REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENJAMIN A. MALABRIGO,
Petitioner,

- versus - C.T.A. CASE NO. 2355

ACTING COMMISSIONER OF CUSTOMS,
Respondent.

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

5/31/83

D E C I S I O N

Petitioner seeks to vacate respondent Commissioner of Customs' decision in Customs Case No. 1000 dated November 17, 1970, relative to the forfeiture of two (2) armalite rifles, rounds of ammunition and containing baffles allegedly found violative of the Customs law.

The pertinent provisions of the Tariff and Customs Code are as follows:

> "Section 102. Prohibited Importations.- The importation into the Philippines of the following articles is prohibited:
>
> a. Dynamite, gunpowder, ammunitions and other explosives, firearms, and weapons of war, and parts thereof, except when authorized by law.
>
> xxx xxx xxx."

> "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 subject 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;

xxx xxx xxx

(m) Any article sought to be imported or exported:

xxx xxx xxx

(3) On the strenth of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;

xxx xxx xxx

(5) Through any other practice or device contrary to law by means of which such articles was entered through a customhouse to the prejudice of the government."

(Underscoring supplied.)

The records disclose that, 1) sometime on August 26, 1969 three (3) pieces of unaccompanied baggage from Saigon, Vietnam on board the Pan American Airways plane arrived at the Manila International Airport, so declared in the covering Airwaybill, "SAID TO CONTAIN: USED PERSONAL EFFECTS" shipped by and consigned to Benjamin A. Malabrigo, the petitioner, whose arrival was on August 27, 1969; 2) on September 2, 1969 a representative of the brokerage of the 67th Airborne Forwarders claimed the cargo from the Pacific Associates Corporation, a customs bonded warehouse, for release from Customs custody; 3) upon Customs inspection and examination, each of the two (2) "Sansui" baffles yielded a dismantled Armalite rifle, Colt AR-15, with corresponding magazines containing 15 rounds of ammunition and the one suitcase, items of clothing, new and used; 4) the Collector of Customs, Manila International Airport, instituted seizure proceedings against the military hardware and containers thereof, which importation was effected on the strength of a "false declaration" and through fraudulent device pursuant to Section 2530(m)-3 and -5 of the Tariff and Customs Code, supra, and accordingly decreed the forfeiture in favor of the government on April 2, 1970 (Seizure Identification No. 959); 5) on appeal by the claimant petitioner, the forfeiture order was affirmed by the respondent Commissioner of Customs reinforced by Section 102(a) in relation to Section 2530(f), both of the Tariff and Customs Code, supra, as additional ground therefor (Customs Case No. 1000 dated November 17, 1970); and 6) a further reconsideration proved to no avail as the same was denied in a resolution dated November 3, 1971 of the respondent.

Hence, this petition.

Petitioner assails the legality of the decree of forfeiture and avers the confiscated articles were not "falsely declared" in contemplation of Section 2530(m)-3, supra, as they are indeed "used personal effects"; and further takes issue that the rifles can no longer be considered "prohibited importation under Section 102(a), supra, after having applied for a license therefor as affirmed by the Collector of Customs that the same "ceased to become an article of prohibited importation as defined in Section 102(a) of Republic Act No. 1937" and which respondent Commissioner of Customs ought infuse cognizance.

The precise issue is nothing more that whether or not the forfeiture of the subject cargo is in accord with law.

We do not in the case at bar find difficulty in disentangling the apparent quibble posed by the petitioner. The nature and character of the articles hardly seem to be a gripping question. The pellucidity of the language of Section 102(a) insofar as it relates to "firearms and weapons of war and parts thereof", deemed prohibited "except when authorized by law" requires no further exegesis. The controverted military rifles of the Vietnam War vintage sought to be entered sans the necessary license or authority are obviously of the category. The requisite "authorized by law" cannot be naively viewed for a mere queasy anticipation but rather of definiteness and finality upon which petitioner's right to the importation must be exercised or lost. The pendency of the application for legal possession thereof furnishes no satisfaction of ultimate solution. As a factly matter, "up to this time, no license has yet been received from the Philippine Constabulary authorizing the importation or possession of the firearms (Respondent's brief, p. 5)" and neither is it forthcoming as a consequence of a Presidential ban. We are not to confuse the circumstances as they might be but as they actually were at the time of entry nor be misled on what petitioner expects for himself in the way of entitlement but what he is entitled to expect from an importation effected or attempted contrary to law.

Respondent's view that the subject weapons, aside from the Collector's findings, were of equal certainty "prohibited importation" as defined in Section 102(a), supra, and thus justify their forfeiture under Section 2530(f), supra, is fully shared by us. Petitioner's nibble in faulting respondent's authority in superseding the Collector's ruling could be a kind of an unwarranted persiflage. Section 2313 of the Tariff and Customs Code squares that starveling agitation, thus, the Commissioner of Customs "shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision." And certainly, "the appellate power of the Commissioner of Customs to review seizure and protest cases is not limited to a review of the issues raised on appeal. He may affirm, modify or reverse the decision of the Collector (Section 2313) on other questions provided that his findings and conclusions are, as ih the case at bar, supported by evidence. It is of no consequence whatsoever what were the original grounds of the seizure and forfeiture if, in point of fact, the goods are by law subject to forfeiture (Wood v. U.S. 16 Pet. (US) 342, 10 L.Ed. 987)." Vierneza v. The Commissioner of Customs, G.R. L-24388, July 30, 1968. We hesitate to further fashion an issue into a satisfactorily settled legal situation.

Moreover, by having declared the military weapons as "Used Personal Effects" offers no comforting alternative. Such could be a grasping vulgarity in the ploy, an effrontery that provokes disbelief. Petitioner has overplayed his understanding of "personal effects" and oversimplified what does not seem to fit. But candor would have proved disastrous for a venture he was unprepared. Petitioner wanted results he got consequences. "While it is true that firearms may be for personal use of the claimant, nevertheless, there is no known authority in Customs jurisdiction which have ruled that 'firearms' are considered personal effects. On the contrary firearms are always considered as special kind of chattel considering that the importation of which requires some sort of authority from the State." (Collector's decision.) Aptly enough, we uphold.

Although the reach of the issue on which we rest our decision renders the consideration of other subsidiary questions unnecessary, suffice it to state that, first, petitioner has placed himself sharply at odds with the statutory proscriptions, making unlawful for any person to import or possess any firearm unless allowed by law

(Section 879, Revised Administrative Code), and, on arrival in the Philippines, having in his possession any firearm or ammunitions for which he has no license shall deposit the same, with the Collector of Customs for delivery to the Chief of the Constabulary for safekeeping (Section 892, *ibid*.). Petitioner has failed compliance, either he was unwilling to take responsibilities or simply unable to discern what they are. Second, the ill considered and misguided attempt at concealment of the dismantled armalite rifles in such innocent and innocuous "sansui" baffles is no less of furtive significance. Such a specie of dodging and hiding was not propitious then, it cannot, now. These circumstances open decidedly contentious affiliating breaches which made a bad situation considerably worse for petitioner.

WHEREFORE, the petition is hereby dismissed with costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, May 31, 1983.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge