1B

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ENGINEER FRANKLIN POLICARPIO,
Petitioner,

- versus -

C.T.A. CASE NO. 5057

HON. LICERIO C. EVANGELISTA in his capacity as DEPUTY COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:

MAY 07 1996

x - x

DECISION

This is an appeal instituted by petitioner from the decision of the Deputy Commissioner of Customs acting under the authority of the Commissioner of Customs affirming the order of forfeiture handed down by the District Collector of Customs of Batangas on several pieces of machinery more particularly described as follows:

a. Special Circular Saw for vertical and horizontal cutting of strips Model Block Tailor BK-1200 with switch gear and contactor control and reinforced main motor, and

b. Diamond Sawing Machine, Model TBS 500D, including switch gear cabinet with contactor for all motors.

The facts of this case as gathered from the customs records and the stipulation of facts agreed upon by both parties show that on April 10, 1987, petitioner participated in an auction sale conducted by the Bureau of Customs and was later on adjudged as the highest bidder of Lot 15 advertised in the Notice of Sale as "15 tons more or less marble processing machine, rusty and in junk condition and grinding machine stored at the Mina Amapola Compound, Taguig Metro Manila with a floor price of P61,234.35". Petitioner paid the total amount of P61,250.00 for the said lot (Annex A of the Stipulation of Facts, page 232 of the CTA records) and as per procedure was issued Gate Pass No. 5136 to enable him to withdraw the articles that were part of lot 15 from customs custody (see page 241 of Customs records). The petition alleges that lot 15 was not completely delivered to him as two items were missing from the lot. In reaction to this incomplete delivery, petitioner wrote a letter, dated April 21, 1987, to the then Collector of Customs Guillermo Orbos informing the latter that two items supposed to be part of lot 15 awarded to him were missing (page 236 of Customs records). In that same letter, petitioner apprised the collector that upon investigation conducted by him he found out that the missing items can be found at the compound of the Carrara Marble Philippines, Inc. in Lipa City, Batangas. In response to the letter, the Collector of Customs

Guillermo Orbos issued a directive ordering several CIID agents and their representatives to proceed to Carrara Marble Philippines, Inc. to verify whether or not petitioner's statements are true. Upon investigation, these agents assigned to go to Carrara Marble Philippines, Inc. concluded that the machineries found installed in the compound of Carrara Marble were the very same items missing from lot 15, however they were already painted with a different color (page 233 Customs records). It was also revealed in the investigation that representatives of Carrara Marble were not able to produce any proof of payment of duties and taxes for the subject machineries and as a consequence a warrant of seizure and detention was issued by Rolando Yebes, District Collector of Customs. Shortly thereafter, seizure proceedings were instituted against these machineries, pursuant to Section 2536 and 2530(e) of the Tariff and Customs Code, with Carrara Marble as owner/claimant and petitioner herein as claimant/intervenor because he claims that the subject of the seizure case are part of lot 15 that was awarded to him by virtue of the auction sale. In a decision, dated June 24, 1992, the Collector of Customs decreed the forfeiture of the subject articles in favor of the government. Petitioner made his appeal to the

Commissioner of Customs who later affirmed the decree of forfeiture in a decision, dated July 28, 1993. Petitioner then sought reconsideration of the aforesaid decision but this was denied in a letter received on December 13, 1993. Petitioner subsequently filed a petition for review with this Court on January 12, 1994 praying for the setting aside of the decision of the Commissioner and for the delivery of the subject articles to him. In an amended petition for review, petitioner also asked for actual and moral damages in the total amount of P500,000.00 because he alleged that the decision of the Commissioner was issued with grave abuse of discretion, without or in excess of jurisdiction, and in a manner contrary to law.

Respondent initially filed a Motion to Dismiss on the ground of petitioner's lack of cause of action but this Court denied the motion as the arguments raised therein are better passed upon in connection with the merit of the case. In answer to the petition, respondent gives emphasis on the wordings of the terms and conditions of the sale conducted by the Bureau of Customs where petitioner was awarded lot 15, thus:

"<u>TERMS AND CONDITIONS</u>

"10. Unless otherwise indicated, the articles shall be offered for sale 'AS IS, WHERE IS' and the Bureau of Customs <u>gives no</u>

> warranty as to their condition. Quantity, numbers, weight or measurement of the articles listed in Notice of Sale is subject to exact determination before delivery; in case any excess is discovered, a corresponding increase of bid price will be required, otherwise the excess will be withheld from the delivery; on the other hand, should a shortage be discovered' a proportionate refund will be made."

By its terms, respondent maintains that the Bureau of Customs gives no warranty as to the condition, quantity, number, weight or measurement of the articles listed in the notice of sale and that the exact determination of the same is to be determined before delivery. In effect, respondent contends that if the buyer discovers that only 7 tons instead of 15 tons as advertised were delivered to him then his remedy would be to file a claim for refund corresponding to the value of the undelivered portion of lot 15 instead of praying for the retrieval of the missing items. Respondent also took issue with the prayer of petitioner for actual and moral damages on the ground that he cannot be made liable for such as this would be tantamount to instituting a suit against the State and it is common knowledge that the State cannot be sued without its consent.

The issue that calls for determination in this case is whether or not the decision of the Commissioner of Customs affirming the decree of forfeiture is founded on sound legal and factual grounds to withstand judicial scrutiny. Intertwined with this issue is the purely factual determination of whether or not the subject machineries earlier described and forfeited in favor of the government form part of lot 15 earlier awarded to petitioner as the highest bidder in the auction sale conducted on April 10, 1987.

It is important to note at this point that the very same decision handed down by the Commissioner of Customs is also the subject of an appeal filed in this Court on November 4, 1993 instituted by Carrara Marble Philippines, Inc., the other claimant of the same subject machineries, and this case is entitled **Carrara Marble Philippines, Inc. vs. Commissioner of Customs**, CTA Case No. 5039.

Such being the case, the Customs records submitted in the Carrara Marble case was borrowed for use in formulating the decision in the instant petition as these Customs records contain the same documents utilized in formulating the impugned decision of the Commissioner of Customs.

Petitioner in the instant case is firm in his conviction that the missing items later on found in the premises of Carrara Marble Phil., Inc. form part of lot 15 that was eventually sold to him via an auction sale conducted by the Bureau of Customs. During the hearings conducted on the seizure proceedings of Customs Case 92-29 entitled Republic of the Philippines vs. Special Circular Saw for vertical and horizontal cutting of strips model block tailor BK-1200 with switch gear, contactor control and Re-enforcement main motor, etc.; Carrara Marble Philippines, Inc. (owners/claimants); Engr. Franklin Policarpio (Claimant/Intervenor), petitioner herein submitted as evidence photographs allegedly taken by him on March 28, 1987 showing that the two items now missing were part of lot 15 prior to the auction sale (Exhibits "H", "H-1", "H-2", "H-3", page 259, Customs records) held on April 10, 1987. Petitioner also produced a certificate, dated October 20, 1985, from Carl Meyer Trading, PTE, Ltd., a company based in Singapore, attesting to the fact that their company delivered only one such machine model BK 1200 to the Philippines on August 22, 1978 which is the same machinery being claimed by the petitioner. Apparently, this certificate was produced to show that there is only one such model of machinery so what was originally part of lot 15 is the same machine found installed in the compound of Carrara Marble Phil., Inc.. The decree of forfeiture was anchored primarily on the fact that the present possessor of the subject items, Carrara Marble Phils., Inc., could show no evidence of payment of customs duties and taxes. Carrara Marble Phil., Inc. in the same proceeding asserted the defense that it could not be held liable for import duties as they bought the 2 pieces of machinery locally from Jaina Perez evidenced by two Deeds of Absolute Sale executed on December 20, 1985 and on October 28, 1986 in the total amount of P300,000.00. The Collector of Customs belittled this line of defense because during the seizure proceedings, claimant Carrara Marble could not produce the seller Jaina Perez. Further inquiries conducted by the Bureau of Customs revealed that no such Jaina Perez resided in the place and address stated in the deeds of absolute sale leading the Collector to conclude that the alleged seller, Jaina Perez, is fictitious. As to the claim of herein petitioner, the Collector of Customs went on to conclude that such pieces of machinery were no longer part of lot 15 when it was advertised for sale and that "it was clandestinely removed by unscrupulous elements during the pre-bidding stage". The foregoing theory propounded by the Collector is supported by the fact that the floor price of lot 15 as advertised was too low to include the alleged missing pieces of machinery. It was the opinion of the Collector that the prevailing price of these two missing articles would certainly be more than the amount of P61,234.35, its floor price as advertised.

Moreover, the Collector considers the price paid by herein petitioner was unrealistically low considering that one of the missing items was "studded with diamonds".

We find the decision of the Commissioner of Customs affirming the decree of forfeiture and disallowing the claim of petitioner ordered by the Collector of Customs inconsistent with the facts as gathered from the Customs and CTA records. We likewise find the decision of the Collector of Customs which became the basis of the appealed decision of the Commissioner as being incompatible with his earlier admissions and inconsistent with the facts as they occurred, as borne out by the records and the evidence presented during the seizure proceedings.

The decision of the Collector, as affirmed by the respondent, maintains that the subject pieces of machinery forfeited in favor of the government were not part of lot 15 so that when petitioner became the highest bidder, he became entitled only to what was part of lot 15 at the time of delivery minus the two items alleged to be missing.

The above theory proposed by the Collector is hard to believe because from the start of the investigation in the administrative level which led to the eventual seizure of the subject articles, several personnel of the Bureau of Customs involved in said inquiry and even the Collector himself were one in concluding that the pieces of machinery found installed in the premises of Carrara Marble Phil., Inc. were part of lot 15 awarded to petitioner in the auction sale held on April 10, 1987. In an order dated February 13, 1992, the Collector of Customs, Luciano Morabe, in a declaration justifying the assumption of jurisdiction of the Bureau of Customs over the subject machineries, pronounced, thus:

> Acting on the Motion to Dismiss, this Office, after a thorough and careful study of the records, is convinced that the instant motion has no leg to stand on considering the following legal and factual grounds:
>
> 1) The prosecution has presented the evidence that the article under question are part and parcel of lot No. 15 of the auction sale conducted by the Auction & Cargo Disposal Division, port of Manila, on April 10, 1987, and that the same article was awarded to the winning bidder, Engr. Franklin Policarpio. The prosecution also submitted evidence which tends to show that as shown in the Sworn Statement of the COA representative that out of 15 tons of such bidded articles, only about 7 tons thereof were delivered to the highest bidder. As established by documentary evidence, subject items were removed between the pre-bid inspection on March 1987 and at the time of delivery, in clear violation of Sec. 2530 par. (e) of the Tariff and Customs Code of the Philippines.
>
> (page 377, Customs records)

The CIID agents that were tasked to investigate the allegations of herein petitioner that the missing items can be located at Carrara Marble Phil., Inc. in Batangas, made a report which confirmed the suspicions of herein petitioner when they wrote, thus:

> Please be informed that as per physical inspection made by the undersigned together with the NCP (Batangas Unit) as well as with the cooperation of the Officer-In-Charge of the Carrara Marble, the cutting machine mentioned by the winning bidder Mr. Franklin Policarpio in his attached letter are the very same goods found in the vicinity of the Carrara compounds.
>
> (page 233, Customs records)

The Customs legal officer, Ms. Esther Villas-Guanzon, after studying the facts of the case to determine whether or not assumption of jurisdiction of the Bureau of Customs is proper in the case, made the following recommendations to Deputy Commissioner Licerio Evangelista, thus:

> 1. there is no showing whatsoever that there had been an intervening transaction of whatever nature between the Bureau of Customs and Jaina Perez concerning subject machineries that would have relinquished ownership of the same in favor of the latter;
>
> 2. the ACDD would not have advertised subject items for public auction for the 10th time knowing that ownership of the same had already passed to a third person;
>
> 3. the actual physical condition of the said machine as shown by the attached pictures taken prior to the bidding indicates that the

same were already greatly depreciated thus commanding a relatively low floor price;

4. there is a great possibility that subject items were pilfered at a time between the pre-bid inspection made by Engr. Franklin Policarpio in March, 1987 and the time he was to take delivery thereof;

5. the adamance of the CARRARA people to show proof of legitimate ownership or legal title to the questioned items gives rise to the suspicion that they have indeed no evidence to show and that the supposed Deed of Sale is a fake and the supposed seller, non-existent;

6. <u>the obligation of the Bureau to deliver what has been awarded by it to Engr. Policarpio by means of public auction sale is an actionable commitment which must be dutifully fulfilled</u>. (Underscoring supplied)

(page 26, Customs records)

Even the Commissioner of Customs as respondent in the instant case has admitted by way of Stipulation of Facts agreed upon by both parties; that the subject articles are part of lot 15 awarded to petitioner, thus:

Proposed Stipulation of Facts by petitioner:

Question - 5. Will counsel agree/admit that said missing articles found at the Carrara compound are the very same articles subject matter of this case. Same finds support in Annexes "B" and "C" aforestated.

Question - 6. Will counsel agree/admit that even the Collector of Customs of Batangas is convinced that the articles in question are part and parcel of said Lot No. 15, and that they were awarded to petitioner as the highest and winning bidder thereof, in

> Customs Auction Sale held on April 10, 1987, in Manila, of which factual evidence was utilized by the said Collector in his Order dated February 13, 1992, if only to resolve/dispose "CARRARA Marble, Inc.: Motion to Dismiss in batangas S.I. No. 03-91. Same is supported by copy of said Collector's Order, hereto attached as Annex "D" hereof.

Answer of Respondent to Petitioner's proposed Stipulation of Facts:

> 4. In connection with Questions - 4 and 5, Counsel so stipulates as to the existence of the documents mentioned therein, the same being part of the records and offers no objection to the contents thereof.
>
> 5. With regard to Question - 6, Counsel so stipulated as to the existence of the Order of the Batangas Collector of Customs attached as Annex "D" to the Proposed Judicial Stipulation/Admission of Facts/Documents, the same forming part of the records and admits the contents thereof. (Underscoring supplied)

Finally, in the Answer filed by respondent Commissioner in the CTA Case entitled Carrara Marble Phil., Inc. vs. Commissioner of Customs, CTA Case No. 5039, an appeal instituted against the same decision rendered by him regarding the same pieces of machinery, he asserted the following affirmative defense in justifying the assumption of jurisdiction, thus:

> "The abandoned shipment became lot 15 which was awarded in a public auction sale at P61,250.00 to Engr. Franklin Policarpio on April 10, 1987.

> Photographs taken by Engr. Policarpio showed the subject pieces of machinery namely:
>
> 1) Special Circular Saw, Block Tailor BK 1200
>
> 2) Diamond Sewing Machine Model TBS 500
>
> were among the items covered by lot 15.
>
> However, on the date of delivery, April 21, 1987, the machineries were no longer in the Mina-Amapola CY-CFS and were subsequently located at the premises of petitioner" (petitioner referred to is Carrara Marble Phils., Inc.).

Although the aforequoted admission made by the Commissioner was made in another case, we deem it appropriate to utilize it in the instant case to prove an important point. The Supreme Court in the recent case entitled **Vda. de Alvarez vs. Court of Appeals**, 231 SCRA 309 ruled, thus:

> "An admission in a pleading in one action may be admitted in evidence against the pleader or his successor-in-interest at the subsequent trial of the same suit or in another action involving the same issue or in which the admission is pertinent to the issues."

It is therefore clear that the subject machineries forfeited in favor of the government were part of lot 15 awarded to petitioner in the public auction sale held on April 10, 1987, being the highest bidder. As a consequence, the Bureau of Customs as seller has an actionable commitment to deliver these subject articles to petitioner pursuant to Article 1458 of the Civil Code of the Philippines which provides, thus:

> **ARTICLE 1458.** By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

Having sold lot 15 including the subject two (2) items by way of a public auction sale and having received a corresponding amount from the petitioner, these machineries should not be forfeited but should be delivered to the buyer, petitioner herein, as part of the seller's legal obligation under the contract of sale. To forfeit the very same items earlier sold by way of a public auction sale is tantamount to a double recovery on the part of the government.

The relatively low price of the subject items can be explained by a cursory look at the photographs taken of the missing articles (page 259, Customs records) which show that these machineries have already depreciated and as correctly advertised in the Notice of Sale are in "rusty and in junk condition". The conclusion of the Collector that the Diamond Sawing Machine is "studded with diamonds" is clearly a misinterpretation of the name of the subject machinery and is clearly not "diamond-studded".

The contention of respondent that petitioner should have asked for a refund when he discovered that only 7 tons out of 15 tons were delivered is without merit. We agree with the petitioner that this refund theory proposed by respondent applies only in a situation where the missing articles can no longer be found. In the instant case, the missing items had already been located at the premises of the Carrara Marble Phil., Inc. as pointed out by the petitioner and as established by the records of this case, hence it is the legal commitment of the Bureau of Customs to retrieve these items from Carrara Marble and deliver it to petitioner. Anything short of this obligation would be contrary to law and equity.

However, the claim of petitioner for actual and moral damages in the total amount of P500,000.00 against the Commissioner of Customs cannot lie as this liability will ultimately fall upon the government which would in effect be a suit against the State and the Constitution of the Philippines provides that the State cannot be sued without its consent. The Supreme Court in the case entitled Syquia vs. Almeda Lopez, 84 Phil. 312, ruled thus:

> "However, and this is important, where the judgment in such a case would result not only in the recovery of possession of the property

> in favor of said citizen but also in a charge against or financial liability to the Government, then the suit should be regarded as one against the government itself, and consequently, it cannot prosper or be validly entertained by the courts except with the consent of said government."

WHEREFORE, in view of the foregoing, the decision of the Commissioner of Customs affirming the decree of forfeiture of the 2 pieces of machinery more particularly described as follows:

a. Special Circular Saw for vertical and horizontal cutting of strips Model Block Tailor BK-1200 with switch gear and contactor control and reinforced main motor, and

b. Diamond Sawing machine, Model TBS 500D, including switch gear cabinet with contactor for all motors.

is hereby **REVERSED.** Respondent Commissioner is ordered to deliver the above-described items to petitioner being the highest bidder of said items in the public auction sale held on April 10, 1987.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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