REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

TRI-MARK VENTURES TRADING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS,
Respondent.

C.T.A. CASE NO. 6858

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JAN 30 2008
3:00 p.m.

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DECISION

CASTAÑEDA, JR. *J.*:

This is a Petition for Review, filed by Tri-Mark Ventures Trading Corporation, appealing the Decision dated October 29, 2003, of Bureau of Customs Commissioner Antonio M. Bernardo, in Customs Case No. 2002-13 (NAIA SI No. 149-2001) dismissing petitioner's appeal.

Tri-Mark Ventures Trading Corporation (Petitioner) is a corporation established and existing under Philippine laws. It is registered with the Securities and Exchange Commission (SEC) on October 16, 1989, under SEC Registration No. 169557.[1] It is the sole representative and distributor of

[1] Par. 1, Statement of Facts and of the Case, Petition for Review, *Rollo*, page 4.

Heckler and Koch (UK) Ltd. products in the Philippines so that no other domestic company is authorized to import said products from Great Britain.[2]

Respondent is the Commissioner of the Bureau of Customs (BOC), with postal address at the Bureau of Customs Manila; where summons and other court processes may be served.

The facts, as culled from the records, are as follows:

On November 17, 1998, the Philippine National Police (PNP) issued an import permit, which was valid until November 16, 1999, for the importation of the following:[3]

a) 150 units of MP5A5 caliber 9 MM;
b) 75 units of HK MP5 KA4 caliber 9 MM sub-machine guns;
c) 30 units of HK MP5SD6 caliber 9 MM;
d) 30 units of HK MP5K PDW4;
e) 1,625 magazines for MP5 caliber 9 MM
f) 50 magazines for HK11E 7.62 MM; and
g) 10 pieces of HK11E caliber 7.62 MM with exchangeable barrel.

These articles which were mentioned in the Import Permit did not arrive in the Philippines at the same time. The first shipment which contained the articles mentioned in *a, b, c,* and *d* had already been released to petitioner. The second shipment which contained the articles mentioned in *e, f,* and *g* arrived on October 29, 1999.[4]

Inasmuch as the taxes and duties due on the articles in the second shipment have not yet been paid by petitioner, the Auction and Cargo Disposal Division (ACDD) of the Bureau of Customs issued the *Warrant of Seizure and Detention* dated December 11, 2001, against the articles.[5] The

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[2] Par. 2, Statement of Facts and of the Case, Petition for Review, *Rollo*, page 4.
[3] Paragraph 1(c), Joint Stipulation of Facts, *Rollo*, page 145; BOC Records, pages 67-68.
[4] Paragraph 1(d), Joint Stipulation of Facts, *Rollo*, page 145-146.
[5] Paragraph 1(e), Joint Stipulation of Facts, *Rollo*, page 146.

BOC seized the articles on the ground that the import permit covering the said importation thereof had already expired.

Meanwhile, the PNP issued to petitioner Indentor's License Nos. 1309 and 1322 on January 8 and October 16, 2001, respectively. Indentor's License No. 1309, which was valid up to January 7, 2003, allowed petitioner to engage in the importation of firearms, ammunitions, and accessories.[6] On the other hand, Indentor's License No. 1322, which was valid up to October 15, 2003, authorized petitioner to deal in firearms, ammunitions, spare parts and accessories for sale to the PNP and the Armed Forces of the Philippines (AFP).[7]

On December 17, 2001, District Collector Celso P. Templo of BOC Collection District III set the case for hearing.[8] On January 31, 2002, District Collector Celso P. Templo rendered a Decision forfeiting the subject goods in favor of the government; the dispositive portion of which reads:[9]

> "WHEREFORE, by virtue of the authority vested by law in this Office, it is hereby ordered and decreed that the aforementioned articles be, as they are hereby FORFEITED in favor of the government, the same to be disposed of in the manner prescribed by law.
>
> Let copies of this Decision be furnished to all offices and parties concerned for their information and guidance, particularly to the Auction and Cargo Disposal Division for it to take custody of subject shipments for final disposition in accordance with law.
>
> SO ORDERED."

[6] BOC Records, page 52.
[7] BOC Records, page 51.
[8] BOC Records, page 30.
[9] BOC Records, pages 36-37.

Before the Decision could become final and executory, petitioner, by way of a letter to the BOC Commissioner dated February 4, 2002, filed a Motion for Reconsideration of the Decision and offered to pay the taxes and duties due on the goods for their return.[10]

Two hearing dates were consequently scheduled for the Motion for Reconsideration on April 16 and 26, 2002. In the meantime, petitioner, through Ferdinand B. Trinidad (petitioner's president), Anthony Cristobal (petitioner's broker), and Norman Ofalsa (petitioner's customs representative), endeavored to comply with the BOC's requirement of a revalidated import permit, in spite of petitioner's insistence that the revalidation was no longer necessary.

Ultimately, District Collector of Customs Celso P. Templo denied petitioner's Motion for Reconsideration in an Order dated August 19, 2002.[11]

On September 11, 2002, petitioner filed a Notice of Appeal of the Order to respondent.[12] On November 5, 2002, petitioner received a copy of an Order issued by respondent requiring it to submit a Position Paper within ten (10) days from receipt.[13] Petitioner filed the Position Paper on November 15, 2002.[14]

Respondent rendered a Decision dated October 29, 2003, affirming the Order of Forfeiture of petitioner's goods by the District Collector of Customs.[15] The dispositive portion states:

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[10] Paragraph 1(j), Joint Stipulation of Facts, *Rollo*, page 147.
[11] BOC Records, pages 160-168.
[12] BOC Records, pages 175-176.
[13] Paragraph 1(n), Joint Stipulation of Facts, *Rollo*, page 148
[14] BOC Records, pages 189-200.
[15] BOC Records, pages 207-208.

> "In the case at bar, claimant's authority to import the subject articles lapsed prior to the grant of the requisite permit to withdraw. It appears from the records that the claimant was given ample opportunity to revalidate its import authority but it failed to do so. Such being the case, WE see no reason to disturb the Decision appealed from and the Order denying claimant's Motion for Reconsideration.
>
> FOREGOING PREMISES CONSIDERED, the Decision of forfeiture and the Order denying claimant's Motion for Reconsideration in this case are hereby AFFIRMED.
>
> SO ORDERED."

Hence, this Petition for Review filed on January 12, 2004.

On March 23, 2004, respondent filed a Motion to Dismiss on the sole ground that petitioner failed to attach a copy of the challenged Decision to the Petition.[16] On June 23, 2004, this Court denied the same taking into consideration respondent's failure to furnish a copy of the subject Decision to petitioner despite the latter's request.[17] Besides, a certified xerox copy of the Decision was attached by petitioner in its Opposition to the Motion to Dismiss filed on April 12, 2004.[18]

On October 3, 2005, petitioner filed an Omnibus Motion for the dispensation of the presentation of evidence, on the ground that the real issues to be resolved in the Petition involve purely questions of law.[19] On January 24, 2006, this Court denied the same.[20]

During the hearing on June 7, 2006, petitioner manifested that it will not be presenting evidence and is resting its case on the ground that the facts of the case and the evidence to be presented were already stipulated by the

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[16] *Rollo*, pages 70-74.
[17] *Rollo*, pages 78-82.
[18] *Rollo*, pages 54-69.
[19] *Rollo*, pages 165-168.
[20] *Rollo*, pages 189-192.

parties in their Joint Stipulation of Facts.[21] On July 2, 2007, this Court declared respondent to have waived his right to present evidence.[22]

On October 9, 2007, the case was submitted for decision after the submission by both parties of their respective Memorandum.[23]

The issues[24] as jointly stipulated by the parties are the following:

> "a. Whether the Commissioner of Customs could legally order the forfeiture of petitioner's subject goods in favor of government on the ground that the import permit covering the importation thereof had already expired before petitioner could pay the taxes and duties due thereon;
>
> b. Whether there is a need to revalidate the import permit covering the importation of the subject goods considering that the same was valid at the time of the arrival of said goods in Philippine territory; and
>
> c. Whether the petitioner actually received separate notices of the 17 December 2001 and the 29 January 2002 initial forfeiture hearing set by the Auction and Cargo Disposal Division (ACDD)."

The first and second issues will be resolved jointly, being interrelated.

The goods involved in this case are firearms, ammunitions, spare parts, and accessories; and their importation is considered prohibited under Section 102(a) of the Tariff and Customs Code of the Philippines (TCCP). Section 102(a) is reproduced as follows:

> "**Sec. 102.** *Prohibited Importations.* — The importation into the Philippines of the following articles is prohibited:
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> a. Dynamite, gunpowder, ammunitions and other explosives, firearm and weapons of war, and detached parts thereof, except when authorized by law.
>
> x x x"

[21] TSN, June 07, 2006, page 5.
[22] TSN, July 02, 2007, page 4.
[23] *Rollo*, page 337.
[24] Paragraph 2(a), (b), and (c), Joint Stipulation of Facts, *Rollo*, pages 148-149.

While firearms, ammunitions, spare parts and accessories are prohibited importations; its importation may be allowed "*when authorized by law*". Section 24(f) of Republic Act (R.A.) No. 6975 grants the PNP with the power to issue such permits, to wit:

> "**Section 24.** *Powers and Functions.* The PNP shall have the following powers and functions:
>
> x x x
>
> (f) Issue licenses for the possession of firearms and explosives in accordance with law;
>
> x x x"

In this case, petitioner was issued the import permit on November 17, 1998 which was valid until November 16, 1999. While the goods entered Philippine jurisdiction on October 29, 1999, it failed to pay the duties thereon within the period of validity. As a result, respondent ordered the forfeiture of petitioner's goods. Respondent based its forfeiture order on Sections 1202 and 2305 of the TCCP, which provides:

> "**Sec. 1202.** *When Importation Begins and Deemed Terminated.* — Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein. Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs."
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> "**Sec. 2530.** *Property Subject to Forfeiture Under Tariff and Customs Laws.* — Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
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> x x x
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> f. Any article of prohibited importation or exportation, the importation or exportation of which is effected or attempted

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> contrary to law, and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former.
>
> x x x"

Petitioner argues that the definition of the term "importation" is only meant to determine the point at which the jurisdiction of respondent over the goods commences and the point at which it ends. Petitioner claims that its goods were unloaded in Philippine territory upon a valid import permit notwithstanding its failure to pay the duties thereon within the validity of the permit.

The Court finds no error in respondent's action.

Importation is a stage which begins with the entry of the goods into Philippine jurisdiction and ends with the withdrawal of the same from customs. When an import permit is issued with a validity period, the importation must be completed within that same period. This means that both the goods must have entered the Philippines and withdrawn from customs within the validity period. If any stage of importation is not completed within the validity period, the importation of an article becomes prohibited.

In this case, petitioner failed to pay the duties on the imported articles within the validity period of the import permit issued to it by the PNP. Therefore, the importation of the articles became prohibited for petitioner's failure to complete the importation within that period.

To remedy the situation, however, petitioner must have its import permit revalidated so that it may legally withdraw its articles from respondent by paying the corresponding duties thereon within the validity period of the revalidated import permit. Here, petitioner failed to have its import permit revalidated. Thus, the importation is illegal.

For being an illegal importation, respondent is prohibited from accepting payment of duties thereon in accordance with Section 2307 of the TCCP, which states:

> "**Sec. 2307.** *Settlement of Case by Payment of Fine or Redemption of Forfeited Property.* — If, in any seizure case, the owner or agent shall, while the case is yet before the Collector of the district of seizure, pay to such Collector the fine imposed by him or, in case of forfeiture, shall pay the appraised value of the property, or, if after appeal of the case, he shall pay to the Commissioner the amount of the fine as finally determined by him, or, in case of forfeiture, shall pay the appraised value of the property, such property shall be forthwith surrendered, and all liability which may or might attach to the property by virtue of the offense which was the occasion of the seizure and all liability which might have been incurred under any bond given by the owner or agent in respect to such property shall thereupon be deemed to be discharged.
>
> **Redemption of forfeited property shall not be allowed in any case where the importation is absolutely prohibited or where the surrender of the property to the person offering to redeem the same would be contrary to law.**" (*Emphasis supplied*)

Anent the allegation that petitioner did not receive separate notices of the December 17, 2001 and January 29, 2002 initial forfeiture hearings set by the ACDD, the Court finds the same untenable.

Respondent sufficiently explained that a Notice of Hearing was posted in the Bulletin Board of the Bureau of Customs' Law Division, pursuant to Section 2304 of the TCCP, which provides:

> "**Sec. 2304.** *Notification to Unknown Owner.* — Notice to an unknown owner shall be effected by posting a notice for fifteen days in the public corridor of the customhouse of the district in which the seizure was made, and, in the discretion of the

> Commissioner, by publication in a newspaper or by such other means as he shall consider desirable."

According to respondent, a Notification to Unknown Owner was posted because petitioner's address was not written on the Examiner's Report. Since petitioner did not present evidence to show that respondent has knowledge of its address, respondent was correct in posting a Notification to Unknown Owner in the Bulletin Board of the Bureau of Customs' Law Division. Thus, petitioner was constructively notified of the hearings set by the ACDD.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision dated October 29, 2003 rendered by the Commissioner of Customs is **AFFIRMED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice