REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

February 3, 1968

JULIO LLAMADO,
Petitioner-Intervenor,

- versus -

C. T. A.
CASE NO. 1856

COMMISSIONER OF CUSTOMS,
Respondent.

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DECISION

This is an appeal by the petitioner-intervenor Julio Llamado from the decision of the Commissioner of Customs dated May 3, 1967, affirming in toto the decision of the Collector of Customs of Siain, Province of Quezon, forfeiting the Cessna plane P.I. C-494 in favor of the Government in Seizure Identification No. 3-66.

On April 9, 1966, at about 11:00 A.M. a Cessna plane, P.I. C-494, landed at Alabat airstrip, Quezon Province, with four persons aboard, namely: Romeo Palencia, Osias Mission, Jacob Lim, and one identified only as a Chinese mestizo. A few minutes later, the same plane, piloted by Osias Mission took off, leaving behind the other three. These persons approached the employees of the C.A.A. and told them that they would have a picnic. While there, the Chinese mestizo told Francisco de Leon, an employee of the C.A.A., that they would use the airstrip in landing and transporting contraband goods and offered the sum of P1,500.00 which the latter refused to receive. Romeo Palencia, Jacob Lim, and the Chinese mestizo were later picked up by the same plane at about 1:00 P.M. (t.s.n. pp. 4, 5, 6, 23, 29, 80, 279, and 284, Vol. 2, Customs rec.)

At about 5:00 P.M. of the same day, a DC-3 plane, P.I. C-718, landed at Alabat airstrip. On board were Jesus Granda and Osias Mission. It was followed by Cessna Plane P.I. C-494, which unloaded two boxes containing "de gaza" lanterns and two cans of kerosene. After the unloading, the Cessna plane took off, leaving behind the DC-3 plane (t.s.n., pp. 82, 84, 164, and 165, Vol. 2, Customs rec.; See also pp. 70 and 78, C.T.A. rec.).

At about 11:00 P.M., a motorized banca unloaded several cases of "Fortune" blue seal cigarettes at the tip of the Alabat airstrip. This motorized banca made several trips between the shore and a certain vessel lying offshore from where the said cigarettes were taken. From the shore, the cigarettes were loaded on board the DC-3 plane by laborers hired by the Chinese mestizo. At about 3:00 A.M. of April 10, 1966, after 300 cases of blue seal cigarettes were already loaded, the DC-3 took off with the aid of the lighted "de gaza" lamps and lanterns brought earlier by the Cessna plane, P.I.

C-494. (T.s.n., p. 170, Vol. 2, Customs Rec.; see also pp. 70 and 79, C.T.A. rec.) Again, on April 10, 1966 at about 5:00 P.M., the DC-3 plane returned to the Alabat airstrip and loaded the remaining cases of "Fortune" blue seal cigarettes. At about 3:00 A.M. of April 11, 1966, the same plane took off for Porac, Pampanga. (T.s.n., pp. 90 and 98, Vol. 2, Customs rec., see also pp. 72 and 79, C.T.A. rec.)

All the landings and take offs of both planes were not recorded in the log book at the Alabat airstrip for the reason that their pilots refused to sign the same. (T.s.n., pp. 82 and 83, Vol. 2, Customs rec.)

A warrant of seizure and detention of the Cessna Plane, P.I. C-494, was issued on June 1, 1966 by the Collector of Customs of the Port of Siain, Quezon Province for violation of Section 2530 (a), (c) (f), and (m)(1) of the Tariff and Customs Code, in relation to Central Bank Circular 133. (Pp. 20 and 87, Vol. 1, Customs rec.) After hearing, a decision was rendered by the Collector of Customs ordering the forfeiture of the Cessna Plane P.I. C-494 in question for violation of Sec. 2530 (a) of the Tariff and Customs Code, which decision was affirmed by the Commissioner of Customs. Subsequently, upon the filing by petitioner of a surety bond in the in the amount of ₱30,000.00 to answer for its appraised value, the Cessna plane was released to petitioner. (Pp. 55 and 56, C.T.A. rec.)

The only issue is whether or not the forfeiture of the Cessna Plane P.I. C-494 is legal.

Petitioner contends that the Cessna plane can not be forfeited under Section 2530 (a) of the Tariff and Customs Code for it did not come from a foreign country nor did it carry or unload cigarettes in any port or place in the Philippines.

Respondent contends otherwise, citing the case of U.S. v. One 1948 Plymouth Sedan, (DC N.D. 1949) 87 F. Supp. 281.

The law, under which the forfeiture of the Cessna plane is being justified by respondent Commissioner provides 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:
>
> "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." (Tariff and Customs Code, underlining supplied.)

It is undisputed that the importation or bringing into the Philippines of the blue seal cigarettes is not authorized by law. That the Cessna plane carried and unloaded the "de gaza" lanterns on the Alabat airstrip where the cigarettes were loaded and lifted by the DC-3 plane P.I. C-718 is equally admitted by petitioner. Similarly, it is conceded by petitioner that the lanterns were used to light the airstrip during the take-off of the DC-3 plane. In this circumstance, the Cessna plane in question was availed of in the importation of the blue seal cigarettes. Having carried and unloaded the lanterns that lighted the airstrip during the take-off of the DC-3, C-718, it was therefore employed to accomplish a purpose, i.e., importing or bringing into the Philippines the blue seal cigarettes, and is subject to forfeiture under Sec. 2530 (a) of the Tariff and Customs Code. In other words, its use in the importation of the blue seal cigarettes should be understood and taken in the common meaning of the term "use". The common meaning of "use" is to employ for accomplishment of purpose. (Words and Phrases, Vol. 43, p. 478, citing In re Fleshmen's Estate, Idaho, 5 p. 2rd 727, 728.) In this sense, it is not necessary that there be an actual carriage or unloading of the prescribed cigarettes by the seized

Cessna plane in order to hold said plane subject to forfeiture for being used unlawfully in the importation of articles into the Philippines.

Petitioner also contends that the Cessna plane, P.I. C-494, not having come from a foreign country, can not be forfeited. It is argued that since the "Fortune" blue seal cigarettes were already landed at Alabat airstrip, importation was completed or terminated and, therefore, the Cessna plane could not have been used unlawfully in the importation. This argument is without merit, for the taxes and/or duties due on the interdicted cigarettes have not been paid and the legal permit for their withdrawal has not been granted. 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." (Underlining supplied.)

WHEREFORE, the decision appealed from is hereby affirmed. The forfeited Cessna plane P.I. C-494 having been released to petitioner and secured by

Philippine Motor Assurance Corporation (PMAC) Bond No. 267 dated July 31, 1967, said bond is hereby forfeited in favor of the Government. Petitioner Julio Llamado and the Philippine Motor Assurance Corporation are hereby ordered to pay, jointly and severally, to the Collector of Customs of Siain, or any of his authorized representatives, the amount of ₱30,000.00 corresponding to the appraised value of the forfeited Cessna plane within thirty days from the date this decision becomes final. With costs against petitioner-appellant.

SO ORDERED.

Quezon City, February 3, 1968.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge