

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GENEROSO DE LEON,
Petitioner,

versus

CTA CASE NO. 1942

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - x

DECISION

This is an appeal from the decision of the Commissioner of Customs, dated April 8, 1968, modifying the decision of the Collector of Customs for the Port of Zamboanga in Seizure Identification No. 12-67 insofar as it ordered the release of one Willy's Jitney with Plate No. PUJ 24435-66, which was allegedly used in the conveyance of untaxed blue seal cigarettes.

Petitioner is a grantee of a certificate of public convenience to operate five (5) passenger jitneys in Zamboanga City. As such, he hired regular drivers for his jitneys, one of whom was Jose Alvarez, assigned as a regular driver for Willy's Jitney bearing Plate No. 24435-66 (Jitney for short).

On January 23, 1967, Jose Alvarez was indisposed and he was substituted by one Usman D. Mo-hamad to drive the Jitney. While driving along

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Baliwasan Grande, Zamboanga City with one Jaapal Datnayo, the Jitney was stopped by Cpl. Ramon Guerijero and S/Sgt. Geriano Rabago of the Far Air Element Strike Force, who were patrolling the area in connection with the government's drive against smuggling. Upon inspection of the Jitney, the apprehending officers discovered a "Tide" soapbox placed in the front seat and suspecting that it contained blue seal cigarettes, the same, together with the Jitney, and Mohamad and Datnayo, were brought to the Edwin Andrew Air Base for investigation. When opened at the airbase, the soapbox was found to contain forty (40) cartons of "UNION" untaxed blue seal cigarettes and upon interrogation, Usman Mohamad and Jaapal Datnayo admitted, in a joint affidavit subscribed before Judge Abelardo Buecy of Zamboanga City that the blue seal cigarettes were loaded in the Jitney at the instance of one Malali of Zamboanga City for delivery to the city market (p. 7, Customs rec.).

Accordingly, seizure proceedings were instituted against the forty (40) cartons of blue seal cigarettes and the Jitney for violation of Sections 2530(f), (m-1) and (m-3) and Section 2530(h) of the Tariff and Customs Code, respectively. After due hearing, the Collector of Customs for the Port

of Zamboanga rendered his decision, the dispositive portion of which reads as follows:

WHEREFORE, by authority of Section 2312 of the Tariff and Customs Code of the Philippines ~~and decreed that the 43 packs of~~ it is hereby ordered untaxed "UNION" cigarettes covered by ~~Release~~ Identification No. 12-67 be, as the same is hereby ordered forfeited in favor of the Government of the Republic of the Philippines to be disposed of in a manner provided for by law, and with respect to the "Willy's" Jitney, P.W. 22435-66, the same is hereby ordered returned to its owner, Mr. Geronimo de Leon.
x x x (P. 49, Customs rec.; underlining supplied.)

Dissatisfied with the decision of the Collector of Customs with respect to the release of the Jitney to its owner, the prosecuting officer of the PAF Air Element Strike Force, through the Solicitor General, appealed to the Commissioner of Customs who, on April 8, 1968, rendered a decision modifying the decision of the Collector of Customs by ordering the forfeiture of the Jitney in favor of the government. Hence, petitioner filed the present petition for review.

During the hearing before this Court on November 25, 1968, petitioner presented oral and documentary evidence to support his view that the Jitney is not subject to forfeiture. On the other hand, respondent submitted his case solely on the

bases of the pleadings and customs records (pp. 40, t.s.n.; p. 25, CTA rec.).

The sole issue involved in this case is whether or not the jitney in question is subject to forfeiture for violation of Section 2530(k) of the Tariff and Customs Code which provides as follows:

SEC. 2530. Property Subject to Forfeiture Under Tariff and Customs Laws.—Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:

x x x x x

k. Any beast actually being used for the conveyance of articles subject to forfeiture under the customs and tariff laws, with its equipment or trappings, and any vehicles similarly used, together with its equipment and appurtenances, including the beast, steam or other motive power drawing or propelling the same; but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid or his agent in charge thereof at the time, has no knowledge of the unlawful act. (Underlining supplied.)

(Under the aforequoted provision of law, two (2) conditions must be met to justify the forfeiture of a motor vehicle, namely: (a) that the motor vehicle was actually used in the conveyance of articles subject to forfeiture under the Tariff and Customs Laws; and (b) that the owner of the

said motor vehicle or his agent in charge at the time, had knowledge of the unlawful act.)

It is not controverted that the cigarettes found in the Jitney were untaxed blue seal cigarettes. In other words, they do not bear the required internal revenue stamps to show payment of lawful duties and taxes due thereon, and therefore subject to forfeiture under Section 2530(f), (m-1) and (m-5) of the Tariff and Customs Code. (See *Gigare v. Comm. of Customs*, L-21376, Aug. 29, 1966.) In fact, no appeal was made with respect to the forfeiture of the cigarettes in question. Since the blue seal cigarettes were found inside the Jitney, it follows that said vehicle was actually used in the conveyance of articles subject to forfeiture under the Tariff and Customs Code.

We are now going to determine whether the second condition is present in this case.

(When the Jitney was apprehended for violation of the above provision of law, there arises a presumption in favor of the government that it was used with the knowledge of the owner or his agent in charge at the time of apprehension. With such presumption, it becomes incumbent upon petitioner to rebut the same by showing that he or his agent has no knowledge that the Jitney was used for con-

vying blue seal cigarettes. (See 15 Am Jur 369.)

It appears that petitioner is the owner of the Jitney, being one of the five (5) units he was authorized to operate in Zamboanga City; that on January 23, 1967 at about 1:40 p.m., the Jitney was apprehended on suspicion that it was loaded with blue seal cigarettes; that at the time it was apprehended, it was driven by Usman Mohamad, a casual driver, who was allowed to relieve indisposed Jose Alvarez, the regular driver (see p. 16, Customs rec.; par. 1, Pet. for Review); that Jose Alvarez was the one who got the Jitney from petitioner in the morning of January 23, 1967 (p. 15, Customs rec.); and that he gave instructions to all his drivers not to use the jitneys in any smuggling activities (see pp. 16-17, Customs rec.). It likewise appears from the records of this case that Usman Mohamad was contracted by one Malali, a merchant of Zamboanga City, to carry one (1) box of cigarettes from the latter's residence to his store in Zamboanga City market; and that he executed a joint affidavit with one Jaapal Datuayo wherein he admitted that he knew the box contained blue seal cigarettes (see p. 7, Customs rec.).

(From the foregoing facts, it is clear that Usman Mohamed was authorized to drive the Jitney

at the time it was apprehended; and that he actually knew that the goods loaded therein were blue seal cigarettes. As the authorized driver in the actual control of the Jitney when it was apprehended, Usman Mohamad was, to all intents and purposes, the agent of petitioner in the use thereof. Consequently, petitioner is liable for the act of his driver.) Under a similar factual environment, this Court held, in the case of Antonio Sabu v. Commissioner of Customs, CTA Case No. 1333, August 3, 1965, as follows:

The evidence adduced during the seizure proceedings has established that Romulo Suazo brought the car in question to the North Harbor at the highly suspicious hour of 2:00 a.m. on May 24, 1962; that he helped load the "blue seal" cigarettes into the baggage compartment of the car; and that he was authorized by petitioner to use the car. By granting authority to use the car in question upon Suazo, petitioner has constituted the former his agent in the matter of using said vehicle. And the fact that Suazo brought the car at 2 o'clock in the morning to North Harbor where he helped load the "blue seal" cigarettes into the baggage compartment of the car sustains the conclusion that he had knowledge of the unlawful act of using the car in the conveyance of the forfeitable cigarettes. Hence, petitioner's car, with Plate No. L-97901 - Pasay City, is subject to forfeiture under the provisions of Section 2430(k) of the Tariff and Customs Code. (Underlining supplied.)

Anent petitioner's testimony before this Court that he did not authorize Usman Mohamad to drive the Jitney and neither did he know or meet him before, suffice it to say that this is in conflict with his own testimony before the Collector of Customs during the seizure proceedings and therefore could not be given much credit. Besides, he admitted in his petition for review that Usman Mohamad was allowed to relieve indisposed regular driver Jose Alvarez.

It is also urged upon Us that the Jitney should be exempt from the application of Section 2530(k) of the Tariff and Customs Code because it is "affected with public interest" since it was for passenger use, with fixed line and prescribed fare and freight.

(In the forfeiture of vehicles used in smuggling, the law does not distinguish between vehicles affected with public interest and those which are not so affected. To exempt from forfeiture vehicles for public use simply because they are affected with public interest would in effect sanction smuggling committed in public utility vehicles thus tolerating the very evil which Congress sought to eradicate when it enacted this law.)

Petitioner further claims that the apprehension of the Jitney was a "frame-up authored by Sgt. Soriano Rabago."

It is undisputed that the apprehending officers of the PAF Air Element Strike Force were in the performance of their official duties when they apprehended the Jitney conveying blue seal cigarettes. If it is true that the apprehension was a "frame-up" because of petitioner's refusal to lend the Jitney, he could have easily taken court action against the officers to protect his interest. He, however, failed to bring such action and this could only be interpreted to mean that the Jitney was actually apprehended for conveying blue seal cigarettes. Besides, as officers in charge of the enforcement of the laws against smuggling, they are presumed to have acted in the performance of their official duties.

Petitioner likewise contends that he had invested considerable amount of money in his Jitney and it would be unthinkable to risk forfeiture by allowing it to convey blue seal cigarettes.

It is unfortunate that for the unlawful act of his driver, petitioner had to suffer the forfeiture of his Jitney and the loss of his investment therein. The law however is clear on this point. As Justice Cardozo said -

... Forfeiture of vehicles bearing smuggled goods is one of the time-honored methods adopted by the Government for the repression of the crime of smuggling. . . . The penalty is at times a hard one, but it is imposed by the statute in terms too clear to be misread. . . (General Motors Acceptance Corp. v. U. S., 82 A.L.R. 600.)

(Finally, we disagree with petitioner's contention that the Jitney should be returned to him because driver Usman Mohamad was acquitted in Criminal Case No. 13699 by the City Court of Zamboanga.

It is now a settled rule in this jurisdiction that acquittal in a criminal case is not a bar against the forfeiture of articles imported, or attempted to be imported, illegally, or used in the unlawful importation of such articles. (See *Gigare v. Comm. of Customs*, *supra*; *C. F. Sharp & Co., Inc. v. Comm. of Customs*, L-23803, Feb. 26, 1968.)

... Thus, it has been held that since the forfeiture proceeding is one in rem under which the offense is attached primarily to the thing rather than the offender, the forfeiture proceeding stands independent of, and wholly unaffected by, any criminal proceeding in personam and is not barred by a conviction of the individual under a criminal charge. . . (See 23 Am. Jur. 618.)

WHEREFORE, finding no reversible error in

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the decision appealed from, the same is hereby
affirmed. Costs against petitioner.

SO ORDERED.

Quezon City, January 27, 1969.

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

Roman M. Umali
ROMAN M. UMALI
Presiding Judge

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge