REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TEODORO LUNA,
Petitioner,

- versus -

COMMISSIONER OF CUSTOMS,
Respondent.

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

C.T.A. CASE NO. 1947

Nov. 29/68

DECISION

This is an appeal from the decision of respondent Commissioner of Customs affirming that of the Collector of Customs of Manila in Customs Case No. 906 (S.I. No. 1085), forfeiting in favor of the Government one (1) Ford "Mustang", Model 1967, 2-Door Coupe, 6-Cylinder, bearing Serial No. 7102T-131277, for alleged violation of Section 2530 (m-5) of the Tariff and Customs Code.

The facts as stipulated by the parties are as follows:

1. Petitioner is a member of the Armed Forces of the Philippines with the rank of Captain in the Medical Corps.

2. Petitioner underwent a tour of duty as a member of the Philippine Contingent to Vietnam IV for the period covering April 28, 1966 to May 5, 1967, inclusive.

3. The Office of the President, Republic of the Philippines, granted a tax exemption privilege to the members of the Philippine Contingent to Vietnam under the following Indorsement which was embodied under Customs Memorandum Circular No. 173-65, to wit:

"OFFICE OF THE PRESIDENT OF THE PHILIPPINES"
5th Indorsement
September 16, 1965

Respectfully referred to the Honorable,

the Secretary of Finance, Manila, hereby authorizing the exemption from payment of customs duties and compensating taxes the personal effects and motor vehicles of the officers and men of the Philippine Contingent to Vietnam returning to the Philippines in recognition and appreciation of the government for their perilous assignment in Vietnam, provided said items will be used by them and their families exclusively and not be sold in the local market.

Similar exemptions were granted to officers and men of the Philippine Expeditionary Force to Korea when they returned."

4. Petitioner, relying on the foregoing tax exemption, arranged to import through a Ford representative in Vietnam the subject motor vehicle for his personal use upon his return to the Philippines.

5. The car in question arrived at the port of Manila direct from the United States on January 28, 1967, aboard the S.S. "American Contractor", REG. 159, consigned to petitioner and declared under Import Entry No. 11066 (1967).

6. Petitioner, through his customs broker, applied for exemption from the payment of customs duties and compensating taxes under his tax exemption privilege granted by the Office of the President embodied in Customs Memorandum Circular No. 173-65, supra, but the request for tax exemption was denied by the Bureau of Customs allegedly on the principal ground that petitioner's car did not actually come from Vietnam.

7. In May, 1967 petitioner, together with other Philcon IV officers who also imported cars, requested the President of the Philippines through official channels for the exemption provided under the said 5th Indorsement of the Office of the President but the same was denied.

8. The Collector of Customs assessed petitioner's car for the payment of customs duties and taxes in the total amount of ₱32,475.00.

9. Petitioner learned of the refusal of the customs authorities to grant him tax exemption upon his return from Vietnam in May, 1967. Acting in good faith on the advice of a friend, petitioner engaged the services of one, Mr. Lope Lozano, who was represented to have arranged the release of similar importation of vehicle by petitioner's companions, tax-free or by paying at most the compensating tax.

10. On August 23, 1967, petitioner's car was seized by the Office of the Collector of Customs because the check which was used to pay the customs duties and compensating taxes was dishonored by the drawee bank. Petitioner had no knowledge of nor did he authorize the payment of the aforementioned check. Petitioner actually gave Mr. Lope Lozano ₱12,000.00 in cash to answer for the payment of compensating taxes, if these were really due.

11. It appears from the records of the Collector of Customs that similar importations of vehicles by other members of the Philippine Contingent to Vietnam IV were exempted from the payment of customs duties and compensating taxes. These vehicle-importations came from ports other than Vietnam and arrived at the Port of Manila a few months prior to the arrival of petitioner's car, namely:

> One Volkswagen, model 1966, of Capt. Cesar F. Tapia, covered by Informal Entry No. 1451616, dated Oct. 7, 1966 (Exh. "3");
>
> A model 1966 Volkswagen of Capt. Felix Brauner, covered by Informal Entry No. 1434992;
>
> One Rambler car, model 1966, of Orlando Dulay, covered by Informal Entry No. 1451841, dated Nov. 8, 1966 (Exh. "5");
>
> One Rambler Classics, model 1966, of Major Antonio Venades, covered by Informal Entry No. 1451529, dated October 7, 1966 (Exh. "6");

One Rambler, model 1966, of Capt. Felix C. Guerrero, covered by Informal Entry No. 1451535, dated Oct. 10, 1966 (Exh. "7");

One Ford Falcon, model 1967, of Capt. Rufino P. Combatir, covered by Informal Entry No. 1505058, dated Jan. 11, 1967 (Exh. "8");

One Ford Falcon, model 1967, of Capt. Carmelito Doria, covered by Informal Entry No. 1505059, dated January 11, 1967 (Exh. "9").

12. In August, 1967 the Office of the Executive Secretary revoked Customs Memorandum Circular No. 173-65.

13. On March 29, 1968, the Secretary of Finance in his first indorsement to the Commissioner of Customs of the said date directed the Bureau of Customs to release the motor vehicles imported by Philcon IV officers Captain Bienvenido N. Masicat and Major Guillermo Ilumin (companions of the petitioner), free from taxes and duties as an exception to existing policy. A copy of the said indorsement is hereto attached as Annex "A". The importation by the said officers of their motor vehicles were under similar circumstances as petitioner's importation of his motor vehicle. (Stifacts, pp. 22-26, CTA rec.)

After seizure proceedings, the Collector of Customs, in his decision dated February 27, 1968, ordered the forfeiture of petitioner's car under Section 2530 (m-5) of the Tariff and Customs Code on the ground that the payment of the tax and duty assessed on the car with a fake check was a fraudulent device by means of which said vehicle was entered through the custom-house. Upon appeal, respondent Commissioner affirmed the decision, hence this appeal.

Respondent justifies the order of forfeiture upon Sec. 2530 (m-5) of the Tariff and Customs Code, the pertinent provisions of which read:

> "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
>
> "m. Any article sought to be imported or exported.
>
> x x x x x
>
> "(5). Through any other fraudulent practice or device by means of which such article was entered through a customhouse to the prejudice of the government."

On the other hand, petitioner assails the validity of the forfeiture on the following grounds:

> "(1) The Commissioner of Customs and the Collector of Customs erred in refusing to release petitioner's car without payment of the customs duties and compensating taxes under authority of the 5th Indorsement of the Office of the President dated September 16, 1965, petitioner admittedly being a member of the Philippine Contingent to Vietnam (No. IV) and the car in question having been imported for his personal exclusive use;
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> "(2) The respondent Commissioner of Customs and the Collector of Customs in so refusing the latter his tax exemption privilege, discriminated against the petitioner considering that the two (2) aforementioned officials extended the tax-exemption privilege subject of customs Memorandum Circular No. 173-65 (Annex 'A') to other members of the Philippine Contingent to Vietnam (No. IV) on their importation of vehicles which were made under the same circumstances as petitioner's car;

> "(3) The alleged payment of a fake check is not a valid ground for forfeiture since petitioner's car is tax-exempt from customs duties and compensating taxes; furthermore, the alleged payment of a fake check was made without the knowledge, consent or authority of the herein petitioner."

In other words, petitioner challenges the validity of the questioned forfeiture on the ground that his car is exempt from the payment of customs duties and compensating tax. We believe that petitioner's reason for objecting to the forfeiture is beside the point. The alleged tax exemption of the car has no bearing on the determination of whether said car is subject to forfeiture for having been imported through a fraudulent practice or device by means of which said article was entered through a customhouse to the prejudice of the Government. If there was in fact a fraudulent practice or device, the tax exempt status of the car is immaterial. It would still be subject to forfeiture under Sec. 2530 (m-5) of the Tariff and Customs Code.

Even assuming that the tax exemption of the car is decisive on the resolution of the validity or invalidity of the forfeiture under Sec. 2530 (m-5), we cannot pass upon, in this appeal, the question of the exemption of the car from the payment of compensating tax, in the absence of a prior decision of the Commissioner of Internal Revenue on a claim for such tax immunity. It should be noted that the compensating tax is a national internal revenue tax, and any claim for immunity therefrom must have to be lodged with and decided by the Commissioner of Internal Revenue. Only in an appeal from an adverse decision of the said Commissioner can this Court pass upon the question of immunity. As regards the liability of said car to customs duty, the remedy of petitioner is provided in Sections 2308, et seq. of the Tariff and Customs Code.

The sole issue, therefore, to be resolved in this case is whether or not the forfeiture of petitioner's car is justified under Sec. 2530 (m-5) of the Tariff and Customs Code.

Section 2530 (m-5) of the Tariff and Customs Code under which the car in question was declared forfeited authorizes the forfeiture of an imported article if the importation is made "through any other fraudulent practice or device by means of which such article was entered through a customhouse to the prejudice of the government." Was the car "entered through a customhouse" through a fraudulent practice or device? The answer to this question is to be found in the meaning of the term "entered through a customhouse."

The Tariff and Customs Code provides that all imported articles shall be entered through a customhouse at a port of entry. Imported articles, except duty free articles, are subject to a formal or informal entry. (Sec. 1302.) Entry must be made by the importer, or his agent, by filing an import entry within fifteen days from the date of discharge, which may be extended by the Collector for not more than fifteen days. (Sec. 1301.) The form and contents of an import entry are prescribed in Sections 1304-1306. From these statutory provisions, it is evident that the term "entered through a customhouse" appearing in Section 2530 (m-5) "refers to the filing by the importer of an import entry covering an imported article, which import entry must be made within fifteen days from the date of discharge of the article.

Is the import entry filed covering the car in question false or fraudulent to justify forfeiture of the car? Nothing appears of record to show that the said import entry contains any false statement or declaration. The car was declared forfeited solely on the basis of the fact that the check which was tendered in payment of the duties and taxes is "fake" and was dishonored by the drawee bank. Therefore, the offense committed is the payment of taxes and duties by means of a "fake" check, which is separately punishable, and not the filing of a false or fraudulent entry punishable under Section 2530 (m-5) of the Tariff and Customs Code.

It is true that as a result of the tender of payment of the duties and taxes due on the car in question by means of an alleged "fake" check, the car was released from the customshouse. In effect, the taxes and duties due have not yet been paid. The Tariff and Customs Code has provided for such a contingency. Under Section 1206, the Collector is required to cause to be assessed and collected the duties, taxes and other charges due on imported articles, "and shall hold possession of all imported articles upon which duties, taxes, and other charges have not been paid or secured to be paid, disposing of the same according to law," and Section 1204 provides that said duties, taxes and other charges shall constitute "a lien upon the articles imported which may be enforced while such articles are in custody or subject to the control of the government," The proper remedy of the Government in this case is, therefore, by enforcement of the lien for the unpaid duties and taxes and not by forfeiture.

In view of the foregoing, the decision appealed from is hereby reversed. Respondent is hereby ordered to release to petitioner the car in question upon payment of the corresponding duties and taxes, without prejudice on the part of petitioner to raise the issue in regard to the legality of the assessment of such duties and taxes in an appropriate proceeding. Without pronouncement as to costs.

SO ORDERED.

Quezon City, November 29, 1968.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge