REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PACASIRANG BATIDOR & MV "HENNESY" PHILIPPINES DIAMOND CRUISER CORPORATION (PDCC), 24,000 more or less unmarked Bags of Imported Sugar,

Petitioners,

- versus -

C.T.A. CASE NO. 6006

BUREAU OF CUSTOMS, AND THE DISTRICT COLLECTOR OF CUSTOMS OF CAGAYAN DE ORO CITY,

Respondents.

Promulgated:

AUG 24 2001

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DECISION

Before Us is a Petition for Review which seeks the reversal or setting aside of the decision of the Bureau of Customs dated October 11, 1999 which affirmed in toto the decision of the District Collector of Customs, Port of Cagayan de Oro dated January 26, 1999, which ordered the forfeiture of the cargo of 24,000 more or less unmarked bags of imported sugar on board M/V "HENNESY" in favor of the Government of the Republic of the Philippines for violation of Section 2530 paragraphs a, f, k and l nos. 1, 2 and 5 of the Tariff and Customs Code of the Philippines (TCCP), as amended.

Petitioner, Pacasirang A. Batidor (Batidor) represented that he is duly registered and licensed to operate as a Sugar Trader by the Sugar Regulatory Administration (SRA) and doing business under the name and style, Batidor General Merchandise, and is the claimant of the subject cargo consisting of 24,000 bags of unmarked sugar. As a duly licensed Sugar Trader, he was commissioned by the Rebel Returnees Association of Lanao del Norte to engage in the business of trading prime commodities such as sugar, rice, flour, groceries, etc. for the benefit of the members and family of the rebel returnees. For this purpose, they pooled their resources initially to finance the purchase of sugar in wholesale quantity and to retail them to its members for a reasonable margin of profit.

Consequently, during the period from the last week of October 1998 to the middle part of November 1998, Batidor allegedly bought sugar from local traders in Cotabato using the financial resources pooled by the Rebel Returnees Association of Lanao del Norte. He was, thus, able to purchase a total of twenty four thousand (24,000) bags of sugar, more or less, from twenty eight (28) local traders in Cotabato. The bags of sugar were then directly transported from the bodega of the sellers and loaded on board the vessel M/V "HENNESY" which Batidor chartered from the Philippine Diamond Cruiser Corporation (PDCC).

Records show that on November 11, 1998, the vessel M/V "HENNESY" loaded with 24, 000 bags of unmarked sugar left the Port of Cotabato bound for Nabilid, Roxas, Zamboanga del Norte and docked at the wharf of its destination, in the evening of the same day.

On November 12, 1998, while in the process of unloading the bags of sugar, a composite team of the NBI, Bureau of Customs, Philippine National Police and the Intelligence Group of the AFP, acting on intelligence information, seized the vessel and its cargoes by virtue of a Warrant of Seizure and Detention (WSD) issued on November 11, 1998 by the District Collector of the Port of Cagayan de Oro (Joint Affidavit of Apprehension/Seizure, p. 352, CTA Records).

The WSD was personally served by the District Commander of the Enforcement and Security Service of the Bureau of Customs, to the Master of the vessel M/V "HENNESY," Capt. Angel Valdehueza.

Pending seizure proceedings, the 24,000 bags of sugar were allowed to be discharged from the vessel and were transferred to the warehouses of the National Food Authority (NFA) in Dipolog City, while the vessel M/V "HENNESY" was transferred from the Port of Pukawan, Zamboanga del Norte to the Port of Cagayan de Oro where it anchored on November 24, 1998.

On December 10 and 11, 1998, hearings were conducted at the Cagayan de Oro Customhouse on the seizure and forfeiture of the 24,000 bags of the alleged imported sugar and the carrying vessel M/V "HENNESY," docketed as Seizure Identification No. 12-98. Corollary thereto, the Municipal Trial Court of Roxas, Zamboanga del Norte issued a Resolution finding probable cause for violation of Section 3601 of the TCCP, as amended.

On January 26, 1999, the District Collector of Customs rendered a decision which ruled that a violation of Section 2530 paragraphs a, f, k, and l nos. 1, 2 and 5 of the TCCP, as amended was committed (see pages 371 to 374, Customs Records, Volume I). Furthermore, the subject cargoes and carrying vessel were ordered forfeited in favor of the Government of the Republic of the Philippines, to be disposed of in accordance with law, the dispositive portion of which reads, thus:

> "**WHEREFORE**, premises considered and by virtue of the authority vested in me under the Tariff & Customs Code of the Philippines, as amended, it is hereby ordered and decreed that the vessel M/V "Hennesy" and its cargo of Twenty Four Thousand (24,000) more or less unmarked bags of imported sugar subject of this proceeding, be, as they are forfeited

in favor of the Government of the Republic of the Philippines, to be disposed of in the manner provided for by law. Let copies of this decision be furnished the claimants or their counsels at their given addresses.

SO ORDERED."

The said decision was separately appealed by Batidor as claimant of the cargo, and PDCC as claimant of the vessel M/V "HENNESY."

Deciding on the appeal filed by PDCC, Deputy Commissioner of Customs Emma M. Rosqueta modified the decision of the District Collector of Customs in her decision dated April 20, 1999 (see pages 409 to 416, Customs Records, Volume I), the dispositive portion of which states as follows:

> "**WHEREFORE**, the appealed decision of the District Collector of Customs of Cagayan de Oro is hereby **SET ASIDE** and **MODIFIED**, the Warrant of Seizure and Detention **LIFTED** and a **FINE** in the amount of **ONE HUNDRED FIFTY SEVEN THOUSAND AND EIGHT HUNDRED SEVENTY-TWO (P150,872.00) PESOS**, imposed against the vessel M/V "Hennesy" and upon payment of the said **FINE** the vessel M/V "Hennesy" shall be forthwith released and all liabilities which may or might attach to said property by virtue of the offense which was the occasion of the seizure and all liabilities which have been incurred under any cash bond given by the owner or agent in respect to such property shall thereupon be deemed discharged.
>
> **SO ORDERED.**"

Accordingly, the Warrant of Seizure and Detention against "M/V HENNESY" was lifted and the vessel was released upon payment by the owner of the fine.

On October 11, 1999, acting on the appeal filed by Batidor with respect to the cargo of sugar, the Commissioner of Customs affirmed in toto the decision of the District Collector dated January 26, 1999 (see pages 29 to 34, CTA Records), pertinent portions of which are quoted hereunder:

"The decision of the District Collector, Port of Cagayan de Oro is **AFFIRMED**.

x x x x x x x x x

In the case under consideration, there is a strong evidence to show that the seized sugar although purchased locally is of foreign origin. The physical appearance of the commodity which is silvery white refined cane sugar as well as the packaging materials (bags) are of foreign textures. (See Exhibit "R" and the Examiner/Appraiser Report of Mr. Evan A. Sano dated 11 January 1999).

x x x x x x x x x

Probable cause having been established by the government prosecutor, the burden of proof has, therefore, been shifted to the claimants to show that the seized articles are properly covered with documents, imported legally and not subject to seizure or detention.

x x x x x x x x x

The physical appearance, texture and packaging clearly indicate that the sugar is of foreign origin. Locally produced sugar does not possess these characteristics. Moreover, Cotobato is not a sugar producing city or province and the possibility that these sugar were produced, milled or shipped from the neighboring Visayan provinces is quite remote not only because of its texture and appearance but also because of its sheer volume.

x x x x x x x x x

WHEREFORE, premises considered and by virtue of the authority vested in me by law, the assailed decision of the District Collector, Port of Cagayan de Oro is hereby **AFFIRMED** in toto and the **APPEAL** interposed by claimant is **DISMISSED** for lack of merit.

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SO ORDERED."

The aforequoted decision having been received by Petitioner on January 5, 2000, it consequently filed with this Court the instant Petition for Review on February 4, 2000.

In assailing the legality of the forfeiture, Petitioner Batidor averred that an abuse of discretion was committed in the issuance of the Warrant of Seizure and Detention. Petitioner likewise declared that the provisions of law cited by the District Collector of Customs speaks of forfeiture of articles the importation of which have been effected contrary to law. However, Petitioner maintained that at the very onset of the apprehensions, the seized shipment of sugar is of local source, having been bought in Cotabato. Furthermore, it presented several receipts dated between October 20, 1998 to November 2, 1998 which were allegedly issued by individuals for the purchase of bags of sugar in Cotabato City. Likewise, Deeds of Sale evidencing the sale of the cargoes from sellers in Cotabato to claimant Batidor were presented by Petitioner.

Petitioner contended that the government prosecutor failed to prove that the sugar shipment was of foreign origin. It further argued that, the fact that the shipment was declared as fertilizer does not *ipso facto* make it of foreign origin absence any showing of positive proof. Petitioner Batidor also maintained that it has in its possession the Coasting Manifest prepared by the master of the vessel M/V "Hennesy," which through inadvertence of Petitioner's counsel was not marked and presented during the seizure case. Petitioner further argued the fact that the physical appearance of the commodity is silvery white refined cane as well as the different texture of the packaging materials, cannot be made the basis to conclude that the seized 24,000 bags of sugar are of foreign origin. Moreover, Petitioner Batidor averred that even assuming that the sugar shipment is of foreign origin, the fact that Petitioner bought it from a local source and in good faith takes the subject shipment outside the coverage of Section 2530 of the TCCP, as amended. Petitioner Batidor cited the case of **American Express Co. vs. Aldenes, 47**

PHIL 235 where the Supreme Court held, "where the merchandise imported is in the possession of a third person, holder in good faith and innocent of the alleged fráud to have been committed by the importer, said merchandise is not subject to forfeiture." Thus, Petitioner further advanced the view that the 24,000 bags of sugar cannot be forfeited pursuant to Section 2530 of the TCCP, as amended, there being no importation to speak of for what transpired was a legitimate purchase of sugar from Cotabato City.

Respondents, on the other hand, filed their Answer with Motion to Dismiss on the following ground:

> "1. The ground raised by Petitioner in his assignment of error and the arguments in support thereof are merely a rehash of the issues raised in his Memorandum on Appeal filed with the Office of the Commissioner, Bureau of Customs."

This Motion to Dismiss was denied in open court during the hearing held on May 5, 2000 and ordered the setting for pre-trial.

Respondents further advanced the view that the importation of the commodity in question, though not per se prohibited, is nevertheless regulated. It maintained that there was a strong evidence to show that the seized sugar, although purchased locally is of foreign origin. This conclusion was based on the physical appearance of the commodity which is silvery white refined cane sugar and the packaging materials appeared to be of foreign texture. As such, it was incumbent upon claimant to show proof that the importation of the subject sugar was made in accordance with existing rules, regulations, and policy of the Sugar Regulatory Authority (SRA). The claimant should have presented the following documents, to wit: SRA Authority to Import, the SGS Clean Report of Findings, the Commercial Invoice, Packing List and the Import Entry if it was entered in another port. Moreover, the domestic tran-port of sugar from one port to another also requires a shipping permit from the SRA indicating therein whether or not the sugar is of foreign source and if of foreign source, then the shipper has to submit the Authority to Import, the name of the importer/consignee, the quantity and the amount of duties and taxes paid on the importation. However, Petitioner failed to produce any of the aforementioned documents.

Respondents further maintained that claimant produced various receipts and deeds of sale purportedly to show that the sugar was procured from the local traders in Cotabato City. However, upon examination of the receipts, Resp ndents found out that they were written on mere pieces of paper and/or on printed "receipts" which were not official receipts required by the BIR indicating the Official Receipt Number, the name of the trader, VAT exemption, if any, tax identification and other official data. Thus, Respondents concluded that these receipts were clearly manufactured and therefore, spurious, which were self-serving and with no probative value.

In view of the fact that Petitioner's counsel manifested that he is no longer presenting any other evidence and is submitting the case for decision based on the stipulation of facts by the parties, and since Respondent's counsel has not indicated any objection thereto, the case was deemed submitted for decision on May 18, 2001.

The issues which have been jointly stipulated and which are brought for Ou consideration are:

1. WHETHER OR NOT PROBABLE CAUSE EXISTS TO JUSTIFY THE ISSSUANCE OF THE WARRANT OF SEIZURE AND DETENTION AGAINST THE SUBJECT SHIPMENT UNDER SECTION 2535 OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED.

2. WHETHER OR NOT THE SUBJECT SHIPMENT CONSISTING OF 24,000 BAGS OF SUGAR ARE OF FOREIGN ORIGIN ENTERED WITHOUT SUPPORTING DOCUMENTS AND THEREFORE SUBJECT TO SEIZURE AND FORFEITURE.

After a conscientious and judicious review of the records, the Court hereby rules in favor of the Respondents.

Section 2530 of the TCCP, as amended provides, as follows:

> "**SEC. 2530**. *Property Subject to Forfeiture Under Tariff and Customs Law.* – Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture.
>
> a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and/or transporting contraband or smuggled articles in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft or any other craft to forfeiture: Provided, That the vessel, or aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;
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> x x x
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> f. Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or exportation of the former;
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> x x x
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> k. Any conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws, with its equipage or trappings, and any vehicle similarly used, together with its equipage and appurtenances including the beast, steam or other motive

power drawing or propelling the same. The mere conveyance of contraband or smuggled articles by such beast or vehicle shall be sufficient cause for the outright seizure and confiscation of such beast or vehicle, but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or his agent in charge thereof at the time, has no knowledge of the unlawful act;

l. Any article sought to be imported or exported.

(1) Without going through a customhouse, whether the act was consummated, frustrated or attempted;
(2) By failure to mention to a customs official, articles found in the baggage of a person arriving from abroad;
(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 articles; and
(5) Through any other practice or device contrary to law by means of which such articles were entered through a customhouse to the prejudice of the government."

Forfeitures are imposed by the seizure and subsequent institution of seizure proceedings pursuant to Section 2532 of the TCCP, as amended. In seizure cases, one important aspect of the proceedings in the consideration of the issues involved, is the duty on the part of the government of presenting evidence which indicates probable cause for instituting such proceedings. (**Metropolitan Garment Corporation vs. Ramon J. Farolan, Acting Commissioner of Customs, CTA Case No. 3959, April 16, 1986, citing Sanchez vs. Commissioner of Customs, B.T.A. Case No. 185, November 2, 1954, citing U.S. vs. One Bag of Paradise and Choura Feathers, N.Y. 356, F. 301, 167, C.C.A. 473; Associated Banking Corporation vs. Commissioner of Customs, et.**

al., CTA Case No. 2448, August 6, 1976). The term "probable cause" which has been held synonymous with "reasonable cause," means less than the evidence which will justify condemnation. It imports a seizure made under the circumstances which warrant suspicion (**Sanchez vs. Commissioner of Customs, supra, citing Locke vs. United States, 7 Crauch [U.S. 339]; Associated Banking Corporation vs. Commissioner of Customs, supra**).

As clearly shown from the records of the case, the subject cargo was declared in the Coasting Manifest as 24,000 bags of fertilizer which is totally different from the cargo actually transported consisting of 24,000 bags of unmarked sugar. Certainly, there was a misdeclaration in the entries in the Coasting Manifest. Moreover, there were two (2) Coasting Manifests in the records, bearing the same date, November 12, 1998 and same signatory, Capt. Valdehueza, but declaring different cargoes. One which declared 24,000 bags of fertilizer, the Coasting Manifest being stamped with the Port of Clearance, Terminal Port of Cotabato (page 63, Customs Records, Volume III). Furthermore, the shipper and consignees stated therein were Alvin's Agri-Product and R & M Enterprises, both non-existent and thus, fictitious. The other Coasting Manifest declared 24,000 bags of sugar, the shipper and consignee, being Pacasirang Batidor (see pages 42 and 45, Customs Records, Volume III).

This indeed constituted a *prima facie* evidence of violation of the provisions of the TCCP, as amended, particularly Section 2530 (a), (f), (k) and (l), nos. (1) (3) and (5).

It is worth stressing at this point that probable cause has been established by the government prosecutor for violation of Section 2530 (a), (f), (k), (l), nos. (1), (4) & (5) in relation to Section 3601 of the TCCP, as amended. (Resolution dated December 18, 1998, page 91, Customs Records, Volume III). Section 2535 of the TCCP, as amended provides, viz:

> "**SEC. 2535**. *Burden of Proof in Seizure and/or Forfeiture.* – In all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provisions of the tariff and customs laws, the burden of proof shall lie upon the claimant: *Provided*, That probable cause shall be first shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding sections of this Code."

As previously discussed, there having been a probable cause, therefore, it is incumbent upon Petitioner to prove that his allegations are correct and that Respondents' assertions were wrong. Petitioner Batidor, however, tried to exculpate himself by presenting receipts which appeared to be not registered with the Bureau of Internal Revenue and thus not considered official receipts, therefore, without any probative value as these were merely self-serving. Furthermore, assuming that the 24,000 bags of sugar were of local origin, the transport of said cargo from one port to another requires a shipping permit from the SRA indicating therein whether or not the sugar is of foreign source. This document was not presented by the Petitioner. This Court, likewise, takes cognizance of the fact that Cotabato is not a sugar-producing province and thus could not have manufactured such voluminous stocks of sugar.

Petitioner further asseverated that in order to support forfeiture, there must be fraud on the part of the owner of the goods to evade the payment of the duties and taxes due thereon. Moreover, Petitioner argued that the misdeclaration in the Coasting Manifest does not *ipso facto* make it of foreign origin in the absence of positive proof to support it. In fact, Petitioner was allegedly in possession of the Coasting Manifest prepared by the master of the vessel M/V "HENNESY" but which through inadvertence of claimant's counsel, was not marked and presented during the hearing of the seizure case.

We cannot agree with Petitioner. The events which transpired during the seizure proceedings prove that the Coasting Manifest was not inadvertently omitted but was in fact withdrawn by Petitioner's counsel. Hereinbelow are excerpts of the hearing of this case held on December 11, 1998, to wit:

Atty. Fajardo:

I would like to manifest that we don't possess the original of the exhibits.

Hearing Officer:

We will admit that temporarily.

Atty. Fajardo:

Can I offer my exhibits?

Hearing Officer:

Proceed.

Atty. Fajardo:

Exhibits "1," series of receipts up to Exhibit "1-BB" are being offered to prove that the articles are not sourced from outside. It is from Cotabato containing 28 receipts covering 24,000 bags of sugar. I marked Exhibit "2" yesterday <u>but I would like to withdraw the same exhibit</u>. x x x" (underscoring ours)

The Commissioner of Customs opined that "the reason for the withdrawal of the Coasting Manifest is to avoid the possibility of a criminal prosecution for deliberately presenting a forged, falsified or spurious document. The truth is that the genuine

Coasting Manifest filed by the Captain of the Vessel is marked as Exhibits "E" and "E-1" which shows that the shipment consists of 24,000 bags of fertilizer, 1080 MT."

Since Petitioner failed to present the required supporting documents which can convincingly abrogate the cloud of suspicion elicited by the Respondents , we cannot grant the instant Petition for Review.

IN THE LIGHT OF ALL THE FOREGOING, the decision of the Commissioner of Customs dated October 11, 1999 which **AFFIRMED** in toto the Decision of the District Collector of Customs dated January 26, 1999, which ordered the forfeiture of the 24,000 bags of unmarked sugar in favor of the government is hereby **AFFIRMED** in toto.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge