REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MAXIMO G. RIVERA, owner/claimant of Ten-Wheeler with Plate No. T-PBM 365, One of the Two (2) subject Ten-wheeler Trucks in Customs Case No. 89-39 (Batangas S.I. No. 5-88),
Petitioner,

- versus - C.T.A. CASE NO. 4479

HON. SALVADOR M. MISON, in his official capacity as COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from the decision of the Respondent dated September 8, 1989 affirming the decision, dated February 14, 1989, of the District Collector of Customs, Port of Batangas, ordering and declaring the forfeiture, among others, the ten-wheeler truck, with Plate No. T-PBM 365, owned by herein petitioner/claimant.

On February 23, 1993, the Petitioner and Respondent entered into a stipulation of facts as follows:

1. On December 9, 1988 at around 4:00 o'clock in the afternoon, the elements of Philippine Coastguard, 5FS, CG2 and CGS Calapan, intercepted and confiscated, among

others, the ten-wheeler truck with Plate No. T-PBM 365, owned by petitioner Maximo Rivera, in Sta Clara, Batangas City, loaded with allegedly imported garlic.

2. The said ten-wheeler truck, with allegedly imported garlic, was turned over to the Bureau of Customs, Port of Batangas on December 10, 1988.

3. On December 10, 1988, Marcial F. Lopez, District Collector of Customs, Port of Batangas, issued Warrant of Seizure and Detention, dated December 10, 1988, Batangas Seizure Identification No. 05-88, ordering the Sector Commander, National Customs, Port of Batangas and the Supply Officer, Bureau of Customs Police, Port of Batangas, to seize and take custody of the ten-wheeler truck mentioned above, among others.

4. The hearing of the seizure case was conducted by Marcial F. Lopez, District Collector of Customs, Port of Batangas, on the following dates:

a. December 16, 1988
b. December 21, 1988
c. December 23, 1988
d. December 28, 1988
e. January 5, 1989, and
f. January 6, 1989.

5. The proceedings in the hearings conducted on the dates mentioned above are duly recorded in the Transcripts of Stenographic Notes, the carbon copies of which, duly certified by Atty. Romeo Amadora, Acting Chief, Legal Division, Bureau of Customs, Port of Batangas, are hereto attached and submitted to this Honorable Court to form part of the records of the instant case.

6. In the said seizure case, the government, represented by said Atty. Romeo A. Amadora, presented the following witnesses:

a. Cornelio Baylon, Jr.
b. Capt. Ismael Hernandez

c. Lt. Abundio T. Baybay
d. Ernesto Carandang
e. Aguinaldo C. Marquez
f. Isidro Husmillo
g. Dexter Dilay
h. Ruperto P. Donato

and offered the following exhibits:

Exhibit A - Inventory Receipt, dated December 10, 1988.
A-1 - Signature of Cornelio S. Baylon, Jr.
A-2 - Signature of Pacifico Oximora.
A-3 - Signature of Porfirio Bool.
A-4 - Signature of Silvino Lapitan.
B - Apprehension Report, dated December 11, 1988.
C - Warrant of Seizure and Detention.
D - The report of Acting Examiner, Ernesto S. Carandang
D-1 - Signature of Ernesto S. Carandang.
E - Memorandum of Aguinaldo C. Marquez, dated December 13, 1988.
F - Certification issued by Assistant Director, Augusto C.Baluyot.
G - Registration Certificate of truck with Plate No. T-PBM 365.
G-1 - Bracketed portion (Plate No. T-PBM 365).
G-2 - Bracketed portion (Classification-Private).
H - The Official Receipt No. 734416 of the truck with Plate No. T-PBM 365.

All said exhibits are attached to the records of the case.

7. The then respondent (Maximo Rivera, petitioner herein presented the following witnesses:

a. Maximo Rivera, the petitioner, and
b. Meynardo Rivera

and offered the following exhibits:

Exhibit 1 - Mayor's Permit for the year 1988.
1-A - The name Maximo G. Rivera, portion of Exhibit "1".
2 - Certification issued by the Bureau of Internal Revenue, Revenue District Office No. 42, with Registry No. 80-019-04.
3 - Registration Certificate No. 0061729.
3-A - The name Maximo G. Rivera, portion of Exhibit "3".
4 - Confirmation Receipt No. B 15645325
4-A - Payment Order No. C 2421146.
5 - Confirmation Receipt No. B 14312721.

5-A - Payment Order No. C 1467384
6 - Confirmation Receipt No. B 14330790.
6-A - Payment Order No. C 2419060.
7 - Official Receipt No. 7344416.
8 - Confirmation Receipt No. B 140150096.
8-A - Payment Order No. C 0802313.
9 - Confirmation Receipt No. B A191064.
10 - Confirmation Receipt No. B B11304242.
10-A - Payment Order No. B A742769.
11 - Confirmation Receipt No. B 12239608.
11-A - Payment Order No. C 0800530.
12 - Official Receipt No. AD 021368.
12-A - Official Receipt No. AD 122620.
12-B - Official Receipt No. AD 143835.
12-C - Official Receipt No. AD 216524.
12-D - Official Receipt No. AD 216791.
12-E - Official Receipt No. AD 011181.
12-F - Official Receipt No. AD 011412.
12-G - Official Receipt No. AD 058743.
12-H - Official Receipt No. AD 121611.
12-I - Official Receipt No. AD 121846.
12-J - Official Receipt No. AD 211557.
12-K - Official Receipt No. AD 178541.

All said exhibits are attached to the records of the case.

8. After hearing, the Collector of Customs rendered a decision, dated February 14, 1989, whereby, the ten-wheeler truck, with Plate No. T-PBM 365, was "ordered and declared forfeited in favor of the Republic of the Philippines". Said decision is attached to the records of the case.

9. The petitioner appealed the decision of the Collector of Customs, Port of Batangas, in Seizure Case No. 05-88, to the Commissioner of Customs. Said appeal was docketed as Customs Case No. 89-39.

10. The Commissioner of Customs rendered decision affirming the decision of the Collector of Customs, Port of Batangas, in Seizure Case No. 05-88 and dismissing petitioner's appeal for lack of merit.

11. The petitioner and the respondent, through their respective counsels, agree and stipulate that all the records of the proceedings in Seizure Case No. 05-88

conducted by the Collector of Customs, Port of Batangas, those in Customs Case No. 89-39, the transcript of stenographic notes of the hearings mentioned above, as well as the exhibits offered by both the government and the petitioner herein in Seizure Case No. 05-88, be made parts of the records of the instant case.

12. The petitioner and the respondent, further agree to submit the present case on the basis of the evidence presented by the government as well as by the petitioner herein in the hearing of Seizure Case No. 05-88.

(CTA Records, pp. 174-177)

The provisions under the Tariff and Customs Code relevant to the resolution of the case at bar read as follows:

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

xxx xxx xxx

(a) Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and/or transporting contraband or smuggled articles in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft or any other craft to forfeiture; <u>Provided that the vessel, aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;</u>

xxx xxx xxx

> (k) Any conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws, with its equipage and appurtenances including the beast, steam or other motive power drawing or propelling the same. The mere conveyance of contraband or smuggled articles by such beast or vehicle shall be sufficient cause for the outright seizure and confiscation of such beast or vehicle, but <u>the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or his agent in charge thereof at the time, has no knowledge of the unlawful act</u>; (Underscoring supplied)
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> xxx xxx xxx
>
> SEC. 2531. *Properties Not Subject to Forfeiture in the Absence of Prima Facie Evidence.* - The <u>forfeiture of the vehicle, vessel, or aircraft shall not be effected</u> if it is established that the owner thereof or his agent in charge of the means of conveyance used as aforesaid <u>has no knowledge of or participation in the unlawful act</u>: Provided, however, That a prima facie presumption shall exist against the vessel, vehicle or aircraft under any of the following circumstances:
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> 1. If the conveyance has been used for smuggling at least twice before;
>
> 2. If the owner is not in the business for which the conveyance is generally used; and
>
> 3. If the owner is not financially in a position to own such conveyance.

The Petition for Review posits the theory that the Petitioner with the subject ten-wheeler truck is a common carrier and that he and/or his agent has no knowledge of the unlawful act, therefore, exempt from forfeiture under Section 2530 (k) which is further buttressed by Section 2531 of the Tariff and Customs Code.

Respondent, however, admitted that claimant while holding his truck as public utility is not a holder of a certificate of public convenience and hence, does not fall within the purview of "common carrier" as contemplated under the law. The defense of lack of knowledge by the owner/agent in charge at the time is, according to the Respondent, also unavailing citing the case of Commissioner of Customs vs. Court of Tax Appeals, et al. G.R. No. L-31733 dated September 20, 1985 (see Respondent's Memorandum, CTA Records p. 321).

The Civil Code defines "common carriers" in the following terms:

> Article 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air for compensation, offering their services to the public.

In the case of Lastimoso v. Doliente, 58 OG 5905 it sets out the distinctive characteristics of a common carrier which are: (1) that he holds himself out as ready to engage in the transportation of goods for hire as a public employment, and not as a casual occupation; and (2) that he undertakes to carry for all persons indifferently, within the limits of his capacity and the sphere of the business required of him, so that he is bound to serve all who apply, and is liable for refusal, without sufficient reason, to do so.

One can take notice, therefore, that the Civil Code and the existing jurisprudence do not make any distinction with regard to whether or not a certificate of public convenience (specifically on motor vehicles) is necessary for one to be considered a common carrier. Neither does the Tariff and Customs Code make any such distinction. In fact under Section 2530 (k) it provides: "...but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is <u>engaged as common carrier</u> and not chartered or leased..." It is admitted, however, that under Section 2530 (a), it provides: "Provided, that the <u>vessel</u>, <u>aircraft</u> or <u>any other craft</u> is not used as <u>duly authorized common carrier</u> and as such a carrier it is not chartered or leased;" (Emphasis supplied). But a careful analysis of the quoted article reveals that although indeed it made such distinction, meaning that the "common carrier" should be "duly authorized" for it to be exempted, yet such distinction does not include "<u>vehicle</u>". It only enumerated "vessel, aircraft or any other craft." We think the legislators intentionally omitted the "vehicle" from among those to be considered as "duly authorized common carrier." Settled is the rule on statutory construction that what the law does not include, it necessarily excludes. We cannot inject a different interpretation on what is otherwise the clear import of law. This is further buttressed by the fact that under Section 2530 (k) the words "duly authorized" are no longer appended before the words "common carrier"; and, hence, when the vehicle is used as such, it should be exempted from forfeiture.

In the case at bar, uncontroverted is the fact that the Petitioner is a common carrier having declared himself to the government as such (Exhs. 1, to 12-k inclusive). Hence, he should be exempted from forfeiture.

Furthermore, herein Petitioner does not have knowledge of the unlawful importation of the garlic. This finds support in the fact that the loading of the alleged imported garlic was done under ordinary circumstances in broad daylight and in a public place (in fact, a market place) which could never raise any suspicion from the Petitioner and/or his agent. It is worth taking note that it is not easy to distinguish an imported garlic from a locally produced one. In fact, the government's witness Ruperto P. Donato, Supervising

Horticulturist and Chief of Vegetables and Legume Crop Section of the Bureau of Plant Industry, made it clear that it takes expertise to be able to distinguish imported varieties from locally produced ones. Said Mr. Donato during the customs hearing of December 28, 1988:

> ATTY. DE MESA:
>
> Q. And it was your expertise on the subject of growing garlic that made it easy for you to come into a conclusion that the garlic were of foreign origin?
>
> A. Yes sir.
>
> Q. As a matter of fact you made use of your knowledge and experience you have gathered and earned in the performance of your function as supervising horticulturist in coming to a conclusion that this garlics were of foreign origin, am I correct?
>
> A. Yes sir.
>
> Q. You will agree with me that every person will not have such an easy conclusion considering that fact your conclusion is out of your expertise?
>
> A. If you are not an expert along the line probably, but for this one I am definite that this is imported garlic.
>
> Q. Are you telling the Honorable Collector that if one is not an expert, he may not be able to say easy that one garlic is imported or locally produced?
>
> A. Yes sir.
>
> HEARING OFFICER: Counsel for Mr. Marasigan.

ATTY. MANALO: (To the witness)

Q. So in other words, it is not easy to differentiate a locally produced garlic from an imported garlic by just looking at them; it needs expert knowledge, is that correct?

