REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

July 31/'66

FRANCISCO D. BALMOCENA,
Petitioner

versus

CTA CASE NO. 1585

THE COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from the decision of the respondent Commissioner of Customs affirming that of the Acting Collector of Customs of Manila which decreed the forfeiture of M/B "Don Gerardo B", a fishing vessel, for violation of Section 2530, pars. (a), (b) and (c), of the Tariff and Customs Code.

Before hearing, petitioner filed a motion to require respondent to release the vessel upon the filing of the necessary bond to secure payment of the appraised value thereof. Release of the vessel was ordered upon the filing of a surety bond, with the Wellington Insurance Co., Inc., as surety, to guarantee payment of the appraised value of the vessel, taking into account the depreciation in value as a consequence of its impounding.

The facts of the case are not disputed, the parties having submitted a joint stipulation of facts, which, for convenience, is quoted below:

> "COME NOW the parties in the above-entitled case, through their respective counsel, and to this Honorable Court respectfully submit the following Joint Stipulation of Facts:

"1.- That the articles involved in the above-entitled case consisting of 54 cases of 'Old Gold' cigarettes with blue seals, playing cards, printed bed-sheets and haslenut milk blocks; and the carrying vessel, the M/B Don Gerardo-B, were libeled for alleged violation of Section 2350-(a), (b) & (c) of the Tariff and Customs Code;

"2.- That the seizure of the aforementioned properties is based on the discovery of the said articles on board the said vessel on July 3, 1963, while the vessel M/B Don Gerardo-B was docked at Pier 4, North Harbor, by Special Police Officer Jayme Solis and several agents who searched the said vessel on the strength of a search warrant issued by a certain captain;

"3.- That the said articles were found inside Hatch No. 4 of said vessel;

"4.- That the claimant of the aforementioned cigarettes and other dutiable items is Jaime Zaragosa who expressly abandoned the same in open hearing of the seizure case under Seizure Identification No. 7831-A, (Decision, Commissioner of Customs, p. 2);

"5.- That the claimant of the vessel M/B Don Gerardo-B under Seizure Identification No. 688 is Francisco Balmocena, petitioner herein;

"6.- That claimant-petitioner Francisco Balmocena is a legitimate fishing operator since 1947, operating under the business name 'FRABAL', with the following vessels duly registered and licensed under his name and/or his wife Aurea Mateo, to wit:

(a) M/B Don Gerardo	- 103 tons
(b) M/B Doña Aurora	- 133 "
(c) M/B Doña Lolita-B	- 99.57 tons
(d) M/B Don Francisco-B	- 98.32 "
(e) M/B Don Jose-B	- 99.40 "
(f) M/B Don Carlos	- 70.00 "
(g) Lady Azucena-II	- 70.00 "
(h) M/B Don Antonio	- 98.35 "

(Customs Record, p. 0157, pp. 120-152)

"7.- That claimant Jaime Zaragosa was

the Chief Bodegero of the seized vessel M/B Don Gerardo-B who confessed and admitted before Hearing Officer Mariano A. Tiu of the Commissioner Investigation Staff, that he was responsible for the loading of the 54 cases of blue seal cigarettes and other items found in the said vessel with the help of seven Moros while the rest of the crew members including the captain was absent from the said vessel who were then attending a funeral of one of the pescadores of said vessel;

"8.- That the findings of the said hearing officer Mariano A. Tiu on the said confession and admission of Jaime Zaragosa to his sole and exclusive responsibility for the loading of the aforementioned articles in the hold of said vessel are reflected in his Memorandum Report, dated July 10, 1963, and we quote, to wit:

'Jaime Zaragosa, 29 years old, married and presently residing at No. 82 Muelle de la Industria, Binondo, Manila, stated under oath:

'That he is presently employed as bodegero of the M/V "Don Gerardo-B" which is owned and operated by Francisco Balmoceno; that on May 25, 1963 they left Manila for Palawan for the purpose of fishing; that while at Brooke's Point, Palawan, he permitted the loading of blue seals cigarettes and other untaxed items on board the M/V "Don Gerardo-B" without the knowledge and consent of the Captain and the other crew members; that he was helped by 7 Moros who are not members of the crew; that when these cigarettes were loaded he was the one on board the M/V "Don Gerardo-B" and all his other companion were on shore.' (Customs Records, p. 000581);

"9.- That, upon inquiry made on board the said vessel as to the ownership of the seized articles aforementioned, both the patron as well as the crew members denied any knowledge of the presence of such cargoes on board (Decision of the Commissioner of Customs, dated October 29, 1964, p. 2);

"10.- That the findings of the hearing officer Mariano Tiu on the person responsible for the loading of the said articles, as reflected in his Memorandum Report, are as follows, and we quote:

> 'After subjecting all the crew members into a rigid investigation, it was only Jaime Zaragosa who admitted responsibility for the presence of the blue seal cigarettes and other items in Hatch No. 4 of the M/B "Don Gerardo-B". He took advantage of the situation when all the rest of the crew members attended a funeral while they were at Brookes Point to fetch "pescadores". All these were done without the knowledge and consent of the captain and his other companions.' (Customs Records, p. 00058);

"11.- That petitioner-claimant Francisco Balmocena, had no knowledge of the loading and presence of the 54 cases of Blue seal cigarettes and other dutiable items on board the vessel M/B Don Gerardo-B;

"12.- That the findings of the hearing officer Mariano Tiu on the question of personal knowledge of petitioner Francisco Balmocena on the presence of blue seal cigarettes and other articles on Board the M/B Don Gerardo-B are reflected in his Memorandum Report as follows and we quote:

> 'Francisco D. Balmocena - that he is the owner-operator of the M/V Don Gerardo-B, together with 7 other fishing boats; that he has been engaged in the fishing industry since 1947.
>
> 'That before the boat left for Palawan, he gave strict order

to the Captain, Francisco Cariñgal, together with a memorandum prohibiting the loading of any contraband goods like cigarettes and other highly dutiable items; that he does not know anything about the 55 cases blue seal cigarettes found in Hatch No. 4 of said boat; that he learned of the apprehension of the blue seal cigarettes on said boat when he was informed by telephone by his brother-in-law, one Victor Mateo; that he proceeded immediately to Pier 4 and confronted the crew members about the presence of blue seal cigarettes; that one of the crew members confessed to him that he is the one responsible for the loading of said contraband; that he scolded said Jaime Zaragosa, and right there and then he dismissed him from the service; that Jaime Zaragosa told him that the captain and the other crew members have no knowledge of the loading of the said cigarettes; that this is the first time that anyone of his fishing boats was involved in the loading of contraband articles ever since 1947 when he started fishing business.' (Customs Records, p. 00057);

"13.- That petitioner-claimant Francisco Balmoceda had express instruction in a Memorandum Order requiring the crew members of his fishing vessels to comply strictly with Customs Rules and Regulations and prohibiting crew members from loading or allowing the loading of contraband items particularly blue seal cigarettes; and that before the vessel M/B Don Gerardo-B left for Palawan, Jaime Zaragosa acknowledged receipt of said order, (Exhibit '1'; Customs Records, p. 136);

"14.- That hearing officer Mariano Tiu recommended release of the vessel M/B Don Gerardo-B being convinced that petitioner Francisco Balmoceda is innocent of the loading of the 54 cases of blue seal cigarettes and other items found therein (Customs Records, p. 00054);

"15.- That hearing officer Mariano Tiu made findings supporting the innocence of the petitioner, Francisco Balmocena, as reflected in his Memorandum Report and we quote:

'It can therefore be readily gleaned from the above facts that the owner and captain have no knowledge of what Jaime Zaragosa did with respect to the loading of the contraband articles which were apprehended by the Customs Authorities. In fact the M/V Don gerardo arrived in the early morning of July 1st, at Pier 4 and immediately upon arrival, several tubs of fish were unloaded. From July 1 up to July 3, they could have easily unloaded those contraband goods without being detected by the authorities.' (Customs Records, p. 00056).

'Furthermore, considering the condition of the boat, the M/V Don Gerardo-B which has a gross weight of 100 tons, more or less, the owner will not invest quite a big amount of money if his purpose is to use the same for smuggling. It was shown that Mr. Francisco Balmocena is a legitimate fishing operator with 7 other similar boats strictly engaged in the fishing industry since 1947 with a clear record.' (Ibid, p. 00055).

'Recommendation

'It is therefore respectfully recommended that:

'1. Jaime Zaragosa be charged for violation of Section 174 of the Internal Revenue Code and Section 3603 of the Tariff and Customs Code;

'2. That the 55 cases of blue seal cigarettes and other dutiable items enumerated in the Inventory Report herein attached be seized and seizure proceedings be instituted thereon;

'3. <u>That the fishing boat be released to the owner based on the reasons already stated above</u>.' (Ibid. p. 00056)

"16.- That the findings of the Office of the Secretary of Finance, during the reinvestigation of the matter of the apprehension of the M/B Don Gerardo-B because of the discovery of the aforementioned articles, as reflected in the Memorandum Report of Crisostomo F. Pariñas, Confidential Technical Assistant, Office of the Secretary of Finance, are as follows and we quote, to wit:

'At the outset there exists no controversy as to the conclusiveness of the following facts which were adduced during the investigation conducted in the premises, namely:

'(a) that Mr. Francisco Balmoceda, owner of the M/V Don Gerardo-B is engaged in the fishing business and that the subject vessel is solely used in the pursuit of said fishing business;

'(b) that Mr. Francisco Balmoceda had never been engaged in smuggling activities;

'(c) that the blue seal cigarettes and other dutiable articles found by the customs agent in hatch No. 4 of M/V Don Gerardo-B on July 3, 1963 were surreptitiously loaded by Jaime Zaragosa at a time where he was alone on board the vessel without the knowledge whatsoever on the part of any other crew member; and

'(d) that there is absolutely no iota of evidence whatsoever to show that the owner of M/B Don Gerardo-B, much less his agent had any knowledge of the surreptitious loading aforesaid, nay, of the unlawful act perpetrated by

Jaime Zaragosa.

'<u>In other words, the owner is entirely innocent in relation to the illegal loading and unlawful presence of the smuggled articles found in hatch 4 of the fishing boat under consideration</u>.

'(Memorandum Report to Secretary Rodrigo Perez, Department of Finance submitted by Crisostomo F. Pariñas, Confidential Technical Asst. Office, Secretary of Finance)' (Ibid., p. 0098, underscoring supplied);

"17.- That, since 1947, the above-named fishing vessels of petitioner-claimant Francisco Balmocena have never been seized for any violation of Customs Laws, Rules and Regulation except the M/B Don Gerardo-B for the present charges in the appealed case at bar; and that the petitioner-claimant Francisco Balmocena has never been charged for violation of the same laws, rules, and regulations in the course of the operation of his fishing boats;

"18.- That the facts stipulated herein and the facts appearing on the records of the seizure cases involved in the above-entitled case do not show a basis for, nor warrant the filing of, a criminal action against the claimants therein; and in fact no criminal action has so far, as of this date, been filed against the claimants;

"19.- That parties hereto reserve the right to present additional evidence to prove facts not included in this joint stipulation.

"WHEREFORE, parties jointly pray that this Joint Stipulation of Facts be admitted in lieu of evidence to prove the existence of the same and that it be considered in deciding the above-entitled case as if the facts agreed therein were established in a trial on the merits."

(pp. 48-54, CTA records.)

