REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARK ROCHE INTERNATIONAL, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4695

HONORABLE TOMAS APACIBLE, in his capacity as **COMMISSIONER OF CUSTOMS** and **BUENAVENTURA C. MANIEGO,** District Collector of Customs, Port of Manila,
Respondent.

Promulgated:

JUN 14 1995

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DECISION

This is a petition to review the decision of the Commissioner of Customs affirming the penalty of forfeiture decreed by the District Collector of Customs of a vessel identified as M/V Mark Roche for the alleged transshipment of several bags of smuggled sugar in commercial quantities in violation of the provisions of the Tariff and Customs Code of the Philippines.

The vessel subject of this petition is owned by Mark Roche International Inc., a domestic corporation alleged to be engaged in the shipping business as well as other business endeavors.

On May 18, 1988, operatives of the EIIB in coordination with the Philippine Coast Guard seized the vessel M/V Mark Roche while it was docked at the North Harbor in Manila apparently on the suspicion that its load of sugar is of foreign origin. On May 20, 1988, the Commissioner of the EIIB recommended that a warrant of seizure and detention be issued against the said vessel M/V Mark Roche and its load of sugar. Upon the request of the counsel for M/V Mark Roche, separate seizure proceedings were conducted on the vessel and the sugar.

During the seizure proceedings on the refined sugar, one Jose Uy appeared claiming to be its owner. Evidence adduced during the hearings as well as an analysis of the sugar revealed that the same is of foreign origin. Consequently, in a decision dated December 29, 1988, the Collector of Customs decreed the forfeiture of 23,928 bags of sugar in favor of the government. No appeal was made by its claimant.

The seizure proceedings on the vessel similarly resulted in a decree of forfeiture on the basis of Section 2530 (a) and (k) of the Tariff and Customs Code of the Philippines. A copy of the decision was received by the petitioner on January 28, 1991 and a notice of appeal was filed on January 30, 1991 seeking a review of the aforementioned decision. This appeal suffered the same fate because the Commissioner of Customs affirmed the decree of forfeiture handed down by the Collector of Customs in a decision dated December 16, 1991. Petitioner then sought the assistance of this Court in a petition for review filed on January 3, 1992. This petition included a prayer for the immediate release of the vessel M/V Mark Roche under a surety bond pending the final decision on the case. This request was granted by this Court in a resolution dated January 28, 1993 and the amount of P1,500,000.00 was posted by the Visayan Surety and Insurance Corporation to guarantee payment in the event that petitioner loses its appeal. However the release of the vessel did not materialize as the pitiful condition of the vessel after several years of being detained propelled the petitioner to allow the same to be sold at public auction. This Court then authorized the Commissioner of Customs to sell the vessel and the proceeds thereof be held in trust pending formal disposition of this case. Respondent Commissioner scheduled the auction sale on September 13, 1994. But the results of the sale are not reflected in the records of this case.

An analysis of the allegations contained in the petition serves to point out that petitioner is not disputing the findings of the Collector of Customs with respect to the sugar being of foreign origin, it however renounces any knowledge of the vessel being used to transport this product into the Philippines without the proper payment of customs duties, taxes and other charges as the vessel was chartered by another person when this alleged unlawful act took place. Petitioner maintains the theory that knowledge of the owner of the vessel of the unlawful act of smuggling is an essential element in a decree of forfeiture, hence innocence or good faith will serve to exonerate the owner and the vessel from any liability as provided for in Section 2530 (k) of the Tariff and Customs Code of the Philippines. For this purpose, petitioner introduced as an exhibit, a photocopy of the "Bareboat Charter Agreement" entered into between Mark Roche International as owner and one Antonio Bolos as Charterer dated March 30, 1988. This agreement contained among other things that said charter will last for 3 months from the date of the contract, so in effect petitioner would like to point out that at the time the unlawful act took place, the said vessel was under the control of the charterer and that as owner it was unaware that it was to be used for an illegal purpose. The aforementioned copy of the Charter Agreement was introduced as Exhibit "E" by the petitioner but this was denied by respondent as being self-serving in nature.

This Court in a resolution dated August 13, 1992 reserved the right to evaluate and rule on its admissibility and required the petitioner to present a duly certified and authenticated copy of the said charter agreement from the Philippine Coast Guard or in the alternative produce the original of the said document. Respondent belittled the evidentiary value of the abovementioned document as the same was not notarized and as such cannot be classified as a public instrument.

Respondent, in defense of his stance of forfeiture presents the following Special and Affirmative defenses:

> 9. On May 18, 1988, EIIB agents, in coordination with the Philippine Coast Guard, held the vessel, M/V "MARK ROCHE," while docked at Pier 8, North Harbor, Manila, on the information that its load consisting of 23,928 bags of sugar marked "Victoria Milling" at 50 kgs. per bag is of foreign origin;
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> 10. On May 20, 1988, the Commissioner of EIIB recommended to the Commissioner of Customs the issuance of a Warrant of Seizure and Detention against the vessel M/V "MARK ROCHE," under the Tariff and Customs Code. On the basis of this recommendation, and finding the existence of a probable cause, the Collector of Customs, Port of Manila, issued the corresponding Warrant of Seizure and Detention. Thus, seizure and forfeiture proceedings were instituted against the vessel M/V "MARK ROCHE" and its load of sugar. During the hearing, a sample was taken from the cargo of sugar and the same was analyzed by a representative of the Victoria Milling, who found that the same was not its product but of foreign origin. Hence, the cargo of sugar was ordered forfeited by the Collector of Customs.

11. In the meantime, however, petitioner requested a separate hearing on the vessel M/V "MARK ROCHE," and, during its pendency, filed a Motion for Release of the same under a surety bond. However, then Commissioner of Customs Salvador M. Mison denied said motion and instead ordered the Collector of Customs to proceed with the seizure proceedings against the vessel and rendered judgment thereon. After hearing, the Collector ordered the forfeiture of the vessel M/V "MARK ROCHE," which was affirmed by the Commissioner of Customs.

12. The evidence on record clearly shows that the vessel M/V "MARK ROCHE" was used to smuggle into the country 23,928 bags of sugar found to be of foreign origin, hence, the same is forfeitable pursuant to Section 2530, a, b and k of the Tariff and Customs Code, as amended, which provides:

> "**SEC. 2530. PROPERTY SUBJECT TO FORFEITURE UNDER TARIFF AND CUSTOMS LAWS.** - Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions, be subject 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: <u>Provided, That the vessel, or aircraft or any other craft</u>

is not used as duly authorized common carrier and as such a carrier it is not chartered or lease;

b. Any vessel engaging in the coastwise trade which shall have on board any article of foreign growth, produced or manufacture in the excess of the amount necessary for sea stores, without such article having been properly entered or legally imported;

c. xxx

xxx

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, stream 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 effected 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."
(Underscoring supplied)

13. Moreover, petitioner's defense that at the time of apprehension of the vessel M/V "MARK ROCHE" on May 18, 1988, it was under charter by Mr. Antonio Bolos of Bacolod City, cannot hold water, since lack of actual knowledge on the part of the petitioner that said vessel was used illegally does not exempt the vessel from forfeiture as held by the Supreme Court in one case that:

> "Forfeiture proceedings are in the nature of proceedings in rem (**Vierneza vs. Commissioner of Customs**, 24 SCRA 394) and are directed against the res. The fact that private respondent has allegedly no actual knowledge that M/V "Mina Victoria P" was used illegally does not render the vessel immune from forfeiture. This is so because the forfeiture proceedings in this case was instituted against the vessel itself. Private respondent's defense that he has no actual knowledge that the vessel was used illegally is personal to him but cannot absolve the vessel from liability of forfeiture."

(**Commissioner of Customs vs. Court of Tax Appeals**, 138 SCRA 581; underscoring supplied.)

Further, the "Bareboat Charter Agreement" was not duly notarized, hence, it cannot be considered as a public instrument and the same was evidently merely manufactured by petitioner to evade the penalty of forfeiture.

14. Respondent Commissioner validly denied petitioner's Motion for Release under bond, as the alleged favorable recommendations made by the Law Division and the Collector of Customs do not bind him, who has supervision and control over them. Moreover, respondent Commissioner denied said Motion for Release under bond based on solid evidence that the vessel M/V "MARK ROCHE" was used in smuggling.

The records of this case show that it is undisputed that the 23,928 bags of refined sugar seized from the vessel M/V Mark Roche is of foreign origin and that the same was brought into the Philippines without the payment of taxes, duties and other charges in violation of the Tariff and Customs Code of the Philippines. It was established during the seizure proceedings, that the sugar was placed in container bags which had the markings "Victoria Milling Corporation" giving it an appearance that it was produced in the Philippines. However, Mr. Hermogenes D. Escalona, the chief chemist of the Victoria Milling Corporation (VMC) testified to the effect that the seized sugar is definitely not VMC sugar contrary to the labels emblazoned on the bags. Furthermore, the assistant treasurer of VMC submitted an affidavit noting that the bags were sewn by a different type of sewing machine other than that used by their company. Evidence further showed that the shipper and consignee appear to be fictitious.

On the other hand, the vessel used to tranship these foreign goods into the Philippines were forfeited in accordance with Section 2530 (a) (c) and (k), thus:

> SEC. 2530. *Property subject to Forfeiture Under Tariff and Customs Laws.* Any vehicle, cargo, article and other objects shall, under the following conditions be subject 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 article in commercial quantities into or from any Philippine port or place, and any vessel which, being of less than thirty tons capacity shall be used in the importation of articles in 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 lease;

b. xxxx

c. Any vessel or aircraft into which shall be transferred cargo unladen contrary to law prior to the arrival of the importing vessel or aircraft at her port of destination;

d. xxxx

xxxx

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 effected 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.

Petitioner would like to impress upon this Court that the only issue to be resolved relates to the question of whether or not the aforementioned provisions of the law require knowledge of the owner or his agent of the unlawful act for forfeiture to be imposed on the vessel. It is petitioner's contention that a careful reading of Section 2530 (k) would reveal that good faith or lack of knowledge is a valid defense against the penalty of forfeiture.

We find that basic to the resolution of this case is the question of whether or not the owner of the vessel, Mark Roche International represented by Mr. Leonardo Uy as its manager had really no knowledge of the unlawful act committed and the fact that the petitioner asks this Court to interpret the aforementioned provisions of the law fails to distract us from the real meat of this case. During the seizure proceedings conducted on the vessel as well as the hearings held on this petition, petitioner presented as exhibit the "Bareboat Charter Agreement" which serves as the only proof that the owners of the vessel were innocent of the illegal maneuvers being committed because as discussed earlier, the vessel was alleged to be under the control of another person when the act was committed. Respondent took issue with the fact that this written agreement was not notarized. We believe that the failure to have this agreement notarized does not make the agreement null and void but neither does it negate the possibility that it might have been made only as a convenient way of escaping liability. Certainly it is very easy to type a written agreement and have several persons sign it. Not being notarized means that no one has a public record of the agreement having been signed on the alleged date stated in the document or if there was even such an agreement to begin with. At best this so-called "bareboat charter agreement" is self-serving because the real existence or non-existence of which is known only to the petitioner. Moreover, there is nothing in the records of this case which shows that this bareboat charter agreement was registered with the Philippine Coast Guard, neither was there any allegation made by the petitioner to this effect. This Court also finds it highly irregular if not suspicious that a document as important as a contract of lease of a valuable vessel worth millions of pesos not be notarized. The testimony of Leonardo Uy, stating that because the charterer paid in cash, he no longer found it necessary to have the same notarized is not satisfactory. If at all it was grossly negligent on his part to allow this to happen. Aggravating this cloud of doubt is the fact that Antonio Bolos, the alleged charterer and signatory to the agreement is nowhere to be found. Furthermore, we seek an answer to the question of whether or not Jose Uy, the claimant to the seized sugar and who never bothered to appeal the decree of forfeiture is related to Leonardo Uy, the manager of Mark Roche International, owner of the vessel. Section 2535 of the Customs Code provides the following, thus:

> **Burden of Proof in Seizure and/or Forfeiture.** "In all proceedings taken for the seizure and/or forfeiture of any vehicle, vessel, 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 seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding sections of this code."

From the records of this case, We find that petitioner as claimant of the forfeited vessel has not satisfactorily erased the doubts that plague this Court brought about by the circumstances earlier narrated.

The contention of petitioner that Article 2530 (a)(b)(k) of the Tariff and Customs Code serves as a firm legal basis to exonerate the vessel from the liability of forfeiture is clearly a misapprehension of the law. The said subsections of Article 2530 (a)(b)(k), are hereinbelow quoted, 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 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 article in commercial quantities into or from any Philippine port or place, and any vessel which, being less than thirty tons capacity shall be used in the importation of articles into 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, vehicle, aircraft or any other craft is not used as a duly authorized common carrier and as such a carrier it is not chartered or leased;

b. Any vessel engaging in the coastwise trade which shall have on board any article of foreign growth, produce or manufacture in excess of the amount of the necessary for sea stores, without such article having been properly entered or legally imported;

c. xxx xxx xxx

xxx xxx xxx

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 or 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 effected 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; (Underscoring supplied)

It is the theory of petitioner that the aforecited sections stipulate that forfeiture will not apply if the vessel is under a bareboat charter. We find this interpretation erroneous as a cursory reading of the aforecited provisions will clearly reveal that the penalty of forfeiture will not be imposed in cases where the vessel is used as a duly authorized common carrier and as such is not chartered or leased. So if the vessel is a common carrier but was transformed into a private carrier by virtue of a charter or a lease then it may be subjected to forfeiture. There is all the more reason to subject the vessel to forfeiture if it is not a common carrier and was chartered for a private purpose as in the instant case.

It is clear from the foregoing that the petitioner has not satisfactorily established its claim of lack of knowledge therefore this Court no longer finds it necessary to delve into the other issue presented in the petition.

WHEREFORE, this Court hereby affirms the order of the Collector of Customs dated January 22, 1991 and the decision of the Commissioner dated August 8, 1991 providing the decree of forfeiture of the vessel M/V Mark Roche.

Accordingly, the M/V Mark Roche is hereby decreed forfeited in favor of the government.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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