Lit,

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DIAMOND SHIPPING CORPORATION
MV "DIAMOND BELLE", V-35,
Petitioner,

- versus - C.T.A. CASE NO. 2619

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - x

11/29/78

D E C I S I O N

This case, submitted for judgment on the pleadings and records of the Bureau of Customs, involves an appeal of petitioner Diamond Shipping Corporation from the decision of the Commissioner of Customs affirming that of the Collector of Customs of the Port of Zamboanga, imposing a fine of ₱10,000.00 upon the vessel MV "Diamond Belle," for having been allegedly used in the unlawful importation and illegal discharge of foreign made articles in violation of Section 2530(a) and Section 2518 of the Tariff and Customs Code.

In its petition for review, petitioner Diamond Shipping Corporation, owner and operator of the said vessel, did not dispute the fact that there was an unlawful importation and that the MV "Diamond Belle" was used in connection there-with. However, petitioner's principal defense, assailing the legality of the decision of respondent Commissioner of Customs, is that as owner of the vessel, it never had a hand, directly or indirectly, in the unlawful importation of the articles as said offense was committed solely by the vessel's captain.

While admitting the petitioner's lack of any participation in the unlawful importation and discharge of said articles, respondent however maintains in his answer that such fact will not exculpate the vessel from liability.

We sustain the stand of respondent Commissioner of Customs.

It appears from the records of the Bureau of Customs that sometime in December, 1972, somewhere in Cabug Island, Zamboanga del Sur, before the MV "Diamond Belle" sailed for Japan, there were unloaded from said vessel foreign made articles consisting of 5 TV Sets, 5 Refrigerators, 1 Washing Machine, 1 Sewing Machine, 1 Electric Fan, 1 Motorcycle and 1 Bicycle. The unlawful importation and discharge of said articles was noticed and discovered by a customs inspector who thereupon seized the articles.

Thereafter, seizure and forfeiture proceeding

(S.I. No. 72-72) was instituted by the Bureau of Customs against the articles and vessel MV "Diamond Belle" for violation of Section 2530(a) (f) and m(1) of the Tariff and Customs Code. After proper hearing, the Collector of Customs of the Port of Zamboanga rendered a decision on May 2, 1973 decreeing the forfeiture of the imported articles in favor of the government and declaring that said forfeiture is "without prejudice to any administrative and criminal action that this (his) Office may take against the vessel MV "DIAMOND BELLE", her master and other persons involved in the illegal discharge thereof, on the vessel's next call to this port".

On May 14, 1973, further administrative proceeding was taken against the MV "Diamond Belle." During this proceeding, the officers and crewmembers of the vessel MV "Diamond Belle" testified and admitted, among others, that the unloading of the subject articles was upon the direction and order of the captain or master of the vessel. Consequently, on May 17, 1973, the Collector of Customs sent a letter to petitioner Diamond Shipping Corporation imposing upon the MV "Diamond Belle" a fine of P10,000.00 for violation of Section 2530(a) and Section 2518 of the Tariff and

Customs Code.

On June 26, 1973, petitioner Diamond Shipping Corporation filed a request for reconsideration but the same was denied by the Collector of Customs in his letter dated August 13, 1973. In justifying the imposition of the fine and denial of petitioner's request for reconsideration, the Collector of Customs explained, among others, (1) that under Section 2530(a) of the Tariff and Customs Code any vessel used in the unlawful importation of articles is subject to forfeiture. However, the reason for the non-forfeiture of the MV "Diamond Belle" is because it is more than thirty (30) tons, not chartered or leased, and hence only a fine is imposable against it; (2) that the unloading of dutiable cargoes at a place and time not in accordance with law subjects the vessel to a fine pursuant to Section 2518 of the Tariff and Customs Code, which provides:

> "Unloading of Cargo at Improper Time or Place after Arrival. - Any vessel or aircraft, which after arrival at her port of destination in the Philippines, discharges cargo at any time or place other than that designated by the Collector shall be fined in a sum not exceeding Ten Thousand pesos unless the unloading was rendered necessary, by stress or weather, accident or other necessity; and if due to necessity, the subsequent approval of the proper collection must be obtained." (Underscoring supplied)

On May 30, 1974, after appeal by petitioner, the Commissioner of Customs affirmed the decision of the Collector, holding as follows:

> The defense of the herein appellant that the shipowner or their ship agents has no hand directly or indirectly, in the unlawful importation would not hold water for it is already established in this jurisdiction that in such proceedings in rem, the knowledge or consent of the owner of the vessel or aircraft is of no moment. (U.S. vs. Malek Adhel, 43 U.S. 210, cited in U.S. vs. Steamship 'Rubi', 228, 239, Customs Case No. 71-26).
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> Since it had been established that subject vessel was used in the unlawful importation or transportation of foreign articles which had themselves been finally forfeited in favor of the Government of the Republic of the Philippines, for violation of Section 2530 m(1) of the Tariff and Customs Code of the Philippines, as amended, the action of the Collector of Customs in imposing a fine on the subject vessel is therefore legal and in order.
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> WHEREFORE, the decision appealed from is hereby affirmed.

Indeed, the undisputed fact that the MV "Diamond Belle" was used in the unlawful importation and illegal discharge of merchandise justifies the imposition of the fine. As a matter of fact, Section 2530(a) of the Tariff and Customs Code provides for a penalty of forfeiture, 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:
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> > 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 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 in as such a carrier it is not chartered or leased.

But as explained by the Collector of Customs in his letter of August 13, 1973, the reason for not subjecting the vessel MV "Diamond Belle" to forfeiture is that said vessel is more than thirty (30) tons capacity.

On the other hand, the unauthorized and improper unloading or discharge by the vessel of a cargo is punishable by a fine of not exceeding ₱10,000.00 under Section 2518 of the Code. Thus:

> SEC. 2518. Unloading of Cargo at Improper Time or Place after Arrival. -Any vessel or aircraft, which after arrival at her port of destination in the Philippines, discharges cargo at any time or place other than that designated by the Collector shall be fined in a sum not exceeding ten thousand pesos unless the unlading was rendered

> necessary by stress of weather, accident or other necessity; and if due to necessity, the subsequent approval of the proper Collector must be obtained.

In this case, we deem it proper to restate for emphasis, that the illegal or unauthorized discharge of the foreign articles at Cabug Island, Zamboanga del Sur, as found by the Bureau of Customs, is not controverted by petitioner.

The defense that the owner or ship agent of the vessel did not have a hand, directly or indirectly, in the unlawful importation and illegal discharge of the subject articles will not exculpate the vessel from the payment of a fine. Clearly, the law makes the vessel itself liable for the said penalty.

WHEREFORE, the decision of respondent Commissioner of Customs appealed from is hereby affirmed, and the MV "Diamond Belle" and/or petitioner herein, are ordered to pay a fine of P10,000.00 to the Bureau of Customs, for violation of Section 2530(a) and 2518 of the Tariff and Customs Code. With costs.

SO ORDERED.

Quezon City, November 29, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge