REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EVERGOOD MERCHANDISING CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5195

HONORABLE GUILLERMO PARAYNO, JR. in his capacity as the Commissioner of Customs,
Respondent.

Promulgated:

OCT 09 1998

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DECISION

This petition for review assails the Order of respondent, dated November 18, 1994, in Seizure Identification No. 92-249 (MICP[1]) denying, on automatic review, the clearance being sought by the District Collector of Customs of MICP for the release of the shipment of petitioner upon payment of taxes and duties thereon; and declaring said shipment forfeited in favor of the government pursuant to Section 2530 (f) and (l) 3, 4 and 5 of the Tariff and Customs Code of the Philippines, as amended ("Customs Code" for brevity).

At issue in the case at bar is the extent of responsibility of the petitioner for an attempted fraudulent release of its shipment by persons allegedly unknown or unconnected to it.

Petitioner is a corporation duly organized and existing under Philippine laws and is engaged in the import and export business.

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1 Manila International Container Port

On or before June 1, 1992, petitioner decided to import to the Philippines "polypropylene and polyethelyne resins" from Korea, and the necessary letter of credit was opened with the Prudential Bank, Makati Branch, under Letter of Credit No. P-4745-92, in the amount of US$378,890.00. Correspondingly, an advance deposit of One Million Two Hundred Seventy Pesos (₱1,000,270.00) was paid on June 1, 1992 under O.R. No. 24903207 and Import Entry Declaration serial no. 08130516. Said shipment of resins eventually arrived in Manila on August 5, 1992 under Bill of Lading No. 225260021260.

Thereupon, petitioner's General Manager, by the name of Antonio Sanchez engaged the services of one Roberto Sanchez, an alleged customs broker to facilitate the release of the subject shipment. The latter received from petitioner the amount of ₱220,000.00 as cash advance for the payment of shipping line fees, arrastre and wharfage dues, processing fees and trucking cost.

Then on August 14, 1992, Mr. Antonio Sanchez received information that the subject shipment was apprehended by the customs police while being attempted to be released from customs zone through the use of spurious documents. It was learned that a certain Mr. Rafael Bautista and Arturo Bonifacio were the persons apprehended by the Customs Police. Thereafter, Mr.

Antonio Sanchez's efforts to locate Mr. Roberto Sanchez proved futile.

The following issue, facts and findings as contained in the Memorandum of the MICP Law Division, dated July 18, 1994 (Exhibit I) and duly indorsed by the District Collector of Customs of MICP, Buenaventura C. Maniego for favorable approval by the respondent reveal some insights over the incident, to wit:

x-x-x x-x-x x-x-x

> The sole issue to be resolved is the alleged involvement of herein consignee in the introduction of the spurious documents relative to the importation of subject shipment. During the hearing of the Motion, it was agreed and stipulated by both parties that the identity of the persons who delivered the spurious bank documents to the MICP Cash Division was duly established even before the inception of the proceeding in the instant seizure case. That person was identified by the personnel at the Cash Division to be Mr. Rafael Bautista, a messenger of the Philippine National Bank, Escolta Branch who in turn pointed to Mr. Arturo A. Bonifacio as the one [who] instructed the former to deliver the said fake documents to the Cash Division of this Port. However, as correctly observed by herein consignee, there is nothing from the testimonies of Messrs. Bautista and Bonifacio that could have, in any way, linked Roberto Sanchez, Isidro Balauro, Antonio Sanchez or the consignee itself to the introduction of the spurious documents to support the theory of conspiracy in the attempt to release subject shipment in violation of the TCCP warranting the forfeiture of the same. Consignee further argued that the spurious documents refers (sic) only to bank documents which they have nothing to do or control in terms of preparation or transmittal to the

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Bureau of Customs and that the covering Entry together with all the supporting documents are genuine and authentic.

x-x-x x-x-x x-x-x

The failure of the prosecutor to elicit favorable testimonies from Messrs. Bautista and Bonifacio that would sustain the forfeiture of the shipment left the prosecutor with no other recourse but to resort to biased and baseless interpretation of the phrases "full authority" and "facilitate" to give the impression that Roberto Sanchez who was given "full authority" to facilitate the release of subject shipment is in cahoots with the arrested persons responsible for the submission of the spurious documents. But the fact is, Mr. Roberto Sanchez engaged the services of Isidro Balauro as broker not Rafael Bautista or Arturo Bonifacio and what makes the prosecution's case worst (sic) is their failure to link either by direct or circumstantial evidence, herein consignee, Antonio Sanchez, Roberto Sanchez or Isidro Balauro to Messrs. Bautista and Bonifacio, the authors of the spurious documents.

x-x-x x-x-x x-x-x

(Underscoring supplied)

Respondent was not, however, convinced that herein petitioner corporation had no participation whatsoever in the attempted fraudulent release of the subject shipment. Thus, on November 18, 1994, he issued the Order in question and, *inter alia*, made the following findings therein, to wit:

x-x-x x-x-x x-x-x

WHEREAS, after a restudy of the facts and circumstances of the case it was found:

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A. That Mr. Robert Sanchez, the person who was given full authority to effect the release of this shipment was an employee of consignee and by the action of its manager, Antonio Sanchez has been constituted as "agent" thereof insofar as this transaction is concerned.

B. That it has been established that release of this shipment was attempted through the use of spurious documents which renders it liable for forfeiture under Section 2530 (f) and (l) 3, 4, and 5 of the Tariff and Customs Code of the Philippines, as amended.

x-x-x x-x-x x-x-x

At bar, petitioner reasserts its stance ***a quo*** that the assailed Order has no legal basis because nowhere in the records of the instant case could it be found that the government prosecutor in the hearings conducted before respondent's Bureau was able to establish the connection or relationship, directly or indirectly, between the persons apprehended by the Customs Police and itself.

In his Answer, respondent merely reiterated, by way of special and affirmative defenses, the findings of the respondent in the above quoted assailed Order and added, ***inter alia***, that proof of principal-agent relationship between the petitioner and the apprehended persons, Mr. Rafael Bautista and Arturo Bonifacio is immaterial because a forfeiture proceeding is a proceeding ***in rem***, which is administrative or civil in character and directed against the thing itself, citing **Commissioner of Customs vs. Andrulis, 129 SCRA 71 and Vierneza vs. Commissioner of Customs, 24 SCRA 394**; and that as held in **Agustin de Luna vs. Jose Linatoc, 74 Phil. 15**, neither honest mistake nor error could absolve the properties from the consequence of forfeiture in view of the time-honored maxim that"no man can take advantage of his own wrong".

Records show that both parties formally offered their respective evidence to the case at bar. However, they both decided not to file their memoranda anymore.

The issue besetting Us is whether or not the assailed Order of the respondent, dated November 18, 1994, is supported by evidence sufficient enough to eatablish the participation of the petitioner in the attempted fraudulent release of its shipment of resins.

After a careful scrutiny of the attending facts, the disquisition of the parties and the laws and jurisprudence in point, this Court peremptorily rules in favor of the petitioner.

We agree with the petitioner that based on a circumspect examination of the entire records of herein case there appears to be no shred of evidence that would

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link, directly or indirectly, the petitioner, Messrs. Antonio Sanchez, Roberto Sanchez and Isidro Balauro to the fraudulent act perpetrated by Messrs. Rafael Bautista and Arturo Bonifacio.

We lament the way respondent arrived at his findings in the questioned Order. The fact that Mr. Antonio Sanchez has constituted Mr. Roberto Sanchez as an agent of the petitioner in effecting the release of the shipment at the Bureau of Customs does not *ipso facto* mean that the attempted fraudulent release of the same by Messrs. Rafael Sanchez and Arturo Bonifacio is within the knowledge and authority of the petitioner.

The rule is well-settled under the maxim "*res inter alios acta alteri nocere non debet*" that a party is not bound by any agreement of which he has no knowledge and to which he has not given his consent and that his rights cannot be prejudiced by the declaration, act or omission of another, except by virtue of a particular relation between them. **(Section 28, Rule 130, Rules of Court; Samillano, et al. vs. Samillano, et al.,(CA) 52 O.G. 4296; Belvis III vs. Court of Appeals, et al., G.R. No. L-38907-09, November 14, 1988 as cited in Evidence, 3rd Ed. 1996 by R.J. Francisco)**

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Thus, any attribution of involvement by the petitioner in the fraudulent scheme committed by Messrs. Rafael Bautista and Arturo Bonifacio must be proved by the respondent. Fraud is never presumed. It must be proved by clear and convincing evidence amounting to more than mere preponderance and not by mere speculation. (**Yutivo and Sons Hardware Co. vs. Court of Tax Appeals, 110 Phil. 751**)

Unfortunately, however, respondent has no scintilla of evidence to prove the same. Hence, the alleged involvement or participation of the petitioner is purely speculative and lacks legal basis.

Even a cursory glance of the provisions of Section 2530 (f) and (l) 3, 4 and 5 of the Customs Code which were cited as the bases for the forfeiture of the subject shipment fails to convince Us that the attending facts of herein case are within their coverage, thus:

> 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 subject to forfeiture:
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> x x x x x x x x x
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> f. Any article the importation or exportation of which is effected 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,
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> x x x x x x x x x
>
> 1. Any article sought to be imported or exported:
>
> x x x x x x x x x
>
> (3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;
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> (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 article; and
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> (5) Through any other practice or device contrary to law by means of which such articles was entered through a customshouse to the prejudice of the government. (Underscoring supplied)

To support forfeiture under paragraphs (f) and (l) 3, 4 and 5, it is necessary that the importer has personal knowledge and has given his consent to the attempted importation which is contrary to law. This view is in consonance with the above mentioned rule on "*res inter alios acta*" and the fact that under subparagraphs 3 and 4, the false declaration, affidavit,

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invoice or other document must be "executed" by the owner, importer, exporter or consignee.

It is to be observed that not anyone of the spurious documents confiscated from Messrs. Rafael Bautista and Arturo Bonifacio were shown to have been actually executed and genuinely signed by herein owner, importer, consignee or their authorized agents.

In like manner, the phrase "[t]hrough any other practice or device contrary to law" as stated in subparagraph 5 presupposes the existence of fraud in the commission thereof. The word "device" is defined as "a scheme to trick or deceive" or "a stratagem or artifice, as in the laws relating to fraud and cheating." (**Black's Law Dictionay, 6th ed.**) Sad to say, however, respondent miserably failed to establish any semblance of fraud as having been conceived and participated in by herein importer.

In the case of **Farm Implement & Machinery Co. vs. Commissioner of Customs, 24 SCRA 905 at p. 917,** the Supreme Court held, thus:

> And fraud is never presumed. It must be proved. Failure of proof of fraud is a bar to forfeiture. The reason is that "forfeitures are not favored in law and equity."

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Prescinding from the above, We consider respondent's affirmative defenses as above cited to be entirely off tangent to the real issue in this case. His citation of the maxim "no man can take advantage of his own wrong" readily reveals a misapplication because, as the records bear, petitioner has not done any wrongdoing. We have already declared that no evidence has been established linking it whatsoever to the attempted fraudulent release of its shipment of resins.

Also, respondent is totally wrong in his belief that it need not prove principal-agent relationship between petitioner on one hand, and Messrs. Rafael Bautista and Arturo Bonifacio on the other hand, on account of the fact that a forfeiture proceeding is a proceeding **in rem** which is directed against the thing itself.

Respondent must hearken that the Customs Code, except for prohibited articles, requires knowledge of or participation in any unlawful act before any property involved therein shall be subject to forfeiture. Thus, under Section 2531 of said Code, the forfeiture of any vehicle, vessel, or aircraft shall not lie if it is established that the owner thereof or his agent in charge of the means of conveyance used has no knowledge of or participation in any alleged unlawful act.

In the same manner, under Section 2532 of the same Code, the forfeiture of imported or exported articles whereof the importation or exportation is merely attempted shall not be effected if the persons who shall receive, conceal, buy, sell or transport the same or aid in such acts have no knowledge that the article was imported, or was the subject of an attempt at importation or exportation, contrary to law.

Verily, such above mentioned circumstances of prior knowledge and participation in the unlawful act, which may possibly be obtaining in a principal-agent relationship, necessitates the proving of the same before forfeiture can be validly effected.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assailed Order of the respondent, dated November 18, 1994, in Seizure Identification No. 92-249 (MICP) is hereby **REVERSED** and **SET ASIDE**. However, as a consequence of the importation of the subject articles, petitioner is ORDERED to pay the balance of P1,299,080.00 representing customs duties and taxes, detailed as follows:

Customs duties and taxes-	P1,090,909.00
VAT	1,208,441.00
TOTAL	2,299,350.00
Less: Payment made	1,000,270.00
AMOUNT STILL DUE	P1,299,080.00

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Upon payment of the aforestated amount by petitioner, the surety bond posted by petitioner under Bond No. G (16) 02411 issued by Western Guaranty Corporation on February 13, 1996 in the amount of P18,126,613.00 shall be released of its undertaking.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals

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