REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PERFECTO M. MALATBALAT,
Petitioner,

versus C.T.A. CASE NO. 2181

THE COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

Petitioner Perfecto M. Malatbalat appealed from the decision of Commissioner of Customs Rolando G. Geotina, affirming that of Collector of Customs Salvador T. Mascardo of the Airport Customhouse in Seizure Identification No. 821, wherein he ordered, instead of forfeiture, the payment of duties, taxes and other charges on the 56 packages of assorted merchandise consisting of 3,914 men's, ladies' and boys' wrist watches, men's and ladies' watch bracelets, loose watch parts, ladies' leather flat shoes and hard rubber sole slippers, 3912 yards of nylon crepe dress materials made in Japan, 496½ yards of men's suiting materials made in England and Switzerland, Parker T-Ball Pen refills, leather watch straps, gold rings, pendants, men's tie pins and cuff-links, birthday and jewelry stones, medicines, tranquilizers, empty gelatin capsules, 34 decks of Chinese playing cards,

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etc., which were appraised and valued by Customs Examiner Paciente D. Gulle and Customs Appraiser Melquiades Ocampo at $28,406.22 (U.S. dollar). At the rate of ₱3.90 to a U.S. dollar at the time of the appraisal on June 5, 1968 of the above-mentioned merchandise, the same amounted to ₱110,784.26. (See Customs Administrative Order No. 6-70 dated February 23, 1970.)

For a detailed description of the seized articles, their quantity, unit price and sources of origin, the same are itemized hereunder as follows:

147 pcs. Seiko Men's wrist watch, 21 jewels, gold plated, automatic, calendar. . .	$16.25/pc -	$2,388.75
5 pcs. Seiko Men's wrist watch, 21 jewels, gold plated ..	16.25/pc -	81.25
20 pcs. Seiko Men's wrist watch, 21 jewels, gold plated, diashock	16.25/pc -	325.00
20 pcs. Seiko Men's wrist watch, 25 jewels, gold plated, automatic, calendar . . .	19.50/pc -	390.00
30 pcs. Seiko Men's wrist watch, 17 jewels, gold plated, automatic, calendar . . .	8.00/pc -	240.00
50 pcs. Seiko Men's wrist watch, 17 jewels, stainless, calendar	8.00/pc	400.00
43 pcs. Seiko Men's wrist watch, 21 jewels, stainless, calendar, automatic . . .	16.25/pc	698.75
10 pcs. Seiko Men's wrist watch, 25 jewels, gold plated, day-date, automatic . . .	19.50/pc	195.00
10 pcs. Seiko Men's wrist watch, no jewels, gold plated. .	4.35/pc	43.50
130 pcs. Tugaris Men's wrist watch, 25 jewels, gold plated, calendar, Incabloc, automatic	10.00/pc -	1,300.00

50 pcs.	Tugaris Men's wrist watch, 25 jewels, gold plated, day-date	10.00/pc -	500.00
100 pcs.	Tugaris Men's wrist watch, 21 jewels, gold plated, calendar	8.50/pc -	850.00
130 pcs.	Tugaris Men's wrist watch, 21 jewels, stainless, calendar	8.50/pc -	1,105.00
80 pcs.	Tugaris Boy's wrist watch, 17 jewels, stainless, calendar	4.00/pc -	320.00
20 pcs.	Tugaris Boy's wrist watch, 17 jewels, stainless . . .	4.00/pc -	80.00
230 pcs.	Buler Men's wrist watch, 21 jewels, gold plated, calendar	5.00/pc -	1,150.00
200 pcs.	Buler Men's wrist watch, 21 jewels, stainless, calendar	5.00/pc -	1,000.00
270 pcs.	Buler Men's wrist watch, 17 jewels, gold plated . .	4.00/pc -	1,080.00
50 pcs.	Buler Men's wrist watch, 21 jewels, gold plated . .	5.00/pc -	250.00
100 pcs.	Buler Men's wrist watch, 17 jewels, stainless . . .	4.00/pc -	400.00
20 pcs.	Seiko Men's wrist watch, 17 jewels, stainless, automatic, Calendar . . .	8.00/pc -	160.00
1 pc.	Buler Men's wrist watch, 17 jewels, stainless, automatic, calendar with luminous arms and numberings, S.N. 1356 A.C. . .	5.00/pc -	5.00
1 pc.	Buler Men's wrist watch, no jewels, gold plated, anti-magnetic, S.N. 1349. .	2.50/pc -	2.50
1 pc.	Buler Men's wrist watch, no jewels, gold plated, anti-magnetic, with Roman numeral numberings	2.50/pc -	2.50
50 pcs.	Buler Boy's wrist watch, 21 jewels, stainless, calendar	5.00/pc -	250.00
31 pcs.	Buler Boy's wrist watch, 17 jewels, stainless . . .	4.00/pc -	124.00
170 pcs.	Buler Men's wrist watch, movements, less dial, case, back and arms	1.00/pc -	170.00
240 pcs.	Ceba Men's wrist watch (Golden Dragon) 21 jewels	5.00/pc -	1,200.00

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60 pcs.	Philip Men's wrist watch 21 jewels, stainless, day-date	$ 10.00/pc -	$ 600.00
750 pcs.	Lady de Luxe, lady's wrist watch, 17 jewels, stainless	7.50/pc -	5,625.00
200 pcs.	Lady de Luxe, lady's wrist watch, 17 jewels, gold plated	7.50/pc -	1,500.00
50 pcs.	SWAN, Lady's wrist watch, 21 jewels, gold plated . .	6.00/pc -	300.00
30 pcs.	Seiko, Lady's wrist watch, no jewels, gold plated . .	4.00/pc -	120.00
1 pc.	Buler Lady's wrist Pendant watch, 17 jewels, gold plated, Nakar-faced, calendar with gold anodized chain.	5.00/pc	5.00
1 pc.	Small box-containing assorted, loose watch parts	2.00/all	2.00
350 pcs.	Seiko Men's watch bracelets, stainless	1.00/pc -	350.00
180 pcs.	Seiko Men's watch bracelets, gold plated	1.00/pc -	180.00
80 pcs.	Seiko Lady's watch bracelets, stainless. . .	0.75/pc	60.00
50 pcs.	Seiko Lady's watch bracelets, gold plated. .	0.75/pc -	37.50
20 pcs.	Seiko Lady's watch bracelets, gold plated with attached chain . . .	0.75/pc -	5.00
150 pcs.	Seiko, Men's leather watch straps with stainless buckle	0.20/pc -	30.00
35 pcs.	Seiko, Men's leather watch straps with gold plated buckle	0.20/pc -	7.00
34 prs.	Lady's leather flat shoes	1.00/pr.	34.00
17 prs.	Lady's leather flat shoes with nylon mesh . .	1.00/pr -	17.00
6 prs.	Lady's leather low-heeled shoes	2.50/pr -	15.00
26 prs.	Lady's slippers of hard rubber soles	0.25/pr.	6.50
600 yds.	Dress materials (Nylon Crepe de Chine) aquamarine color.)		

595 yds. Dress materials (Nylon
Crepe de Chine) yellow color.)
550 yds. Dress materials (Nylon)
Crepe de Chine) salmon-pink)
color.)
449 yds. Dress materials (Nylon
Crepe de Chine) mustard color)
539 yds. Dress materials (Nylon Crepe
de Chine) white color.) $0.70/yd.
516 yds. Dress materials (Nylon Crepe
de Chine) light green color.)
447 yds. Dress Materials (Nylon Crepe
de Chine) light pink color.)
100 yds. Dress materials (Nylon Crepe
de Chine) light blue color.)
50 yds. Dress materials (Nylon Crepe
de Chine) sky-blue color.)

66 yds. Dress materials (Rayon-
jersey) printed.) $0.70/yd.

3,912 yds. Total . . . .$0.70/yd - $ 2,738.40

NOTE: All above dress materials are marked SEIRIN, Japan made.

467 yds. Men's suiting materials
(Terylene Worsted) Swiss-
made, double width, as-
sorted dark colors.
29½ yds. Men's suiting materials
(Terylen Worsted) England-
made, double width, as-
sorted dark colors.
496½ yads. Total . . . . $2.00/yd. - 993.00

119 pcs. Parker T-Ball Pen Refills 0.20/pc. - 23.80

NOTE: The following are the list of articles found inside Bundle No. 24 which was previously set aside and sealed pending the presence of Mr. Melquiades Ocampo, Customs Appraiser, MIA, an expert on examination of jewelries and precious stones, per instruction of the Commissioner of Customs, Juan Ponce Enrile, and whose findings appears below:

<u>ACTUAL FINDINGS:</u>

One (1) Tin Box (Creme crackers box -
Jacob) containing:
One(1) pc. 14K lady's gold bracelet
with 12 small jades hollow. . .$ 8.00/pc - $ 8.00

Five (5) pcs. 14k lady's gold bracelets with engravings, hollow -	$5.00/pc -$	25.00
Two (2) pcs. 14k lady's gold bracelets, streamlined.	5.00/pc -	10.00
Seven (7) pcs. 14k gold bracelets (lady's) - one set of 7 pcs.	0.30/pc -	2.10
Ten (10) pcs. lady's white gold bracelets (KWG) hollow, with engravings	3.00/pc -	30.00
Twenty-one (21) pcs. lady's thin bracelets - set of three (3) of 7 pcs. each set	0.30/pc -	6.30
Two (2) pcs. lady's bracelets (KWG) hollow with 12 small jades each	8.00/pc -	16.00
Two (2) pcs. loose granate stones (birth stones)	0.50/pc -	1.00
Two (2) pcs. loose stones, sapphire, small	0.50/pc -	1.00
Three (3) pcs. lady's small pendants, 18k with small jade.	5.00/pc	15.00
Two (2) pcs. tie pins (Men's) with one small moonstone each	2.00/pc. -	2.00
Six (6) prs. 14k Men's cuff-links with one tie clip each	4.00/set -	16.00
Ten (10) pcs. yellow lady's rings set with one jade each	1.50/set -	15.00
Ten (10) pcs. white lady's rings set with one jade each	m1.50/set -	15.00
Ten (10) pcs. white lady's rings set with five (5) tiny jade each	1.50/set -	15.00
Two (2) pcs. white lady's rings set with three (3) tiny jade each	1.50/set -	3.00
One (1) pair white Men's cuff-links set with one (1) jade each	3.00/set	3.00
Two (2) pcs. white tie-clip (one (1) with moonstone and the other with jade)	4.50/pc.	9.00
Sixty-three (63) pcs. lady's rings (KWG) - 6 prs. with white stones.	1.50/pc. -	94.50
Four (4) pcs. white stones (Moonstones)	0.50/pc. -	2.00
Two (2) pcs. Turquoise stones	0.50/pc. -	1.00
Four (4) pcs. Star sapphires..	2.00/pc. -	8.00
Two (2) pcs. Black Star sapphires. . .	3. 0.50/pc. -	12 1.00
Three (3) pcs. Indian Star Ruby . . .	2.00/pc. -	6.00
Two (2) pcs. Garnate stones	0.75/pc. -	1.50
Three (3) pcs. Golden Topaz	1.00/pc. -	3.00
Six (6) pcs. Small red corral (Flower shape)	0.25/pc.	1.50
Four (4) prs. white Men's cuff-links with one (1) tie-clip each . .	3.00/pr. -	12.00
Forty-seven (47) pcs. lady's gold rings 14k.	1.00/pc. -	47.00
Four (4) Smoky Topaz	3.00/pc. -	12.00

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Note: Corresponding samples were taken by Mr. N. Ocampo, Customs Appraiser, as follows:

2 white gold bracelets of different sizes.
7 pcs. lady's rings, assorted.
Three (3) prs. cuff-links, assorted.
2 pcs. thin bracelets.
9 pcs. assorted stones.
1 pc. small pendant.

28,000	Dilantin capsules (diphenyldydantoin sodium) Parke Davis USA 0.1 gram each capsule.) . .	$ 95.00 all -	$ 95.00
19,000	Chlormycin (Cloramphenicol) capsules - U.S.P.) Jones Pharmacal, U.S.A., 250 mg. each capsUle.)		
16,000	Empty Gelatin capsules (Parke Davis USA)	1.25/1000 pap.	200.50
4,500	Librium - 5 dragees, 5 mg. each dragee (Roche)	0.60/30 dragees	91.90
4,000	Librax dragees (Roche) . . .	13.63/500 dragees	109.04
3,000	Sinutab tablets	0.02/tablet	60.00
600	Dramamine tablets 50 mg. each tablet (Searle) USA. .	0.03/tablet	18.00
300	Ephynal chewable dragees (Vitamin E) Roche, 100 mg. each dragee	3.25/100 dragees	9.75
192	tubes Chloromycetin - Opthalmic Ointment (Parke Davis)..	0.24/tube	46.08
34	Decks Chinese playing cards (Gnajo) no brand.	1.00/deck	34.00
	(Pp. 111-114, Customs rec.)		

The seizure proceedings were commenced by Collector of Customs Salvador T. Mascardo on June 1, 1968 by the issuance of the Warrant of Seizure and Detention. On June 18, 1968, Messrs. Perfecto Malatbalat and Ruperto Santiago instituted an action in the Court of First Instance of Manila against the Commissioner of Customs, docketed as Civil Case No. 73322, for Mandamus and Prohibition with prayer for the issuance of a writ of

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preliminary injunction to stop Collector of Customs Salvador T. Mascardo from conducting the seizure proceedings because he has no jurisdiction over the seized articles and merchandise which were purchased locally by claimant Perfecto Malatbalat. The seizure proceedings were held in abeyance while the judicial suit was in progress. Subsequently, the court action was dismissed by Judge Jose Moya of the CFI of Manila and, therefore, the administrative proceedings were resumed.

The seizure proceedings were instituted for the reported violation of Section 2530(m)-1 of the Tariff and Customs Code, in relation to Section 1202 of the same Code, which provides as follows:

> SEC. 2530. Property Subject to Forfeiture Under Tariff and Customs Laws. - Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
>
> x x x x
>
> m. Any article sought to be imported or exported:
>
> (1) Without going through a customhouse, whether the act was consummated, frustrated or attempted;
>
> SEC. 1202. When Importation Begins and Deemed Terminated. - Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intent to unlade therein.

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> Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges until they have legally left the jurisdiction of the customs.

The opposing parties submitted the case to this Court for decision on the basis of their pleadings, customs record, transcript of the administrative hearings, oral and documentary evidences adduced thereat, and the partial stipulation of facts submitted to this Court which read as follows:

> COME NOW the parties in the above-entitled case, assisted by their respective counsel, and to this Honorable Court respectfully submit the following stipulation of facts:
>
> 1. That on June 1, 1968, the Collector of Customs, Airport Customhouse (MIA) initiated seizure proceedings against the merchandise of the herein petitioner which was docketed therein as S.I. No. 821, wherein the original claimants were the petitioner herein with respect to the 56 packages of miscellaneous goods and Ruperto C. Santiago with respect to the delivery van, carrier of the said goods.
>
> 2. That the parties herein are adopting the partial stipulation of facts entered into by the petitioner herein and his co-claimant Ruperto C. Santiago on the one hand and the representative of the government on the other hand in the hearing on January 2, 1969 in said S.I. No. 821.

3. That the parties herein are also adopting _in toto_ the record of the proceedings in S.I. No. 821, including the testimony of the witnesses and documentary exhibits presented therein.

4. That after due hearing in S.I. No. 821, the Collector, Airport Customhouse, MIA, decreed the release of the delivery van to Ruperto C. Santiago and, likewise, the release of the 56 packages of assorted merchandise to the petitioner herein upon full payment of the duties, taxes and other charges due thereon.

5. That from the aforesaid decision, petitioner Perfecto M. Malatbalat interposed an appeal to the Commissioner of Customs (Customs Case No. 953) insofar as the 56 packages of assorted merchandise is concerned, while claimant Ruperto C. Santiago, owner of the delivery van, took possession of the van on December 18, 1970.

6. That the Commissioner of Customs affirmed the decision of the Collector, Airport Customhouse, MIA on September 15, 1970.

7. That claimant Perfecto M. Malatbalat, again, not satisfied with the decision of the Commissioner of Customs, now petitions this Honorable Court for the review of the decision rendered by the Commissioner of Customs.

8. That after the Commissioner of Customs had rendered his decision in Customs Case No. 953, the Commissioner of Customs, upon motion of Ruperto C. Santiago, owner of the delivery van, authorized the release of the said delivery van to its owner on December 2, 1970.

> WHEREFORE, the parties herein respectfully pray that judgment be rendered in this case on the basis of the above stipulation of facts and the records of the proceedings aforecited, with the reservation that the parties be allowed to submit their respective memorandum, the petitioner within fifteen (15) days from receipt of the order of this Honorable Court admitting this stipulation and the respondent within fifteen (15) days from receipt of petitioner's memorandum.

After the administrative hearings, the Collector of Customs of the Airport Customhouse, Pasay City, rendered a decision on July 19, 1969, wherein he decreed the release of the Volkswagen Kombi delivery van to claimant Ruperto Santiago as well as the release of the 56 packages of assorted merchandise to Perfecto Malatbalat provided that the duties, taxes and other charges due thereon are paid by the claimant in full. The said decision of the Collector of Customs was affirmed in the decision of the Commissioner of Customs dated September 15, 1970.

The principal and pivotal issue submitted to this Court for resolution is whether or not the 56 packages of assorted merchandise in question were imported without going through the customshouse, whether the act was consummated, frustrated, or attempted. As a corollary issue, this Court has to resolve whether or not the aforesaid merchandise valued at ₱110,784.26 are subject to forfeiture or the payment of tariff duties, internal revenue taxes and other charges.

To disprove the report that the 56 packages of assorted merchandise were imported by the claimant-petitioner without going through the customhouse, Perfecto Malatbalat adduced testimonial and documentary evidences showing that the merchandise in question were purchased locally from three commercial establishments, namely:

1. M. R. Tolosa Trading
   R-350, Republic Supermarket, Rizal., Ave., Manila
   Miguel R. Romualdez, Proprietor
   Sales Invoices: Exhs. 6, 6-A, 6-B, 6-C and 6-D;

2. J. M. S. Enterprises
   752 Kings Road, Mandaluyong, Rizal
   Juanito M. Saavedra, Proprietor
   Sales Invoices: Exhs. 7, 7-A and 7-B; and

3. Farmacia Hosana-Aguilan
   248 Kanlaon St., corner Apo, Quezon City
   Alejandro B. Aguilan, Proprietor
   Sales Invoices: Exhs. 8, 8-A and 8-B.

In the administrative hearing, Perfecto Malatbalat declared and testified that the sales invoices of M. R. Tolosa Trading marked as Exhibits 6 to 6-D were issued and signed by Bonifacio Almaden who is a sales agent of the said establishment, the details and particulars of which are as follows:

Inv. No.	Date Issued	Quantity	Articles Sold	Unit Price	Amount
652	May 18,'68	230 pcs.	Watches and Bracelets	₱25.00	₱5,750.00
Terms:	Cash				
653	May 20,'68	410 pcs.	"	25.00	10,250.00
Terms:	Cash				
654	May 21, '68	542 pcs.	Watches	15.00	8,130.00
		770 "	"	14.00	10,780.00
		225 "	Bracelets	3.00	675.00
Terms:	90 days.				₱19,585.00
655	May 21, '68	11 set	Cuff-link	10.00	110.00
		3 pcs.	Brooch	8.00	24.00
		20 "	Jade ring	10.00	200.00
		10 "	" "	25.00	250.00
		4 "	" bracelet	30.00	200.00
		2 "	" "	50.00	100.00
		77 "	W.S. Ring	7.00	539.00
		47 "	K.G. "	8.00	375.00
		30 "	Assorted stone	5.00	150.00
		27 "	Bracelet	15.00	405.00
Terms:	Cash				₱ 2,354.00
656	May 21, '68	358 pcs.	Watches	9.00	3,222.00
		20 "	Bracelets	3.00	60.00
		16 doz.	Strap	3.00	48.00
		10 "	Refill	15.00	150.00
Terms:	Cash				₱3,480.00
	TOTAL VALUE OF MERCHANDISE PURCHASED.				₱41,419.00

Perfecto Malatbalat also declared and testified that Sales Invoices Nos. 1002 and 1004 of J. M. S. Enterprises were issued and signed by the store employees, the details and particulars of which are as follows:

Inv. No.	Date Issued	Quantity	Articles Sold	Unit Price	Amount
1002	May 21, '68	600 yds.	Suiting Materials	₱4.00	₱ 2,400.00
		48 prs.	Shoes	3.00	144.00
		48 "	Slippers	1.50	72.00
		190 yds.	Dress materials	1.00	190.00
		4000 "	" "	1.00	4,000.00
		117 pcs.	Watch parts	2.50	292.50
		1035 "	Watches	4.00	4,140.00
Terms:	90 days per self-serving certificate of Perfecto Malatbalat (page 7, Customs rec.)				₱11,238.50
1004	May 21,'68	53 pcs.	Watch part	2.50	192.50
Terms:	Cash				
	TOTAL VALUE OF MERCHANDISE PURCHASED				₱11,431.00

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Petitioner further declared and testified that on May 21, 1968, he purchased for the first time from Farmacia Hosana-Aguilan assorted drugs and empty capsules valued at ₱4,567.05 under Sales Invoice Nos. 294, 295 and 296.

The purchases, therefore, of petitioner-claimant Perfecto Malatbalat of the 56 packages of assorted merchandise from May 18 to 21, 1968 were made in three places, namely: Manila, Mandaluyong, Rizal and Quezon City. The total value thereof amounted to ₱57,417.05 computed as follows:

1. M. R. Tolosa Trading	₱41,419.00
2. J. M. S. Enterprises	11,431.00
3. Farmacia Hosana-Aguilan. . .	4,567.05
T O T A L. .	₱57,417.05

Deducting the alleged purchases of petitioner-claimant amounting to ₱57,417.05 from the sum of ₱110,784.26, representing the appraisal value of the seized merchandise made by the customs examiner and appraiser, shows a substantial difference of ₱53,367.21. This staggering disparity in value may be attributed to the fact that, upon review and computation of the list and inventory of the seized watches alone in relation to the supposed purchases made locally by the petitioner, it was ascertained that there is a difference of 569 wrist watches, that is, by deducting from the total

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seized wrist watches of 3,914 the 3,345 pieces of wrist watches purchased from M. R. Tolosa Trading and J. M. S. Enterprises numbering 2,310 and 1,035 pieces, respectively.

Despite the huge difference in the number of wrist watches, there is a big disparity between the appraisal and purchase value thereof. From petitioner's documentary evidence, we gather the following data:

No. of Watches	Unit Price
1,035 pieces	₱ 4.00 each
656 "	9.00 "
770 "	14.00 "
542 "	15.00 "
652 & 563 pieces with bracelet	25.00 "

On the other hand, from the conservative appraisal made by Customs Examiner Paciente Gulle and Customs Appraiser Melquiades Ocampo, the seized Swiss wrist watches such as Tugaris, Seiko, Buler, Lady de Luxe, Philip, Ceba and Swan were appraised at $2.50 to $16.25 U.S. dollar, or from ₱9.75 to ₱53.38 each. The unrealistic purchase prices of the wrist watches allegedly bought locally are, therefore, preposterous and deceptive to say the least.

It is a settled doctrine that a party litigant who prays for judgment on the pleadings must be understood to have admitted the truth of all the material and relevant allegations of the op-

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posing party in the absence of proof to the contrary. (Bauerman v. Casas, 10 Phil. 115; Evangelista v. De la Rosa, et al., 76 Phil. 115; Tanchico v. Ramos, 48 Off. Gaz. 654.) This is particularly true in customs seizure cases which are proceedings _in rem_ where the claimants or persons affected thereby must establish their legitimate claim and legal right convincingly and satisfactorily.

Petitioner-claimant Malatbalat claims that he is a merchant engaged in the business of general merchandising at 4727 Road I, Mapa St., Sta. Mesa Blvd., Manila. But it is surprising to note that as a merchant of consequence he has no store but uses his residence as a place of business (p. 80, t.s.n., Customs rec.). He started in the buy-and-sell of second-hand appliances in 1967 with a capital of only ₱5,000.00. On March 21, 1968, his application with the Bureau of Commerce for the registration of his firm name (Permalat Enterprises) shows that his capital as a single proprietor was ₱10,000.00 only. For the year 1967, he has not paid any income tax because he was exempt from the payment thereof. Despite his pretension as a merchant, the Mayor's Permit and Municipal License Receipt as a merchant (pp. 29-

30, Customs rec.) shows that they were secured and issued about two weeks after the seizure of the 56 packages of assorted merchandise on May 22, 1968. The records, both administrative and judicial, failed to show that petitioner-claimant was either provided with an internal revenue Privilege Tax Receipt (C-13) as a merchant in 1968 or with the duly registered books of accounts, in violation of Sections 178 and 334 of the Revenue Code.

Under the foregoing factual background, petitioner's pretension that he purchased locally the 56 packages of assorted merchandise and that the taxes due thereon have been paid is untenable. A critical analysis and thorough evaluation of petitioner's evidences, documentary and testimonial, leads us to the conclusion that Perfecto Malatbalat is a dummy-claimant of the seized merchandise or a puppet of an undisclosed importer for the following reasons, to wit:

First, petitioner-claimant is not a legitimate merchant because he was not provided with an internal revenue privilege tax receipt, municipal license receipt and Mayor's permit from 1967 to May 22, 1968 when the 56 packages of assorted merchandise were intercepted and seized by a group of Pasay City policemen. Neither was he provided with the required books of accounts and duly registered sales invoices considering the volume and value of his alleged business transactions in May, 1968;

Second, his capital of ₱5,000.00 in 1967 or the registered capital of ₱10,000.00 in 1968 is very small and insufficient in effecting the alleged purchases, in a few days of May, 1968, of assorted merchandise from M.R. Tolosa Trading, J.M.S. Enterprises and Farmacia Hosana-Aguilan valued at ₱57,417.05 but actually worth ₱110,784.26 according to the conservative appraisal made by the customs examiner and customs appraiser;

Third, petitioner's self-serving certificate and purchase invoice showing that he bought on credit (90-day term) from M.R. Tolosa Trading and J.M.S. Enterprises assorted merchandise valued at ₱19,585.00 and ₱11,238.50 are belied and contradicted by his own admission in the administrative hearing that he does not know Tolosa Trading, Farmacia Hosan-Aguilan and J.M.S. Enterprises (p. 72, t.s.n.., Customs rec.). Moreover, the invoices allegedly covering the purchases on credit were issued and signed by a sales agent and store employees without the knowledge and consent of the owner or manager of the commercial establishments concerned;

Fourth, the staggering difference of ₱53,367.21 between the purchase price (₱57,417.26) and the official appraisal value (₱110,784.26) of the 56 packages of assorted merchandise was never rebutted by the petitioner-claimant during the administrative hearings. Moreover, the sales invoices submitted as evidences were not properly identified by the parties concerned and, therefore, they are self-serving and without evidentiary value;

Fifth, the 34 decks of Chinese playing cards listed in the inventory made by the customs examiner and appraiser are subject to specific tax under Section 147 of the Revenue Code and the unlawful possession or removal thereof is penalized under Section 174 of the same Code. An examination, however, of all the sales invoices adduced by petitioner-claimant failed to show where the said Chinese playing cards came from or from whom they were purchased, thereby impugning the truth and veracity of petitioner's defense that all the seized merchandise were purchased locally;

Sixth, the official inventory of the seized merchandise shows a total of 3,914 pieces of men's, ladies' and boys' wrist watches while those allegedly purchased from M.R. Tolosa Trading and J.M.S. Enterprises totalled 3,345 pieces only, thereby showing a difference of 569 wrist watches;

Seventh, the truth and veracity of the statements contained in the sales invoices submitted by petitioner-claimant as evidences can easily be corroborated by the entries in the duly registered books of accounts of the sellers and buyer of the merchandise in question but petitioner failed to do so for reasons beyond our comprehension; and

Eight, petitioner-claimant allegedly purchased assorted merchandise from M. R. Tolosa Trading on May 18 and 20, 1968, under Invoice Nos. 652 and 653, for ₱5,750.00 and ₱10,250.00, respectively, without securing the delivery thereof on the same date but instead entrusted them to the custody of the alleged seller. With respect to the purchases made by petitioner on May 21, 1968 from M. R. Tolosa Trading, Farmacia Hosana-Aguilan and J. S. M. Enterprises, petitioner again failed to secure the delivery thereof but instead entrusted them to the custody of Ruperto Santiago, who is the registered owner of the Volkswagen Kombi delivery van, until May 22, 1968 when the said delivery panel and the 56 packages of assorted merchandise were intercepted and seized by a group of Pasay City policemen along F. B. Harrison St., Pasay City, corner of Polo Road. If petitioner is a legitimate merchant and the real owner of the seized merchandise valued at ₱110,784.26, we cannot understand and comprehend why he was in Olongapo City on the date and time the merchandise in question were seized and apprehended. The unusual actuations and behavior of petitioner in this case baffle the logic of an ordinary man.

After pronouncing that petitioner is a dummy-claimant under the facts and circumstances of this case, we are constrained to hold that the merchandise in controversy were imported without going through a customhouse because they were seized in Pasay City where the Airport Customhouse is territorially located; the merchandise in question were undoubtedly of foreign origin; and the tariff duties and internal revenue taxes due thereon have not been paid. We sustain, therefore, the power of the Commissioner of Customs to assess and collect the taxes and other charges due thereon under Section 1202 of the Tariff and Customs Code, supra. It may not be amiss to state that the Commissioner of Customs and his subordinates are agents of the Commissioner of Internal Revenue for the collection of the national internal revenue taxes on imported articles under the provisions of Section 6 of the National Internal Revenue Code, as amended by Section 1, Republic Act No. 2655.

Petitioner questioned the power of the Bureau of Customs for instituting the seizure proceedings because the merchandise in question were seized

> a petition praying that the lower court's order of July 9, 1946, be set aside, that said court be required to order the return of the documents and things in question to petitioner, and that the prosecutor be restrained from using and presenting them as evidence at the trial of the criminal case for treason.

The procedure adverted to above was also followed in the case of Harry S. Stonehill, et al. v. Hon. Jose W. Diokno, et al., G.R. No. L-19550, June 19, 1967. In the said case, our Supreme Court, among others, said:

> . . . on March 20, 1962, said petitioners filed with the Supreme Court this original action for certiorari, prohibition, mandamus and injunction, and prayed that, 'pending final disposition of the present case, a writ of preliminary injunction be issued restraining Respondent-Prosecutors, their agents and/or representativess from using the effects seized as aforementioned, or any copies thereof, in the deportation cases already adverted to, and that, in due course, thereafter, decision be rendered quashing the contested search warrants and declaring the same null and void, and commanding the respondents, their agents or representatives to return to petitioners herein, in accordance with Section 3, Rule 67, of the Rules of Court, the documents, papers, things and cash moneys seized or confiscated under the search warrants in question. (Underscoring supplied.)

If we were to adhere to the rule denying the admissibility of the evidence procured by an illegal search and seizure, the real party concerned must interpose in court a timely challenge to the validity of the seizure and the competency of the evidence by means of a petition or original action. If upon such action, the real party in interest can show in fact that the seized articles and merchandise were secured by an unlawful search and seizure, the same if used as evidence will be suppressed following the Supreme Court decision in the Stonehill case, supra. In the case at bar, however, Perfecto Malatbalat failed to file a petition in this court praying for the return of the illegally seized merchandise and the suppression thereof as evidence. The original action for prohibition, mandamus and injunction filed with the Court of First Instance of Manila under Civil Case No. 73322 was dismissed by the court. Consequently, the suppression of the illegally seized assorted merchandise as evidences cannot be entertained by this Court.

WHEREFORE, finding that petitioner Perfecto M. Malatbalat is a dummy-claimant of the 56 packages of assorted merchandise here in controversy, the decision of the Commissioner of Customs appealed from has to be, as it is hereby, modified. It is hereby declared and ordered that under Section 2530(m)-1 of the Tariff and Customs Code, all the assorted merchandise in question are forfeited to the Government and disposed according to law.

SO ORDERED.

Quezon City, April 17, 1971.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge