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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMPANIA GENERAL DE TABACOS
DE FILIPINAS, agent of the
vessel, SS "JENS MAERSK", as
claimant,

Petitioner,

- versus -

C.T.A. CASE NO. 2555

COMMISSIONER OF CUSTOMS,

Respondent.

- - -

GREGORIO C. CO, SR.

Intervenor.

12/18/75

x - - - - - x

D E C I S I O N

The only question tendered for resolution
in this appeal is whether or not want of know-
ledge or innocence of the carrying vessel is a
defense for the forfeiture of articles illegally
removed or pilfered therefrom.

Section 2530-m(1) of the Tariff and Cus-
toms Code applicable to this case reads as follows:

Sec. 2530 Property Subject to
Forfeiture Under Tariff and Customs Laws.-

Any vessel or aircraft, cargo,
article and other objects shall, un-
der the following conditions, be sub-
ject to forfeiture:

x x x x

m. Any article sought to be imported
or exported:

(1) Without going through a custom-
house, whether the act was consummated,
frustrated or attempted.

DECISION
CTA CASE NO. 2553

- 2 -

Petitioner Compania General de Tabacos de Filipinas, agent of the vessel SS "Jens Maersk", contends that the subject articles, consisting of sixteen (16) sacks of heat resistant copper wires, were "pilfered" or taken from the vessel without the authority or consent of the latter or its responsible crew members. It sought, therefore, the recovery of the articles in question or the payment of the proceeds of the sale thereof. The Collector of Customs, Port of Manila, however, decreed the subject articles forfeited to the Government. An appeal to respondent Commissioner of Customs resulted in the affirmance of the decision of forfeiture. Hence, this appeal. It was submitted for decision on the pleadings and on the record of this case.

The undisputed facts of this case as stated in the decision under review are as follows:

*Perusal of the records reveal that sixteen (16) sacks of the Heat Resistant Copper Wires Scrap marked "KIRTI OSAKA" were apprehended by the elements of the Water Patrol Division of Customs Metropolitan Police Service on board the LUSTEVECO Barge No. L-220 which was tied alongside the SS "Jens Maersk", then docked at Berth 2, Pier 3 of the Port of Manila sometime on May 11, 1972. Initial investigation revealed that the subject scrap copper wires were allegedly pilfered from the SS "Jens Maersk" and

- 3 -

dumped unto the LUSTEVECO barge. Thereafter, the apprehended scrap copper wire together with the carrying LUSTEVECO Barge No. L-220 were brought to the Water Patrol base and impounded therein for further investigation.

It appears further that the same sixteen (16) sacks of copper wires were inadvertently included as among the articles covered by Abandonment Proceeding No. 0107-72 which were advertized for sale by the Auction and Cargo Disposal Division of this Bureau in a Notice of Sale dated September 11, 1972, under Lot No. 15 (Page 3 of the Notice of Sale). That in an auction sale conducted by the Auction and Cargo Disposal Division on September 28, 1972, Lot No. 15 was awarded to one Gregorio Co with a bid price of P10,000.00 per Notice of Award dated October 17, 1972. The delivery, however, of the said apprehended copper wires was withheld by the Port of Manila upon request of the Customs Metropolitan Police Service while the rest of the items forming part of Lot No. 15 which was awarded and sold to Mr. Gregorio Co was released from customs custody and delivered to the latter.

Thereafter, upon discovery that the subject copper wires were not included in Abandonment Proceeding No. 0107-72, the Collector of Customs of Manila, on November 7, 1972, issued the corresponding Warrant of Seizure and Detention against the subject copper wires for violation of the provisions of Section 2530 (m-1) of the Tariff and Customs Code.

The subject articles are being claimed by Compania General de Tabacos de Filipinas in its capacity as local agent of the carrying vessel. In claiming said articles, the herein claimant alleged that the subject copper wires formed part of the "143 bags copper wire scrap" from Singapore destined for Osaka, Japan and duly manifested in Freight Manifest of the vessel under Bill of Lading No. 4; that while the ship was docked at Pier 3, the subject sixteen (16) sacks

- 4 -

were unloaded (pilfered) without authority from the vessel unto LUSTEVECO Barge No. L-220; and that it filed its claim over said articles on May 12, 1972, the day after the apprehension.

The subject copper wires were likewise being claimed by Mr. Gregorio Co on the ground that in an auction sale conducted on September 28, 1972, the subject articles were awarded and sold to him under Notice of Award dated October 17, 1972. (GTA records, pp. 188-189.)"

As above stated, petitioner contends that the sixteen (16) sacks of heat resistant copper wires were "pilfered" or taken from the vessel SS "Jens Maersk" without the authority or consent of the carrying vessel. It is now argued that since the forfeited articles were manifested and consigned from Singapore to Osaka, Japan, it could not be said that they were sought to be imported by petitioner in violation of Section 2530 m-(1) of the Tariff and Customs Code, supra. It is further contended that the absence of deliberate intent, negligence, or fault of the carrying ~~the~~ vessel or its crew justifies the return of the forfeited articles to petitioner.

On the other hand, respondent insists that at the time of apprehension, the sixteen (16) sacks of heat resistant copper wires were removed from the vessel SS "Jens Maersk" and found on board LUSTEVECO Barge No. L-220 which was tied

- 5 -

along side the SS "Jens Maersk". Respondent, therefore, took the view that the copper wires in question were intended to be brought out and transferred to some place without passing through the customhouse to avoid payment of the corresponding duties and taxes to the prejudice of the Government.

Petitioner submitted this case for decision on the basis of the pleadings and customs records. In paragraph 4 of respondent's answer, he alleged as one of the special and affirmative defenses that:

Special and Affirmative Defenses

4. There is no ground for review.

At the time of their apprehension and confiscation, the sixteen (16) bags of Heat-Resistant Copper Wire Scrap were found on board the LUSTEVECO Barge No. L-220 which was tied alongside the S/S "Jens Maersk". Unless rebutted by contrary evidence, this fact alone proves that the said copper wires, assuming that they were part of the cargo of petitioner's vessel, were intended to be brought out and transferred to some place here in the Philippines without passing through a customhouse in violation of Section 2530 (m-1) of the Tariff and Customs Code and to the prejudice of the government.

The petitioner claims that the said copper wires were illegally unloaded and/or pilfered from the S/S "Jens Maersk". The petitioner, however, failed to prove this allegation. As a matter of fact, it

- 6 -

cannot cite any evidence in its petition to substantiate this allegation.

It is true that there were 143 bags of copper wire on board petitioner's vessel which it manifested, but it did not prove that said manifested cargo was short by 16 bags which could have easily been established by a simple ocular inspection to be done at its instance. The manifested 143 bags of copper wire were intact and complete.

Neither did the petitioner present evidence to show that the confiscated cargo formed part of the manifested cargo.

It is incredible that the 16 bags could have been pilfered from the hatch of the vessel without being discovered by its duty officer nor dumped overboard unto the barge without being noticed by its crew on duty.

Clearly, the respondent was correct when he found that "the 16 bags were actually unmanifested when loaded on board the S/S Jens Maersk and made to appear as manifested cargo to facilitate its smuggling which has been the scheme among unscrupulous crew members who are in connivance with smugglers."

Since petitioner prayed for judgment on the pleadings, we hold and rule that petitioner has admitted the truth of all the material and relevant allegations found in respondent's answer.

Under analogous conditions, we ruled in the case of Gapan Farmers' Cooperative Marketing Association, Inc. vs. The Commissioner of Customs, CTA Case No. 1887, promulgated on August 28, 1975, as follows:

- 7 -

"Petitioner prayed for judgement on the pleadings without substantiating the truth of its own allegations which were specifically denied by respondent. Respondent was not given by petitioner the opportunity to introduce evidence to prove his own allegations, thereby admitting the truth of all the material and relevant allegations of said respondent. (Alemany v. Sweeney, 3 Phil. 114; Bauermann v. Cases, 10 Phil. 386; Evangelista v. De la Rosa, et al., 76 Phil. 115). Be that as it may, it is already settled that an action for forfeiture is a proceeding in rem and the property in such a case is primarily considered as the offender, or rather the offense is primarily attached to the thing. Consequently, want of knowledge or innocence on the part of the owner is immaterial in forfeiture proceedings. (Tria, et al., v. Acting Commissioner of Customs, C.T.A., Case No. 1413, March 18, 1964.) In brief, lack of knowledge or consent by the owners in the forfeiture of the goods is not a valid defense in a proceeding directed in rem, and the thing in such a case is primary considered as the offender. (U.S. v. Steamship Rubi, 32 Phil. 22 .)

Lack of knowledge or innocence of the vessel or its crew is not a valid defense in forfeiture proceedings. Thus, it was held:

Petitioner's allegation that it had no knowledge, much less consented to or participated, in the illegal discharge, transfer, concealment and withdrawal of the fertilizer is of no moment because the explicit provisions of Section 2530 (a), (m-1), (m-3), (m-4), and (m-5) of the Tariff and Customs Code, supra, do not provide for any exception. Moreover, to sustain petitioner's view (pilferage) would render the provisions of Section 2530 of the Tariff and Customs Code meaningless and ineffective because imported goods may not be forfeited on the mere pretext that the owner or importer

- 8 -

thereof had no knowledge of or consented to the illegal acts of its authorized agent and trusted official. (See *Ampere Trading and Stand Brokerage Corp. v. Commissioner of Customs*, C.T.A. Case No. 1951, March 27, 1972.) (See also *Japan Farmers' Cooperative Marketing Association, Inc. v. The Commissioner of Customs*, supra.)

The ratio decidendi in the above cited case is squarely applicable to the case at bar. It is incredible that the sixteen (16) bags of copper wires could have been pilfered from the hatch of the vessel without being discovered by its duty officer nor dumped over board unto the barge without being noticed by its crew on duty. It is clear, therefore, that the copper wires in question were actually unmanifested when loaded on board the SS "Jens Maersk" and made to appear as manifested to facilitate its smuggling which has been the scheme among unscrupulous crew members in connivance with smugglers.

If the vessel had no knowledge whatsoever of such illegal act (or pilferage), it could have taken drastic and punitive action against its duty officer or crew members after knowing the real facts. Petitioner could not, therefore, disclaim responsibility for the unlawful act of the carrying vessel or its crew members.

- 9 -

Accordingly, we affirm the decision of the respondent Commissioner of Customs dated August 27, 1973, and sustain the action of the Collector of Customs, Port of Manila, in declaring the forfeiture to the Government of sixteen (16) sacks of heat resistant copper wires for violation of Section 2530 m(1) of the Tariff and Customs Code.

In a resolution dated July 22, 1975, (CTA record, pages 44-45), Gregorio Co was allowed to intervene in this case, after it has been shown that he has actual, material, direct, and immediate interest on the matter in litigation. We have already stated that the sixteen (16) sacks of copper wires were inadvertently included among the articles covered by Abandonment Proceedings No. 0107-76 which were advertised for sale by the Auction and Cargo Disposal Division, Bureau of Customs, in a notice of sale dated September 11, 1972. Together with some other items, intervenor Co was the purchaser in good faith of the sixteen (16) sacks of copper wires but the delivery thereof was withheld by the Port of Manila pending the outcome of this case. Having affirmed the decision of the Commissioner of Customs forfeiting the said copper wires to the Government, the order

DECISION
CTA CASE NO. 2555

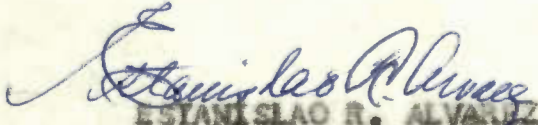
- 10 -

of respondent directing the Auction and Cargo Disposal Division, Bureau of Customs, to deliver to Intervenor-Claimant Gregorio Co the said copper wires which were purchased by him in good faith in an auction sale is hereby sustained.

WHEREFORE, the decision appealed from is affirmed. with costs against petitioner.

SO ORDERED.

Quezon City, December 18, 1975.


ESTANISLAO R. ALVAREZ
Associate Judge

I CONCUR:


ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCENA
Associate Judge
(Took no part)