REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GELMART INDUSTRIES PHILIPPINES, INC.,
Petitioner,

\- versus -

C.T.A. Case No. 4371

COMMISSIONER OF CUSTOMS,
Respondent.

x - x

6/24/94

DECISION

This is a forfeiture case of 1 x 40' container No. SEAU 464909-6 containing cartons of nylon filament yarn consigned to the Petitioner, for alleged violation of Sec. 2530 (e),(f), and (l)-5 of the Tariff and Customs Code, as amended.

During the hearing of the customs seizure proceedings, the parties entered into stipulation of facts which is narrated in the Decision of the Collector of Customs, as follows:

> "1. That, **GELMART INDUSTRIES, INC.** is the consignee of a shipment described as 1 x 40' container No. SEAU-4649-6 containing 400 cartons nylon filament yarn (raw) ex "M/V Sealand Liberator", Reg. No. 242, E. No. 28885-87;"
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> "2. That, Hemisphere Brokerage and Transport Corp. is the duly authorized

broker/representative of the consignee for the purpose of processing and effecting release of the aforesaid importation from the Bureau of Customs, Manila;"

"3. That, in the afternoon of August 3, 1987 at about 5:30 o'clock in the afternoon, the cogsignee's broker/representative, thru Norberto Maula, Jr. and Oscar Y. Marinas, tried to effect the release of the aforesaid importation by inserting the description of the aforesaid shipment in the boatnote covering another shipment of similar kind of merchandise and likewise consigned to Gelmart Industries, Inc.;"

"4. That, when confronted, Norberto Maula, Jr. and Oscar Marinas told the investigators that they included the 1 x 40' van in the other shipment because they wanted to save time and to be able to deliver both shipments to their principal, Gelmart Industries, Inc.;"

"5. That, the customs police did not allow the shipment to be released and instead, the shipment was detained and subsequently ordered fully opened, examined to determine its actual contents;"

"6. That, at the time the aforesaid shipment was being brought out from the Bureau of Customs as narrated in paragraph 3 hereof, the pertinent documents covering the aforementioned shipment were already duly filed, processed, BC perforated and approved as follows:

A. Original Warehouse Entry No. 28886-87
B. Proforma Chargeable Bond
C. Importer Sworn Statement
D. Communication to the Collector
E. SGS clean report of findings
F. Packing list
G. Commercial Invoice
H. Bill landing
I. Warehousing Permit white copy (BC Form 198)
J. Certification of Availability of Import License;"

"7. That, the aforementioned importation is exempt from payment of advance sales taxes or compensating sales taxes and other sales duties because it is a duly approved merchandise for re-export by the GTEB."

and adopted as common exhibits the following:

Exhibits	
"A"/"1"	- Warehousing Entry No. 28886 - 87
"B"/"2"	- Proforma, Chargeable Bond
"C"/"3"	- Importer's Sworn Statement
"D"/"4"	- Communication to the Collector
"E"/"5"	- SGS clean report of findings
"F"/"6"	- Packing List
"G"/"7"	- Commercial Invoice
"H"/"8"	- Bill of Lading
"I"/"9"	- Warehousing Permit
"J"/"10"	- Certificate of Availability
"K"/"11"	- Certificate of Mr. Mardelo
"L"/"12"	- Gate Pass No. 052840
"M"/"13"	- Gate Pass No. 052849
"O"/"14"	- S/S of Mr. Jose C. Corpus
"P"/"15"	- S/S of Mr. Norberto Maula, Jr.
"Q"/"16"	- S/S of Mr. Oscar Marinas
"R"/"17"	- Boatnote No. 240703
"R-1"/"18"	- Insertion of 1 x 40' van in Boatnote No. 240703
"S"/"19"	- Investigation report of Mr. Sorina
"T"/"20"	- Endorsement of Lt. Honorio Juan to the Collector of Custom, MICP
"U"/"21"	- W S D
"V"/"22"	- 2nd Endorsement of Collector Mendoza

Counsel for the government likewise admitted as proposed by claimant, the existence of the following documents forming part of the records, to wit:

(a) Memorandum of Principal Appraiser Aurelio Marcelo stating that a 100% examination showed no discrepancy and that there are no findings to show that consignee and/or its broker tried to conceal or defraud government revenue (Exhs. "K" and "11").

(b) 1st Endorsement signed by Buenventura C. Maniego, Acting Collector of Customs dated August 6, 1987 (Exhs. "L" and "12").

(c) Gate Pass No. 052849 issued by the arrastre contractor (Exhs. "N" and "14").

(d) 2nd Endorsement dated August 17, 1987 of Mr. Raymundo R. Mendoza, OIC, MICP (Exhs. "22" and "V").

(e) The imputed violations cited in the Warrant are: (1) That the articles are fraudently removed contrary to law from a container yard under customs supervision (Sec. 2530(e); (2) That the importation of the articles were effected contrary to law (Sec. 2530 (f); and (3) That the articles were imported through a practice or device contrary to law by means of which the articles were entered through a customhouse to the prejudice of the Government (Sec. 2530(1) - 5).

(Exh. X)

In said Decision, the lady Acting Collector of Customs forfeited the subject shipment only on the ground that "there was an attempt to defraud the government through the use of a falsified boatnote." She said, thusly:

On the first charge of the fraudulent removal from the container yard, it has been shown that a genuine gate pass has been issued (Exhs. "N"/"14", TSN, p. 6). As regards the second violation, sufficient proofs have been adduced to show that all related documents filed with the entry and the declaration tallied with the examiner's findings (Exh. "A" to "I"), and that such importation of raw materials is duly authorized by the GTEB (Exh. "J"). With respect to the third violation, the parties have stipulated that the insertion of the words "SEAU 464909-6 1 x 40 Van Yarn" in the boatnote was deliberately made by Norberto

> Maula, Jr. who is legitimately employed as a checker of the brokerage firm servicing the importation of the claimant in order to save time and to be able to deliver both shipments to the claimant. It is worthy to note, in this connection, that claimant is an operator of a customs bonded warehouse engaged in the manufacture of raw materials for re-export as finished products on consignment basis. Its importation of such materials are duty-free and tax-exempt and that it has a timetable to follow in order to meet the deadlines of its export commitments abroad. There is no dispute that Maula indeed committed falsification punishable under our criminal law. As a matter of fact, Mr. Maula together with Mr. Marinas were both criminally charged before the Fiscal's Office of Manila of the crime of theft, falsification of official document and violation of sections 3609 and 3602 of the TCCP docketed as I.S. No. 87-21559 (Exhs. "S-1" and "19-A".
>
> In view thereof and it appearing that the insertion was deliberate, the conclusion would be that there was an attempt to defraud the government through the use of falsified boatnote. Consequently, this Office finds and so holds that the articles in question have incurred the liability of forfeiture.

(*ibid.*)

The issue then is narrowed down on whether or not the Government was indeed defrauded of the needed duties and revenues to warrant forfeiture on the subject shipment.

We answer in the negative.

We have another case which shows utter the disregard by the former Commissioner of Customs Salvador Mison of the legal procedure provided for by law in forfeiting goods.This, of course, is not the only time that he displayed such attitude. In the very recent case of **Nusselts Industries Corporation vs. Commissioner of Customs**, (C.T.A. Case No. 4449, May 27, 1993), this Court commented:

> Surprisingly, however, inspite of the evidences presented, both documentary and testimonial, coupled with the accompanying recommendations from the Appellate and Legal Service Divisions as well as the endorsements from the District Collector and the Assistant Commissioner of Customs for the qualified release of the articles in question, herein respondent rejected all of these and instead, arbitrarily ordered District Collector Titus Villanueva to forfeit <u>all</u> the articles in question. Sadly, the District Collector in reversing his order, blindly obeyed and copied almost verbatim the 3rd Endorsement of the respondent dated July 25, 1989 (Annex K).

In the case at bar, the following pertinent documents covering the questioned shipment were duly filed, processed, BC perforated and approved:

A. Original Warehouse Entry No. 28886-87
B. Proforma Chargeable Bond (Exh. B)
C. Importer's Sworn Statement (Exh. C)
D. Communication to the Collector (Exh.D)
E. SGS clean report of findings (Exh. E)
F. Packing List (Exh. F)
G. Commercial Invoice (Exh. G)
H. Bill of Lading (Exh. H)
I. Warehousing Permit (BC Form 198) (Exh. I)
J. Certification of Availability of Import License (Exh. J)
K. Gate Pass No. 052849 (Exh. M)

Moreover, such shipment was exempt from payment of advance sales taxes or compensating sales taxes and other duties since it is intended to be re-exported as duly approved by the GTEB. In fact, it was covered by an Embroidery Bond (i.e. the re-export bond) (Exh. II). Also, there was an examination of the shipment by the Principal Appraiser (as directed by the Commissioner of Customs) who confirmed that, after a "100% examination", the shipment conforms and tallies with that declared in the entries and there was no showing that the petitioner or the customs broker tried to conceal anything or defraud the government of revenues, strongly recommended the release of the questioned shipment to the Petitioner. (Exh. K)

The foregoing led the MICP Collector of Customs Maniego to "strongly recommend the immediate release" of the shipment to the Petitioner (Exh. AA). The same recommendation was endorsed by the succeeding MICP Collector of Customs Emma Rosqueta (Exh. W). The Legal Office of the Commissioner of Customs in a prepared 2nd Endorsement dated December 9, 1987 was "giving due course" to the MICP Collector of Custom's "proposed decision to release the shipment in question it appearing that its importation suffers no infraction of the Tariff and Customs Code whatsoever" (Exh. DD). This was followed by the recommendation of the Legal and Intelligence Services to the Commissioner of Customs that the proposed Decision of the MICP Collector of Customs "being legal and well taken may now be enforced" (Exh. FF). It is interesting to note that the one who prepared such favorable recommendation is the present counsel of the Respondent, Atty. Magdalena Soriano. The above recommendation was concurred by no less than Deputy Commissioner of Customs Vicente A. Feria, Jr. (Exhs. FF-1 and FF-2). Not satisfied with the first recommendation, the Customs Service Chief of the Legal and Intelligence Services reiterated to the Commissioner of Customs its "previous recommendation for approving Collector Roqueta's proposed decision releasing containers SEAU-464909-6" (Exh. GG). Again, it was prepared by the same present counsel of the Respondent.

