REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SANTAL ENTERPRISES, represented by its Proprietor MAX RODRIGO,
Petitioner,

- versus -

C.T.A. CASE NO. 2866

THE COMMISSIONER OF CUSTOMS,
Respondent.

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

10/31/79

D E C I S I O N

From the decision of respondent Commissioner of Customs dated January 27, 1976, affirming the decision of the Collector of Customs of the Port of Cebu dated June 30, 1975 (in Cebu Seizure Identification No. 1-75), decreeing the forfeiture of 2,000 cases of merchandise, which were declared as "candies" in the export entry and covering export documents, for violation of Presidential Decree No. 579, in relation to Section 2530(f) of the Tariff and Customs Code, as amended, the exporter, petitioner Santal Enterprises, represented by its proprietor Max Rodrigo, has filed this appeal.

The reasons for the forfeiture of the subject merchandise for violation of Section 2530(f) of the Tariff and Customs Code and Presidential Decree No. 579 are: as found by the Collector in his decision, the preservative of the candies "in the form of refined sugar is quite big in proportion" (pp. 139-141, Customs records); and, as found by respondent Commissioner of Customs in his decision,

> "It is very apparent that the candies were used as a subterfuge for sugar. The subject article were so devised to make an exportation of sugar and pass them of as candies in order to circumvent the law."

(See Exh. "A", pp. 162-164, Customs records). Otherwise stated, the arguments in support of the forfeiture of the subject shipment, as expressed in respondent's memorandum filed in this Court after trial, are:

> "Under Section 2530(f) of the Tariff and Customs Code, it is clearly stated that any article the importation or <u>exportation</u> of which is effected or attempted contrary to law is subject to forfeiture. That per Chemistry Report No. C-75-7 dated February 7, 1975, the brownish yellow lumps as well as the white crystalline solid were positive for sugar and per report No. 11-75 RAW SP dated February 7, 1975, the sucrose content of the crystalline lumps of irregular sizes with powdery coating yellow orange in color is 80.70% made by the National Bureau of Investigation Central Visayas Regional Office and the Philippine Sugar Institute, respectively. It is indubitable, therefore, that the candies were used as a subterfuge for the sugar. The subject articles were so devised to make an exportation of sugar and pass them of as candies in order to circumvent the law. Under Section 2 of Presidential Decree No. 579 it is explicitly stated that to carry out the objectives of the Decree, the Philippine Exchange Company, Inc. may be authorized by the President of the Philippines to purchase sugar allocated for export to the U.S. and world market in a quantity and at a price to be fixed in accordance with the rules and regulations that shall be established by the Sugar Quota Administration, the Philippine National Bank,

> and Department of Trade and approved by the President of the Philippines. Under the premises, there is no doubt that there is an exportation of sugar contrary to law in gross violation of Section 2530(f) of the Tariff and Customs Code."

In support of its appeal assailing the legality and validity of respondent's decision, several reasons were advanced by petitioner in its original petition for review (pp. 1-3, CTA records) and, subsequently, in its amended petition for review (pp. 41-45, CTA records), but in its memorandum filed after trial, the principal arguments raised could properly be summarized into four, to wit:

1. That respondent Commissioner of Customs, in maintaining the view that what was loaded on board the M/S "Eastern Minicon" was sugar and not candies, disregarded the certificate of the Bureau of Standards (Exh. "F", p. 85, Customs records); certificate of the Food and Drug Administration (Exh. "G", p. 94, Customs records); and the examination report of export examiner Rodulfo Sagun (Exh. "H", p. 1, Customs records);

2. That granting without admitting that the subject exportation is sugar and not candies, Presidential Decree No. 579 does not impose a penalty;

3. That the seizure proceedings instituted by the Bureau of Customs on February 26, 1975, as well as the decisions rendered by the Collector of

Customs and the Commissioner of Customs declaring the forfeiture of the subject merchandise for violation of Presidential Decree No. 579, in relation to Section 2530(f) of the Tariff and Customs Code, are null and void, because Presidential Decree No. 579 was repealed by Presidential Decree No. 659 upon its effectivity on February 21, 1975, and that under Section 5 of the latter law, the jurisdiction to conduct seizure proceedings in cases involving illegal trading and illegal exportation of sugar is vested in the proper courts and not in the Bureau of Customs;

4. That in another case involving an exportation of 200 cartons of sugar apprehended by the Philippine Coast Guard in Cebu on June 3, 1975, the Collector of Customs of Cebu did not conduct seizure proceedings against the articles because under Presidential Decree No. 659 his office is already divested of jurisdiction over cases involving illegal trading and illegal exportation of sugar.

The Court disagrees with petitioner and must perforce sustain the stand of respondent Commissioner of Customs.

The facts of this case, as stated in the decision appealed from, are not the subject of substantial controversy, the same having been established during the customs seizure proceedings. Thus:

(1) That the 2,000 cases declared as candies was duly covered by Export Entry No. 00201 dated January 31, 1975, and all pertinent documents consigned to the Eastern Worldwide Co., Ltd., Hongkong to be shipped by the Santal Enterprises was loaded aboard the MV "EASTERN MINICON" on February 5, 1975;

(2) That since the aforesaid cargo was duly and properly documented, an Authority to Load was issued by this Office and the cargo in question was included in the outward foreign manifest of the vessel;

(3) That after loading of the same a clearance dated February 6, 1975, was issued to the aforesaid vessel;

(4) That when the representatives of the shipping company applied for military clearance at the Office of the Philippine Coastguard on February 6, 1975, the latter refused to issue such clearance but instead apprehended the 2,000 cartons declared as candies;

(5) That the aforesaid cargo was ordered discharged by Commander Mariano G. Tuvilla on February 6, 1975, and stored at the Cebu Customs Bonded Warehouse;

(6) That on February 25, 1975, Commander Tuvilla requested for the issuance of Warrant of Seizure and Detention against the aforesaid cargoes and vessel for violation of Section 2530(a) and (f) of the amended Tariff and Customs Code;

(7) That on February 26, 1975, the Warrant of Seizure and Detention was issued by this Office;

(8) That a team composed of the representatives of the Philippine Coastguard, Bureau of Customs, Philippine National Bank, Sugar Quota Administration and the Philippine Constabulary was created to conduct an inventory of the cargoes involved and determine the percentage of refined sugar allegedly used as preservative of the candies;

(9) That said inventory was started on February 24, 1975, and completed on March 21,

1975, report of which was submitted to this Office on April 8, 1975;

(10) That per report of the Inventory Team, the gross weight of the cargoes involved was 98,427 kilos, 55,619 kilos or 56.51%, 42,609 kilos or 43.29% and 199 kilos or .29% of which covers the total weight of candies, refined sugar and containers, respectively;

(11) That the refined sugar segregated from the said shipment was packed in 816 bags;

(12) That per Chemistry Report No. C-75-7 dated February 7, 1975, the brownish yellow lumps as well as the white crystalline solid positive for sugar and per report No. 11-75 RAW SP dated February 7, 1975, the sucrose content of the crystalline lumps of irregular sizes with powdery coating yellow orange in color is 80.70% made by the National Bureau of Investigation Central Visayas Regional Office and the Philippine Sugar Institute, respectively.

From the facts and figures borne out by the report of the customs inventory team (see Exhs. "D", "D-1" - "D-18", pp. 5-24, Customs records) and admitted by petitioner (p. 40, Customs records), the segregated <u>refined sugar</u> which was mixed with the candies in the same containers amounted to 42,609 kilos or 816 bags, or 43.29% of the whole shipments; while the candies or candy drops represent 55,619 kilos or 56.51%. And as per chemistry report (No. 11-75 RAW SP) dated February 7, 1975 of the Philippine Sugar Institute (see p. 102, Customs records), which was likewise admitted by petitioner (p. 40, Customs records), the crystalline lumps of irregular sizes with powdery coating yellow orange in color (i.e., referring to the samples of candies) have a sucrose content of 80.70%. Evidently, if the whole percentage of sugar (that is both the segregated refined sugar and the sucrose contents of the candies) should be considered, it would clearly appear that, instead of being purely candies as declared by petitioner, the subject merchandise constitutes practically of sugar. Nevertheless, even if only the segregated refined sugar should be taken into account, the percentage or proportion thereof is quite big and substantial that, in the absence of competent evidence that this type or kind of candies being exported necessarily requires this large quantity of refined sugar, the conclusion is inevitable that the subject exportation consists not merely of candies but partly of refined sugar.

Contrary to petitioner's reliance of proof on the certificate of the Bureau of Standards (Exh. "F", p. 85, Customs records); the certification of the Food and Drug Administration (Exh. "D", p. 94, Customs records); and the report of export examiner Rodolfo Sagun (Exh. "H", p. 1, Customs records), the Court is convinced that what is more controlling and credible as to the actual nature and condition of the subject merchandise are the undisputed findings of the customs inventory team and the chemistry reports of recognized agencies which were made after the discovery and apprehension of the subject articles. These reports command much respect and weight, since they proceed from the agencies of the Government called upon to safeguard the sugar industry, and to rationalize and stabilize the export of sugar. On the other hand, the certifications cited by petitioner merely make self-serving generalized statements as to the exportability and conformability to buyer's specifications of the candies or candy drops before their actual loading for export and, apparently, such routine documents, which could conveniently be obtained, do not take into account the actual condition of the shipment upon apprehension, and its composition, which actually involve an enormous quantity of refined sugar mixed with the candies in the same containers. And with respect to the report of examiner Rodolfo Sagun to the Collector of Customs (Exh. "H", p. 1, Customs records), it smacks of insufficiency and indefiniteness because it simply states that the cartons contain plastic packages or bags of unwrapped candy drops with <u>liberal sprinkling of sugar</u>, without specifying the proportion thereof. It admits that: "This spot-check report is submitted for your information and guidance <u>and for the exercise of discretion whether or not to enlarge the percentage</u>

of examination" (emphasis supplied.). Verily, said report is not final and binding on the Collector of Customs and same has been negated and contradicted by the report of the customs inventory team (Exhs. "D", "D-1" to "D-18", Id.) which indicates that there was not merely a liberal sprinkling of sugar on the candies but a tremendous and large quantity of refined sugar mixed with them.

Indeed, under Presidential Decree No. 579, which took effect upon its promulgation on November 12, 1974, the export of sugar is subject to certain requirements and regulations. And under Section 2530(f) of the Tariff and Customs Code, any article the importation or exportation of which is effected or attempted contrary to law, as well as the articles used or were entered to be used as instruments in the importation or exportation of the former, are subject to forfeiture. We quote hereunder the pertinent provisions of said laws for clarity and convenience.

PRESIDENTIAL DECREE NO. 579

RATIONALIZING AND STABILIZING THE EXPORT OF SUGAR AND FOR OTHER PURPOSES

xxx xxx xxx

SECTION 1. The Sugar Quota Administration shall from time to time and commencing from the crop year 1973-1974, re-allocate such portion of the total sugar production per crop year for export to the United States and world markets as may be necessary to safeguard the sugar industry and the national economy against contingencies brought about by speculative interests in sugar.

In addition to its powers under existing laws, the Sugar Quota Administration shall have the power to issue authorization for the export of sugar in accordance with the re-allocations provided for in the preceding paragraph.

SECTION 2. To carry out the objectives of the Decree, the Philippine Exchange Company, Inc. may be authorized by the President of the Philippines to purchase sugar allocated for export to the U.S. and world markets in a quantity and at a price to be fixed in accordance with the rules and regulations that shall be established by the Sugar Quota Administration, the Philippine National Bank, and the Department of Trade and approved by the President of the Philippines.

SECTION 3. The Philippine National Bank shall finance these purchases of sugar from the following sources of funds:

xxx xxx xxx

SECTION 4. To effectively implement the provisions of the preceding section, loans or advances by the Philippine National Bank to the Philippine Exchange Company, Inc. for the purpose directed in this Decree shall be exempt from the loan limits imposed in the charter of the said Bank.

xxx xxx xxx

SECTION 5. The Department of Trade and the Sugar Quota Administration shall extend full cooperation and assistance to the government agencies and entities herein mentioned in order to attain the objectives of this Decree and shall furnish them with such data and information as may be necessary for the effective international marketing of sugar.

SECTION 6. The sugar so purchased by the Philippine Exchange Company, Inc. shall not be disposed of without the prior approval of the

President of the Philippines. The Philippine Exchange Company, Inc. shall handle the export and shipment of such sugar to the U.S. and world markets.

xxx xxx xxx

TARIFF AND CUSTOMS CODE
(As amended by P.D. No. 34)

SECTION 2530. Property Subject to Forfeiture Under Tariff and Customs Law.- Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture:

xxx xxx xxx

f. 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.

Here, there is no question that the exportation of sugar was made or attempted without compliance with the requirements of Presidential Decree No. 579, as it does not even appear that the transaction was made known to the Sugar Quota Administration and the Philippine Exchange Company, Inc. And, apparently, the candies were used to effectuate the said illegal and unauthorized exportation. As such, the subject shipment consisting of 2,000 cases of candies and sugar is subject to forfeiture under Section 2530(f) of the Tariff and Customs Code.

The fact that Presidential Decree No. 579 does not provide for a penalty is of no consequence, because the violation of its provisions would, nonetheless, make the exportation of sugar illegal or contrary to law, punishable under Section 2530(f) of the Tariff and Customs Code. As will be noted, the provisions of Section 2530(f) of the Tariff and Customs Code are general in character and the same can be made to apply to all kinds of importations or exportations effected or attempted contrary to law. The articles of prohibited importation or exportation mentioned in Section 2530(f) which are subject to forfeiture are not limited to articles of prohibited importation or exportation enumerated in the Tariff and Customs Code. The statutory provisions authorizing forfeiture also apply to articles that may be the subject of activities undertaken in violation of other laws. (Venancio Carreion Tong Tek vs. Commissioner of Customs, CTA Case No. 135, December 21, 1956, affd. in 105 Phil. 1071; Gigare vs. Commissioner of Customs, L-21370, August 29, 1966, 17 SCRA 1001; Vierneza vs. Commissioner of Customs, L-24348, July 30, 1968, 24 SCRA 394; Felipe Yupangco vs. Commissioner of Customs, L-22259, January 19, 1966, 16 SCRA 1; Chan Kian vs. Commissioner of Customs, L-20803, January 31, 1966, 16 SCRA 133; Capulong vs. Aseron, L-22989, May 14, 1966, 17 SCRA 11; Lazatin vs. Commissioner of Customs, L-19753, July

30, 1969, 28 SCRA 1016; F. Sare vs. Commissioner of Customs, L-22263, August 29, 1969, 29 SCRA 112; Geotina vs. Court of Tax Appeals, L-33500, August 30, 1971, 40 SCRA 362; Commissioner of Customs vs. Dichoso, L-33471, January 31, 1972, 43 SCRA 192.)

Coming to the argument of petitioner that the customs seizure proceedings as well as the decisions of the Collector and the Commissioner of Customs are null and void because Presidential Decree No. 579 had already been repealed by Presidential Decree No. 659 at the time the instant seizure proceeding was instituted on February 26, 1979; and that under Section 5 of the latter decree the jurisdiction to conduct seizure proceedings in cases involving illegal exportation of sugar is already vested in the proper courts and not in the Bureau of Customs, the same is likewise devoid of merit.

In the first place, while Presidential Decree No. 659 (decree penalising illègal trading and illegal exportation of Philippine sugar) provides that all laws, executive orders, instructions, rules and regulations inconsistent with its provisions are repealed or amended accordingly (see Section 6, P.D. No. 659), there is actually no repugnancy or inconsistency between the provisions of said decree and the provisions of Presidential Decree No. 579 to indicate such a repeal. Presidential Decree No. 659 simply amplifies and complements the provisions of Presidential Decree No. 579, which already prescribe certain requirements and regulations for the export of sugar, by expanding the coverage of the decree to illegal trading and illegal exportation of sugar in any form (See Section 1, P.D. No. 659); defining the acts punishable thereby (Sec. 2, Id.); imposing criminal sanctions or penalties against the offender (Sec. 3, Id.); and providing for the confiscation of sugar illegally traded or exported as well as the vessel or aircraft used in violation thereof. In fact, in defining the punishable acts, Presidential Decree No. 659 includes the sale, transfer or assignment of sugar to any person or entity other than the Philippine Exchange Inc. and the Philippine National Bank, as illegal trading of sugar (Sec. 2/a/, Id.); and in the exportation of sugar, it is required that there must be a prior authority to load from the Bureau of Customs and the corresponding export permits therefor from the Sugar Quota Administration and the Central Bank (Sec. 2/b/, Id.), which export permits are already contemplated under Presidential Decree No. 579.

And in Section 5 of Presidential Decree No. 659, which provides as follows:

which has jurisdiction over the criminal case, which may order the confiscation of the instrument used in the violation thereof, in addition to the criminal penalty; or the final judgment of the court on appeal from the decision of the Bureau of Customs in the seizure proceedings. At this juncture, it may be noted that cases involving seizure under Customs Laws, which include not only the provisions of the Tariff and Customs Code and regulations pursuant thereto but all other laws and regulations which are subject to enforcement by the Bureau of Customs or otherwise within its jurisdiction (Sec. 3514, Tariff and Customs Code), are exclusively under the jurisdiction of the Court of Tax Appeals. (Acting Collector of Customs vs. Caluag, L-23925, May 24, 1967, 23 SCRA 204.)

In other words, since Section 5 of Presidential Decree No. 659 does not expressly provide that the Bureau of Customs has no jurisdiction over the seizure and forfeiture of sugar illegally exported, as well as the articles, vessel or aircraft used in effecting the illegal exportation; and since there is no apparent conflict or inconsistency between the provisions of said section and the provisions of the Tariff and Customs Code, particularly Section 2530(a) and (f) thereof, the provisions of the two statutes should be reconciled and harmonized, applying the settled rule

> "SEC. 5. Confiscation of Sugar, Vessel or Aircraft. - The sugar traded or loaded in violation of this Decree shall be confiscated and surrendered to the nearest PNB or Philippine Exchange, Inc. office for reallocation, without prejudice to the rights of the parties involved, who shall be entitled to the return of sugar of the same kind and quantity, should they be found later on by the proper authorities to be innocent of the offenses herein defined. The vessel or aircraft used in violation of the provisions hereof shall, after final judgment by the court, be confiscated in favor of the Government, thereafter to be disposed of in accordance with the provisions of the Tariff and Customs Code.

nothing is said either expressly or impliedly that the Bureau of Customs has been deprived of its jurisdiction to conduct seizure proceedings against the article (sugar), vessel or aircraft involved in the illegal exportation. The confiscation stated therein could either mean the confiscation in connection with, or as a result of, the criminal action against the offender, which is cognizable by the regular courts, or the confiscation in connection with, or as a result of, the civil proceedings for the seizure and forfeiture of the article, vessel or aircraft involved in the illegal exportation, which is cognizable by the Bureau of Customs under the Tariff and Customs Code. And, parenthetically, the phrase therein: "after final judgment by the court", which qualifies the confiscation of the vessel or aircraft used in the violation of the decree, should be construed to mean either the final judgment of the court of statutory construction that repeal by implication is not favored unless it is manifest that the legislature so intended (Commissioner of Customs vs. Esso Standard Eastern, Inc., L-28329, August 7, 1975, 66 SCRA 113), and that statutes relating to the same subject matter are to be construed with reference to each other (Madrigal vs. Rafferty, 38 Phil. 414; 51 Am. Jur. 363).

Secondly, assuming but without admitting, that Presidential Decree No. 579 had been repealed by Presidential Decree No. 659 upon its effectivity on February 21, 1975, the repeal can only have prospective operation because the latter does not provide for retroactivity. Statutes have no retroactive effect unless otherwise provided therein. (Espiritu vs. Cipriano, L-32743, February 15, 1974, 55 SCRA 533.) Consequently, on February 5, 1975 when the loading of the subject shipment of sugar and candies for export took place, and on February 6, 1975 when the said exportation was apprehended by the authorities, Presidential Decree No. 579, which provides, among others, that the export of sugar shall be covered by re-allocation and authorization by the Sugar Quota Administration, was still in force and in effect. And as we said, the violation of or non-compliance with, the requirements of Presidential Decree No. 579 would make the exportation of sugar contrary to law and the said article subject to seizure and forfeiture under Section 2530(f) of the Tariff and Customs Code.

Anent petitioner's argument, or observation, that in another case involving the exportation of 200 cartons of sugar on June 3, 1975 the Collector of Customs of the Port of Cebu did not issue a warrant of seizure and detention or conduct seizure proceedings against the said article because of his view that under the procedure established by the implementing rules and regulations of Presidential Decree No. 659, cases involving violations of said Decree are already vested in the proper courts and not in the Bureau of Customs (See Exh. "N", pp. 66-67, CTA records), the Court feels that this matter has no materiality or relevancy to the instant appeal. Without in the least attempting to express an opinion on the actuation or motivation of the Collector of Customs of Cebu in refusing to issue the warrant of seizure and detention or to conduct seizure proceedings, it bears emphasis that the instant case involves a decision of the same Collector of Customs of the Port of Cebu which was upheld by respondent Commissioner of Customs and duly appealed to this Court under the provisions of Republic Act No. 1125 and

Section 2402 of the Tariff and Customs Code. It would therefore be a misconception of its judicial duty of impartially interpreting and applying the law if this Court would take into account an alleged inconsistent stand of a collector of customs in deciding customs cases properly appealed before it.

In the light of the above, the decision of respondent Commissioner of Customs dated January 27, 1976, ordering the forfeiture of the subject shipment of 2,000 cases declared as candies and marked C.W.C. Hongkong 1-2000 for violation of Presidential Decree No. 579, in relation to Section 2530(f) of the Tariff and Customs Code, must be sustained.

WHEREFORE, the judgment under review is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, October 31, 1979.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge