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AMPERE TRADING; and
STAND BROKERAGE CORP.,
Petitioners,

- versus -

C.T.A. CASE No. 1959

COMMISSIONER OF CUSTOMS,
JUAN PONCE ENRILE,
Respondent.

x - - - - - - - - - - - - - x

Mar 27/72

D E C I S I O N

This is an appeal from the decision of respondent affirming that of the Collector of Customs of Manila ordering the forfeiture in favor of the Government of 104 bales of remnant textiles and six (6) cargo trucks for alleged violation of paragraphs (e) and (k) of Section 2530 of the Tariff and Customs Code.

The facts as narrated in the decision appealed from are as follows:

> At about 3:30 o'clock dawn of February 19, 1966, acting on an alleged confidential information that highly dutiable goods would be spirited out of the Customs zone, elements of the Intelligence Division of the Manila Police Department placed themselves at strategic points at Customs area. Shortly thereafter, they observed suspicious movements of persons and vehicles in the vicinity, and later on, they saw the six cargo trucks in question coming out from the Customs Bonded Warehouse No. 194 at Boston Street, Port Area, Manila. As soon as the first truck was at the front of the New Shamrock Bar at 13th Street, the police officers immediately intercepted them and discovered that the six cargo trucks were laden with seventy-three (73) bales of remnants and that these goods were withdrawn unlawfully without the taxes and duties due thereon having been paid and without any permit for such withdrawal issued by customs authorities. Immediately thereafter, the police officers caused the six cargo trucks and the 73 bales of remnants laden thereon to be impounded at the MPD Headquarters where inventory was made the following morning by

representatives of the Bureau of Customs in collaboration with the Manila Police authorities.

These 73 bales of remnants were later found to have been taken from two shipments, one shipment consigned to Ampere Trading consisting of 56 bales which arrived Manila from New York on January 11, 1966, ex "Eurymachus", Reg. No. 64, marked "53135 Manila" and covered by Consumption Entry No. 8368, Series of 1966 and another shipment consigned to Pel-Pike Trading from New York which arrived Manila on December 30, 1965 ex "Pioneer Mill", Reg. No. 1893, consisting of 57 bales of remnants marked "11438 Manila" and covered by Consumption Entries Nos. 674 and 675, Series of 1966.

Meanwhile, customs agents also seized thirty-one (31) more bales of remnants that remained in the Customs Bonded Warehouse No. 194 bearing the same marks and had them included in the seizure proceedings against the 73 bales earlier seized, thus making a total number of 104 bales.

During the hearing before the Collector of Customs of Manila, the prosecution presented evidence to show that 73 bales of remnant textiles were withdrawn from the Customs Bonded Warehouse No. 194 without the customs duties and taxes due thereon having been paid and without release authority issued by the customs authorities at the instance of the managing personnel of the Stand Brokerage Corporation, broker of the Ampere Trading, and claimant of the six cargo trucks (Exhs. "F", "G", "H", "I", "J" and "K", pp. 376-381, Customs rec.). This fact was not disputed by the importers and no evidence to refute the same was presented by the Stand Brokerage Corporation. The importers merely disclaimed any knowledge of the withdrawal of the goods. On the other hand, the Stand Brokerage Corporation, claimant of the cargo trucks set up as a defense that the subject trucks are covered by a Certificate of Public Convenience issued by the Public Service Commission as trucks for hire, and, as such, they can not be subject to forfeiture.

On November 16, 1966, the Collector of Customs of Manila decreed the forfeiture of the 104 bales of remnants and the 6 cargo trucks for violation of paragraphs (e) and (k) of Section 2530 of the Tariff and Customs Code. From this decision only the Ampere Trading and Stand Brokerage Corporation filed a motion for reconsideration which was, however, denied by the Collector of Customs of Manila on January 17, 1967. On appeal, the Commissioner of Customs affirmed the decree of forfeiture. Hence, the instant petition for review.

The issues raised by the parties are summarized as follows:

1. Whether or not knowledge and consent of the owner or importer of the goods involved is an essential element to constitute a violation of Section 2530 (e) of the Tariff and Customs Code; and as a corollary whether or not the Ampere Trading was a privy to the alleged withdrawal of said goods;

2. Whether or not the six cargo trucks in question which are covered by a certificate of public convenience aré subject to forfeiture; and

3. Whether or not the 31 bales of remnant textiles which were not withdrawn from the warehouse at the time of the apprehension of the 73 bales are subject to forfeiture.

With respect to the first issue, petitioners did not dispute the fact that there was unlawful withdrawal of the goods involved from the Customs Bonded Warehouse No. 194, perpetrated at the instance of the managing personnel of the Stand Brokerage Corporation. It is contended that said goods can not be forfeited because the Ampere Trading had no knowledge of, much less consented to, such withdrawal. In other words, it is alleged that lack of knowledge and consent by the owner or importer of goods to the unlawful withdrawal thereof does not justify forfeiture. This position is untenable.

Section 2530 (e) of the Tariff and Customs Code provides:

> "SEC. 2530. Property Subject To Forfeiture Under Tariff and Customs Laws.-- Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
>
> x x x x x x x x x
>
> "e. Any article which is fraudulently concealed in or removed from any public or private warehouse under customs supervision."

As correctly pointed out in respondent's decision, from which we quote:

> The word "fraudulently" as used in the language of the above provisions of law refers to the act of concealment or removal of the article with the intent to defraud the government of revenue (U.S. v. 350 Chests of Tea, 12 Wheat (US) 486, 6 L. ed 702). Since the obligation of paying the customs duties and taxes due on the article devolves upon the owner or consignee thereof, it necessarily follows therefore that this fraudulent act is committed by the owner or consignee of the article, or "with that of some person employed or trusted by him" (Peisch v. Ware, 4 cranch (US) 347, 2 L. ed 643), so that if

> the act is done by any other person with intent to acquire the said article to the prejudice of the owner, the offense becomes a case of theft or robbery (People v. Soria et al., citing People v. Godia, et al., 44 Phil. 66), in which case the property will not be forfeited as against the true owner (U.S. v. 208 Bags of Kainit, D.D.S.C. 1889, 37 F. 326). Hence, the concurrence, consent, connivance or participation of the owner or consignee, or that of some person employed or trusted by him, in the fraudulent concealment or removal of the article becomes an essential element to constitute a violation of Section 2530 (e) of the Tariff and Customs Code (pp. 460-461, Customs rec.).

In the instant case, the participation of petitioner Appere Trading in the unlawful removal of the goods was shown by the fact that such removal was done by the Stand Brokerage, its broker. The allegation that it had no knowledge much less consented to the withdrawal of the goods is of no moment considering that the aforequoted provision of Section 2530 (e) of the Tariff and Customs Code does not provide for any exception. Furthermore, to sustain such view would open a wide avenue to circumvent the law, thus creating a situation where goods may not be forfeited on the mere allegation that the owner or importer thereof had no knowledge of the illegal acts of its broker. At any rate, if, as alleged, the importer or owner of the goods had no knowledge of the illegal removal of such goods, it has a recourse against the erring broker.

As to the second issue, it is argued that the cargo trucks are covered by a certificate of public convenience as trucks for hire, and, as such, can not be the subject of forfeiture.

The fact that said cargo trucks are being operated under a certificate of public convenience is of no consequence, it appearing that the managing personnel of the Stand Brokerage, claimant of the trucks, was responsible for the unlawful act.

Moreover, forfeiture proceeding is <u>in rem</u> and the property in such case is primarily considered as the offender, and, under Customs Law, liable for forfeiture.

> ". . . because forfeiture is <u>in rem</u>, directed against the property seized, the courts have upheld the condemnation and forfeiture of property used for illegal purposes although the user was acting without authority from the true owner, without right, contrary to the wishes of that owner, and while the latter was ignorant of such use of his property. x x " (23 Am Jur. 603 (Trias & Lopez v. Comm. of Customs, CTA No. 1413, March 18, 1964).

Anent the 31 bales of remnants that were not actually withdrawn from the Customs Bonded Warehouse, the same were also forfeited because, according to respondent, "the evidence clearly show that steps were already taken to withdraw them from the warehouse in the same manner the 73 bales were withdrawn, and considering further the fact that they are part and parcel of the shipments under seizure." On the other hand, the importer claims that under Section 2530 (e) of the Tariff and Customs Code, the articles can not be forfeited because they were not actually removed from the warehouse.

The 31 bales of remnants in question were declared forfeited under paragraph (e) of Section 2530 of the

Tariff and Customs Code which imposes the penalty of forfeiture upon goods "fraudulently concealed in or removed from any public or private warehouse under customs supervision." There is nothing in the law which imposes the same penalty for an attempt at fraudulent concealment in or removal from a public or private warehouse under customs supervision. Where the law intends to penalize a mere attempt to commit an offense, it is so expressly provided. See, for instance, paragraph (f) of Section 2530 which imposes the penalty of forfeiture upon an attempt to import or export an article of prohibited importation. The absence of a similar provision in paragraph (e) of the same section is an indication that the law does not intend to penalize a mere attempt to commit the offense described therein. We are, therefore, of the opinion that the said 31 bales of remnants are not subject to forfeiture.

IN VIEW OF THE FOREGOING, the decision appealed from is hereby affirmed, except with respect to the 31 bales of remnants, with costs against petitioners.

SO ORDERED.

Quezon City, March 27, 1972.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge