REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

15,000 BAGS OF ALLEGEDLY SMUGGLED RICE AND THE VESSEL M/V "GYPSY QUEEN", WILLIAM SINGSON, AND TRITON SHIPPING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6406

HON. COMMISSIONER OF CUSTOMS, BUREAU OF CUSTOMS AND THE DISTRICT COLLECTOR OF CUSTOMS, PORT OF CEBU,
Respondent.

Promulgated:

NOV 18 2003

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DECISION

This is a judicial appeal assailing the 2nd Indorsement issued by the Commissioner of Customs dated March 11, 2002, which ordered the forfeiture of the 15,000 bags of rice and the vessel M/V "Gypsy Queen" in favor of the government.

The facts, as simplified by the parties in their Joint Stipulation of Facts and Issues, are as follows:

On September 5, 2001, the joint elements of the Philippine Navy Gun Boat PG-394 apprehended the vessel M/V "Gypsy Queen" in Cebu for carrying 15,000 bags of suspected smuggled rice. M/V "Gypsy Queen" is owned by Triton Shipping Corporation

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with business address at 482 National Road, Basak, Pardo, Ceby City. Said vessel is duly registered with the Maritime Industry Authority (MARINA) by virtue of Certificate of Vessel Registry No. 011819, Certificate of Ownership No. 012301 in the name of Triton Shipping Corporation and Coastwise License No. HCGDM-01-030 from July 17, 2001 to July 2002.

During the inspection, the documents presented by the Master of the vessel, Capt. Jolly Galvez, are the Master's Oath of Safe Departure dated August 14, 2001, which was received by one PO3 Fernandez, Philippine Coast Guard Station, Mobile Team, Pier 18 on August 15, 2001; the Coasting Manifest where it was reflected that the vessel was loaded with 15,000 bags of rice with Metro Star Rice Mill of Bocaue, Bulacan as shipper and William Singson of Raybrig Marketing of Cebu City as consignee; and the vessel's Roll Book where it reflected that the vessel was cleared by the Philippine Ports Authority (PPA), North Harbor Office, Manila on August 14, 2001 and received by a certain PO3 Fernandez of the Philippine Coast Guard in Manila on August 15, 2001.

Captain Alvin G. Urbi, Commander, Naval Forces Central, Philippine Navy, in his letter to the District Customs Collector Atty. Robert Sacramento of Cebu, dated September 12, 2001, stated among others, that verification made by his office with the Office of the Station Commander, Coast Guard Station, Manila, showed that there was no vessel named MV "Gypsy Queen" that logged-in or submitted any Master's Oath of Safe Departure on August 15, 2001. It also found that no personnel by the name PO3 Fernandez, PCG, was detailed at Pier 18, Mobile Team on said date.

Accordingly, SI Alejandro M. Bondoc, CPD-ESS, Cebu District Office, issued a Memorandum dated September 17, 2001 and recommended the issuance of a Warrant of Seizure and Detention against the vessel MV "Gypsy Queen" and the 15,000 bags of rice loaded therein.

On September 18, 2001, the District Collector of Customs issued a Warrant of Seizure and Detention (WSD) against the vessel and the 15,000 bags of rice on the basis of said recommendation for alleged violation of the tariff and customs laws.

After trial, the same District Collector of the Port of Cebu rendered a Decision dated 18 December 2001 in favor of herein petitioners and ordered the release of said cargo and the vessel M/V "Gypsy Queen" on the ground that there is no evidence to establish a cause of action or existence of probable cause.

Upon automatic review, respondent Commissioner of Customs, then Commissioner Titus Villanueva, issued a one-paged 2nd Indorsement dated March 11, 2002,[1] which reversed the decision of the District Collector of Cebu and declared the subject cargo and vessel forfeited in favor of the government.

Hence, this appeal filed on March 12, 2002.

The parties submitted their Joint Stipulation of Facts and Issues on February 24, 2003 and approved by the court on February 28, 2003. The parties likewise prayed that in lieu of trial, they would submit their respective memorandum. The court granted the same on even date.

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[1] Annex "A", Petition for Review.

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The parties agreed that the only issue in this case is: "Whether or not the grounds relied upon by the respondent Commissioner of Customs in the assailed 2nd Indorsement constitute sufficient basis to reverse the decision of the District Collector of Customs, Port of Cebu, in favor of petitioners ordering the release of 15,000 bags of rice and the vessel M/V "GYPSY QUEEN".

In reversing the decision of the District Collector of Customs, the Commissioner of Customs relied on the following grounds, to wit:

1) That claimant(s) failed to rebut the Certification issued by Coast Guard Station, Manila (issued by Jose G. Cabildo, Station Commander), that there was no vessel named M/V "Gypsy Queen" that logged-in nor submitted any Master's Oath of Safe Departure on August 15, 2001 at North Harbor; and

2) While it is true that the National Food Authority (NFA) certified on the authenticity of the NFA Receipts and Warehouse Stock Issue submitted by claimant(s), records is bereft of any evidence, documentary or otherwise, to show that the rice withdrawn from NFA Zambales is the same rice apprehended on board the vessel M/V "Gypsy Queen".

Apparently, the focal point of the controversy is the certification issued by Commander Jose G. Cabildo that no vessel in the name of M/V "Gypsy Queen" logged in or submitted a Master's Oath of Safety Departure on August 15, 2001.

As stipulated, during the inspection, the Master of the vessel, Capt. Jolly Galvez, presented a Master's Oath of Safe Departure dated August 14, 2001 and received by a certain PO3 Fernandez on August 15, 2001. But as certified to by Commander Cabildo, there was no PO3 Fernandez detailed at Pier 18, Mobile Team on August 15, 2001. Thus, Captain Alvin G. Urbi, in his letter to Atty. Roberto M. Sacramento, District

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Collector of Customs, Port of Cebu, stated that the said Master's Oath of Safe Departure was fabricated. Consequently, a Warrant of Seizure and Detention was subsequently issued by District Collector Sacramento for violation of Sections 2530 (b) and (f) of the Tariff and Customs Code of the Philippines, *viz*:

> b. Any vessel engaging in the coastwise trade which shall have on board any article of foreign growth, produce or manufacture in excess of the amount necessary for sea stores, without such article having been properly entered or legally imported;
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> xxx xxx xxx
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> f. Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or exportation of the former.

It bears stressing that the said certification was never identified by the author thereof, Commander Jose Cabildo. The petitioners were never able to cross examine him or the authenticity of the document he executed. However, respondents insist that petitioners could have obtained the necessary documents to rebut the presumption of illegality of the transportation of the subject 15,000 bags of rice and to explain why the Philippine Navy issued said certification. Considering that the vessel M/V "Gypsy Queen" was used in the transportation of the 15,000 bags of rice, respondents maintain that the seizure of both the vessel and cargo was proper.

We do not agree.

The certification, by itself, is not sufficient to prove violation of the Tariff and Customs Code, particularly Section 2530(a) thereof:

> **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, or aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;

It bears emphasis that the author was not presented as witness and the petitioners did not have the chance to cross examine him; thus, said certification can be considered hearsay evidence. A sworn statement is absolutely inadmissible in evidence for being hearsay, where the affiant himself never took the witness stand during trial.[2]

Even assuming for the sake of argument, that no Master's Oath of Safe Departure was logged-in on August 15, 2001, it does not necessarily follow that the ship did not call on the port of Manila and that its cargo were illegally transported.

It must be noted that the Commissioner of Customs reversed the decision of the District Collector also on the ground that petitioners failed to prove that the rice withdrawn from NFA Zambales were the same rice apprehended on board the vessel M/V "Gypsy Queen".

However, we find that the documents submitted by the petitioners are sufficient to prove that the rice apprehended on board were the same rice withdrawn from NFA Zambales.

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[2] People vs. Santos, G.R. No. L-62072, November 11, 1985.

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Pursuant to the Open Sale Program of the NFA wherein the NFA would openly sell its imported stocks to interested individual retailers and encourage these retailers to buy the stocks in order that the older stocks can be disposed of in the warehouses to accommodate the incoming imported rice, Memorandum No. RO3-140 No. 01-06-010 dated June 4, 2001 was issued by the Regional Manager II of NFA endorsing to the NFA Manager of Zambales the accredited individual retailers of NFA Nueva Ecija.[3] Among the accredited individual retailers were Jose Navarro and Emmanuel Jacinto. Emmanuel Jacinto was able to buy from the open sale 7,000 bags of NFA rice.[4] He likewise purchased NFA rice from Jose Navarro and Manuel Sevilla, a retailer from Bulacan. Emmanuel Jacinto then sold 17,000 bags of NFA rice to Metro Star Rice Mill.[5] The parties admit that all documents issued by the NFA Zambales, relative to the said Open Sale Program such as the Certifications issued by the NFA Zambales Senior Grains Operations Officer, the Official Receipts, the NFA Authority to Issue and the NFA Warehouse Stocks Issue[6] were duly confirmed as genuine by then NFA Administrator R.A. Abad in his letter dated February 15, 2002 to Customs Deputy Commissioner Gil Valera.[7]

Subsequently, Metro Star sold 15,000 bags of rice to Raybrig Marketing owned by William Singson in the amount of P12,050.000.00.[8] William Singson is duly registered to engage in Wholesaling/Importing Rice under Grains Business License issued by the

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[3] Customs Records, Folder E, page 48.
[4] *Ibid*, page 46.
[5] *Ibid*., page 51.
[6] Ibid., pages 17-47.
[7] Annex "E", Petition for Review.
[8] Customs Records, Folder E, pages 52-54.

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NFA.[9] Emmanuel Jacinto testified that these 15,000 bags of rice were taken from the 17,000 bags of imported NFA rice sold by him to Metro Star Rice Mill.[10] It was Metro Star that delivered the 15,000 bags of NFA rice sold from its warehouse in Bocaue, Bulacan to Manila for loading.[11] It was the charterer who arranged for the shipment of the 15,000 bags of rice on board M/V "Gypsy Queen" from Manila to Cebu.[12] The shipment of the said 15,000 bags of rice was covered by a Bill of Lading with Metro Star Rice Mill of Bulacan as Shipper and William Singson of Raybrig Marketing in Cebu City as Consignee.[13] And M/V "Gypsy Queen" paid the proper charges and other fees to the Philippine Ports Authority (PPA) in the amount of P3,030.00 as shown by Official Receipt No. 44191451 relative to said shipment.[14]

The above evidence submitted by the petitioners are enough to defeat the bare speculation of the Commissioner of Customs that the apprehended 15,000 bags of rice were not the same rice withdrawn from NFA Zambales. In fact, respondents failed to rebut petitioner's documents. Thus, we do not concur with the declaration of the Commissioner that the records are bereft of any evidence to show that the rice withdrawn from NFA Zambales are the same rice apprehended on board the vessel M/V "Gypsy Queen". Granting that under Section 2535 of the Tariff and Customs Code, the claimants have the burden of proof to show that the vessel, vehicle, aircraft, beast or article is not subject to forfeiture, yet, with the presentation of petitioner's testimonial and

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[9] Joint Stipulation of Facts and Issues, Admission 3.8.
[10] Customs Records, Folder F, page 32.
[11] *Ibid.*, page 40.
[12] Joint Stipulation of Facts and Issues, Admission 3.4.
[13] *Ibid.*, Admission 3.5.
[14] *Ibid.*, Admission 3.6.

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documentary evidence, the burden of proof is shifted to the respondents. Respondent Commissioner of Customs cannot just order the forfeiture of both rice and vessel by mere assumption of fraud. The term "fraud" in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another.[15] We agree with the petitioners that the 2nd Indorsement of respondent Commissioner failed to clearly indicate any actual commission of fraud or any attempt or frustration thereof. As defined, actual or intentional fraud consists of deception willfully and deliberately done or resorted to in order to induce another to give up some right. It must amount to intentional wrong-doing with the sole object of avoiding the tax. Fraud is never presumed. It must be proved. Failure of proof of fraud is a bar to forfeiture.[16] Since forfeiture is a divestiture of property imposed by way of punishment, it must be looked upon with disfavor. There must be evidence of greater weight or more convincing and not mere speculation than that which is offered in opposition to it.

IN VIEW OF ALL THE FOREGOING, the 2nd Indorsement issued by the Commissioner of Customs is hereby **REVERSED and SET ASIDE**. The vessel M/V "Gypsy Queen" and its cargo of 15,000 bags of rice are hereby **ORDERED** released to their respective lawful owners. Consequently, the Security Pacific Assurance Corporation Surety Bond [SPAC Bond No. 01564/2002] in the total amount of

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[15] Philippine Law Dictionary, Moreno, 3rd Ed., page 392.

[16] M/V "Don Martin", et al. vs. Secretary of Finance, CTA Case No. 5890, May 22, 2001, citing Hon. Farolan, Jr. vs. Court of Tax Appeals, 217 SCRA 298 and Aznar vs. Court of Tax Appeals, 58 SCRA 543.

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P21,297,622.50 posted by the petitioners for the provisional release of the vessel and its cargo shall be cancelled upon the finality of this decision.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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