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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

March 4, 1963

LUZ M. GIGARE,
Petitioner,

- versus -

C.T.A. CASE NO. 1047

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - x

D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs decreeing the forfeiture in favor of the Government of 519 cartons of "Chesterfield" cigarettes.

It appears that at high noon on April 19, 1957 several customs agents conducted a search on board the vessel F/S "Bais" while said vessel was docked at the port of Jolo. The search party discovered several cartons of "Chesterfield" cigarettes, which bore blue seals, but not internal revenue strip stamps, concealed in different parts of the vessel. The wrappers of the cigarettes indicated that the same were manufactured in the United States of America. Said cigarettes were seized by the customs agents, allegedly for violation of Section 1363(m-1) of the Revised Administrative Code and Section 174 of the National Internal Revenue Code, after issuing a receipt therefor to petitioner, who purchased them in the open market of Jolo.

Later, in the office of the patrol division of the Collector of Customs of Jolo, petitioner, fearing detention, denied ownership of the 519 cartons of "Chesterfield" cigarettes. However, in a communication dated May 15, 1957, she claimed ownership over the same.

At the time the cigarettes in question were seized, petitioner was a transient in Jolo. She was neither an agent nor an importer in either Jolo or Manila.

After a formal hearing, the Collector of Customs of Jolo ordered the forfeiture of the cigarettes in question. Petitioner appealed to the Commissioner of Customs who affirmed the decision of the Collector of Customs of Jolo. The Commissioner based his decree of forfeiture on paragraphs (f) and (m-1) of Section 1363 of the Revised Administrative Code.

The evidence and records show that petitioner received the notice and a copy of the decision, dated March 24, 1961, of the Commissioner of Customs on March 27, 1961. On April 24, 1961, she filed a motion for reconsideration which was denied. She received the order of denial on April 28, 1961. On April 29, 1961, she posted at the Manila Post Office, by registered and special delivery mail and addressed to this Court, the instant petition for review which this Court received on May 3, 1961.

The main issue to be resolved in this case is whether or not the cigarettes in question are subject to forfeiture.

Respondent, in his memorandum, suggests that the present petition for review was filed beyond the thirty-day period prescribed in Section 11 of Republic Act No. 1125. A careful scrutiny of the evidence and records of this case shows that petitioner seasonably filed her petition for review, having consumed only twenty-nine days of the thirty days allowed by law. From March 27, 1961 when petitioner received the decision of respondent to April 24, 1961 when she filed her motion for reconsideration, 28 days have elapsed. It took her only one day from April 28, 1961, the date when she received the denial of her motion for reconsideration, to perfect her appeal by mailing (registered and special delivery mail) the petition for review on April 29, 1961. The date of mailing, not the date of actual receipt in this Court, is considered the date the instant appeal was instituted (Section 1, Rule 27, Rules of Court, Henning vs. Western Equipment et al., 62 Phil. 886).

We come now to the main issue.

Paragraphs (f) and (m-1) of Section 1363 of the Revised Administrative Code, upon which the forfeiture of the cigarettes at bar is being justified, provide as follows:

> "SEC. 1363. Property subject to forfeiture under customs laws. - Vessels, cargo, merchandise, and other objects and things shall, under the conditions hereinbelow specified, be subject to forfeiture:
>
> x x x x x
>
> "(f) Any merchandise of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law, and all other merchandise which, in the opinion of the collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former.
>
> x x x x x
>
> "(m) Any merchandise the importation or exportation of which is effected or attempted in any of the ways or under any of the conditions hereinbelow described.
>
> "1. Upon importation or exportation, either consummate or frustrate, without going through a customhouse."

It is the theory of petitioner that inasmuch as the cigarettes in question were purchased by her in the open market of Jolo and there being no proof, other than the "blue seals" and the cigarette wrappers, that the cigarettes came from outside the Philippines, there could not have been an importation or attempt thereof in order to subject the same to forfeiture under the provisions of paragraphs (f) and (m-1) of Section 1363 of the Revised Administrative Code. In other words, petitioner maintains that the cigarettes were not imported into the Philippines, hence, they are not subject to forfeiture.

Were the cigarettes in question illegally imported into the Philippines? We are of the opinion that the Commissioner of Customs should be sustained in his finding that the cigarettes in question were imported illegally. The absence of Philippine internal revenue strip stamps on cigarettes indicates that they are either manufactured clandestinely within the Philippines or imported illegally into the country. In the case at bar, concomitant circumstances militate against the clandestine manufacture within the Philippines of the cigarettes. The affixture of blue seals on the packs of cigarettes, the wrappers, the purchase of the cigarettes in the open market of Jolo, a place where American and other foreign-made cigarettes are, of common knowledge, frequently smuggled from Borneo (Lim Bak vs. Collector of Customs, BTA Case No. 180, August 28, 1954), and the failure of petitioner to show that the cigarettes in question were locally manufactured rule out the possibility that the cigarettes in question were manufactured in the Philippines.

Consequently, we are constrained to conclude that these cigarettes were foreign (American) made. They were merchandise of prohibited importation, the importation of which was contrary to law, and should be forfeited under Section 1363 (f) of the Revised Administrative Code.

The "blue seal" cigarettes at bar having been illegally brought into the country, they are likewise subject to forfeiture under Section 1363 (m-1) of the Revised Administrative Code for the reason that they were imported into the country without going through a customhouse. Our conclusion may seem harsh on petitioner, considering that she is being deprived of her property although she is merely the buyer, and not the illegal importer, of the cigarettes. "Revenue laws are of a harsher nature than any others, and necessarily so; for, the devices of ingenious men render it indispensable for the legislature to meet their illicit practices with severer penalties" (United States vs. the SS "Islas Filipinas", 28 Phil. 291, 296).

The fact that petitioner is merely a buyer of the cigarettes in the open market of Jolo does not render the cigarettes immune from the penalty of forfeiture. This is so because forfeiture proceedings are instituted against the res (cigarettes) (Origet vs. U. S., 125 U.S. 240, 31 Lued 743; Coffey vs. United States, 116 U. S. 436, 29 Lued 684, 687; The Palmyra, Escurra, Master, 12 Wheaton 1, 6 Lued 531, 537) and, by express provision of Section 1364 of the Revised Administrative Code, the forfeiture shall also occur while the merchandise is in the hands or subject to the control of some person who shall receive, conceal, buy, sell, or transport the same with knowledge that the merchandise was imported contrary to law. Petitioner cannot but be charged with the knowledge that the cigarettes in question were imported contrary to law, for if it were otherwise, why were these cigarettes concealed on board the vessel F/S "Bais"? Why did she deny ownership over said cigarettes? For what plausible reason was she afraid of detention? What impelled her to believe that she would be detained by the customs authorities? To uphold the claim of petitioner and forego the forfeiture would be giving a chance to accessories after the fact of smugglers of foreign cigarettes to ply their trade with impunity and with the sanction of the courts. What the executive department could not then curb, that is, rampant smuggling of foreign cigarettes, the courts should

DECISION -
CTA CASE NO. 1047

not tolerate (Republic of the Philippines vs. Goco, 50 O. G. 1662, 1667).

IN VIEW OF THE FOREGOING CONSIDERATION, the decision of the Commissioner of Customs appealed from is hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, Philippines, March 4, 1963.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge