Sitrams

Republic of the Philippines
COURT OF TAX APPEALS
Manila

C. F. SHARP & CO., INC.
(Harbor Facilities, Inc.)
Petitioner,

August 17, 1964

- versus - C.T.A. CASE NO. 1309

HONORABLE NORBERTO ROMUALDEZ,
JR., Commissioner of Customs,
Respondent.

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D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs ordering the forfeiture of M/V CHETON, a motor launch of 14.51 gross tonnage with an estimated value of ₱19,000.00, registered in the Bureau of Customs in the name of the petitioner.

During the hearing of the case in the Bureau of Customs, the parties agreed on the following facts:

> Sometime on April 1, 1962 at around 4:30 A.M., Lt. Dominguez, Chief of the Water Patrol Division of the Bureau of Customs with Lt. Iban and some others, apprehended the M/V "Cheton" with 1,865 cartons of assorted "blue seal" cigarettes while said boat was passing through the breakwater, coming from Pier 13 with the following crew on board, Jovencio Bernabe as Patron, Fernando Bernal as Engineer, and Ernesto Gallardo as Seaman.
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> That the M/V "Cheton" was seized for alleged violation of Section 2530 (a) of the Tariff and Customs Code and that C. F. Sharp & Co., Inc. is the registered owner.

After hearing, the Collector of Customs of Manila rendered his decision imposing a fine of ₱10,000.00 in lieu of forfeiture. From this decision, the owner of the vessel, the herein petitioner, appealed to the

Commissioner of Customs who sustained the Collector's findings in regard to the commission of the offense charged but increased the penalty from fine to forfeiture. Petitioner has appealed from the decision of the Commissioner on the ground that the penalty imposed is not justified by the circumstances of the case and the law.

Although not raised by the parties, we deem it proper to pass upon the question of the jurisdiction of this Court over the instant case which involves the penalty of forfeiture imposed under the Tariff and Customs Code. Section 7(2) of Republic Act No. 1125 provides that this Court shall have exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affectdd; fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs. This provision of law has been interpreted as not authorizing this Court to review decisions of the Commissioner of Customs in seizure cases.

> Of course, We do not maintain that the copies of the magazine objected to, if really containing indecent or obscene literature, cannot be forfeited and destroyed, but We hold that this cannot be done or authorized by any order, resolution or decision of the respondent Court of Tax Appeals, a court that according to the explanatory note of Republic Act No. 1125, was created to review tax cases and

> to expedite the collection of taxes.
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> Finally, the title of Republic Act No. 1125 reads as follows: "An Act Creating the Court of Tax Appeals", and this law might be rendered unconstitutional if it is interpreted as including within the jurisdiction of said Court appeals from decisions of the Commissioner wherein no tax is involved, thus amplifying its jurisdiction to cases not covered by the title of the law creating the same. (Actg. Coll. of Customs v. Actg. Com. of Customs, G. R. No. L-8811, Oct. 31, 1957.)

It was intimated, however, in the case of Actg. Coll. of Customs v. Actg. Com. of Customs, supra, that decisions of the Commissioner of Customs in seizure cases may be appealed to this Court if such cases involve the determination of the proprietary rights of the persons concerned. To quote from the decision in said case:

> The dissenting Justice further cites our decisions in the 3 cases of Millarez, as Acting Collector of Customs for the port of Manila, et al. v. Judge Rafael Amparo et al., G. R. Nos. L-8364, L-8365, and L-8351, June 30, 1955; the case of Khe Kun Commercial vs. Commissioner of Customs et al., G. R. No. L-9778, Resolution of October 11, 1955, and NAMARCO vs. Judge Higinio Macadaeg et al., G. R. No. L-10030, January 18, 1956, all of which refer to seizures in connection with prohibited importation of garlic, and naturally the seizures thereof made by the Bureau of Customs not only come under the aforementioned Section 1363, paragraph (f) of the Revised Administrative Code, but also involved the determination of the proprietary rights of the persons concerned. It is, therefore, evident that none of these cases have any bearing on the case at bar.

The nature and scope of "proprietary rights" involved in a seizure case necessary to bring it within the jurisdiction of this Court is not quite clear. The question was not considered at length in said decision.

In the instant case, it is obvious that the proprietary rights of petitioner over the vessel in question are involved, but it is not clear whether such proprietary rights are sufficient to bring the case within the purview of the decisions in Millarez v. Amparo, Khe Kun Commercial v. Commissioner of Customs, and NAMARCO v. Macadaeg, supra.

It is to be noted that the case of Actg. Collector of Customs v. Actg. Commissioner of Customs, supra, arose and was decided solely on the basis of Section 7(2) of Republic Act No. 1125. Congress has clarified the situation by providing in Section 2402 of the Tariff and Customs Code that the party aggrieved by a ruling or decision of the Commissioner of Customs <u>in any case of seizure</u> may appeal to the Court of Tax Appeals. Said section reads as follows: xxx

> SEC. 2402. <u>Review by Court of Tax Appeals</u>.- The party aggrieved by a ruling of the Commissioner in any matter brought before him upon protest or by his action or ruling <u>in any case of seizure may appeal</u> to the Court of Tax Appeals, in the manner and within the period prescribed by law and regulations.
>
> Unless an appeal is made to the Court of Tax Appeals in the manner and within the period prescribed by laws and regulations, the action or ruling of the Commissioner shall be final and conclusive.

The Tariff and Customs Code (Rep. Act No. 1937) took effect on July 1, 1957, four years after the enactment of Republic Act No. 1125. To our mind, Section 2402 of the Tariff and Customs Code confers upon this Court jurisdiction to review decisions of the Commissioner of Customs in seizure cases arising under said

Code, such as the present case. 5)

Having arrived at the conclusion that we have jurisdiction over the instant case, we will now proceed to consider whether or not the decision appealed from is in accordance with law.

It is contended that the vessel in question is not liable for forfeiture because the "blue seal" cigarettes found on said vessel were loaded thereon through threat and intimidation by four armed men. To quote from the petition for review:

> M/L "CHETON" is a motor yacht engaged in the business of carrying passengers from the piers at South Harbor to the ships and vice-versa when the ships are not on dock at pierside. On March 31, 1962, said motor launch was on dock at the Pasig River near Jones Bridge. In the afternoon of said date, an office messenger of petitioner went to see the Patron of said motor boat and told the latter to proceed to the Manila Yacht Club early in the morning of next day, April 1, 1962 because the motor launch was to be used by some officers of the Company. After leaving Pasig River at Jones Bridge at around 4:00 a. m. on her way to the Manila Yacht Club, said motor boat was intercepted by a small motorized banca with four armed men in civilian clothes on board posing to be employees of the Manila Port Service. The four men by threat and intimidation directed the Patron of the M/L "CHETON" to proceed to Pier 13 at South Harbor where about 1,800 cartons of blue seal cigarettes of assorted brand were hurriedly loaded. The Patron was thereafter ordered to go to the direction of Cavite with the motor boat of the four armed men closely following behind. In a very short while, the patron of petitioner's launch saw a Cutter (motor boat) of the Water Patrol Division of the Bureau of Customs, and taking a calculated risk approached the same and quickly informed the officers on board the Cutter of the cargo forcibly loaded by the four armed men. At this precise moment, the motor boat with the four armed men on board escaped and vanished.

> A futile search was made and, immediately thereafter, the crew of the motor launch were instructed to proceed to the Law Enforcement Command Office of the Bureau of Customs where interrogations and investigations were conducted. In the meanwhile, petitioner's vessel was impounded because of its cargo.

Respondent refused to give credence to the foregoing story stating that "it is in the highest degree unlikely." We agree with respondent. If it is true as alleged that after loading the cigarettes the Patron of the Cheton was ordered to go to the direction of Cavite "with the motor boat of the four armed men closely following behind," it is highly improbable that the motor boat could have just vanished into thin air when they were met by the patrol boat of the Bureau of Customs. It is alleged that a "futile search was made" for the motor boat, but the records do not disclose that any such search was made because the officers on board the patrol boat were not informed of the existence of the motor boat with four armed men. As stated by Florante R. Malimban, one of the apprehending officers, he and his companions were on patrol at that time because of a confidential information that the M/L.Cheton was going to be used in securing blue seal cigarettes in the South Harbor.

> Q - When you apprehended the m/l "cheton" at about 4:45 AM on April 1, 1962, were you already informed as to the blue seal cigarettes loaded in it?
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> A - We were already tipped-off by my informant that the m/l "cheton" was going to load blue seal cigarettes in the South Harbor.
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> Q - Did you not inquire from your informant from what vessel the cigar-

ettes were to be unloaded?

A - At that time he was not sure of the particular vessel.

(Sworn statement of Florante R. Malindan, May 18, 1962, Exh. L-1 for Petitioner; Exh. 1-A for Respondent, pp. 96-97, Customs Records.)

Noteworthy is the fact that at the time the cigarettes were taken from Pier 13, the M/V Ventura of which petitioner is the agent, was docked at said Pier. (See Exh. A, pp. 17-18, Customs Records.) This circumstance lends credence to the confidential information referred to by Malimban that the M/L Cheton was to load blue seal cigarettes at the South Harbor.

The M/L Cheton was ordered forfeited pursuant to Section 2530 of the Tariff and Customs Code, the pertinent portions of which read as follows:

> 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:
>
> a. Any vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles into or from any Philippine port or place except a port of entry; and any vessel which, being of less than thirty tons capacity shall be used in the importation of articles into any Philippine port or place except into a port of the Sulu sea where importation in such vessel may be authorized by the Commissioner, with the approval of the department head.

It is alleged that there is no evidence that the M/L Cheton was used unlawfully in the importation of cigarettes to justify forfeiture under Section 2530 (a) of the Tariff and Customs Code.

Again, respondent in a vain attempt to mislead made repeated conclusions that

> the "blue seal" cigarettes are "untaxed" and "imported" cigarettes. Nowhere could it be found in the records of the proceedings that respondent tried or even attempted to prove that there was importation. To justify forfeiture under Section 2530(a) of the Tariff and Customs Code as charged, respondent must satisfy and prove the indispensable conditions that the vessel must have been (1) unlawfully used in (2) importation or exportation; or if the theory of respondent is that the M/L "CHETON" is less than thirty tons, then respondent must prove that the vessel must have been used "in the importation of articles into" any Philippine port or place. But even a most careful examination of the records of this case will fail to show any hint, clue, much less, proof, of any of the essential ingredients pointed above. On the contrary, the findings of the Collector and admittedly made as basis in promulgating respondent's decision extending the "benefit of doubt" in petitioner's favor (Exh. "I", pp. 32-33 and Exh. "1-1", p. 32) patently negates the element of unlawful use of the motor launch. (Respondent's Reply Memorandum, pp. 2-3.)

There is no question that the cigarettes in question were "blue seal" cigarettes, that is to say, cigarettes imported from abroad on which the corresponding customs duties and taxes had not been paid. The evidence for petitioner attests to this fact, for why should the crew of the M/L Cheton allegedly voluntarily surrender the cigarettes to the Customs officers alleging that said cigarettes were forcibly loaded on board said vessel by four armed men?

It having been established that the said cigarettes were imported from abroad; that the corresponding customs duties and taxes due thereon were not paid; that the cigarettes were on board the M/L Cheton at the time of apprehension; and that the M/L Cheton did not have the necessary documents relating to the importation of said cigarettes, the conclusion is inevitable that the said cigarettes were illegally imported and that the M/L Cheton was illegally used in the unlawful importation thereof. The said vessel is, therefore, subject to forfeiture under Section 2530(a) of the Tariff and Customs Code.

Section 1202 of the Tariff and Customs Code provides:

> SEC. 1202. When Importation Begins and Deemed Terminated.- Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein. Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs.

It is clear from Section 1202 of said Code that in case of taxable articles coming from abroad, importation is not terminated until the duties, taxes and other charges due thereon have been paid, or secured to be paid, at a port of entry. In this case the duties and taxes have not been paid, so that at the time of apprehension and while the cigarettes were on board the M/L Cheton, said cigarettes were in the course of illegal importation into the Philippines. And the means used to import the said cigarettes illegally was the M/L Cheton which did not have the necessary documents of importation.

It is true that the members of the crew of the M/L Cheton were acquitted in the criminal case filed against them in the Court of First Instance of Manila. But acquittal in a criminal case is no bar against the forfeiture of articles imported, or attempted to be imported, illegally, or used in the unlawful importation of such articles. (See Venancio Carreon Tong Tek v. Com. of Customs, G. R. No. L-11947, June 30, 1959; Pascual v. Com. of Customs, G. R. No. L-12219, April 25, 1962.)

Petitioner argues that if the penalty of forfeiture is to be imposed upon the M/L Cheton it would be unduly discriminated against because in other cases only a nominal penalty was imposed by the Collector of Customs of Manila. It is enough to state in this connection that this Court is not bound by administrative decisions of executive officials. What is pertinent is whether or not the penalty imposed is in accordance with the facts and the law, and we are satisfied that it is so in the case at bar.

Finding no reversible error in the decision appealed from, the same is hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, August 17, 1964.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge