REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CONCEPCION CALALANG,
Petitioner,

- versus - C.T.A. Case No. 2371

ROLANDO G. GEOTINA, Acting
Commissioner of Customs,
Respondent.
x - - - - - - - - - - - - - x

D E C I S I O N

This is an appeal from a decision of respondent Commissioner of Customs, dated December 16, 1971, affirming that of the Collector of Customs of Manila in Seizure Identification No. 8235, declaring the forfeiture of one Chevrolet Car, Sedan, Model 1956, with Motor No. 0040962 F56Y, for violation of Section 2530 (m-1) and (m-5) of the Tariff and Customs Code.

The parties have entered into a partial stipulation of facts stating as follows:

> 1. That on May 24, 1967, the Supreme Court promulgated its decision in G.R. No. L-23929, entitled "The Acting Collector of Customs of the Port of Manila, Petitioner *versus* Hon. Hermogenes Caluag, as Judge of the Court of First Instance of Rizal, Branch IV, sitting at Quezon City and Concepcion S. Calalang, respondents" in which the Supreme Court recited the facts of the case, and which the parties accept in this case insofar as material hereto (copy of the said decision is hereto attached as Annex "A", and made an integral part of this stipulation);
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> 2. That on July 22, 1964, Mr. Pedro N.R. Domingo, Chief, Registration Division, Land Transportation Commission, wrote the Collector of Customs, Port of Manila, stating that the motor vehicle involved "Chevrolet Sta. Wagon bearing Motor No. 0040962 F56Y,

with File No. 124051 was originally registered in the name of Robert A. Gibson, U.S. Military Port, Manila under File No. 124051 on September 12, 1956 as tax-exempt and was renewed by him on April 24, 1957 with temporary Plate No. 535. At present said car was registered with Plate No. H-279650 series of 1964 in the name of Concepcion Calalang, 471 España Ext., Cubao, Quezon City." Furthermore, he stated that "our records fail to show that taxes have been paid." (Copy of the said letter is hereto attached as Annex "B" and made an integral part of this stipulation);

3. That the parties reserve the right to adduce evidence on points not covered by this partial stipulation." (pp. 67-68, CTA rec.)

Despite their reservation to adduce further evidence, the parties no longer did so after their partial stipulation of facts was admitted by this Court. Instead they chose to submit this case for decision solely on the basis of said stipulation and the pleadings.

In the aforesaid case of Collector of Customs v. Caluag, et al., G.R. No. L-23925, May 24, 1967, the background facts and circumstances were recited by the Supreme Court as follows:

An American military personnel assigned in the Philippines, Robert A. Gibson, purchased for $2,700.00 at the United States sometime in March 1956, a Chevrolet two-door station wagon. Shipped to the Philippines, the car was landed in Manila on September 11, 1956.

On September 12, 1956, it was registered by Gibson, in his name, with the Motor Vehicles Office in Quezon City. A certificate of registration was issued with the statement of its exemption from payment of registration fees, for the reason that the Chief of the MVO had received an official communication from United States military authorities to the effect that said car was owned by Gibson and used in connection with his duties. A special plate number was issued for the car. Said registration was renewed the following year by Gibson, in the same office.

On September 11, 1957, Gibson informed the MVO Chief in writing that the same car was no longer used officially and requested to be allowed to pay its registration fees and that private number plates be issued to him. Stamped on said letter was the following: "Subject to duties and taxes when sold or transferred in the Philippines to non-exempt persons."

Subsequently, the car became the subject of a series of transfers. On September 12, 1957, a registration certificate and the corresponding private plates were issued by the Cavite City MVO agency to one Bonifacio Alinsod with address at 471 España Ext., Q.C. On October 29, 1957, Alinsod sold the car for ₱6,500.00 to one Silverio Espiritu. On November 30, 1957, Espiritu sold it to Maximo Calalang. A month later, this sale was registered at the MVO pasig agency and a certificate of registration and private plates were issued to Maximo Calalang. On December 6, 1957, the car was sold to one Felisa San Jose, although the sale's registration was made only on February 13, 1959. Felisa San Jose remained in possession of the car up to March 19, 1963, when she sold the same to Concepcion S. Calalang. Parenthetically, this last purchaser is the spouse of former purchaser Maximo Calalang and has the same address as that given by previous buyer Alinsod.

The sale last made was presented for registration to the MVO Pasig agency, but that office refused on the ground that the car in question was among those included in the master list of "hot cars", i.e., motor vehicles brought into this country by tax-exempt persons or entities, for which the import taxes have not been paid. As the registrant failed to submit proof of payment of the advanced sales or the compensating taxes due on said car, registration was not allowed.

Pursuant however to a preliminary mandatory injunction writ issued by the Court of First Instance of Rizal at Quezon City, in a suit Concepcion S. Calalang instituted, the registration certificates and plates

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were later issued by the MVO Pasig agency for 1963. And in 1964, because of an amended preliminary mandatory injunction writ, a new registration certificate was issued in Concepcion S. Calalang's favor

On July 22, 1964, the Chief of the Registration Division of the Land Transportation Commission certified to the Collector of Customs that the car in question was originally imported tax-free by one Robert A. Gibson and is registered in the name of Concepcion S. Calalang. Acting thereon and finding that the advanced sales or compensating taxes due on the car have not been paid, the Acting Collector of Customs issued a warrant of Seizure and Detention, Identification Warrant No. 8235, dated July 30, 1964. Said warrant was forwarded for execution to the Law Enforcement Command of the Bureau of Customs. No execution, however, could be made by the latter as Concepcion S. Calalang refused to surrender the car. So the warrant was referred to the National Bureau of Investigation. And on August 13, 1964, NBI agents, armed with a copy of the said warrant of seizure and detention, seized the car from Concepcion S. Calalang's house in Quezon City and brought the same to the NBI office in Manila.

After seizure proceedings were instituted against the car in question, the Collector of Customs of Manila rendered a decision on August 24, 1970, decreeing the forfeiture of the car for violation of Section 2530 (m-1) and (m-5) of the Tariff and Customs Code, which decision, on appeal to the Commissioner of Customs, was affirmed by the latter on December 16, 1971.

This case involves Article XII (3) of the Philippine-United States Bases Agreement which provides as follows:

"(3) No person referred to in paragraphs 1 and 2 of this said Article shall be liable to pay the government or local

> local authorities of the Philippines any poll or residence tax, or any import or export duties, or any other tax on personal property imported for his own use provided, that private owned vehicles shall be subject to payment of the following only: when certified as being used for military purposes by appropriate United States authorities, the normal license plate fee; otherwise, the normal license plate and registration fees;" (43 O.G. No. 3, p. 1020, 1025.)

There is no controversy that under the foregoing provision automobiles of personnel of the United States Army imported for their own use are not subject to duties and taxes upon entry in the Philippines but are subject thereto if they are sold to non-exempt persons. As a matter of fact when Gibson wrote to the Motor Vehicles Office, now Land Transportation Office, requesting that the car in question be registered, there was stamped on the letter: "Subject to duties and taxes when sold to non-exempt persons." Again, Embassy Note No. 507 dated December 14, 1966 as well as Department of Foreign Affairs Note No. 175 of even date acknowledges the dutiable and taxable character of such cars upon sale to non-exempt persons.

Contrary to the pretension of petitioner, the Bureau of Customs had jurisdiction over the aforesaid automobile when respondent issued the warrant of seizure and detention in this case. Under Section 1202 of the Tariff and Customs Code, the Bureau of Customs loses jurisdiction over imported merchandise only after the

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payment of duties and taxes. Thus in Go Cheng Tee v. Meer (87 Phil. 18) it was held that goods imported by the U. S. Army not subject to duties but later sold to non-exempt persons remain within the jurisdiction of the Customs until duties and taxes thereon have been paid and the purchaser is deemed to be the importer.

The warrant of seizure in question appears to have been issued under Section 2530(m-1) and (m-5) of the Tariff and Customs Code 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:
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> x x x x x x
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> m. Any article sought to be imported or exported:
>
> > (1) Without going through a customhouse, whether the act was consummated, frustrated or attempted;
> >
> > x x x x
> >
> > (5) Through any other fraudulent practice or device by means of which such article was entered through a customhouse to the prejudice of the government.

