REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ESMERALDO LOQUIBER, BABY NERI, PABING OROLAN, MARILYN VILLANUEVA, ELVIRA BUENAVISTA, ELPIDIO SAROSAL, BOY LOQUIBER, BALTAZAR SALLURIDA, REGALADO LEGURA, and MARYMIE SEVILLA,
Petitioner,

- versus -

C.T.A. Case No. 4847

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:
SEP 02 1994

x - x

8-26-97

DECISION

The instant petition seeks for the release of twenty(20) bales of used clothings that were seized and ordered forfeited by the respondent for allegedly being smuggled items.

Petitioners are vendors in Palao's Supermarket in Iligan City and are engaged in business as retailers of merchandise including used clothing.

On September 14, 1989, the Customs Police of the sub-port of Iligan City intercepted the M/V Iligan City, an inter-island vessel plying the Cebu-Iligan route, and confiscated from its cargo 20 bales of used clothing for allegedly being violative of Republic Act No. 4653, the pertinent portion of which provides:

> "xxx xxx xxx
>
> Section 1. It shall be unlawful for any person, association or corporation to introduce into any point in the Philippines textile articles commonly known as used clothing and rags, except when these are imported under Subsection 'i', 'j', 'k', 'l', 'n', and 'v' of Section 105 of Republic Act Numbered Nineteen hundred and thirty-seven.
>
> xxx xxx xxx"

The petitioners contends that they are the lawful purchasers of the seized bales of used clothing. They allegedly formed part of the 2,207 bales of used clothing that were legitimately imported by Eloy's Merchandise Inc. during the effectivity of CB Circular No. 1060, which liberalized the importation of certain non-essential consumer items including used clothing.

The respondent subsequently admitted the legality of the importation of used clothings made by Eloy's Merchandise Inc.. In his answer, he stated that he is not questioning the validity of the importation of used clothing made by Eloy's Merchandise Inc.. He however maintains that the seized items should still be forfeited in the absence of any proof that the seized items were actually among those that were legally imported by Eloy's Merchandise Inc..

The respondent further alleged that the seized bales of used clothings allegedly purchased by the petitioners could not have been among those that were legally imported by Eloy's Merchandise Inc. in January 1986. The respective dates of the two transactions are allegedly too far remote from each other that it becomes doubtful whether the same importation of used clothing in 1986 were also the subject of the purchase made by the petitioner in 1989. It is opined by the respondent that the used clothings imported in 1986 must have already been sold out before the alleged purchase of the petitioners in 1989. In furtherance of his arguments, the respondent pointed out that the seized bales of used clothing do not have the same numbers and markings of those that were legally imported by the Eloy's Merchandise Inc.

Therefore, as correctly stated by the respondent, the only issue to be resolved in the case is whether or not the 20 bales of used clothing subject of forfeiture were part and parcel of the valid importation made by Eloy's Merchandise Inc. in January 1986.

We rule in favor of the petitioners.

The records in the case at bar is devoid of any evidence which tends to establish that the 20 bales of used clothings subject of forfeiture were illegally imported or smuggled by the petitioner into the country.

Having presented to the apprehending customs officials the sales invoices issued by Eloy's Merchandise Inc.(pp. 8-10, BIR records) corresponding to the 20 bales of used clothings, the petitioners had fairly established that the seized bales of used clothings were not imported but purchased domestically from an establishment lawfully engaged in business of selling such items.

It is entirely unreasonable and unjust to require any purchaser who, after having duly presented the receipts or sales invoices of the items he bought from any store or establishment, to still prove that such items were legally imported. A buyer in good faith is not obligated to prove that the item he bought was lawfully acquired by the seller, inasmuch as the seller or vendor warrants to the buyer that it has the right to sell the thing subject of the sale and that the same is free from any hidden faults or defects (Art. 1547, Civil Code).

By being able to show the receipts corresponding to the domestic sale of the 20 bales of used clothing, the petitioners were able to shift the *onus* to the respondent for her to prove that the seized items were the subject of illegal importation. This *onus*, the respondent had failed to discharge. In fact, he had admitted the legality of the importation of used clothings made by

Eloy's Merchandise Inc. from which it had been established the seized items came from.

Moreover, during the administrative hearing on November 21, 1989, no less than the President of Eloy's Merchandise Inc. had testified that the bales of used clothing which it imported on January 1986 had not been sold out at the time that the petitioners bought the seized items. His explanation that legitimate importers like Eloy's Merchandise Inc. found it hard to compete with smugglers of used clothing appears plausible and credible in view of his active participation in anti-smuggling campaign as Vice-Chairman of the People's Economic Council of Cebu and the re-imposition of the restriction on the importation of used clothings under Central Bank Circular No. 1090.

Neither the fact that the seized bales bore different markings or numbers will deviate from the foregoing conclusion that they formed part of those that were legally imported by Eloy's Merchandise Inc. Since Eloy's Merchandise Inc. is engaging in retail business, it is not unlikely that its buyers purchase items by piece or in quantities less than those contained in any of the bales of used clothing it imported. It is not also unlikely, as in the case of the petitioners, that buyers purchase individual items from each imported bale or container of used clothings. It is therefore but a sound and common practice that retailers rebag and repackage their merchandise to adapt to the exigencies of its business activities to suit the needs of its clientele. Moreover, no law compels retailers to sell their imported merchandise in the very same state that they were imported.

In the absence of a more concrete and direct evidence that the said merchandise was smuggled to the country by Petitioners, we have no alternative but to sustain the position of the latter who has presented a more concrete evidence as to its source. We cannot sustain the position of the respondent which is primarily based only on mere suspicion and doubts.

WHEREFORE, in view of the foregoing discussion, judgement is hereby rendered ordering the respondent to release to the petitioners the 20 bales of used clothing subject of SI No. 11-05-89.

SO ORDERED.

Quezon City, Metro Manila.

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge

DECISION -
C.T.A. CASE NO. 4847

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
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