REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JOSE ROBLE, JR.,
Petitioner,

- versus - **C.T.A. CASE NO. 4226**

THE COMMISSIONER OF CUSTOMS,
Respondent.

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4/6/92

D E C I S I O N

This is a petition to review the order of the Commissioner of Customs dated December 3, 1987 denying a motion for reconsideration of the decision dated June 15, 1987. Said decision affirmed the judgment rendered by Geodofredo F. Ursal, Acting District Collector of Customs, Port of Cebu in Seizure Identification Case No. 1-85. The Collector decreed the forfeiture of M/V "Marao", among others, for having transhipped smuggled garlic in commercial quantities in violation of the provisions of the Tariff and Customs Code.

Petitioner in seeking the release of his vessel M/V "Marao" from the "clutches of forfeiture or from any form of fine", raises the issue of good faith in contracting the transhipment of garlic to the effect that petitioner and his agents had no knowledge of the unlawful act.

On or before December 21, 1984, Jose L. Roble, Jr., the registered owner of M/V "Marao", and a certain Alfredo Jimenez Chua entered into an agreement to tranship sacks of garlic from LCT "Mayflower" docked and in anchor at Bagakay Point, Lilo-an, eight nautical miles from Pier 3, Cebu City, to the port of Cebu City.

On December 21, 1984, the M/V "Marao" proceeded from the port of Cebu City to Lilo-an where 2,500 bags of garlic were loaded into the vessel from the LCT "Mayflower". The M/V "Marao" then sailed for the port of Cebu City where it unloaded its cargo. On December 23, 1984, the M/V "Marao" entered the port of Lilo-an for the last haul of 2,500 bags which it again unloaded in the port of Cebu City. Said trips of the M/V "Marao" as well as the loading and unloading of the cargo of garlic to and from the vessel were cleared by the appropriate government authorities, namely: the Philippine Coast Guard, the Philippine Ports Authority and the Bureau of Customs (M/V "Marao" Roll Books: Exhs. A, A-1, C, C-1, E, E-1, E-2, G, I, I-1, I-2, K, K-1, M, M-1, M-2, M-3 and O; and

Coasting Manifests: Exhs. B, B-1, B-2, B-3, B-4, D, D-1, D-2, D-3, F, F-1, F-2, F-3, F-4, F-5, H, H-1, H-2, H-3, H-4, J, J-1, J-2, J-3, J-4, J-5, N and N-1).

From the port of Cebu City the commodity was transferred by cargo truck of ERS Trucking, owned and operated by one Eduardo Sy, to different areas in Cebu and Mandaue Cities. Thereafter, Customs authorities concluded from their investigation that the garlic transhipped by M/V "Marao" and LCT "Mayflower" were imported from Taiwan and had entered the Philippines without the payment of taxes, duties and charges due thereon. Consequently, Warrants of Seizure and Detention were issued by the District Collector of Customs, Port of Cebu. On the strength of these processes, the LCT "Mayflower", M/V "Marao" and one unit Hino cargo truck of ERS Trucking with Plate No. NA-GCD 828 were seized and sequestered by the government and thereafter were subjected to forfeiture proceedings.

In its decision, dated November 27, 1986, the District Collector of Customs, finding the merchandise to be of foreign origin and to have been brought into the country without the payment of duties, taxes and other charges due thereon, decreed the forfeiture of LCT "Mayflower", M/V "Marao" and said cargo truck for violations of paragraphs a, c and k of Section 2530 of the Tariff and Customs Code, as follows:

> "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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> 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; Provided, That the vessel, aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;
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> xxx xxx xxx
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> 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;
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> xxx xxx xxx
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> k. Any conveyance actually being used for the transport of articles subject to forfeitre 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;
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> xxx xxx xxx."

In support of his decision, the Collector relied on the following facts and circumstances:

1. Failure of Captain Ancheta of LCT "Mayflower" to present documents normally carried by a commercial vessel engaged in trade, like cargo manifest which shows the origin of the merchandise, and the roll book which states the origin of the vessel - when it entered and cleared a port;

2. Testimony of witness Autonomo Enclona of the Bureau of Customs stating that the said garlic shipped by M/V "Marao" to the port of Cebu were of extraordinary size compared to that of local garlic and were contained in bags with markings "Made in Taiwan".

3. The Master's Oath contained in the Coasting Manifest of M/V "Marao" in which the vessel's master stated that the cargoes of the vessel were of foreign origin;

4. The absence of claimants of the confiscated garlic; and

5. The fact that M/V "Marao" was chartered for the purpose of transhipping the imported garlic.

The decision of forfeiture of M/V "Marao"[1] was appealed to the Commissioner of Customs [Customs Case No. 87-04 (Cebu S.I. No. 1-85)]. Respondent affirmed the decision of the Collector in his decision dated June 15, 1987 which was received by petitioner on October 30 1987. On November 12, 1987, petitioner filed a motion for reconsideration. Respondent denied the motion for reconsideration in its Order dated December 3, 1987. Petitioner received a copy of the Order on January 5, 1988. Hence, this petition filed through registered mail on January 14, 1988 well within the prescriptive period to appeal to this court.

The only issue brought before Us is whether or not good faith, that is lack of knowledge of the unlawful act of smuggling,on the part of petitioner and his agents provide an absolutory cause against

[1]CTA Case No. 4179, "Mayflower Shipping Corporation and Gabaldon Industries, Co." involving the seizure and forfeiture of LCT "Mayflower" was dismissed by this Court due to failure to prosecute.

forfeiture of a vessel used in the transhipment of smuggled goods.

Petitioner contends that the seizure and forfeiture of the vessel M/V "Marao" is void in the light of his and his vessel crew's lack of knowledge of any unlawful act committed in the course of transporting smuggled goods. He invokes the last portion of paragraph k of Section 2530 which states:

> "xxx 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 petitioner's)

In addition to the above-quoted provision, petitioner cites Section 2531 which, he argues, sets as condition sine quo non for forfeiture, the knowledge or participation of the owner or his agent in charge of the vessel of the unlawful act. Section 2531 states:

> "SEC. 2531. Properties Not Subject to Forfeiture In The Absence of Prima Facie Evidence. - The forfeiture of the vehicle, vessel, or aircraft shall not be effected if it is established that the owner thereof or his agent in charge of the means of conveyance used aforesaid has no knowledge of or participation in the unlawful act: Provided, however that a prima facie presumption shall exist against the vessel, vehicle or aircraft under any of the following circumstances:

> 1. If the conveyance has been used for smuggling at least twice before;
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> 2. If the owner is not in the business for which the conveyance is generally used; and
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> 3. If the owner is not financially in position to own such conveyance." (Underscoring petitioner's)

We answer the issue in the negative.

Petitioner failed to overcome, to the satisfaction of this Court, respondent Commissioner's findings that the cargo in question to be of foreign origin and that no taxes, duties and charges due thereon have been paid. There is therefore illegal importation.

It is also undisputed, in fact petitioner so admits, that the M/V "Marao" was used in the unlawful act of smuggling. The active participation and involvement of M/V "Marao" in transhipping smuggled garlics from LCT "Mayflower" constituted an unlawful use of the vessel for smuggling or illegal importation within the meaning of Section 2530(a) of the Tariff and Customs Code. Pursuant to this provision, the M/V "Marao" must be forfeited in favor of the government.

Forfeiture proceedings are in the nature of proceedings in rem and are directed against the res. Since forfeiture is directed against the property seized, the defense of good faith or lack of knowledge on the part of petitioner is personal to him but cannot protect the vessel from the clutches of forfeiture. In **Commissioner of Customs v. Court of Tax Appeals and Jose Pascual** (138 SCRA 581), the Supreme Court interpreting Section 2530(a) held:

> "Pursuant to the aforesaid provision, the vessel is clearly subject to forfeiture in favor of the Government. Forfeiture proceedings are in the nature of proceedings in rem (Vierneza v. Commissioner of Customs, 24 SCRA 394) and are directed against the res. The fact that private respondent has allegedly no actual knowledge that M/B "Maria 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 the liability of forfeiture.
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> "Moreover, the aforequoted provision prescribes in an unequivocal term the imposition of the penalty of forfeiture in cases of unlawful importation of foreign articles regardless of whether such importation occurred with or without the knowledge of the owner of the vessel."

Petitioner's reliance on paragraph k of Section 2530 and Section 2531 is misplaced.

Section 2530(k) refers to a "conveyance actually being used for the transport of articles subject to forfeiture". This provision allows the petitioner to raise the issue of good faith or lack of knowledge of the unlawful act to defeat forfeiture. On the other hand, Section 2530(a) speaks of a "vehicle, vessel or aircraft xxx which shall be used unlawfully in the importation xxx of articles or in conveying and/or transporting contraband or smuggled articles in commercial quantities into xxx any Philippine port or place".

In this instant case, the M/V "Marao" transhipped the smuggled goods in commercial quantities and unloaded the same in a Philippine port. Clearly, the M/V "Marao's" participation in the unlawful act falls within the purview of Section 2530(a). Section 2530(k) is inapplicable since it can only refer to vehicles used after the unlawful importation, that is, after the goods subject to forfeiture are unloaded.

Section 2531 is likewise inapplicable. The vehicles, vessel or aircraft referred to in Section 2531 is one that did not <u>participate in the unlawful act - that of illegal importation</u> - otherwise that would be covered by Section 2530(a). Vessels used after the goods are unloaded can not be said to have participated in the "unlawful act of importation". In other words, the vessel referred to in Section 2531 is a vehicle, vessel or aircraft of <u>third persons</u> used after the goods were unloaded. This vehicle, vessel or aircraft is not liable to forfeiture if it is shown that such third person or his agent has no knowledge or participation in the unlawful act. (**See Tejam, Tariff and Customs Code of the Philippines, Vol. 4, 1981 ed., p. 2366**). In this instant case, the truck used in hauling the imported garlic from the pier may well be the vehicle referred to in Section 2531.

The above construction of the aforementioned provisions is proper to avoid irreconcilable inconsistencies among the said provisions. If Section 2530(a) be made to apply, along with Section 2530(k) or Section 2531, an absurd situation arises. The M/V "Marao" is subject to forfeiture under Section 2530 regardless of lack of knowledge, which under Section 2530(k) or Section 2531 the vessel will be absolved from forfeiture once lack of knowledge is established. Under the rules of statutory construction, the various provisions should be read together so that all may, if possible, have their due and conjoin effect, without repugnancy or inconsistency (**Lichauco & Co. v. Apostol**, 44 Phil. 138). All the provisions, even if apparently contradictory, should be allowed to stand and given effect by reconciling them (**Araneta v. Concepcion**, 99 Phil. 709). The statute must be so construed as to prevent a conflict between parts of it. For it is only by so construing a statute that the statute will be given effect as a whole (**People v. Uy Jui**, 102 Phil. 679).

Granting that Section 2530(k) or Section 2531 were applicable and that the petitioner can now raise the issue of good faith to prevent forfeiture, the evidence on record shows that at least petitioner's agent knew of the unlawful act which was the illegal importation of the garlic. It is sufficient that the agent in charge at the time had knowledge of the unlawful act. The defense of good faith will therefor fail.

WHEREFORE, the questioned **ORDER** dated December 3, 1987 and the Decision dated June 15, 1987 of the respondent Commissioner are hereby **AFFIRMED**; and the M/V "Marao" is hereby ordered forfeited in favor of the government.

Petition for review is **DISMISSED** with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, April 6, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

Dissenting

ERNESTO D. ACOSTA
Presiding Judge

STELLA DADIVAS-FARRALES
Acting 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

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DISSENTING OPINION

With due respect to the decision prepared herein may I express my opinion based on my appreciation of the facts presented in the records of the case.

There is no dispute that there was a smuggling of garlic. In fact, the vessel, "Mayflower" which brought the garlic from abroad was, in a separate case, already forfeited by the government. However, with reference to the vessel M/V "Marao" the owner of that vessel professed good faith as a defense pursuant to provision of Sections 2530(k) and 2531 of the Tariff and Customs Code.

I believe the owner as well as the captain of the vessel M/V "Marao" were both in good faith for the following reasons:

1) In the Charter Agreement entered into by Afredo Chua, the owner of "Mayflower" and Mr.

Jose Roble, Jr., the owner of M/V "Marao", it was stipulated clearly in the agreement that the garlic was actually of local origin and it was expressly warranted by Mr. Chua;

2) It was likewise testified by Captain Abrenilla and petitioner Roble of M/V "Marao" that they did not see in the jute sacks the markings "Made in Taiwan". The testimony of the customs appraiser Autonomo Enclona, is likewise not very firm on this matter. He was the witness of the respondent in the Bureau of Customs who testified on the markings "Made in Taiwan" and also stated that in the view of the unusually large size of the garlic, it must be of foreign origin. Moreover, the respondent never presented him before the court to testify. Considering that the proceeding in this court is trial de novo said vital witness of respondent should have been presented. (C.C. Sharp, Inc. v. Comm. of Customs, GRL 23803, Feb. 26, 1968, 1968A Phil 612). In view of this, I would like to give credence to the argument of the petitioner that the markings "Made in Taiwan" in the jute sacks do not necessarily pertain to the garlic. It may pertain to the jute sacks

itself and not to the garlic. If the jute sacks are the real containers of the garlic, the markings should be "Produced in Taiwan" as in the case of other imported agricultural products.

3.) The coasting manifest signed by Capt. Abrenilla is pro-forma which he has to sign otherwise the vessel cannot sail. This manifest is not only used in inter-island shipping but in foreign shipping as well. This fact was corroborated by Mr. Benjamin Platon formerly Entrance and Clearing Officer of the Bureau of Customs.

4.) Said trips of M/V "Marao" as well as the loading and unloading of the cargo, garlic to and from the vessel were cleared by the appropriate government authorities namely: Philippine Coastguard, Philippine Ports Authority and Bureau of Customs. In fact, the loading and unloading were done in the presence of the officials of the government agencies.

5.) The LTC Mayflower is a domestic vessel and Mr. Chua is a Filipino citizen.

The above facts relied upon by the owner and the captain of M/V "Marao" would under normal circumstances deny bad faith on their part especially considering that their only role was to pick up the garlic from Mayflower anchored in Bagacay Point, Li-loan City within the territorial jurisdiction of the Port of Cebu and the transhipments were never done surreptitiously but in the presence of all officials concerned and the fact that they were previously cleared by these government agencies. Furthermore, the allegation that they have used the vessel for smuggling at least twice before is not borne by the records. The first transhipment as well as the second are considered one and the same act being charged in the instant case. When the law states that there was a prima facie case against the vessel if the conveyance was used in smuggling at least twice before. This presupposes that the vessel was previously found guilty of involvement in smuggling for at least two times.

In our case, the controlling provision should be Section 253 of the Tariff and Customs Code rather than Section 2530 not only because it is a latter provision of law but more so because it specifically deals on lack of knowledge by the owner or his agent. Section 2530 applies only to exonerate the owner in case he is operating the vessel as a common carrier and not leased or chartered. But it does not necessarily follow that if the vessel is chartered there is already bad faith on the part of the owner. The law never says so. Bad faith of the owner has to be established.

In view of all the foregoing, or even in case of doubt, I believe we should decide in favor of the taxpayer as we may be doing injustice to an innocent taxpayer who may be deprived of his property without intention on his part to violate the Tariff and Customs Code. Under the circumstances, I find the penalty of forfeiture too harsh and excessive. An imposition of P10,000.00 fine is reasonable citing previous cases decided by this court (Francisco D. Balmocena v. Comm. of Customs, CTA Case No. 1585, July 31, 1969; Jose Pascual v. Comm. of Customs, CTA Case No. 1608, Sept. 30, 1969; Manila Star Ferry, Inc. v. Comm. of Customs, CTA Case No. 1836, Sept. 30, 1969 and others).

ERNESTO D. ACOSTA
Presiding Judge