Section 2530(m-5) aforesaid is not applicable to this case. In Teodoro Luna v. Commissioner of Customs (C.T.A. Case No. 1947, November 29, 1968) we said that the term "entered through a customhouse" appearing in said provision refers to the filing by the importer of an import entry covering an imported article, which import entry must be made within fifteen days from the date of the discharge of the article. Respondent anchors the forfeiture "on the fact of fraudulent transfer" and obviously this is not the fraud in the entry contemplated by said provision. The record does not reveal that a fraudulent entry was made in connection with the car in question. As a matter of fact there is nothing therein that might show that an entry was made when it first landed in the Philippines or when the sale was made or sometime thereafter.

Neither do we think that the vehicle in question is subject to forfeiture under Section 2530(m-1) of the Tariff and Customs Code, for the reason that the same was not entered through the customhouse but was landed in the U.S. Navy port of Manila. It appears that the automobile did not pass through a customhouse because it was exempt from duties and taxes under Article XII(3) of the Philippine-United States Base Agreement and it is quite obvious that Section 2530(m-1) does not cover such a case. Said law applies to cases where goods imported are not passed through a customhouse to avoid payment of duties and taxes, not to instances where there was no intention to avoid duties and taxes being exempt therefrom and the merchandise need not pass through a customhouse by special arrangement.

The car in question is subject to forfeiture under Section 2530(f) of the said Code for failure to pay duties

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and internal revenue taxes upon the sale to Alinsod, a non-exempt person, as merchandise of prohibited importation, the importation of which is contrary to law.

> "This is not the first time that this question has been posed before us. In the case of Gigare vs. Commissioner of Customs (G.R. No. L-21376, August 29, 1966, 17 SCRA 1001), we disposed of the same by holding that'(s) ince, admittedly, the internal revenue tax on the cigarettes in dispute has not been paid, it is clear that said cigarettes fall within the category of "merchandise of prohibited importation," the importation of which is contrary to law and may justify its forfeiture, as provided in Sections 1363 (f) and 1364 of the Revised Administrative Code,' which correspond to Sections 2530 (f) and 2531, respectively, of the Tariff and Customs Code."(Vierneza v. Commissioner of Customs, 24 SCRA 394)

We find no merit in petitioner's pretension that the duties and taxes must have been paid because the Certificate of Registration of Maximo Calalang appears to be stamped with the words "Presidential Action Committee." The significance of the stamping of said words on said Certificate of Registration is too ambiguous to be of value as proof of payment. What strikes us is that this claim was never made during the administrative proceedings on the basis of the records.

Neither is there any proof of payment presented to this Court by petitioner. If payment was actually made, petitione could have presented the receipts of payment or presented either Alinsod, Maximo Calalang or Espiritu, to explain why the receipt of payment is no longer available. These transferees are accessible to her since Alinsod has the same address as petitioner, Maximo is her husband, and there is nothing to show that Espiritu can no longer be located.

Petitioner urges that the seizure was illegal because under Section 2209 of the Tariff and Customs Code a dwelling house may be entered and searched only upon warrant issued by a judge or justice of the peace upon sworn application showing probable cause and particularly describing the place to search and person or thing to be searched. We find no merit in this pretension. In the first place, the warrant is not for search but for seizure and detention. In the second place, no dwelling has been entered by the peace officers who served it because the automobile was not inside a dwelling when it was seized. Such a vehicle is hardly a thing that is kept inside a dwelling.

It is also urged that the agents of the National Bureau of Investigation who executed the warrant were not specially deputized by the Collector of Customs. There is nothing in the Tariff and Customs Code that requires a special form for deputizing officers generally empowered to effect arrests to effect seizure. Under Section 2207 of said Code, any person exercising police authority under the customs and tariff laws may demand assistance of any police officer when such assistance shall be necessary to effect search, seizure or arrest

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and it shall be the duty of any police officer upon whom such requisition is made to make such lawful assistance in the matter as may be required. The requisition may be made on the spot. At any rate, the authorities are to the effect that it is wholly immaterial who makes the seizure or whether they are duly authorized or not.

> . . . "It is settled that where property declared by a federal statute to be forfeited, because used in violation of federal law, is seized by one having no authority to do so, the United States may adopt the seizure with the same effect as if it had originally been made by one duly authorized. The Caledonian, 4 Wheat. 99/100/101, 4 L.Ed. 523; Taylor v. United States, 3 How. 197, 205, 11 L. Ed. 559. See United States v. One Studebaker Seven-Passenger Sedan /9 Cir./, 4 F. 2d 534."
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> The foregoing language was but a reaffirmance of the remarks of Storey, J., in Taylor v. United States, 3 How. 197, at page 205, 11 L. Ed. 559: "At the common law any person may, at his peril, seize for a forfeiture to the government, and, if the government adopts his seizure, and institutes proceedings to enforce the forfeiture, and the property is condemned, he will be completely justified. So that is wholly immaterial in such a case who makes the seizure, or whether it is irregularly made or not, or whether the cause assigned originally for the seizure be that for which the condemnation takes place, provided the adjudication is for a sufficient cause."
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> Justice Holmes expressed the same view in Dodge v. United States, 272 U.S. 530, at page 532, 47 S. Ct. 191, 71 L. Ed. 392, when discussing a proceeding to forfeit a motor boat for violation of the National Prohibition Act, the initial seizure of which was by police officers of the City of Providence who were not authorized to seize the liquor and vehicle under the Act. He said: "The owner of the property suffers nothing that he would not have suffered if the seizure had been authorized.

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> However effected it brings the object within the power of the Court, which is an end that the law seeks to attain, and justice to the owner is as safe in the one case as in the other. . . (United States v. Eight Boxes, etc., supra.)

Neither do we find merit in the pretension that the Collector of Customs of Manila has no authority to make seizures in Quezon City because the latter is not within his collection district. In answer to this claim suffice it to quote the following language of the Supreme Court:

> . . . It is of no moment where the introduction of the property subject to forfeiture took place. For to our mind, "(i)t is the right of an officer of the customs to seize goods which are suspected to have been introduced into the country in violation of the revenue laws not only in his own district, but also in any other district than his own." /Taylor vs. U.S. 44 U.S. (3 How.) 197, 11 L. ed. 559/. Any other construction of the Tariff and Customs Code, such as the one proposed by petitioner, would virtually place the Collector of Customs in a straitjacket and render inutile his police power of search and seizure, thereby frustrating effective enforcement of the measures provided in the Code to prevent and suppress smuggling and other frauds upon the customs. This we can not sanction by subscribing to petitioner's conclusion. The Code, as a revenue law, is to be construed to carry out the intention of Congress in enacting it and as would most effectively accomplish its objects (15 Am. Jur. 304). (Vierneza v. Comm. of Customs, G.R. No. L-24348, July 30, 1968; 24 SCRA 394-402.)

Finally, it is contended by petitioner that the compensating tax on the car in question does not constitute a lien thereon and that the right to collect the same has already prescribed. This argument is beside the point because the action of the Bureau of Customs here is not for collection of the taxes or duties on the imported article but for forfeiture under Section 2530 of the Tariff and Customs Code and there is no provision in said Code that provides for a prescriptive period for the same.

In Gibson vs. Chouteau, supra, the court said:

> "It is a matter of common knowledge that statutes of limitation do not run against the State. That no laches can be imputed to the King, and that no time can bar his rights, was the maxim of the common law, and was founded on the principle of public policy, that as he was occupied with the cares of government he ought not to suffer from the negligence of his officers and servants. The principle is applicable to all governments, which must necessarily act through numerous agents, and is essential to a preservation of the interests and property of the public. It is upon this principle that in this country the statutes of a State prescribing periods within which rights must be prosecuted are not held to embrace the State itself, unless it is expressly designated or the mischiefs to be remedied are of such a nature that it must necessarily be included. As legislation of a State can only apply to persons and things over which the State has jurisdiction, the United States are also necessarily excluded from the operation of such statutes."
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> In 25 Cyc., 1006, the rule, supported by numerous authorities, is stated as follows:
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> "In the absence of express statutory provision to the contrary, statutes of limitations do not as a general rule run against the sovereign or government, whether state or federal. But the rule is otherwise where the mischiefs to be

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remedied are of such a nature that the state must necessarily be included, where the state goes into business in concert or in competition with her citizens, or where a party seeks to enforce his private rights by suit in the name of the state or government, so that the latter is only a nominal party." (Government of P.I. v. Monte de Piedad, 35 Phil. 752.)

WHEREFORE, the decision of the Commissioner of Customs is hereby affirmed. With costs.

SO ORDERED.

Quezon City, February 12, 1975.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge

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