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GAPAN FARMERS' COOPERATIVE
MARKETING ASSOCIATION, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1887

8/28/75

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

D E C I S I O N

Petitioner sought the review of the decision of respondent Commissioner of Customs dated July 21, 1967, which affirmed <u>in toto</u> the consolidated decision of the Collector of Customs of the Port of Manila declaring the forfeiture to the Government of the various bags of ammonium sulphate (fertilizer) for violating Section 2530(e), (m-1), (m-3), (m-4) and (m-5) of the Tariff and Customs Code, in the following seizure identification cases, namely:

1. <u>Seizure Identification No. 10580</u>. A shipment of 66,140 bags of ammonium sulphate under Bill of Lading No. OMA-36 consisting of 55,116 bags and 11,024 bags under Bill of Lading No. OMA-37, which arrived from Osaka, Japan, on or about July 21, 1966 on board the S/S "Eastern Venus", Reg. No. 1105, consigned to petitioner herein;

2. <u>Seizure Identification No. 10581</u>. A shipment of 55,000 bags of ammonium sulphate which arrived at the Port of Manila on or about September 13, 1966 on board the

S/S "Asian Mariner", Reg. No. 1410, likewise consigned to herein petitioner;

3. Seizure Identification No. 10583. A shipment of 66,667 bags of ammonium sulphate which arrived at the Port of Manila from Tokyo, Japan, on or about November 10, 1966 on board the vessel S/S "Loong Hwa", Reg. No. 1745 and consigned to herein petitioner; and

4. Seizure Identification No. 10584. A shipment of 6,930 bags of ammonium sulphate discharged from S/S "Eastern Venus", Reg. No. 1105.

The pertinent provisions of Section 2530 of the Tariff and Customs Code upon which the forfeiture was based read as follows:

> Sec. 2530. Property Subject to Forfeiture Under Tariff and Customs Laws. - Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
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> xx xx xx xx xx
>
> (e) Any article which is fraudulently concealed in or removed from any public or private warehouse under customs supervision.
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> xx xx xx xx xx
>
> (m) Any article sought to be imported or exported:
>
> (1) Without going through a customhouse, whether the act was consummated, frustrated or attempted;
>
> xx xx xx xx
>
> (3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter, or consignee concerning the importation or exportation 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;
>
> (5) Through any other fraudulent practice or devise by means of which such article was entered through a customhouse to the prejudice of the Government.

At the outset, it should be stated that during the scheduled hearing of this case on the merits, petitioner's counsel submitted the case for decision on the basis of the customs records and the pleadings because the only issue raised by him involves a question of law. Respondent's counsel likewise submitted the same case for decision solely on the question of law.

The undisputed facts are as follows:

> The claimant imported from Japan the subject ammonium sulphate which shipments arrived in the Port of Manila sometime in July, September and November, 1966. There is no dispute that these various shipments, which were consigned to the claimant, were covered by the necessary importation papers and were duly manifested. But what made these goods liable to forfeiture was the fraudulent act in having these shipments transferred from vessel unto lighter with the use of fake special permits (with the exception in the case of the 66,140 bags under S. I. No. 10580 and the 66,667 bags under S. I. No. 10583) wherein the special permits to transfer from vessel to lighter are genuine, and from the lighter all these shipments were taken to and concealed in different customs bonded warehouses with the use of fake customs documents. Some of these articles were later on removed from the warehouse and were apparently disposed of to third parties (Exh. "O). Records further show that no warehousing or consumption entry has ever been filed by the claimant-consignee or its representatives covering the shipments in question.

> That the subject articles were fraudulently carted away from customs custody in fraud of revenue with the use of fake customs documents is not contested by the claimant. As a matter of fact the claimant stipulated and admitted the signatures of customs officials appearing on the questioned customs documents as forged (Exh. "H-16"; "L-14"; t.s.n. 108-110, 114-116, and 150). (CTA records, p. 6.)

The sole issue to be resolved is whether or not the forfeiture of the imported fertilizer under the pertinent provisions of the Tariff and Customs Code, supra, was valid and justified.

