REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MAYER STEEL PIPE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4656

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated :
OCT 28 1994

x - x

DECISION

This is a forfeiture case involving 669 coils of hot rolled steel sheets used by the Petitioner in the manufacture of steel pipes to be sold domestically and internationally.

On February 26, 1988, a shipment of 669 coils of hot rolled steel sheets from Bulgaria arrived in the Port of Manila on board "S/S PEGASUS" which for alleged lack of the required cargo manifest was forfeited in favor of the government. Petitioner, however, vehemently denied that the cargo was unmanifested "for in truth and in fact, there is a manifest, which petitioner will endeavor to prove during the hearing of the Petition for Review." (Petition for Review, p. 5)

On December 3, 1990, the Acting District Collector of Customs, Port of Manila in his Decision, "FORFEITED (the shipment) in favor of the government and to be disposed of in the manner provided for by law" for being "unmanifested and was transferred to claimant's warehouse in violation of existing rules and regulations." (CTA Records, p. 18) Pertinent portion of said Decision is hereby quoted, thus:

> We are afraid but it has reached a point where this Office could no longer give in and succumb to the pleas of counsel for the claimant without being placed in suspicion of being overly lenient or even accused of abetting claimant's dilatory maneuvers. It is believed that this Office had accorded claimant every reasonable opportunity to present its case, but sadly, claimant has decided to abuse this generosity and just simply totally neglected its case. This Office feels that it may now proceed to rule against claimant without being accused of depriving it of due process. The records will bear us out. Claimant is hereby considered to have waived its right to present evidence and this case is submitted for resolution based on the documents obtaining. Consequently, there being in actuality no evidence submitted in favor of the claimant and considering further that the burden of proof in seizure cases lies on it, the only inescapable conclusion is that the subject shipment was indeed unmanifested and was transferred to claimant's warehouse in violation of existing rules and regulations. Forfeiture therefore lies against the same. (CTA Records, p. 18)

Such Decision of the Acting Collector of Customs was subsequently affirmed by the Respondent in his Decision dated September 16, 1991, the dispositive portion of which is hereby quoted:

> **WHEREFORE**, finding no cogent reason to disturb the forfeiture Decision of the Port of Manila Collector, the same is hereby AFFIRMED.
>
> **SO ORDERED.**

Petitioner, before this Court by way of Petition for Review, challenged said Decision of the Respondent alledging that "the Decision of the Respondent Commissioner of Customs, affirming the Decree of Forfeiture of the merchandise issued by the Collector of Customs is, contrary to law and the principle of 'due process'"(Petition for Review, p. 2). Said, the Petitioner:

> Hearing on the seizure proceedings were conducted and in the course of the prosecution's evidence, one of the prosecution witnesses, was in the person of JUANITO A. BONOAN, then Chief of the Liquidation and Billing Division, Bureau of Customs, Port of Manila. In his testimony, as a witness for the prosecution, he admitted that he "acted upon the matter (the issuance of a shipside permit, to allow discharges of the cargo from carrying vessel to lighter) based upon the request of the importer, which requirement would not have been made or consequently acted upon by the Collector, had there been no cargo expected to arrive. However, allow me to submit herewith xerox copy marked "B" of the Issued Foreign Cargo Manifest in question, duly certified by the Customs Boarding Office, Mr. D.Z. Nacible which will disprove the allegation of the Chief, EPD (Entry Processing Division). Attached herewith is the explanation of prosecution witness Bonoan, which was marked

during the seizure proceeding as Exh. "2-O" Annexes "D" to "D-15"), as claimant/petitioner's own exhibit, because at that time of its presentation by the witness for the prosecution, the prosecution lawyer refused to marked it as prosecution evidence. However, the claimant, due to supervening circumstances during the seizure proceedings, was not able to formally offer the same in evidence. The claimant/petitioner was not allowed, or shall it be said, was denied the right to offer their material evidence, so much so, that as a result of such failure the claimant was left with no evidence to consider. This matter will be further discussed elsewhere in this petition.

At any rate, when it was the claimant's term to present evidence, the witness it intended to present was not available because at first he was out of the country and so the hearing was re-set. Again, when the witness arrived and was supposed to testify at the next scheduled hearing, said witness was stricken ill. In spite of claimant counsels's representation, the prosecution represented by one Atty. Tugday, under the influence of his former superior, Col. Sindulfo Sebastian refused to have the case re-set, and witness insisted that the case be deemed submitted for decision, without any evidence formally offered by the claimant, as it had no opportunity to do so, thanks to the adamant objection of the prosecution.

The Collector of Customs, through the prodding of unseen, but influential hands, issued an Order denying claimant's representation, and considered the case submitted. Thus, the case was decided and eventually, a decree of forfeiture was issued, wherein, on appeal to the Commissioner of Customs, it was affirmed.
(ibid., pp. 5-7).

Hence, this appeal.

The twin issues for this Court to resolve are the following:

> 1. Whether or not the cargo in question is manifested; and
>
> 2. Whether or not the transfer of the subject shipment to Petitioner's warehouse was in violation of existing rules and regulations there being no prior examination thereof and no bond was posted to guarantee the payment of the duties and taxes -- a means prejudicial to the government.

We answer both issues in the affirmative.

The question of whether or not the shipment was manifested is simply a question of fact discernable through the evaluation of the evidences on hand.

Records of the case reveal that there are seemingly two existing manifests touching on a singular shipment. One was presented by the Respondent which allegedly "indicated that it carried 'NIL CARGO' when in truth and in fact it transported 699 coils of Hot Rolled Steel Plates..." (Underscoring supplied; Respondent's Formal Offer of Evidence, Exh. 1) while the other was offered by the Petitioner "to show that the cargo unloaded from the 'M/V PEGASUS was duly manifested contrary to the imputation that the cargo was not manifested" (Underscoring supplied; Attachment "C", Exh. A, CTA Records, p. 93).

We are inclined to believe that such shipment was indeed manifested under the obtaining circumstances:

1. The issuance of a "Certification of Non-Availability of Locally Produced or Manufactured Competitive Substitutes for the Imported Materials to be Used in Philippine Export Products" by Director Agapito L. Kalingking, Jr. of the Board of Investment (Exh. D). This Certification was sought by the Petitioner after having "failed to find any competitive local source". (T.S.N. May 25, 1992, p. 7) and in compliance with the condition precedent required by the BOI for the importation of raw materials used in the manufacture of steel pipes for export.

2. Letter-request of the Petitioner to the Secretary of Finance for Authority to Import 7,000 M/T of Hot Rolled Sheets in coils (Exh. E) after having been certified by the BOI that such materials are not locally available. This showed that Petitioner had sought the proper authority from the Department of Finance prior to importation as required by law.

3. The request for Authority to Import was granted by the then Ministry of Finance

3. The request for Authority to Import was granted by the then Ministry of Finance through Antonio P. Belicena, Acting Chief, Finance Revenue Service, saying that "this Department interposes no objection to your request under Section 105 (d) of the Tariff and Customs Code, as an exception to CAO 3-78 insofar as your capitalization requirement is concerned, provided that you will post a bond in an amount equal to one and one-half (1½) times the ascertained duties, taxes and other charges conditioned for the exportation thereof or payment of the corresponding duties, and taxes within six (6) months from the date of acceptance of the import entry..." (Exh. F).

4. Petitioner put up a Bond To Re-Export Merchandise in the amount of P15,500,586.00 undertaken by AFISCO Insurance, Corp. (Exh. I, I-1 and I-2). This is to show that Petitioner again complied with what is required by law.

5. Petitioner opened a Letter of Credit in favor of the supplier "through the agent bank, Equitable Banking Corporation in the amount of $2,334,500 for 7,000 metric tons of hot rolled steel sheets in coils" (T.S.N. p. 15, Exh. G)

hot rolled steel sheets in coils" (T.S.N. p. 15, Exh. G)

6. Petitioner, through its broker, Safeway Customs Brokerage, filed an advance Import Entry Declaration (No. 395146) (Exh. G-1)

7. In compliance with the directive of the Department of Finance in its approval of Petitioner's Authority to Import "that upon arrival of the shipment the shipping and commercial documents covering the same shall be submitted to this Department for processing..."(Exh. F) Petitioner submitted said documents, to wit:

a) Commercial Invoice No. 7018 from the supplier MT steel trading AG covering the shipment of the subject cargo (Exh. H-1);

b) Packing list from the same supplier; (Exh. H-Attachment) and

c) Bill of Lading of the shipment on board M/V "Pegasus" (Exh. H-Attachment)

8. Series of correspondence between the Petitioner and the Department of Finance and the Bureau of Customs.

a) Letter of Marcelo N. Fernando, Undersecretary of the

Department of Finance, dated April 8, 1988 denying Petitioner's request for exemption from the provision of CAO No. 3-78 and Section 105(d) of the TCCP. "Therefore, aforesaid importation may only be released upon payment of duties and taxes" (Exh. J);

b) Letter from the Petitioner dated April 18, 1988 asking for a reconsideration of the denial of the request "because our product would not be able to compete in the U.S. market especially with our toughest competitor from Malaysia, Singapore and Thailand who exports with the benefit of incentives similar to that of Section 105-d granted by their respective government" (Exh. K);

c) Letter from the Petitioner to the Chief, Law Division, Bureau of Customs dated June 6, 1988 requesting "Issuance of an order effecting tentative acceptance of said entry without advance payment of duty... x x x ...in order that the BOC will have a basis on the assessment therefrom" (Exh. L);

d) Follow-up letter of the counsel of the Petitioner to the Collector of Customs, dated January 6, 1989 showing Petitioner's consistent desire "that the entry (should) be allowed to be filed, so as to aid the basis for the computation of the rightful duties and taxes" (Exh.). Attached to this letter was the previous letter of the Petitioner's counsel "to accept the filing of the Entry conditionally, so as to have a basis for the computation of the duties and taxes, and other charges, due therein, and for eventual payment later on, should the Collector find no merit in our defense in the seizure proceedings,

> or should the Department of Finance finally declare their disapproval of the authority which the importer has requested" (Exh. O-2);
>
> e) Another letter by the Petitioner's counsel to the Bureau of Customs through Col. Sindulfo Sebastian dated January 17, 1989 <u>again urging "the Entry Processing Division to accept the filing of the entry, conditionally, so as to have a basis for the computation of the duties and taxes due therein. x x x We repeat, the importer is willing to pay whatever duties, taxes and other charges that may be due on the importation"</u>. (Underscoring supplied; Exh. R and R-1).

At this juncture, <u>it can easily be gleaned and safely concluded that the Petitioner never intended to deprive the government of its duties and taxes. In fact, it was the Petitioner which constantly and consistently prodded the Bureau of Customs to compute the duties and taxes in order for them to be able to pay their dues.</u> Inspite all these, the Respondent was adamantly reluctant to heed the requests of the Petitioner which sadly only fell on deaf ears, until five (5) years thereafter, or on February 26, 1993, when the Respondent frantically filed an Urgent Motion, averring:

> 1. That reports have been received by this Office that the shipment of 699 coils (6,999.9 MT) of Hot Rolled Steel Sheets subject of this case could not be located at Petitioner's premises where it has been deposited;

> (P9,900,857.00) PESOS should be immediately collected.
> (CTA Records, p. 160)

Petitioner, waiving any formal defect in the motion again expressed willingness to pay said duties and taxes, T.S.N. March 2, 1993) after proper computation thereof, and "abatement in favor of the petitioner of the customs duties and taxes pertaining to the seven (7) coils of Hot Rolled Steel Sheets not actually received by respondent in his manifestation of March 11, 1993..."(Resolution, dated April 1, 1993, p. 4). And based on the recomputation done by a Customs Appraiser(CTA Records, p. 233), Petitioner immediately paid NINE MILLION NINE HUNDRED EIGHTY ONE THOUSAND FOUR HUNDRED SIXTY EIGHT PESOS (P9,981,468.00) as evidenced by O.R. No. 41931583 dated May 5, 1993 (CTA Records, p. 231).

Surprisingly, however, on May 6, 1993 or just a day after Petitioner paid the duties and taxes, Respondent again filed a Manifestation and Motion, asking this Court "that an Order be issued directing the Petitioner to deposit with the Honorable Court in escrow the sum of FIFTY TWO MILLION THREE HUNDRED SIXTY TWO THOUSAND FOUR HUNDRED TWENTY THREE PESOS AND TWENTY EIGHT CENTAVOS. (52,362,423.28) representing the landed cost of the shipment in question... to protect the interest of the Government and to give meaning and substance to this

CENTAVOS. (52,362,423.28) representing the landed cost of the shipment in question... to protect the interest of the Government and to give meaning and substance to this proceedings" (CTA Records, p. 227). This motion is based on "the memorandum dated February 12, 1993 (copy of which is attached as Annex 'A') of the Customs Team created under Special Mission Order dated January 26, 1993 stated that the subject shipment' x x x are no longer in the premises.'" (Underscoring supplied; ibid.)

A closer scrutiny of the said motion led us to a reasonable deduction that such was a highly regrettable ploy to continuously harass herein Petitioner. Why did the Respondent file this motion only on the day after Petitioner paid the duties and taxes? It should be remembered that this motion was based on a memorandum dated February 12, 1993 yet filed it only on May 6, 1993 or a day after Petitioner already paid the taxes and duties. Why then, did the Respondent not file it on the very day the memorandum was received if indeed the report was true? We could only surmise two things: first, that there was no truth to the alleged memorandum; second, that the Respondent was remiss in his duties for not acting immediately on the same. We find for both conjectures. The timing of the filing of the motion was

> P52,362,423.28 representing the landed cost of the shipment in question, it is petitioner's belief that such would be very onerous, not to say without basis. This staggering amount does not grow on trees, so to speak, and this has no basis in law, and in fact, for such an imposition. Besides, putting such a huge amount of money in escrow, would cause considerable damage to petitioner since such amount of money will remain "idle" instead of setting it free, to be used in more productive investments.
>
> That duties and taxes, due on the merchandise, had already been paid by petitioner, is an admitted fact. However, the allegations that the goods, subject of this petition "are no longer in the premises" as reported by Customs Policemen to Col Sebastian (ANNEX "A" of Petitioner's Manifestation) is, a bit misplaced. Such memorandum/report is a unilateral act of the signatories therein. Considering the serious implications of this memorandum/report, the signatories should not solely be the agents of the police, but it should have also been attested to, by the Customs guards who are all respectable officers having custody of the articles. From petitioner's perspective, such memorandum/report unilaterally signed and submitted by said Customs Policemen, weakens their position. The Customs Guard who is responsible for the continuous guarding of the shipment, until ordered discharge from his duties, is liable for negligence and dereliction of duty, if indeed the cargo is "no longer in the premises ". Yet, these Customs officials were not signatories to the memorandum/report (ANNEX "A") ".
> (CTA Records, p. 242-243)

In order to really ferret out the truth, "this Court created a committee to conduct an ocular inspection" (Resolution, dated October 21, 1993) "... of the premises of the Petitioner in order to determine, once and for all, the existence of the goods in question inside said premises" (Resolution, dated November 9, 1993). Said committee composed of representatives from both the Petitioner and the Respondent and headed by a Court Attorney of this Court as its Chairman, belied the allegation of the Respondent and confirmed this Court's apprehension that the allegation was a pure and simple form of harassment. Said, the committee report:

> F I N D I N G S
>
> This committee found the Hot Rolled Steel Sheets subject goods of this case properly filed in three (3) groups inside a big warehouse within the premises of the petitioner, Mayer Steel Pipe Corporation (Annex A).
>
> Then, we made a physical count of the said goods (Annex A) which yield the following results:
>
> | | |
> |---|---|
> | Group I | 330 Hot Rolled Coils |
> | Group II | 180 Hot Rolled Coils |
> | Group III | 152 Hot Rolled Coils |
> | Total | 662 Hot Rolled Coils |
>
> We also took the specifications of said hot rolled sheets (please see Annex C) which varies anywhere between 3.0 mm. to 12.00 mm. in thickness and between 1,000 to 1,500 mm. in width which tally the specifications stated in the commercial shipping documents contained in the records of this case.
>
> C O N C L U S I O N /RECOMMENDATION
>
> WHEREFORE, we find no merit on the governments apprehension that the subject goods may be lost and that its interest may not be protected since the said goods are all intact as found and fully secured within the premises of the petitioner of this case. Moreover, the

> subject goods have been in continuous guard since the first shipment in 1988 by no less than an employee of the Respondent of this case in the person of customs guard Mr. Larry Cabuhat. Mr. Cabuhat corroborated our findings and swore to us that nothing has been taken out from the subject goods within the Petitioner's premises since 1988.
>
> ACCORDINGLY, no surety bond is recommended.
> (CTA Records, p. 295-296)

All of the foregoing documents above-discussed point out to the fact that the cargo in question was indeed manifested. Certainly, Petitioner would never bother to go through the hassle of all the preparations if it even had the slightest intention to smuggle in the goods. These documents are even corroborated by the testimony of an unwilling and hostile witness in the person of Mr. Juanito A. Bonoan, Chief, Liquidation and Billing Division, BOC, Port of Manila who declared among others, that:

> 4. With regards to the certification by the Chief, Entry Processing Division, dated 27 January 1988 that, the Inward Foreign Manifest submitted did not declare or show the shipment subject of this explanation, I believe this is already beyond my reach as I acted on the matter based upon the request of the importer, which request would not have been made or consequently acted upon by the Collector and me had there been no cargo expected to arrive (xerox copy of the letter attached marked "A"). However, allow me to submit, herewith attached, a xerox copy marked "B" (Attachment "C", Exh. A of this Record) of the Inward Foreign Cargo Manifest

> the shipment subject of this explanation, I believe this is already beyond my reach as I acted on the matter based upon the request of the importer, which request would not have been made or consequently acted upon by the Collector and me had there been no cargo expected to arrive (xerox copy of the letter attached marked "A"). However, allow me to submit, herewith attached, a xerox copy marked "B" (Attachment "C", Exh. A of this Record) of the Inward Foreign Cargo Manifest in question, duly certified to by the Customs Boarding Officer, Mr. D.Z. Nacilla which will disprove the allegation implied in the certification of the Chief, EPD. If it is true that the Inward Foreign Manifest (IFM) in the possession of EPD declares nil cargo, I suppose clarification must be made with that office as to who submitted and received the said entry. In fact, as reported, the assigned Customs Inspector has assigned a Customs Guard to underguard the cargo, issued boatnotes xerox copy attached marked "C" through "J" to cover the movement of the same and up to this writing, the shipment is intact in the consignee's bodega.
> (Underscoring supplied; Exh. A-3, and A-4)

And by way of empirical deduction, the same witness declared that it is a condition precedent that a cargo manifest should exist, otherwise, no discharge should take place. Said, he:

> Q. Be that as it may, Mr. Witness, when a cargo is discharged from the vessel, it is a condition precedent that a cargo manifest should exist, otherwise, no discharge should take place, and on that presumption will discharge of cargo, is that correct?
>
> A. Yes.

x x x x x x

A. Condition that there are cargos. As to whether this cargo manifest is genuine or if there is cargo manifest...

JUDGE ACOSTA

You just answer the question.

