REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

OSCAR H. FERNANDEZ,
Petitioner,

- versus - C.T.A. CASE NO. 2535

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

3/3/78

D E C I S I O N

This is an appeal by petitioner Oscar H. Fernandez, from the decision of respondent Commissioner of Customs dated May 5, 1973, affirming the decision of the Collector of Customs, Port of Manila, dated January 10, 1973, in Seizure Identification No. 12744, decreeing the seizure, detention, and forfeiture of one (1) Buick car, 2-Door Hardtop, with Motor No. 6R947745 and Plate No. 18-86 Y H Rizal, for violation of Section 2530(m)-1 of the Tariff and Customs Code of the Philippines, as amended, in relation to Republic Act No. 1603.

The records of the case show that sometime before October 12, 1972, M/Sgt. James Hartel, a U.S. Serviceman and a tax-exempt individual sold to M/Sgt. Alfonso Cruz of TRAFCON, Ancar Unit (PC) his Buick car, 2-Door Harttop. This car was later sold to Mrs. Leonida Narvaez. On or about November 29, 1971, Mrs. Narvaez in turn sold the same car to Alexander Mejia, who also sold the same vehicle finally to Oscar H. Fernandez, the petitioner in the instant case.

On October 30, 1972, by virtue of a Warrant of Seizure and Detention dated October 23, 1972 issued by the Collector of Customs of the Port of Manila, the said car was seized by members of the RASAC, Metrocom, and the Philippine Constabulary from the petitioner allegedly for the failure to pay the customs duties, taxes and other charges upon the said car.

Seizure proceedings was instituted by the Bureau of Customs, after which a decision was rendered by the Collector of Customs on January 10, 1973 decreeing the forfeiture of the said motor vehicle for violation of Section 2530(m)-1 of the Tariff and Customs Code of the Philippines, as amended, in relation to Republic Act No. 1603.

On appeal to the Commissioner of Customs, the decision of the Collector of Customs was affirmed on May 5, 1973.

Two issues involved in this case are as follows:

1. Was the seizure and the subsequent forfeiture of the car in question valid?

2. Is the petitioner entitled to the release of the said car under the tax amnesty provisions of Presidential Decree No. 52?

It was established that the original owner of the motor vehicle in question was a tax-exempt person by the name of James Hartel, as aforesaid, a U.S. serviceman. The car, described as a two-door Hardtop Buick, was sold to M/Sgt. Alfonso Cruz, Ancar Unit (PC) on November 18, 1971. (p. 20, Customs Records.) Later on, said M/Sgt Alfonso Cruz sold the said car to Mrs. Leonida Narvaez, who, after her payment of the customs duties, taxes, and other charges due on said car in the amount of ₱4,004.60, ultimately became the car registered owner.

Mrs. Narvaez had sold this car to Alexander Mejia, who sold it finally to Oscar H. Fernandez, petitioner in the instant case, on December 12, 1972.

On September 18, 1972, acting on a tip by an informer, Major Servilliano Villanueva, Intelligence Officer, Rasac, Central Luzon, caused the verification from the Land Transportation Commission of the registration certificate of the motor vehicle in question. When the verification slip was forwarded to Major Villanueva, he found that the certificate of payment, official receipt, and the informal entry were not indicated thereon. These pieces of information are necessary to find out whether a motor vehicle is registered or not. Due to the absence of these information in the verification slip, said officer right away concluded that the car was a hot car. On the strength of this conclusion, Major Villanueva caused the Collector of Customs to issue on October 23, 1972 a warrant of seizure and detention against said car.

On October 30, 1972, the said officer, in the company of Basac, Metrocom, and PC agents, armed with said warrant, seized the car from its possessor and present owner herein petitioner Oscar H. Hernandez. Petitioner vehemently questioned the legality of the seizure inasmuch as he had papers and/or documents to prove that the taxes, duties, and other charges due on the car were paid but to no avail.

Consequently, in his letter to the Collector of Customs dated November 13, 1972, petitioner asserted, among others, that the taxes and duties in the total amount of ₱4,004.60 (Exh. D, p. 59, CTA Records) had been collected and paid under Official Receipt No. 4233987, duly acknowledged by the Customs office, and that there was no reason why the warrant of seizure and detention upon the car should not be lifted and the car, therefore, be released to him. However, the Collector of Customs did not believe that the documents shown and presented during the administrative hearings were sufficient to warrant the lifting of the warrant and release of the car to the petitioner. And so, in the Collector of Customs' decision dated January 10, 1973, the car was decreed forfeited in favor of the government.

On appeal, the decision of the Collector of Customs was affirmed by the Commissioner of Customs, holding that the car was a hot car and, therefore, subject to forfeiture under the provisions of Section 2530(m)-1 of the Tariff and Customs Code.

Within the reglementary period provided by the law, petitioner appealed the decision to this Court.

On the first issue, this Court finds that the seizure of the motor vehicle in question is highly irregular and, therefore, not valid. The said vehicle is not subject to forfeiture under Section 2530(m)-1 of the Tariff and Customs Code for the reason that the said motor vehicle was not entered through the customhouse because it was exempt from duties and taxes under Article XII (3) of the Philippine-United States Base Agreement. It is obvious that because the vehicle is imported, the aforesaid Section 2530(m)-1 of the Tariff and Customs Code does not cover said case. Apparently, said section applies to cases where goods imported do not pass through the customhouse to avoid the payment of duties and taxes. In this particular instance, there was no intention to avoid taxes. Nonetheless, in the Memorandum for Respondent dated November 8, 1977, the case of Collector of Internal Revenue, et al. vs. T. Viduya, et al., 103 Phil. 93, 1958, was cited bringing into focus the definition of a hot car, thus:

> A hot car is a car, jeep, truck, trailer, motorcycle and scooter of any kind of motor vehicle either imported into the Philippines directly from abroad or purchased after August 25, 1956 from a member of the U.S. Armed Forces, foreign diplomatic corps and mission personnel without payment of the taxes and duties prescribed in the Tariff and Customs Code as well as the taxes provided under the National Internal Revenue Code and other laws. (underlining supplied)

Obviously, the purpose of the foregoing citation is to justify the seizure of the car in question. However, analyzing the above definition of a hot car, hardly can the car in question be considered a hot car. This must be so because a hot car is one on which no taxes have been paid, while subject car in the instant case is one on which payment of taxes was made. Evidence of this is the certificate of payment in the amount of ₱4,004.60 under Official Receipt No. 4233987. (Exh. D, p. 50, C.T.A. Records). The said amount of ₱4,004.60 as appearing on the certificate of payment may have been very much less than what should actually be paid, as alleged by respondent, the unofficial assessment by an appraiser of the Bureau of Customs being ₱28,334.00; nonetheless, this does not classify the motor vehicle in question as a hot car.

When informed of the unofficial assessment of the car, petitioner stated that he was willing to pay the deficiency taxes and duties under the reduced rates provided for under Presidential Decree No. 52, pertinent provisions of which are quoted hereunder:

> PROCLAIMING A TAX AMNESTY FOR UNTAXED MOTOR VEHICLES SUBJECT TO CERTAIN CONDITIONS
>
> WHEREAS, pursuant to General Order No. 2-A dated September 26, 1972, a large number of motor vehicles transferred from tax exempt persons/entities to non tax exempt persons/entities or imported motor vehicles where the correct duties and taxes have not been paid, have either been impounded by or are being voluntarily surrendered to the authorities and are not under government custody pending the assessment and collection of the correct duties due thereof;
>
> WHEREAS, only a few, if any, of the owners or possessors thereof will be able to pay the correct duties and taxes on these motor vehicles for the reason that under the present rates and system of computation the correct duties and taxes will exceed the present market value of the vehicles such that the strict enforcement of the existing pertinent laws will have a confiscatory effect against the personal property which may have been acquired in good faith;
>
> WHEREAS, it is the policy of the government to encourage the payment of the duties and taxes due thereon and put a stop to graft and corruption in

the different revenue collection and enforcement agencies of the government brought about by the existence of this so-called "hot car" racket:

x x x do hereby decree and order that:

1. a fifty per cent (50%) and a seventy per cent (70%) across the board deduction be allowed on the duties and taxes collectible by the government on vehicles transferred from tax exempt persons/entities to non tax exempt persons/entities, or such vehicles where the correct taxes and duties have not been collected, depending upon the year models of such vehicles and under the following mechanics:

The Bureau of Customs shall:

x x x x x x

b. Reduce the total amounts of taxes arrived at by 50% for vehicles with models 1970 to 1972 and 70% for year models 1969 and below;

c. Deduct whatever duties and taxes might have been paid originally on these vehicles, upon presentation of evidence of payment to be verified by the Bureau of Customs;

x x x x x x

4. After the duty and tax shall have been paid pursuant to this Decree the taxpayer shall be cleared of all criminal responsibility by reason of the nonpayment of the correct duty and tax on such motor vehicles.

x x x x x x

Done in the City of Manila, this 16th day of November, in the year of Our Lord, nineteen hundred and seventy-two.

Based on the foregoing provisions of Presidential Decree No. 52, respondent Commissioner of Customs alleged that neither petitioner nor the car is entitled to the reduced rates provided therefor, citing the memorandum of the Secretary of Finance, addressed to the Commissioner of Customs, dated December 5, 1972, implementing said Decree, as follows:

> "In order to prevent abuse and confine the tax amnesty to the beneficiary intended under Presidential Decree No. 52, it is hereby prescribed that:
>
> The corresponding reduced rates on the collectible taxes, duties and other charges shall apply only to motor vehicles acquired or transferred and duly registered in the names of their present owners/possessors or claimants as evidenced by registered certificates issued by the Land Transportation Commission prior to October 12, 1972, but in no case shall cover those vehicles seized and/or forfeited or under seizure proceedings by the Bureau of Customs. (p. 7, Memo of respondent, Nov. 8, 1977.)

It was in accordance with the aforequoted implementing order by the Secretary of Finance of Presidential Decree No. 52 that respondent Commissioner of Customs denied the request of petitioner that he be allowed to pay the deficiency taxes and duties due on the car in accordance with the principles embodied in said Decree, on the ground that the petitioner is not the registered owner/possesser of the car and, furthermore, the vehicle was seized and/or forfeited or under seizure proceedings by the Bureau of Customs.

However, going back to the events that took place before seizure proceedings were instituted against the subject car and carefully weighing and considering the issue of the legality or illegality of its seizure, surely this case could not have gone this far. As stated earlier, the motor vehicle in question should not have been seized for non-payment of taxes (Warrant of Seizure and Detention, page 7, Customs Records) for the simple reason that it is not a hot car, taxes having been paid thereof as evidenced by Official Receipt No. 4233987 dated November 26, 1971 in the amount of ₱4,004.60. (Exh. G, p. 10, Customs Records.) Furthermore, it was registered with the Land Transportation Commission (a fact the seizing officers failed to verify) in the name of Leonida Narvaez who remained its registered owner until her rights were transferred to petitioner herein. (Exh. 1, p. 69, Customs Records.) Thus, finding the seizure of the motor vehicle, subject of this case, null and void, it follows that petitioner should have been assessed and made to pay whatever deficiency taxes still remain to be due and unpaid. Or, granting that the seizure of the car was legal, he should have been allowed to avail of the tax amnesty benefits of Presidential Decree No. 52 under the principles envisioned therein, which are to encourage the collection of more revenues for the government and to minimize graft and corruption arising from the so-called hot car racket.

Relative to the second issue, the fact is clear that even before an appeal was taken by petitioner Oscar H. Fernandez to this Court, the deficiency customs duties and taxes in the amount of P3,696.00 was allowed to be paid in accordance with Authority to Accept Payment (p. 58, C.T.A. Records) issued by the Bureau of Customs. Correspondingly, a certificate of payment in the amount of P3,696.00 and stamped "Fully paid," was subsequently issued to him, evidencing full payment of the duties, taxes and charges due on the said car. (Exhs. H, H-1, and H-1-A, pp. 58 and 59, C.T.A. Records.)

WHEREFORE, in view of all the foregoing, the decision appealed from is hereby reversed. Respondent is ordered to release the Buick 2-Door Hardtop to petitioner Oscar H. Fernandez. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Philippines, March 3, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge