REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

QUIRINO U. ORDONEZ, doing business under the name and style of "DECIMAL MERCHANDISING"
Petitioner,

- versus -

C.T.A. CASE NO. 3908

THE HONORABLE COMMISSIONER OF CUSTOMS,
Respondent.

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

6/30/80

D E C I S I O N

Petitioner seeks to vacate respondent Commissioner of Customs' decision dismissing an appeal from an Order of the Collector of Customs of the Port of Manila forfeiting in favor of the government the entire shipment in four (4) container vans of woodfiber accoustical boards as well as 210 cartons of lock sets as violative of Section 2530(f) and (l)-3, 4 and 5 in relation with Section 2503, both of the Tariff and Customs Code, respectively quoted as follows:

> SEC. 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 subjected to forfeiture:
>
> x x x x
>
> (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.

x x x x

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

x x x x

3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation 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 articles; and

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

SEC. 2503. Undervaluation, Misclassification and Misdeclaration in Entry. - x x x Provided, That, an undervaluation, misdeclaration in weight, measurement or quantity of more than 50% between the value, weight, measurement or quantity declared in the entry, and the correct value, weight, quantity or measurement, shall constitute a prima evidence of fraud penalized under Section 2530 of this Code.

The material facts are relatively simple.

On April 7, 1983, the SS "HONGKONG ACE" arrived at the Port of Manila from Japan, conveying and discharging, among others, four (4) container vans said to contain

2,400 carton boxes of Woodfiber Accoustical Boards under the "Shofuku Steamship Co., Ltd." B/L No. KHZ - 03441, consigned to the petitioner, doing business in the name "DECIMAL MERCHANDISING", and so declared in Customs Informal Entry No. 23346-83 valued at US$6,247.80.

Upon inspection of the four (4) containers "whereon the imported Woodfiber Accoustical Boards were packed and loaded", the Customs authorities stumbled upon an undeclared shipment of 240 cartons of door knobs or lock sets carrying the brand of "Straight" which "were found located deep inside the containers, hidden and covered by the cartons consisting of accoustical boards" and "equally distributed in the four containers", appraised at US$8,343.13, which percentage difference between the declared and undeclared items is more than 50%. Accordingly, the Bureau of Customs instituted seizure proceedings against the entire shipment for violation of Section 2530(f) and (1)-3, 4 and 5 of the Tariff and Customs Code, supra.

After due hearing the Collector of Customs decreed the forfeiture of "the entire shipment in the four (4) containers said to contain Woodfiber Accoustical Boards as well as the "straight" lock sets found therein, covered by Seizure Identification No. 425-83." On appeal, respondent

Commissioner of Customs, "finding no cogent reason to disturb the decision of the Collector," affirmed the same.

Hence this petition.

In assailing the validity of the Order, petitioner seeks a limit to the applicable coverage of the forfeiture as to exclude the legally imported shipment of accoustical boards, having disclaimed any knowledge, intent much less participation in the importation of the undeclared 250 boxes (quantity certified by the exporter-supplier) of door knobs or lock sets. Likewise urging a flip-flop to a simple case of "mis-shipment" allegedly consequenced by the error, negligence and inadvertence of the foreign supplier.

In affirming the decree of forfeiture, the Commissioner of Customs went by the Collector's findings that -

> "The undeclared 210 (sic) boxes of lock sets were found located deep inside the containers, hidden and covered by the cartons consisting of accoustical boards. More intriguing is the fact that these 210 boxes of locksets were almost equally distributed in the four containers. To give a vivid picture - Container No. SKLU-2231989 has 58 cartons of undeclared locks, Container No. SKLU-2211597, 55 cartons, Container No. SKLU-2211220, 48 cartons and SKLU-2230806, 49 cartons."

Concluded as thus -

> "This Office believes that fraud in this case is self-evident. The arrangement and the manner of distribution of the undeclared lock

> sets in each container cannot countenance allegation of mis-shipment. Fraud here is patent and it has undoubtedly shown, in pure logical sense, the connivance of both the shipper and herein claimant in the effort to prejudice the interest of the government. As what can be aptly stated, forfeiture must lie."

We reach the same conclusion. Petitioner's finagling seems no more than a clumsy attempt to diffuse the delinquency. The apparent quibble on a "mis-chipment" can hardly be a reassuring prospect that can easily be reconciled with the statutory intendment. Far be it from a comedy of errors the cargo stuffing was neither slipshod nor unprofessional and which the parties concern just knew what there was to be known. Innocuous and innocent as made to appear, the scheme, no less of furtive significance, brooks no instant exculpation. Perhaps there is nothing wrong with a "mishipment" but there is nothing ingratiatingly right either and the fact is the law has been violated. Such specie of dodging of the mold as the case at bar was not propitious then, it cannot, now.

Upon the records before Us there is nothing to take the case out of the operative effects of the statutory proscription as understood and applied. The circumstances obtaining have clearly brought the petitioner's situation within the caveat enjoined in Section 2503 of the customs law, supra, that an undervaluation of more than 50% between the declared and undeclared items constitutes a prima evidence of fraud. And a finding of a 153% discrepancy in the instant case unduly straining the allowable latitude of 50% could be no more random quirk nor niggling picayune to bar the forfeiture of the questioned shipments of the petitioner. Section 2530(f) and (1)-3, 4 and 5 of the Tariff and Customs Code, supra, explicitly directs the forfeiture of illegally imported goods, as well as the goods or articles which were used as instruments in the importation.

WHEREFORE, the petition is without merit and the same is hereby dismissed with costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, June 30, 1986.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge