(14)

ANTONIO JAVIER,
Petitioner,

- versus -

C.T.A. CASE NO. 2483

COMMISSIONER OF CUSTOMS,
Respondent.

3/22/77

x - - - - - - - - - - - x

D E C I S I O N

This is an appeal by petitioner Antonio S. Javier from the decision of the Commissioner of Customs dated January 5, 1973, affirming the decision of the Collector of Customs of the Port of Manila decreeing the forfeiture of a panel truck or van (Ford 350), Motor No. AU3JHY229367, with Plate No. 58-2, PPS-Quezon City, under the provisions of Section 2530(k) of the Tariff and Customs Code of the Philippines.

Antonio Javier, a resident of 4272 Emilia Street, Makati, Rizal, is the owner of the above-named panel truck or van which on May 5, 1971 was used in transporting 84 cases of 50 cartons per case of Jackpot King size, 46 cases and 25 cartons of Champion King size, 26 cases and 47 cartons of Union regular, and 26 cartons of Salem King size blue seal cigarettes.

Said vehicle was apprehended by Philippine Constabulary officers on May 6, 1971, which, for some time, had said vehicle under surveilance, and on which were found the aforesaid untaxed smuggled cigarettes. Seizure proceeding was instituted against the vehicle and its cargo of blue seal cigarettes by the Collector of Customs for violating Section 2530 (K) of the Tariff and Customs Code, which is quoted hereunder:

> 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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> xxx xxx xxx xxx
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> (k) Any beast actually being used for the conveyance of article subject to forfeiture under the customs and tariff laws, with its equipage or trappings, and any vehicles similarly used, together with its equipage and appurtenances, including the best, team 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.

After hearing, a decision of forfeiture of said vehicle, together with its contraband cargo of cigarettes, was rendered by the Collector of Customs on October 26, 1972, from which an appeal was taken to the Commissioner of Customs and who affirmed the decision of forfeiture on January 5, 1973. From the latter decision, petitioner appealed to this Court.

The only issue involved in this case is whether the decision of the Commissioner of Customs ordering the forfeiture of the aforesaid panel truck or van (Ford 350) owned by petitioner is legal and proper under Section 2530(k) of the Tariff and Customs Code.

It appears from the solitary testimony of petitioner and the decision in the case of People vs. Antonio Javier, Criminal Case No. 27301 of the Court of First Instance of Rizal dated July 2, 1975 that one Rodolfo Santos, an alleged fruit and vegetable merchant, had been renting a room or was a bed spacer in the house of petitioner Antonio Javier at No. 4272 Emilia Street, Makati, Rizal. As merchant, Santos purchased fruits and vegetables in Silang, Cavite and sold them at Divisoria, Manila. Santos, however, did not own any vehicle with which to transport the fruits and vegetables he buys from Cavite. At one time, he borrowed the truck of petitioner for which he allegedly had paid the latter ₱150.00 (p. 23, t.s.n. Sept. 1, 1976.) During the second time, or on May 5, 1971, Javier declared that Santos again borrowed his panel truck but this time upon the intercession of his "compadre" (pp. 14-15, t.s.n.), one Mr. Marcelino Fernandez (p. 29, t.s.n.). On this second time that his truck was borrowed nothing was said in

Javier's testimony that said panel truck was borrowed by Santos for a fee. We take it that this truck was therefore borrowed for free.

As stated heretofore, the said panel truck was trailed by members of the Philippine Constabulary at midnight of May 5, 1971, starting from Cavite up to the residence of petitioner at 4272 Emilia St., Makati, Rizal. While the panel truck was backing inside the gate of petitioner's house, the truck was ordered to stop by the PC officers and a warning shot was fired. Thereupon, three persons ran from the panel truck and into the house. In the course of this act of apprehension, boxes of cigarettes were scattered or strewn in the yard of petitioner's house at No. 4272, at Emilia St., Makati, Rizal. A search warrant was then secured. It was only at 6:00 in the morning of May 6, 1971, when the PC officers, armed with a search warrant, knocked at the door of the petitioner's house, and the latter opened the door for them. The panel truck was thereafter searched by the officers and found loaded therein with untaxed cigarettes. During the investigation that followed, petitioner was asked by the PC officers if the smuggled cigarettes were his, and he gave an affirmative reply. And he apparently added to the PC officers, "Puede bang mapakiusapan." As was said heretofore, petitioner Javier is the owner of the truck. However, he disclaimed knowledge of the use of his panel truck for smuggling of untaxed cigarettes.

Based upon the act of petitioner of lending his truck to Santos and giving authority to the use of the vehicle in question on May 5, 1971, on which were found on board untaxed cigarettes, said petitioner had constituted Santos as his agent as far as the use of the truck was concerned. The illegal act that had been committed by Santos involving the said vehicle, therefore, which is the use of the panel truck for carrying untaxed blue seal cigarettes, binds petitioner, who is owner of the truck and makes it liable to forfeiture under Section 2530(k) of the Tariff and Customs Code.

Javier sought to exculpate himself from the effects of the decree of forfeiture of his truck by disavowing knowledge of its use by Santos for smuggling purposes. However, the evidence show that Javier had testified before this Court that his truck was rented for the first time at ₱150.00, while his testimony before the Court of First Instance is that the rent given to him was ₱100.00, which are inconsistent; that during the second time that the truck was borrowed and definitely found to have been used for smuggling purposes, and it was said to have been borrowed through the intercession of Marcelino Fernandez, Javier's "compadre," we cannot understand why Santos still have to go through that long circuitous process when he can readily borrow it, if true, for a fee from Javier as in the first time. Were these statements then deliberately contrived with intent to let this Court believe that he had no knowledge of the use of his truck for illegal purposes? Firstly, it must be noted that Javier's testimony was neither corroborated by Rodolfo Santos nor by his "compadre," Marcelino Fernandez. And secondly, the evidence show that prior to the time the truck was searched for smuggled cigarettes, we noted a rather startling occurence that happened in the yard of Javier's house, on the eve of May 5, 1971, when there was fired a warning shot of a gun by a PC officer when the truck was being stopped by them and three (3) persons ran to and inside Javier's house. If it is true that he has no knowledge of the fact that his truck was at the time used in smuggling activity, knowing as we now do that Javier was all the time inside his house, this startling occurence would have given cause for Javier to immediately investigate and find out what was happening as that was taking place in his own yard and house. And it would have been only natural for him to have voluntarily helped the authorities look into this matter and/or should have informed the authorities immediately after knowing the activity of Santos of using his truck for smuggling purposes. His failure in not even inquiring as to what was happening inside his yard and house, and the use of his truck by Santos is opposed to the humanly natural reaction of quickly being angered at the first instance, or immediately upon knowing the illegal use of his truck. Not only did he fail thus, but when he still sought to talk it out with the PC officers saying, "Puede bang pakiusapan," speaks only of one thing that he was definitely aware of the use of his truck for smuggling purposes by Santos. His declaration that he had no knowledge of the use of his vehicle is not only inconsistent with the actual occurence, it is also uncorroborated, and therefore, cannot be believed.

In sum, by the established facts, borne by the circumstances of this case, to our mind points to no other conclusion than the fact that Javier has knowledge of the use by Santos of his truck for smuggling untaxed cigarettes. In the use of the truck, as aforesaid, Javier created Santos as his agent. Consequently, the truck in question having been used for smuggling purposes, which, as aforesaid, was apparently with the evident knowledge of petitioner, is liable for forfeiture under the provisions of Section 2530(k) of the Tariff and Customs Code. (Antonio Nabu vs. Commissioner of Customs, CTA Case No. 1333, Aug. 3, 1974.)

That petitioner was acquitted by the Court of First Instance of Rizal in its decision in Criminal Case No. 2750, dated July 2, 1975, involving the same vehicle with its cargo of blue seal cigarettes, and/or that the vehicle in question is "res nullius" or abandoned property as the truck in question is now a complete junk, are unavailing and do not bar the forfeiture of petitioner's vehicle used in smuggling (C.F. Sharp & Co. vs. Romualdez, CTA Case No. 1309, Aug. 7, 1969) the proceeding of seizure and forfeiture of articles or goods, being an action taken against the res. (Meyers Steel Pipe Company vs. Hon. Alfredo Pio de Roda, etc. CTA Case No. 2823, Resolution, November 9, 1976, citing Pascual vs. Commissioner of

Customs, 114 Phil. 958; 4 SCRA 1024; Wright vs U.S. 125 US 240, 312 L. ed. 743; Freeman v. Alderson, 119 US 240).

WHEREFORE, the decision of the Commissioner of Customs dated January 5, 1973 is hereby affirmed. With costs against petitioner.

SO ORDERED.

Quezon City, March 22, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge