REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LIBERTY AVIATION CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3497

COMMISSIONER OF CUSTOMS,
Respondent.
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D E C I S I O N

This is about the liability of petitioner to a surcharge imposed on late payment of import liabilities on an importation.

As it appears, an importation of One (1) unit of Beechcraft Duchess '76 Model with Serial No. ME 134 arrived at the Manila International Airport (MIA for short) on March 15, 1979, consigned to petitioner Liberty Aviation Corporation by Beech Aircraft Corporation of Wichita, Kansas, U.S.A.; the aircraft was imported for "demonstration flight only" and was released from Customs' custody on a conditionally tax free basis pursuant to the provisions of Section 105(i) of the Tariff and

Customs Code, as amended, upon posting of Ordinary Re-Export Bond No. C(9) 0700 dated March 15, 1979 in the total amount of P215,614.00 issued by the Philippine American General Insurance Co. "conditioned for the exportation thereof or payment of the corresponding duties, taxes and other charges within six (6) months from date of acceptance of the import entry."

Subsequently, petitioner opted to acquire for itself the conditionally entered aircraft by paying the amount of P144,842.00 representing the ascertained duties, taxes and other charges as evidenced by an Official Receipt and a "Statement of Payment" issued by the Bureau of Customs. The release of the aircraft was effected on August 28, 1981 under a covering Customs Release Certificate.

As a consequence, petitioner sought the discharge of the Re Export Bond earlier posted but the Collector of Customs District III (MIA) instead, demanded the payment of the face value of the bond in the amount of P215,612.00 for the petitioner's failure to re-export the aircraft within the six-month period expiring on September

15, 1979. The same demand was reiterated by the respondent Commissioner of Customs in his letter dated June 15, 1982.

Hence this appeal.

In the course of the hearing respondent dropped the demand for the face value of the bond after taking valid cognizance of petitioner's payment of the corresponding duties, taxes and other charges due on the subject importation but insisted on the liability of petitioner for surcharge in the amount of P13,579.95 computed at 6% per annum based on the total amount of duties and taxes for delayed payment pursuant to the provisions of Par. 3, re: Imposition of surcharge for the payment of duties and taxes, of Customs Administrative Order No. 8-80.

Taking exception petitioner avers that, Customs Administrative Order lacks the requisite publication and therefore unenforceable; in arguendo, the said Order is inapplicable as no bond was breached; the payment of the duties, taxes and other lawful charges could have included the surcharges then due and payable on the subject importation; and, the claimed surcharge has prescribed.

Posed is the simple question of the legality of a surcharge imposed as a penalty for late payment of import liabilities on an imported aircraft.

As thus shown the conditionally tax-free entered aircraft was neither exported nor the corresponding duties, taxes and other charges paid upon expiry of the re-export bond on September 15, 1979 in breach of the condition thereof. Payment of the corresponding import liabilities was effected only on April 15, 1981 or a lapse of one (1) year and seven (7) months from due date. Here lies the rub.

Respondent's unvarying assertion that the payment on April 15, 1981 (Official Receipt No. 44-2836) was long overdue thus incurring the surcharge of P13,759.99 computed at 6% per annum based on the total amount of duties and taxes, imposed under Customs Administrative Order No. 8-80, implementing the provisions of the Customs law is more than a statement of the obvious.

We sustain.

Petitioner's breach of the terms of the Re-export Bond posted on the imported aircraft "conditioned for exportation thereof or payment of the corresponding duties, taxes and other charges within six (6) months from date of acceptance of the import entry" in "compliance with the formalities prescribed in, or with, the regulations which shall be promulgated by the Commissioner of Customs with the approval of the Minister (now Secretary) of Finance." (Section 105 of the Tariff and Customs Code) "shall be subject to forfeiture and the importation shall constitute a fraudulent practice against customs revenue punishable under Section Thirty-six hundred and two, as amended of this Code." (Id.).

We shall be less than respecting the full and compelling import and force of the customs law should the validity of the assailed implementing regulatory thrust issued pursuant thereof remains contingent upon publication.

WHEREFORE, petition is dismissed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, June 15, 1988.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

(On official leave)
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