In support of his appeal, petitioner has raised the following issues:

> (a) That the element of importation was not proven, therefore forfeiture under par. (a) of Section 2530 of the Tariff and Customs Code is not substantiated;
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> (b) That the absence of proof as to the maximum amount of articles authorized for sea stores of the vessel involved renders of doubtful legality the forfeiture of the said vessel under the provision of par. (b), Section 2530 of the Tariff and Customs Code;
>
> (c) That the absence of proof of unlading of the seized articles to the vessel under forfeiture from the importing vessel before reaching its destination as well as proofs of the existence and/or identity of the importing vessels, likewise renders of doubtful legality, the forfeiture of the vessel involved under the provision of par. (c) of Section 2530 of the Tariff and Customs Code;
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> (d) That the seizure proceeding in the above-entitled case is null and void because the search warrant used in the seizure of the articles involved was issued without authority of law;
>
> (e) That assuming arguendo that the vessel involved is subject to seizure, the respondent Collector of Customs committed grave abuse of discretion in imposing the penalty of forfeiture instead of a fine considering the mitigating circumstances proven by the evidence of the claimant-petitioner. (Page 2, Petition for Review.)

Paragraphs (a), (b) and (c) of Section 2530 of the Tariff and Customs Code, read as follows:

> "a. Any vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles into or from any Philippine port or place except a port of entry; and any vessel which, being of less than thirty tons capacity shall be used in the

importation of articles into any Philippine port or place except into a port of the Sulu sea where importation in such vessel may be authorized by the Commissioner, with the approval of the department head.

"b. Any vessel engaging in the coastwise trade which shall have on board any article of foreign growth, product or manufacture in excess of the amount necessary for sea stores, without such article having been properly entered or legally imported.

"c. Any vessel or aircraft into which shall be transferred cargo unladen contrary to law prior to the arrival of the importing vessel or aircraft at her port of destination."

It is argued that no evidence was adduced by the Government to show that the 54 cases of "Old Gold" blue seal cigarettes and other assorted articles found hidden in said vessel were imported from abroad and that the said vessel was used in the importation thereof. It is not denied that said articles were of foreign origin and that the corresponding taxes and duties were not paid or attempted to be paid thereon. That the articles were found hidden in said vessel is sufficient evidence that said vessel was used unlawfully in the importation of such articles.

"It having been established that the said cigarettes were imported from abroad; that the corresponding customs duties and taxes due thereon were not paid; that the cigarettes were on board the M/L Cheton at the time of apprehension; and that theM/L Cheton did not have the necessary documents relating to the importation of said cigarettes, the conclusion is inevitable that the said cigarettes were illegally imported and that the M/L Cheton was illegally used in the unlawful importation thereof. The said vessel is, therefore, subject to forfeiture under Section 2530(a) of the Tariff and Customs Code.

"Section 1202 of the Tariff and Customs Code provides:

> 'Sec. 1202.- When importation begins and deemed terminated. - Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unlade therein. Importation is deemed terminated upon payment of the duties, taxes and other charges due upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction of the customs.'

It is clear from Section 1202 of said Code that in case of taxable articles coming from abroad, importation is not terminated until the duties, taxes and other charges due thereon have been paid, or secured to be paid, at a port of entry. In this case, the duties and taxes have not been paid, so that at the time of apprehension and while the cigarettes were on board the M/L Cheton, said cigarettes were in the course of illegal importation into the Philippines. And the means used to import the said cigarettes illegally was the M/L Cheton which did not have the necessary documents of importation." (C. F. Sharp & Co., Inc. v. Com. of Customs, C.T.A. No. 1309, Aug. 17, 1964. See also Leuterio Trias & Manuela Lopez v. The Acting Com. of Customs, C.T.A. No. 1413, March 18, 1964.)

The legality of the forfeiture is contested on the ground that there is no evidence as to the "maximum amount of articles authorized for sea stores of the vessel involved." We find no merit in this argument because there is no claim or pretense that said cigarettes and other dutiable articles found in said vessel, or any portion thereof, were for the use or consumption of the vessel or of its crew. In fact, in the stipulation of facts, the parties agreed that said articles were owned and were illegally concealed in said vessel by its "bodeguero," and for which the latter was prosecuted criminally.

Petitioner also claims that there is no "proof of unlading of the seized articles to the vessel under forfeiture from the importing vessel before reaching its destination as well as proofs of the existence and/or identity of the importing vessels." As already stated above, we are of the opinion that the M/B "Don Gerardo-B" was used illegally in the importation of the articles described above within the meaning of Section 2530, in relation to Section 1202, of the Tariff and Customs Code, hence the same is subject to the corresponding penalty provided by law.

The legality of the seizure proceeding against the said vessel is contested on the ground that "the search warrant used in the seizure of the articles involved was issued without authority of law." It having been established that the said vessel was used, or attempted to be used, in the illegal importation of articles from abroad, which offense is penalized under Section 2530 of the Tariff and Customs Code, it is immaterial that the evidence was secured or procured illegally. (Medina v.

Collector, G.R. No. L-15113, Jan. 28, 1961.) Petitioner has his recourse elsewhere, but not in this proceeding.

A Finally, it is argued -

> "That assuming arguendo that the vessel involved is subject to seizure, the respondent Collector of Customs committed grave abuse of discretion in imposing the penalty of forfeiture instead of a fine considering the mitigating circumstances proven by the evidence of the claimant-petitioner."

At first, this Court entertained serious doubt whether or not a fine may be imposed upon an offending vessel or aircraft for violation of Section 2530 of the Tariff and Customs Code. For this reason, an order was issued on February 28, 1966, requiring both parties to submit memorandum on the question whether or not a fine may be imposed in lieu of forfeiture in cases arising under Section 2530 of said Code. Both counsel for petitioner and the office of the Solicitor General express the view that there is sufficient authority for the imposition of a fine in lieu of forfeiture, citing Sections 2312, 2532 and 2533 of the Tariff and Customs Code.

Under the old Customs Law, it was expressly provided that a fine could be imposed in lieu of forfeiture. (Sec. 1365, Adm. Code.) This discretionary power to impose a fine in lieu of forfeiture was recognized in Venancio Carreon Tong Tek v. Com., C.T.A. No. 135, Nov. 21, 1956, affd. in G. R. No. L-11947, June 30, 1959, 58 O.G. 5444. Notwithstanding the failure of Congress to reenact Section 1365 of the Administrative Code as part of the new Tariff and Customs Code, we agree with the Solicitor General and counsel for petitioner that such discretionary power still exists. In seizure proceedings against a vessel or aircraft for violation of Section 2530 of the Tariff and Customs Code, it is no defense that the owner or owners had no knowledge of the offense or of the attempt to commit the offense charged. It would, therefore, be patently unjust, not to say highly arbitrary, to order the seizure and forfeiture of an ocean liner or an aircraft engaged in international trade, which cost millions of pesos, for an illegal act of a member of the crew of the vessel or aircraft, or by a mere passenger, without the knowledge or consent of the owner or owners of the vessel or aircraft.

In this case, it is admitted that the owners of the vessel in question, petitioner and his wife, had no knowledge of the illegal act of a member of the crew of the vessel in surreptitiously loading and concealing the aforesaid articles in said vessel; that petitioner, prior to the apprehension of the vessel, had issued a memorandum instructing the members of the crew of the fishing vessel not to load contraband articles in said vessel nor to engage in any activity in connection with blue seal cigarettes; and that the owner of said contraband articles was immediately dismissed by petitioner and was subsequently prosecuted for violation of the revenue laws. In view of these circumstances, we find that the imposition of a fine of ₱10,000.00, in lieu of forfeiture, would be an adequate penalty. In arriving at this conclusion, we have also taken into account the fact that the seizure of the vessel and its subsequent impounding by the Bureau of Customs resulted in the deterioration thereof and caused damages to petitioner in the amount of approximately ₱50,000.00, according to an estimate made by appraisers of said Bureau.

For the foregoing considerations, the decision appealed from is hereby modified, and petitioner and his surety, the Wellington Insurance Co., Inc., are hereby ordered, jointly and severally, to pay a fine of ₱10,000.00 within thirty days from the date this decision becomes final. With costs against petitioner.

SO ORDERED.

Quezon City, July 31, 1966.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge