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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RENATO RAYMUNDO,
Petitioner,

- versus -

C.T.A. CASE NO. 1567

HON. ALBERTO R. DE JOYA, and HON. PEDRO PACIS, in their capacity as Commissioner of Customs and Acting Collector of Customs, respectively,
Respondents.

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

May 18/67

D E C I S I O N

This is an appeal from a decision of respondent Commissioner of Customs affirming that of the Collector of Customs ordering and decreeing the payment of the amount of ₱3,775.00 as deficiency customs duty and taxes due on the importation of a Pontiac car, Chieftain, four-door sedan, model 1957, with Motor No. K75H-3132, or upon failure to pay, the sale of the car at public auction to satisfy the lien of the Government to the extent of said amount.

It appears that sometime in June, 1959, the Pontiac car described above was imported into the Philippines. On June 12, 1959, Rafael Cavanna purchased it from Anastacio Teodoro, Jr., owner of the New Esquire Car Lot, for ₱6,000.00 subject to the provision in the sales agreement that the "Seller does not assume any tax liabilities due the Bureau of Customs." (Pp. 50, 51, 128, 129, Customs record.) Cavanna registered the car on June 16, 1959 with the Motor Vehicles Office (now Land Transportation Commission) at Quezon City in his name on the strength of an Informal Entry No. 670567 (pp. 52, 62 Customs record) and certificate of payment No. 1152 purportedly issued by the Bureau of Customs wherein the amount of ₱7,295.05 appeared to have been paid as customs duty and taxes. Upon investigation, it was discovered that certificate of payment No. 1152 was issued on July 14, 1959 for a pick-up Ford, and Informal Entry No. 670567 covered 4 units of trailer (pp. 133-134, Customs record). In view of this discovery, the car in question was included in the inventory of hot cars (p. 133, Customs record).

On February 4, 1963, Rafael Cavanna transferred the car to his wife, Paz V. Alcantara, by virtue of a deed of sale for the amount of ₱6,000.00 (pp. 65, 136-138, Customs record). The next day she brought the car and presented the deed of sale to the Bureau of Customs for appraisal for customs duties and taxes (pp. 4, 5, Customs record). On the representation by Paz V. Alcantara that the car was acquired only on February 4, 1963, the sum of ₱2,428.00, representing customs duty and taxes, was levied and collected (pp. 56, 57, 88, 89, 116, 139, 140, Customs record). On the basis of informal entry No. 997567 and certificate of payment No. 0679 for the sum of ₱2,428.00, the car was registered with the Motor Vehicles Office (now Land Transportation Commission) in the name of Paz V. Alcantara (pp. 41-44, Customs record).

Upon application of German M. Montemayor, Supervising Agent of the National Bureau of Investigation (p. 102, Customs record), a "Warrant of Seizure and Detention" was issued by Acting Collector Pedro Pacis on September 16, 1964 ordering the seizure of said car (p. 101, Customs record). Accordingly, the said car was seized at the Francis Court, 217 M. Paterno, San Juan, Rizal, from Rafael Cavanna on October 2, 1964 (p. 125, Customs record).

Thereupon, a hearing was conducted on the seizure of said car under Seizure Identification No. 8309 (pp. 103-159, Customs record). After the hearing, the Collector of Customs, in his decision dated November 5, 1964, held that the total amount of duty and taxes on the car that should have been collected on the basis of the first deed of sale executed in 1959 is ₱6,203.00, of which the sum of ₱2,428.00 has been paid, thereby leaving a balance of ₱3,775.00. Hence, he ordered the owner-claimant Paz V. Alcantara to pay to the Bureau of Customs the amount of ₱3,775.00, otherwise the car shall be sold at public auction to satisfy the lien of the Government.

On appeal by Paz V. Alcantara to the Commissioner of Customs, the latter rendered a decision on January 12, 1965 affirming *in toto* the decision of the Collector of Customs (pp. 4-8, Customs record).

During the pendency of the appeal before the Commissioner of Customs, Paz V. Alcantara sold the car to petitioner, Renato G. Raymundo (pp. 4-8, Customs record), who appealed from the decision of the Commissioner of Customs by filing the instant petition for review (p. 1, CTA record).

Upon motion of petitioner and the filing of Bond No. 242 of the Midland Insurance Corporation dated March 9, 1965 in the amount of ₱4,500.00 to guarantee payment of the claim of the Government in the amount of ₱3,775.00 in the event the legality of petitioner's tax liability is upheld, this Court ordered on March 16, 1965, the release and delivery to petitioner of the car in question.

The issues in this case are (1) whether or not said car is subject to seizure under the provisions of Section 2530(m) - 1 and 5 of the Tariff and Customs Code, in relation to Section 2312 of the same Code;

and (2) whether or not the Commissioner of Customs is estopped from collecting deficiency duties and taxes.

Sections 2530(m) - 1 and 5 and 1603 of the Tariff and Customs Code provide as follows:

> "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:
>
> "xx xx xx
>
> "m. Any article sought to be imported or exported:
>
> "(1) Without going through a customhouse, whether the act was consummated, frustrated or attempted;
>
> "xx xx xx
>
> "(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."
>
> SEC. 1603. Finality of Liquidation.- When articles have been entered and passed free of duty or final adjustment of duties made, with subsequent delivery, such entry and passage free of duty or settlement of duties will, after the expiration of one year, from the date of the final payment of duties, in the absence of fraud or protest, be final and conclusive upon all parties, unless the liquidation of the import entry was merely tentative."

The petitioner does not question the correctness of the computation of the deficiency customs duty and taxes assessed against the car in question. However, he contends that the car is not one of those subject to seizure and/or forfeiture under Section 2530(m) - 1 and 5 of the Tariff and Customs Code as no fraud was committed.

The evidence, oral and documentary, presented in the seizure proceedings at the Bureau of Customs (S.I. No. 8309) evinces fraud on the part of Rafael Cavanna and his wife to the prejudice of the Government. They were aware that the car was still liable for customs duties and taxes at the time it was purchased from Anastacio Teodoro, Jr. The provision in the sales agreement which states that the "Seller (Anastacio Teodoro, Jr.) does not assume any tax liabilities due the Bureau of Customs" served notice to them that taxes were due on the car. In order to escape the payment of duties and taxes, Rafael Cavanna registered the car in his name at the Motor Vehicles Office in 1959 by using an import entry (No. 670567) which purportedly show that he had paid the duties and taxes to the Government, but which actually pertained to another importation. Later, when the authorities uncovered the deception, Cavanna executed on February 4, 1963, a deed of sale of the car in favor of his wife. The sale was apparently made to the wife to make it appear that the car was acquired by her only in 1963. On the basis of the deed of sale to the wife, only the amount of ₱2,428.00, instead of ₱6,203.00, was levied and collected as duty and taxes. These circumstances demonstrate without any shadow of doubt the intention to defraud the Government.

With respect to the second issue, petitioner contends that respondent is estopped from collecting the deficiency duty and taxes inasmuch as the liquidation of the duties in question has become final in accordance with Section 1603 of the Tariff and Customs Code. However, the same section provides that final liquidation of import entries becomes final and conclusive after one year in the absence of fraud. Here, there is fraud. Consequently, deficiency duties and taxes may be collected at any time. (F. Vitelli & Son v. U.S., 250 U.S. 355-356; 63 L. Ed. 1028, 1029.)

Finding no error in the decision appealed from, the same is hereby affirmed. Petitioner Renato Raymundo and his surety, Midland Insurance Corporation, are hereby ordered to pay the Commissioner of Customs, or his duly authorized representatives, the amount of ₱3,775.00 within 30 days from the date this decision becomes final. With costs against petitioner.

SO ORDERED.

Quezon City, May 18, 1967.

R M Umali
ROMAN M. UMALI
Presiding Judge

I CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Associate Judge Ramon L. Avanceña did not participate.