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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JAVIER SULAY, JULKANAIN ARA, JUMIL MOHAD, and JUL ANJAO,
Petitioners

Oct. 5, 1966

versus CTA CASE NO. 1127

THE COMMISSIONER OF CUSTOMS, and THE COLLECTOR OF CUSTOMS, JOLO, SULU,
Respondents

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D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs, dated March 29, 1961, affirming that of the Collector of Customs of Jolo, ordering the forfeiture of a "Paraw," 2 outboard motors, 2 sacks of MOP shells, 1 compass, and cash amounting to ₱4,956.00 for violation of Section 2530, paragraphs (a), (g), and (m-1) of the Tariff and Customs Code of the Philippines, Central Bank Circulars Nos. 55 and 60 and Executive Order No. 94, both in relation to Section 2530(f) of the same Code. This case has been submitted for decision solely on the basis of the records of the case submitted to this Court by the Bureau of Customs.

The facts are clearly stated in the decision of the Collector of Customs of Jolo, the pertinent portions of which read as follows:

> "On August 25, 1959, at about 10:00 o'clock A.M., RPS 'Sulu' (G-49), Philippine Navy, intercepted at vicinity, latitude 5 degree 53.0 minutes and longitude

118 degree 21.0 minutes, approximately 11.5 miles, South East of Taganak Island, Sulu, one (1) 'Paraw' (Banca) with 2 outboard motors of 35 HP each, manned by Javier Sulay, Julkanain Ara, Junil Muhat and Jul Anjao, all filipinos and residents of Jolo, Sulu, and found on board the 'Paraw', 2 sacks of MOP shells, which are prohibited for exportation without permit from the export control office and the Bureau of Commerce, and the above-mentioned sum of money in the possession of the above-named persons, also without permit from the Central Bank to bring out to a foreign country. The 'Paraw' was in the British water navigating toward and nearing the port of Sandakan, when overtaken by a speedboat of the RPS 'Sulu'. The Paraw and the persons including the shells and money were turned over to the customs authorities at Bongao for final disposition.

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"Ernesto dela Rama, Ens., Philippine Navy, Gunnery Officer, RPS 'Sulu', apprehending officer and prosecution witness, testified that on August 25, 1959, he was detailed as a patrol officer of the RPS 'Sulu's' speedboat patrolling the vicinity between Taganak, Turtle Island and Sandakan, North British Borneo; that the subject 'Paraw' was sighted by the lookout of his mother-ship, RPS 'Sulu', which was then about 9 miles south of Taganak, or about 3.5 miles within the British territorial water, proceeding towards Sandakan; that upon order of his Commanding Officer, he pursued the Paraw, and after 45 minutes of chasing, he overtook the Paraw; that he ordered this Paraw toward his mother ship for investigation; that in their investigation, it was discovered that one of the outboard motors was out of order; that the Paraw have no Philippine customs clearance to make trip to a foreign port, and that both the shells and the money were not covered by specific permit from the Philippine government to export the same to a foreign country.

"Javier Sulay, who claimed to be the leader of the persons operating the Paraw, testified that he and his companions were out on a business trip and for this purpose was on their way to Taganak, Turtle Island, from Tahao (Pearl Bank group) where they intended to buy turtle eggs for sale back in Jolo, from where they had originally come from; that on their way between Tahao and Taganak, at about midnight of August 24, 1959, one of their outboard motors broke down; that because it was dark and there was inclement weather, they thought it safer for them to also stop the other engine and allow themselves be drifted until daylight, because they were afraid that if the other outboard motor would also breakdown, they have no more way of guiding themselves to safety; that they could not repair the broken down outboard motor because it was dark, although he admitted that they had some spare parts for emergency; that they were carried by the current to the vicinity where they were apprehended; that the shells in their possession were bought by him and his companions in North Ubian, Sulu, which they also passed from Jolo; that they have no intention to go to Sandakan; that they did not secure customs clearance from Jolo when they left because they were only intending to navigate coastwise, and that, it was their belief that, their vinta being of less than 3 tons burden, it was exempted to such requirements." (See pp. 40-41, Customs rec.)

Of the issues raised by petitioners before the Commissioner of Customs, they pose to this Court only two, abandoning the rest. The first is mainly of fact; the second purely legal.

As regards the first issue, petitioners contend that the Commissioner erred in not giving credence to the version that they were not on the way to Sandakan, Borneo when they were intercepted by the Philippine Navy patrol but were merely drifted there by the current and the wind. This version appears in the testimony of petitioners Javier Sulay and Jul Anjao given before the Collector of Customs of the Port of Jolo. We do not find error in said finding.

Petitioners' version is amply belied by the testimony of Ernesto dela Rama, Ensign of the Philippine Navy, that appears to be straightforward and frank. His admission that they overtook the Paraw not in Philippine waters or in the high seas but in British waters is proof enough of candor. There is nothing in said testimony that can arouse suspicion or doubt in his credibility, and what is more, his motives are not impugned by petitioners. At the very least, his testimony is comfortably cloaked with the presumption of regularity in the performance of official duties and even on this score alone, he deserves full faith and credit. As against him, one can hardly prefer the two petitioners in point of veracity considering that by the very nature of things the latter can be assailed on the ground of interest.

Ensign Dela Rama's testimony that they saw petitioners' Paraw proceeding toward Sandakan and intercepting it after a long pursuit is more probable than petitioners' version that they were merely drifted by the current, strong winds and rough seas to British waters after one of their outboard motors went out of order in the stretch from Tahao to Taganak. If petitioners' story were true, normal instinct would have impelled them to proceed to Taganak with the remaining motor and seek shelter there, as generally done by sea-going vessels, instead of just drifting at the mercy of the turbulent sea. Again the report of the Weather Bureau shows that in the evening of March 24, 1959, the weather over the Turtle Islands and vicinity was fair with the wind from 3 to 5 knots and the sea smooth to slight.

Of course, petitioners consider it an error on the part of respondent Commissioner of Customs to take into consideration a report of the Weather Bureau because the same was not formally presented in evidence during the proceeding before him. Respondent Commissioner of Customs, acting administratively in review of the Collector's decision, is neither bound by the technical rules of evidence (Philippine Shipowners' Asso. vs. The Public Utility Commission, 51 Phil. 957; 20 Am. Jur. 36-37), nor constrained by technical rules as to the admissibility of proof (Interstate Commerce Commission vs. Baird, 194 U.S. 25; 48 L. ed. 860) and is free to fashion his own rules and procedure and to pursue methods of inquiry capable of permitting him to discharge his multitudinous duties (Federal Communications Commission vs. Pottsvile Broadcasting Co., 309 U.S. 134; 84 L. ed. 656). Then again, it seems significant that petitioners submitted their case on the bases of the proceedings before the Collector of Customs of Jolo and the Commissioner of Customs when they could have entered trial instead and presented their objection to said weather report before this Court or presented evidence to rebut same. Under these circumstances, we find no valid reason for disregarding said report. At any rate, even without said report, the evidence on hand sufficiently sustains respondents' finding of facts.

We now come to the question of whether or not the forfeiture of ₱4,956.00 in cash was abated by the alleged revocation of Central Bank Circular No. 60 and the adoption in 1962 by the government of the policy of decontrol. It is true that Central Bank Circular No. 136, dated January 30, 1962, revoked Central Bank Circular No. 37, as amended by Central Bank Circular No. 60 (see The Phil. Tax Journal, Vol. 7, p. 299), but such revocation did not have the effect of legalizing the exportation of coins or notes involved herein, the money in question having been attempted to be exported illegally while the circular was still in force.

> "Moreover, even granting arguendo, that Central Bank Circular No. 44 has been repealed by Circular No. 133, the validity of the forfeiture under the old circular is not affected by its repeal, the merchandise in question having been imported illegally while it is still in force. The expiration of Central Bank Circular No. 44 did not have the effect of legalizing an importation of goods which was illegal at the time of importation." (Litton & Co., Inc. v. Comm. of Customs, CTA Case 784, Oct. 30, 1963, and cases cited therein.)

> "Even assuming that Central Bank Circular No. 133 had the effect of repealing impliedly Central Bank Circulars Nos. 44 and 45, such repeal, however, cannot have

> the effect of abating the forfeiture case instituted against petitioner for the simple reason that forfeiture proceedings are civil in nature and not criminal. In this sense, the repeal cannot be given any retroactive effect." (Bienvenido Capulong v. The Acting Commissioner of Customs, G.R. No. L-2299, May 19, 1966.)

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

SO ORDERED.

QUEZON CITY, October 5, 1966.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge