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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JAMIL BARODI,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS,
Respondent.

C.T.A. CASE NO. 5121

Promulgated:
MAY 28 1996

x - x

DECISION

This is a petition for the review of respondent's denial of petitioner's offer of redemption of his seized goods.

Petitioner claims to be a businessman engaged in the buying and selling of textile materials with residence at Barangay Bardarainged, Maharlika Village, Taguig, Metro Manila.

The facts are as hereunder stated.

In 1992, petitioner allegedly bought 86 bales of textile materials from the Muslim Barter Trade Association through its representative, Melodina Ampo. The materials originally form part of eleven (11) containers of shipment consigned to Commonwealth Garments Mfg., Philippines, forfeited by the Bureau of Customs in favor of the government. They were later on acquired by the said Association through redemption, and allegedly released from customs zone per Gate Pass No. 76-93 dated May 8, 1992.

The controversy all started when agents of the Economic Intelligence and Investigation Bureau (EIIB) apprehended and seized 30 bales of the abovementioned 86 bales of textile materials for alleged "diversion" committed by Commonwealth Garments Mfg., Phils., while about to be transported to petitioner's stall at the Barter Goods Center in Manila.

Appropriate seizure proceedings were instituted against Commonwealth Garments Mfg., Phils., Victoria Reyes and Jerry Javier under Seizure Identification Nos. 92-306, 92-305 and 92-305A, respectively. Petitioner was allowed to enter as claimant-intervenor in S.I. No. 92-306.

Subsequent events that transpired are succinctly narrated in the decision of the District Collector dated January 14, 1994 (Annex "E" of Petition for Review), to quote:

xxx xxx xxx

> In the proposed decision rendered by the Collector of Customs on 14 December 1992, the above 30 bales of textiles were recommended for release to Claimant-Intervenor, but the same was denied by Deputy Commissioner Licerio

> Evangelista in his 2nd Indorsement dated 22 December 1992. Claimant-Intervenor then filed his first motion for reconsideration, which was referred again to the Deputy Commissioner on 20 January 1993. In a 2nd Indorsement dated 26 February 1993, the motion was referred to the Collector with instructions to conduct a hearing for purposes of eliciting the EIIB's comment on the motion. On 18 May 1993, the Collector of Customs indorsed a memorandum of the Law Division reiterating its original findings for the release of the above properties to Intervenor-Claimant. On 22 October 1993, the Honorable Deputy Commissioner again denied the release and reiterated the continuation of the forfeiture proceedings against the above properties. On 18 October 1993, Claimant-Intervenor Jamil Barodi filed his second motion for reconsideration on the denial by the Honorable Deputy Commissioner, but then on 29 November 1993, same was again denied and accordingly, the Honorable Deputy Commissioner directed the continuation of the seizure and forfeiture proceedings and immediate disposal of the said articles in accordance with the law. On these scores, the Collector of Customs forfeited the said goods on 08 December 1993. On 22 December 1993, Intervenor-Claimant filed his offer to redeem the above properties pursuant to Section 2307 TCCP as amended by E.O. 38. Subject offer for redemption was referred to the EIIB Commissioner for Comment pursuant to CMO No. 41-93, and in the manifestation dated 12 January 1994, the EIIB prosecutor Atty. Adolfo Runas, offered no objection to the said offer for redemption, provided said offer satisfies the guidelines under CMO No. 87-92 dated 30 July 1992.
>
> xxx xxx xxx

Unfortunate enough for the petitioner, the approval of the abovequoted decision of the District Collector, as required by Section 2307 of the Tariff and Customs Code of the Philippines, Code for brevity, was denied by

Deputy Commissioner Licerio C. Evangelista in his 2nd Indorsement dated March 9, 1994. (Annex "F" of Petition for Review)

On March 17, 1994, petitioner filed a Notice of Appeal from the said denial of the offer to redeem with Deputy Commissioner Evangelista, who indorsed the same to the Commissioner of Customs for final action on May 31, 1994. (Annex "G" of Petition for Review)

On June 1, 1994, Special Assistant Atty. Magtanggol T. Gunigundo I, by authority of the Commissioner of Customs, denied petitioner's Notice of Appeal with finality (Annex "A" of Petition for Review)

Hence, this appeal.

In his "assignment of errors", petitioner accuses respondent of committing grave abuse of discretion in denying his offer of redemption. He cites the above January 14, 1994 decision and the memorandum of the Law Division of the Manila International Container Port, Bureau of Customs dated May 5, 1993, both of which were for the granting of the offer, as the grounds relied upon by him in support of his allegation against the respondent.

Petitioner argues, among others, that respondent "without any substantial grounds therefor", denied the recommendation of the said Collector by holding, thus:

> 1. In seizure proceedings the burden of proof lies upon the claimant which has not been discharged satisfactorily by herein claimants * Intervenor-Claimants;
>
> 2. Supreme Court has ruled that credence should be given to the narration of prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner there being no evidence to the contrary (**People of the Philippines vs. De Jesus**, GR No. 93-852, 24 January 1992). The testimony of EIIB Agent Erwin Santi is presumed to have performed his duty in a regular manner has not been rebutted and deserves respect and credence;
>
> 3. Redemption is not a matter of right and the law allows the Commissioner of Customs to exercise discretion in the approval or denial of offers of redemption.
>
> (2nd Indorsement of Atty. Magtanggol T. Gunigundo I upon the Authority of the Commissioner dated June 1, 1994; Annex "A" of Petition for Review)

Petitioner admits that "there is a conflict of findings as to whether the subject goods were indeed part of the 11 container shipment." (Petition for Review, p. 7) He then construes the conflict as giving rise to a "doubt" that should be resolved in his favor, inasmuch as his position is sustained by those who had a direct hand in the actual prosecution and the determination of the facts of the case. (Ibid.) Being so, he deems the recommendations and findings of the District Collector and the Law Division of the Bureau of Customs deserving of respect and credence.

Moreover, petitioner reiterates the policy of the State to encourage settlement of cases through the redemption of forfeited property in order to "increase and accelerate revenue collection" and "to settle seizure cases which will expedite the collection of revenue and hasten the release of cargoes under seizure proceedings", as provided under the whereas clause of Executive Order No. 38 amending Section 2307 of the Code.

It is thus prayed for by petitioner that (1) the decision of respondent through the 2nd Indorsement of June 1, 1994 be set aside and instead, order his payment of the redemption value, and that (2) respondent be ordered to direct EIIB to release the 30 bales of textile under the latter's custody at the Logistics Command, Camp Aguinaldo, Quezon City to petitioner after payment of the redemption value in the amount of P250,224.88 (Petition for Review, p. 9)

Respondent, on the other hand, contends that "petitioner himself admits that the authority of the Commissioner to allow or not to allow redemption is undisputedly discretionary", despite his allegation of grave abuse thereof. (Answer, p. 3) Respondent strongly denies any such abuse.

It is the counter allegation of respondent that petitioner failed to prove ownership of the questioned cargoes or that the same were part of the goods released to the Association on redemption. Respondent maintains that the denial of the offer to redeem by Deputy Commissioner Licerio Evangelista was correct when it was found out that:

> "A restudy of the records of this case showed that there is no clear-cut showing that the subject 30 bales of TC fabrics were identified to be part of the 11 containers forfeited goods released to Melodina Ampo on redemption.
>
> Such being the case, the subject offer to redeem is hereby denied."

As regards the objectives of the government in promoting settlement of seizure cases through offer of redemption, respondent avers that while it is true that the payment of taxes and duties is the government's concern, it does not detract, however, from the main responsibility of citizens to obey the law and not to trifle with the government. (Ibid, p. 4)

After a careful reading of the facts and circumstances attendant to the case at bar, this Court so holds that respondent committed no grave abuse of discretion.

Respondent in his 2nd Indorsement of June 1, 1994 as abovequoted cited considerable and ample grounds for his decision not to accept the offer of redemption. He gave credence to the testimony of EIIB Agent Erwin Santi based on the Supreme Court decision in **People of the Philippines vs.De Jesus**, G.R. No. 93-852, January 24, 1992 that under the law public officers are presumed to have performed their duties in a regular manner. It was also his finding that petitioner who has the ***onus probandi*** of proving his case failed to discharge the same satisfactorily. Lastly, he asseverates the fact that the law allows the Commissioner to exercise discretion in the approval or denial of offer of redemption.

Coupled with the above, it may be recalled that petitioner admits of the "doubt" surrounding the conflict of findings within the Bureau of Customs as to whether the subject goods were indeed part of the consigned shipment, *supra*. Petitioner is therefore aware of the uncertainty surrounding his alleged ownership right over the seized goods. As such, it is evident that there could be no manifest showing of grave abuse of discretion where respondent merely exercised his discretion to deny the offer of redemption based on his appreciation and weighing of the countervailing facts and circumstances. (Petition, Annexes "A" and "G")

Notwithstanding petitioner's concerns, thus, respondent's letter-denial of the offer of redemption is supported by substantial evidence.

"Substantial evidence" means that the one weighing the evidence takes into consideration all the facts presented to him and all reasonable inferences, deductions and conclusions to be drawn therefrom, and considering them in their entirety and relation to each other, arrives at a fixed conviction. (**Diaz vs. Burgos**, SP-00949, August 25, 1972, as cited in Philippine Law Dictionary, 1988 ed., p. 915 by Moreno)

It is the rule that in reviewing administrative decisions, the findings of facts made therein must be respected, so long as they are supported by substantial evidence, even if not overwhelming or preponderant and that it is not for the reviewing Court to weigh the conflicting evidence, determine the credibility of the witnesses, or otherwise substitute its judgment for that of the administrative agency on the sufficiency of the evidence, unless there is proof of gross abuse of discretion, fraud or error of law. (**Timbancaya vs. Vicente, et. al**, G.R. No. L-1900, December 27, 1963, 9 SCRA 852, citing **Ang Tibay vs. CIR**, 69 Phil. 635; **Lao Tang Bun vs. Fabre**, 81 Phil. 682 and **Lovina vs. Moreno**, 9 SCRA 557)

In view thereof, this Court supports the respondent's decision to deny redemption. However, records show that this Court granted petitioner's motion for release under bond of the seized goods involved herein. During the hearing of this case, particularly at the time petitioner filed his motion to release the goods under bond, respondent has softened his stand to deny the release of the goods when he interposed no objection to their release under a cash bond. Respondent may have been convinced by the fact that the goods which have been exposed for two long years to the weather and other elements were perishable and have developed rust and may have been damaged already. Subsequently, respondent submitted to this Court the depreciated value of the textile which it computed at P200,179.00. Accordingly, in the interest of justice, taking into consideration the perishable nature of the goods in custody and the fact that continued exposure to the elements will prove them worthless whether the same will end up in the hands of the government or with the petitioner, this Court in a resolution dated October 20, 1994 ordered the release of the goods under a cash bond in an amount equivalent to the depreciated value thereof. To this order respondent has not objected and in fact agreed by submitting the above valuation. The subsequent events(deteriorating conditions of the goods) must have changed his mind and exercised his discretion by not objecting anymore to their release under a cash bond. So on November 8, 1994 this Court ordered the release of the goods when petitioner submitted the cash bond.

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **DISMISSED** for lack of merit. **ACCORDINGLY**, the cash bond posted by the petitioner with this Court in the amount of P200,179.00 is hereby **FORFEITED** and declared to be the property of the Government. The Clerk of Court is directed to turn over the amount of the bond to the Bureau of Customs without delay upon finality of this decision.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(On leave)
MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
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