

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FABIAN DAMALERIO,
Petitioner,

- versus - C.T.A. CASE NO. 2374

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - x

HADJI MOHAMMED ALI,
Petitioner,

- versus - C.T.A. CASE NO. 2375

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - x

D E C I S I O N

Petitioners have appealed from the decision of the Commissioner of Customs decreeing the forfeiture of (a) 939 sacks of coffee beans loaded on board the vessel M/L "Hypha" for violation of Section 1, Republic Act No. 2712, otherwise entitled "An Act to Prohibit the Importation of Coffee", in relation to Section 2530(f) of the Tariff and Customs Code; and (b) the vessel M/L "Hypha" for violation of Section 2530(a), (b) and (c) of the same Code.

The appealed decision further ordered the Collector of Customs of Manila to dispose of the 939 sacks of coffee beans in accordance with Section 2, Republic Act No. 2712, after

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the appraisal value thereof had been taken due to their perishable nature. The disposition of the vessel M/L "Hypha" was, however, held in abeyance pending clarification of the presidential policy on seized and forfeited vessels used in smuggling.

The above-entitled cases were jointly heard and tried administratively and judicially later on by this Court. In addition to the evidence already adduced at the administrative hearing, petitioner submitted additional evidence during the judicial hearing. Thereafter, respondent submitted the two cases for decision based solely on the Customs' record and the evidence adduced at the administrative hearing.

The records show that the vessel M/L "Hypha" and its cargo of coffee beans were seized by operatives of the Philippine Coast Guard and Agents of the Anti-Smuggling Action Center (ASAC) while it was docked at the Navotas Anchorage Area, Pasig River, near the Muelle de la Industria, Manila. Thereafter, said vessel was towed to the Yacht Basin of the Philippine Navy, Roxas Boulevard, Manila. On December 26, 1969, a thorough investigation was conducted by the apprehending officers and they found that the vessel M/L "Hypha" was loaded with 939

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sacks of imported coffee beans and the said vessel was not provided with (1) fire hose, (2) fire pump, (3) Certificate of Philippine Registry, (4) Certificate of Ownership, (5) Shipping Articles, and (6) Cargo Manifest. (Exhs. N and M, pp. 37-38, Folder II, Customs rec.)

On January 5, 1970, the Collector of Customs of Manila issued a Warrant of Seizure and Detention of the vessel and its cargo of coffee beans based on the denunciation of the apprehending officers. On January 8, 1970, petitioner Fabian Damalerio's counsel filed a written motion to dismiss the denunciation alleging, among others, that the seizure of the 939 sacks of coffee beans is baseless and unwarranted because they were not smuggled from Indonesia. The said motion was, however, denied and the Collector of Customs of Manila proceeded with the joint trial of the two forfeiture cases.

After the termination of the trial on July 20, 1970, the Hearing Officer prepared a decision for the Collector of Customs of Manila, the dispositive part of which ordered the return of the vessel M/L "Hypha" and the 939 sacks of coffee beans to their owners. (Exhs. 9-9 to 9-9 P, pp. 260-276, Folder I, Customs rec.)

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The said Collector, however, disregarded the proposed decision and rendered another one dated September 9, 1970, wherein he ordered the forfeiture of the 939 sacks of coffee beans and the vessel in question. (Pp. 294-310, Folder I, Customs rec.) The outright forfeiture of said vessel was modified in the decision of the Commissioner of Customs.

The factual issues to be evaluated and resolved by this Court are the following:

- (1) Whether or not the 939 sacks of coffee beans were smuggled by petitioner Fabian Damalerio from Indonesia; and
- (2) Whether or not the vessel M/L "Hypha" was used in the smuggling of coffee beans from Indonesia.

The law allegedly violated by petitioner Fabian Damalerio provides, among others, as follows:

Sec. 1. The importation of roasted beans, roasted ground coffee, instant and soluble coffee in powder form, extract or concentrate in liquid form or finished coffee products in any form, raw coffee beans of the robusta, excelsa, and liberia varieties, is hereby prohibited; x x x x x.
(Rep. Act No. 2712).

The civil penalty for illegal importation of coffee beans and the unlawful use of the vessel is prescribed in Section 2530 of the Tariff and Customs Code, the pertinent portions of

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which provide as follows:

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:

a. Any vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles into or from any Philippine port or place except a port of entry; and any vessel which, being of less than thirty tons capacity shall be used in the importation of articles into any Philippine port or place 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.

b. Any vessel engaging in the coastwise trade which shall have on board any article of foreign growth, product or manufacture in excess of the amount necessary for sea stores, without such article having been properly entered or legally imported.

c. Any vessel or aircraft into which shall be transferred cargo unladen contrary to law prior to the arrival of the importing vessel or aircraft at her port of destination.

f. Any article of prohibited importation or exportation, the importation or exportation of which is effected or attempted 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.

Respondent claims that the seized 939 sacks of coffee beans were smuggled from Indonesia

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while petitioners contend that they came from Basilan City, Philippines. Consequently, the forfeiture of the vessel M/L "Hypha" will depend upon the legality or illegality of the seizure of the coffee beans found aboard the seized vessel.

A critical study and painstaking analysis of the voluminous records and the lengthy testimonies of government witnesses reveal that respondent's evidence is neither persuasive nor convincing in concluding that the 939 sacks of seized coffee beans were smuggled from Indonesia. Apparently, respondent relied too much on the declarations of Mr. Barahim Bandaeng who testified that:

He has been employed by petitioner Fabian Damalerio since 1967 as "patron" of the vessels that were chartered by said petitioner from time to time; in November 1969, the vessels M/L "June" and M/L "Hypha" were chartered by Fabian Damalerio; on November 22, 1969, he was hired by the said petitioner to act as "patron" of the vessel M/L "June"; on or about the same date, the chartered vessels were docked at Lamitan Wharf, Zamboanga, where he loaded sugar, matches, milk, candies, rice, and petroleum products aboard the vessel M/L "June"; when it sailed for Indonesia, it was not provided with a clearance certificate from the Philippine Coast Guard in Zamboanga; during the trip to Indonesia, he used the old permit issued to him in July 1969 as "patron" of the vessel "Richardson"; when the vessel

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M/L "June" sailed for Indonesia, the vessel M/L "Hypha" was left behind at Lamitan Wharf; he did not know the engineer and the other crew members of his vessel except Ismael Bandaeng, his son, and Messrs. Gapan Sali and Luis Delgado, Jr.; the vessels M/L "June" and M/L "Hypha" arrived in Marore, Indonesia, on December 1 and 2, 1969, respectively; during his stay in Marore, he never approached the Border and Crossing Officer as his old clearance certificate had already expired; the Philippine goods loaded on both vessels were bartered for Indonesian coffee beans and copra; he actually saw the foreign markings of the sacks containing the coffee beans loaded on board the vessel M/L "Hypha", on December 8, 1969, upon arrival of the M/L "June" at Lamitan, Zamboanga, he was instructed by petitioner Damalerio to unload the 300 sacks of coffee beans for storage at his warehouse; the vessel M/L "Hypha" arrived at Lamitan, Zamboanga, on December 9, 1969, but it never unloaded its cargo of coffee beans; the 300 sacks containing coffee beans which were already unloaded were painted to remove their foreign markings; and the said 300 sacks of coffee beans were transferred and loaded aboard the vessel M/L "Hypha" which subsequently left for Manila.

The foregoing testimony of Barahim Bandaeng is replete with glaring contradictions and inconsistencies. As aptly pointed out by respondent's Hearing Officer in the proposed decision submitted to the Collector of Customs, some of the major lapses of respondent's key witness are substantially as follows:

1. Bandaeng declared that he was no longer employed by Fabian Damalerio

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since November 22, 1969. If the allegation is true, how come that he was the acting patron of the vessel M/L "June" in late November 1969? How come that he was instructed by petitioner Damalerio to load and unload goods from the vessels M/L "June" and M/L "Hypha" before and after their arrivals in Marore City?

2. Bandaeng saw personally that the sacks with foreign markings were painted over and over again to get rid of their foreign markings. If the allegation is true, how come that there were still foreign markings found on said sacks when the vessel M/L "Hypha" was apprehended in Manila?

3. Bandaeng testified that when the vessel M/L "Hypha" arrived in Lamitan, Basilan, on December 9, 1969, he loaded on board said vessel 300 sacks of coffee beans, while the purser, Fred Santiago, loaded thereon an additional 600 sacks of coffee beans - a total of 900 sacks. If it is true that the imported sacks of coffee beans aboard the vessel M/L "Hypha" were not unloaded, how come that only 939 sacks of coffee beans were seized by the apprehending officers when there should be more?

4. Bandaeng declared that he knew all the activities of the vessel M/L "Hypha" from the time it left Lamitan, Basilan, until it arrived in Marore City and vice-versa. If the allegation is true, how come he knew less the identity of his own engineer and the members of his crew? (Exh. 9-9-C, p. 269, Folder I, Customs rec.)

What is more, Bandaeng's testimony was effectively contradicted on material points by respondent's corroborative witness, Lt. Felinor

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R. Yeban. His declarations are substantially as follows:

He is an officer of the Philippine Coast Guard detailed with the Department of Foreign Affairs as Border and Crossing Officer; he represented the Philippine panel in Marore, Indonesia; as such representative he had to enforce the Border and Crossing agreement between the two countries; his duties were to inspect special permits, cargo manifests, medical certificates, etc. and to countersign papers of crew members of vessels going beyond the Border and Crossing station; said agreement provides that only bona fide residents of Balut and Sarangani Islands were qualified and authorized to bring goods to Indonesia worth P5,000.00 or less and to barter them for Indonesian goods; he was in Marore, Indonesia, on December 5 or 6, 1969, where he inspected the vessel M/L "Hypha" and its cargo; among the passengers thereof were Pedro Africa, Jesus Castro and Pedro Francisco - all of whom are residents of Balut Islands; said persons were the owners of the Philippine goods on board said vessel consisting of 100 cases of condensed milk, 5 cases of Lux soaps, 50 cases of candies and 10 cases of other soaps; said goods were bartered for Indonesian coffee beans; Philippine goods valued at P5,000.00 could be bartered for only 80 to 100 sacks of coffee beans - not 900 sacks; Marore, Indonesia has an area of 3 to 4 square miles; his office was only 200 meters away from the pier where the vessel M/L "Hypha" was docked; from his office he could see or notice any vessel that will dock at Marore either during day or night time; in December 1969, the vessel M/L "June" never reached Marore; all passengers and crew members of every Philippine vessel going to and coming from Marore are given clearance by the Border and Crossing Officer of both countries; Barahim Bandaeng never

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requested for such clearance in December 1969; in fact, in December 1969 he never saw Barahim Bandaeng in Marore; his record shows that Bandaeng was in Marore only in September 1969; the official Border Crossing Report (Exh. O) for December 1969 neither show that the vessel M/L "June" has docked at Marore, Indonesia, nor Barahim Bandaeng appeared among the persons listed therein; by tonnage, the coffee beans that were loaded on board the vessel M/L "Hypha" were estimated at 80 to 100 sacks; and the trip of the vessel M/L "Hypha" was legal as it was properly documented and everything was in order.

Considering the conflicting testimonies of respondent's witnesses, this Court is inclined to give more weight and credence to the testimony of Lt. Felinor R. Yeban, a responsible government official, based on the presumption in law that he has performed his duties regularly. In contrast, Barahim Bandaeng admitted that he left Lamitan, Basilan, for Indonesia without securing any clearance from the Philippine Coast Guard as required by law and that he used an expired permit of another vessel during the voyage. Lt. Felinor R. Yeban, however, asserted that Barahim Bandaeng and his vessel were not seen by him in Marore, Indonesia, in December 1969 and that his official record disclosed that neither Bandaeng nor his vessel M/L "June" ever reached Indonesia at the time. What is more,

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Bandaeng claimed that he was no longer in the employ of Fabian Damalerio since November 22, 1969. From the foregoing conflicting declarations, the petulant and perverse testimony of Barahim Bandaeng as a whole is of doubtful veracity.

Bandaeng also testified that the 300 sacks containing coffee beans aboard the vessel M/L "June" were unloaded at Lamitan, Basilan, for the purpose of painting the sacks to cover their foreign markings. If this is true, why were the sacks containing coffee beans on board the vessel M/L "Hypha" not unloaded and likewise painted to cover their foreign markings? If Fabian Damalerio really intended to cover the evidence of his misdeed, it is only natural for him to erase all the foreign markings on the remaining 639 sacks of coffee beans. The evidence, however, shows otherwise.

Assuming arguendo the correctness of the declaration of Bandaeng that, at the time material to this case, the vessel M/L "June" was loaded with 300 sacks of coffee beans at Marore, Indonesia, and the vessel M/L "Hypha", according to Lt. Yeban, was loaded with 100 sacks of coffee beans, then the total of both shipment would only be 400 sacks. Where would the remaining 539 sacks of

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coffee beans, which were also seized by the apprehending officers, come from? This point has neither been clarified nor explained by respondent's witnesses to the satisfaction of this Court as they were not presented during the judicial hearing of the above-entitled cases.

In the administrative hearing, another prosecution witness, Mrs. Jacoba Paterno, testified in substance as follows:

She is the President of the Coffee and Cacao Association of the Philippines from 1957 to the present; she is also the Manager and Treasurer, Cooperative Marketing Association of the Philippines; she received representative samples of the seized coffee beans and examined them in compliance with the letter-request of General Pelagio Cruz, ASAC Chairman; she found the seized coffee beans to be of the Robusta variety mixed with Excelsa and other immaturated beans; they were processed by the Dry Method; said coffee beans were of old stock, very dusty, dirty and not fit for human consumption; the seized coffee beans are of the kind which are grown all over the Philippines, especially in Basilan; she believes that the 939 sacks of the seized coffee beans could not have been produced in one province; the old and dirty sacks containing the seized coffee beans were not manufactured in the Philippines; and Itemcop (Industrial Textile Manufacturing Corp.) is the only manufacturer of industrial sacks in the Philippines.

From the highlights of the foregoing testimony, we are constrained to concur with petitioners' view that the 939 sacks of coffee beans were of local origin and not imported. Res-

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pondent's witness disclosed that the said coffee beans were of old stock, very dusty, and dirty. The finding of respondent's witness tallies and corroborates with the testimonies given by the seller-farmers that, long before they sold their coffee beans to petitioner Fabian Damalerio, they were first stockpiled because, prior to 1969, the price of coffee beans in the market was very low. (Exhs. 1-1, 1-1a, 1-1-c).

The declaration of respondent's witness that the seized coffee beans were not fit for human consumption strengthens our belief that the disputed coffee beans were not smuggled from Indonesia. The reason is obvious. Petitioner Fabian Damalerio is not expected to risk his life and limb to transgress the law, sail back and forth through the rough waters of the Sulu Sea, and invest substantial amount of money in buying and smuggling from Indonesia 939 sacks of coffee beans which are not fit for human consumption. Verily, an astute and experienced businessman like petitioner cannot be expected to enter into a risky business venture of buying and selling inferior coffee beans which are of old stock, very dusty, dirty and not fit for

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human consumption. As it is of public knowledge that people engages in business for livelihood and profit, we cannot see any justification for respondent's conclusion that the deteriorating coffee beans were imported and smuggled from Indonesia.

Respondent's witness admitted that the variety of coffee beans seized from petitioner Damalerio are the type grown all over the Philippines. She advanced the opinion, however, that the 939 sacks of the seized coffee beans could not have been produced in one province alone. The said opinion has no solid factual foundation. Mr. Eliseo C. Carandang, Director of the Bureau of Plant Industry, contradicted the said ~~opinion~~ when he attested officially in a letter to the ASAC Chairman that the Annual Production (1968-1969) of Basilan City was 1,939,100 kilos of dried coffee beans - equivalent to more than 29,833 sacks of 65 kilos each. Again, we give more weight and credit to the statement of a responsible government official.

Respondent's witness also declared that the seized sacks containing coffee beans were not made in the Philippines. She concluded, therefore, that they came from Indonesia, as well as the coffee beans placed therein.

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On the other hand, respondent's Hearing Officer opined otherwise. In substance, he disagreed with the conclusion of the prosecution witnesses that the seized coffee beans came from Indonesia simply because the vessel M/L "Hypha" made a trip to Marore, Indonesia, and the seized coffee beans were placed in Indonesian sacks. It is argued that, if the theory of the prosecution is correct, then the coffee beans placed in Chinese or Malaysian sacks would be considered smuggled from China or Malaysia. The said Hearing Officer further observed that residents of Balut and Sarangani Islands are authorized by the Border and Crossing Agreement to barter their goods in Indonesia. Consequently, they accumulate sacks with Indonesian markings which were sold in the open market. It cannot be concluded, therefore, that local coffee beans placed in Indonesian sacks were unlawfully imported from Indonesia. (Page 14, Exh. 9-9; p. 280, Folder I, Customs rec.)

We are in complete accord with the observations of respondent's Hearing Officer because petitioner Fabian Damalerio presented in evidence an invoice dated November 24, 1969, showing that the sacks in dispute were purchased by him from Madipe Mercantile, Zamboanga City. (Exh. 11).

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In addition, former Commissioner of Customs Cesar Climaco testified that sometime in September 1968, some 1,500 bales of jute sacks with foreign markings were smuggled by Madip● Mercantile into the Philippines via Zamboanga; the same were intercepted and apprehended by him; said firm secured their release from custom's custody after payment of the taxes, duties, and fine due thereon; said smuggled jute sacks were splashed with black paints to cover their foreign markings; and said jute sacks were later on sold in the open market in Zamboanga, Basilan, and Cebu.

Petitioners' evidence are supported and corroborated by the following uncontradicted testimonies:

1. Petitioner Fabian Damalerio stated in his defense as follows:

He was licensed as a general merchant since 1963; he was engaged in the buy-and-sell of coffee, copra, rice, corn, peanuts, cocoa, coconuts, and other agricultural products; he was provided since 1968 with a special license as a dealer in copra, coffee, corn grains as required by a City Ordinance which was passed for the first time in that year; in November 1969, he contacted the owner's representative of the vessel M/L "Hypha" for the purpose of chartering the same; he was informed that the said vessel had already been chartered by other persons up to December 10, 1969 and that it was only available after said date; he denied having been to Marore, Indonesia,

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aboard the vessel M/L "Hypha" in December 1969; he denied having chartered the vessel M/L "June" and made Barahim Bandaeng a "patron" thereof; the coffee beans stored in his bodega in 1969 were purchased from Basilan City Mayor Leroy Brown and other farmers of said City; he is an owner of a coconut and coffee plantation with an area of 48 hectares; he harvested therefrom yearly 90 to 100 sacks of Robusta coffee per hectare during good harvest, otherwise 50 to 60 sacks; he purchased the controversial sacks from Madipo Mercantile as evidenced by a sales invoice (Exh. 11); the seized coffee beans were inspected and fumigated inside his bodega by employees of the Bureau of Standards and the Plant Quarantine Office of the Bureau of Plant Industry, Zamboanga City, (Exhs. 7, 7-A, 8, 11, 11-A and 11-B); the coffee beans in his bodega were loaded aboard the vessel M/L "Hypha" after its arrival at Lamitan, Basilan, in December 1969; when the seized coffee beans were loaded aboard said vessel, Mr. Angel Sebastian, then Port Collector of Basilan City assigned at Lamitan Wharf, collected the tax required by the new ordinance; the City Treasurer of Basilan City thereafter sent him a letter demanding payment of the deficiency tax on the seized 939 sacks of coffee beans (Exh. 3-3, p. 815 T.s.n., Folder V, Customs rec.); he stayed at the First Hotel, Manila, from December 9, 1969 up to January 13, 1970 (Exh. 13, p. 778, T.s.n., Folder V, Customs rec.); upon arrival of the vessel M/L "Hypha" in Manila on December 15, 1969, it was apprehended by operatives of the Philippine Coast Guard; thereafter, he went to the Philippine Navy Headquarters to claim for the return of the seized coffee beans; he submitted to the investigators the documentary evidence supporting his claim; after meticulously processing his claim, Atty. Antonio Umali, Legal Officer, ordered his assistant to help him prepare a motion to dismiss the denunciation (Exh. 12, p. 276, T.s.n., Folder V, Customs rec.);

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when the said motion was finalized, Atty. Umali wrote at the back thereof as follows: Law Division, 3rd Floor, Bureau of Customs, Manila," indicating to petitioner the place where to file said motion; and the Collector of Customs of Manila denied the motion in question.

2. Mayor Leroy Brown of Basilan City, another defense witness, declared as follows:

He has been the Mayor of Basilan City from 1954 up to the present; he owns around 210 hectares of farm land planted to coconut and coffee; he is the Chairman of the Anti-Smuggling Committee in their Area under an Executive Order of the President; as such, he and his men apprehended the vessel "Susan" loaded with copra and coffee beans which were smuggled from Indonesia; the said vessel and its cargo were seized and confiscated; he has known Fabian Damalerio since he was a small boy; Fabian Damalerio is habitually engaged in the buy-and-sell of farm products; on or about December 1, 1969, he sold 10-1/2 tons of coffee beans to Fabian Damalerio under Invoice No. 959 (Exhs. 6 and 6-A); he is interested in the case against petitioner Damalerio because, as Chairman of the Anti-Smuggling Committee and as Mayor of Basilan City, his integrity and personal interest are involved; he has personal interest in the case because petitioner Damalerio owes him P11,000.00 representing the balance of the purchase price of the coffee beans sold to said petitioner; as Chief Executive of the City, he has received many complaints against the RASAC and ASAC agents for alleged harassment of merchants; he went to the President denouncing the irregular seizure of the vessel and coffee beans in question; and, he and the other planters of coffee in Basilan have staunchly opposed the importation and smuggling of coffee beans as it would compete with their own products considering that Basilan

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City has more than enough coffee beans to supply the entire Philippines.

3. Fred Santiago for the petitioners declared as follows:

He is the purser of the vessel M/L "Hypha" which is owned by Hadji Mohammad Ali; on November 22, 1969, he left Lamitan, Basilan, for Mabila, Balut Island, because said vessel was chartered by Messrs. Pedro Africa, Jesus Castro, and Pedro Francisco; said vessel left Balut for Indonesia on December 1, 1969 loaded with various goods owned by the above-named persons; it arrived in Marore, Indonesia, on December 2, 1969 where the same were bartered for Indonesian products; during his stay in Marore, Indonesia, from December 2 to 6, 1969, he never saw Barahim Bandaeng or the vessel M/L "June"; after the vessel M/L "Hypha" was inspected by Lt. Yeban, it returned to Mabila, Balut Island; from Mabila, their vessel proceeded to Lamitan, Basilan, because of the charter contract with Fabian Damalerio; on December 10, 1969, Damalerio's coffee beans were loaded on their vessel which subsequently left for Manila; and their vessel was properly documented with: Costwise License No. 237, issued in Zamboanga City on November 20, 1969; Certificate of Inspection No. 1155-69 with expiry date on December 20, 1969; and clearance paper issued in Zamboanga by the Philippine Coast Guard.

4. Angel Sebastian, petitioners' witness, states and deposes as follows:

He is the collector of City Port Inspector's Office, Basilan City; he held the job since February 9, 1967 and was assigned at Lamitan Wharf; it was his duty to collect fees imposed by City Ordinance No. 506 on coffee beans, copra, fowls, hogs, corn grains, corn starch, and other products exported from

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Basilan City; on December 10, 1969, he witnessed the loading of Damalerio's coffee beans on board the vessel M/L "Hypha" from morning to evening; he issued to Damalerio the corresponding receipt for local tax paid on account of the 600 sacks of coffee beans for export; he discovered later that 939 sacks of coffee beans were loaded on board the vessel instead of 600; he reported the discrepancy to the City Treasurer; the City Treasurer in turn sent a letter to Fabian Damalerio demanding payment of the deficiency fees. (pp. 83-89, CTA rec.)

This Court cannot ignore and disregard the material evidence for the petitioners in the absence of any clear evidence which would destroy and impeach the testimonies given by petitioners' witnesses. Moreover, petitioners' theory and defense are substantiated by the following documentary evidence:

Exh. 2 - Letter of Director Carandang of the Bureau of Plant Industry, dated January 2, 1970, addressed to the ASAC Chairman, showing that Basilan City produces coffee beans far in excess of the quantity seized from the vessel M/L "Hypha";

Exh. 6 - List of coffee beans purchased by Fabian Damalerio in Basilan City from November 27 to December 7, 1969 as verified by Rolando Saavedra, RASAC Team Leader, and one Pat. Rodolfo Aquino, showing that the seized coffee beans were purchased locally;

Exh. 6-A Sales Invoice of the coffee beans purchased by Fabian Damalerio from Mayor Leroy Brown of Basilan City;

Exh. 6-B - Purchase Invoice Nos. 951-973 issued to petitioner Damalerio

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by local sellers of coffee
beans;

Exh. 7 - Philippine Quarantine Service
7-A to Certificate and other support-
7-D ing papers, showing that the
seized coffee beans came from
Basilan City;

Exh. 8 - Money Order paid to the Bureau of
Standards for the inspection of
the seized coffee beans;

Exh. 11-A Xerox copies of cash invoices of
to 11-D Madipo Mercantile, proving that
petitioner Damalerio purchased
the empty sacks used as con-
tainers of the seized coffee
beans;

Exh. 14 - Depositions of seller-farmers,
to 14-a showing the sale of coffee beans
to 14-c to petitioner Damalerio; and

Exh. 5-5 Depositions of seller-farmers,
5-5-a showing the sale of coffee beans
to 5-5-x to petitioner Damalerio.

It appears to us that the Collector of Customs
of Manila and the Commissioner of Customs labored
under a misapprehension of facts when they sum-
marily ordered the seizure and forfeiture of the
disputed coffee beans and vessel. To show the
inherent weakness of respondent's stand, we are
reproducing hereunder the relevant portion of his
decision which reads:

xx xx xx. True, the excess
of the aforementioned 100 sacks of
coffee beans found on board the vessel
M/L "Hypha" by the apprehending officers
in Manila cannot possibly be established
by the prosecution panel as having
actually come from Marore, Indonesia,
but possibly were taken from other ship-
ments also from foreign countries or
from Indonesia itself and this jibes

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with the claim of the prosecution that when Barahim Bandaeng was presented as a witness, it (Prosecution) had decided to establish the fact that the 939 sacks of coffee beans which were loaded on board the vessel M/L "Hypha" in Lamitan actually came from the vessel M/L "June" and from the bodega of Fabian Damalerio in Lamitan, which only proves that the coffee now in question is not local product." (Exh. 10-10J, p. 300, Folder I, Customs rec.)

XX XX XX XX

XX XX XX. If, on the basis of the allegations that those markings appearing on those sacks (Exhs. "D", "D-1" to "D-9") which contained the coffee beans and that the vessel M/L "Hypha" made a trip to Marore, Indonesia, it may be concluded by the prosecution that said coffee beans were imported from Indonesia, then it may also be asked what about the markings appearing on the other sacks showing Philippine manufacture? The answer is that it having been established that coffee of this big quantity could not readily be obtained in Dapitan and immediate vicinity, then common sense dictates that imported coffee could have been placed in containers locally produced to allay any suspicion that the coffee is not locally produced."

"By and large, this Office is convinced by the fact that coffee beans in question, because of their deteriorating condition and unusually big quantity, originated and came from abroad, and that is the answer to the main issue in this case." (Exh. 10-10-n, p. 000296, Folder I, Customs rec.) (Underlining supplied.)

It can be gleaned from the foregoing statements that the forfeiture of the disputed coffee beans and vessel were based on mere presumptions

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and inferences without sufficient valid justification. What is more, respondent appreciated and sustained the evidence of the prosecution in capsule form and without explanation. Thus, it was stated:

On the basis of the evidence for the prosecution the following points are eloquently projected:

1. That the coffee beans are of the Robusta and Excelsa variety;

2. That Fabian Damalerio was really engaged in the importation of coffee from Indonesia;

3. That the M/L "Hypha" was chartered by Fabian Damalerio for trips to Indonesia;

4. That the M/L "Hypha" was actually in Indonesia on or before December 2, 1969 prior to its apprehension in Pasig River, Manila;

5. That the M/L "Hypha" arrived at Lamitan Wharf on December 9, 1969;

6. That the 900 sacks of coffee beans, more or less, were loaded on board the M/L "Hypha" in Indonesia;

7. That the M/L "Hypha" arrived at Lamitan Wharf on December 9, 1969;

8. That some of the sacks containing the coffee beans are painted with foreign markings or characters; and

9. That the M/L "Hypha" was operating illegally without proper documentation.

In rejecting petitioners' defense, respondent in his decision stated as follows:

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"For the defense, the significant points that are worthy of consideration is the fact that the same varieties of coffee beans in question could also be produced in the Philippines and also the allegation that they were locally purchased as shown by the receipts of purchase. On the first fact, this could be explained because Indonesia and the Philippines are within the same region in the tropics and, therefore, it is possible that they could produce the same varieties of coffee beans without distinction in quality and flavor.

"On the second point, it is true that receipts were produced purportedly to show that the coffee beans were purchased locally and that no less than Mayor Brown testified to the genuineness of some of purchases made by claimant Damalerio. A careful examination of the receipts allegedly covering the sales of coffee beans will, however, show that they are self-serving and uncorroborated in their material details by competent evidence. Besides, they contain certain features which give the impression that they were designed purposely to be used as evidence for the claimant."

It is to be noted that the statements contained in paragraphs 1, 4, 5, 7, and 8 of the decision, supra, were readily admitted by petitioners because they are consistent with the testimonies of their witnesses. As regards the statements in paragraphs 2 and 3, supra, they were based solely on the perverse testimony of Barahim Bandaeng whose credibility as a witness was seriously doubted by this Court for the reasons already explained. With respect

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to the statement found in paragraph 6 of the appealed decision, no evidence whatsoever was adduced by the opposing parties that the 900 sacks of seized coffee beans were loaded on board the vessel M/L "Hypha" in Marore, Indonesia. On the contrary, respondent's evidence tends to show that out of the 939 sacks of the seized coffee beans, 300 sacks thereof came from the vessel M/L "June" and transferred to the vessel M/L "Hypha" while it was docked at Lamitan Wharf, Basilan, before it sailed for Manila. However, Lt. Yeban who is another witness for the prosecution testified that the vessel M/L "June" has never been in Marore, Indonesia, thereby showing a misapprehension of the facts upon which respondent based his conclusion that the seized coffee beans came from Indonesia.

Respondent claimed further that the sales invoices submitted by petitioner Fabian Damalerio are self-serving and uncorroborated. Suffice it to say, Mr. Rolanda Saavedra, the RASAC Team Leader at Basilan, verified the said invoices and found them to be correct. (Page 963-965, Folder V, Customs rec.)

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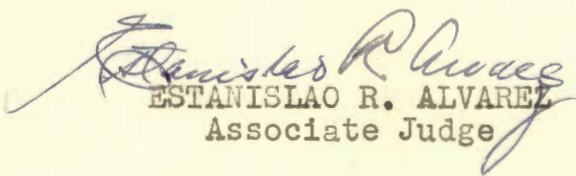
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After sifting and evaluating the evidence adduced by the opposing parties, we feel we have reached the cross-road where we have to deviate and depart from the uncharted and nebulous path trodden by the respondent Commissioner of Customs in deciding the cases at bar on the merits.

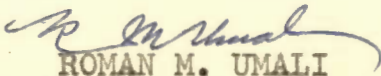
IN VIEW OF THE FOREGOING, the decision of the respondent Commissioner of Customs appealed from is reversed. Said respondent is hereby ordered to release the seized 939 sacks of coffee beans to petitioner Fabian Damalerio and to release the vessel M/L "Hypha" to petitioner Hadji Mohammed Ali. Without pronouncement as to costs.

SO ORDERED.

Quezon City, November 29, 1974.


ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:


ROMAN M. UMALI
Presiding Judge


RAMON L. AVANCEÑA
Associate Judge

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