WITNESS

<u>Yes, Your Honors.</u>
(T.S.N. April 3, 1992 pp. 25-26)

This testimony was further corroborated by the testimony of another witness in the person of Atty. Remigio E. Ramirez, Hearing Officer, Prosecution and Litigation Division, Legal Service, Bureau of Customs <u>when he testified about the veracity of the existence of the cargo manifest</u>. Said, he:

Q. Will you tell the Court how it came about that you had investigated the manifest of the "SS Pegasus" and when was that?

A. The case for investigation by the Legal Prosecution Litigation Division was assigned to me in connection with the Bureau of Customs personnel namely Collector Brillo and Mr. Bunuan. That was assigned to me sometime in 1988.

x x x x x x x x x

Q. In the case of your investigation, what did you find out particularly on the manifest of this vessel Pegasus?

A. I started my investigation by going to the office of the Marine Division, Your Honor, of the Bureau of Customs. The office under the Port, Collector of Manila wherein all the records of shipments especially the cargo manifest, inward cargo manifest will be deposited from the vessel by the boarding officer for the Bureau of Customs to have a listings of all the importations coming in. And I discovered a manifest, inward foreign manifest with the recording nil cargo certified by the manifest clerk dated February 26, 1988.

ATTY. ALBANO

Witness handling to counsel a photocopy of inward foreign manifest, the M/V Pegasus which he claimed he got from the Marine Division which says nil cargo.

Q. Now, I noticed in this manifest, Mr. Witness, that the one who signed here was one Usop Candaros, manifest clerk. Did you ever try to find out, who should have been the proper officer to sign this manifest?

A. It should have been signed by the boarding officer who received it from the Captain of the vessel.

Q. But in this case there is no signature of the boarding officer?

A. Yes, sir.

Q. Now, because there was no signature of the boarding officer, what then did you do if you did anything?

A. I went further after knowing the agent, shipping agent of the vessel. I issued a subpoena to the documentation officer of C.F. Sharp, the shipping agent and I obtained from them a copy of the inward foreign manifest dated February 26, 1988 certified by the documentation services manager.

ATTY. ALBANO

Witness handling to counsel, a copy of inward foreign manifest of the M/V Pegasus which states that there were on board 669 coils hot rolled steel sheets cosigned to Mayer Steel Pipe Corporation Manila.

x x x x x x x x x

Q. Now, during the course of the testimony of Collector Bunuan before this Court, he presented a manifest, inward foreign manifest also which was previously marked as Exhibit "2-g". Will you go over this manifest Mr. Witness, and compare the same with the inward foreign manifest you got from the shipping agent?

A. Your Honor, the manifest presented as Exhibit "2-g" has the signature of Nacilla B.O. or Boarding Officer.

Q. Did you find out during the course of your investigation who was then the Boarding Officer of the ship Pegasus at that time when it was berth at the Port of Manila?

A. It was Mr. Nacilla, Your Honor.

Q. Will you look at the signature here of D.C. Nacilla and tell the Court if you know whose signature is this?

A. It is admitted by Mr. Nacilla that this is his signature.

Q. The fact remains however, you will agree with me that there was a manifest as shown by Mr. Nacilla and as shown by the copy given to you by the shipping company, shipping agent?

A. Yes, because I have collected this from the shipping company itself.
(T.S.N. February 2, 1994 pp. 6-12)

In conformity with the regular Customs Procedure, the manifest is handled by the boarding officer, Mr. Nacilla from the vessel to the Marine Division (Entry Processing Division). It is not in any way handled by the importer neither by the broker, thus, preventing any fraudulent participation by them.

REDIRECT EXAMINATION BY ATTY. ALBANO

Q. In the course of your investigation Mr. Witness, as to the existence of the manifest, did you ever try to find out who handles the manifest from the time it is accomplished up to the time it reaches the Entry Processing Division of Marine Division?

A. <u>The manifest is handled by the boarding officer from the vessel, from the captain to the Marine Division.</u>

Q. How about the importer, does he have anything to do in the manifest?

A. In the customs practice, the importer does not know of the arrival of the vessel. It was only monitored by the Pier Inspection Division where the boarding officer was instructed to meet the vessel at the breakwater.

Q. Neither does the broker handle the manifest?

A. The broker participates on the filing of the entry.

Q. How about the manifest? Does he handle the manifest from the time the boarding officer signs the manifest and sends it to the Marine Division?

A. <u>In practice, Your Honor, the broker does not have any participation in handling the manifest.</u>
(T.S.N. February 2, 1994, pp. 26-27)

The existence, therefore, of another manifest declaring "NIL CARGO" was, to the mind of the importer, probably the making of unseen hands out to exact some "filthy lucre" at the expense of this legitimate importer. We tend to believe so. But certainly its existence cannot be imputed to the importer as it has nothing to do, neither its broker has anything to do, with the handling of the manifest.

Finally, it should be remembered that Petitioner had a pending application for a "Conditionally-Free Importations" under Section 105 (d) of the Tariff Code, the condition precedent of which was "that upon arrival of the shipment, the shipping and commercial documents covering the same shall be submitted to this Department for processing before the actual release thereof from the Bureau of Customs may be effected" (Exh. F-1-b). Thus, it would be absurd for the Petitioner not to declare said cargo. It would then be improbable for the Petitioner to do what the Respondent maliciously imputed to it.

Just one last note. <u>To support forfeiture, there must be fraud on the part of the importer to evade payment of the duties due. And fraud is never presumed. It must be proved. Failure of proof of fraud is a bar to forfeiture.</u> (see also **Farm Implement and Machinery Co. vs. Com. of Customs**, G.R. No. L-22212, Aug. 30, 1968 citing **Kasilag vs. Rodriguez**, 69 Phil, 217, **Republic vs. Ker & Co., Ltd.**, G.R. No. L-21609, 1966; **Yu Phi Kim vs. Amparo**, 86 Phil. 441) This is so since, forfeiture is a harsh measure and should be resorted to only with extra care. All doubts, therefore, should be resolved in favor of the taxpayer (**Maximo G. Rivera vs. Salvador Mison**, CTA Case No. 4479, Dec. 24, 1993).

As to the other issue of whether or not the transfer of the subject shipment to Petitioner's warehouse was in violation of existing rules and regulations, We find the explanation of Mr. Juanito A. Bunuan, Chief, Liquidation and Billing Division, BOC, Port of Manila, meritorious. A substantial portion of his letter of explanation to the Respondent why no administrative charges should be filed against him for disregarding existing regulations is hereby reproduced, thus:

June 13, 1988

> HONORABLE SALVADOR M. MISON
> Commissioner of Customs
> M a n i l a
>
> S i r :
>
> In compliance with your order to me to explain why no administrative charges should be filed against me for disregarding existing regulations, particularly Par. III E-3 and 4 of CAO 3-79, in connection with the transfer of 6,999 MT of Hot Rolled Sheets consigned to Mayer Steel Pipe Corporation under Temporary Transfer Permit No. 88-038, direct from the carrying vessel M/V Pegasus to the consignee's warehouse, herewith is my explanation:
>
> 1. Temporary Transfer Permit has been an old accepted practice not governed by CAO 3-79, and occasionally exercised by the Collector for Operations due to operational exigencies such as, the situation obtaining in the port, safety of the vessels, cargoes and the piers. It was discretionary on the Collector for

Operations, to delegate to me in my capacity as Acting Chief, Port Operations Branch then, the function to issue Temporary Transfer Permits depending on the nature, kind, volume or weight of cargo, provided the government's interest is properly protected and equally the transacting public is served well.

2. In connection thereto, allow me to cite the following:

2.1 The carrying vessel M/V Pegasus, considering its draft on arrival, and the weight and kind of its cargo, could not be berthed alongside the pier and even at the anchorage inside the breakwater. Thus, she was moored outside the breakwater (OBW), where cargo discharging operations were conducted.

2.2 Among the cargoes discharged was the shipment of 6,999 MT of Steel Coil, the subject of this explanation. The same could not be accommodated at any of the piers in the port, because of its weight, as it would surely impair the physical structure of the pier. Aside from this, there is the restriction imposed by the Philippine Ports Authority (PPA) whereby, no more than 200 MT shall be discharged in any one landing point at the piers.

2.3 The carrying vessel was moored at the stream (OBW), and therefore, there was no other means to discharge and transport the cargo to any landing point on land except by use of lighters (Shipside).

2.4 Note: The weight of the cargo to be discharged was 6,999 MT. This needed at least seventeen (17) lighters with 400 MT capacity each to unload the cargo from the vessel. Considering at that time and up to now, there exists a critical shortage of lighters, there was no other recourse but to allow the temporary transfer of the subject shipment to the consignee's bodega, to enable the consignee to immediately empty the limited number of lighters used and facilitate their turn around. Thus prevent the delay in discharging operations, as any delay on the carrying vessel would necessarily entail costly demurrage chargeable against the importer.

2.5 The cargo was Hot Rolled Steel Sheets as manifested and, therefore non-sensitive and non-pilferable. To move the same from one point to another would not have been risky.

3. In view of the above citations, I had issued the Temporary Transfer Permit, providing thereon adequate control and supervision as:

3.1 <u>Continuous underguarding until its release from customs custody</u>;

3.2 <u>NCP/CIID clearance should be secured prior to transfer;</u>

3.3 <u>No withdrawal shall be allowed without prior approval by the Collector of Customs, or presentation of valid delivery permit to the Customs Guard;</u>

3.4 <u>Entry must be filed within the reglamentary period; and</u>

3.5 <u>Customs Inspector concerned shall submit report after completion.</u>

Attached is the certified xerox copy of the Temporary Transfer Permit #88-038 and Shipside Permit #0127 duly processed and passed through the NCP/CIID with all the above conditions clearly indicated.

Allow me to make mention that had there been something remiss or irregular with the aforesaid permits, I suppose NCP/CIID should have notified me or called my attention or that of the Deputy Collector for Operations considering that the permits had passed through them. However, in this particular case neither the Collector nor I was notified. The truth of the matter is that, NCP/CIID is well aware of this mode of transfer as evidenced by records on file by me and my predecessors whereby all transfer permits of this nature passed through their offices, a condition so specifically stated on the Temporary Transfer Permit, before transfer of cargoes may be effected.

x x x x x x x x x

There is no hard and fast rule in operations for any indecision in vessel and cargo operations means delay and delay means unnecessary and costly port expenses. Thus, suffice it to say, that the Collector of Operations is normally clothed with a wide range of discretion and as a well-meaning public servant, he is obliged to make decisions with dispatch considering not only the interest of the government but also of the transacting public as well.

<u>In the light of the foregoing considering that the subject shipment is safe and intact in view of the appropriate measure instituted by the undersigned and that the interest of the government as well as that of the importer are</u>

amply protected. I hope this explanation will merit your kind consideration.

Very truly yours,

Juanito A. Bonoan
Chief
Liquidation & Billing Division, BOC
Port of Manila

(Underscoring supplied; Exh. 2, CTA Records pp. 27-32)

Above explanation was supported by our findings as above-discussed consistently showing that Petitioner was straight-forward and in good faith in its dealings with the Bureau of Customs. We cannot indict a legitimate importer based only on the minds of those whose intentions are underhanded.

In all the foregoing, the decision of the Respondent dated September 16, 1991 is hereby SET ASIDE and this Court hereby ORDERS the RELEASE of 662 Hot Rolled Coils to the legal custody of the Petitioner, the taxes and duties having been fully settled.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between 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