REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NUSSELTS INDUSTRIES CORPORATION,
Petitioner,

-versus - **C.T.A. CASE NO. 4449**

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - - x

5/22/93

D E C I S I O N

This case is an appeal to the decision of the Commissioner of Customs, dated March 12, 1990, which affirmed the decision of the Collector of Customs, dated August 28, 1989, wherein it is decreed, thus:

> "WHEREFORE, by virtue of the authority vested in me by law, it is hereby ordered and decreed that the articles reflected in the Inventory Report of the Auction and Cargo Disposal Division (ACDD) consisting of Sixty One (61) pages, be FORFEITED in favor of the government and the same be disposed in the manner provided for by law.
>
> SO ORDERED."

(See Annex A, p. 15, CTA record.)

The basis for the forfeiture of the subject articles is allegedly the violation of Section 2530 pars. (f) and (l), sub-paragraphs 3, 4 and 5 in relation to Section 2503 of the Tariff and Customs Code, as amended. (See Warrant of Seizure and Detention, Annex E, p. 27, CTA rec.)

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. It is "engaged in the operation of a bonded warehouse for storage of imported raw materials mainly coming from Taiwan and then manufactured into finished garments for export to EAC countries mainly West Germany and some in the U. S. A." (See T.S.N., p. 5, Hearing of Nov. 26, 1991). "Adjudged one of the top 12 huge dollar exporters by the Garments Business Association of the Philippines, its export products principally include men's, ladies' and children's shirts, sweatshirts, jogging suits and tennis sets" (see Petitioner's Memorandum, p. 2).

On October 29, 1986, a Task Force of the Bureau of Customs, armed with a Warrant of Seizure and Detention, proceeded to the petitioner's private warehouse and hauled the subject raw materials and finished products which it suspected to have been illegally withdrawn from the customs bonded warehouse without the corresponding duties and taxes having been paid. Since then, said articles have been under the custody of the Auction and Cargo Disposal Division.

On October 19, 1987, the District Collector of Customs issued another Warrant of Seizure and Detention against subject articles for alleged violation of Section 2530 paragraphs (f) and (1), sub-paragraphs 3, 4 and 5 of the Tariff and Customs Code, as amended.

Petitioner-claimant contended that the confiscated imported articles could not be forfeited because some were locally purchased items and the rest were declared as wastages, for which customs duties and taxes have been duly paid.

The Law Division of the Bureau of Customs, after evaluating all the pertinent documents submitted by the petitioner, recommended for the signature of then

District Collector of Customs, Ricardo Ampil, a proposed ORDER decreeing, thus:

> "x x x that the effects of the warrant of seizure and detention issued against the articles declared as wastages, namely: children's sweatshirts - 3,163 pcs., men's sweatshirts - 703 pcs., children's jogging pants - 4,824 pcs., men's jogging pants - 613 pcs., children's jogging pants - 684 pcs., ladies jogging set - 4,046 pcs., men's jogging set - 40 pcs., one-sided rib assorted colors - 208.80 kgs., 2 x 2 rib assorted colors - 512.90 kgs. and CVC unbrushed assorted colors - 195.00 kgs. to which duties and taxes have already been paid and the articles locally purchased by claimant from the Alliance Textile Mills duly covered by an official receipt issued by the Bureau of Customs (Official Receipt No. 089789 dated November 12, 1982) be lifted and the same be RELEASED to claimant upon proper identification. On the other hand, the subject warrant should remain effective with respect to the remaining seized articles which could be released to claimant only upon payment of the customs duties, taxes and other charges due thereon." (Annex F of the Petition.)

This proposed ORDER was favorably endorsed by Collector Ampil to the Commissioner of Customs for his clearance (see Annex F-1, ibid).

In reviewing the aforesaid proposed ORDER, Asst. Commissioner of Customs Isauro C. Garcia, in a Memorandum for the Commissioner of Customs prepared by Atty. P.C. Salvosa of the Appellate Division which was favorably endorsed by

Atty. Mariano Abanilla, Chief of the Customs Legal Service, recommended the modification of the said proposed ORDER, thus:

> "Approval of the release of the imported articles declared as wastages, namely:
>
> (a) Export over-runs which were accumulated during the period from 1983 - 1986:
>
> | | | |
> |---|---|---|
> | Childrens' sweatshirts | 3,163 | pcs. |
> | Men's sweatshirts | 703 | " |
> | Children's Jogging Pants | 4,824 | " |
> | Men's Jogging Pants | 613 | " |
> | Children's Jogging Set | 684 | " |
> | Ladies' Jogging Set | 4,046 | " |
> | Men's Jogging Set | 40 | " |
>
> (b)
>
> | | | |
> |---|---|---|
> | One-sided rib assorted colors | 208.80 | kgs. |
> | 2 x 2 rib assorted colors | 512.90 | " |
> | CVC unbrushed assorted colors | 195.00 | " |
>
> it appearing that the duties and taxes have already been paid.
>
> Clearance may likewise be extended to the articles locally purchased from Alliance Textile Mills, having been covered by official receipt issued by the Bureau of Customs (OR No. 089789 dated November 12, 1982, attached to the Records).
>
> However, regarding the other undermentioned locally purchased articles, to wit:
>
> (a) CVC brushed fabric of assorted colors weighing 1,920 kgs.
>
> (b) 556 sets of jogging suits placed in 38 cartons marked C & A France Order No. 549/71/125.
>
> (c) 1,295 yds. of assorted colors of woven crinkle

> to which claimant failed to produce documents showing payment of duties and taxes thereon, shall be forfeited.
>
> (See Annex G, ibid.)

On December 2, 1988, respondent Commissioner of Customs, thru Atty. Nelson Tan, directed District Collector of Customs Titus Villanueva "to conduct further hearings to determine the authenticity and relevancy of the receipts hereto submitted. Additionally, you are instructed to comment on the claimant's allegation that most of the items are <u>wastages</u> x x x." (Annex H, ibid.)

During the re-hearing, petitioner submitted, in addition to the numerous boatnotes, warehousing permits, entry riders, manufacturing entries and official receipts issued by the Bureau of Customs relative to the subject articles. Certifications from various local firms attesting to the veracity of the invoices as well as the list of materials purchased from them were also presented. All these documents were given due weight by the Law Division. Consequently, it submitted to the District Collector of Customs a <u>second</u> proposed ORDER substantially reiterating the <u>first</u> proposed ORDER earlier favorably endorsed by Collector Ampil. (Annex J-1, ibid.) This second proposed ORDER was also favorably endorsed for clearance by District Collector Villanueva, informing the Commissioner that "re-hearing shows that the documents submitted by the claimant support its contention that some of the seized materials were bought from local textile firms" (Annex J, ibid).

With utter disregard to the favorable endorsement made by his District Collector of Customs as well as the favorable recommendations made by his official legal advisers, i.e., the Appellate Division and the Legal Service Division, including his Assistant Commissioner, the respondent disapproved the proposed Order of Release and directed the office of the District Collector of Customs "to forfeit <u>all</u> the articles subject of the instant proceedings" (Annex K, ibid).

On August 28, 1989, District Collector Titus Villanueva, reversing his previous favorable endorsements, promulgated an ORDER decreeing the FORFEITURE of all the subject articles (Annex B, ibid).

On the same date, the petitioner appealed the Order of Forfeiture to the Office of the Commissioner of Customs claiming that there was no legal and factual basis for the declaration of forfeiture.

Deputy Commissioner Isauro Garcia after reviewing anew the case recommended in his Memorandum for the Commissioner, dated October 9, 1989, the modification of the appealed Order of Forfeiture, thus:

> "We find merit in the contention of Appellant and hereby recommend the MODIFICATION of the forfeiture decision.
>
> Indeed, by preponderance of evidence, Claimant-Appellant has satisfactorily shown that there was in fact no basis in law and in fact for the forfeiture of <u>some</u> of the subject articles. The fact that customs duties and taxes have been paid for the export overruns were verified, as evidenced by the Customs receipts of payments, and other pertinent documents such as the corresponding Boatnotes and Warehousing Permits. Anent the wastages that Claimant-Appellant bought, the defense of Claimant-Appellant that the receipts are no longer available, as they have been discarded as part of common business practice, considering the time that have already elapsed from the date of the transaction up to the seizure is

credible. The alleged purchase of the textile materials from five (5) companies, namely: Pioneer Texturizing Corp., NonWoven Fabric Phils., Robitex, Peggy Mills and Alliance Textile Mills were duly substantiated by sales invoices submitted. The sales receipts issued by Alliance Textile Mills, Inc., were in fact duly certified as authentic, as well as the documents showing that the taxes and duties thereon have been liquidated. The other sellers, however, failed to present evidence of payment of duties and taxes. In the absence thereof, it is reasonable to presume that the same have not been paid. Nonetheless, law and equity demand that the penalty of the infraction be mitigated, Claimant-Appellant not having been shown to have acquired them with knowledge of the non-payment of duties and taxes.

Having thus established the foregoing and befittingly bestowing on the substantiating evidence presented, the presumption of regularity and legitimacy, this Office, recommends the following:

That the finished products considered as export overruns:

GChildren's sweatshirts . .3,163 pcs.
GMen's sweatshirts . . . . 703 pcs.
GChildren's Jogging Pants .4,824 pcs.
GMen's Jogging Pants. . . . 613 pcs.
GChildren's Jogging Pants . 684 pcs.
GLadies' Jogging Set. . . .4,046 pcs.
GMen's Jogging Set . .. . 40 pcs.
GOne Sided Rib Assorted
G Colors . . . . . . 208.80 kgs.
G2 x 2 Rib Assorted
G Colors 512.90 kgs.
GCVC Unbrushed Assorted
G Colors 195.00 kgs.

the duties and taxes of which have been duly paid as well as the articles locally purchased by Claimant from the Alliance Textile Mills duly covered by the receipts evidencing payment of taxes and

> duties, be RELEASED to Claimant-Appellant, while the articles purchased from the four (4) other suppliers, consisting of textiles materials of various yardage, the duties and taxes which have not been shown to be paid, shall also be RELEASED upon payment of the duties and taxes and other charges due thereon.
>
> The decree of forfeiture against the articles, as hereunder described:
>
> *CVC Brushed fabric of assorted colors weighing 1,920 kgs.;
> *556 sets of Jogging Suits placed in 30 cartons marked C & A France Order No. 549/71/125;
> *1,295 yards of assorted colors of woven crinkle.
>
> is UPHELD, as Claimant-Appellant has consistently failed to produce evidence showing the payment of the taxes and duties thereon.
>
> (Annex L, ibid.)

The respondent Commissioner of Customs, rejecting again the favorable endorsements and recommendations from the Appellate Division, Legal Service and his Deputy Commissioner for the modified release of the subject articles, DISMISSED the petitioner's appeal in his Decision, dated March 12, 1990, affirming the Order of the District Collector forfeiting the subject articles.

Hence, this appeal.

The issue at bar is whether or not acquisition of the subject articles violated Section 2530 paragraphs (f)and (l), sub-paragraphs 3, 4 and 5 of the Tariff and Customs Code.

We disagree with the decision of the respondent, dated March 12, 1990. Such decision was without rhyme or reason and found to be arbitrary.

The provisions of law allegedly violated read as follows:

> "SEC. 2530. Property Subject To Forfeiture Under Tariff and Customs Law.- Any vehicle, vessel or aircraft, cargo, article and other object shall, under the following conditions, be subject to forfeiture:
>
> x x x x x
> x x x x x
>
> f. Any article the importation or exportation of which is attempted or effected 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;
>
> x x x x x
> x x x x x
>
> 1. Any article sought to be imported or exported:

x x x x
x x x x

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;

(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

(5) Through any other practice or device contrary to law by means of which such article was entered through a customhouse to the prejudice of the government."

Nowhere in the Court records would show any substantial evidence that the petitioner violated the above quoted provision of law. On the contrary, petitioner's witness, Ms. Crescenciana Laurel, Assistant Manager, Import-Export Department, testified on the lawful importation of most of the subject articles. In the hearing of November 26, 1991, she testified, thus:

"Q. Now, do you have any documents to prove these importations of your company were locally lawfully entered into the Philippines and the corresponding duties and taxes have been paid to the government?

A. We have sufficient support for the documents as to the legality of the entries of these items into the Philippines as per the boatnotes, import entries, and then the relative documents issued by the GTEB and the Bureau of Customs.

Q. How about the proof of payment of duties and taxes?

A. We have also, it is in the entries and then the other documents. They are all together, compiled together.

Q. I am showing you, Madam Witness, documents which have been previously marked as Exhibits L, M, N, O, P, Q, R, S, T and U together with all their respective submarkings which are official receipts of payments of wastages as well as the corresponding boatnotes and warehousing permits covering the importation involved. Would you kindly go over these documents and please tell us what relation do they have with the documents which you claimed proofs of the lawful importation of the articles involved as well as the payment of the corresponding duties and taxes due the government?

ATTY. MILLAN

Witness, Your Honors, is going over set of documents previously marked.

A. Exhibits presented represent the support to the entry of the goods from Taiwan and the OR's presented here are the official receipts issued to us by the customs in payment of the duties and taxes for wastages.

Q. Now, these receipts of payment relate to wastages. What are the connection of these wastages to the materials you mentioned earlier?

A. They are the waste and the defects that we incur in the process of manufacture of the imported fabrics into finished products.

Q. By the way, are these wastages subject to payment of duties and taxes?

A. They are. Because in the occurrence of the wastages the Bureau of Customs give us some ways into how we could dispose of these wastages. One is the payment of duties and taxes, others condonation, donation and others and we elect through payment of duties and taxes."

(T.S.N., Nov. 26, 1991, pp. 10-13.)

Certifications of key officials of various textile firms and supporting invoices (Exhs. W-2, X-2, Y-2, Z-1, AA-2, BB-2 and their sub-markings) further showed that the rest of the subject articles were manufactured from locally-purchased raw materials. A careful review of these documents indubitably buttressed petitioner's allegation that it has actually purchased the aforesaid raw materials from local sources. (Exhs. V to DD-GG and their sub-markings). Continuing petitioner's evidence regarding the testimony of Mrs. Laurel:

> "Q. Now, how about those articles which you claimed were purchased by you from local textile firms. Do you have any document to show first that these materials were indeed purchased by your company from these local firms and proofs of payment by these sources of the duties and taxes arising from the importations made by them?
>
> A. We have a chance to secure one from one of our suppliers, from Alliance Textile Mills. They gave us proof that they paid the duties and taxes of the products they imported and then they eventually sold locally.
>
> Q. You mentioned Alliance Textile Mills which is a firm from which you procure the textile materials which were manufactured into finished products, subject matter of this case. My question to you Madam Witness, is, do you have documents to show that such were purchased from Alliance Textile Mills?
>
> A. We have sufficient documents. In every purchase that we made from Alliance we have been issued invoice, as to the quantity and value of the materials purchased

from them. (T.S.N., Nov. 26, 1991, pp. 13-15.)

xxx xxx xxx

Q. Now Madam Witness, all these, I am showing you again all these sales invoices issued by Alliance Textile Mills, Inc. as well as manufacturing entries including official receipts of payments marked from DD-GG with their corresponding submarkings. Will you kindly go over them and please tell us what relation do they have with the invoices, the entries as well as official receipts of payment which were issued by Alliance Textile Mills and/or by the Bureau of Customs covering the materials you said which formed part of the finished products that constitute the subject matter of this case?

A. The sales invoices from Alliance Textile Mills were the ones issued to us upon the purchase of the local materials. And then the official receipts and the proof of payment plus the entry covering the shipments were the ones we secured from them."

(pp. 21-22, ibid.)

Respondent's allegations that "there was also no concrete proof to indicate that the customs documents and official receipts for various years payments actually correspond and appertain to the raw materials in question" (Annex K, p. 54, CTA rec.) and that "no clear showing was made whether the local purchases made truly refer and form part of the items seized. x x x the presumption therefore that these items are untaxed articles bought by herein claimant from abroad still lies and continues to attach" (ibid) are not in accord with the existing evidence on record. It is not required of the petitioner to prove beyond reasonable doubt that it truly paid the duties and taxes of the articles in question. Preponderance of evidence is enough. And the petitioner has satisfactorily shown to this Court that there was no basis in law and in fact for the forfeiture of the subject articles. This Court also find the explanation of petitioner that the reason why it cannot produce the supporting documents of some raw materials bought from local manufacturers is that they have "misplaced the documents and some have closed down their operation like Peggy Mills." (T.S.N., Hearing: November 26, 1993, p. 23.) This is indeed understandable considering the time that has elapsed (which is more than five years) from the date of the transaction up to the time the petitioner was required to produce such documents.

Suffice it to say that petitioner has generally shown through documentary and testimonial evidence that there was no illegal withdrawal of imported raw materials, much less any violation of customs laws to legally justify forfeiture of all the articles in dispute. In fact, no less than Mr. Hernani I. Saturnino, the assigned Customs Bonded Warehouseman, affirmed, both in his written report (Exh. CC) and in open hearing on January 6, 1992 that:

> "Q. I also call your attention to paragraph 3, second sentence of your letter report which reads and I quote "Records will show that no materials has been released without the duly processed withdrawal permit or authority from the Collector of Customs Port of Manila since the undersigned assumed office, April 1, 1985". Will you kindly go over again your letter report and please tell us if you confirm the truthfulness of the afore-mentioned part of your report?
>
> A. Yes, this is true."

Surprisingly, however, in spite of the evidences presented, both documentary and testimonial, coupled with the accompanying recommendations from the Appellate and Legal Service Divisions as well as the endorsements from the District Collector and the Assistant Commissioner of Customs for the qualified release of the articles in question, herein respondent rejected all of these and instead, arbitrarily ordered District Collector Titus Villanueva to forfeit all the articles in question. Sadly, the District Collector in reversing his order, blindly obeyed and copied almost verbatim the 3rd Endorsement of the respondent dated July 25, 1989 (Annex K).

It is not too much to point out that it is an elementary rule in procedure that a decision of the Collector of Customs just like that of a judge (or a person or a body lawfully authorized to issue decisions) must be in writing personally, independently, and directly prepared by him (Sec. 1, Rule 36, Revised Rules of Court). For the Commissioner to summarily dismiss or overturn whatever recommendations and dictate the Collector of Customs to decide whatever is in conformity to his whims and caprices is a blatant usurpation of the latter's powers under Section 2312 of the Revised Tariff and Customs Code. The Commissioner cannot hide under the cloak of exercising the power of supervision and control over his subordinates for it will render the doctrine of exhaustion of administrative remedies and due process for naught. The palpably flagrant anomaly of the Commissioner of Customs reviewing the decision of the Collector of Customs, (which actually was that of the former) is a mockery of administrative justice. In order that the review of the decision of a subordinate officer might not turn out to be farce, must perforce not dictate his own view on the officer whose decision is under his review; otherwise, there could be no real review of the case. The decision of the reviewing officer would be a biased view ... (see related case of Zambales Chromite Mining Co., et. al. vs Gozon, G.R. No. L-49711, November 7, 1979). In such case , needless to say, the appeal becomes a useless formality. It is reduced to an idle ceremony. There would thus be a denial of procedural due process (New

Filipino Maritime Agencies, Inc. vs. Rivera, L-45359-60, June 15, 1978). Hence, in the interest of justice and fair play, this practice of the Commissioner dictating his Collector what to decide must be stopped. Anyway, he can affirm or deny the decision of his subordinate Collector when the proper time comes as provided under Section 2313 of the Revised Tariff and Customs Code.

We find therefore the order of forfeiture of all articles in question by the respondent Commissioner done in an arbitrary manner and without basis in fact and in law.

The recommendation of Deputy Commissioner Isauro C. Garcia was however, found to be in order with a slight modification. It was a product of a thorough study by the legal arm of the Bureau of Customs, i.e., the Appellate and the Legal Services Divisions. Moreover, not only did the Petitioner satisfactorily prove his case but that the Respondent has failed to present even an iota of evidence to overturn the case in his favor.

WHEREFORE, in all the foregoing, we hereby ORDER the RELEASE of the following finished products considered as export overruns:

Children's sweatshirts . .	3,163 pcs.
Men's sweatshirts	703 pcs.
Children's Jogging Pants .	4,824 pcs.
Men's Jogging Pants. . . .	613 pcs.
Children's Jogging Pants .	684 pcs.
Ladies' Jogging Set. . . .	4,046 pcs.
Men's Jogging Set	40 pcs.
One Sided Rib Assorted Colors	208.80 kgs.
2 x 2 Rib Assorted Colors	512.90 kgs.
CVC Unbrushed Assorted Colors	195.00 kgs.

as well as the articles locally purchased by the petitioner from Alliance Textile Mills the duties and taxes of which have been found to be duly paid.

The articles purchased from the four other local suppliers namely: Pioneer Texturizing Corporation, Non-woven Fabric Philippines, Robitex and Peggy Mills, consisting of textile materials of various yardage shall likewise be RELEASED upon payment of the duties and taxes and other charges due thereon.

The remaining articles in question, namely:

1. CVC brushed fabric of assorted colors weighing 1,920 kgs.;
2. 556 sets of jogging suits placed in 30 cartons marked C & A France Order No. 549/71/125;
3. 1,295 yards of assorted colors of woven crinkle;

shall likewise be RELEASED upon payment of the taxes and duties due thereon.

SO ORDERED.

Quezon City, Metro Manila, May 27, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

C E R T I F I C A T I O N

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