Under paragraph VI of the petition for review, petitioner contends that (a) it has nothing to do whatsoever with the shipside discharge and subsequent transfer of the shipments to any customs bonded warehouse and their concealment; (b) it had no knowledge, consent or participation in obtaining from the Bureau of Customs, Manila, the alleged forged and falsified special permits that caused the actual shipside discharge of the shipments as well as the fake permits covering the transfers of the same from the lighters to any customs bonded warehouse; (c) the fake or falsified special permits were applied for and obtained from the Bureau of Customs, Manila, in the name of petitioner or by certain persons who posed as the supposed authorized agents and/or officers of petitioner without its knowledge, consent and authority; (d) the shipside discharge and subsequent transfers of said shipments occurred under the supervision and presence of customs officers and employees and without the knowledge and participation of petitioner; (e) although seizure proceeding is an action *in rem* directed at the thing seized, still the owner thereof is entitled to due process; and (f) admitting *arguendo* that the removal of the shipments from customs control and custody was made without prior payment of the duties and taxes, petitioner cannot be held responsible therefor. (Pp. 2-3, CTA records.)

The participation of petitioner in the unlawful transfer of the imported fertilizer from the carrying vessels unto lighters and their subsequent storage to designated warehouses with the deceptive use of fake customs documents without filing any warehousing or consumption entry violates Section 2530(m-1), (m-3), (m-4) and (m-5) of the Tariff and Customs Code, *supra*. The concealment of the said goods in the designated customs bonded warehouses and their fraudulent removal therefrom violate Section 2530(e) of the same Code, *supra*. Such illegal acts were done with the knowledge, concurrence, consent, connivance and collusion of petitioner's president and general manager, Tito or Mr. Fortunato P. Encinas.

The written requests for shipside transfer of the shipments under consideration were made by Mr. Fortunato P. Encinas as president of petitioner. (Exhs. A-8, B-8 and L-14, Customs Records.) Mr. Fortunato P.

Encinas, the person employed by petitioner as its president and general manager was authorized to act and represent petitioner. This is clearly shown and indicated in the resolution of petitioner's Board of Directors dated May 14, 1966, wherein Mr. Vedasto Liwag, Secretary of the Gapan Farmers' Cooperative Marketing Association, Inc., and in his absence, Mr. Fortunato P. Encinas, was expressly authorized to negotiate with any banking institution in the importation of fertilizer from foreign countries. (Exh. 8, p. 70, Folder "A", Customs Records.)

The records also indicate that Tito Encinas applied for the letter of credit with the Overseas Bank of Manila for the account of petitioner covering the importation of 3,000 M/T (66,667 bags) of ammonium sulphate (Exh. H, p. 12, Folder "C", Customs Records) and in the request for the amendment of said letter of credit. In both instances, Mr. Fortunato P. Encinas signed as General Manager. (Exh. II-4, p. 120, Folder "C", Customs Records.) The same action was taken in the application for letter of credit filed with the Associated Banking Corporation, Manila, covering the importation of 2,500 M/T of ammonium sulphate which was signed by Fortunato P. Encinas as General Manager of petitioner. (Exh. L, p. 70, Folder "C", Customs Records.)

Again, Mr. Encinas represented petitioner in its contract of sublease of a warehouse with Filipinas Integgrated Services Corporation where the various bags of ammonium sulphate were actually stored. (Exh. C-7, pp. 149-150, Folder "C", Customs Records.)

Under the foregoing circumstances, the pretension and allegation of petitioner that it has never participated in the shipside discharge, transfer, concealment and removal of the fertilizer in question are hardly believable. If petitioner had no knowledge whatsoever of such illegal and fraudulent acts, it should have taken drastic and punitive action against Mr. Fortunato P. Encinas immediately after knowing the real facts. Petitioner could not, therefore, disclaim participation in, knowledge of, or consent to all these unlawful acts and transactions by folding its hand and protecting its own guilty official.

Petitioner's allegation that it had no knowledge, much less consented to or participated, in the illegal discharge, transfer, concealment and withdrawal of the fertilizer is of no moment because the explicit provisions of Section 2530(e), (m-1), (m-3), (m-4) and (m-5) of the Tariff and Customs Code, *supra*, do not provide for any exception. Moreover, to sustain petitioner's view would render the provisions of Section 2530 of the Tariff and Customs Code meaningless and ineffective because imported goods may not be forfeited on the mere pretext that the owner or importer thereof had no knowlege of or consented to the illegal acts of its authorized agent and trusted official. (See Ampere Trading and Stand Brokerage Corp. v. Commissioner of Customs, C.T.A. Case No. 1951, March 27, 1972.) This is specially true and applicable to this case because the illegal and fraudulent acts perpetrated by petitioner's president and general manager, Mr. Fortunato P. Encinas, were not even condemned and censured by petitioner as a cooperative marketing association.

At any rate, all the contentions of petitioner under paragraph VI of its petition for review, on which it assails the legality and validity of the forfeiture of the fertilizer in question, were specifically denied by respondent under paragraph 3 of his answer for being erroneous conclusions of fact/and or law. As affirmative and special defenses thereto, respondent alleged under paragraphs 4, 5, 6 and 7 of his answer that petitioner participated, directly or indirectly, in the shipside discharge of the ammonium sulphate from the carrying vessels unto lighters with the use of fake special permits and in the transfer of the same shipments from the lighters to different customs bonded warehouses with the use of fake customs documents, in violation of Section 2530(e), (m-1), (m-3), (m-4) and (m-5) of the Tariff and Customs Code, thereby making such shipments subject to forfeiture; and assuming arguendo that petitioner was not involved, directly or indirectly, in the fraudulent removal of the shipments in question from customs custody, nevertheless the goods are subject to forfeiture for the reason that seizure proceedings are in rem and, therefore, lack of knowledge and consent by the owners of the forfeited goods is not a valid defense.

Petitioner prayed for judgment on the pleadings without substantiating the truth of its own allegations which were specifically denied by respondent. Respondent was not given by petitioner the opportunity to introduce evidence to prove his own allegations, thereby admitting the truth of all the material and relevant allegations of said respondent. (Alemany v. Sweeney, 3 Phil. 114; Bauermann v. Casas, 10 Phil. 386; Evangelista v. De la Rosa, et al., 76 Phil. 115.) Be that as it may, it is already settled that an action for forfeiture is a proceeding in rem and the property in such a case is primarily considered as the offender, or rather the offense is primarily attached to the thing. Consequently, want of knowledge or innocence on the part of the owner is immaterial in forfeiture proceedings. (Trias, et al., v. Acting Commissioner of Customs, C.T.A. Case No. 1413, March 18, 1964.) In brief, lack of knowledge or consent by the owners in the forfeiture of the goods is not a valid defense in a proceeding directed in rem, and the thing in such a case is primarily considered as the offender. (U.S. v. Steamship Rubi, 32 Phil. 22.)

Petitioner argued that it was organized and existing under Act No. 3425 and, therefore, exempt from the payment of taxes and duties. Consequently, it cannot be charged with fraud against the government. However, under Section 1202 of the Tariff and Customs Code, importation is not terminated until the imported goods have legally left the jurisdiction of the customs. Since the bags of fertilizer in question were unlawfully transferred by petitioner from the carrying vessel unto lighters, then stored to designated warehouses with the deceptive use of fake customs documents without filing any warehousing or consumption entry, and later on fraudulently removed therefrom, it can be said that the goods in question have never legally left the jurisdiction of the Bureau of Customs. It follows, therefore, that legitimate importation of fertilizer by a tax-exempt cooperative ceases to be legal when the imported goods are intended for the black market or for the sole benefit of the official of the cooperative as an individual.

The records show that out of the 194,737 bags of ammonium sulphate (fertilizer) covered by the seizure identification cases mentioned above, 66,667 bags thereof which arrived on board the vessel S/S "Loong Hwa" were still in storage under customs custody at the time the petition for review was filed with this Court on September 23, 1967. Upon motion of petitioner, this Court, after due notice and hearing to all parties concerned, ordered respondent Commissioner of Customs, in its resolution dated July 16, 1968, to release and deliver to petitioner the 66,667 bags of ammonium sulphate after petitioner, Gapan Farmers' Cooperative Marketing Association, Inc., and The Travellers Multi-Indemnity Corporation had filed Travellers Bond No. G(16) 144/68, dated July 12, 1968, in the amount of ₱911,084.00 to answer for the appraised value of the said bags of fertilizer in the event that this case is finally decided against petitioner and said articles are forfeited to the Government.

WHEREFORE, the principal, Gapan Farmers' Cooperative Marketing Association, Inc., and the surety, The Travellers Multi-Indemnity Corporation are hereby ordered, jointly and severally, to pay in cash the said amount of ₱911,084.00 to the Bureau of Customs within thirty(30) days from the date this decision becomes final and executory. With costs.

SO ORDERED.

Quezon City, August 28, 1975.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R M Umali
ROMAN M. UMALI
Presiding Judge

Ramon L Avanceña
RAMON L. AVANCEÑA
Associate Judge