

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANGEL NASIAD and
ERNESTO LOZADA,
Petitioners,

versus

CTA CASE NO. 1855

THE COMMISSIONER OF
CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs in Customs Case No. 846 (Seizure Identification No. 25-66- Davao) ordering the forfeiture in favor of the Government of 1,408 sacks of copra and 86 sacks of coffee. This case was submitted for decision on the pleadings and record of this case.

The facts as stated in the Commissioner's decision are as follows:

That on September 19, 1966, the vessel M/V "JOLO LENA" which was already docked at Batjak Wharf, Sasa, Davao City, was apprehended and searched by a combined team of NBI Agents, RASAC, PC and City Policemen; that the search of the vessel revealed that it was loaded with 1,408 sacks of copra and 86 sacks of coffee; that documents and other articles were taken from the vessel and in the hotel room of Mr. Tomas Velasco; that the crew members of the said vessel were interrogated and their written statements were taken in the NBI Headquarters; that at about

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3:00 in the afternoon of the same date, the aforesaid combined team searched the room of Mr. Tomas Velasco, charterer of the vessel and took therefrom various Indonesian documents and other papers; that Mr. Tomas Velasco was not present during the raid, and the only person present therein was a certain Miss Teofila Ibañez; and that the luggage of Mr. Tomas Velasco was opened and searched.

That on the basis of the affidavits taken from the crew members of the vessel and the various Indonesian documents, the Collector of Customs of Davao issued a Warrant of Seizure and Detention against said cargoes including the vessel M/V "JOLO LEMA". (CTA records, pp. 13-14.)

While the seizure proceedings were in progress before the Hearing Officers of the Bureau of Customs, Davao City, the Court of First Instance of Manila, thru Judge Gaudencio Cloribel, issued a restraining order, enjoining all parties concerned from proceeding against the vessel M/V "JOLO LEMA" pending trial on the merits of the case. Only the seizure case against the cargoes was heard. In a decision dated February 16, 1967 (Seizure Identification No. 25-66), the Collector of Customs of Davao decreed the forfeiture of the goods in question. Thereafter, the claimants appealed to the Commissioner of Customs. From the decision of the Commissioner of Customs in Customs Case No. 846 (Seizure Identification No. 25-66 Davao) dated April 27, 1967, an appeal was filed with this Court.

During the pendency of the case, the goods in question were released to the petitioners by an order of the Court dated June 16, 1967 (CTA records pp. 47-48), because the latter filed on June 15, 1967 a surety bond of P60,000.00 subscribed by the Filriters' Guaranty Assurance Corp. to answer for the appraised value of said goods in case it should be finally decided that they are subject to forfeiture.

During the hearing of the case on the merits, the contending parties manifested to this Court their agreement to submit the case for decision on the basis of the pleadings and records thereof.

The only issue submitted to this Court for resolution is the legality of the seizure made by the Collector of Customs of Davao of the 1,408 sacks of copra and 86 sacks of coffee allegedly owned by the petitioners.

The decision of the Commissioner of Customs appealed from is predicated on Section 2530-m(1), (3), (4) and (5) of the Tariff and Customs Code and Section 1 of Republic Act No. 2713 which provide 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:

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n. Any article sought to be imported or exported:

(1) Without going through a customhouse, whether the act was consummated, frustrated or attempted:

x x x x x

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.

(4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.

(5) Through any other fraudulent practice or device by means of which such article was entered through a customhouse to the prejudice of the government.

Republic Act No. 2713 -

SECTION 1. The importation of roasted coffee, instant or soluble coffee in powder form, extract or concentrate in liquid form or finished coffee products in any form, raw coffee beans of the robusta, excelsa, and liberica varieties, is hereby prohibited; x x x

x x x x x

Coffee imported in violation of this Act shall be confiscated by the Government and distributed to welfare and charitable institutions. (Under-scoring supplied)

Petitioners claim that the 1,408 sacks of copra and 86 sacks of coffee in question were purchased in Kiamba, Lumatin, and Lumasal, all in the province of Cotabato, from a certain

Osmeña Juanday. Petitioners contend that, inasmuch as the said goods were not imported and of foreign origin, they are not legally subject to seizure and forfeiture. They likewise contend that the forfeiture made by the Collector of Customs of Davao was invalid because the said forfeiture was based on documents and papers which were illegally seized by agents of the Government through violence and intimidation.

Respondent denies petitioners' claim. He contends that the evidence is sufficient to hold that the goods in question came from Indonesia and subsequently brought to the Philippines in violation of our laws and, therefore, subject to forfeiture; and that the Indonesian documents and papers allegedly secured illegally by the combined team of NBI, PC and RASAC agents stationed in Davao, were in fact lawfully and validly secured by them. Consequently, said documents and papers are admissible in evidence in the forfeiture proceedings instituted administratively by the Collector of Customs of Davao.

The voluminous evidences of record clearly show that M/V JOLO LENA had been under strict surveillance by the combined team of agents of the NBI, PC, RASAC, and City Police of Davao prior to its apprehension at a private wharf in Batjak,

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Sasa, Davao City; that the said M/V JOLO LEMA was skippered by Capt. Aquilino Pantinople and chartered by Mr. Tomas Velasco; during the period from the latter part of August to September 18, 1966, the said vessel was in Indonesian waters where it loaded copra and coffee beans from Taruna, Pitta, and Mangenito, all of Indonesia (Exhs. T-1 to T-24; pp. 38-39 and 56, t.s.n.); that in its trip to Indonesia it brought various merchandise from the Philippines which were exchanged and/or bartered for copra and coffee beans and subsequently taken to Davao City (pp. 38-39 and 124-125, t.s.n.); and that said vessel passed Marore, Indonesia on September 18, 1966 on its way to Tahuna, Indonesia (Exhs. U-1 and U-2; p. 41, t.s.n.) before proceeding to Davao City where it was apprehended on September 19, 1966.

The foregoing findings can only be sustained by considering and admitting as evidence the various Indonesian documents, papers and records found and seized by agents of the government from the Skyroom Hotel of Mr. Tomas Velasco, charterer of the vessel, and the logbook and other papers and records seized from the vessel M/V JOLO LEMA. In both places, the searches and seizures of the various Indonesian documents, logbook and other papers were made by government agents without the corresponding search warrants issued by the court.

Counsel for the petitioners argues vigorously that the various Indonesian documents, logbook, papers and other records which were seized by the government agents without search warrants are not admissible in evidence because the admission thereof would wipe out completely one of the fundamental rights guaranteed in our Constitution which provides as follows:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized. (Art. III, section 1B/ of the Constitution.)

(It was formerly a firmly settled rule that evidence obtained by an unreasonable, unwarranted, or unlawful search and seizure, if otherwise pertinent to an issue, was not rendered incompetent and inadmissible because of the wrong method in which it was obtained until the appearance in 1885 of the ill-starred majority opinion of *Boyd v. United States* (116 U.S. 616), which has exercised unhealthy influence upon subsequent judicial opinion. (See *People v. Carlos*, 47 Phil. 626-635.) In the *Boyd* case, supra, the U. S. Supreme Court held that documents obtained by illegal searches of

the defendant's effects are not admissible in evidence in a criminal case. The Boyd case remained unquestioned in its own Court for twenty years; meantime receiving frequent disfavor in the State Courts. Then in *Adams v. New York* (192 U. S. 585, L. ed. 575) decided by the U. S. Supreme Court in 1904, the doctrine in the Boyd case was virtually repudiated. Subsequently, in *Weeks v. United States*, 232 U. S. 383, the U. S. Supreme Court reverted to the original doctrine of the Boyd case, but with a condition, viz., that the illegality of the search and seizure should first have been directly litigated and established by a motion, and then only, the illegality would be noticed in the main trial and the evidence thus obtained would be excluded. In the case of *Silverthorne Lumber Co. v. United States*, 64 L. ed. 319, the U. S. Supreme Court adhered to its decision in the Weeks case (*People v. Carlos, supra*).

The doctrine enunciated by the U. S. Supreme Court in the case of *Weeks v. United States, supra*, that documents obtained by illegal searches of the defendant's effects are not admissible in evidence in a criminal case was repudiated by our Supreme Court in the case of *Moncado v. Peoples Court and Ladaw*, G. R. No. L-824, January 14, 1948; 80

Phil. 11, when it held as follows: X X X

La teoria de Weeks vs. U. S. que subvierte las reglas de prueba no es aceptable en esta jurisdiccion: es contraria al sentido de justicia y a la ordenada y sana administracion de justicia. La doctrina ortodoxa se impone por su consistencia probada a traves de muchisimos años. No hay que abandonarla si se desea que los derechos constitucionales sean respetados y no profanados. Los culpables deben recibir su condigno castigo, aunque las pruebas contra ellos hayan sido obtenidas ilegalmente. Y los que con infraccion de la ley y de la Constitucion se apoderan indebidamente de tales pruebas deben tambien ser castigados. Asi es como la ley impera, majestuosa e incolume.

It is to be noted, however, that four justices of our Supreme Court, namely: Messrs. Perfecto, Bangzon, Briones and Paras, were against the majority opinion in the Moncado case, MUPRA, and expressed the view that documents obtained by illegal searches of the defendant's effects are not admissible in evidence in a criminal case. This minority view in the Moncado case became the majority opinion in 1967 in the case of Harry S. Stonehill, et al. v. Hon. Jose W. Diokno, et al., G.R. No. L-19550, June 19, 1967, wherein the Supreme Court held as follows:

We hold, therefore, that the doctrine adopted in the Moncado case must be, as it is hereby, abandoned; that the warrants for the search of three (3) residences of herein petitioners, X X X are null and void; that the searches and seizures therein made are illegal; that the writ of preliminary injunction heretofore

issued, in connection with the documents, papers and other effects thus seized in said residences of herein petitioners is hereby made permanent; that the writs prayed for are granted, insofar as the documents, papers and other effects so seized in the aforementioned residences are concerned; x x x)

(Despite the conflicting decisions of the U. S. Supreme Court and our Supreme Court as to the admissibility of documentary evidences obtained by an unreasonable, unwarranted, or unlawful search and seizure, it is now a settled doctrine in this jurisdiction that the illegality of the search and seizure should first have been directly litigated in court and established by a petition or original action before the illegality of the search and seizure would be noticed in the main trial and the evidence thus obtained would be excluded. This procedure was followed in the Moncado case, supra, as stated in the dissenting opinion of Justice Perfecto, to wit:

Thereupon, petitioner filed with this Supreme Court on August 10, 1946, a petition praying that the lower court's order of July 9, 1946, be set aside, that said court be required to order the return of the documents and things in question to petitioner, and that the prosecutor be restrained from using and presenting them as evidence at the trial of the criminal case for treason.

The procedure adverted to above was also followed in the case of Harry S. Stonehill, supra. In the said case, our Supreme Court, among others,

said:

. . . on March 20, 1962, said petitioners filed with the Supreme Court this original action for habeas corpus, prohibition, mandamus and injunction, and prayed that, pending final disposition of the present case, a writ of preliminary injunction be issued restraining Respondent-Prosecutors, their agents and/or representatives from using the effects seized as aforementioned, or any copies thereof, in the deportation cases already adverted to, and that, in due course, thereafter, decision be rendered quashing the contested search warrants and declaring the same null and void, and commanding the respondents, their agents or representatives to return to petitioners herein, in accordance with Section 3, Rule 67, of the Rules of Court, the documents, papers, things and cash moneys seized or confiscated under the search warrants in question.

(If we were to adhere to the rule denying the admissibility of the evidence procured by an illegal search and seizure, only the party concerned must interpose in court a timely challenge to the validity of the seizure and the competency of the evidence by means of a petition or original action. If upon such action, the real party in interest can show in fact that the documentary evidence was secured by an unlawful search and seizure, the evidence will be suppressed as decided by our Supreme Court in the Stonehill case. In the case at bar, however, neither the owner of the vessel M/V JOLO IEMA nor the charterer thereof, Mr. Tomas Velasco, filed an action in court

*by petitioners Nasarad
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for the return of the various Indonesian documents, papers and records allegedly illegally seized from them and the suppression thereof as evidence. Consequently, the suppression of the evidences in question can not be entertained by this Court.)

We have carefully and diligently examined the evidences of record and the testimonies of the witnesses of both parties. In shifting the evidence for respondent, we have not found any ground to discredit them. We consider it quite improbable that the raiding party, composed of the combined team of agents of the NBI, PC, RASAC, and City Police of Davao, would fabricate and concoct false testimonies against the petitioners herein. The evidence does not show any plausible motive for respondent's witnesses to falsify the truth because they represent different agencies of the government. From all appearances, they have no personal interest whatsoever over the goods subject of the forfeiture proceedings. Besides, petitioners have not adduced any evidence showing that they were enemies of the witnesses for the government. In short, no iota of evidence was ever presented by the petitioners to destroy the integrity of the government witnesses and to cast a cloud of doubt on their testimonies.

(We found from the records that the evidences of respondent were strongly corroborated by the

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sworn statements of Capt. Aquilino Pantinople and the members of his crew (Exhs. N, N-1, N-2, N-3, C, P, P-1, P-2, Q, R, S and T). While the said sworn statements were subsequently repudiated or retracted by the officer and crew members of the vessel, we believe that their evidentiary value was not seriously impaired because the recantation can always be expected from such persons, who obviously have common cause and interest with the charterer of the vessel, Mr. Tomas Velasco, an attorney-in-fact of the herein petitioners.

The decision of the Collector of Customs of Davao shows that a petitioner herein and at the same time one of the claimants of the confiscated copra and coffee beans, Mr. Ernesto Lozada, is the Officer-in-Charge of the vessel M/V JOLO LEMA. It is not surprising, therefore, that the members of his crew repudiated their sworn statements given to government agents.)

(Petitioners claimed that the Indonesian documents and other pertinent papers relative to the copra and coffee beans in question were illegally taken by government agents. They also claimed that the search conducted by the raiding party of the hotel room (Skyroom, Davao City) of Mr. Tomas Velasco without a search warrant issued by the

court was illegal and, therefore, the various Indonesian documents, papers and records seized therefrom are not admissible in evidence. Suffice it to state that the legality of a seizure can be contested only by the party whose rights have been impaired thereby, and that the objection to an unlawful search and seizure is purely personal and cannot be availed of by third parties.

. . . Indeed, it is well settled that the legality of a seizure can be contested only by the party whose rights have been impaired thereby, and that the objection to an unlawful search and seizure is purely personal and cannot be availed of by third parties. Consequently, petitioners herein may not validly object to the use in evidence against them of the documents, papers and things seized from the offices and premises of the corporations adverted to above, since the right to object to the admission of said papers in evidence belongs exclusively to the corporations, to whom the seized effects belong, and may not be invoked by the corporate officers in proceedings against them in their individual capacity. . . (Sonchill, et al. v. Dickno, et al., supra.)

Moreover, petitioners failed to explain satisfactorily, much less refute the vital testimony of Fiscal Mariano Umali of the Department of Justice, Manila, that the various Indonesian documents (Exhibits 249-270), duly authenticated by the Indonesian Consulate in Manila, show in clear detail that the vessel M/V JOLO LEWA was in Indonesia during the period from the latter part

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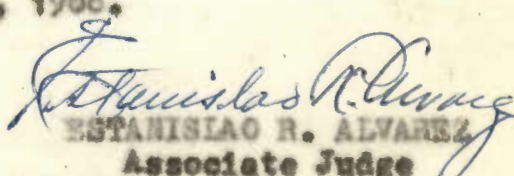
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of August to September 18, 1966, and that it loaded copra and coffee beans therein before the said vessel returned to Davao City on September 19, 1966. Petitioners' failure to successfully dispute or destroy said testimony by competent and reliable evidence strongly indicates that the copra and coffee beans in question were imported from Indonesia.

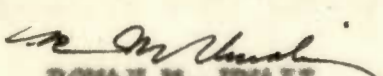
WHEREFORE, finding no error in the decision of the Commissioner of Customs appealed from, the same is hereby affirmed. With costs against petitioners.

SO ORDERED.

Quezon City, April 26, 1968.


ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:


ROMAN M. UMALI
Presiding Judge


RAMON L. AVANCHERA
Associate Judge