REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PASIG STEVEDORING COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 2509

THE COMMISSIONER OF CUSTOMS,
Respondent.
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D E C I S I O N

This is an appeal by petitioner from the decision of respondent Commissioner of Customs dated January 12, 1975, declaring the lighter "Pasigan II" forfeited in favor of the government, modifying the decision of the Collector of Customs dated January 20, 1970, which earlier imposed upon petitioner an administrative fine of ₱10,000.00 for alleged violation of Sections 906 and 907, in relation to Section 2521, of the Tariff and Customs Code of the Philippines, after finding on board said lighter 94½ cases of untaxed blue seal Fortune cigarettes.

There is no dispute as to the facts of this case. The records and pleadings of this case show that sometime on May 6, 1970, the tugboat "Marinero" left Limay, Bataan towing lighters "Pasigan II" and "Pasigan IV" for Bacolod City, loaded with fertilizers, arriving at the Port of Bacolod City on May 10, 1970. After unloading said fertilizers for about fifteen (15) days at Bacolod City, the tugboat and lighters proceeded to Cotabato arriving thereat on May 29, 1970. These two lighters "Pasigan II" and "Pasigan IV" were thereafter towed by another launch, the "Marinero" of a certain Pablo Co, of the Comart

Warehouse to a place on the Cotabato river to load corn in bulk. The loading of the aforementioned bulk of corn was done under the supervision of Mr. Pablo Co who was the consignee of the corn and owner of the said Comart Warehouse. Mr. Pablo Co was also the charterer of the lighter "Pasigan II", which is owned by the Philippine Reparations Commission and the petitioner herein is the end user thereof. (pp. 5-16, T.s.n. Hearing of November 17, 1978; see also Exhs. "E" and "E-1" pp. 58 - 59, CTA. rec., respectively.) It also appears from the Certificate of Ownership and Certificate of Philippine Register of the said lighter "Pasigan II" that it has a tonnage of 309.88 gross tons and 299.65 net tons. (Exhs. "E" and "E-1", ibid.)

After loading the bulk of corn on the aforesaid lighters, the said tugboat towed said lighters "Pasigan II" and "Pasigan lV", from Cotabato bound for Manila on June 3, 1970. Enroute, at about 10:30 P.M. of June 10, 1970, while nearing Manila Bay and cruising somewhere in the vicinity of Caballo Island, near Corregidor, a combined element of Philippine Coast Guard and Custom Police intercepted the aforesaid tugboat and lighters and brought the same to Pier 8, North Harbor in Manila. Upon inspection the following day, there was discovered on board the "Pasigan II" 94½ cases of blue seal Fortune cigarettes, each case contained 50 cartons.

Consequently, the crew members were investigated and an Administrative Case VV-562/70 (Customs Case, No. 71-13) was instituted against the tugboat "Marinero" and lighters "Pasigan II" and "Pasigan lV" for violation of Sections 906 and 907, in relation to Section 2521 of the Tariff and Customs Code. Consequently, the lighter "Pasigan II" was impounded. Subsequently, however, the said lighter was released after the end-user, petitioner herein, executed a surety bond in favor of the government to guarantee the payment of fines, expenses and costs and/or guarantee the production and turnover of said lighter to the proper authorities whenever required in connection with the outcome of the case.

After the administrative hearing, the Collector of Customs rendered a decision dated January 30, 1970, imposing an administrative fine in the amount of ₱10,000.00 against the lighter "Pasigan II" under Section 2521 of the Tariff and Customs Code.

Unsatisfied by the decision of the Collector of Customs, the government appealed to the Commissioner of Customs, who, on January 12, 1973, rendered a decision modifying the decision of the

Collector of Customs by decreeing that the lighter "Pasigan II" be forfeited in favor of the government, pursuant to the provisions of Section 2530 (b) of the Tariff and Customs Code.

From the decision of the Commissioner of Customs, petitioner appealed to the Court of Tax Appeals on April 12, 1973. Petitioner presented only one witness, one Antonio B. Magtibay, and several exhibits were admitted as evidence of petitioner, after which petitioner rested its case. On the other hand, respondent rested his case by submitting the same for decision on the basis of pleadings and the Customs record.

The only issue in this case is whether or not the lighter "Pasigan II" is subject to forfeiture for violation of Section 2530 (b) of the Tariff and Customs Code, or only for an administrative fine as provided in Sections 906 and 907, in relation to Section 2521 of the same Code, which provision of law read as follows:

> SEC. 906. Requirement of Manifest in Coastwise Trade. - Manifests shall be required for cargo and passengers transported from one place or port in the Philippines to another only when one or both of such places is a port of entry.
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> SEC. 907. Manifest Required Upon Departure from Port of Entry. - Prior to departure from a port of entry, the master of a vessel licensed for the coastwise trade shall make out and subscribe duplicate manifests of the whole of the cargo and all of the passengers taken on board such vessels, specifying in the cargo manifests the marks and numbers of packages, the port of

destination, and names of the consignee, together with such further information as may be required, and in the passenger manifests, the name, sex, age, residence, port of embarkation, and destination of all passengers, together with such further information as may be required. He deliver such manifests to the Collector, or other customs officials duly authorized, before whom he shall swear to the best of his knowledge and belief, in respect to the cargo manifests, that the goods therein described, if foreign, were imported legally and that the duties, taxes and other charges thereon have been paid or secured, and in respect to the passenger manifests, that the information therein contained is true and correct as to all passengers taken on board. Thereupon, the said Collector, or customs official, shall certify the same on the manifests, the original of which he shall return to the master with a permit specifying thereon, generally, the lading on board such vessel, and authorizing him to proceed to his port of destination, retaining the duplicates.

SEC. 2521. <u>Failure to Supply Requisite Manifests</u>. - If any vessel or aircraft enters or departs from a port of entry without submitting the proper manifests to the customs authorities, or shall enter or depart conveying unmanifested cargo other than as stated in the next preceding section hereof, such vessel or aircraft shall be fined in a sum not exceeding ten thousand pesos.

The same fine shall be imposed upon any arriving or departing vessel or aircraft if the master or pilot in command shall fail to deliver or mail to the Auditor General a true copy of the manifest of the incoming or outgoing cargo, as required by law.

SEC. 2530. <u>Property Subject to Forfeiture Under Tariff and Customs Law</u>. - Any vessel or aircraft, cargo articles and other objects shall, under the following conditions be subject to forfeiture:

x x x x x x x x x

(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.

Apparently, petitioner admits that the lighter "Pasigan II" violated Sections 906 and 907 in relation to Section 2521 of the Tariff and Customs Code because at the time of the apprehension, said lighter was loaded with contraband items consisting of 94½ cases of blue seal Fortune cigarettes. However, petitioner claims that the correct penalty to be imposed against the lighter "Pasigan II" should merely be an administrative fine and not forfeiture. (see Prayer portion of petitioner's memorandum, p. 89, CTA rec.) This assertion is predicated on the claim that "Pasigan II" was chartered by one Mr. Pablo Co for the purpose of loading and transporting corn, and that such loading and transporting thereof was under the direct supervision of said charterer, and such, it had no previous knowledge of the loading of said contraband goods (blue seal Fortune cigarettes) on board the "Pasigan II". On the other hand, respondent insists that the correct penalty should be the forfeiture of the lighter, as provided for in Section 2530 (b), of the Tariff and Customs Code.

We agree with petitioner's contention that the correct penalty to be imposed against the lighter "Pasigan II" should only be an administrative fine and not forfeiture. As can be gleaned from the records of the case, the vessel was chartered by one Pablo Co, (pp. 5 & 6, t.s.n., Hearings of May 24, 1977 and November 17, 1978, respectively; see also Decision, Collector of Customs, January 20, 1970.) and the loading of the bulk of corn at his Comart Warehouse was directly under his supervision. There is nothing appearing in the records which will show that petitioner had any previous knowledge that the said contraband goods were to be loaded in the lighter "Pasigan II". On the contrary, the evidence points to the fact that petitioner had exerted utmost effort to stop any and all smuggling activities, as shown by its own rules and regulations (Exh. "D", p. 21, Customs rec.), and there was no evidence purportedly showing that the officers and crew members were involved in the smuggling of the subject contraband cigarettes. We think that in order to justify the forfeiture of a vessel, it must be shown that the owner or the end user of the vessel had a previous knowledge of the illegal use of its vessel. While it is true that an action for forfeiture is considered an action in rem, this, however, does not mean that the vessel can be forfeited, notwithstanding the innocence or lack of knowledge of the owner or end user of the wrongful use of its vessel. Besides, it appears that the lighter "Pasigan II" has only a tonnage of 309.88 gross tons and 299.65 net tons, and as such, it could not be the subject of forfeiture pursuant to paragraphs (a) and (b) of Section 2530 of the Tariff and Customs

Code because under the said provisions of law, only vessels which are not common carriers of less than thirty (30) tons capacity used unlawfully or illegally in the importation and exportation, or in conveying and/or transporting of contraband or smuggled articles can be the subject of forfeiture.

In the case of Pitao Lim Eng vs. The Commissioner of Customs, CTA Case No. 2859, August 29, 1977, this Court held:

> "It seems logical to presume that the reason why there is such a proviso exempting common carriers from forfeiture is to protect the innocent owners thereof when such carriers are used as conveyances for smuggling purposes, ostensibly without their actual knowledge, and to safeguard the interest of the riding public by preventing the tonnage reduction of vessels employed in the maritime service and engaged in the transport of passengers and cargo on account of possible forfeiture. We believe that a vessel, which was chartered common carrier, cannot be legally forfeited if there was lack of knowledge of the owner of the illegal use of his vessel. For would it not be clearly unjust if, notwithstanding that there is no evidence of the owner's participation in the illegal act or knowledge of the illegal use of his vessel, the said vessel will still be forfeited to the Government? The injustice will be much more real if the vessel that he owns, which may perhaps costs hundreds of thousands or even millions of pesos, will be forfeited due merely to the act of a commuter or passenger, or the captain or crew members of said vessel, of carrying and loading on the vessel prohibited articles for either importation or exportation purposes.
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> "One will clearly note that from the evidence and record of this case, the owner of the vessel in question never was a privy

to the illegal act of exporting the refined sugar which was loaded by the charterer, Hassinan. Moreover, it must be observed that the charter party in question is not one of "affreightment", wherein the actual owner of a vessel is responsible to, and is in control of the loading and the carriage of the goods to their places of consignment.(Reed v. U.S., 591.) Under this situation, the owner can, therefore, supervise the loading of the cargo and can have the means of knowing the cargoes being loaded on his ship and can readily prevent the loading thereon of of prohibited or contraband goods. It may then be presumed that the carrying on the vessel of any prohibited goods under the "affreightment" kind of a charter party (U.S. v. HVoslef, N.Y., 35 S. Ct.459, 460, 237 U.S. 1, 59 L. Ed. 813, cited in 6 W&P 679; Reed vs. U.S., op. cit.) is with the knowledge of the owners. And, consequently, the vessel can then be subject to forfeiture. However, like in the case at bar, where under the terms of the charter party,the exclusive possession, command, and navigation of the ship is in the charterer, who is clothed with the character of ownership (Reed vs. U.S., ibid.), and who has been given the sole power and control of the voyage, or service contemplated (Aird vs. Weyenhaueuser S.S. Co., 169 F 2d 606, 611), or under the charterer's account in a contract otherwise known as "mercantile lease" (The New York, 93 F 496, 497), then any wrongful act that may be committed by the charterer, like in the exportation of illegal cargo in this case, should be the responsibility of the charterer alone. And the illegal act of exporting illegal sugar cargo should not work to the prejudice and jeopardy of the actual owner as he was placed in no position to know any commission of said wrongful act, such as the loading of illegal or contraband goods, or the use of the vessel for any other unlawful purpose. If the cargo vessel under the kind of charter party known as "mercantile lease" should be subject to forfeiture, it would indeed create a great injustice to the innocent owner. While it may be conceded that an action of forfeiture against a vessel is considered an action in rem, this does not mean that the carrier can simply be libelled, notwithstanding the lack of knowledge or the innocence of the owner of the wrongful use of his vessel. For if this will be so, then hardly anyone engaged in transportation business will take the risk by placing his ship or common carrier available for charter party, a very common business activity in the mercantile world. This will indirectly constitute a restraint on trade. We rather think that in order to justify the forfeiture of the vessel, which as a matter of principle is strongly construed against the Government (Farm Implement & Machinery Co., vs. Comm. of Customs, CTA Case No. 260, Feb. 4, 1957), the forfeiture should have a direct or an indirect relation to the actual knowledge of the owner of the illegal use of his vessel. For if he previously knew of the illegal or wrongful use of his vessel, the owner would then be an accomplice after the fact if it will be committed by another like a charterer. Stated otherwise, it would indeed be harsh, excessive and arbitrary to subject a common carrier, inherently used as a public conveyance for public transportation service, to forfeiture just because it happened to be under lease and specially in a charter party of a kind where the management, control and supervision of the vessel in question was completely in the hands of the charterer. And without the intention of being repetitious, it would,indeed, be a sorrowful state of affairs where the real owner has no means of control or of knowing the illegal acts that may be committed by the charterer with respect to the vessel until later, as what actually happened in this case, and still the vessel will be subject to forfeiture. The owner of the vessel, Pitao Lim Eng, or the petitioner herein, came to know only of the illegal act of loading and exporting the refined sugar to Labuan, Sabah only after his vessel was apprehended and the said petitioner was investigated by the Philippine Coast Guard. We do not think that it is the intention of Section 2530 (a) to forfeit the common carrier, under a charter party without the knowledge of the illegal use of the vessel by the owner. Under these circumstances, the provisions of Section 2530(a) of the Tariff and Customs Code, which provides for the forfeiture of a vessel used in illegal importation and exportation of goods, even without the knowledge of the owner of the vessel, becomes, therefore, of doubtful application. In a companion provision of Section 2530 (a), which is Section 2530(k), which similarly provided for the forfeiture of conveyances, drawn by beasts of burden, or propelled by steam or motive power (such as locomotive, cars, and trucks), used in the conveyance of contraband or smuggled articles, it has been held that the forfeiture of these conveyances can not, however, be effected if there was no knowledge of the commission of the unlawful act by the owner of such conveyance. (De Leon vs. Comm. of Customs, CTA 1942, Jan. 27, 1969.) Considering Section 2530(k), we are of the opinion that knowledge of the illegal act by the owner of the vessel should equally be a condition sine quanon to the application of Section 2530(a) effecting the forfeiture thereof. We take it that when the proviso in Section 2530(a) of the Tariff and Customs Code, as amended by Presidential Decree No. 34, was written into law, it is presumed that right and justice were intended to prevail when the President of the Philippines wrote said Presidential Decree No. 34, in the exercise of an act akin to his legislative authority under Martial Law. (Art. 10, Civil Code of the Philippines.) Consequently, it would only be right and just that in order that any vessel, acquired at tremendous cost of hundreds of thousands to millios of pesos, may be subject to forfeiture, there is need to construe Section 2530(a) in the light that the vessel can be justifiably forfeited only if there is knowledge of the illegal use of the vessel by the owner.

"Considering that what was agreed upon in this case is a charter party otherwise known as a "mercantile lease", the vessel in question can not be subjected to forfeiture without the knowledge of the illegal use by the owner of the vessel. There was, however, a violation of the law and policy of the State when the refined sugar was carried to Labuan, Sabah on board said vessel. There was also a violation of Section 2528 by diverting the route of the common carrier in question to Labuan, Sabah, Malaysia without securing a government permit or clearance for which it is liable for a fine. But even for the sake of argument that the common carrier in question can be forfeitable under Section 2530(a) of the said Tariff and Customs Code, this Court had ruled that a fine may be imposed instead of forfeiture, and not without strong and valid reason. Therefore, in line with the holding in the case of Balmocena vs. Commissioner of Customs, CTA 585, promulgated on July 31, 1966, and for violation of Section 2528 of the Tariff and Customs Code, we hold this vessel liable for a fine of ₱5,000. Said this Court in the said case of Balmocena vs. Commissioner of Customs:

"Finally, it is argued -

> That assuming arguendo that the vessel involved is subject to seizure, the respondent Collector of Customs committed grave abuse of discretion in imposing the penalty of forfeiture

instead of a fine considering the mitigating circumstances proven by the evidence of the claimant-petitioner.

"At first, this Court entertained serious doubt whether or not a fine may be imposed upon an offending vessel or aircraft for violation of Section 2530 of the Tariff and Customs Code. For this reason, an order was issued on February 28, 1966, requiring both parties to submit memorandum on the question whether or not a fine may be imposed in lieu of forfeiture in cases arising under Section 2530 of said Code. Both counsel for petitioner and the office of the Solicitor General expres the view that there is sufficient authority for the imposition of a fine in lieu of forfeiture, citing Sections 2312, 2532 and 2533 of the Tariff and Customs Code.

"Under the old Customs Law, it was expressly provided that a fine could be imposed in lieu of forfeiture. (Sec. 1365, Adm. Code.) This discretionary power to impose a fine in lieu of forfeiture was recognized in Venancio Carreon Tong Talk v. Comm., C.T.A. No. 135, Nov. 22, 1956, affd. in G.R. No. L-11947, June 30, 1959, 58 C.S. 5444. Notwithstanding the failure of Congress to re-enact Section 1365 of the Administrative Code as part of the new Tariff and Customs Code, we agree with the Solicitor General and counsel for petitioner that such discretionary power still exists. In seizure proceedings against a vessel or aircraft for violation of Section 2530 of the Tariff and Customs Code, it is no defense that the owner or owners had no knowledge of the offense or of the attempt to commit the offense charged. It would,therefore, be patently unjust, not to say highly arbitrary, to order the seizure and forfeiture of an ocean liner or an aircraft engaged in international trade, which cost millions of pesos, for an illegal act of a member of the crew of the vessel or aircraft, or by a mere passenger, without the knowledge or consent of the owner or owners of the vessel or aircraft.

"In this case, it is admitted that the owners of the vessel in question, petitioner and his wife, had no knowledge of the illegal act of a member of the crew of the vessel in surreptitiously loading and concealing the aforesaid articles in said vessel; that petitioner, prior to the apprehension of the vessel, had issued a memorandum instructing the members of the crew of the fishing vessel not to load contraband

> articles in said vessel nor to engage in any activity in connection with blue seal cigarettes; and that the owner of said contraband articles was immediately dismissed by petitioner and was subsequently prosecuted for violation of the revenue laws. In view of these circumstances, we find that the imposition of a fine of ₱10,000.00 in lieu of forfeiture, would be adequate penalty. In arriving at this conclusion, we have also taken into account the fact that the seizure of the vessel and its subsequent impounding by the Bureau of Customs resulted in the deterioration thereof and caused damages to petitioner in the amount of approximately ₱50,000.00, according to an estimate made by appraisers of said Bureau.

A similar holding was accordingly repeated in the case of Pascual vs. Commissioner of Customs, CTA Case No. 1608 promulgated on September 30, 1969, pertinent portion of which is quoted:

> The "M/B Maria Victoria-P" was declared forfeited in favor of the Government pursuant to Section 2530(a), (b) and (c) of the Tariff and Customs Code which read as follows:
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> x x x x x x x x x
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> There is no question that the vessel was used in the illegal importation of blue seal cigarettes. Consequently, the said vessel is subject to the penalty imposed by Section 2530 of the Tariff and Customs Code. (C.F. Sharp & Co. vs. Commissioner of Customs, G.R. No. L-23803, Feb. 26, 1968.) Considering, however, that petitioner, owner of the vessel, took all the necessary action to prevent the vessel from being used illegally by notifying the Philippine Navy of the disappearance of this vessel, the penalty of forfeiture appears to us excessive.

The same holding imposing fine was made in the case of Manila Star Ferry, Inc. et.al. vs. Comm. of Customs, CTA Case Nos. 1837, 1836, 1839, promulgated on September 30, 1969."

Accordingly, we find and so hold that petitioner is liable only to an administrative fine of ₱10,000.00.

WHEREFORE, the decision of the Commissioner of Customs appealed from, ordering the forfeiture of the lighter "Pasigan II", is hereby modified.

Petitioner Pasig Stevedoring Company is hereby ordered to pay to the Commissioner of Customs a fine of ₱10,000.00 within thirty (30) days from receipt of this decision.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, November 26, 1979.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge

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