

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TOMAS VELASCO,
Petitioner,

versus

CTA CASE NO. 2210

COMMISSIONER OF
CUSTOMS,
Respondent.

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D E C I S I O N

Petitioner Tomas Velasco appealed from the decision of Commissioner of Customs Rolando G. Geotina dated January 21, 1971, ordering the forfeiture of the vessel "Sta. Juliana XI" and the 1,147 sacks of coffee beans for alleged violation of Republic Act No. 2712, in relation to Section 2530(a), (b), (c), (f) and (m-1) of the Tariff and Customs Code. Petitioner, however, interposed no appeal with respect to the forfeiture of various perfumes (Siboleys, Santalias, Matadoyong), playing cards, Batik cloth, hair sprays, watches, vanishing creams, beans, umbrellas, etc. found on board "M/V Sta. Juliana XI" under Manila Seizure Identification No. 11360.

Both parties submitted the case for decision on the basis of the testimonial and documentary evidence submitted to the Bureau of Customs during

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the administrative hearings thereof.

The pertinent facts of this case as borne by the records are as follows:

1. At about 7:00 o'clock in the evening of December 14, 1969, while the vessel "Sta. Juliana XI" was docked at Pier 4, North Harbor, Manila, a Philippine Navy Patrol Craft tied along the starboard side and the agents of the Anti-Smuggling Action Center (ASAC) and members of the Philippine Coast Guard boarded said vessel and ordered that it be brought to the Philippine Navy Basin, Roxas Boulevard, Manila;

2. Thereafter, some members of the crew were investigated and the vessel "Sta. Juliana XI" was searched by the raiding team, resulting in the discovery of various articles consisting of assorted perfumes, playing cards, Batik cloth, hair sprays, watches, vanishing creams, beans, umbrellas, etc.; 1,147 sacks of coffee beans; and pertinent papers and documents relative to the said vessel and its cargo;

3. Warrants of seizure and detention were issued and seizure proceedings instituted against said vessel and its cargo on December 17, 1969 and January 5, 1970, under Manila Seizure Identification Nos. 11360, 11360-A and 11360-B;

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4. The seizure proceedings against the vessel and its cargo were jointly heard at the Law Division of the Manila Customshouse. The hearing officer of said Division, Atty. Raymundo Mendoza, recommended the release of both the vessel and its cargo as embodied in the draft of a decision dated July 17, 1970;

5. The recommendation contained in the said draft of the decision of the Law Division of the Manila Customshouse was not adopted by the Collector of Customs of Manila who ordered the forfeiture of the vessel "M/V Sta. Juliana XI" and its cargo for alleged violation of the provisions of the Tariff and Customs Code and Republic Act No. 2712; and

6. The decision of the Collector of Customs of Manila was sustained by the Commissioner of Customs on appeal. The decision, therefore, of respondent was appealed to this Court with respect to the forfeiture of the vessel and the 1,147 sacks of coffee beans.

During the pendency of the appeal, this Court ordered the release to petitioner of the vessel "M/V Sta. Juliana XI" on March 10, 1971 after the filing and approval of a surety bond of ₱36,000.00

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to guarantee the payment thereof in case the said vessel is finally declared forfeited to the Government.

There are three (3) issues submitted to the Court for resolution, namely:

1. Whether or not the 1,147 sacks of coffee beans were imported from Labuan, Sabah, Malaysia, in violation of Section 2530(f) of the Tariff and Customs Code, in relation to Republic Act No. 2712;
2. Whether or not the "M/V Sta. Juliana XI" had been used in the importation of various merchandise and 1,147 sacks of coffee beans, in violation of Section 2530 (a), (b) and (c) of the Tariff and Customs Code; and
3. Whether or not Sabah, Malaysia, is a part of the Philippine territory under the provisions of Republic Act No. 5446, which was approved on September 18, 1969, for the purpose of determining whether or not there was importation in violation of law.

The provisions of law alleged to have been violated by petitioner are the following:

I. SECTION 2530. Property Subject to Forfeiture Under Tariff and Customs Laws. -

m. Any article sought to be imported or exported:

- (1) Without going through a customhouse, whether the act was consummated, frustrated or attempted;

II. Republic Act No. 2712, the pertinent provision of which provides:

SECTION 1. The importation of roasted coffee beans, roasted ground coffee, instant or soluble coffee in powder form, extract or concentrate in liquid form or finished coffee product in any form, raw coffee beans of the robusta, excelsa and liberica varieties, is hereby prohibited:
.....

III. SECTION 2530. Property Subject to Forfeiture Under Tariff and Customs Laws. -

(f) Any article of prohibited importation or exportation, the exportation or importation of which is effected or attempted contrary to law, and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former.

IV. SECTION 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:

a. Any vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles into or from any Philippine port or place except a port of entry; any vessel which, being of less than thirty tons capacity shall be used in the importation of articles into any Philippine port or place except into a port of the Sulu sea where importation in such vessel may be authorized by

the Commissioner, with the approval of the Department head.

b. Any vessel engaging in the coastwise trade which shall have on board any article of foreign growth, product or manufacture in excess of the amount necessary for sea stores, without such articles having been properly entered or legally imported.

c. Any vessel or aircraft into which shall be transferred cargo unladen contrary to law prior to the arrival of the importing vessel or aircraft at her port of destination.

Respondent Commissioner of Customs contends that the disputed 1,147 sacks of coffee beans were illegally imported from Labuan, Sabah, Malaysia, sometime in the first week of December 1969 on the basis of the testimonial and documentary evidence presented by the Government, to wit:

1. Testimonial -

- a. Taja Salahudin
- b. Adjibon Abdugafar (Hadjibul Abdul Rapal)

Both witnesses testified that about the second week of November, 1969, they were crew members of the vessel "M/V Sta. Juliana" which sailed from Ricodo, Zamboanga City, to Labuan, Sabah, Malaysia; upon arrival thereat, the Customs officials

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took their pictures and told them to go to the Quarantine Office for inspection and vaccination; Mr. Velasco, petitioner herein, was in the wharf supervising the loading of the coffee beans on the vessel "Sta. Juliana" from the Teck Guan bodega; together with other members of the crew they arranged the sacks of coffee beans and painted the said sacks to cover the markings, "Labuan, Indonesia & Malaysia"; they loaded the cargo for two days, more or less, then proceeded to Manila after securing the necessary clearance papers from the Customs in Labuan; they stayed in Manila for about ten days and then sailed again for Labuan, Malaysia, where they again loaded more than 1,000 sacks of coffee beans under the direction and supervision of Mr. Velasco; they again painted the sacks of coffee beans to conceal the country of their origin; on both occasions, they saw the vessel "Sitti Amina"; upon their second arrival in Manila in the evening of December 14, 1969, they were apprehended by the members of the Philippine Coast Guard and investigated in the Headquarters of the Philippine Navy where they stayed for at least two weeks; an errand boy of Mr. Velasco brought food to them during their confinement; they escaped therefrom and went to

the vessel "M/V Alfonso", another boat operated by Mr. Velasco; subsequently, Mr. Velasco instructed them to proceed to Zamboanga; and while therein Abdulgafar received a telegram (Exhibit O) from Tommy (Tomas Velasco) telling him to hide to avoid apprehension by the authorities.

c. Alcan Amping testified and declared that during the last days of November, 1969, he was a crew member of "Sitti Amina", a vessel chartered by Velasco; the vessel "Sitti Amina" was in Labuan, Sabah, for about twenty days, during which period he witnessed on two occasions that the vessel "Sta. Juliana" arrived and loaded coffee beans under the supervision of Tomas Velasco; the crew members of "Sta. Juliana" painted the sacks of coffee beans; he saw Abdulgafar at the wharf in Labuan; their vessel "Sitti Amina" left Labuan without cargo because there was scarcity of coffee beans in Labuan; and they were told by Velasco to load blue seal cigarettes instead of coffee beans but the patron of their vessel refused to comply with said order;

d. Captain Orlando Trinidad testified that he personally discovered the documents (Outward Manifest, Exhibit U-3), Export Declaration (Exhibit U-13), and Crew List (Exhibit U-7),

all of Malaysian origin hidden inside a compartment of the crew together with the assorted perfumes, playing cards, Batik cloth, hair sprays, watches, etc.;

e. Francisco Reyes, Marcelo Tomagos and Manuel Garcia testified that a cablegram (Exhibit S) was sent by Teck Guan and Co., Ltd. of Labuan, Sabah, to Tomas Velasco, offering the sale of coffee beans at ₱158.00 per bag; and a certain Tomas Chua of 483 Juan Luna, Binondo, Manila (with Telephone No. 4-51-49) subsequently replied by cablegram also (Exhibit T) thru Eastern Extension Australasia and China Telegraph Co., Ltd., offering a counterprice of ₱150.00 per bag of coffee beans;

f. Juan Orendain, Acting Detachment Commander, Bureau of Customs, in Rio Hondo, Zamboanga City, testified that his signature in the Coasting Manifest (Exhibit 33-C) was a forgery; and he was tricked and misled into signing a certificate that the "M/V Juliana XI" arrived at Rio Hondo, Zamboanga, on December 8, 1969 and left Port loaded with cargo on December 10, 1969;

g. Juanito de la Cruz, a PC Sergeant declared that he acted as interpreter of Ling Haw Kee, Manager, Beneficial Export Corporation, when

the affiant made a sworn statement before Asst. Fiscal Cornelio Wasan of Quezon City denying the reported sale of local coffee beans to Velasco (pp. 596-604, t.s.n., Folder No. VII, Customs rec.). However, Ling Haw Kee refused to testify during the administrative hearing (pp. 200-208, t.s.n., Folder VI, Customs rec.);

h. Avelino Tan, errand boy and confidante of petitioner declared that he was paid ₱1,000.00 per trip of the vessel "Sta. Juliana." He testified on the modus operandi of petitioner in his previous illegal importations of coffee beans from Labuan, Sabah;

i. Jacoba Tirona Vda. de Paterno, an experienced coffee planter and producer, declared that, after analysis of the coffee beans, she found that it was of the Robusta variety; said coffee beans were processed by the wet and dry methods; they were loosely packed to allow expansion while in transit; the sacks containing the coffee beans were new and larger than the sacks locally manufactured; and she admitted that the Robusta variety of coffee is also extensively grown in the Philippines and that it was hard to differentiate locally grown coffee beans from those of foreign origin;

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j. Constancio Sepulvida, Philippine Navy photographer, testified that he took pictures of the vessel "M/V Sta. Juliana XI" and of the sacks of coffee beans with its foreign markings "Labuàn, Indonesia, Malaysia" and "Robusta Coffee - 20-25% Produce of Indonesia, Nilakandi";

k. Vicente Cunanan, assistant to the Undersecretary of Foreign Affairs, testified that the Anti-Smuggling Action Center (ASAC) requested for attestation and authentication of Malaysian shipping documents found and seized from the vessel "Sta. Juliana XI" but the Ministry of Foreign Affairs of Malaysia refused the issuance to the Philippine Government of the certified true copies of the Outward Manifest (Exh. U-3), Export Declaration (Exh. U-13), and Crew List (Exh. U-7) on the ground that compliance therewith would be in conflict with the law of Malaysia under Official Secrets Ordinance of 1950 (Exhs. JJ-1 and JJ-2, pp. 168-170, Folder V of the Customs rec.; pp. 2123-2131, t.s.n., Folder X, Customs rec.); and

l. Atty. Sigefredo Alcala, one of respondent's lawyers, identified a letter written by petitioner to General Cruz of the ASAC claiming ownership of the 1,147 sacks of coffee beans loaded on board the "Sta. Juliana XI" (Exh. Q,

p. 19, Folder V, Customs rec.; p. 551, t.s.n.,
Folder VII, Customs rec.).

2. Documentary -

- a. Outward Manifest (Exh. U-3)
- b. Crew List (Exh. U-7)
- c. Export Declaration (Exh. U-13)
- d. Cablegram from Teck Guan and Co.,
Ltd. to Tomas Velasco (Exh. S)
- e. Cablegram from Tomas Velasco to
Chua Teck Guan and Co., Ltd.
(Exh. T)
- f. Contract of Lease between Soledad
Santos and Tomas Velasco Chua
(Exhs. FF & FF-1)
- g. Letter of Tomas Velasco Chua to
Soledad Santos terminating the
lease contract (Exh. FF-2)

On the other hand, petitioner submitted the
following testimonial and documentary evidence,
to wit:

Testimonial -

1. Tomas Velasco testified that he is engaged in the business of buying and selling coffee beans and copra at Zamboanga City; he is the owner of Terra-Mar Trader; he and his wife are stockholders of the Beneficial Export Corporation; both firms are engaged in buying and selling coffee beans and copra; the vessel "Sta. Juliana XVI" was leased by him from the Santos-Gamboa Development Corporation to ferry his cargo of coffee beans from Zamboanga to Manila; provisional permit was given by the Third Coast Guard District at Zamboanga to convert said fishing vessel to a cargo

vessel; subsequently, said vessel was found to be unseaworthy and was returned to Santos-Gamboa Development Corporation for repairs; as a substitute, he purchased the vessel "Sta. Juliana XI" on installment; it was allegedly cleared by the Manila North Harbor Authorities for a trip to Zamboanga on December 1, 1969; said vessel arrived at the port of Zamboanga on December 8, 1969 where coffee beans were loaded on December 10, 1969; it left Zamboanga for Manila on the same date; and upon arrival at Pier 4 in the evening of December 14, 1969, it was boarded and apprehended by agents of the Coast Guard and ASAC;

2. Francisco Fernandez, Captain of the vessel "M/V Sta. Juliana XI", testified that they left Manila on December 3 and arrived at Zamboanga on December 8, 1969; the vessel "Sta. Juliana XI" had been using the papers of the "Sta. Juliana XVI" consisting of the Coasting Manifest (Exhs. 36, 36-A, 36-B and 36-C), Master's Oath (Exhs. 35, 35-A and 35-B) and Crew List (Exhs. 34, 34-A and 34-B); their destinations under the shipping documents were Palawan and Basilan City, but he was instructed by petitioner Tomas Velasco to proceed to Zamboanga instead; in Zamboanga they

loaded coffee beans under the supervision of a Chinese by the name of Kee; he was not able to secure a customs clearance in Zamboanga before they sailed for Manila on December 10, 1969 because their trip would be delayed; and upon their arrival at Pier 4 in the evening of December 14, 1969, agents of the ASAC and the Coastguard boarded the vessel and ordered that the same be brought to the Philippine Navy Basin, Roxas Boulevard, Manila;

3. Claudio Candelaria, a mechanic, testified that he was a crew member of the vessel M/B Alfonso; on the night of December 14, 1969, petitioner requested him to bring two companions to meet the vessel "Sta. Juliana XI"; he brought along Taja Salahudin and Hadjibon Abdulgafar, also crew members of the vessel M/B Alfonso, to meet the "Sta. Juliana XI"; and the three of them helped each other tie the ropes of said vessel when it arrived at North Harbor, Manila;

4. Exequiel Bañgayan, cover agent of the ASAC, declared that upon oral instructions of Col. Alpad he accompanied Atty. De Leon to the Bureau of Standards, Department of Commerce and Industry, Zamboanga City office, to check on the certificate of inspection issued by Mr. Effendi Schuck, Standards Officer; said Mr. Schuck, actually issued a certificate on the inspection of the said vessel; he said, however, that he did not notice certain erasures in the Certificate of Inspection (Exh. 18-petitioner) which does not appear in Exhibit DD-2 for respondent based on

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the file copy of the Bureau of Standards, specifically as to the variety of coffee which was erased from III-C to II-C and the date October 30 was made to appear as October 29, 1969; he did not notice that the certificates of fumigation and inspection were for the vessel M/B Alfonso and not for "Sta. Juliana XI"; and he got from Ling Kaw Kee, manager of Beneficial Export Corporation, a certificate that Peregrino Miguel really sold coffee beans to petitioner Tomas Velasco sometime in October 1969;

5. Ruperto Arquillano, Assistant Manager of the Santos-Gamboa Development Corporation, testified that on October 26, 1969, petitioner Velasco rented the vessel "Sta. Juliana XVI"; said vessel was returned by petitioner on November 15, 1969 for being unseaworthy; in lieu of said vessel, "Sta. Juliana XI" was bought on installment by petitioner; no transfer of equipment was made from "Sta. Juliana XVI" to "Sta. Juliana XI" except the list of said equipment; and he attended to the repair of the vessel "Sta. Juliana XVI" and the loading and servicing of fuel and oil on the vessel "Sta. Juliana XI" by Esso Company;

6. Atty. Rolando de León, petitioner's counsel declared that he secured the necessary

license allowing petitioner to engage in coffee and copra business; petitioner Velasco and his wife owned around 30% of the stock of Beneficial Export Corporation; in October 1969, petitioner's business was in full swing because big quantities of coffee beans were purchased from farmers and traders in Zamboanga and Basilan; he secured the certificates of inspection and fumigation from the Bureau of Standards; the confiscated coffee beans were those purchased locally by petitioner in October, 1969; the shipment of said coffee beans to Manila was delayed because of the absence of a seaworthy vessel; petitioner Velasco informed him by telephone of the interception of the vessel "Sta. Juliana XI"; he communicated by letter to Teck Guan and Co., Ltd., Labuan, Sabah, addressed to Hock Teck Ming, manager, for confirmation or denial of the genuineness of the foreign shipping documents found inside the said vessel (Exhs. U-3, U-7 and U-13); and said addressee replied that the said documents were spurious and fake.

We find petitioner's defense and allegations to be tainted with illegality, falsehoods, and damaging inconsistencies. For instance, petitioner Tomas Velasco and Captain Francisco Fernandez, admitted that the vessel used by them

("Sta. Juliana XI") and the shipping documents consisting of Oath of Masters, Crew List, and Manifest (Exhs. 31, 32 and 33) carried by said vessel pertained to another vessel, the "Sta. Juliana XVI". By their admission, it is very clear that, from the inception of the voyage of the vessel "Sta. Juliana XI", they have agreed and conspired to violate the Marine and Customs Laws by making it appear that the vessel "Sta. Juliana XI" was duly provided with the required official papers and documents when in fact it has none. Moreover, the vessel "Sta. Juliana XI" was neither provided with a Certificate of Philippine Registry nor a Certificate of Ownership. Furthermore, the said vessel was not licensed to engage in coastwise trade, the same being a fishing vessel registered with the Philippine Fisheries Commission.

To soften the impact of Velasco's fault and misgivings, Capt. Francisco Fernandez gave the flimsy excuse that the documents pertaining to the vessel "Sta. Juliana XVI" were used by the vessel "Sta. Juliana XI" because the former vessel was unseaworthy; and the two vessels were sister ships of almost the same shape, size and appearance; and the vessel "Sta. Juliana XI" would

only be used for a short period, thereby dispensing with the legal requirement of requesting the transfer of the shipping documents of the vessel "Sta. Juliana XVI" to "Sta. Juliana XI" (p. 1324 t.s.n., Folder IX, Customs rec.). The alibi and justification of Capt. Francisco Fernandez for violating the marine and customs laws betray the height of his gross negligence and irresponsibility. As an experienced marine officer, Capt. Francisco Fernandez was aware of the strict requirements of the marine and customs laws; yet, not even a semblance of compliance was made thereto.

We cannot understand and comprehend the assertion of Capt. Fernandez that the vessel "Sta. Juliana XI" would be used for a period of short duration, despite the fact that said vessel had already been bought by petitioner Velasco who had already abandoned the lease of the vessel "Sta. Juliana XVI" which was unseaworthy. This Court is further astounded by the contradictory statements of Capt. Fernandez, petitioner's counsel, and petitioner himself, who alleged that since November 15, 1969 the vessel "Sta. Juliana XVI", which was unseaworthy, had been undergoing repairs. Barely three days thereafter, a certificate of inspection as to the seaworthiness of said vessel

was issued in Zamboanga on November 18, 1969 (Exh. 40). Another fact which baffles us is the presence of ring buoys at the vessel "Sta. Juliana XI" despite the testimony of the Assistant Manager, Santos-Gamboa Development Corporation, that no equipment was ever transferred from the vessel "Sta. Juliana XVI" to its sister vessel "Sta. Juliana XI".

Aside from the foregoing inconsistencies and discrepancies, the official papers of the vessel "Sta. Juliana XVI" show that its ports of destination were Palawan and Basilan. After the apprehension of "Sta. Juliana XI", Capt. Francisco Fernandez declared under oath before the Legal Division, Philippine Navy, that they passed by Palawan before proceeding to Manila. On cross examination, however, he repudiated his sworn statement and alleged that the vessel "Sta. Juliana XI" proceeded directly to Manila without passing Palawan. To our mind, all these inconsistencies and discrepancies are indicative of bad faith with the end in view of protecting and concealing the nefarious and illicit importations of petitioner Tomas Velasco.

To bolster the defense theory that the coffee beans seized from the "Sta. Juliana XI" came from

Zamboanga instead of Labuan, Sabah, North Borneo, petitioner presented invoices issued by Beneficial Export Corporation to Tera-Mar Trader showing that the confiscated coffee beans were purchased in Zamboanga. After evaluating the evidence for respondent, we are prone to give little weight to the documentary evidence of petitioner on this point. In the first place, petitioner Tomas Velasco is the sole owner of Tera-Mar Trader and that petitioner and his wife own about 30% of the stocks of the Beneficial Export Corporation. Their control and financial interests in the two (2) business firms cast a cloud of doubt that the alleged sales were at arms length in relation to the confiscated coffee beans. In the second place, Sales Invoices Nos. 000018 and 000019 show that the confiscated coffee beans were purchased on October 20 and October 28, 1969, respectively (Exhs. 13 and 14), while the vessel "Sta. Juliana XI" left Zamboanga for Manila on December 10, 1969, thereby giving rise to the probability that the said invoices refer and cover transactions other than the present one. And finally, Ling Haw Kee, Manager of Beneficial Export Corporation, at first signed and subscribed to a sworn statement wherein he denied the delivery to petitioner of the coffee

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beans covered by the said sales invoices and the receipt of payment therefor. Later on, the said Ling Haw Kee refused to testify on the witness stand by alleging that he does not want to favor any of the contending parties.

To substantiate the allegation that the confiscated coffee beans really came from Zamboanga, petitioner Tomas Velasco submitted in evidence various papers and documents such as the Certificate of Inspection issued by the Bureau of Standards, Zamboanga City, allegedly signed by Effendi Schuck, Provincial Standard Officer (Exhs. 18, 18-A, 19, 19-A, 20 & 20-A), Charge Slip for Inspection, Certificate of Fumigation, Disinfection, etc. issued by the Plant Quarantine Office, Bureau of Plant Industry, Region No. 7, Zamboanga City (Exh. 22) and the Certificate of Inspection and Fumigation of Plant Materials and Parts thereof for Domestic Movement or Shipment (Exhs. 23, 24 and 25). However, a careful examination and scrutiny of the said documents reveal that they were issued sometime on October 29 (Exhs. 20, 20-A and 25); October 30 (Exhs. 18, 18-A, 19, and 19-A); October 22, 1969 (Exhs. 22 and 23); and October 27, 1969 (Exhs. 24), or long before the departure of the vessel "Sta. Juliana XI"

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from the port of Zamboanga on December 10, 1969. Moreover, some of the certificates submitted in evidence refer to the vessel "M/V Alfonso" and not to "Sta. Juliana XI" (Exhs. 18, 18-A, 22, 23 and 24). It was found in certain documents such as Exhibits 18, 18-A, 20 and 20-A that erasures were made therein by altering and classifying the coffee beans as Variety II-Grade C, instead of Variety III-Grade C as recorded in the official file of the Bureau of Standards. There is also a discrepancy in the number of sacks of coffee beans referred to in one of the above-mentioned exhibits compared with the number of sacks of the confiscated coffee beans. Petitioner's exhibits show that the total coffee beans purchased numbered 1,300 sacks while the confiscated coffee beans amounted to 1,147 sacks only. A critical analysis and study of petitioner's exhibits in relation to time element, reference to a wrong vessel, erasures and alteration in the exhibits and the discrepancy as to the number of sacks of coffee beans imported and locally purchased disclose serious contradictions which lead us to believe that the documents submitted by petitioner in evidence refer to transactions other than the 1,147 sacks of coffee beans here at issue.

To substantiate petitioner's allegation that the vessel "Sta. Juliana XI" really docked at Rio Hondo, Zamboanga, and loaded coffee beans thereat, petitioner presented the unauthenticated certificate of Juan Orendain, Acting Detachment Commander, Bureau of Customs, Rio Hondo, Zamboanga City, showing that the vessel "Sta. Juliana XI" arrived in port at Rio Hondo, Zamboanga, on December 8, 1969 from Varadero Recodo, without cargoes and left port on December 10, 1969 without customs clearance but loaded with cargoes (Exh. 28, p. 46, Folder IV, Customs rec.). It is alleged that the said certificate was issued upon the request of RASAC Agent Alejo Alvarez, Jr.

RASAC Agent Alvarez, however, denied during the administrative hearing that he requested the issuance of said certificate (pp. 2024, 2025, 2026 and 2037, t.s.n., Folder X, Customs rec.). In fact, Acting Detachment Commander Juan Orendain of the Customs Office in Zamboanga categorically denied having made any handwritten entry in the Coasting Manifest giving customs clearance for the departure of the vessel "Sta. Juliana XI" (Exh. 33-C). He explained that he was not authorized to do so inasmuch as the authority to issue customs clearance certificate pertained to the Marine

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Division of the Bureau of Customs. He likewise denied the contents of the certificate issued by him that the vessel "Sta. Juliana XI" was loaded with cargo when it left Rio Hondo, Zamboanga, for Manila on December 10, 1967⁹ because he was misled by petitioner's counsel who asked him to sign the certificate at the Bay View Hotel in the presence of petitioner when he was tipsy and without eyeglasses. In support of the denial, he explained that it was not possible for the vessel "Sta. Juliana XI" to enter the port of Rio Hondo even during high tide because said vessel is big and bulky and, therefore, it cannot enter said port.

We give credence to the testimony of Mr. Orendain that not a single grain of the confiscated coffee beans was loaded by the vessel "Sta. Juliana XI" in Rio Hondo, Zamboanga, for his declaration is corroborated by the Customs radiogram made by then Acting Commissioner Alfredo Pio de Roda, thru the Acting Chief, Legal Department, and the spontaneous answer thereto which reads as follows:

NOVEMBER 6, 1970

CUSTOMS COLLECTOR
ZAMBOANGA

PLEASE VERIFY FROM YOUR RECORDS
WHETHER VESSEL STA. JULIANA CALLED AT
RIO HONDO UNDER YOUR JURISDICTION ON
DECEMBER 10, 1969 CMA WHETHER IT LOADED
ANY CARGO CMA DESTINATION OF CARGO LOADED
IF ANY CMA WHETHER VESSEL COMPLIED WITH

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ALL EXISTING REQUIREMENTS UNDER PRESENT
LAWS AND REGULATIONS STOP PLEASE WIRE
YOUR REPLY DIRECT TO HEAD LEGAL DEPART-
MENT THIS BUREAU SOONEST END

ACTING COMMISSIONER PIO DE RODA

The radiogram reply of the Collector of Customs
of Zamboanga reads as follows: -

1111550 NOV.

TO HEAD LEGAL DEPT MLA FM COLL RAMIREZ ZAMBO

COMPLIANCE TEL COMM CUSTOMS EVEN DATE OUR
RECORDS SHOW VESSEL STA JULIANA XVI DID
NOT CALL AT RIO HONDO UNDER THIS JURIS-
DICTION ON DEC 10/69 STOP FALSE ENTRY
MADE IN CUSTOMS DAILY EVENT BOOK AT RIO
HONDO IS PRESENTLY SUBJECT OF INVESTIGA-
TION BEING CONDUCTED BY THIS OFFICER END

Orendain's testimony, although belated
and delayed, is credible and must be given weight.
The admission that he signed the disputed cer-
tificate while he was tipsy and without eyeglasses
would only strengthen and aggravate the adminis-
trative case already filed against him, thereby
exposing himself to greater risk in the interest
of truth and justice.

Petitioner's claim that the Commissioner of
Customs disregarded the elementary rules of pro-
cedure in accepting the testimony of Mr. Orendain
after the opposing parties have already submitted
their respective memorandum, suffice it to state
that the "respondent Commissioner of Customs,

acting administratively in review of the Collector's decision, is neither bound by the technical rules of evidence (Philippine Shipowner's Asso. v. The Public Utility Commission, 51 Phil. 957; 20 Am. Jur. 36-37), nor constrained by the technical rules as to the admissibility of proof (Interstate Commerce Commission v. Baird, 194 U.S. 25; 48 L. ed. 860) . . ." (Javier Sulay, et al., v. The Commissioner of Customs, and the Collector of Customs, Jolo, Sulu, C.T.A. Case No. 1127, October 5, 1966).

Over and above the implausible evidence of petitioner, we give credence to the testimonies of Adjibon Abdulgafar and Taja Salahudin, because their names appear in the crew list seized from the vessel "Sta. Juliana XVI" (Exh. U-7); they testified and admitted that they were crew members of the vessel "Sta. Juliana"; as members of the said crew they left Zamboanga City and proceeded to Labuan, Sabah; they testified that the confiscated coffee beans were then loaded thereat under the supervision of petitioner Tomas Velasco; and they performed the job of painting the sacks of coffee beans to cover the markings of the country of their origin - Labuan, Indonesia, Malaysia.

The testimonies of said witnesses were confirmed by Constancio Sepulvida, Philippine Navy Photographer, who took pictures of the confiscated sacks of coffee beans after the apprehension of the vessel "Sta. Juliana XI". He corroborated the statements of respondent's witnesses when he declared that the sacks of confiscated coffee beans were newly painted and the original markings thereon were still legible as reading "Robusta Coffee", 20-25%, Produce of Indonesia, Nilakandi, "HCC Labuan" (Exhs. I-3, I-4, I-5, I-7, I-8, I-11, I-12, I-13, I-14 and I-15).

The importation of the 1,147 sacks of coffee beans is evidenced by the cablegrams sent by Teck Guan and Co. Ltd., Labuan, Sabah, to Tomas Velasco, 433 Juan Luna St., Binondo, Manila, dated December 1, 1969, wherein the former offered to the latter 100 tons of coffee beans contained in 1650 bags available on the 7th of December at the rate of ₱158.00 per bag and asking confirmation of the acceptance of the offer by cablegram (Exh. S, p. 14, Folder V, Customs rec.). In reply thereto, Tomas Chua, 483 Juan Luna, Binondo, Manila, sent a cablegram on December 2, 1969 accepting the offer of the seller at a lower price of ₱150.00

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per bag because the price of coffee beans here (Philippines) has gone down (Exh. T, p. 13, Folder V, Customs rec.).

Three witnesses, namely: Francisco Reyes, Marcelo Tomagos, and Manuel Garcia testified that the cablegram (Exh. S) was sent by Teck Guan & Co. Ltd. to Tomas Velasco; a certain Chua replied thereto (Exh. T) and that these two cablegrams reached their destination and addressees for the reason that there was no notice of non-delivery thereof as is the usual procedure in case cablegrams are not received. Manuel Garcia, a messenger of Eastern Australasia and China Telegraph Co., Ltd. for 22 years, confirmed the delivery of the cablegram sent by Teck Guan of Sabah to 483 Juan Luna, Binondo, Manila, upon failure to locate the addressee at No. 433 Juan Luna, Manila. However, the persons found by the said messenger at 483 Juan Luna, Manila, claimed that the cablegram belonged to them. The receipt thereof was even acknowledged by the signature of C. Masakayan.

Petitioner, however, disclaimed that he has an employee by the name of C. Masakayan. It would appear, therefore, that the recipient of the cablegram is a fictitious person. On the contrary,

it was shown that the person alluded to was the one who received the "Manifestation and Objection to Exhibits" relative to these proceedings (Exhs. HH and HH-1). Moreover, petitioner admitted and confirmed that his correct address was 483 Juan Luna, Manila, with telephone number 4-51-49 as stated in the cablegram (p. 1904, t.s.n., Folder F, Customs rec.). The aforementioned cablegrams are, therefore, admissible in evidence.

"A reply letter, coming in due course of mail, containing references showing knowledge of the first letter addressed to the party purporting to sign the reply letter is admissible, for the known usual accuracy of the government mail service would have delivered the first letter correctly to addressee.

"A reply telegram is admissible for a similar reason; here resting on the known usual accuracy of commercial telegraphic service. . . (Gray, Communication by Telegraph, par. 135, cited by 3 Moran 460)." (Salonga, Philippine Law on Evidence, p. 722, 1964 ed.)

When confronted with the cablegrams clearly indicating that the 1,147 sacks of coffee beans were imported from Labuan, Sabah, petitioner tried to wiggle his way out of a tight rope by claiming that his real name is Tomas Velasco and not Tomas Chua. The flimsy excuse of petitioner was belied by two documents, namely (1) Contract of Lease between Soledad P. Santos and Mr. Tomas

Velasco Chua executed on the 13th of November, 1969 for the lease of three adjacent lots (Exh. FF); and (2) the letter of petitioner under the name Tomas Velasco Chua, dated January 6, 1970, to Soledad Santos terminating the lease contract (Exh. FF-2).

To strengthen and justify the contention of respondent that 1,147 sacks of coffee beans were imported from Labuan, Sabah, and that the vessel "Sta. Juliana XI" was used in the importation thereof, Captain Trinidad of the ASAC testified that certain documents of Malaysian origin, namely: (1) Outward Manifest of the State of Sabah (Exh. U-3); (2) Export Declaration (Exh. U-13); and (3) Crew List (Exh. U-7) were seized from the compartment of the said vessel immediately after its apprehension.

The contents of the foregoing documents overthrow and render ineffective the defense of petitioner Tomas Velasco that the disputed coffee beans were purchased locally. The said documents contain the following description and information, to wit:

(1) Outward Manifest (Exh. U-3). It bears the letterhead "State of Sabah". It contains the following data: Name of Vessel - M/V Sta. Juliana; Agents -

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Teck Guan & Co. Ltd., (Labuan); Whither Bound - Sambuoanga, P. I.; Date of Departure - 4-12-1969; From Port - Labuan, Sabah; Quantity - 1,147 sacks coffee seed.

(2) Crew List (Exh. U-7). It gives the following information: Name of Vessel - Sta. Juliana; Left Labuan - 2-12-1969; To - Sambuoanga, P. I.; the names of Abdul Gapol (Hadjibon Abdulgafar) and Thaha Salahudin appear therein as crew members.

(3) Customs Ordinance (Cap. 33) and Export Declaration (Exh. U-13) indicate the name of the exporter as Teck Guan & Co. (Labuan) Ltd., Labuan; Name of Ship - M/V Sta. Juliana; Date of Export - 4-12-1969; Quantity - 1,147 sacks unroasted coffee.

The contents and information given in the aforesaid documents (Crew List, Outward Manifest, and Export Declaration) tally with the facts in this case, namely:

1. The exact quantity of coffee beans seized - 1,147 sacks;
2. Name of vessel - Sta. Juliana;
3. Name of agent or seller - Teck Guan & Co. Ltd.;
4. Date of transaction or shipment - first week of December, 1969;
5. Members of the crew - names of Abdul Gapol (Hadjibon Abdulgafar) and Thaha Salahudin appear therein; and

6. Destination of the vessel and its cargo - Zamboanga where petitioner's business interests are located.

Petitioner Velasco objected vigorously to the admission of the foregoing documents because they were not authenticated by Malaysian officials. Suffice it to state that the said documents were found immediately in one of the compartments of the vessel "Sta. Juliana XI" during a lawful search. Petitioner neither questioned the legality of the search and seizure nor brought an independent court action for the return of the illegally seized articles, papers and documents. Consequently, all the goods, papers and documents seized by the raiding team are admissible in evidence (see *Angel Nasiad, et al. v. The Commissioner of Customs*, C.T.A. Case No. 1855, April 25, 1968, docketed in the Supreme Court as G.R. No. L-29318; *Perfecto Malatbalat v. The Commissioner of Customs*, C.T.A. Case No. 2181, April 18, 1971; *Stonehill v. Hon. Jose Diokno*, G.R. No. L-19550, June 19, 1967).

To refute and destroy the efficacy and validity of the contents of the foreign shipping documents, petitioner's counsel submitted in evidence his letter to Hong Teck Ming, alleged Manager of the

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firm Teck Guan & Co., Ltd., and the reply thereto wherein the said manager claimed that the shipping documents in question were fake. At the same time, petitioner's counsel was advised to refer the aforesaid shipping documents to the Acting Controller of Customs of Labuan, Sabah, for verification. Said advice was not heeded by petitioner's counsel. At any rate, the said letters confirmed the genuineness of the controverted shipping documents because Hock Teck Ming noted and indicated at the lower part of the letter of petitioner's counsel the date of receipt as 3/3/70 and the date of reply as 7/3/70 following the British way of writing numerical dates, that is, the day first, the month second, and the year last (Exh. 43, p. 28, Folder IV, Customs rec.) in the same manner that the shipping documents in question were dated in the same numerical order.

Petitioner assiduously contends that the Outward Manifest, Crew List, and Export Declaration must invariably be authenticated to prove their genuineness and due execution; otherwise, they are not admissible in evidence, in line with the provisions of Sections 25 and 26, Rule 32 of the Revised Rules of Court. In short, petitioner is invoking and relying on the strict application of

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the technical rules of evidence. Unfortunately, petitioner failed to prove that the shipping documents in question were public or official records. But even assuming arguendo that they were, still this Court, in the interest of truth and justice, is not bound by the technical rules of evidence as explicitly provided in Section 8 of Republic Act No. 1125 creating the Court of Tax Appeals.

Section 2 of Republic Act No. 5446, which amended Section 1, Republic Act No. 3046, entitled "An Act To Define The Baselines of the Territorial Sea of the Philippines" provides as follows:

SECTION 2. The definition of the baselines of the territorial sea of the Philippine Archipelago as provided in this Act is without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah, situated in North Borneo, over which the Republic of the Philippines has acquired dominion and sovereignty.

The foregoing provisions of Section 2, Republic Act No. 5446, did not incorporate or make Sabah, North Borneo, a part of the Philippine territory. The said law merely contemplates that, in the event that the Philippines acquires dominion and sovereignty over Sabah, North Borneo, in accordance with the generally accepted principles of International Law, there would be no necessity

of enacting another law defining the baselines of the Philippines. At present, the Federation of Malaysia exercises dominion and sovereignty over Sabah, North Borneo. Consequently, it is a foreign territory for all legal intents and purposes, unless the territorial claim of the Philippine Government thereto is recognized, admitted, and acquiesced by the Malaysian Government.

It may not be out of context to say that we are awed and impressed by the Herculean effort of petitioner to prove that the 1,147 sacks of coffee beans were purchased locally. After weighing, evaluating, and sifting, however, the mass of documentary evidence and the voluminous records of testimonial evidence adduced by the opposing parties, we are constrained to sustain the findings of Commissioner Rolando G. Geotina of the Bureau of Customs that the disputed 1,147 sacks of coffee beans and also the articles of foreign manufacture consisting of assorted perfumes (Siboleys, Santalias, Matadoyong), playing cards, Batik cloth, hair sprays, watches, vanishing creams, umbrellas, etc. were imported by petitioner in violation of law. It follows, therefore, that the vessel "Sta. Juliana XI" had been used in the

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illegal importation into the Philippines of the articles herein mentioned.

WHEREFORE, the decision of the respondent Commissioner of Customs appealed from is hereby affirmed. Accordingly, the 1,147 sacks of coffee beans here in dispute are declared forfeited to the Government and should be dealt with in accordance with law. With costs against petitioner.

SO ORDERED..

Quezon City, May 5, 1971.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

Roman M. Umali
ROMAN M. UMALI
Presiding Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge

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