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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOUTHERN ISLES WOOD EXPORT,
Petitioner,

- versus - C.T.A. CASE NO. 3751

COMMISSIONER OF CUSTOMS,
Respondent.
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6/26/87

D E C I S I O N

The basic question tendered for resolution is whether the shipment involved in this case described as "Nine (9) Truck Loads Sawn Lumber Per 'S/S Eastern Virgo'" is subject to forfeiture in favor of the government for violation of Section 2530, paragraphs (f) and (l), sub-paragraphs 3, 4 and 5, of the Tariff and Customs Code, which provides:

> "SEC. 2530. <u>Property Subject to Forfeiture Under Tariff and Customs Law</u>.- Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subject to forfeiture:
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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;
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> (1) Any article sought to be imported or exported:
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> (3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;
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> (4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and
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> (5) Through any other practice or device contrary to law by means of which such articles was entered through a customhouse to the prejudice of the government."

There is no dispute as to the facts, the parties having submitted the case for decision on the basis of the pleadings and the records. As narrated by respondent:

> The records of the instant case show that subject shipment are to be exported to Guam on board the S/S Eastern Virgo,

but before it was loaded, a spot check was conducted by agents of the CIID due to some derogatory information about said cargo. It was found out after the initial verification of the covering papers and documents that no Certificate of Inspection was issued by the Bureau of Forest Development and therefore no export duty was paid by the exporter, hence the seizure case instituted against the subject shipment for violation of the above-cited law.

During the hearing it has been duly established that subject shipment consisted of nine truck loads of sawn lumber intended to be exported to Guam, and the same was declared on Export Declaration No. NLRO 82/9059, as 130 skids building materials "(A.D. Purlin, A.D. Rafter, A.D. Floor Joist, A.D. Girdle, A.D. Railding, K.D. Decer, K.D. Drawside, K.D. Siding, K.D. Paneling, K.D. Facial Board, Panel Board)" with an export value of US$24,406.12. It was further established that subject shipment was not covered by the required Certificate of Inspection issued by the Bureau of Forest Development and no export duty was paid by the exporter.

On the other hand, claimant through its General Manager in his manifestations stated that the reason why a Certificate of Inspection was not secured from the Bureau of Forest Development was because the Southern Isles Wood Export is relatively new in the lumber export business, and the omission to submit to the pre-shipment inspection by the Bureau of Forest Development was not an infraction willfully done by said firm and for that matter he would like to request the Office of the Collector of Customs that an inspection be made in order to comply with the regulation.

On July 15, 1982 a Certificate of Inspection No. 23439 was issued by the Office of the Bureau of Forest Development after an ocular inspection was conducted by the Office of the Collector of Customs represented by its hearing Officer, a representative of the CIID through its Prosecutor and the representative of the herein claimant.

With the alleged violation of non-payment of the corresponding export duty, the herein claimant cited Section 516 of the Revised Tariff and Customs Code which provide that the exporter is allowed to pay the export duty not later than thirty (30) days from date of shipment.

After a thorough study of the facts and circumstances of the instant case, it appears that the failure of the herein claimant to secure the necessary Certificate of Inspection from the Bureau of Forest Development is not the question to be resolved or the violation neither the non-payment of the corresponding export duty, but the misdeclaration of the subject export cargo under Section 2530 (f) of the Revised Tariff and Customs Code. The herein claimant declared it as building materials to evade the payment of export duty instead of sawn lumber. As per the analysis and final classification made by the Chief, Export Coordination Division in his 3rd Indorsement of February 17, 1983, subject shipment are Sawn Lumber and not building materials hence it is subject to export tax.

At the outset, it should be stated that forfeitures are imposed by the seizure and subsequent institution of seizure proceedings pursuant to Section 2532 of the Tariff and Customs Code. In seizure cases, one important aspect of the proceedings in the consideration of the issues involved, is the duty on the part of the government of presenting evidence which indicates probable cause for instituting such proceedings. (Sanchez vs. Commissioner of Customs, B.T.A. Case No. 185, decided by the Court of Tax Appeals on November 2, 1954, citing U.S. vs. One Bag of Paradise and Choura Feathers, N.Y., 365 F. 301, 167, C.C.A. 473; Associated Banking Corporation vs. Commissioner of Customs, et al., C.T.A. Case No. 2448, August 6, 1976; Metropolitan Garment Corporation vs. Ramon J. Farolan, Acting Commissioner of Customs, C.T.A. Case No. 3959, April 16, 1986; Mayer Steel Pipe Corporation vs. Hon. Alfredo Pio de Roda, et al., C.T.A. Case No. 2823, February 18, 1987.) The term "probable case", which has been held synonymous with "reasonable cause", means less than the evidence which will justify condemnation. It imports a seizure made under circumstances which warrant suspicion. (Sanchez vs. Commissioner of Customs, _supra_, citing Fooke vs. United States, 7 Cramch /U.S. 339/; Associated Banking Corporation vs. Commissioner of Customs, _supra_;

Metropolitan Garment Corporation vs. Ramon J. Farolan, as Acting Commissioner of Customs, supra; Mayer Steel Pipe Corporation vs. Hon. Alfredo Pio de Roda, et al., supra.) And Section 2535 of the Tariff and Customs Code, as amended, provides:

> "SEC. 2535. Burden of Proof in Seizure and/or Forfeiture.- In all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provisions of the tariff and customs laws, the burden of proof shall lie upon the claimant: Provided, That probable cause shall be first shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding sections of this Code."

When, therefore, the Bureau of Customs ordered and decreed the seizure and forfeiture in favor of the Government of the subject shipment under Seizure Identification No. 205-82, what are the circumstances which warranted, or created the suspicion, that petitioner misdeclared the same under Section 2530, paragraphs (f) and (l), sub-paragraphs 3, 4 and 5 of the Tariff and Customs Code?

As clearly shown in the records of the case and concisely stated by respondent in his answer as special and affirmative defenses:

It is undisputed that the subject shipment was to be exported to Guam on board the S/S "Eastern Virgo", and that petitioner declared the same as building materials. The said declaration dispenses with the requirements of a Certificate of Inspection issued by the Bureau of Forest Development and the payment of export duty. Before the shipment was loaded, however, a spot-check was conducted by the agents of the Customs Intelligence and Investigation Division, and it was found that the same was actually sawed lumber. This was confirmed by the analysis and final classification made by the Chief, Export Coordination Division, as well as by the inspection report issued by the Bureau of Forest Development.

Indubitably, when petitioner misdeclared the aforesaid goods as building materials when in truth and in fact the same are sawed lumber, its intention was to evade payment of the corresponding export duty.

Consequently, petitioner is guilty of gross misdeclaration warranting the penalty of forfeiture pursuant to Section 2530, paragraphs (f) and (1), sub-paragraphs 3, 4 and 5, of the Tariff and Customs Code.

Petitioner has not been denied due process since during the hearing of the seizure case before the

Collector of Customs it was given all the opportunity to adduce evidence, as in fact it presented evidence in its defense. Moreover, its appeal before the Commissioner of Customs was judiciously resolved.

The merit of respondent's position as averred in the above-stated special and affirmative defenses is clear on the face of the 3rd Indorsement dated February 17, 1983 of the Chief, Export Coordination Division of the Bureau of Customs. (p. 108, Customs record.) To quote:

> Respectfully returned to the Honorable Commissioner, Attn: Customs Service Chief, Legal & Intelligence Services, the within case folder of Manila Seizure Identification No. 200-82, entitled "Republic of the Philippines versus Nine (9) Truck Loads of sawn lumber per S/S "Eastern Virgo", SOUTHERN ISLES WOOD EXPORT", with the information that per stipulation of facts submitted by the parties during the hearing of this case as appearing in the herein prepared/contemplated decision, and as shown in the Certificate of Inspection No. 23439 issued by the Bureau of Forest Development and submitted as Exhibit "9" for the claimant, the shipment concerned is "SAWN LUMBER", and not "building materials."
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And even in the "Urgent Motion to Render Decision" dated September 28, 1983, filed by counsel for petitioner Jose S. Santos, Jr. & Associates with respondent in Manila Seizure Identification No. 200-82, it is expressly stated that: (p. 110, Customs record.)

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> The failure of the Honorable Commissioner of Customs to render his decision on the matter despite the lapse of more than one (1) year has caused great loss and irreparable damage on the part of Southern Isles Wood Export Inc., considering that the items subject of seizure and detention are <u>sawn lumber</u>, the value of which rapidly deteriorates. Moreover, Southern Isles Wood Export failed to come up with its commitments to its foreign customers. (Emphasis supplied.)

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Upon the other hand, except the bare statement of petitioner given to the CIID that subject shipment consists of building materials "because the same has undergone smooting (sic.) on all sides and cut according to its thickness, width and length in conformity with its final usage" (p. 76, CTA record), no evidence whatsoever was presented to support such statement. Instead petitioner submitted this case on the basis of the pleadings and the records. Settled is the rule that the party who prays for judgment on the pleadings without offering proof as to the truth of his own allegations and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party. (Bauermann vs. Casas, et al., 10 Phil. 386; Evangelista vs. De la Rosa, 70 Phil. 115.) Since petitioner failed to controvert the fact appearing in the customs records, and alleged by respondent in his answer, that the subject shipment to be exported to Guam on board the S/S "Eastern Virgo"was actually sawn lumber, petitioner misdeclared said goods as building materials in order to evade payment of the corresponding export duty. Accordingly, petitioner is guilty of misdeclaration warranting the penalty of forfeiture pursuant to Section 2530, paragraphs (f), (1), sub-paragraphs 3, 4 and 5, of the Tariff and Customs Code, supra.

It is hardly necessary to add that when an importer challenges by legal steps the correctness or validity of the actions of the Collector of Customs, the question to be decided is not whether the Collector was wrong but whether the importer (or exporter) was right, the burden being on the latter to establish the correctness of his own contention. (See Behn, Meyer & Co. vs. Collector of Customs, 26 Phil. 647.) The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that public officials of the state who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law. (See Inter-provincial Autobus Co., Inc. vs. Collector of Internal Revenue, 98 Phil. 290.) This is specially true in this case where respondent's special and affirmative defenses, the validity of w lich as borne out from the records of the case, have the effect, if not controverted by adequate and competent evidence, of nullifying petitioner's cause of action.

Anent petitioner's allegation of lack of due process on the ground that the misdeclaration was not squarely raised during the hearing of this case before the hearing officer, hence, petitioner failed to present evidence, or show that there was no malicious intention to commit such violation, suffice it to say that the appellate power of the Commissioner of Customs to review seizure and protest cases is not limited to a review of the issues raised on appeal. He may affirm, modify or reverse the decision of the Collector on other questions provided that his findings and conclusions are supported by evidence. (Vierneza vs. Commissioner of Customs, L-24345, July 30, 1968, 24 SCRA 394.) Even more, petitioner, before this Court wherein trial de novo can be availed of, should have presented evidence that its shipment consisted of building materials instead of choosing to waive the same by submitting the case for decision on the basis of the records and the pleadings. What measure of diligence, therefore, can be claimed by petitioner, or its counsel, in the production of said evidence? Surely, we believe it would not be in consonance with the rules of established judicial procedure, nor in keeping with the principles of justice, if a party who has waived trial, can raise lack of due process.

WHEREFORE, the decision of respondent Commissioner of Customs forfeiting the subject shipment of petitioner Southern Isles Wood Export in favor of the Government is hereby affirmed. Costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, June 26, 1987.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge