REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SENBA SHOKAI, CO. LTD.
(Represented by its Attorney-in-fact Takashi Shimizu),
Petitioner,

- versus - C.T.A. CASE NO. 4310

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - x

SENBA SHOKAI, COMPANY, LTD.
(Represented by its President Yoshitaro Okazaki),
Petitioner,

- versus - C.T.A. CASE NO. 4322

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - x

9/8/93

D E C I S I O N

This is an appeal from the decision of the Respondent rendered on November 21, 1988 ordering the forfeiture of twenty-eight (28) brand-new and reconditioned Nissan and Toyota vehicles of the Petitioner for alleged violation of Section 2530 paragraphs d, g, and l, subparagraphs (3), (4), and

(5) of the Tariff and Customs Code in relation to Central Bank Circular No. 1029.

Petitioner is a corporation duly organized and existing in accordance with the laws of Japan and engaged as shipper/supplier of used reconditioned cars with principal offices at 1563-1 Imajiku, Himeji, Japan and is represented in CTA Cases No. 4310 by its Attorney-in-fact Takashi Shimizu (see Annex "B" CTA Case No. 4310) a resident of Room 214 Mabini Mansion, Mabini, Ermita, Manila. Subsequently another case was filed by Senba Shokai, Co. Ltd. represented by its President Yoshitaro Okazaki docketed as CTA Case No. 4322 designating Raymundo Caberte as Attorney-in-Fact (see Annex "A" CTA Case No. 4322). Both cases were later on consolidated since they involved the same facts and issues.

The facts are stated in the opinion of the Court.

Sometime in October of 1986, the vessel "Maria VII" left Japan laden with about 136 units of motor vehicles all of which were discharged to various individuals in Rangon, Burma and a firm in Colombo, Sri Lanka except the questioned twenty-eight (28) units which were ordered to be returned to Japan due to the inability of the consignee to open the proper letters of credit.

On its way back to Japan, the carrying vessel, upon instructions of the ship's owner, proceeded to Penang, Malaysia for refueling and to further proceed to Poro Point, La Union, Philippines for a change of crew since their contracts have already expired. While en route to the Philippines but still in Malaysian territory, the vessel encountered "boisterous" weather (see Note of Sea Protest, Exh. "II") which flooded its engine room causing it to run aground. Coming to the vessel's aid, the Royal Malaysian Navy on December 30, 1986 towed it to Kota Kinabalu, Sabah, Malaysia where the vessel's master, Capt. Crispino Mendoza filed with the harbor authorities there a sworn Note of Sea Protest (See Exh. "II"). Soon thereafter, the owner of the vessel sent the Ranger I tugboat to undertake emergency repairs and eventually towed it to Manila.

On January 10, 1987, upon arrival of the vessel in Manila, Capt. Mendoza handed to Collector Narciso Y. Santiago, Jr. among others, a typewritten transit cargo manifest indicating that the subject 28 units of motor vehicles were in transit to Japan (see Exhs. "MM" and "NN"). Subsequently, an Extension of Note of Sea Protest was filed by Capt. Mendoza with the Bureau of Customs (see Exh. "JJ").

Upon learning the unexpected development on the voyage of the vessel and the questioned transit cargoes, herein Petitioner sent a Letter Advice and Notice of Claim on the Contract of Affreightment dated June 4, 1987 to the shipping company, Yasukuni Kauin (Hongkong) Ltd. demanding the return of the subject motor vehicles to Osaka, Japan and also claiming compensation for whatever loss or damage as well as expenses arising from delay or non-action in releasing the cargoes (see Exh. "LL").

In its earnest desire to have the subject shipment returned to Osaka, Japan, Petitioner through its Attorney-in-fact, Atty. C. S. Quintanilla requested Acting Collector of Customs, Port of Manila, Cesar Z. Dario for the clearance of the subject vehicles for the eventual reshipment to Osaka, Japan.

On July 17, 1987 a Notice of Levy upon this subject vehicles was issued by the sheriff of

Manila (see Exh. "QQ-1") pursuant to an Order of Attachment issued by the Regional Trial Court of Manila (see Exh. "QQ") in connection with the complaint for sum of money filed by the Master of distressed vessel thru Manning and Management Corporation. However, on September 3, 1987, said Notice of Levy was lifted and cancelled and considered of no force and effect after it was found out that subject vehicles were not owned by Yasukuni Kaiun (Hongkong) Ltd., and that the lawful owner was Senba Shokai, herein Petitioner.

It should be noted here that the same Master of the distressed vessel, Capt. Crispino Mendoza, never appealed his case from the adverse decision of the Respondent Commissioner of Customs but only to file a Motion For Leave To Intervene in this Court on October 9, 1991 or almost three (3) years from the time it was promulgated on November 21, 1988. Such Motion was not acted upon by this Court, it appearing on records that the supposed intervenor Capt. Mendoza was not interested in pursuing his case. Another claimant in the administrative level, the Progressive Ecosystem Foundation, Inc., likewise did not appeal to this Court.

In the meantime, on August 19, 1987, despite alleged submission of Bill of Lading and other commercial documents showing that the shipment was not intended to any local consignee, the same was seized and eventually forfeited, in view of the alleged findings of the Port Collector that the subject cargoes were unmanifested and that there was an attempt to effect release of the seized vehicles through fake documents, and in pursuant to Section 2530, paragraphs d, g and l, sub-paragraphs (3), (4) and (5) of the Tariff and Customs Code, of the Philippines, thus:

> "SEC. 2530. Property Subject To Forfeiture Under Tariff and Customs Law. - Any vehicle, vessel or aircraft, cargo, article and other object shall, under the following conditions be subject to forfeiture:
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> xxx xxx xxx
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> xxx xxx xxx
>
> d. Any part of the cargo, stores or supplies of vessel or aircraft arriving from a foreign port which is unladen before arrival at the vessel;s or aircraft's port of destinations and without authority from the customs officials; but such cargo, ship or aircraft stores and supply shall not be forfeited if such unloading was due to accident, stress of weather or other necessity and is subsequently approved by the collector;
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> xxx xxx xxx

> xxx xxx xxx
>
> g. Unmanifested article found in any vessel aircraft if manifest therefor is required;
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> xxx xxx xxx
>
> xxx xxx xxx
>
> l. Any article sought to be imported or exported:
>
> (1) xxx xxx xxx
>
> xxx xxx xxx
>
> (3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;
>
> (4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and
>
> (5) Through any other practice or devise contrary to law by means of which such articles were entered through a customs-house to the prejudice of the government."

in relation to Central Bank circular 1029 which requires among others, the submission of Central Bank authority to import or the necessary release certificate from the Central Bank or its agent bank authorizing the release of articles imported or brought into the country.

On November 21, 1988, the Commissioner of Customs affirmed the decision of the Collector of Customs, thus: (see Annex "A")

> "The Collector, in his decision, maintained that "the said motor vehicles were not manifested in the Inward Cargo Manifest of the vessel and that no shipping and commercial documents covering the said shipment were submitted in due course as required by law and thus, as "the charges imputed against the motor vehicle in question have not been refuted, the same have therefore incurred and liability of forfeiture under the law".
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> "Claimant-Intervenor-Appellant on appeal, averred in essence that the Collector of manila erred in disregarding the evidentiary and probative value of the (1) Bills of Lading and the Commercial Invoices it submitted which could have established the ownership of the vehicles and their destination which was Sri Lanka as well as the (2) official report of the Chief, Pier Inspection Division of this Bureau, that the Master of the vessel submitted among others, a typewritten Transit Cargo Manifest indicating that the 28 units of motor vehicles on board were only in transit.
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> "The first argument of Appellant is untenable. The authenticity of the documents it adverted to above, which was not seasonably offered as evidence, was not indubitably established, in as much as appellant was not able to impugn Bills of Lading OM-101 and OM-011 submitted by the prosecution and the Claimant Amirul din Islam indicating that the 28 vehicles were destined for Manila and that the vessel and the cargoes were owned by Yasukuni Kaiun Co., Ltd. We cannot help

but cast doubt on the genuineness of the former Bills of Lading as even the master of the vessel himself, whose privity in the shipper-carrier relationship was not remote, utilized the latter Bills of Lading in the prosecution of his claim for unpaid wages.

"The second contention of appellant is also devoid of merit. Although it is conceded that the master of the vessel indeed submitted to the Chief of the Pier Inspection Division of this Bureau, the Transit Cargo Manifest disclosing that the subject cargoes were in transit, it was also the said official who upon evaluation of the said document, concluded per his Memorandum to the District Collector of the Port of Manila dated 14 May 1987 or before the seizure of the vehicles, that the said Transit Cargo Manifest "did not conform in substance and in form with the required Transit Cargo Manifest, thus, it is as if no Transit Cargo Manifest was submitted at all". On top of this, is the damaging evidence on hand - the Inward Cargo Manifest, submitted to the Customs authorities on the date of the arrival of the vessel, which declared the contents of the vessel as 'NIL CARGO'.

"The fact thus remain, that the forfeiture of the seized vehicles was legal and proper. The shipment was unmanifested, the entry of the vessel in the Philippines allegedly under stress was not sufficiently established, the shipment was illegally unladen hereat, there was an attempt to release the importation through fake documents - violations of the customs laws warranting the forfeiture of the RES.

"WHEREFORE, the forfeiture decision appealed from should be, as it is hereby AFFIRMED."

Hence, this appeal.

The only issue to be resolved here is: whether or not there was violation of Section 2530 paragraphs d, g, and l, sub-paragraphs (3), (4), and (5) of the Tariff and Customs Code in relation to Central Bank Circular No. 1029. We, however, can only resolve the issue after the following questions are already cleared:

a) Was there an importation of the subject vehicles discharged and unladen at the Port of Manila?

b) Did the carrying vessel arrive under stress of weather?

c) Were the Bills of Lading and other commercial documents presented by Petitioner authentic and not falsified in view of the Respondent's reliance of Bills of Lading No. OM-010 and ON-011 submitted by the other claimant Amiral Din Islam A1-Philippines, Inc.?

d) Was the questioned shipment covered by a Transit Cargo Manifest?

e) Was the same shipment covered by Inward Foreign Manifest?

f) Was there an attempt by the Petitioner to have the shipment released through fake documents?

The answer to the first question is in the negative, the subject vehicles not being importation intended for the Port of Manila but only a return shipment to Osaka, Japan. Importation, generally as well as etymologically, "consists of a voluntary bringing in of goods with intent to unlade the same" (Republic of Hawaii v. Anderson, 10 Haw. 252). "It takes place when the vessel arrives at a port of entry, intending there to discharge her cargo" (Kidd v. Flagler, 54 F. 367, Underscoring supplied). In the case at bar, the fact of importation was not established. On the contrary, documentary evidences (Exhs. A to HH and their sub-markings), showed to the effect that all the 28 units of motor vehicles originated from Osaka, Japan and the port of Discharge was Colombo, Sri Lanka. In short, said motor vehicles were never intended to be unladen in the Philippines. In fact, the prayer of the Petitioner was for the reshipment of the cargoes back to Osaka, Japan. Yes, there was unloading of the subject vehicles but it was not illegal as it was upon the approval of the then Acting District Collector of Customs Cesar Z. Dario of the Port of Manila as embodied in his letter to Deputy Sheriff Melchor Pena of the Regional Trial Court of Manila Branch 27 dated

August 5, 1987 wherein he informed the latter that the discharge "may be effected at the pier area with the coordination of the Philippine Ports Authority and the party in interest" (Exh. RR and its sub-markings).

Moreover, the vessel admittedly arrived under stress of weather. This was sufficiently established by the sworn Note of Sea Protest dated December 31, 1986 filed by the vessel's master with the port authorities of Kota Kinabalu, Sabah, Malaysia (see Exh. "II") as well as the sworn Extension of Note of Sea Protest dated January 19, 1987 which he filed with the port authorities (see Exh. JJ and sub-markings). As such, Petitioner should not be liable under Section 2530 paragraph d of the Tariff and Customs Code. As succinctly put in the case of Kisajiro Okamoto v. Collector of Customs, "the right of asylum from stress of weather is a right well recognized by international law and is in accordance with the dictates of Christianity. The only limitation is that the weather must be such as to create an honest belief in the mind of a skillful and firm mariner" (60 Phil. 218, July 11, 1934). That settles the second question.

As to the third question, the Petitioner has reasonably established the authenticity of the bills of lading and invoices through the documents submitted (see Exhs. A to HH and their sub-markings) to this Court and the oral testimonies of witness Lucero Francisco of Smith Bell and Co., the Attorney-in-fact of the Petitioner and that of Atty. C. S. Quintanilla during the seizure case at the Bureau of Customs (see Exhs. TT and TT-1).

The Bills of Lading Nos. OM-010 and OM-011 submitted by Amirul Din Islam A1-Philippines, Inc., heavily relied upon by the Commissioner of Customs are dubious in character in view of the fact that its very own counsel filed a notice of Withdrawal since the "donor of my client by the name of Julie Keneyoshi has failed to turn over the original documents consisting of bills of lading and other commercial documents which are proof of ownership of the subject matter of the case" (see Exh. "VV").

Undoubtedly, the questioned shipment was covered by a typewritten Transit Cargo Manifest handed by the master of the vessel to the customs authorities upon its arrival in Manila (see Exhs. MM and NN with their sub-markings). Hence, the fourth question necessitates a positive answer.

As to the fifth question, the questioned shipment being merely in transit thru and not intended for Manila, the same would not be reflected on the Inward Foreign Manifest of the vessel which explains the "NIL" on the column for cargo appearing in said manifest. Moreover, it should be remembered that the vessel arrived under stress of weather and was even described by the Collector of Customs and PID Chief Narciso Santiago, Jr., as "dead ship" towed by the tugboat "Ranger I" of the Malayan Towage and Salvage Corporation (see Exh. "MM-1").

Lastly, no iota of evidence was presented by the Respondent to prove directly or indirectly the alleged attempt by the Petitioner to have the shipment released through fake documents.

WHEREFORE, having cleared all the pertinent questions, We hereby RESOLVE that no violation of the Customs Laws as charged was ever committed by the Petitioner; neither was there a violation of the Central Bank Circular 1029 since the procurement of import authority from the Central Bank does not apply, the subject vehicles being not intended to be unladen in the Philippines.

ACCORDINGLY, the decision of the Respondent is hereby **REVERSED** and the same Respondent is hereby **ORDERED** to **RELEASE** the subject 28 units of Nissan and Toyota vehicles to the Petitioner for re-shipment to the place of origin (Osaka, Japan) as herein prayed for. In view of the information furnished by Petitioner's counsel in their manifestation and Motion dated 17 August 1993 that some of the vehicles were sold at Public Auction, the proceeds with such sale shall be delivered to the Petitioner in lieu of the vehicles which have already been sold.

This court does not take cognizance of the Motion For Leave To Intervene filed by Capt. Crispino Mendoza on October 9, 1991 it appearing that it was filed in order to circumvent procedural rules. Capt. Mendoza should have filed a Petition for Review in this Court within thirty (30) days after receipt of the adverse Decision of the Commissioner of Customs over his claims in the administrative level. Having failed to do so directly within the reglementary period, he cannot do it indirectly by way of intervention. For lack of jurisdiction over his case, the same is hereby **DISMISSED**.

SO ORDERED.

Quezon City, Metro Manila, September 8, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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