REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SATURNINO A. GAZZINGAN,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS,
Respondent.

C.T.A. Case No. 4428

Promulgated:
SEP 15 1994

x - x

DECISION

This is a forfeiture case of one(1) unit of 1978 MERCEDEZ BENZ 230 from Bremen, West Germany.

Petitioner, a Filipino of legal age, is a legitimate importer-consignee of one(1) unit 1978 MERCEDEZ BENZ 230 which arrived at the port of Manila on January 23, 1989 from Bremen, West Germany, on board the vessel SS "EVER GLOBE" with Registry No. DTS-007 and covered by Bill of Lading No. BREMNLO 208059RE.

On March 30, 1989, Entry No. 26217-89 was filed by Petitioner declaring the aforesaid motor vehicle which upon examination, the same was found as declared in the entry.

For failure of Petitioner to secure clearance from the Bureau of Import Services, the said motor vehicle was ordered seized for alleged violation of Section 2530(f) and (1) 3, 4 and 5 of the Tariff and Customs Code, as amended.

On June 27, 1989, Petitioner personally appeared during the scheduled hearing of the seizure proceedings and requested that he be allowed to avail of the provision of Section 2307 of the Tariff and Customs Code, as amended by Executive Order No. 38 by offering imposable taxes, duties and fine thereon, amounting to P123,641.00. The government prosecutor did not interpose any objection. Said request was granted by the Collector of Customs and was referred for clearance to the Commissioner of Customs, who, in his 2nd Indorsement dated September 11, 1989 denied the same it appearing that Petitioner's financial capacity to acquire and import the said motor vehicle is doubtful.

Hence, this appeal.

In the meantime, the Respondent, knowing very well that there was a pending appeal before this Court on his forfeiture decision, deliberately or not, sold the subject vehicle in a public auction sale conducted by his office. Such vehicle was never recovered despite orders by this Court for Respondent to retrieve the same.

The only issue raised by the Petitioner is: Whether or not Respondent gravely abused his discretion in denying Petitioner's offer of settlement pursuant to E.O.

No. 38, as amended, which denial led to the forfeiture of the subject vehicle.

The applicable provision in the resolution of this case is Section 1, Executive Order No. 38, which is hereby quoted, thusly:

> **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 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. 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." A pertinent portion of the memorandum to the Collector of Customs is hereby quoted, thus:

> After a careful review of the evidences thus adduced, this Office finds that there is no fraud in the importation of the subject motor vehicle. Claimant has properly declared in the covering entry the vehicle under litigation which tallied to the findings of the Customs Examiner concerned. As further established from the submitted evidences, claimant is the registered owner of the said vehicle as evidenced by Certificate of Registration No. 64529458 issued on June 15, 1987. It should be noted that the subject motor vehicle was personally used by the claimant during his stay in Germany from June 3, 1988 to January 8, 1989 where he was employed at G. Belvan Merchandising. The

> reason why claimant failed to use the said vehicle at the time of registration because he was requested by his daughter, who is living in Japan, to extend his stay in Japan until they could find a trusted driver as his replacement. Not withstanding the foregoing circumstances, it is safe to state that claimant has been using the questioned vehicle for more than six (6) months, thus there is sufficient compliance of six month use requirement as prescribed by CB Circular No. 1069 on Motor Vehicles.
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> Aside from his stay in Germany, claimant has stayed in Japan for more than one (1) year as shown in his Passport No. D542859.
>
> As borne out from the above facts, claimant's request merit favorable consideration, finding no legal impediment to deny his right to settlement enunciated in Executive Order No. 38.
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> (C.T.A. Records, pp. 12-13)

Yet, without rhyme or reason but solely because of Petitioner's "financial capacity to acquire subject vehicle creates doubt as to his good faith in the importation thereof", Respondent adamantly refused the offer of settlement and denied the recommendation of release by the Collector of Customs. The specific reason advanced by the respondent is, surprisingly, not even among those provided by the Tariff and Customs Code.

> Q. Well anyway, what was the decision, initially, of the Collector of Customs? Is it not for the car to be released already to you?
>
> A. Iyon and decision ng Collector...
>
> Q. You have to distinguish the Collector from the Commissioner.
>
> A. Yes.

Q. So the recommendation of the Collector was, what?

A. Irerelease na iyong kotse.

Q. Now, when the approval/indorsement of document was submitted to the Commissioner, then Commissioner Mison of Customs, what did Commissioner Mison do? Do you know?

A. Dinenay iyong kuwan ng Collector.

Q. On what ground did he deny the favorable recommendation for the release of the vehicle on the part of the Collector of Customs? What was the reason given by then Commissioner Mison?

A. Because wala daw akong financial capacity na magkaroon ng Mercedez Benz.

Q. So the only reason on which Commissioner Mison based his decision or action to reverse the recommendation of his Collector of Customs was that you have no financial capacity to purchase a Mercedez Benz?

A. Yes.

(T.S.N. pp. 14-16, Aug. 6, 1993)

Be that as it may, records of the case, however, showed that the subject vehicle was donated by Gerhard Belwan, a German national who was married to Petitioner's daughter, Zenaida M. Gazzingan. In the hearing of September 30, 1993, Atty. Manuel Relorcasa, Attorney III, Appellate Division of the Bureau of Customs who made a review and subsequently recommended for the settlement of the case, testified, thus:

Q. What additional matter was the lawyer of Mr. Gazzingan able to show?

A. Mr. Gazzingan... I mean the lawyer of Mr. Gazzingan showed a donation paper form his son-in-law who is a German national who is married to his daughter.

Q. His daughter?

A. Yes, his daughter.

Q. In other words, the hearing conducted by you, Mr. Gazzingan was able to prove that he did not buy the vehicle and he did not pay for that vehicle, in as much as, it was donated to him by his son in law who is a German national. In other words, in that hearing Mr. Gazzingan was able to adduce evidence that no cash amount involve. and his financial capacity was not required in order to acquire the car, in as much as, it was donated to him by his son in law in the person of this German national who owned the vehicle in Germany.

A. Yes. After the hearing, I prepared form and I recommended for the reversal of the decision of the collector of the Customs to the Commissioner, to be approved again by the Legal Service Division but still the Commissioner insisted to return back the records and ordered the Legal Service to issue a forfeiture order. So, what we did, is to finally issue a seizure order. Again, Mr. Gazzingan appeal to the court.

Q. Yes, and during that appeal Mr. Gazzingan was able to show that contrary to the finding of the Commissioner of Customs, he may not have the financial capacity to purchase it at all for it was donated to him by his son in law. Is it not what transpired during that hearing conducted by you? Is it not correct?

A. You know, one of the requirements of an importer is that, he must have the capacity to import for the program, the beneficiaries of the program are the balikbayan, or workers abroad for it does not involve dollars output out of the country. So, that is one of the requirements. Now, I honestly believe that Mr. Gazzingan's offer to settle is a substitute to the absence of the requirement but at any rate. He was able to prove that his daughter is married to this German national who owns this car. So, we humanized the law on that aspect. I recommended to the legal that it is still the Commissioner who has the final say but did deny my recommendation. I cannot do anything except to follow the Commissioner.

(T.S.N. pp. 10-14, Sept. 9, 1993; underscoring supplied)

From the foregoing testimony, it can be deduced that the Respondent indeed whimsically and capriciously exercised his power of forfeiture. And this is not the first time that We have taken notice and in fact, admonished herein Respondent, then Commissioner of Customs Salvador Mison, regarding his despotic manner of forfeiting goods and vessels. Forfeiture is a harsh measure and should be resorted to only with extra care. (**Maximo Rivera vs. Commissioner of Customs**, C.T.A. Case No. 4479, Dec. 24, 1993).

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.

With regard to the fact that the subject vehicle can no longer be recovered after Respondent, deliberately or not, sold the same in an auction sale, such faux pas should not prejudice the interest of the Petitioner. Hence, the amount paid by the buyer in good faith to the Respondent after deduction of the duties and taxes due thereon and fine thereof amounting to P123,641.00 be turned over to the Petitioner in replacement of his motor vehicle.

WHEREFORE, in all the foregoing, the decision of Respondent dated December 18, 1989 is hereby REVERSED and SET ASIDE ordering him to DELIVER to the Petitioner the amount paid by the buyer in good faith, in that auction sale minus the duties and taxes due thereon and fine thereof (amounting to P123,641.00), in replacement of his motor vehicle.

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