However, despite the findings and recommendations of the foregoing offices and authorities of the Bureau of Customs, then Commissioner of Customs Salvador M. Mison refused to have the shipment released and instead ordered its forfeiture only because "I want this shipment seized" (Exh. HH).

Sadly, the District Collector blindly reversed herself. This should not be so.

> "It is not too much to point out that it is an elementary rule in procedure that a decision of the Collector of Customs just like that of a judge (or a person or a body lawfully authorized to issue decisions) must be in writing <u>personally</u>, <u>independently</u>, and <u>directly</u> prepared by him (Sec. 1, Rule 36, Revised Rules

> of Court). For the Commissioner to summarily dismiss or overturn whatever recommendations and dictate the Collector of Customs to decide whatever is in conformity to his whims and caprices is a blatant usurpation of the latter's powers under Section 2312 of the Revised Tariff and Customs Code. The Commissioner can not hide under the cloak of exercising the power of supervision and control over his subordinates for it will render the doctrine of exhaustion of administrative remedies and due process for naught. The palpably flagrant anomaly of the Commissioner of Customs reviewing the decision of the Collector of Customs, (which <u>actually</u> was that of the former) is a mockery of administrative justice. In order that the review of the decision of a subordinate officer might not turn out to be farce, must perforce not dictate his own view on the officer whose decision is under his review; otherwise, there could be no real review of the case. The decision of the reviewing officer would be biased view ... (see related cases of **Zambales Chromite Mining Co., et. al. vs. Gozon**, G.R. No. L-49711, November 7, 1979). In such case, needless to say, the appeal becomes a useless formality. It is reduced to an idle ceremony. There would thus be a denial of procedural due process (**New Filipino Maritime Agencies, Inc. vs. Rivera**, L-45359-60, June 15, 1978). Hence, in the interest of justice and fair play, <u>this practice of the Commissioner dictating his Collector what to decide must be stopped.</u> Anyway, he can affirm or deny the decision of his subordinate Collector when the proper time comes as provided under Section 2313 of the Revised Tariff and Customs Code. (Emphasis Supplied)
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> (Nusselts Industries, infra)

We find no merit in the Respondent's Decision. Such Decision was without rhyme or reason and found to be arbitrary as can be gleaned from the foregoing discussions.

The Respondent advanced the argument that the shipment was forfeited since the broker falsified the boatnote to effect release in violation of Section 2530(e), (f) and (1)-5 of the Tariff and Customs Code, as amended does not hold water. As aptly put in our Resolution dated July 4, 1990, thus:

> On the incident that the insertion of the words "SEAU 464909-6, 1 x 40 Van Yarn" in the boatnote was deliberately made by one Norberto Maula, Jr., which act should be seen as an attempt to defraud the government, it appears that only Maula, Jr. and Oscar Y. Marinas have been charged by the Bureau of Customs of the crimes of Theft, Falsification of Official Document and violation of Sections 3602, 3609 and 3610 of the Tariff and Customs Code. These persons have also, by themselves, confessed that they made the insertions in the boatnote on their own. It thus appear that petitioner did not consent, had no knowledge nor did it participate in the acts of Maula, Jr. and Marinas. Criminal responsibility being personal, we are not now ready to impute any upon petitioner.
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> xxx xxx xxx
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> Upon the other hand, assuming arguendo that the principles of agency are controlling in this case, it is not enough for the respondent to merely allege that the illegal acts of Maula, Jr. and Marinas are considered the acts of the petitioner. It is also true in agency that the agent is personally liable for acts beyond the scope of his authority except when the principal ratifies the acts expressly or tacitly (Art. 1910, NCC). Considering that here, these customs broker employees were obviously not acting within their powers when they made the insertion in the boatnote which act they eventually admitted to be their own, unsupported allegations of the respondent would not suffice. Failing to supply the necessary

> proof to his allegations that could have put his case at least within the bounds of the exceptions to the rule above stated, respondent's position becomes even less tenable.

(C.T.A. Records, pp. 115-117)

WHEREFORE, in all the foregoing we hereby **RESOLVE** to **ANNUL** the Decision of the Commissioner of Customs dated October 5, 1988 and **ORDER** the permanent **RELEASE** of the shipment subject of this case. The surety bond posted by the Petitioner for the temporary release of the shipment is hereby cancelled.

SO ORDERED.

Quezon City, Metro Manila, 24 June 1994.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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