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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ALEMANYA INTERNATIONAL TRADING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO.4389

THE HONORABLE COMMISSIONER OF CUSTOMS,
Respondent.

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ENGR. EDUARDO R. SOLAMILLO doing business under the name and style STAR MARINE ENTERPRISES,
Petitioner,

- versus -

C.T.A. CASE NO.4404

HON. SALVADOR MISON, in his official capacity as Commissioner of Customs,
Respondent.

Promulgated :

FEB 06 1995

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DECISION

These are consolidated cases involving the forfeiture of a motor tanker (RTC-1) and its cargo of 1,200 metric tons, more or less, of automotive diesel oil (ADO).

Petitioner Alemanya International Trading Corporation (ALEMANYA) is a corporation duly organized and existing under and by virtue of the laws of the

Republic of the Philippines. It is the claimant of the One Thousand Two Hundred (1,200) metric tons, more or less, of automotive diesel oil (ADO) originally in CTA Case No. 4389.

Petitioner, Engr. Eduardo R. Solamillo, doing business under the name and style STAR MARINE ENTERPRISES is the claimant of subject motor tanker having acquired the same through auction sale conducted by the Regional Trial Court of Cebu to satisfy a final and executory judgment in Civil Case No. CEB-3866 (see Certificate of Sale, dated July 6, 1988, Exh. A). He was later substituted to the rights of ALEMANYA by virtue of a Deed of Absolute Sale executed by and between him and Atty. Rolando Villacorta as the duly authorized representative of ALEMANYA (see Exh. B and the Remarks of the Clerk of Court, CTA Records, p. 159) making the former as the sole petitioner of these cases and thereby giving way to their consolidation (CTA Resolution dated April 29, 1991, CTA Records, p. 160-162).

Prior thereto, subject motor tanker was first levied by virtue of a Writ of Attachment duly issued on December 17, 1985 by the same Cebu Regional Trial Court and was later on levied on execution on September 10, 1986 (Annex G, CTA Case No. 4404, p. 32-34) to satisfy the final and executory judgment in the same Civil Case No. CEB-3866

(Cebu Shipyard & Engineering Works, Inc., vs. N & S Lines and RICNOR Tankers Corporation).

Meanwhile, on July 5, 1986, ALEMANYA contracted the services of RICNOR for the purpose of transporting One Thousand Two Hundred (1,200) metric tons, more or less of automotive diesel oil from General Santos City or its vicinity to Manila (see Fixture Note, Annex A, CTA Case No. 4389, p. 16).

On the eve of July 15, 1986, while entering the North Harbor, Port of Manila, M/T RTC-1 was apprehended by the elements of the National Customs Police on the ground that "the tanker was found carrying on board oil in four (4) compartments without the requisite manifest and failure to present evidence of payment of duties and taxes on the importation" (Decision, Commissioner of Customs, Exh. E) and therefore, liable to forfeiture as unmanifested cargo under Section 2530 (g) in relation to Sections 906, 907, and 908 of the Tariff and Customs Code. The tanker was likewise forfeited under the same Section for having been used in transporting the abovesaid unmanifested cargo.

In his defense, Petitioner argued that "in the absence of substantial proof on the alleged act of smuggling, the inescapable conclusion is that the offense charged has not been established. xxx On this score, the extreme penalty of forfeiture will not lie" (Petition, CTA Records, p. 8) Moreover, Petitioner was "a mere purchaser for value and in good faith" (ibid.; Memorandum for Petitioner, CTA Records, p. 525)

The only issue brought for resolution is: Whether or not subject motor tanker ana its cargo (ADO) are liable for forfeiture.

Let us discuss the subject matters separately from each other.

As regards to the cargo, the applicable provisions of the Tariff and Customs Code are the following:

> SEC. 906. *Requirement of Manifest in Coastwise Trade.* - <u>Manifests shall be required for cargo and passengers transported from one port in the Philippines to another only when one or both of such places is a port of entry.</u>
>
> SEC. 907. *Manifest Required Upon Departure from Port of Entry.* - Prior to departure from a port of entry, the master of a vessel licensed for the coastwise trade <u>shall make out and subscribe duplicate manifests of the whole of the cargo</u> and all of the passengers taken on board such vessels, specifying in the cargo manifests the marks and numbers of packages, the port of destination and names of the consignees, together with such further information as may be required and in the passenger manifests the name, sex, age, residence, port of embarkation, and destination of all passengers, together with such further information as may be required. <u>He shall deliver such manifests to the Collector of Customs or other customs officials duly authorized, before whom he shall swear to the best of his knowledge and belief, in respect to the cargo manifests, that the goods therein described, if foreign, were imported legally</u>

> <u>and that the duties, taxes and other charges thereon have been paid or secured to be paid,</u> and with respect to the passenger manifests, that the information therein contained is true and correct as to all passengers taken on board. Thereupon, the said Collector of Customs or customs official, shall certify the same on the manifest, the original of which he shall return to the master with a permit specifying thereon, generally, the landing on board such vessel and authorizing him to proceed to his port of destination retaining the duplicates.
>
> Sec. 908. *Manifests Required Prior to Unlading at Port of Entry.* - <u>Upon arrival at a port of entry of a vessel engaged in the coastwise trade and prior to the unlading of any part of the cargo, the master shall deliver to the Collector or other proper customs official complete manifests of all the cargo and passengers brought into said port, together with the clearance manifests of cargo and passengers for said port granted at any port or ports of entry from which said vessel may have cleared during the voyage</u>.
> (Emphases supplied)

and in relation to the above sections, is Section 2530 (g) which provides, thus:

> Sec. 2530. *Property Subject to Forfeiture Under Tariff and Customs Law.* - Any vehicle, <u>vessel</u> or aircraft, cargo, article and other objects shall, under the following conditions <u>be subject to forfeiture</u>:
>
> xxx xxx xxx
>
> (g) <u>Unmanifested article found on any vessel or aircraft if manifest therefor is required</u>;
> (Emphases supplied)

The above-cited laws speak in unmistakable terms the fact that said cargo must be forfeited for being unmanifested. In fact, it was admitted by the Petitioner himself that the above-quoted section is indeed the applicable law to the case at bar when he said, thus: "As to the fact that the cargo (diesel oil) was not manifested, the same, if at all, may only constitute mere violation of Section 2530 (g) ..." (Petition, p. 8).

And rightly so.

Hence, it should be forfeited.

The defense of the Petitioner that the prosecution failed to establish substantial proof of the alleged act of smuggling is without merit since the fact remains that the cargo was of foreign origin and UNMANIFESTED when manifest therefor was required. Under the principle of *res ipsa loquitor*, it is immaterial whether the act of smuggling was clearly established. Under the above quoted provisions of the Tariff and Customs Code, it is enough that the cargo was <u>unmanifested</u> and that there was no showing that payment of duties and taxes thereon had been made for it to be subjected to forfeiture.

This ruling finds its agreement in the commentaries of the learned Prof. Montano A. Tejam, an acknowledged authority in Customs Law, when he said, thusly:

> In the contemplation of Section 1363 (g) of the Rev. Adm. Code (now Sec. 2530 (g), Customs Law) <u>it is not necessary to prove by direct and positive evidence that the goods in question were smuggled into the Philippines in order that the same can be forfeited; neither</u>

is it necessary to prove their illegal importation and loss of revenue thereof. It is sufficient ground for forfeiture when the goods were not included in the ship's manifests in violation of the Customs Law aforequoted.

The transportation from one port of entry to another of goods not declared in the shipping manifest of the vessel is in violation of sections 1211 and 1212 of the Rev. Adm. Code (now Secs. 906, and 907, Customs Law). Such goods become liable to forfeiture in accordance with section 1363 (g) (now Sec. 2530 (g), Customs Law) of the same Code. To condone the forfeiture as decided by the Collector of Customs and affirmed by the court *a quo* would be giving a chance to accessories after the fact of smugglers of foreign cigarettes to ply their trade with impunity and with the sanction of the courts. What the executive department could not then curb, the court should not tolerate. (Rep. of the Phil. vs. Goco, CA-G.R. No. 9543-R, Jan. 22, 1954; 50 O.G. 1662, April, 1954)
(TEJAM, Commentaries on the Revised Tariff and Customs Code, 1988 ed. p. 2348; Emphasis supplied)

Very well said. We cannot agree even more.

As regards the motor tanker, the applicable provision of law should be Section 2521 which provides, thus:

SEC. 2521. *Failure to Supply Requisite Manifests.* - If any vessel or aircraft enters or departs from a port of entry without submitting the proper manifests to the customs authorities, or shall enter or depart conveying unmanifested cargo other than as stated in the next preceding hereof, such vessel or aircraft shall be fined in a sum not less than ten thousand (P10,000.00) but not exceeding thirty thousand (P30,000.00) pesos.
(Emphasis supplied)

xxx xxx xxx

Again, the doctrine under *res ipsa loquitor* applies. And since there is no showing on the records that Petitioner submitted the proper manifests to the customs authorities, he should therefore be liable for fine under this provision. In fact, Petitioner himself admitted that "at most, therefore, the vessel should be subjected only to a fine." (Petition, ibid)

We agree.

We cannot impose the extreme penalty of forfeiture as it was not proven beyond reasonable doubt by the Respondent that the cargo was indeed smuggled. Needless to state, what subjects the vessel to a fine under Sec. 2521 of the Tariff and Customs Code is the failure to have a manifest of its cargo. (TEJAM, ibid, p. 2333). Accordingly, the amount of thirty thousand pesos (P30,000.00) is hereby imposed as fine on the vessel.

The argument of "purchaser in good faith and for value" raised by the Petitioner is unavailing as it was immaterial in the above discussions. Moreover, this Court is convinced that Petitioner is not completely without fault as he bought the motor tanker only on July 6, 1988 when it was already seized by the Respondent two years before or on July 14, 1986. It is difficult for this Court to conceive that Petitioner did not know anything about the incident.

WHEREFORE, in all the foregoing, the surety bond equivalent to P3,063,554.30 (which is the appraised value of the oil cargo as per appraisal report of the Auction and Cargo Disposal Division of the Bureau of Customs and made as basis by this Court in arriving at the correct amount of bond as per Resolution dated June 6, 1991, CTA Records, p. 176) which represents the unmanifested cargo, is hereby **ORDERED FORFEITED** in favor of the Government . Said amount is to be taken from the P4,200,000.00 surety bond undertaken by SIDDCOR INSURANCE CORPORATION, put up by the Petitioner in case the decision would be adverse to him. In addition thereto, the Petitioner is also **HEREBY ORDERED TO PAY** the Respondent the sum of P30,000.00 (to be taken also from the same P4,200,000.00 surety bond put up by the Petitioner) as fine on the motor tanker which conveyed said unmanifested cargo.

SO ORDERED.

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge

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 between 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