A. Yes sir.

(T.S.N., December 28, 1988, pp.8-10)

Accordingly, since neither the Petitioner nor his driver was an expert on garlics then it would be too much to expect from them the knowledge that the garlics were imported. In fine, it is deduced that the Petitioner had no knowledge that the garlics were imported, much less smuggled.

The case of Commissioner of Customs v. Court of Tax Appeals, 138 SCRA 587 relied upon by the Respondent is not on all fours with the case at bar and hence, not applicable. In the cited case, the Supreme Court ruled that "a ship found smuggling blue seal cigarettes is subject to forfeiture even if the owner thereof claims he does not know such illegal use..." But a closer reading of the cited decision reveals that there are in the facts of the case concomitant circumstances leading to a reasonable conclusion that the person in charge of the vessel had knowledge of the commission of the illegal act. The Supreme Court observed, thus:

> "The claim of private respondent that while the crew members of the vessel were fishing, all the fishing nets were destroyed and that he was even notified in this regard is hardly convincing. It may be possible that while in the course of catching fish, one or two fishing nets may be destroyed. But the destruction of all the fishing nets at the same time is highly improbable. Furthermore, private respondent reported to the Philippine Navy instead of the Coast Guard that his vessel was missing, only after a lapse of six (6) days from the time he was informed of the alleged destruction of all the fishing nets. Could it be that all those notification of destruction of fishing nets eventually of the loss of vessel are just a part of a scheme to prevent the vessel from any liability should, as it happened in this case, it be intercepted by the authorities?
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> The insistence of Jose Joloc, captain of the vessel that the boat could not be brought back to Manila due to bad weather is not supported by evidence. No weather report in Mindoro was ever presented during the hearing of the case. His insistence becomes even more dubious by the fact that he agreed with Fructuoso Maniego to load the latter's fishes on board M/B "Maria Victoria-P" when the alleged fishes were even out at sea aboard an alleged disabled boat. It is unbelievable that he could risk going out to sea to load the fish cargo of Maniego in the midst of the storm, but could not sail back to Manila.
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> Taking all these circumstances, the conclusion is inevitable that the vessel was not used in catching fish but was used in the smuggling of blue seal cigarettes."

Hence, "the acts of the master and crew, in cases of this sort, bind the interest of the owner of the ship, whether he be innocent or guilty." (U.S. v. Steamship "Rubi" 22 Phil.239). When the Supreme Court applied Section 2530 (a) and (b) ruling that "the aforequoted provision prescribes in an unequivocal term the imposition of the penalty of forfeiture in cases of unlawful importation of foreign articles regardless of whether such importation with or without the knowledge of the owner of the vessel" (Commissioner of Customs v. Court of Tax Appeals, ibid.), should not be indiscriminately applied to all cases of the same nature but of different facts and surrounding circumstances. To do otherwise, therefore, would render Section 2530 (k) and Section 2531 inutile and nugatory. We believe it should not be so.

Moreover, in the same Commissioner of Customs v. Court of Tax Appeals case, relied upon by the Respondent, the vessel subject of the forfeiture was not a common carrier falling as an exception under paragraph k of Section 2530. Additionally, blue seal cigarettes are easily recognizable as imported goods as compared with garlics.

Petitioner's lack of knowledge on unlawful importation of the garlic loaded in his truck only fortifies his exemption from forfeiture because of his being a common carrier under Section 2530 (a) and (k). <u>This lack of knowledge on the unlawful importation finds support under Section 2530 (k) and 2531</u>.

A contrary interpretation on the foregoing Sections would render said sections nugatory and prejudicial against the interest of an innocent party. This is so since forfeiture is a harsh measure and should be resorted to only with extra care. All doubts should be resolved in favor of the taxpayer.

WHEREFORE, in all the foregoing, this Court hereby **RESOLVES** to reverse and set aside the Decision of the Commissioner of Customs dated September 8, 1989 and **ORDERS** the release of the ten-wheeler truck with Plate No. T-PBM 365 to herein Petitioner.

SO ORDERED.

Quezon City, Metro Manila, December 24, 1993

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

C E R T I F I C A T I O N

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals

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