REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

IGNACIO TORRES,
Petitioner,

-versus -

C.T.A. CASE NO. 3693

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - - - - - x

5/28/92

D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs affirming the forfeiture of one (1) unit Mercedes Benz, 240D, 1981 model with Motor No. 616-912-12-056674 and Serial No. WDB123-123-12-251637 for violation of the Tariff and Customs Code.

Petitioner, Ignacio Torres, Administrative Assistant Level VIII of the Asian Development Bank, imported from Hamburg, Germany, the subject Mercedes Benz 240 (D). On May 15, 1981, the car in question arrived in the Port of Manila on board the vessel S/S "Kurama Maru" under B/L No. 3305337 consigned to Ignacio Torres. The said consignee filed Entry No. 38954 series of 1981. The Collector of Customs computed the tax, customs duty and other legal charges due thereon in the total amount of P377,727.00. However, on May 28, 1981, the said car was released tax and duty free on the strength of an authorization from the Department of Finance issued pursuant to Sections 34(b), 44 and 45(f) of the existing Headquarters Agreement between the Government of the Republic of the Philippines and the Asian Development Bank, in line with the provision of the last paragraph of Section 105 of the Tariff and Customs Code and the provision of item 3 of the last paragraph of Section 204 of the revised National Internal Revenue Code of 1977 (Exh. "B-7").

On or about May 24, 1982, the Collector of Customs of the Port of Manila seized the above motor vehicle at 1979 Kasoy Street, Damarinas Village, Makati, Metro Manila in the possession of Mr. Emilio Tayao. The seizure was ordered by the Collector of Customs on his alleged discovery that Emilio Taymo had continuous use of the vehicle from the time of arrival until its apprehension and that the petitioner intended the vehicle as a collateral for some business not connected with his job at the Asian Development Bank. After hearing, the Collector of Customs of the Port of Manila on February 23, 1983 ordered the forfeiture of the subject vehicle in favor of the government.

Petitioner appealed to the Commissioner of Customs. In a decision dated July 29, 1983, the latter affirmed in toto the decision of the Collector of Customs. Hence, this instant appeal.

The issue presented before the court is whether or not Mr. Ignacio Torres has in fact violated the provision of Section 105 of the Tariff and Customs Code so as to warrant seizure and forfeiture of the subject vehicle.

The pertinent provision of law involved is qouted hereunder:

> SECTION 105. Conditionally-Free Importations. The following articles shall be exempt from the payment of import duties upon compliance with the formalities prescribed in, or with, the regulations which shall be promulgated by the Commissioner of Customs with the approval of the Minister of Finance; Provided, <u>That any article sold, bartered, hired or used for purposes other than they were intended for without payment of the duty, tax or other charges which would have been due and payable at the time of entry if the article had been entered without the benefit of this section, shall be subject to forfeiture</u> and the importation shall constitute a fraudulent practice against customs revenue punishable under Section Thirty-six hundred and two, as amended of this Code: Provided, further, That a sale pursuant to a judicial order or in liquidation of the estate of a deceased person shall not be subject to the preceding proviso, without prejudice to the payment of duties, taxes and other charges: Provided, finally, That the President may, upon recommendation of the

> Minister of Finance, suspend, disallow or completely withdraw, in whole or in part, any of the conditionally-free importation under this Section: (Underscoring supplied.)

Petitioner for his part alleged that the subject vehicle was never transferred or sold to Mr. Emilio Tayao; that it was found in his possession because it was mortgaged to the latter as security for a loan extended by Mr. Tayao to Petitioner; that petitioner has fully paid the loan on June 16 and 21, 1982 which renders the chattel mortgage without force and effect; that the seizure is in violation of the provisions of the Headquarters Agreement between the Republic of the Philippines and the Asian Development Bank and Item No. 3 of the last paragraph of Section 204 of the revised National Internal Revenue Code and that the customs agents who seized the vehicle merely acted on suspicion and he did not violate the condition for the release thereof.

Respondent for his part alleged by way of special and affirmative defenses that the release of said vehicle was subject to the conditions set forth under Section 105 of the Tariff and Customs Code that the same shall not be "sold, bartered, hired or used for purposes other than that they were intended for without payment of the duty, tax and other charges", or that it should not be "intended for other persons or for barter, sale or hire".

The circumstances surrounding this case justify a finding against the petitioner. The circumstances show that the petitioner actually imported subject vehicle for the use of Mr. Emilio Tayao in violation of Section 105 of the Tariff and Customs Code. First of all, on December 18, 1980, Mr. Ignacio Torres, petitioner, long before the arrival of the subject vehicle, executed in favor of Mr. Emilio Tayao a Deed of Chattel Mortgage (Exh. "E") covering a Mercedes Benz 1981 model allegedly to guarantee payment of a loan in the amount of P177,000.00. Likewise, on the same date, December 18, 1980, petitioner executed a Special Power of Attorney granting Mr. Emilio Tayao the power to do and execute any of the following acts:

"(1) To work for the release of the above described motor vehicle from the warehouse or custody of the Bureau of Customs or any other government agency;

(2) To execute, sign and deliver all such documents as may be necessary and pertinent in

connection with the release of the aforesaid motor vehicle;

(3) To use, operate, maintain the aforementioned vehicle in connection with his personal and business dealings and in all cases without limit;

(4) To sell, transfer, dispose, mortgage or otherwise encumber the abovementioned automobile for any reasonable price or amount according to his own estimation as well as to collect and apply the proceeds thereof according to his own wishes or discretion;

(5) To sue for damages or loss involving the same vehicle as well as to engage the services of a lawyer for this purpose;

(6) To register the said vehicle with the Land and Transportation Commission; to renew such registration should it become necessary every year; and to perform everything that the government may require to make its entry in the Philippines legal according to the requirement of the laws and regulations."

From the above document we could see that even from the very start petitioner has been violating the provision of Section 105 of Tariff and Customs

Code. Its possession and use have actually been transferred to Mr. Emilio Tayao even before the actual arrival of the vehicle. The Special Power of Attorney will show that not only possession has been transferred to Mr. Tayao but including practically the right of ownership. This can easily be gleaned when petitioner granted Mr. Tayao the right "to sell, transfer, dispose, mortgage or otherwise encumber" the above mentioned vehicle for any reasonable price and proceeds thereof may be disposed of by Mr. Tayao according to his own wish and discretion. These are all acts which only a legitimate owner can exercise. The Deed of Chattel Mortgage and Special Power of Attorney were utilized by the petitioner as an instrument to circumvent the prohibition provided under the Tariff and Customs Code. This notwithstanding the fact that said Special Power of Attorney was revoked after four years or on August 1, 1985. As it is prohibited to sell, barter or hire the subject tax exempt vehicle without payment of duties, taxes and other charges, the aforementioned instruments were utilized to effect a transfer or use of the vehicle without changing the owner's name in the certificate of registration. These facts are bolstered by the findings made by the National Customs Police headed by Captain Edward dela Cuesta who in his First Indorsement dated May 24, 1982 has reported that after surveillance of the vehicle since January of 1982, Mr. Emilio Tayao has continuously used the vehicle up to the time of seizure (Exh. "1"). Furthermore, when the case was elevated to the Court of Tax Appeals, petitioner executed another Special Power of Attorney dated August 1, 1985 in favor of Mr. Emilio Tayao empowering him to represent petitioner in the Court of Tax Appeals. (P. 181 of the records.) So that when the court ordered the release of the vehicle under bond, this court noticed in the custody receipt issued by the Bureau of Customs on June 16, 1988 that the said vehicle was acknowledged to have been received by Mr. Tayao (Exhibit "I"). Likewise noticed by this court is the fact that after receipt of the vehicle and during the pendency of this case Emilio Tayao maintained and caused the repair of the subject vehicle. In fact, his counsel presented before this court various official receipts and invoices evidencing the purchase of spare parts and maintenances expenses for the said vehicle all in the name of Mr. Emilio

Tayao. These circumstances will show the undue interest on the part of Mr. Tayao to the vehicle in question.

From the above circumstances we can safely conclude that in truth and in fact, Mr. Emilio Tayao owns the vehicle. This conclusion is further supported by the fact that according to the counsel of Mr. Torres, (page 6 of the amended petition for review), petitioner has fully paid its obligation to Mr. Tayao on June 16 and 21 of 1982 (page 64 of the records). Why then has Mr. Tayao showed unusual interest in the vehicle if in fact petitioner has fully paid its obligation?

In view of all the foregoing, this court believes that petitioner has violated the provision of Section 105 of the Tariff and Customs Code when he allowed another person to use the subject vehicle and exercise the right of ownership.

WHEREFORE, this instant petition for review is hereby dismissed. We affirm in toto the findings of the Commissioner of Customs. The bond posted for the temporary release of the shipment of this vehicle is hereby held answerable for the immediate recovery of the vehicle.

SO ORDERED.

Quezon City, Metro Manila, May 28, 1992.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

STELLA DADIVAS-FARRALES
Acting Associate Judge

CERTIFICATION

I hereby certify that this 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