REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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M/V "DON MARTIN" VOY 047 and its cargoes of 6,500 sacks of Imported Rice, PALACIO SHIPPING, INC. and LEOPOLDO "JUNIOR" PAMULAKLAKIN,
Petitioners,

- versus -

C.T.A. CASE NO. 5890

HON. SECRETARY OF FINANCE, DEPARTMENT OF FINANCE, BUREAU OF CUSTOMS, and the DISTRICT COLLECTOR OF CUSTOMS OF CAGAYAN DE ORO CITY,
Respondents.

Promulgated:

MAY 22 2001

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DECISION

The case at bar seeks (1) the nullification of the decision rendered by the Deputy Commissioner of Customs dated April 19, 1999 which ordered the forfeiture in favor of the government the subject cargoes consisting of 6,500 sacks of rice for violation of Section 2530 (f) and (l) of the Tariff and Customs Code of the Philippines and (2) the nullification of the decision of the Secretary of Finance which likewise ordered the forfeiture of the carrying vessel "M/V DON MARTIN," for violation of Section 2530 par. (a), and (k) of the same Tariff and Customs Code of the Philippines (TCCP), as amended.

As represented, Petitioner PALACIO SHIPPING, INC., is a corporation duly organized and existing by virtue of the laws of the Republic of the Philippines and is the owner of the subject vessel namely "M/V DON MARTIN," with office address at corner Mabini and Zulueta Streets, Cebu City, while Petitioner LEOPOLDO "JUNIOR" PAMULAKLAKIN is a Filipino of legal age, and is the consignee/claimant of the subject cargo consisting of 6,500 sacks of rice, with postal address at # 735 Banal St., Gagalangin, Tondo, Manila.

On January 25, 1999, M/V "DON MARTIN," a vessel of Philippine registry arrived in the Port of Cagayan de Oro, with the subject cargo of 6,500 sacks of rice.

Acting on an intelligence report that the sacks of rice were smuggled, the operatives of the Economic Intelligence and Investigation Bureau (EIIB) and the Bureau of Customs apprehended and seized both the vessel and its cargo of 6,500 sacks of rice on January 26, 1999. Thereafter, a Warrant of Seizure and Detention (WSD) was issued by the District Collector of Customs of Cagayan de Oro against the vessel and its shipment for violation of Section 2530 (a), (f), (k) and (l) of the TCCP.

The said seizure case was heard before the District Collector of Customs, Port of Cagayan de Oro, docketed as Seizure Identification No. 03-99.

On March 24, 1999, Ms. Marietta Z. Pacasum, the District Collector of Customs of the Port of Cagayan de Oro, rendered a decision on the above seizure case, ordering the forfeiture of the subject shipment consisting of 6,500 sacks of rice and the release of the vessel for insufficiency of evidence, the dispositive portion of which states, to wit:

> "**WHEREFORE**, in the light of the foregoing and by virtue of the authority vested in the undersigned under Section 2312 of the Tariff and Customs Code of the Philippines, as amended, it is hereby ordered and decreed that the 6,500 sacks of imported rice subject of this seizure proceedings be, as they are hereby decreed forfeited in favor of the Government of the Republic of the Philippines to be disposed of in the

> manner provided by law. It is further ordered and decreed that the carrying vessel **M/V "DON MARTIN"** be released to the owner/claimant and be cleared for its next destination, for insufficiency of evidence."

The said decision was appealed by Leopoldo "Junior" Pamulaklakin to the Commissioner of Customs on March 26, 1999.

On April 19, 1999, Deputy Commissioner Emma M. Rosqueta, by the authority of the Commissioner of Customs, affirmed the aforesaid decision of the District Collector of Customs of the Port of Cagayan de Oro, the decretal portion of her decision states, to wit:

> "**WHEREFORE**, the decision of the District Collector of Customs, Port of Cagayan de Oro, ordering the forfeiture of the 6,500 sacks of rice discharge/seized from the **M/V "DON MARTIN"** is **AFFIRMED**. It is further ordered and decreed that the said rice be immediately disposed of in accordance with law."

On May 11, 1999, Respondent Secretary of Finance reversed the decision of the Deputy Commissioner of Customs as regards the release of the carrying vessel "M/V DON MARTIN," thus:

> "Respectfully returned to the Acting Commissioner of Customs, Port Area Manila, the within records of S.I. No. 03-99, PALACIO SHIPPING INC. and LEOPOLDO "JUNIOR" PAMULAKLAKIN, CLAIMANTS, with respect to MV "Don Martin," Voy 047 and its cargoes of 6,500 sacks of rice.
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> The District Collector of Customs decreed the forfeiture of the 6,500 sacks of imported rice in favor of the Government but ordered the release of the carrying vessel MV "Don Martin" for insufficiency of evidence. This decision was affirmed by the Deputy Commissioner of Customs. Pursuant to Sec. 2313 of the TCCP, the decision with respect to the order to release MV "Don Martin" is subject to automatic review by this Department.
>
> Upon review of the facts and supporting documents, we find that the operator of the vessel is the shipper of the smuggled goods. We cannot thus agree with the decision of the Bureau of Customs.

> Premises considered, the decision of the Collector of Customs concerning the order to release the MV "Don Martin" is hereby reversed and set aside pursuant to Section 2530 (a) and (k) of the TCCP."

Consequently, on June 21, 1999, Petitioners filed with this Court the instant Petition for Review.

In a resolution promulgated on November 8, 1999, the vessel "M/V DON MARTIN" and its cargo consisting of 6,500 sacks of rice were ordered released by this Court to Petitioners, after the latter posted a GSIS Surety Bond in favor of the Bureau of Customs in the total amount of P12,232,000.00.

On January 7, 2000, the parties filed a "Joint Motion and Manifestation to Submit Memorandum and the Case for Decision," in lieu of the Pre-trial and Formal Trial.

On March 2, 2001, the case was submitted for decision based on the records and pleadings, *sans* the memorandum of the Respondents.

In assailing the legality of the forfeiture, Petitioners averred that Respondents committed reversible errors when they declared (1) that the subject vessel M/V "DON MARTIN" be forfeited in favor of the government for violation of Section 2530 (a) and (k) of the Tariff and Customs Code of the Philippines (TCCP) and (2) that the subject cargo of 6,500 sacks of rice be forfeited in favor of the government despite the testimonial and documentary evidence of Petitioners indisputably showing that the same was produced and acquired locally.

Petitioners contend that the government miserably failed to prove with sufficient definiteness the specific legal wrong that was committed by them. They argued that the vessel M/V "DON MARTIN" is a common carrier as shown by its Coastwise License

(Annex D, p. 25 docket), thus, it is not liable to forfeiture pursuant to Section 2530 (a) of the TCCP. They further declared that the case against the vessel is bereft of any proof to create a *prima facie* presumption that the same is subject to forfeiture under Section 2531 of TCCP, as there was no showing that the vessel had been used for smuggling at least twice before, or that the owner is not generally in the business for which conveyance is used; and that the owner is not financially in a position to own such vessel. Hence, they articulated that the Secretary of Finance could not have validly justified his decision ordering the forfeiture of the carrying vessel M/V "DON MARTIN" in favor of the government. Moreover, Petitioners argued that no positive evidence was presented to solidify the government's allegation that the shipment of rice was imported except the findings of the National Food Authority, Region X, that the same "resembles NFA imported rice," thus, said conclusion was based only on physical attributes and therefore not conclusive so as to warrant the forfeiture of the said shipment. Petitioners said that the pertinent documentary evidence they submitted to the District Collector of Customs, Port of Cagayan de Oro, consisting of the Mintu Rice Mill Official Receipt; NFA Clearance, Sablayan, Occidental Mindoro; NFA Clearance, Catbalogan, Western Samar; Philippine Ports Authority Seal; Coast Guard Seal; Bill of Lading; Coastwise Manifest, among others, clearly show that the shipment of rice was not of foreign origin but were produced, milled and acquired locally, thus, the government failed to establish a probable cause for the seizure and forfeiture of the vessel and cargo. Hence, they prayed that the decision contained in the Third Indorsement dated May 11, 1999 issued by the Secretary of Finance and the decision of Deputy Commissioner Rosqueta dated April 19, 1999 be reversed and set-aside and that the subject cargo consisting of 6,500 sacks of rice and the carrying vessel be ordered released.

On the other hand, Respondents demur and maintain that both the vessel M/V "DON MARTIN" and its cargo of 6,500 bags of rice are forfeitable under the provision of the TCCP, as amended, particularly Sections 2530 paragraphs (a) (f) (k) and (l) thereof.

Respondents reiterated their stance embodied in the decision of the District Collector of Customs, Port of Cagayan de Oro, dated March 24, 1999 and the decision of the Secretary of Finance dated May 11, 1999, pertinent portions of these two decisions are hereinbelow quoted, thus:

A.) Decision of the District Collector of Customs

> "The results of Laboratory Analysis of samples of the subject rice by the NFA and the Philippine Rice Institute reveal that the grain length is unusually long with 7.2 mm. for both Orion and Platinum 2000 rice samples as compared to the grain length of most Philippine Varieties which ranges from 5.8 to 6.9 mm. only. It was also found out that rice with grain length of more than 7.0 mm. are more common in the countries of Brazil, Bolivia, Guatemala and Thailand, (Exhibit "J-3" and "K-1"), although the said imported variety could be purchased locally through the NFA.
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> Furthermore, it also appears that some white sacks/containers were marked with Premium Rice whereas per Philippine Grains Standardization, yellow color is for premium while white color is for ordinary rice. (Exhibit I).
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> On the basis of the above findings, it can be safely concluded that the 6,500 sacks of rice subject of this proceedings are of foreign origin and therefore subject to seizure and forfeiture for violation of Section 2530 (f) and (l) No. 1 of the TCCP, as amended, in the absence of showing of its lawful entry into the country. The presentation of the supporting documents by respondents/claimants was a strategy to conceal the true nature and origin of the cargoes and to mislead the Customs

Authorities into believing that subject rice are locally produced and locally purchased. Hence, said documents have no probative value whatsoever in so far as the subject cargoes are concerned.

Section 2530 provides: Property Subject to Forfeiture Under Tariff and Customs Law. x x x

(L) Any article sought to be imported or exported:

1. Without going through a Customhouse, whether the act was consummated, frustrated or attempted.

Since the subject rice was established to be of the imported variety and considering that the said cargoes are not covered by proper import documents, the importation of the same fall squarely on the above quoted provision of the TCCP."

B.) Decision of the Secretary of Finance

"Upon review of the facts and supporting documents, we find that the operator of the vessel is the shipper of the smuggled goods. We cannot thus agree with the decision of the Bureau of Customs.

Premises considered, the decision of the Collector of Customs concerning the order to release the M/V "Don Martin" is hereby reversed and set aside pursuant to Section 2530 (a) and (k) of the TCCP."

Thus, the issue that comes to fore for our resolution is WHETHER OR NOT THE VESSEL M/V "DON MARTIN" AND ITS SHIPMENT OF RICE ARE LIABLE TO FORFEITURE FOR VIOLATION OF SECTION 2530 PAR. (a) (f) (k) AND (l) OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, which pertinently provides as follows:

"**SEC. 2530**. *Property Subject to Forfeiture Under Tariff and Customs Law.* – Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture.

a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and/or transporting contraband or smuggled articles in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft or any other craft to forfeiture: Provided, That the vessel, or aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;

x x x

f. Any article the importation or exportation of which is affected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or exportation of the former;

x x x.

k. Any conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws, with its equipage or trappings, and any vehicle similarly used, together with its equipage and appurtenances including the beast, steam or other motive power drawing or propelling the same. The mere conveyance of contraband or smuggled articles by such beast or vehicle shall be sufficient cause for the outright seizure and confiscation of such beast or vehicle, but the forfeiture shall not be affected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or his agent in charge thereof at the time, has no knowledge of the unlawful act;

l. Any article sought to be imported or exported.

(1) Without going through a customhouse, whether the act was consummated, frustrated or attempted;
(2) By failure to mention to a customs official, articles found in the baggage of a person arriving from abroad;

> (3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;
> (4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such articles; and
> (5) Through any other practice or device contrary to law by means of which such articles was entered through a customhouse to the prejudice of the government."

The facts and circumstances borne by the evidence adduced in the seizure proceedings before the District Collector of Customs, Port of Cagayan de Oro, led this Court to an ineluctable conclusion that the seizure and detention of the carrying vessel M/V "DON MARTIN" and its cargo of rice was done without legal bases.

Jurisprudence is replete with cases which held that in order that a shipment be liable for forfeiture, it must be proved that fraud has been committed by the consignee/importer to evade the payment of the duties due. This is clear under Section 2530 (f) and (l) of the TCCP. To establish the existence of fraud, the *onus probandi* rests on the Respondents who ordered the forfeiture of the shipment of rice and its carrying vessel M/V "DON MARTIN."

In the case at bar, Respondents did not bother to prove before this Court the presence of the element of fraud in the alleged importation of the subject cargo of rice. They merely submitted the case for decision based on the records and pleadings *sans* their memorandum and nothing more. It is not amiss to point out that cases brought before this Court are litigated *de novo*, meaning the parties are expected to adduce evidence in support of their respective positions. This particular observation brings special relevance when we take into account the nature of the instant petition, which is one involving forfeiture. The Supreme Court, in several decisions, has ruled that fraud is never presumed, thus:

> "Fraud is never presumed. It must be proved (*Republic vs. Ker and Company, Lt., L-21609, Sept. 26, 1966*). Failure of proof of fraud is a bar to forfeiture. The reason is that "forfeitures are not favored in law and equity (*Yu Phi Kim vs. Amparo, 86 Phil. 441, 446*)." [*Farm Implement and Machinery Co. vs. Commissioner of Customs, 24 SCRA 905*]
>
> Applying subparagraph (5), fraud must be committed by an importer/consignee to evade payment of the duties due, We support the stance of the Court of Tax Appeals that the Commissioner of Customs failed to show that fraud had been committed by the private respondent. The fraud contemplated by law must be actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right. (*Hon. Farolan, Jr. vs. Court of Tax Appeals, 217 SCRA 298*).

The Special and Affirmative Defenses of the Respondents generally averred that the subject 6,500 bags of rice are of imported variety which are not covered by proper import documents, hence should be declared forfeited in favor of the government.

We do not agree. The said ratiocination of Respondents did not clearly indicate any actual commission of fraud or any attempt or frustration thereof. As defined, actual or intentional fraud consist of deception willfully and deliberately done or resorted to in order to induce another to give up some right (*Hon. Farolan, Jr. vs. Court of Tax Appeals, 217 SCRA 298*). It must amount to intentional wrong-doing with the sole object of avoiding the tax. (*Aznar vs. Court of Tax Appeals, 58 SCRA 543*).

The circumstances presented by the Respondents in their Answer do not reveal to us any kind of deception committed by Petitioners. Such circumstances are nothing more than mere half-baked premises that fail to support the proposition sought to be established which is the commission of fraud in accordance with Section 2530 (f) and (l) of the TCCP, as amended.

As correctly pointed out by Petitioners, the government miserably failed to prove the legal wrong committed by them and that the allegations of the government are simply replete with vague and baseless assumptions. The documentary evidence adduced by Petitioners during the seizure proceedings, such as the Mintu Rice Mill Official Receipt, NFA Clearance, Bill of Lading, Coastwise Manifest, among others, were uncontroverted, thus, sufficient enough to hold that the subject rice was not of foreign origin but locally sourced.

The Court is in total acquiescence with the argument of Petitioners that it is *non sequitur* to conclude that the subject rice was imported simply because its grain length is more common in other foreign countries. **Firstly**, the said laboratory analysis by both the NFA and Philippine Rice Research Institute are not conclusive. In fact, the Head of the Rice Chemistry and Food Science Division of the Philippine Rice Research Institute, Mr. James Patindol, **admitted that it is premature to conclude that the samples are indeed imported by simply relying on the grain length** (Annex "H"). **Secondly**, these inconclusive findings do not and cannot overcome the documentary evidence of Petitioners that show that said rice was produced, milled and acquired locally. And **thirdly**, at the time the vessel M/V "DON MARTIN" and its cargo of rice were seized on 26 January 1999, the agents of the EIIB and the Bureau of Customs never had a probable cause that would warrant the filing of the seizure proceedings. The Government agents only made their inquiries about the alleged smuggling only three (3) days after the seizure. This is a gross violation of Section 2535 in relation to Section 2531 of the Tariff and Customs Code of the Philippines which provides that:

> "**Sec. 2535**. *Burden of Proof in Seizure and/or Forfeiture.* – In all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provisions of the tariff and customs laws, the burden of proof shall lie upon the claimant: ***Provided, That probable cause shall be first shown for the institution of such proceedings and that the seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding sections of this Code."***

Unfortunately, the Government failed to establish a probable cause for the seizure and/or forfeiture of the subject vessel and cargo. As in this case, no reasonable ground of presumption exists that a charge is well founded and that the seizure and/or forfeiture proceeding was made under the conditions and along the lines mentioned in Sections 2531, 2532 and 2534 of the Tariff and Customs Code of the Philippines.

Thus, the bare and feeble justification of the Respondent cannot stand against the positive documentary evidence of Petitioners. As such, the forfeiture proceedings should be set aside for being patently illegal for having been issued without factual and legal basis.

Finally, in view of the above findings of this Court, we likewise rule that the forfeiture of the vessel M/V "DON MARTIN" was merely based on presumptions and conjectures which could not stand judicial scrutiny.

IN THE LIGHT OF ALL THE FOREGOING, the decisions of the Respondents are hereby **REVERSED** and **SET ASIDE**. Accordingly, the GSIS Surety Bonds in the total amount of P12,232,000.00, which were earlier posted by Petitioners for the release of the subject cargo of rice and its carrying vessel are hereby **ORDERED RELEASED** for reasons aforestated. No costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge