REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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NARCISO YTING,
Petitioner,

- versus -

THE COMMISSIONER OF CUSTOMS.
Respondent.

C.T.A. CASE NO. 5462

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
MAY 28 2009 ; 10:41 am

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DECISION

CASANOVA, *J.*:

Submitted for decision is a Petition for Review praying for this Court (1) to reverse and set aside the Decision dated August 29, 1996 of Manila International Container Port (MICP) Collector of Customs, Buenaventura C. Maniego, affirmed by respondent Commissioner of Customs, through Deputy Commissioner Licerio C. Evangelista, in his Second Indorsement dated December 6, 1996, declaring the forfeiture of the subject shipment in favor of the government; (2) to order the Bureau of Customs, through its responsible officers, to release the subject shipment to the owner, Duty Free Philippines, or to compensate the owner with the actual and reasonable value of the goods wrongfully seized; and (3) to grant petitioner and/or the owner such other relief or remedy as the Court may deem lawful, just and equitable.[1]

THE FACTS

Petitioner is a bonafide employee of Duty Free Philippines and assigned as Warehouseman at Duty Free Philippines, FTI Taguig, Metro Manila.[2]

In 1993, Duty Free Philippines imported various products from different countries, which were transhipped to different port areas where Duty Free Philippines has sales outlets.[3]

On April 24, 1994, Duty Free Philippines pulled out several of the imported merchandise from its Davao Warehouse and shipped the same to its FTI Warehouse because of "slow movement."[4]

On May 5, 1994, before the merchandise could reach the Customs Bonded Warehouse No. 84, in FTI, Taguig, Acting Collector Col. Pacifico M. Bautista of Sub-Port of North Harbor issued Hold Order No. 48-94 to Aboitiz Transport System as regards the shipment with Container Van No. ACCU 2101319 loaded on board Megaone and consigned to "Narciso Yting/Duty Free Phil."[5]

On May 19, 1994, Officer-on-Case Aristeo C. Almanzor wrote a memorandum for the Acting Collector of the Sub-Port of North Harbor recommending that the subject van be held for further investigation. He reported:

> "Subject Van was found to be padlocked and upon instruction from the Collector of this Port, no spotchecking/examination was

[1] Docket, pp. 1- 8.
[2] Exhibit "R"; Customs Records, p. 61.
[3] *Id*, pp. 62-129.
[4] Meaning the goods remain unsold. These items include assorted cigarettes, home furnishings, electronics, toys, and Philippine gifts (*id.*, pp. 130-140).
[5] Exhibits "A" and "39"; *Id.*, pp. 12 and 60. See also TSN, September 9, 1997.

> conducted but was however properly sealed. Said shipment is covered only by a Bill of lading which I secured from Aboitiz Transport System. Suffic[ie]nt efforts exerted by the shipping Company to communicate with the consignee has failed. No Transhipment permit from the Port of Origin nor an advance notice from the Port of origin was produced, aggravated by the fact that said shipment was not put under guard when transported to Manila."[6]

As he has no objection to the recommendation of Mr. Almanzor, Acting Collector Col. Pacifico M. Bautista forwarded on May 19, 1994 the report of Mr. Almanzor and recommended further investigation to the Commissioner of Customs, through the District Collector of Customs, MICP.[7]

On May 24, 1994, District Collector of Customs, Mr. Buenaventura C. Maniego, issued a Warrant of Seizure and Detention to the District Commander, ESS-MICP, North Harbor, Manila, and the Chief, Wharfinger-In-Charge, MICP, North Harbor, Manila to seize the subject shipment; and turn over the same to the custody of the Auction and Cargo Disposal Division, MICP, pending termination of the Seizure Proceedings (with Seizure Identification No. 94-175) and/or until further order.[8]

On August 29, 1996, District Collector Buenaventura C. Maniego of the MICP rendered a Decision forfeiting the subject shipment in favor of the government. Pertinent portions of the Decision read:

> "From a review of the evidence presented by the parties, it appears that there was an attempt to deviate the subject articles to other outlets other than the DFP. Although the container was sealed, the name was merely consigned to a certain Narciso Yting whose identity at the time of arrival of the shipment could not be ascertained, whether he is an employer of the DFP or not. This fact was bolstered by the investigation made by the Officer-on-case and the shipping agent who tried to contract the said consignee Narciso Yting but to no avail. Moreover, the shipment was not really underguarded and

[6] Exhibit "A-1"; *id.*, p. 16.
[7] Exhibit "B"; *id.*, p. 18.
[8] Exhibits "C" and "40"; *id.*, p. 19.

stayed for a while in the custody of the shipping lines, a situation which is highly suspicious, hence, the reason for the issuance of the WSD against the shipment in order to prevent the deviation of the same to other outlets other than the DFP.

Although Duty Free Philippines presented documentary exhibits regarding its importations of the same kind of articles, such merely showed the fact of importation of the goods but did not overcome the findings that there was an attempt to deviate it to other outlets. Duty free Philippines is allowed to sell its importations only to tourists and balikbayans or overseas contract workers. Thus, for it to deviate the goods and sell the same to local outlets would be contrary to law and would defeat not only the very purpose for which it was established to the damage and prejudice of the local manufacturers who need to be protected.

WHEREFORE, by virtue of the authority vested in this Office by law, subject shipment is hereby FORFEITED in favor of the government, the same to be disposed of in the manner prescribed by law.

xxx.

SO ORDERED."

On December 6, 1996, respondent, through Deputy Commissioner Licerio C. Evangelista, affirmed the above Decision as there being no legal reason to disturb the findings therein contained and ordered the immediate disposal of the subject articles in accordance with law.

Hence, petitioner filed the present petition on February 12, 1997.

On March 18, 1997, respondent filed his Answer and raised that petitioner has no cause of action of one of the special and affirmative defenses. He argues:

"4. The seizure of the articles subject of the present case was justified on the following grounds:

(a) it was not covered by a transshipment permit;
(b) no advance notice from the port of origin regarding the arrival of the shipment was made; and

> (c) the shipment was not continuously underguarded when transported to Manila,
>
> all in violation of Sections 2503 in relation to Section 2530(f) and (l) – 3, 4 and 5 of the Tariff and Customs Code of the Philippines and related rules and regulations.
>
> 5. Moreover, the identity of petitioner Narciso Yting was unknown, and if known, his personality and whereabouts were unclear in relation to Duty Free Philippines at the time of seizure of the subject shipment."

Trial proceeded. Petitioner presented evidence, and rested his case. Respondent, on the other hand, was deemed to have waived his right to present evidence after he failed to appear, and to present evidence on scheduled two (2) hearing dates.[9] The case was deemed submitted for decision after petitioner filed his Memorandum on December 11, 1997.[10]

On January 14, 1999, this Court rendered a Decision dismissing the instant Petition on the ground of lack of jurisdiction.[11] After the Court denied petitioner's Motion for Reconsideration[12] in a Resolution dated March 5, 1999,[13] petitioner filed before the Court of Appeals a Petition for Review.[14] The Court of Appeals (Eleventh Division) rendered a Decision on April 10, 2006 granting said petition, reversed this Court's Decision, and remanded the case to this Court for proper disposition.[15] Said Decision became final and executory on May 4, 2006, and was entered in the Book of Judgment on July 12, 2006.[16]

After the case was remanded to this Court, counsel for petitioner manifested during the June 7, 2007 hearing that he will no longer present additional evidence

[9] Docket, p. 72.
[10] *Id.*, p. 81.
[11] *Id.*, pp. 83- 91.
[12] Filed on January 29, 1999. *Id.*, pp. 94-97.
[13] *Id.*, pp. 108-111.
[14] *Id.*, pp. 116-125.
[15] *Id.*, pp. 178-183.
[16] *Id.*, pp-. 187-188.

and rested his case.[17] And considering that respondent failed to present his evidence during the scheduled hearing dates, respondent was deemed to have waived his right to present evidence.[18]

After both parties filed their respective Memoranda,[19] the case was submitted for decision on June 2, 2008.[20]

ISSUE

The lone issue is:[21]

> "Whether or not there [is] a violation of any custom laws or regulation in this case, to justify the seizure by the BOC of the Goods and their forfeiture of the government."

THIS COURT'S RULING

Duty Free Philippines was created under Executive Order (EO) No. 46 on September 4, 1986 primarily to augment the service facilities for tourists and to generate foreign exchange and revenue for the government. In order for the government to exercise direct and effective control and regulation over the tax and duty free shops, their establishment and operation was vested in the Ministry, now Department of Tourism (DOT), through its implementing arm, the Philippine Tourism Authority (PTA).[22]

On the sole issue submitted for resolution, this Court rules in the negative.

Section 14 of CAO 3-87, as amended, provides the penalties for violations. Pertinent portion of said section reads:

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[17] *Id.*, p. 219.
[18] *Id.*, p. 236.
[19] *Id.*, pp. 242-250, and 274-286.
[20] *Id.*, p. 297.
[21] *Id.*, p. 243.
[22] *Duty Free Philippines v. Mojica*, G.R. No. 166365, September 30, 2005 (471 SCRA 776).

> "14.1 Any violation by the PTA/private operator/contractor of any terms and conditions hereof and such other regulations as may hereafter be promulgated will be sufficient cause for the cancellation of their authority to operate the duty and tax free bonded warehouse, store/outlets/sales counters. Any fraudulent practices committed against customs revenue as defined in the Tariff Code of the Philippines, as amended, shall subject the violator to the administrative and penal provisions provided for under the TCCP, as amended."

As provided in Duty Free Philippines' Permit to Operate,[23] violation or non-compliance thereof was a valid ground for the suspension of its operation. It does not speak of seizure and forfeiture of goods.

In addition, based on the above-quoted paragraph, the seizure and forfeiture of the shipment is warranted only when PTA/private operator/contractor committed fraudulent practices against customs revenue.

Section 3602 of the Tariff and Customs Code is explicit and lists various fraudulent practices against customs revenue, which are as follows:

> "Sec. 3602. *Various Fraudulent Practices Against Customs Revenue.* -- Any person who makes or attempts to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, paper or by any means of any false statement, written or verbal, or by any means of any false or fraudulent practice whatsoever, or knowingly effects any entry of goods, wares or merchandise, at less than the true weight or measures thereof or upon a classification as to quality or value, or by the payment of less than the amount legally due, or knowingly and wilfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise, or makes or files any affidavit, abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any wilful act or omission, shall, for each offense, be punished in accordance with the penalties prescribed in the preceding section."

[23] Footnote 23.

In *Jardeleza v. People of the Philippines,*[24] the Supreme Court explained Section 3602 of the Tariff and Customs Code of the Philippines ("TCCP") as follows:

> "The provision enumerates the various fraudulent practices against customs revenue, such as the entry of imported or exported articles by means of any false or fraudulent invoice, statement or practice; the entry of goods at less than the true weight or measure; or the filing of any false or fraudulent entry for the payment of drawback or refund of duties.
>
> The fraud contemplated by law must be intentional fraud, consisting of deception, willfully and deliberately dared or resorted to in order to give up some right. The offender must have acted knowingly and with the specific intent to deceive for the purpose of causing financial loss to another; even false representations or statements or omissions of material facts come within fraudulent intent. The fraud envisaged in the law includes the suppression of a material fact which a party is bound in good faith to disclose. Fraudulent nondisclosure and fraudulent concealment are of the same genre.
>
> Fraudulent concealment presupposes a duty to disclose the truth and that disclosure was not made when opportunity to speak and inform was present, and that the party to whom the duty of disclosure as to a material fact was due was thereby induced to act to his injury. Fraud is not confined to words or positive assertions; it may consist as well of deeds, acts or artifice of a nature calculated to mislead another and thus allow one to obtain an undue advantage."

The records of the case is bereft of evidence showing that there was a finding of fraud or fraudulent practice committed by Duty Free Philippines or the petitioner that warranted the seizure and forfeiture of the shipment in the administrative proceeding.

This Court finds no indicia of fraud or fraudulent practice committed by Duty Free Philippines that warranted the seizure of the shipment. The latter's failure to comply with the conditions imposed in its Permit to Operate was without "specific

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[24] G.R. No. 165265, February 6, 2006 (481 SCRA 638).

intent to deceive for the purpose of causing financial loss" to the Government. It is simply a matter of wrong appreciation and application of Customs Administrative Orders when it transshipped the subject articles. Fraud is never imputed and the courts never sustain findings of fraud upon circumstances which, at most, create only suspicion.[25]

The forfeiture of the subject shipment was seized and forfeited for lack of transshipment permit, lack of advance notice, and remain unguarded when transported in Manila in violation of Section 2503 in relation to Section 2530 (f) and (l) (3), (4), and (5) of the Tariff and Customs Code of the Philippines and related rules and regulations. Said sections of the Tariff and Customs Code of the Philippines read:

> "SEC. 2503. *Undervaluation, Misclassification and Misdeclaration in Entry.* - When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten per cent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten per cent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten per cent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: Provided, That, an undervaluation, misdeclaration in weight, measurement or quantity of more than 50% between the value, weigh, measurement, or quantity declared in the entry, and the correct value, weight, quantity or measurement, shall constitute a prima facie evidence of fraud penalized under Section 2530 of this Code.

[25] *Commissioner of Internal Revenue vs. Javier and the Court of Tax Appeals*, G.R. No. 78953. July 31, 1991 (199 SCRA 824), citing *Yutivo Sons Hardware Co. vs. Court of Tax Appeals*, L-13203, January 28, 1961 (1 SCRA 160).

When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional the importer shall be subject to the penal provision under Section 3602 of this Code."

"SEC. 2530. *Property Subject to Forfeiture Under Tariff and Customs Law.* - Any vehicle, vessel or aircraft, cargo and other objects shall, under the following conditions be subject to forfeiture:

xxx.

(f) Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the collector, have been used, are or were entered to be used as instruments in the importation or exportation of the former;

xxx.

(l) Any article sought to be imported or exported:

xxx.

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;
(4) On the strength of a false invoice or other document executed by the owner, importer, exported or consignee concerning the importation or exportation of such article; and
(5) Through any other practice or device contrary to law by means of which such articles was entered through a customhouse t the prejudice of the government."

The above-quoted Section 2530 of Tariff and Customs Code lists the kinds of property, imported or exported, subject to forfeiture. And based on the records of the case, this Court likewise finds no justification for the seizure and forfeiture of the subject shipment based on the above-quoted sections. The seized shipment consisted of various articles pulled out from the Davao outlet of Duty Free Philippines. The articles were not imported at the time of seizure. As the Duty Free

Philippines was not required to file an Import Entry as required in Section 1302 of the TCCP, there was no basis to apply Section 2503 of the TCCP.

As the seized articles were not importations, the shipment is likewise not subject to forfeiture under Section 2530 (f) and (l) (3), (4), and (5) of the TCCP.

WHEREFORE, finding merit in the Petition for Review, the same is hereby **GRANTED**. The Decision dated August 29, 1996 of MICP Collector of Customs, Buenaventura C. Maniego, and the Second Indorsement dated December 6, 1996 of respondent Commissioner of Customs, through Deputy Commissioner Licerio C. Evangelista, are **REVERSED** and **SET ASIDE**, and the subject shipment covered by Bill Lading No. 03-7306032 is **ORDERED RELEASED** to Duty Free Philippines, as represented by the petitioner.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice