REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ILLUH ASAALI, HATIB ABDURASID,
INGKOH BANTALA, BASOK INGKIH,
and MOHAMMAD BANTALLA,
Petitioners,

- versus -

C.T.A.
CASE NO. 1451

THE COMMISSIONER OF CUSTOMS,
Respondent.

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DECISION

This is an appeal from the decision of the Acting Commissioner of Customs in Customs Case No. 113, dated September 26, 1961, (Jolo Seizure Identification Cases Nos. 38, 39, 40, 41 & 42) decreeing the forfeiture of five (5) sailing vessels (kumpits) named "Iroc-iroc," "Lahat-lahat," "Liberal Wing III," "Sulu Area Command," and "Business," with their respective cargoes of blue seal cigarettes and rattan chairs, for violation of Section 1363 (a) of the Revised Administrative Code and Section 20 of Republic Act No. 426 in relation with Section 1363 (f) of the Revised Administrative Code.

The facts of this case are not controverted. It appears that on September 10, 1950, at about noon time, a customs patrol team on board Patrol Boat ST-23 intercepted the five (5) sailing vessels in question in the high seas, between British North Borneo and Sulu while they were heading towards Tawi-Tawi, Sulu. After ordering the vessels to stop, the customs officers boarded

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and found on board 181 cases of "Herald" cigarettes, 9 cases of "Camel" cigarettes, and some pieces of rattan chairs.

The sailing vessels are all of Philippine registry, owned and manned by Filipino residents of Sulu, and of less than thirty (30) tons burden. They came from Sandakan, British North Borneo, but did not possess any permit from the Commissioner of Customs to engage in the importation of merchandise into any port of the Sulu sea, as required by Section 1363(a) of the Revised Administrative Code. Their cargoes were not covered by the required import license under Republic Act No. 426, otherwise known as the Import Control Law.

Petitioners appealed from the decision of the Collector of Customs of Jolo to the Commissioner of Customs who affirmed the former's decision. The Commissioner of Customs declared the vessels and their cargoes forfeited, not only for violation of Section 1363(a) of the Revised Administrative Code, but also of Republic Act No. 426 in relation to Section 1363(f) of the Revised Administrative Code.

Petitioners' counsel received the decision of the Commissioner of Customs on January 4, 1962. On January 23, 1962, he allegedly filed with the office of the Commissioner of Customs a motion for reconsideration which was denied. Counsel received the order of denial on September 3, 1963. The instant petition for review in this case was filed on September 14, 1963.

The issues raised in this appeal, stripped of non-essentials, may be condensed as follows:

1. Whether or not the petition for review was seasonably filed;

2. Whether or not the seizure by customs officers of the vessels and the cargoes in question outside the territorial waters of the Philippines was legal;

3. Whether or not the repeal of Republic Act No. 426 abated liabilities incurred thereunder; and

4. Whether or not the Commissioner of Customs, in reviewing a decision of the Collector of Customs, may invoke in his decision a provision of law, the violation of which was not charged in the decision being reviewed.

We shall first dispose of the jurisdictional issue. Respondent contends that the petition for review in this case was filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125. It appears that petitioners' counsel received the decision of the Commissioner of Customs on January 4, 1962. Subsequently, he filed a motion for the reconsideration of said decision and it is the date of filing of this motion that is in dispute.

The original copy of the motion (Exh. 1-B) indicates that it was received in the office of the legal counsel of the Bureau of Customs on January 25, 1962. If this date of receipt were correct as maintained by respondent, then the petition for review would clearly have been filed beyond the time limit fixed by law. On the other hand, petitioners argue that they filed the motion on January 23, 1962, as indicated on their carbon original (Exh. C-1), in the office of the Commissioner of Customs with Mr. Salvador Mascardo, an assistant to the Commissioner of Customs, who acknowledged receipt thereof (Exh. C-2).

In the hearing of this case, petitioners produced a letter of Mr. Salvador Mascardo addressed to respondent owning the initial appearing in Exhibit C-2 and further certifying to his receipt of the original copy of the motion in question while he was assistant to the Commissioner of Customs. From the evidence presented by both parties, we are convinced that the motion for reconsideration was actually filed on January 23, 1962 in the office of respondent and from there the said motion was transmitted to the office of the legal counsel where it was stamped received on January 25, 1962. For purposes of the 30-day period set forth in Section 11 of Republic Act No. 1125, said motion is considered filed on January 23, 1962.

Petitioners received the order denying their motion for reconsideration on September 3, 1963. They filed the instant petition for review on September 14, 1963, the last remaining day allocated to them by law within which to commence an appeal in this Court. We find and so hold that the instant appeal was seasonably filed and, therefore, we have jurisdiction to entertain the same and decide it on the merits.

Having thus decided the first question in the affirmative, we come to the issue whether or not the seizure by customs officers of the vessels together with their cargoes in the high seas was legal.

Section 1363(a) of the Revised Administrative Code, in pursuance of which the seizure was made, states:

> "Sec. 1363. Property subject to forfeiture under customs laws.-Vessels, cargo, merchandise, and other objects and things shall, under the conditions hereinbelow specified, be subject to forfeiture:
>
> "(a) Any vessel, including cargo, which shall be unlawfully engaged in the importation of merchandise into any Philippine port or place except a port of entry; and any vessel which, being of less than thirty tons burden, shall be engaged in the importation of merchandise into any Philippine port or place whatever, except into a port of the Sulu sea where importation in such vessel may be authorized by the Commissioner, with the approval of the Department Head."

Section 1363(a), above quoted, contemplates of two instances where a vessel and its cargo may be subject to forfeiture: (1) engaging in the importation of merchandise into any Philippine port or place except a port of entry; and (2) when the vessel is less than 30 tons burden, engaging in the importation of merchandise into a Philippine port or place whatever, except into a port of the Sulu sea where importation in such vessel may be authorized by the Commissioner of Customs with the approval of the Secretary of Finance. The sailing vessels, subject matter in this case being under 30 tons burden, forfeiture was invoked under the second instance. It was not shown that the said vessels were duly provided with authorization from the Commissioner of Customs approved by the Secretary of Finance to engage in the importation of merchandise into a port in the Sulu sea.

In contesting the forfeiture, petitioners maintain that "importation of an article into a country does not begin until the importing vessel penetrates the jurisdiction of the country concerned, whether it be its terrestial or fluvial juridiction." And, since the vessels in question including their cargoes "were apprehended and seized in the high seas, beyond the territorial waters of the Philippines, the said vessels could not have touched any place or port in the Philippines, whether a port or place of entry or not, consequently, the said vessels could not have been engaged in the importation of the articles laden therein into any Philippine port or place, whether a port or place of entry or not, to have incurred the liability of forfeiture under Section 1363(a) of the Revised Administrative Code." (Memorandum for Petitioners, pp. 6-7; CTA rec. pp. 62-74)

As succinctly stated in Section 1248 of the Revised Administrative Code, the importation of merchandise by sea begins when the importing vessel enters the jurisdictional waters of the Philippines with the intention to unlade therein. We quote Section 1248, to wit:

> "SEC. 1248. When importation by sea begins and ends.- Importation by sea begins when the importing vessel enters the jurisdictional waters of the Philippines with the intention to unlade therein, and is not completed until the duties due upon the merchandise have been paid or secured to be paid at a port of entry and the legal permit for withdrawal shall have been granted, or, in

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case said merchandise is free of duty, until it has legally left the jurisdiction of the customs."

Petitioners theorize that at the time the vessels in question were intercepted in the high seas by customs officers, importation had not yet began. Hence, the vessels could not be held for illegal importation. In short, there was no valid cause for the seizure.

We perfectly see the point of the petitioners but considering the circumstances surrounding the apprehension of the vessels in question, we believe that Section 1363(a) of the Revised Administrative Code should be applied to the case at bar. It has been established that the five vessels came from Sandakan, British North Borneo, a foreign port, and when intercepted, all of them were heading towards Tawi-tawi, a domestic port within the Sulu sea. Laden with foreign manufactured cigarettes, they did not possess the import license required by Republic Act No. 426, nor did they carry a permit from the Commissioner of Customs to engage in importation into any port in the Sulu sea. Their course announced loudly their intention not merely to skirt along the territorial boundary of the Philippines but to come within our limits and land somewhere in Tawi-tawi towards which their prows were pointed. As a matter of fact, they were about to cross our aquatic boundary but for the intervention of a customs patrol which, from all appearances, was more than eager to accomplish its mission.

To entertain even for a moment the thought that

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these vessels were probably not bound for a Philippine port would be too much a concession even for a simpleton or a perennial optimist. It is quite irrational for Filipino sailors manning five Philippine vessels to sneak out of the Philippines and go to British North Borneo, and come a long way back laden with highly taxable goods only to turn about upon reaching the brink of our territorial waters and head for another foreign port.

We take judicial notice of the fact that in the Sulu sea smuggling from Borneo of foreign made cigarettes loaded in sailing vessels called "kumpits" is rampant. To curb smuggling, the Government has mustered practically all its security agencies such as the Bureau of Customs, the Philippine Navy, the Philippine Constabulary, and the N.B.I. to mention only a few. Amidst this laudable campaign, this Court, time and again, has refused to be shackled by technicalities which tend to frustrate the seizure and subsequent forfeiture of the subject matter and instruments of smuggling. In the case at bar, the evidence is overwhelming against the petitioners. We are not inclined to turn our back on the tremendous effort of the Government to eradicate smuggling and uphold the petitioners simply because the vessels in question were intercepted a short distance from the territorial boundary.

Moreover, it is the duty of the Bureau of Customs to prevent and suppress smuggling and other frauds upon the customs (Secs. 1139(h) & 1250, Rev. Adm. Code), and in the exercise of said duty, its jurisdiction extends to areas of the high seas contiguous to the territorial waters of the Philippines where the prevention of smuggling of merchandise by sea could be effectively effected by apprehending and seizing the incoming vessels prior to their entry into Philippine waters.

We come now to the question whether or not the repeal of Republic Act No. 426, otherwise known as the Import Control Law, abated liabilities incurred thereunder. Petitioners argue that pursuant to the opinion of the Secretary of Justice No. 138, Series of 1953, liabilities incurred under Republic Act No. 426 abated when said law was repealed by Republic Act No. 650 on July 1, 1951. Respondent believes otherwise. Republic Act No. 426 was repealed by Republic Act No. 650. Both laws required an import license before any person could import commodities into the Philippines. Violation of this requirement subjected the commodities to forfeiture under both laws. It is thus clear that the repeal of Republic Act No. 426 did not extinguish liabilities incurred under it for the repealing law, in effect, did not totally abrogate the requirements, penalties and liabilities provided for therein. However, Republic Act No. 650 expired by its own provision on June 30, 1953.

On the same question, our Supreme Court said:

> "x x x the expiration of the Import Control Law did not produce the effect of declaring legal

> the importation of goods which were illegally imported and the seizure and forfeiture thereof as ordered by the Collector of Customs illegal or null and void." (Golay-Buchel & Cie. vs. Commissioner of Customs, G. R. No. L-10994, Dec. 29, 1959)

We see no cogent reason in this case to warrant a deviation from the above-quoted ruling of the Supreme Court.

Lastly, it is contended by petitioners that the Commissioner of Customs cannot declare the forfeiture of the vessels and cargoes in question under Section 1363(f) of the Revised Administrative Code inasmuch as the said properties were not libeled under said provision in the proceedings before the Collector of Customs, in the exercise of his appellate power, may affirm, reverse or modify a decision of a subordinate officer on issues other than those raised on appeal as long as his findings and conclusions are supported by evidence.

In a similar case, we ruled that:

> "x x x the Commissioner of Customs, in the exercise of his appellate powers, is not limited to a review of the issues raised on appeal, but may affirm or reverse the decisions of his subordinate officers on other questions, provided his findings and conclusions are supported by the evidence." (Blair vs. Commissioner of Customs, CTA Case No. 686, Mar. 25, 1961)

In this case, the findings and conclusions of respondent are justified by ample evidence.

WHEREFORE, finding no reversible error in the decision appealed from, the same is hereby affirmed, with costs against petitioners.

SO ORDERED.

Quezon City, November 19, 1964.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

R M Umali
ROMAN M. UMALI
Associate Judge