REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAADEDDINE MOHAMAD FARES,
ANIS ABDUL RAHMAN KREIDIR,
HANS PETER MATTHIAS FLOCK,
BERTI HILDEGARD EDERY,
MARLENE LOBIG CASSAU,
FRIEDERICH WALTER JEAN
MULLER and HEINZ SIEGFRIED
LOBIG,
Petitioners,

versus

C.T.A. CASE NO. 2190

Sept 25/73

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from a decision of the Commissioner of Customs dated October 13, 1970, in Customs Case No. 948 (MIA S.I. Nos. 861, 862, 863, 864, 865, 866 & 867) affirming the decision of the Collector of Customs, Manila International Airport, dated March 10, 1969, decreeing the forfeiture of the two hundred thirty four (234) gold bars and seven (7) vests in favor of the government for violation of Section 2530(f) of the Tariff and Customs Code in relation to Central Bank Circular No. 21, and Sections 2505 and 2530-m (3) and (5) of the same Code.

Petitioners Saadeddine Mohamed Fares and

Anis Abdul Rahman Kreidie, both Lebanese nationals and claimants in Seizure Identification Nos. 861 and 862, respectively, together with Hans Peter Matthias Flock and Berti Hildegard Edery, both German nationals and claimants in Seizure Identification Nos. 863 and 864, respectively, arrived at the Manila International Airport at about 3:30 P.M. on October 8, 1968, on board a Scandinavian Airways System (SAS) flight from Bangkok.

Marlene Lobig Cassau, Friederick Walther Jean Muller and Heinz Seigfried Lobig, all German nationals and claimants in Seizure Identification Nos. 865, 866 and 867, respectively, arrived at the Manila International Airport at about 4:45 P.M. on October 9, 1968 via SWISSAIR flight from Tokyo.

Petitioners filled up their Baggage Declaration and Entry forms before alighting at the Manila International Airport by writing the word "tourist" instead of giving a description of articles they have with them in the printed space provided for such a listing of the articles. Each of them had an air ticket coupon bearing confirmed bookings for Taipeh and from the stamp marks on their passports made by the Immigration

Inspectors at the MIA all were admitted as transit tourists under Section 5 of Executive Order No. 408 of June 4, 1954.

It appears that while Petitioners Saadedine Mohamad Fares and Anis Abdul Rehman Kreidie were still in the premises of the Customs at the MIA, after they had been cleared by customs examiners, the customs guards suspected from their gait and movements that they had with them something heavy so the guards accosted them and brought them to the office of the Collector of Customs. When Kreidie was asked if he had gold bars with him, he gave a negative answer. When both were searched each was found to have thirty-five (35) pieces of gold bars.

Marlene Lobig Cassau, Freideric Walther Jean Muller and Heinz Seigfried Lobig were co-passengers of Salvador Mascardo, Collector of Customs of the MIA, who happened to be in the same flight. While on board the plane, Collector Mascardo happened to hold Cassau to prevent her from falling as the plane passed an air pocket. Mascardo noticed that Cassau had something hard inside her dress. When he landed Mascardo warned Customs personnel to observe some passengers for contraband goods.

After Muller and Lobig had been cleared by the Customs examiner, members of the Customs police brought them to the office of the Collector of Customs. The same was done to Cassau, who was in the lobby. Asked if they had gold bars, Muller and Lobig answered in the negative. At first they refused to be searched but later changed their minds. The search showed that Cassau, Muller and Lobig had 28, 36 and 36 pieces of gold bars, respectively.

On October 9, the day Cassau, Muller and Lobig arrived, Flock and Edery appeared at the MIA to take a departing plane. After the two had been cleared by the departure Customs examiner, a Customs police accosted and brought them to the office of the Collector of Customs for questioning. Flock denied carrying gold bars with him and was searched with Edery. The Customs guard found that Flock and Edery had 35 and 28 pieces of gold bars, respectively.

All the gold bars in question were found in specially tailored vests concealed inside the clothes of the petitioners. Each of the gold bars weighed 1½ kilos.

The gold bars of Fares and Kreidie were seized for violation of Section 2530-m, sub-sections 3 and 5, and Section 2505 of Republic Act No. 1937, otherwise known as the Tariff and Customs Code; those of Flock and Edery were seized for violation of Central Bank Circular No. 21, as amended, in relation to Section 2530-f and m(3) and (5), and Section 2505 of the Tariff and Customs Code; those of Cassau, Muller and Lobig were seized under Section 2530-f in relation to Central Bank Circular No. 21, as amended, and Section 2530-m(3) and (5), and Section 2505 of the same Code. Subsequently, Section 1108 of the same Code was included as another cause for seizure with respect to the gold bars of Fares, Kreidie, Cassau, Muller and Lobig.

Petitioners make capital of the tourists' exemption from filing Customs declarations and from submitting their baggage for inspection provided in Executive Order No. 408 and Customs Memorandum Circular No. 130-67. From a perusal of the pertinent provisions, however, one will readily note that said exemptions are not absolute and, what is more important, they do not carry with them a protective mantle for violations of our

Customs laws by tourists.

Section 2(f) of Executive Order No. 408 provides that:

> (f) Except in cases specifically excluded by the Secretary of Foreign Affairs as provided in paragraph 1-a of this Order, and except also where there is reasonable evidence of danger of violation of existing regulations, bona fide foreign tourists, documented as such, shall not be required to file a customs declaration form and their luggage shall be exempt from customs examination if an oral examination proves satisfactory.

Needless to say, under the foregoing provision the government may require tourists to make customs declarations and to submit their baggage for inspection whenever oral examination proves unsatisfactory or there is danger of violation of our customs laws.

Customs Memorandum Circular No. 130-67 on the other hand provides that:

> III. BUREAU OF CUSTOMS
>
> A. Tourists arriving by ship -
>
> x x x x x
>
> B. Tourists ariving by airplane. -
>
> 1. Group Tourists.
>
> x x x x

2. Individual Tourists.

(a) Individual tourists shall present to the Customs Appraiser in charge their tourist cards for assignment of examiners.

(b) The baggage of individual tourists shall not be subject to Customs examination.

(c) If a tourist brings in new articles very much in excess of his personal requirements during the travel, he shall be required either: 1) to leave the articles in the Airport under customs custody; or 2) to file a bond for the exportation of the articles within the reglementary period; or 3) to pay duties and taxes on the excess.

And, the UN Convention concerning facilities for tourists which took effect in the Philippines on May 9, 1960 provides as follows:

Article 1

For the purpose of this Convention:

x x x x

(c) The term "temporary importation permit" shall mean the Customs document testifying to the guarantee or deposit of import duties and import taxes chargeable in the event of failure to re-export article temporarily imported.

Article 2

1. Subject to the other conditions laid down in this Convention, each of the Contracting States shall admit temporarily free of import duties and import taxes the personal effects imported by a tourist, provided they are for the personal use of the tourist, that they are carried on the person of or in the luggage accompanying the tourist, that there is no reason to fear abuse, and that these personal effects will be re-exported by the tourist on leaving the country.

2. The term "personal effects" shall mean all clothing and other articles new or used which a tourist may personally and reasonably require, taking into consideration all the circumstances of his visit, but excluding all merchandise imported for commercial purpose.

It is plain from the foregoing provisions that tourists bringing in merchandise, or personal effects more than what they may personally or reasonably require, or of high value, should make customs declarations or at the very least inform the Customs authorities of possession thereof. This is clearly inferable from the fact that tourists' privilege to import temporarily free from import duties and import taxes is limited to personal effects of limited quantity. It is also inferable from the tourists' option to "1) leave the articles in the Airport under customs custody; or 2) to file a bond for the exportation of the articles within the reglementary period; or 3) to pay duties and taxes on the excess" in case of articles that are not of free import. Moreover, it is clear from their tenor that the exemptions from customs declaration and inspection of luggage are no shields of immunity for violators of our Customs laws. Indeed the exemptions are not meant to be an open invitation for smuggling operators under the cloak of tourists. Thus, the UN Convention hereinbefore adverted to, mindful of the devious ways of smugglers, expressly provides in its Articles 11 and 12 as follows:

<u>Article 11</u>

> In the event of fraud, contravention or abuse the Contracting States shall be free to take proceedings for the recovery of the corresponding import duties and import taxes and also for the imposition of any penalties to which the persons who have been granted exemptions or other facilities may have rendered themselves liable.

<u>Article 12</u>

> Any breach of the provisions of this Convention, any substitution, false declaration or act having the effect of causing a person or an article improperly to benefit from

> the system of importation laid down in this Convention, may render the offender liable in the country where the offense was committed to the penalties prescribed by the laws of that country.

Petitioners urge that importation requires intention to unload; the fact that Flock and Edery were caught with the bars of gold when they were in the airport on the day following their arrival and were about to depart allegedly proves petitioners' lack of intention to unload them in the Philippines; hence, it cannot be said that there was importation of the gold bars.

Under Section 1202 of the Tariff and Customs Code importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein and ends after the article passes through Customs. The term "to unlade" in connection with importation refers simply to the physical operation of unloading (Laidlaw v. Abraham, 43 F. 297). That the tourist intends to bring back the article abroad when he departs is impertinent to the matter. If such be his intention, the bringing back is a separate and distinct act under Customs laws, that is, exportation. Thus, [illegible] that is, exportation. Thus, III-B 2(c) of Circular 130-67 provides that if a tourist brings in new articles very much in excess of his personal requirements during the travel he has "to file a bond for the exportation of the article within the reglementary period," and Article 1, paragraph (c) of the U.N. Convention mentioned further above provides that "'temporary importation permit' shall mean the Customs document testifying to the guarantee or deposit of import duties and import taxes chargeable in the event of failure to re-export article temporarily imported." Customs laws may appear harsh at times but "Revenue Laws are of a harsher nature than any other and necessarily so; for, ingenious men render it indispensable for the legislature to meet their illicit practices with severer penalties" (Luz M. Cigare v. The Commissioner of Customs, G.R. No. L-21376, August 29, 1966). Petitioners' concept of importation not only conflicts with the accepted meaning of the word but also provides a convenient avenue of escape for smugglers posing as tourists.

The case of U.S. v. Chua Loy, 37 Phil. 510 cited by petitioners is not in point because the opium involved therein was in transit from Saigon to Hongkong and was never unloaded from the vessel nor was there any attempt to unload same. Obviously there was no intention to import the drug into the Philippines as said therein there being no intention to unlade. In the instant cases the gold bars were unloaded and passed through Customs surreptitiously.

The gold bars in question are subject to forfeiture under Section 2530, paragraph m(2) of the Tariff and Customs Code because of petitioners' failure to declare or mention them to a Customs official as part of their baggage. Under Customs law, baggage include articles carried by passengers in their person (218½ Carats Loose Emeralds v. United States, 154 Fed. Rep. 839).

Petitioners claim that they have not been afforded substantive and procedural due process. When petitioners speak of substantive due process they obviously refer to the interpretation of provisions purportedly exempting tourists from Customs declaration and examination on which aspect of this appeal we have passed upon herein above. The lack of procedural due process allegedly consists in the denial of petitioners' request to compel the appearance of the Commissioner of Customs and the MIA Collector of Customs at the administrative hearing. The Court cannot see how this supposed irregularity affected petitioners' right to due process. Petitioners have not shown that the appearance or testimony of the Commissioner and the Collector in the administrative hearing could have changed the result of the appealed decision. The rule is that no error or defect in any ruling or order or in anything done or omitted by the Court or by the parties is ground for setting aside or otherwise disturbing a judgment unless substantial justice so require (Sec. 5, Rule 51, Rules of Court). At any rate, the trial de novo in this Court provided petitioners with adequate remedy for the irregularity complained of. In effect then Collector Mascardo testified during the trial in this Court.

With respect to the prayer of Intervenors for a judgment on their reward, suffice it to repeat hereunder what we said in Philippine Tobacco Flue Curing and Redrying Corporation v. Comm. of Int. Rev., CTA Case No. 942:

In allowing C. Neli Aragon to intervene in this case, this Court in its resolution of April 14, 1962 has made it sufficiently clear that "his contribution will mainly be more of a rendition of assistance in the judicial collection of a tax allegedly due." As explained therein, it is to provide him with an opportunity to assist the government in the collection of taxes, which is his duty, and others similarly situated, to do so. While it is true that this Court stated that he has "a legal interest in the matter in litigation which entitles him to intervene," that interest, as elucidated in the resolution, springs from the contingency that he "will either gain or lose by the direct legal operation and effect of the judgment in the case at bar." It is merely an expectancy, for if the assessment for advance sales tax is finally upheld and results in the recovery of revenue, the intervenor will stand to gain to the extent of the 25% informer's fee provided for in Republic Act No. 2338, as long as he can bring himself within the terms of the said statute.

As things stand now, however, it is plain from the intervenor's consolidated counterclaim and cross-claim that his purpose is to secure a determination of his right to the 25% informer's fee provided in Republic Act No. 2338, and to require this Court to order the petitioner or the respondent or both to pay him the said amount. Obviously, therefore, the remedy of the intervenor does not lie with the Court of Tax Appeals, but for him to establish his claim in accordance with the provisions of Republic Act No. 2338 and to present it to the official or officials mentioned therein for appropriate action.

> The consolidated counterclaim and cross-claim does not come under any of the cases enumerated in Sections 7 and 22 of Republic Act No. 1125. It is not a disputed assessment or a decision of the Commissioner of Internal Revenue involving refund of internal revenue taxes, fees or other similar charges. Neither does it involve a matter arising under the National Internal Revenue Code or any law administered by the Bureau of Internal Revenue that belongs to the same kind or class specifically mentioned as falling within the exclusive appellate jurisdiction of the Court of Tax Appeals. As the intervenor himself alleges under paragraph VI of his Consolidated Counterclaim and Cross-claim, it is a claim "under the provisions of Section 1 of Republic Act No. 2338 x x x". Since it is fundamental that a court must have jurisdiction to entertain any counterclaim or cross-claim which a party may have against the opposing party or a co-defendant (Section 3, Rule 10, Rules of Court), it follows that the consolidated counterclaim and cross-claim of the intervenor must have to be dismissed for lack of jurisdiction of this Court. More so when it is considered that the Court of Tax Appeals is a court of special jurisdiction. As such, it can only take cognizance of such matters as are clearly within its jurisdiction (Ker & Company, Ltd., v. The Court of Tax Appeals and the Collector of Internal Revenue, G.R. No. L-12396, January 31, 1962). (Resolution, July 6, 1962.)

WHEREFORE, the appealed decision is hereby affirmed with costs. Intervenors' claim for reward is hereby dismissed since their remedy does not lie with this Court.

SO ORDERED.

Quezon City, September 25, 1973.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge