

Lib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CELSO JUMAO-AS,
Petitioner,

versus

C.T.A. CASE NO. 2415

THE HONORABLE COMMISSIONER
OF CUSTOMS,
Respondent.

x - - - - - x

DECISION

This is an appeal from a decision of the Commissioner of Customs decreeing the forfeiture of one (1) Thames passenger bus bearing plate No. PUJ-11-62 V Cebu marked "SAN VICENTE" in favor of the government for violation of Section 2530(k) of the Tariff and Customs Code.

The facts of the case as stated in the Decision of the Commissioner of Customs and which are not disputed are as follows:

Briefly, the records show that on May 27, 1971, TSGT Sofronio Fernandez and CFC Prospero Lozano, both of the PC, Cebu, were given mission order to proceed to Punta, Engaño, Lapu-Lapu City by their superior officer Lt. Achilles Querouz to detect and apprehend smuggled cigarettes. Upon their arrival thereat at around 9:00 in the evening of said date, they positioned themselves, undercover, in the school building of Punta Engaño. Situated in front of the school building was a gasoline station where they notice a Thames passenger bus parked with two occupants in the front seat. A few minutes later, they saw a man carrying a can of kerosene and placed said can on the running board of the Thames. This was when the PC officers, approached the man and inquired as to the contents of

said kerosene can. The person, who later turned out to be Elpidio Legaspi, answered that they contained salted fish. Examination of the contents of the can, however, revealed 12 reams of Champion blue seal cigarettes. Further, on the spot questioning by the PC officers showed that there were seven (7) other kerosene cans hidden in a nearby bush. This was voluntarily revealed and produced by Elpidio Legaspi. Examination of the cans again showed that each contained 17 reams of Champion blue seal cigarettes.

The PC officers then had the kerosene cans loaded in the Thames passenger bus, and apprehended Legaspi and two occupants of the bus namely, Victor Pagobo, the driver, and Demetrio Pagobo, cousin-companion of Victor, and ordered the driver to proceed to Lapu-Lapu City. On their way, they were accosted by Lapu-Lapu City Police officers, who upon learning of what happened, requested that they first have the incident entered in the Book of the Lapu-Lapu City Police Department. This was done. They then proceeded to the headquarters of the Cebu PC command and turned over 96 reams of Champion blue seal cigarettes, Thames passenger bus, and the apprehended persons.

The cigarettes being of foreign origin and without any papers to show that they had been legally imported into the country, was, pursuant to Sec. 2530(f) and (m-1) of the Tariff and Customs Code, seized. The Thames passenger bus was likewise seized under the same Section (k) of the Tariff and Customs Code.

The corresponding forfeiture proceedings was then instituted under MAC-IA Seizure Identification No. 13-71, hearing of which was held on June 15, 1971 at the Mactan Customhouse.

On July 28, 1971, the Collector of Customs rendered a decision decreeing the forfeiture of the 96 reams of Champion brand blue seal cigarettes and their

container, and one Thames passenger bus in favor of the government. On August 23, 1971, petitioner filed a motion for reconsideration of said decision praying that instead of declaring and ordering the forfeiture of the motor vehicle in question, an order for its return be made to Celso Juma-as, its owner and claimant, which motion was denied by the Collector in its order dated September 10, 1971. On January 20, 1972, the Commissioner of Customs rendered a decision affirming that of the Collector of Customs and on February 23, 1971, petitioner filed a motion for reconsideration of said decision, which motion was denied on April 18, 1972. Notice of said decision was received by petitioner on May 2, 1972.

Section 2530(k) of the Tariff and Customs Code provides as follows:

SRC. 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:

x x x x x x

Any beast actually being used for the conveyance of article subject to forfeiture under the customs and tariff laws, with its equipage or trappings, and any vehicles similarly used, together with its equipage and appurtenances, including the beast, team or other motive power drawing or propelling the same; but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, or his agent in charge thereof at the time, has no knowledge of the unlawful act.

Under the aforementioned law, two conditions must be met to justify the forfeiture of the motor vehicle, namely: (a) that the motor vehicle was being used in the conveyance of articles subject to forfeiture under the Tariff and Customs laws; and (b) that the owner of the said vehicle or his agent in charge at the time had knowledge of the unlawful act. (Generoso de Leon v. Comm. of Customs, C.T.A. Case No. 1942, Jan. 27, 1969.)

It is not controverted that the cigarettes found on the running board of the vehicle in question were untaxed blue seal cigarettes. Petitioner however urges that the vehicle was not actually used in the conveyance of said cigarettes because at the time of their seizure the cans containing them were not loaded yet in the vehicle and only one was on the running board of the same. It is further urged that neither petitioner nor his driver knew that the cans contained untaxed cigarettes.

When untaxed blue seal cigarettes are found in a car it is presumed that the owner or his driver has knowledge thereof and it is the duty of the petitioner to prove the contrary. (De Leon v. Comm. of Customs, supra.) To comply with this burden petitioner and his driver, Victor Pagobo, testified during the hearing before the Collector of Customs. According to Pagobo

the vehicle was hired by Elpidio Legaspi to transport cans of salted fish and he learned that the cans contained blue seal cigarettes and not salted fish only at the time when Legaspi was apprehended by the P.C. operatives on the night in question. Petitioner for his part stated that he did not even know that Pagobo had agreed to transport the aforesaid cans. He further stated that he had previously warned Pagobo not to allow blue seal cigarettes to be loaded on the vehicle.

We are inclined to believe petitioner's statement that he did not know that the vehicle was hired to transport blue seal cigarettes on the night in question and that he had previously warned the driver thereof never to transport smuggled cigarettes. Nothing in the record can provide us with any reason for a contrary finding. However with respect to the lack of knowledge of Pagobo that Legaspi was going to load blue seal cigarettes, we have a different view considering the attendant circumstances of this case.

This is not a case where a public vehicle was loaded with concealed blue seal cigarettes while plying on its authorized route. As the facts show, the vehicle in question was hired specially and exclusively to transport eight cans containing containing blue seal cigarettes and was driven to the place of rendezvous at about 9 o'clock in the evening where it waited for the

cargo which was concealed in the bushes. When the cargo was found to consist of blue seal cigarettes contained in kerosene cans, the driver made no protest nor uttered a word of recrimination against the person who hired the vehicle, which is his expected natural reaction had he been made to believe by Legaspi that salted fish was to be loaded on his vehicle. It should be recalled that he had been previously warned by petitioner never to load blue seal cigarettes and he more or less knew that he would be called to account by the owner of the vehicle in question as well as by the authorities. The suspicious circumstances of the incident compels serious doubts in the statement of Pagobo that he did not know that blue seal cigarettes were to be loaded on his vehicle.

Under Section 2530(k) of the Tariff and Customs Code it is the fact of "being used for the conveyance of articles subject to forfeiture" that makes the vehicle liable for forfeiture. Admittedly the vehicle in question was hired to transport eight cans of cigarettes. From the moment one of the cans was placed on the running board of the vehicle it became clear that the vehicle was being used for the conveyance of the cans of cigarettes as previously agreed between Legaspi and the driver thereof. Conveyance by vehicle requires a series of related acts and it is enough that one

DECISION -
CTA CASE NO. 2415

7

unequivocal act is performed to allow one to say that the vehicle is being used for the conveyance of the said cigarettes.

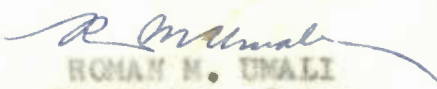
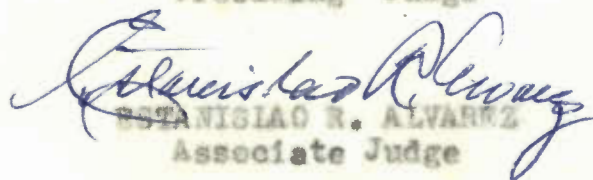
WHEREFORE, the decision appealed from is hereby affirmed, with costs.

SO ORDERED.

Quezon City, July 15, 1975.


RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:


ROMAN M. UNALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge