REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TRANSGLOBE INTERNATIONAL, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5017

THE HONORABLE COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:
JUN 27 1995

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DECISION

This is a case involving a forfeited shipment which Petitioner sought to redeem but was refused by the Respondent.

Petitioner is a duly organized corporation whose primary purpose is "to engage in the business of air and sea freight forwarding, cargo consolidation, warehousing and container yard/container freight station (CY/CFS) operations for the purpose of handling, stripping, stuffing, custody and delivery of cargoes either domestic or foreign and/or conventional or containerized cargoes as non vessel operator common carrier (NVOCC)." (Exh. "K" and Annex "O")

On April 27, 1992 the shipment numbered COSV-7007306 transported in one container in the Port of Manila from Hongkong on board S/S SEA DRAGON under Bill of Lading No.

MNL3193110. It was manifested to contain 1,054 pcs. of various Hand Tools but was found by the agents of the Economic Intelligence and Investigation Bureau (EIIB) "that the shipment actually consisted of various textile piece goods." The EIIB then recommended that a Warrant of Seizure and Detention be issued against the shipment. Thereafter, forfeiture proceedings were then instituted against the shipment of which the Petitioner was declared in default for failure to appear during the scheduled hearings.

On August 26, 1992, the Collector of Customs of the Port of Manila forfeited the shipment "for violation of Section 2503 of the Tariff and Customs Code of the Philippines as amended in relation to Section 2530 (f) and (l) - 3, 4 and 5 of the same Code." (Exh. "B")

Upon receipt by the Petitioner of the said decision, a petition for redemption was immediately filed which was recommended for approval by the Hearing Officer, Atty. Geoffrey Gacula, Legal Officer II with the concurrence of the Chief of the Law Division of the Port of Manila, Buenaventura Tenorio. In his recommendation, Atty. Gacula opined that:

> Records show that the shipment consist of goods which are in legal contemplation not prohibited, nor the release thereof to the claimant contrary to law. In view of the spirit and intent of Executive Order No. 38, to

> increase and accelerate revenue collection by the government thru redemption of forfeited cargoes, which would also benefit importers by giving them the chance to recover portions of their investment, the undersigned is of the opinion that giving due course to claimants offer of redemption is in order.
>
> In view of the foregoing, the undersigned recommends that the herein request be given due course and that the petitioner/claimant be allowed to effect the release of the subject shipment upon payment of the domestic market value thereof in the amount of P1,300,132.04.

The above recommendation was forwarded to the Respondent (Attn.: Deputy Commissioner Licerio C. Evangelista) for approval, saying

> xxx Finding the recommendation of the Hearing Officer as concurred by the Chief, Law Division on the Claimant's offer to settle the case by way of redemption pursuant to Executive Order No. 38 to be in order, the undersigned respectfully recommends approval thereof and the release of the subject shipment to Claimant upon payment of the domestic market value in the total amount of P1,300,132.04. (Exh. "D", CTA Records, p. 151)

Likewise, the Deputy Commissioner of Customs Licerio Evangelista recommended "that the Claimant's offer of redemption pursuant to Executive Order No. 38 be favorably acted upon for the following reasons:

> 1. Favorable recommendation by the Hearing Officer, Law Division Chief, Deputy Collector for Administration and POM District Collector finding the offer to be in order.
>
> 2. The recommended domestic market value has been computed by Customs Appraiser Desta Camento based on the published values of the subject articles. (Exh. "E", CTA Records, p. 152)

Despite the above recommendations by the Hearing Officer as concurred by the Chief, Law Division, the Deputy Collector for Administration and POM District Collector and the Deputy Commissioner, herein Respondent adamantly refused to accede and the offer of redemption made by the Petitioner was denied on the following grounds:

1. The shipment was made to appear to be an innocuous consolidation shipment destined for stripping at an outside CY-CFS in order to conceal the textile fabrics;

2. The eight (8) co-loaders/consignees of the shipment are all fictitious;

3. Under Section 3B, CMO 87-92, offers of redemption shall be denied when the said shipment is consigned to a fictitious consignee. (Exh. "F")

Hence, this appeal.

The only issue raised by the Petitioner is: Whether or not Respondent gravely abused his discretion in denying Petitioner's offer of redemption pursuant to Executive Order No. 38.

We answer in the affirmative.

This is not a case of first impression as We have already settled the question in the recent case of

Saturnino A. Gazzingan vs. Commissioner of Customs, CTA Case No. 4428, September 15, 1994 wherein We ruled, thusly:

> The applicable provision in the resolution of this case is Section 1, Executive Order No. 38, which is hereby quoted, thusly:
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> > **SECTION 1.** Section 2307 of the Tariff and Customs Code of the Philippines is hereby amended to read as follows:
> >
> > "**Sec. 2307.** *Settlement of Case by Payment of Fine or Redemption of Forfeited Property.* - <u>Subject to the approval of the Commissioner, the district collector may while the case is still pending, except when there is fraud, accept the settlement of any seizure case provided that the owner, importer, exporter, or consignee or his agent shall offer to pay to the collector a fine imposed by him upon the property,</u> or <u>in case of forfeiture, the owner, exporter, importer or consignee or his agent shall offer to pay for the domestic market value of the seized article.</u> The Commissioner may accept the settlement of any seizure case on appeal in the same manner.
> >
> > Upon payment of the fine as determined by the district collector which shall be in an amount not less than twenty percentum (20%) nor more than eighty percentum (80%) of the landed cost of the seized imported article or the F.O.B. value of the seized article for export, or payment of the domestic market value, the property shall be forthwith released and all liability which may or might attach to the property by virtue of the offense which was the occasion of the seizure and all liability which

> might have been incurred under any cash deposit or bond given by the owner or agent in respect to such property shall thereupon be deemed to be discharged.
>
> Settlement of any seizure case by payment of the fine or redemption of forfeited property shall not be allowed in any case where the importation is absolutely prohibited or where the release of the property would be contrary to law." (Underscoring supplied)

It is to be remembered that Petitioner offered to settle the case pursuant to the above mentioned law in the amount of P123,641 as payment for the duties and taxes of the subject vehicle and penalty thereon. Clearly, under the said law, Petitioner is entitled to the settlement of the case as there was no fraud on his part and that the subject importation is not absolutely prohibited. In fact, the Law Division of the Bureau of Customs recommended for the settlement of the case since there was no fraud committed by the Petitioner and found "no legal impediment to deny his right to settlement enunciated in Executive Order No. 38."

xxx xxx xxx

Under the circumstance, We agree with the Petitioner that it is more in accord with justice and equity if Respondent would just impose taxes, duties and penalties on the old imported vehicle of Petitioner who in good faith brought home a donated old vehicle for his own domestic use. A slight variation from the rules and regulation done in good faith would prevent the Respondent from whimsically and capriciously exercising his authority. Hence, Petitioner should have been allowed to settle the case pursuant to Executive Order No. 38, as amended.

We do not intend to depart from the wisdom of the above decision as We failed to see any reason to abandon the same.

WHEREFORE, finding the offer of redemption to be in order, Respondent is hereby **ORDERED** to allow the Petitioner to redeem the subject shipment upon payment of the domestic value in the amount of P1,300,132.04.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals