REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BROADWAY & CO., HONGKONG,
Petitioner,

Feb. 15, 1971

- versus -

C.T.A. CASE No. 1956

COMMISSIONER OF CUSTOMS
JUAN PONCE ENRILE,
Respondent.

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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 September 14, 1967, which affirms the decision of the Collector of Customs dated December 14, 1966, decreeing the forfeiture of a shipment consisting of 56 cases of goods claimed by petitioner as shipper for violation of Section 2530(m)(4) of the Tariff and Customs Code.

From the stipulation of facts submitted by the parties, it appears that petitioner is the shipper-claimant of fifty-six (56) cases of goods, marked "LTC" and described as "Dried Fruits" in the inward foreign manifest and bill of lading, which arrived at the Port of Manila from Hongkong on board the S/S Buko Maru on October 21, 1966. Said inward foreign manifest and bill of lading show that the goods were consigned to Luzon Trading Corporation, which had the absolute option to tranship (the goods) to Pokshand, Bangkok, Thailand. On October 20, or prior to the date of arrival of the said cargo, the alleged consignee wrote a letter to the

Collector of Customs for Manila expressing its desire to exercise the option of transhipping the aforesaid cargo to Bangkok and requesting permission to tranship the same. On the day of the goods' arrival at the Port of Manila, Collector of Customs José Viduya approved the request of consignee, on the basis of which the Chief of the Marine Division of the Bureau of Customs issued a permit granting to the consignee permission "to load on board M/V LINDOS FIFTY SIX (56) CASES DRIED FRUITS, s.s. BUKO MARU from Hongkong, Reg. No. 1634 and presently discharged at Pier 5, TRANSIT CARGO FOR POKSHAND, BANGKOK." Barge L-21 was hired for the purpose of unloading the same on another vessel, the M/V Lindos. Because the cargo could not be immediately located (it was said that they were at the bottom of the hatch of the S/S Buko Maru), the barge left on the morning of October 22 without being able to unload the said cargo. On the same day, the M/V Lindos, on which the cargo was to be loaded, left Manila.

The next day, or on October 23, the M/V Tedera was hired to transfer the cargo to the M/V Pres. Roxas. Consequently, on October 24, the cargo was unloaded from the S/S Buko Maru into the barge M/V Tedera, but the operator refused to load it on the M/V Pres. Roxas because the transfer permit called for the transfer of the goods from the S/S Buko Maru to the M/V Lindos. Because of this refusal, one Jose Villanueva, a representative of petitioner, proposed that the transhipment papers be changed to export papers and the cargo loaded on the M/V Pres. Roxas to facilitate its transhipment. Meantime, Attys. Alfredo Singson and Cesar Abogado, lawyers of petitioner, had the transfer permit amended so as to indicate the transfer of the cargo to the M/V Pres. Roxas. Accordingly, Mr. Candido Casimiro, a clerk in the Marine Division of the Bureau of Customs amended the permit. But before the cargo could be loaded, on suspicion of the NBI that said cargo contained narcotics or contraband, it was examined upon their request. The combined team of NBI and Customs agents, who conducted the examination, found the cargo to consist of human hair and mongo beans.

On October 27, or three days from the unloading from the S/S Buko Maru, the Collector of Customs seized and detained the cargo for violation of Section 2530(g) of the Tariff and Customs Code.

During the hearing of the seizure case, the charge against the cargo was amended by the Government prosecutors to violation of Section 2530(m)(4) of the same Code. In said hearing, the reason given why the petitioner described the cargo as dried fruits is to keep the "human hair" a trade secret in order that other traders and businessmen may not imitate the business, thereby preventing exposure of the profitability of the commodity. On December 14, 1966, the Collector of Customs decreed the forfeiture of the cargo. On appeal, the decision of the Collector of Customs was affirmed by respondent Commissioner of Customs in his decision dated September 14, 1967. Hence, this appeal.

During the pendency of this case in this Court, petitioner sought the release of the goods for transhipment upon the filing of a bond which was granted by this Court in its orders dated October 11, 1968 and December 26, 1969. However, before the goods could be released under the bond filed by petitioner (Surety Bond No. G(16)0188 of R and B Surety & Insurance Co., Inc.), said orders were appealed by certiorari to the Supreme Court which annulled the said orders of this Court. (See Geotina v. Broadway & Co., G.R. No. L-30077, Jan. 30, 1971.)

The two (2) issues presented for adjudication by this Court are as follows:

(a) Whether or not the cargo in question is a transit cargo; and

(b) Whether or not said cargo is subject to forfeiture under Section 2530(m)(4) of the Tariff and Customs Code.

With respect to the first issue, petitioner contends the affirmative because the destination of the goods is Pokshand, Bangkok and they are not intended to be imported into the Philippines. Respondent, however, contends otherwise. He argues that the acts of obtaining a shipping order to load the cargo on the M/V Pres. Roxas, which was allegedly bound for Los Angeles, U.S.A. and the taking of a circuitous route to Bangkok via Manila negate the claim that the goods were destined to Bangkok. To quote from the memorandum of counsel for respondent:

> The record of the case of this Honorable Court discloses that the 56 cases are not transit cargoes and the reason is not hard to find. If the intention of the herein petitioner was really to tranship the goods to Bangkok we now ask the question, why did the owner have to ship them to Manila when it could have just as well shipped them directly to Bangkok? The record further shows that a shipping order was obtained to load the 56 cases on the M/V Pres. Roxas" which was not bound for Bangkok but for Los Angeles, U.S.A. Moreover, the very act of the petitioner and/or his representative in taking the alleged circuitous route via Manila of shipping the goods to Bangkok negates the exercise by the consignee (Luzon Trading Corp.) of its alleged "option to tranship to Pokshand, Bangkok" the questioned 56 cases. All these certainly indicate bad faith on the part of petitioner. It may not be out of kilter to state in this connection, that the cargo of human hair came from the Chinese mainland and, in order to enter the U.S., (Los Angeles, Calif.) the transhipment gimmick was resorted to in order to make it appear that the goods had originated from the Philippines. The first issue therefore falls on its own weight.

We are fully in agreement with the finding of respondent. The bill of lading itself shows that the consignee is Luzon Trading Corporation, Manila, which had "absolute option to tranship to Pokshand, Bangkok." Undoubtedly, there was an intention to import said goods into the Philippines. Mere intention to import goods in violation of Customs Laws justifies seizure and forfeiture of such goods if they should come within the jurisdictional limits of the Philippines.

As to the second issue, we are of the opinion that the facts of record clearly show that the goods in question were sought to be imported in violation of Section 2530(m)(4) of the Tariff and Customs Code and the forfeiture thereof is valid. It is undisputed that said goods were declared as "dried fruits" when in fact they consisted mainly of human hair and two cases of mongo. It is alleged, however, that -

> It is usual and common practice for international traders not to reveal the true contents of valuable cargoes for certain justified reasons, to wit: to perpetuate the profitability of business ventures which involve products that are not common in the world market by keeping the contents of the shipment a trade secret, and to protect the shipment from pilferage especially when the cargo is valuable and insurance coverage is not sufficient or when the cargo is not insurable or insurance companies refuse to take the risk of insurance.[1]

It is our opinion that the necessity of keeping trade secrets does not justify falsification of shipping documents required in connection with goods imported from abroad.

For the foregoing considerations, the decision appealed from is hereby affirmed.

In connection with the surety bond for ₱260,000.00 (R & B No. G(16)0188, dated Oct. 30, 1968) filed by peti-

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[1] Page 14, Memorandum of counsel for petitioner.

tioner with R & B Surety & Insurance Co., Inc., as surety, it is hereby ordered that the same be cancelled and returned to the surety, in line with the decision of the Supreme Court in G.R. No. L-30077, January 30, 1971.

SO ORDERED.

Quezon City, February 15, 1971.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge