REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAMHWA COMPANY, LTD.,
Petitioner,

- versus -

C.T.A. CASE NO. 3099

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

7/31/81

D E C I S I O N

The review of respondent's decision in Customs Case No. 79-42 dated May 8, 1980 forfeiting a shipment consisting of 100,000 bags of fertilizer imported in violation of Central Bank Circular No. 243 in relation to Section 2530(f) of the Tariff and Customs Code of 1978 which petitioner alleges to be "erroneous and arbitrary, illegal and invalid, inasmuch as it is contrary to Section 2103, Tariff and Customs Code, as amended, especially in the light of the evidence on record that the said 10,000 (sic) metric tons fertilizer in 100,000 bags was really intended for warehousing purposes in Manila and for transhipment into another country, particularly Malaysia, and not for importation into, much less for sale in, the Philippines," with "undoubted implications in international trade and its possible repercussions in diplomatic relations between the Philippines and Korea" is the case at bar.

As set forth: 1) petitioner, a Korean corporation, had a shipment of 100,000 bags of diamonium phospate fertilizer weighing 5,000 metric tons on board the S/S "Fides Venture", Registry No. 186, covered by bill of lading No. SA(MA-1) consigned to Korphil Marketing Corporation or Samhwa Company, Ltd., Manila Branch, which arrived at the Port of Manila from Samil Port, Korea, on January 26, 1979, declared under Wareshousing Entry No. 14983-79, discharged shipside loaded on board lighter and transferred per Special Permit to Transfer (SPT No. 01909) for storage in Customs Bonded Warehouse (CBW) No. 700 at E. Ramos Street, Makati, Metro Manila, but actually delivered to and stored at CBW No. 161-A located at Panaderos Street, Sta. Ana, Manila; 2) On March 30, 1979, the Collector of Customs of Manila instituted Seizure Proceedings (Seizure

Identification No. 79-79) against the article "the importation of which is effected contrary to law" under Section 2530(f) of the Tariff and Customs Code with Samwha Company, Ltd. (petitioner) substituted for Korphil Marketing Corporation upon its own instance, as claimant; and 3) the article in question was sold at auction in accordance with Section 2607 of the Tariff and Customs Code (Disposition of articles liable for deterioration) for P7,425,500.00 before the Collector of the Port of Manila finally ordered the forfeiture on October 26, 1979, which decree was upheld by the respondent Commissioner of Customs on May 6, 1980. Hence, this appeal.

In disputing the decree of forfeiture, petitioner lays stress on the circumstances compelling its decision to have the shipment warehoused in the Port of Manila for trans-shipment purposes. Petitioner avers that while in the process of loading the contracted order of 200,000 bags of diamonium phospate fertilizer or some 10,000 metric tons at the Samil Port, Korea, its Malaysian importer gave due notice of its inability to accept the entire quantity but only half thereof or 100,000 bags for reasons dictated by nothing but warehousing constraints. Notwithstanding such a timely advice, petitioner proceeded in shipping the uncommitted half of 100,000 bags weighing 5,000 metric tons to take advantage of the freightage paid the chartered vessel S/S "Fides Venture" and have the cargo warehoused at the Port of Manila conditioned that "Transhipment shall be done to another country (Malaysia) at charterer's expense." And, conformably with the requi..ements of Philippine Customs Laws, more particularly Section 2103 of the Tariff and Customs Code, which governs the specific undertaking of re-exportation, payment of the premiums covering the general warehousing and re-export bonds puportedly under corresponding policies - GISCOR No. 6482 and GISCOR No. 6483 was effected with the Executive Insurance Associates, Inc.

Respondent, in opposition, quite obviously differs with petitioner in respect to facts material to the determination of the question bearing on the intended warehousing and transhipment of the subject shipment.

The enabling provision of Section 2103 of the Tariff and Customs Code relating to articles entered for immediate exportation provides insofar as pertinent that "Where an intent to export the articles is shown by the bill of lading, invoice, manifest, or other satisfactory evidence, the whole or a part of a bill (not less than one package) may be entered for immediate exportation under bond", and "no exportation thereof will be permitted except under entry for immediate exportation under irrevocable domestic letter of credit, bank guaranty or bond in an amount equal to the ascertained duties, taxes and other charges." Section 1904 of the same Code equally applies, thus, "After articles declared in the entry for warehousing shall have been examined and the duties, taxes and other charges shall have been determined, the Collector shall require from the importer an irrevocable domestic letter of credit, bank guarantee or bond equivalent to the amount of such duties, taxes and other charges."

Section 2103 and 1904, <u>supra</u>, may validly apply and effectively operate on subject shipment but petitioner must prove compliance with the terms and conditions imposed thereby. The evidence adduced as respondent justifiably asserts shows that "No bonds were recorded to have been filed in favor of the Bureau of Customs. In fact this explains why petitioner failed to introduce the said payments of premiums in the proceedings had in the Bureau of Customs and this Honorable Court." The fact of the alleged payment of premiums cannot legally be equated with the filing or posting of the prescribed bonds. To require less would sanction an expedient arrangement unsustainable either by operation of law or application of settled principles. These prescriptions of securing the integrity of the lawful due, are no more ingenuous sophistries conjured out of some quirky insights but are tinged with strong issues of public policy to prevent fraud upon the revenues lest the cornerstone of effective collection be placed in the quicksand of self-interest. We are less impressed by what petitioner alleged than what it failed to comply. Petitioner has not proved its entitlement to a favorable determination as a matter of law.

Be that as it may, there are other affiliating breaches too slickly practiced which infirmed petitioner's cause. Firstly, after the advice on the unacceptability of the cargo, timely and properly served, no cogency appears for the piggyback loading of an additional 5,000 metric tons of fertilizer sans any definite commitment of disposition in point of time. To have the prospects of quite substantial financial stakes rely upon the efficacy of auguries would seem extremely unlikely unless for "dubious motives" as surmised. Of added significance is the perverting circumstance of a "nil" cargo clearance upon the carrying vessel's departure from the Port of Manila as borne by the certifications of the Customs personnel and the Master of the S/S "Fides Venture", more particularly reflected on the "Outward Manifest of Cargo" and "Statistical Supplement" apparently confirming the fact that the vessel had but the controversial shipment destined for the Port of Manila, which aptly illustrates the clumsiness of the avowed intended transhipment. Would not petitioner do differently had there been no demand for the commodity in the Philippines? We think Murphy's Law has taken over because everything that could go wrong has, so to speak. And, secondly, the delivery and storage of the questioned shipment at CBW No. 161-A located at Panaderos Street, Sta. Ana, Manila, but recorded to have been received at CBW No. 700 at E. Ramos Street, Makati, Metro Manila, the specifically designated warehouse in the Special Permit to Transfer is a deliberate diversion negating petitioner's seeming decorous panache of a well meaning intention. Moreover, the failure to post the pre-requisite deposit of 100% of the estimated duties, taxes and other charges on the cargo before transfer can be effected under the Special Permit to Transfer as required in Customs Administrative Order No. 10-77 (Par. III, E-3) dated October 6, 1977, cannot yield results but consequences.

To be upheld, petitioner's position must stand the scrutiny on both factual and legal foundations. It asseverations of good faith have been encrusted with layers of legal lapses and muddied with narrative implausibilities and internal contradictions. Whatever brouhaha that may be entertained, petitioner alone has to blame, having created its own morass.

Accordingly, the 100,000 bags or 5,000 metric tons of diamonium phosphate fertilizer which arrived on board the S/S "Fides Venture" on January 26, 1979 from Samil Port, Korea, must be deemed an importation into the Philippines and subject to the compliance of all requisites prescribed by law for valid entry thereof.

The record shows that the importation lacked 1) prior approval of the Fertilizer and Pesticide Authority pursuant to Presidential

Decree No. 1144, which provides that, no fertilizer shall be imported unless it has been duly registered with the FPA and that no person shall engage in the business of importing fertilizer except under license issued by the same, likewise, 2) the import license from the Central Bank of the Philippines required under its Circular No. 243, that, "All imports must be covered by letters of credit except transactions involving not more than $100.00"; hence, the forfeiture under the compelling import of the pertinent provision of the Tariff and Customs Code of 1978, thus,

> "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." (Sec. 2530(f).

On the aspect of "diplomatic repercussion" suffice it to state that we can do little more than offer the cold comfort that such kind of simpering cockalorum cannot muffle the Court in the discharge of its judicial function as would permit an injustice to take its toll. Petitioner need not stray into the exceedingly murky area of international law for solace.

After a careful consideration of the facts on record, the Court is unable to find that petitioner has borne its burden of proof, and therefore find respondent's decision to be well founded and the same is hereby affirmed and the decree of forfeiture sustained.

WHEREFORE, the petition for review is hereby dismissed with costs against petitioner.

SO ORDERED.

Quezon City, Philippines, July 31, 1981.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge