

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JOSE G. LOPEZ,
Petitioner,

C.T.A. CASE NO. 1933

- versus -

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - x

Dec. 7/71

D E C I S I O N

Petitioner appealed from the decision of the Commissioner of Customs dated May 8, 1963, affirming that of the Collector of Customs of Davao which upheld the forfeiture of the reparation vessel M/V Jolo Lema.

The facts of the case were established by the evidence of petitioner, the records of the administrative proceeding, the pleadings of the parties, and the decisions of this Court and the Supreme Court in cases related to the case at bar.

On March 2, 1965, petitioner Jose G. Lopez entered into a contract of conditional purchase and sale with the Reparations Commission in which he was the awardee-purchaser of a fishing vessel, registered as M/V Jolo Lema, at a cost of \$174,900.00 payable in installments, and

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subject to the condition that the title to and ownership of the vessel shall remain with the Reparations Commission until full payment of the stipulated price.

Paragraph 4 of the said contract expressly provides:

"Should the Conditional Vendee fail to pay any of the yearly installments when due, or utilize the goods for any illicit purpose or for purposes other than that for which the goods have been procured, or otherwise fail to comply with any of the terms and conditions of this contract, or with any of the applicable provisions of the Reparations Law and/or of the Rules and Regulations promulgated pursuant thereto, then the Conditional Vendor is hereby given the option to either rescind the contract upon notice to the Conditional Vendee, in which case all sums already paid by the Conditional Vendee shall be forfeited as rentals in favor of the Conditional Vendor, and also that the Conditional Vendee shall deliver peacefully to the Conditional Vendor the property subject of this contract or to sue for specific performance in which case the whole amount remaining unpaid under this contract shall immediately become due and payable, and in either case whether the suit is for rescission or specific performance, the Conditional Vendee shall be liable to pay to the Conditional Vendor in the concept of liquidated damages equivalent to 10% of the total procurement value of the goods." (p. 92, CTA rec.)

On July 21, 1966, petitioner Jose G. Lopez entered into a contract with Tomas Velasco, ap-

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and supervise the vessel M/V Jolo Lena in its fishing trip to be undertaken for thirty days.

On September 19, 1966, while said vessel was docked at the Batjak wharf, Sasa Port, Davao City, a combined team of NBI, RASAC, PC agents and Davao City policemen, headed by NBI Agent Earl Reynolds, apprehended the crew members of the vessel while unloading copra and coffee beans without any shipping document.

On the same day, the raiding team proceeded to and searched the room of Tomas Velasco, lessee of the vessel in question, at the Skyroom Hotel, Davao City. They opened his luggage and boxes with the permission and in the presence of Mrs. Tomas Velasco; and seized therefrom various documents pertaining to the vessel and its cargo.

On the basis of the seized documents and papers, forfeiture proceedings (Seizure Identification No. 25-66) were instituted against the vessel and its cargo of 1,408 sacks of copra and 86 sacks of coffee beans, which were illegally smuggled into the country from Indonesia. The said copra and coffee beans were, however, claimed by Angel Nasad and Ernesto Lozada as their own because they allegedly purchased them from a certain Osmeña Juanday in Cotabato. In the decision of the Collector of Customs, Davao City, dated February 16, 1967, the copra and

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coffee beans in question were ordered forfeited to the Government. Upon appeal, the said decision was affirmed by the Commissioner of Customs. This Court likewise affirmed the decision of respondent Commissioner of Customs and declared that the aforesaid copra and coffee beans were illegally imported (Angel Nasiat and Ernesto Lozada vs. The Commissioner of Customs, CTA Case No. 1855, April 26, 1968, pending appeal in the Supreme Court in G. R. No. L-29318).

The forfeiture proceedings against the vessel M/V Jolo Lema were suspended when Judge Gaudencio Cloribel of the CFI of Manila issued a restraining order in Civil Case No. 67513 enjoining all parties from proceeding against the said vessel.

After the restraining order was lifted, the Reparations Commission filed with this Court a motion to intervene alleging that it is the owner of said vessel because the sales contract with petitioner Lopez was already rescinded. The Reparations Commission, in a letter to petitioner dated November 11, 1966, abrogated the sales contract because the vessel in question was used by petitioner Lopez in smuggling activity; he failed to pay the installments when they became due; and he also failed to post the required

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insurance coverage of the said vessel.

Petitioner Jose G. Lopez filed in the Court of First Instance of Manila an action against the Commissioner of Customs; Director, National Bureau of Investigation; and the Reparations Commission praying that the said officials or their representatives be restrained from taking the vessel into their custody. (Civil Case No. 67513).

The Reparations Commission moved to dismiss said action alleging that petitioner Jose G. Lopez failed to state a cause of action against it. The Court of First Instance ordered the dismissal of the action against the Reparations Commission because it has the right to rescind the contract with the buyer or end-user of the reparation vessel for any violation of the terms and conditions thereof without judicial intervention. Likewise, the case against the Commissioner of Customs was dismissed. Petitioner Jose G. Lopez, however, appealed the order of dismissal to the Supreme Court.

On September 23, 1968, this Court denied respondent's motion to dismiss in a resolution which reads as follows:

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"The motion to dismiss is not well taken.

"The Supreme Court has not yet rendered a decision on the appeal ~~in-~~terposed by petitioner questioning the order of the Court of First Instance of Manila holding that the Reparations Commission may rescind its contract with any buyer or end-user, like petitioner herein, without need of a judicial action. Unless and until the validity of the rescission has been resolved by the Supreme Court, the contract between petitioner and the Reparations Commission remains subsisting and hence, petitioner's rights and interests over the vessel remains unimpaired. Besides, the Reparations Commission has already lost interest in this appeal when it withdrew its motion to intervene (pp. 185-186, CTA rec.)." (pp. 201-204, CTA rec.)

On January 30, 1971, the Supreme Court in G.R. No. L-28235 upheld the order of the Court of First Instance of Manila, dated January 25, 1965, dismissing the case instituted by Lopez for lack of jurisdiction to interfere with the seizure proceedings pending with the Bureau of Customs.

As to the question of whether or not the Reparations Commission can validly rescind the contract of conditional purchase and sale with Jose G. Lopez without judicial action, our Supreme Court held as follows:

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x x x. Well-settled is, however, the rule that a judicial action for the rescission of a contract is not necessary where the contract provides that it may be revoked and cancelled for violation of any of its terms and conditions.

"x x. The validity of the stipulation cannot be seriously disputed. It is in the nature of a faultative resolutive condition, which in many cases has been upheld. x x x." (Ponce Enrile vs. Hon. Court of Appeals, L-27549, Sept. 30, 1969; Froilan vs. Pan Oriental Shipping Co., L-11897, Oct. 31, 1964; De la Rana Steamship Co., Inc. vs. Tan, L-8784, May 21, 1956; Taylor vs. Uy Tiang Piao, 43 Phil. 873.)

The only question here at issue is whether or not the vessel M/V Jolo Lema, which was conditionally sold to petitioner Jose G. Lopez but rescinded by the Reparations Commission, is subject to forfeiture for violation of Section 2530 (a) of the Tariff and Customs Code.

The question at issue is not a case of first impression. In the case of Reparations Commission, petitioner, vs. Commissioner of Customs, respondent, CTA Case No. 1820, decided on Sept. 30, 1969, this Court held as follows:

Petitioner's contention is untenable. The petitioner does not perform purely and exclusively governmental functions, and the reparations goods it owns like the vessel in question, are not public properties like roads, public schools, bridges, public plazas, and public markets. There is a distinction between property held by an instrumentality of the Government in its proprietary, or at least quasi proprietary,

functions, and property held for purely public or governmental functions. The former is subject to seizure and execution like any other private property; the latter is not. The immunity of public property from seizure and execution is founded on the great and paramount interest of public order and principles of government. (*Viuda de Tan Toco v. Municipal Council of Iloilo*, 49 Phil. 53.) In the case at bar, the vessel in question is differently situated. It was sold to ANPAD, INC. by petitioner in the exercise of its proprietary functions for pecuniary consideration, and for purposes clearly private and for profit. Therefore, said vessel is not immune from seizure and forfeiture. In the case of *Viuda de Tan Toco v. Municipal Council of Iloilo*, supra, the Supreme Court, citing *Corpus Juris*, Vol. 23, p. 355, held:

" . . . But where a municipal corporation of county owns in its propriety, as distinguished from its public or governmental capacity, property not useful or used for a public purpose but for quasi private purposes, the general rule is that such property may be seized and sold under execution against the corporation, precisely as similar property of individuals is seized and sold. But property held for public purposes is not subject to execution merely because it is temporarily used for private purposes, although if the public use is wholly abandoned it becomes subject to execution. Whether or not property held as public property is necessary for the public use is a political, rather than a judicial question."
(Underscoring supplied.)

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Petitioner's contention that the violation was without his knowledge and consent, is of no moment for the provision of Section 2030(a), (b) and (c) of the Tariff and Customs Code is so clear and explicit as to leave no room for doubt. Since the law as worded does not admit of any exception, neither can this Court add one. Moreover, forfeiture is a proceeding in rem so that want of knowledge or innocence on the part of petitioner is immaterial. (Trias et al. v. Acting Commissioner of Customs, CTA Case No. 1431, March 18, 1964; U.S. v. Eddi, 32 Phil. 223.)

There is another point which merits serious consideration. Under Section 11 of Republic Act No. 1125, only persons or corporations "adversely affected" by the decisions or rulings of the Commissioner of Customs may appeal such decisions to this Court. Petitioner is not the party adversely affected by the decision or ruling of respondent Commissioner of Customs but, ANWAR, INC., the owner of the vessel. While it is true that the vessel remains registered in the name of petitioner, this is so merely to secure payment of the purchase price of said vessel. Forfeiture of the vessel for violation of Customs laws committed by the purchaser of the vessel would not adversely affect the interest of petitioner since it has a recourse against said purchaser for the unpaid balance of the purchase price. To uphold the theory of petitioner that any property registered in its name, although already sold to a private person or corporation, is immune from seizure and forfeiture, would be to encourage owners of vessels acquired by installment from petitioner to engage in nefarious traffic without fear of apprehension. (Sp. 84-87, CTA rec.)

WHEREFORE, finding no error in the Decision of the respondent Commissioner of Customs appealed from,

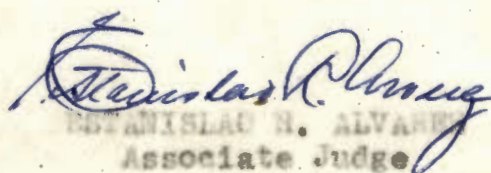
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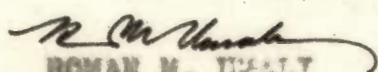
the same is hereby affirmed, with costs against
petitioner.

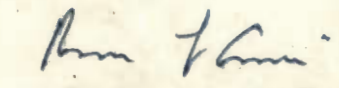
SO ORDERED.

Quezon City, Dec. 17, 1971.


STANISLAUS N. ALVARADO
Associate Judge

WE CONCUR:


ROMAN M. URALI
Presiding Judge


RAMON L. AVANCEÑA
Associate Judge