REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

May 21/73

PHILIPPINE STEAM NAVIGATION CO. in its capacity as agent of the MV "ELCANO",
Petitioner,

versus

C.T.A. CASE NO. 2385

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

The crucial question raised in this case is whether or not a collector of customs of a port can legally impose an administrative fine against a vessel for allegedly carrying unmanifested cargo pursuant to Section 2521 of the Tariff and Customs Code without first instituting seizure proceedings in accordance with the pertinent and applicable provisions of the same Code. Otherwise stated, can the penalty of fine be imposed under the Customs Law without a formal hearing wherein the party adversely affected is given a chance to be heard?

The facts of the case, as found by the Collector of Customs of Davao in an investigation conducted by his legal or hearing officer (not in a formal hearing wherein petitioner Philippine Steamship Navigation Company in its capacity as agent of the MV "Elcano" had been properly charged for violation of Section 2521, Tariff and Customs Code) are as follows:

> This refers to the seizure by the Customs-RASAC-PC team which conducted a search on board the M/V "ELCANO" Voy. No. 360 on the strength of a Search Order issued by the Collector of Customs of this Port, of tax-unpaid cigarettes consisting of three hundred eighty-two (382) reams of "Union" brand regular size; one hundred (100) reams of "Champion" brand regular size; and one hundred forty-nine (149) reams of "Champion" brand king-size and filter-tip cigarettes found on board the said vessel while she was docked at Sasa marginal wharf on July 9-10, 1969, for violation of the provisions of Section 2530 paragraph (g) and (m-1) of the Tariff and Customs Code of the Philippines.
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> xxx xxx xxx
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> Shortly, after the discovery by the Customs-RASAC-PC search team of the above-stated tax-unpaid cigarettes, the persons suspected of being involved in the alleged violation, were immediately investigated. The investigation yielded the fact that the subject cigarettes were placed in the women's bathroom which has not been used for the purpose as the same has been condemned already; that Roberto Mesa, the messman who holds the key to the bathroom, placed two (2) cartons marked "Tanduay", one (1) traveling bag and one (1) tin can, all allegedly contained personal effects belonging to a certain muslim, Indi, upon the request of the latter; that four (4) other boxes were placed inside the

said bathroom by a certain Gerardo Ariston, a checker on board the vessel; that one hundred-fifty (150) reams of cigarettes, "Union" brand, regular size and one hundred forty-nine (149) reams in six (6) cases were found in the rice-store room; that the six (6) cases were placed allegedly by a muslim.

x x x

It has been noted that there are at least, three (3) members of the crew of vessel "Elcano" who at least have knowledge of the cigarettes in question which are furtively kept in place like unused bathroom and rice storeroom of the vessel were they were discovered and seized by the search team. From the records of the vessel in this particular trip when the apprehension was made, it does not show that the subject cigarettes were manifested. x x x (pp. 6-7, CTA records.)

According to the Memorandum of petitioner Philippine Steam Navigation Company in its capacity as agent of the M/V "Elcano":

On August 2, 1969, petitioner received copy of the notice dated July 22, 1969 setting this case captioned "Seizure Identification No. 013-69", for hearing on August 4, 1969. On the same date, August 2, 1969, petitioner sent a telegram to the Collector of Customs at Davao City requesting for the resetting of the hearing of August 4th so that on September 24, 1969, the hearing officer of the Bureau of Customs of Davao City cabled petitioner that the case was set for hearing on October 15, 1969. Subsequently, petitioner through the undersigned counsel sent a telegram dated October 11, 1969, to the Collector of Customs of Davao City requesting that the hearing on October 15th be postponed to coincide with any administrative case that might have been filed against petitioner.

On August 11, 1970, after the lapse of almost one year, petitioner itself (not the undersigned attorneys) received a copy of decision of the Collector of Customs of Davao City dated October 6, 1969. This decision caption entitled "Seizure Identification No. 020-69" contains two (2) aspects:

1. The subject cigarettes are ordered forfeited in favor of the government; and

2. A fine of ₱10,000.00 is imposed on MV "ELCANO" for allegedly violating Section 2521 of the Tariff and Customs Code.

On appeal, respondent rendered a decision affirming said decision dated October 6, 1969. Hence, this case. (pp. 43-44, CTA records.)

In spite of the fact that respondent was given a period of thirty (30) days within which to answer petitioner's memorandum, no memorandum was filed by him. We take it therefore that the above-statement of the case of petitioner is correct. At any rate, the facts as stated by petitioner and as quoted above are borne out by the records of the case.

The present appeal refers, however, only to the imposition of the administrative fine against the M/V "Elcano", it appearing that the decision of the Collector of Customs with respect to the seizure of the cigarettes in question has become final and executory there being no claimant to the afore-mentioned cigarettes.

Worth-while noting are the following salient, and thought-provoking, facts which are borne out by the records of the case:

1. The notice of hearing sent by the investigating/hearing officer of the port of Davao setting this case on August 4, 1969 for trial, together with the telegram of the same officer re-setting it to October 15 which also served as a formal notice of hearing, refers to Seizure Identification No. 013-69, Republic of the Philippines v. 41 Reams Untaxed Union Cigarettes Found in Water Tank of M/V "Elcano". (Pp. 51-52, Customs Record.) The decision rendered by the Collector of Customs of Davao, which was the decision appealed to and affirmed by respondent and now the subject matter of this appeal, is captioned Seizure Identification No. 020-69, Republic of the Philippines v. M/V "Elcano" Voy. 360, 232 Reams "Union" Cigarettes, 149 Reams "Champion" KS, cigarettes. (Pp. 35-38, Customs Record.) Since the records

of this case make no reference to any other notice of hearing except with respect to Seizure Identification No. 013-69, mentioned above, the statement of petitioner that it and its attorneys have never been informed of the proceedings in "Seizure Identification No. 020-69", subject-matter of this instant appeal, is correct.

2. When the Collector of Customs of Davao was requested by respondent to transmit to his office immediately all available records of the hearing of Seizure Identification No. 020-69 as they are vital in the preparation of the answer to be filed in this Court, the former answered that the hearing conducted refers only to the investigation done by the hearing officer. (Pp. 58-59, Customs Record.) Clearly, therefore, there was no formal hearing wherein petitioner was given a chance to be heard in connection with the investigation of the case conducted by the Collector of Customs of Davao.

3. For carrying the alleged unmanifested cargo of cigarettes, no seizure was made by the Collector of Customs of Davao of the M/V "Eleano" and neither was any seizure proceeding instituted against petitioner for violation of Section 2521

of the Tariff and Customs Code. While a bond for ₱10,000.00 was posted by the M/V "Elcano" after the cigarettes were seized, petitioner avers (par. III, Petition for Review) and respondent admits (par. 1, Answer) that it was only to avoid detention of the vessel at Sasa Wharf, Davao City. It is thus evident that there has never been an administrative case filed against petitioner or the M/V "Elcano" for alleged violation of Section 2521 of the Tariff & Customs Code. Consequently, the decisions of the Collector of Customs of Davao dated October 6, 1969 and that of respondent dated November 17, 1970 were rendered in such a manner that the M/V "Elcano" and petitioner did not know of the charge against them, the issues involved and the reasons for the rendition of the said decisions.

4. And strange as it may seem, the decision of the Collector of Customs of Davao imposing an administrative fine of ₱10,000.00 against the M/V "Elcano" for carrying unmanifested cargo while dated October 6, 1969 was received by petitioner itself, although it was represented by counsel, on August 11, 1970, or almost one year after it was rendered. (p. 28, Customs Record.)

With this factual setting, let us consider the law applicable to the case.

It will be noted that the administrative penalties imposed by the Tariff and Customs Code in connection with the importation or exportation of articles are classified into (a) surcharges, Sections 2501 to 2504; (b) fines, Sections 2505 to 2529; and (c) forfeitures, Sections 2530 to 2533. The imposition by respondent of the amount of ₱10,000.00 as administrative fine against the M/V "Elcano" was made allegedly pursuant to Section 2521 of the same Code. Under said Section 2521, in relation to Section 1005, of the same Code, it is incumbent upon the master of the vessel to have on board a complete manifest of all cargoes on board. Failure to comply with this obligation would subject the vessel to a fine of not exceeding ten thousand pesos. (See U.S. v. Islas Filipinas, 28 Phil. 291.)

The Tariff and Customs Code has, however, indicated and described in a manner clear, definite and certain how administrative fines and forfeitures are imposed. Thus, Section 2532 thereof expressly provides that "administrative fines and forfeitures shall be enforced by the seizure of the vessel or aircraft or other property subject to the fine or forfeiture and by subsequent proceedings in conformity with the provisions of Parts 2 (Administrative Proceedings) and 3 (Judicial Proceedings), Title VI (Administrative and Judicial Proceedings), Book II of this Code." And while the first part of Section 2205 enjoins a customs official or any person authorized to effect searches, seizures and arrests to make seizure of any vessel, aircraft or property when the same is subject to forfeiture or liable for any fine imposed under customs and tariff laws, the latter portion of the said Section 2205 stresses that such power must have "to be exercised in conformity with the law and the provisions of this Code."

The pertinent and applicable provisions of the Tariff and Customs Code which describe in detail the procedure in seizure cases are Sections 2205 to 2212; Sections 2301 to 2307; and Sections 2312 to 2315, in relation to Section 2532. Insofar as pertinent hereto, the law expressly requires that upon making any seizure, the Collector shall issue a warrant for the detention of the property. (Section 2301, id.) If the owner or importer desires to secure the release of the property for legitimate use, the Collector may surrender it upon the filing of a sufficient bond, except articles the importation of which is prohibited by law, conditioned for the payment of the appraised value of the article and/or any fine, expenses and costs which may be adjudged in the case. (Section 2301, id.) It was probably under this provision of the law that petitioner was allowed to post a bond for ₱10,000.00 to avoid the detention of the M/V "Ticano" at the Sasa Wharf in Davao City after it was found allegedly carrying unmanifested cargo.

When a seizure is made for any cause, the Collector of the district wherein the seizure is effected shall immediately make report thereof to the Commissioner of Customs and to the Auditor General. (Section 2302, id.) The Collector shall also cause a list and particular description of the property seized to be prepared and an appraisement of the same at its wholesale value in the local market in the usual wholesale quantities to be made by at least two appraising officers, if there are such officers at or near the place of seizure; in the absence of such officers, then by two competent and disinterested citizens of the Philippines, to be selected by him for that purpose, residing at or near the place of seizure, which list and appraisement shall be properly attested to by such collector and the persons making the appraisal. (Section 2305, id.)

Then comes the crucial and decisive provision: "The Collector shall give the owner or importer of the property or his agent a written notice of the seizure and shall give him an opportunity to be heard in reference to the delinquency which was the occasion of such seizure." (Section 2303, id.) And to emphasize the duty of the Collector to give the owner or importer of the property seized that opportunity to be heard in reference to the delinquency which was the occasion of such seizure so that he can present his case and adduce evidence tending to establish his rights, the second part of Section 2313 expressly requires that: "In seizure case, the Collector, after hearing, shall in writing make a declaration of forfeiture or fix the amount of the fine or take such other action as may be proper." (Underscoring supplied.)

The law seems clear, specific and mandatory. There is, therefore, no room for interpretation; it merely calls for its application. Construed together, the above provisions yield no other conclusion but that the penalties of fines and forfeitures under the Tariff and Customs Code can not be imposed without a formal hearing wherein the party adversely affected is given a chance to be heard. Consequently, to the extent that petitioner or its counsel has never been informed of the proceedings in Seizure Identification No. 020-69, which is the subject matter involved in this case; that there was no seizure made by the Collector of Customs of Davao of the M/V "Elcano" and no seizure proceedings were instituted against it for violation of Section 2521 of the Tariff and Customs Code; that no formal hearing was conducted by the Collector of Customs of Davao wherein petitioner was given an opportunity to be heard in reference to the imposition of the fine of ₱10,000.00; and that petitioner was not given a chance to present its side of the case and to submit evidence in support thereof, the decision of the Collector of Customs of Davao dated October 6, 1969, including the affirmance thereof by respondent, is a nullity for having been promulgated in disregard of the requirements of due process provided under the Tariff and Customs Code.

It is well-settled that even in trials and investigations of an administrative character, the fundamental and essential requirements of due process can not entirely be ignored or disregarded. There are cardinal primary rights which must be respected even in proceedings of this character. The first of these rights is the right to a hearing, which includes the right of the party interested or affected to be heard. Not only must the party be given an opportunity to be heard but the tribunal or investigating officer must consider the evidence presented. While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. (Ang Tibay, et al. v. The Court of Industrial Relations, et al., 69 Phil. 635.)

The appealed decision can not therefore stand because it has been clearly shown that the Collector of Customs of Davao and respondent Commissioner of Customs had acted in utter disregard of the principle of due process. (National Development Corp. v. Collector, G.R. No. L-19180, October 31, 1963;

Commissioner of Customs v. Alikpala, G.R. No. L-32542, Nov. 26, 1970, 36 SCRA 208.) To quote from the decision in Commissioner of Customs v. Alikpala, supra:

> . . . Due notice and hearing, besides being an inherent element of due process, is provided for in Section 2303 of the Tariff and Customs Code, which requires the Collector to give the owner or importer of the property written notice of the seizure and an opportunity to be heard in relation to the delinquency which was the occasion for such seizure, as well as in Section 2601, which directs that seized property, other than contraband, shall be subject to sale after liability to sale shall have been established by proper administrative or judicial proceedings in conformity with the provisions of said Code.

With this conclusion, we find it unnecessary to resolve the other corollary issues presented by petitioner.

WHEREFORE, the decision of respondent Commissioner of Customs dated November 17, 1970 affirming the decision of the Collector of Customs of Davao imposing an administrative fine of ₱10,000.00 against the M/V "Elcano" for carrying unmanifested cargo is hereby reversed. Without pronouncement as to costs.

SO ORDERED.

Quezon City, May 21, 1973.

R. M. Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge