REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

REPARATIONS COMMISSION,
Petitioner,

versus

CTA CASE NO. 1820

THE COMMISSIONER OF CUSTOMS,
Respondent.

Sept. 30/69

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DECISION

This is an appeal by the Reparations Commission, a government entity created under Republic Act No. 1789, from a decision of the respondent in Customs Case No. 730 (Seizure Identification No. 7455), dated March 17, 1966, affirming that of the Collector of Customs dated August 24, 1964, decreeing the forfeiture of the fishing vessel M/V "Don Pedro V" for violation of Section 2530(a), (b), and (e) of the Tariff and Customs Code.

The records show that M/V "Don Pedro V" is a fishing vessel procured by the Reparations Commission from Nashim Trading Co. Ltd., Japan, under the terms of the Reparations Agreement entered into between the Republic of the Philippines and Japan on May 9, 1956, and registered in the name of the Reparations Commission under Certificate of Philippine Registry No. 4707 dated July 20, 1961. The vessel was subsequently awarded to ANPAD, INC.

for ₱300,000.00, f.o.b. Japan, payable by installment.

On May 26, 1961, ANPAD, INC. took actual delivery of the vessel and in the early morning of June 1, 1963, it was apprehended off the coast of Bacoor Bay, Cavite, by the Philippine Naval Patrol unloading into two wooden "cascos" more than 400 cases of untaxed and unmanifested blue seal cigarettes. On June 3, 1963, the Acting Collector of Customs of Manila instituted seizure proceedings against the vessel (S.I. No. 7455) and against the unmanifested goods (S.I. No. 7455-A) for violation of Section 2530(a), (b) and (c) of the Tariff and Customs Code. In the seizure proceedings against the vessel, the petitioner, Reparations Commission, intervened claiming ownership over said vessel.

After due hearing the Acting Collector of Customs ordered the forfeiture of the vessel and the cigarettes. From said decision only the Reparations Commission in Seizure Identification No. 7455 appealed to the Commissioner of Customs contending that the fishing vessel "Don Pedro V" being still a government property can not be the subject of forfeiture proceedings under the cited provisions of the Tariff and Customs Code. From the decision of respondent dated March 17, 1966, affirming that of the Collector of Customs, petitioner has appealed.

The only issue raised is whether or not the fishing vessel "Don Pedro V" sold to the end-user, ANPAD, INC. under a conditional sale but still registered in the name of the petitioner, is subject to forfeiture for violation of Section 2530(a), (b), and (e) of the Tariff and Customs Code.

Petitioner does not dispute the fact that the vessel in question was used in smuggling blue seal cigarettes as heretofore stated. In fact, neither the end-user, ANPAD, INC. nor the owners of the smuggled goods appealed from the decision of the Collector of Customs. However, petitioner contends that since the said vessel is still a government property, being still registered in its name, is not subject to forfeiture.

Petitioner's contention is untenable. (The petitioner does not perform purely and exclusively governmental functions, and the reparations goods it owns like the vessel in question, are not public properties like roads, public schools, bridges, public plazas, and public markets. There is a distinction between property held by an instrumentality of the Government in its proprietary, or at least quasi proprietary, functions, and property held for purely public or governmental functions. The former is subject to seizure and execution like any other private property; the latter is not. The immunity of public property from seizure and execution is founded on the great and paramount interest of public order and principles of government. (Viuda de Tan Toco v. Municipal Council of Iloilo, 49 Phil. 53.) In the case at bar, the vessel in question is differently situated. It was sold to ANPAD, INC. by petitioner in the exercise of its proprietary functions for pecuniary consideration, and for purposes clearly private and for profit. Therefore, said vessel is not immune from seizure and forfeiture. In the case of Viuda de Tan Toco v. Municipal Council of Iloilo, *supra*, the Supreme Court, citing Corpus Juris, Vol. 23, p. 355, held:

> " . . . But where a municipal corporation or county owns in its proprietary, as distinguished from its public or governmental capacity, property not useful or used for a public purpose but for *quasi private purposes*, the general rule is that such property may be seized and sold under execution against the corporation, precisely as similar property *of individuals is seized and sold*. But property held for public purposes is not subject to execution merely because it is temporarily used for private purposes, although if the public use is wholly abandoned it becomes subject to execution. Whether or not property held as public property is necessary for the public use is a political, rather than a judicial question." (Underscoring supplied.)

Petitioner's contention that the violation was without his knowledge and consent, is of no moment for the provision of Section 2530(a), (b) and (c) of the Tariff and Customs Code is so clear and explicit as to leave no room for doubt. Since the law as worded does not admit of any exception, neither can this Court add one. Moreover, forfeiture is a proceeding __in rem__ so that want of knowledge or innocence on the part of petitioner is immaterial. (Trias et al. v. Acting Commissioner of Customs, CTA Case No. 1431, March 18, 1964; U.S. v. Rubi, 32 Phil. 223.)

There is another point which merits serious consideration. Under Section 11 of Republic Act No. 1125, only persons or corporations "adversely affected" by the decisions or rulings of the Commissioner of Customs may appeal such decisions to this Court. Petitioner is not the party adversely affected by the decision or ruling of respondent Commissioner of Customs but ANPAD, INC., the owner of the vessel. While it is true that the vessel remains registered in the name of petitioner, this is so merely to secure payment of the purchase price of said vessel. Forfeiture of the vessel for violation of Customs laws committed by the purchaser of the vessel would not adversely affect the interest of petitioner since it has a recourse against said purchaser for the unpaid balance of the purchase price. To uphold the theory of petitioner that any property registered in its name, although already sold to a private person or corporation, is immune from seizure and forfeiture, would be to encourage owners of vessels acquired by installment from petitioner to engage in nefarious traffic without fear of apprehension.

WHEREFORE, finding no error in the decision appealed from, the same is hereby affirmed, and the bond posted by petitioner for the release of the vessel is hereby declared forfeited in favor of respondent.

SO ORDERED.

Quezon City, September 30, 1969.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge