REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LIBERTY AVIATION CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3494

THE ACTING COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - - x

D E C I S I O N

This case involves the forfeiture of a Re-Export Bond posted on an importation conditionally entered tax free pursuant to the provision of Section 105(i) of the Tariff and Customs Code.

A shipment of Beechcraft King Air E-90 including optimum equipment and avionics consigned to petitioner by Beech Aircraft Corporation of Wichita, Kar as, U.S.A., arrived at the Manila International Airport on March 24, 1980. Manifested for "Demonstration flight only" the same was released from Customs' custody under an Ordinary Re-Export Bond PH No. 20/12024 with the petitioner as the principal importer, and the

Philippine Home Assurance Corporation as Surety in the amount of P3,560,594.00 under such terms and condition, t · wit:

> *NOW, THEREFORE, the condition of this Obligation is such that if the aforementioned merchandise shall in good faith be actually exported beyond the limits of the Philippines within six (6) months and the export papers as evidence of such exportation satisfactory to the Collector of Customs be produced and presented to him, if the duties, taxes accruing upon said goods shall be paid promptly on or before the expiration of this bond, then this obligation shall be null and void, otherwise, to remain in full foce and effect.*

In addition, Section 105 of the Tariff and Customs Code specifically prohibits the sale, among others, of articles entered conditionally free under said provision of law prior to the payment of duties, taxes and other charges, thus -

> *" x x x. Provided, that any article sold, bartered, hired or used for purposes other than that they were intended for without prior payment of the duty, tax or other charges, which would have been due and payable at the time of entry if the articles had been entered without the benefit of this section, shall be subject to forfeiture and the importation shall constitute a fraudulent practice against customs revenue punishable under Section 3602, as amended of this Code: x x x" (Emphasis supplied)*

During the lifetime of the bond (extended for another six (6) months) the subject aircraft was never re-exported nor the corresponding duties, taxes and other charges legally due thereon paid notwithstanding the sale thereof for $1,107,757.00 to the National Sugar Trading Corporation (NASUTRA) on October 1980 by the petitioner.

Consequently on November 13, 1981 the Collector of the Manila International Airport demanded the payment from petitioner the amount of P3,560,954.00 or the face value of the re-export bond for the non-compliance of the terms and condition thereof and breach of the affiliating provision of Section 105, *ibid*. The respondent Commissioner of Customs gave finality to the demand on June 3, 1982.

Hence this instant petition.

Petitioner seeks the discharge of the Re-Export Bond earlier posted for the release of the aircraft conditionally entered tax free under Section 105(i) of the Tariff and Customs Code, which was sold on October, 1980 to a tax exempt governmental entity. It avers "Thus, there was in fact no taxes and duties due from the purchaser or importation by NASUTRA from BAC (Beech Aircraft Corporation). In accordance therewith, the Ministry of Finance issued its First Indorsement on 18 May 1981 authorizing the Commissioner of Customs to release the aircraft 'covered by Beech Aircraft Corporation Invoice No. A28923-1 dated January 13, 1981 x x x without the prepayment of duties, taxes, fees and other charges required by Section 23 of Presidential Decree No. 1177 x x x'". Hence, "Under such circumstance, there are no taxes and duties accruing upon the aircraft which need be paid by petitioner before it is entitled to a discharge of its bond."

Respondent's unvarying assertion is "that the sale between Liberty Aviation Corporation and NASUTRA took place in October, 1980, without the knowledge and consent of the Bureau and the subject plane was turned over and delivered to NASUTRA on November 20, 1980. On the other hand, the exemption certificate cited therein was issued to NASUTRA by the Ministry only on May 18, 1981. It must be emphasized that said exemption dated May 18, 1981 of that Office, specifically refers to '<u>shipment of the National Sugar Trading</u>

Corporation'. The Beechcraft plane covered by this case, however, refers to 'importation of Liberty Aviation Corporation which was conditionally released pursuant to the provisions of Section 105(i) of the Tariff and Customs Code'. This being the case, it can safely be concluded that the exemption certificate does not refer to the plane under consideration. Nowhere in the records will show that the Ministry intends this exemption to be applied to the Beechcraft plane imported by Liberty Aviation Corporation." Accordingly, "that sale to a tax-exempt entity will not absolve Liberty Aviation Corporation of its liability for violation of the terms and conditions of the bond, as well as the provision of Section 105 of the Tariff and Customs Code. As the principal importer, it is his prime obligation to fulfill faithfully the terms and conditions of the bond, that is, to re-export the plane or pay the duties and taxes due thereon prior to the sale and any breach thereof will result on the duty of this Bureau to collect the face value of the bond and/or prosecute the importer for violation of Section 105 in relation to Section 3602 of the Tariff and Customs Code, as amended.

Stripped to its essence the case presents a disquieting quibble on the particular "shipment" contemplated and referred to in the certificate of tax exemption issued by the Ministry of Finance on May 18, 1981, which reads:

> *The shipment of the National Sugar Trading Corporation an affiliate of the Philippine Sugar Commission under PD 1192 consisting of one (1) 1980 Standard Beechcraft King Air E-20 and other optional equipment and avionics, covered by Beechcraft Corporation Invoice No. A128923-1 dated January 13, 1981, may be released without the prepayment of duties, taxes and other charges required by Section 23 of Presidential Decree No. 1177 pursuant to the Joint Circular issued by the Budget Commission and the Ministry of Finance dated May 9, 1978 x x x.*

Far from a comedy of errors, the aforesaid tax exemption grant cannot be naively viewed as of such broad scope and spectrum with open-ended feature as would sire an importation which petitioner may proffer to attach. The certificate of exemption is not mere legal legerdemain but finds confinement to "shipment of the National Sugar Trading Corporation." Settled is the rule that exemption from a common burden cannot be permitted to exist upon inference or vague implications because the law "does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words "too plain to be mistaken and too categorical to be misinterpreted." The sale of the questioned aircraft cannot simply be piggy-backed to the privilege made available to NASUTRA. "To require less would sanction an expedient arrangement unsustainable either by operation of law or applicable settled principles. These proscriptions of securing the integrity of the lawful dues are no mere ingenuous sophistries conjured out of some quirky insights but are tinged with strong issues of public policy to prevent fraud upon the revenues lest the cornerstone of effective collection be placed in the quicksand of self-interest" *(Samhwa Corporation Ltd. vs. Commissioner of Customs, CTA Case No. 3099, July 31, 1981)*.

We therefore find illogic the sprouting impression precipitately broached by the petitioner that the tax exemption authorized the National

Sugar Trading Corporation be tacked to the previously imported aircraft sold on November 20, 1980. The intendment in the tax privilege is of deliberate choice and the availment thereof cannot easily titillate to as simple as "What's in a name? That which we call a rose in any other name would smell as sweet", so to speak. We are less impressed by what petitioner alleged than what it failed compliance.

Suffice it to state, in a 2nd Indorsement to the Commissioner of Customs dated March 9, 1982, the Ministry of Finance concurred "with the stand taken by that Bureau on the recommendation of the Collector of Customs of the Manila International Airport to hold the release of all shipments of Liberty Aviation Corporation in view of its failure to pay its obligation arising from the importation of one (1) Beechcraft plane" and ordered, "That office is hereby directed to enforce the immediate collection of the duties and taxes due on the said plane and the corresponding penalties attached thereto in view of the patent violation of the Tariff Code."

So it appears and We so hold that there is no error in the respondent's demand for petitioner to pay the total amount of P3,360,955.00 representing the face value of the Re-Export Bond No. 80/12024.

WHEREFORE, petition is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, January 31, 1989.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals