REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

K.M.K. GANI AND INDRAPAL
& COMPANY,
Petitioners,

- versus - C.T.A. CASE NO. 3831

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

8/30/85

D E C I S I O N

This is an appeal from the Commissioner of Customs' decision of January, 1984, affirming the Collector's of the Manila International Airport (MIA) forfeiting in favor of the Government all the cargoes in two (2) containers allegedly destined for Singapore as violative of the Dangerous Drug Act and Central Bank Circular No. 808 in relation to Section 2530(f), (i) and (l) - 3, 4 & 5 of the Tariff and Customs Code.

Records show that two (2) containers loaded with 103 cartons of merchandise covered by eleven (11) airway bills of several Singapore-based consignees including herein petitioners arrived at the Manila International Airport on board Flight PR 311 from Hongkong on September 11, 1982. Upon arrival, the containerswere off-loaded from the carrier by elements of the Suspected Cargo and Anti-Narcotics (SCAN) group of the Bureau of Customs and were transferred to the

International Cargo Terminal under Warrant of Seizure and Detention and thereafter subjected to Seizure and Forfeiture proceedings for alleged "technical smuggling". After due hearing, all the claimant-consignees moved for the transshipment of their respective cargoes to the actual destination in Singapore. The Collector of Customs (MIA) ordered and decreed the forfeiture of all the cargoes in the said containers. (Seizure Identification No. 4993-82 dated July 14, 1983). Upon appeal by all the claimant-consignees, the Commissioner of Customs affirmed the Collector's decision. (Customs Case No. 83-85, January, 1984). Taking exception, the herein two petitioners moved for the reconsideration insofar as concern their shipments, but likewise dismissed by the respondent Commissioner of Customs in a Resolution dated July, 1984.

Hence, this petition for review.

Petitioners hold themselves entitled to the release of their cargoes for transshipment to Singapore so manifested and covered by Airway bills as in transit, to wit: Three (3) cartons "Audio-visual Parts (D.C. operated)" consigned to "Mr. K.M.K. Gani" 99 Greenfield Drive, Singapore 1564, Rep. of Singapore, sent by "M. Lachmandas" Far East Mansion, Kowloon, Hongkong (PAL Airway Bill No. 079-0358-9342); And, Seven (7) cartons "Movements, Watches, Writing Instruments and Optical Goods" consigned to "Indrapal & Company"

97 High Street, Singapore 0614, Rep. of Singapore, sent by "Khemsons Corporation", Imperial Building, 58 Canton Road, Kowloon, Hongkong (PAL Airway bill No. 079-0366-6821), contending that the goods were never intended importations into the Philippines and the same suffer none of any affiliating breaches allegedly found attributable to the others shipments under the Customs and related laws.

Respondent lays stress on a derogatory information furnished by an informant of apparent impeccable credentials that the cargoes in the containers were actual importations in the country made plausible under a scenario that the route via Manila is "more expensive, tedious and circuituous" vis-a-vis a direct flight from Hongkong to Singapore; uneasy anticipation of the PAL's service van alongside the carrier "apparently to unload" the cargoes; several of the cartons yielded upon examination packages of "mogadon" and "madrax" drugs <u>sans</u> authorization; TV sets, betamax, car stereos and the like of American standard "unadaptable" for Singapore use and such other random specie of "misdeclaration". As thus, "Taken altogether, the above-circumstances lead to only one conclusion - that the articles in question were intended for the Philippines and not Singapore. They constitute a moral certainty of intent to unload in this country in violation of our Tariff and Customs laws for which the articles have incurred the liability of forfeiture."

All told, there are a total of 103 cartons of various merchandise in the two (2) containers deemed importations within the meaning of Section 1202 of the Tariff and Customs Code seized and forfeited as violative of the Customs laws. As so circumstanced, however, the cargo manifests of the carrying aircraft show that the shipments were in transit destined for Singapore. The corresponding airway bills were of the same import. It does not appear that the respondent disputes this simple material fact. But, drummed by a confidential information evoking a sense of a deja vu that the cargoes were intended to be imported into the Philippines, the Customs SCAN team summarily seized the same from the carrying aircraft upon arrival. Upon examination a couple of the cartons contained articles which as earlier averred, were either unauthorized or misdeclared hence forfeitable under Section 2530(f) of the Tariff and Customs Code. On this basis all the 103 cartons of merchandise were compressed into a single shipment deemed imported contrary to law encapsulated in a decree of forfeiture.

The conclusion is a little off, we do not reach the same.

The record raises the basic issue of whether the petitioners' shipments may be deemed importations contemplated in Section 1202 of the Tariff and Customs Code, providing, insofar as pertinent, that -

> "Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with the intention to unlade therein. xxx is deemed terminated upon payment of duties, taxes and other charges due upon the articles, or secured to be paid, at the port of entry and the legal permit for withdrawal shall have been granted; xxx."

The case before Us is essentially addressed and brought to bear upon the 10 cartons of articles consigned to the herein non-resident foreign based petitioners. As thus shown the basis of the claim is not short of specific support in terms of tractable data openly laid and fully disclosed. Upon the records, the circumstances obtaining are by no means clear as to any overt act showing any "intention to unlade" -- just as they are not clear as to any attempt to have the cargoes "entered" into the Philippines. This could be a compelling indicia amply sufficient to dispel any pall of uncertainty cast over the <u>transient</u> status of the cargoes and the locus of the undertaking as well. Validly infused cognizance as thus, it comes an aggravated chutzpah to have the particular shipments subjected to a further speculative dithering yet loose to run the gauntlet of a most demanding wringer of verification. And considering that the examination was neither necessary nor required, the exercise of such authority could have been stretched too far the effective range of expediency. Be that as it may, the examination revealed no Pandora's box of incriminating evidence, so to speak. The questioned cargoes were of the pretty innocuous stuff so stated in the covering airway bills. Respondent points to no factual findings of delinquency nor irregularity of relevance and competence to bash that patina of legitimacy over the petitioners' undertaking. Absent the "intent to unload" much less "attempt to enter", we find no threat of ambiguity in the language of Section 1202, supra, as would have the shipments considered importations in the country. We see no reason and none is vouchsafed why a simple case where fact and fabrication are no longer indistinguishable should remain foreclosed.

By the above light we view with ease petitioners' righteous indignation in prying the cargoes loose from the indiscriminately assumed and arbitrarily imposed sanction of forfeiture. Petitioners have proved entitlement to a favorable determination as a matter of fact and law.

WHEREFORE, the subject ten (10) cartons of articles are hereby released to the carrying airline for immediate transshipment to the country of destination under the terms of the contract of carriage. No costs.

SO ORDERED.

Quezon City, Metro Manila, August 30, 1985.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge