

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SIMEON EVANGELISTA,
Petitioner,

- versus -

C. T. A.
CASE NO. 999

THE COMMISSIONER OF CUSTOMS,
Respondent.

x- - - - -x

D E C I S I O N

This is an appeal from a decision of the Commissioner of Customs, dated January 12, 1960, affirming in toto the decision of the Collector of Customs of Manila, dated August 5, 1958, together with his order, dated September 26, 1958, in Customs Case No. 31, Seizure Identification No. 571⁴ (Manila), declaring forfeited in favor of the Republic of the Philippines certain imported articles for violation of Section 1 (c), in relation to Section 3, of Republic Act No. 1410.

This case was submitted for decision solely on the basis of the records in the administrative proceeding in the Bureau of Customs transmitted to this Court. (See Minutes of Hearing dated January 8, 1964, p. 55, CTA Records.)

Petitioner, Simeon Evangelista of 43 Banawe St., Quezon City, arrived in Manila on board S/S "Frankfurt" from Hongkong, accompanied by his wife and daughter, on or before July 7, 1958, with goods, foodstuff, and a piano manifested as personal effects (pp. 9 & 21,

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t.s.n. p. 000018 & 000020, Customs Record; also pp. 1 & 2, Motion for Reconsideration of Decision dated August 5, 1958, pp. 000036-000037, Customs Record). After an examination of the importation, and payment of duties and taxes in the sum of P493.05 by the petitioner under Informal Entry No. 588812 (p.000036, and 000021 Customs Record), a portion of the importation consisting of:

- (1) One (1) box piano
- (2) Three (3) leather shoes (pieces)
- (3) Six (6) pieces 3 yards rayon cloth
- (4) Thirteen (13) pieces pad locks
- (5) Twenty five (25) cartons selected biscuits
- (6) Twenty five (25) cartons cream-crackers
- (7) Twenty (20) cartons Black Magic Candy
- (8) Fifteen (15) cartons Milk Chocolate
- (9) Fifteen (15) cartons Whole Nut
- (10) Twelve (12) loaf Tuber Candy
- (11) Ten (10) cartons Milady Candy
- (12) Five (5) cartons Pickles
- (13) Three (3) cartons Sandwiches Spread
- (14) Three (3) cartons Del Monte Catsup
- (15) Fifteen (15) cartons Kitkat Chocolate (p. 000036, Customs Record)

was released to the petitioner and the remainder was held by the customs authorities for forfeiture proceedings.

Dissatisfied with the quantity of the goods released, petitioner asked for a hearing wherein he presented evidence that the goods were not intended for commercial purposes, but only for personal use. After the hearing, the Collector of Customs of Manila, in a decision dated August 5, 1958, authorized a partial release of the seized goods, to wit:

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Thirty nine (39) tins of cream crackers
(Jacobs)
Thirty nine (39) tins Selected Biscuits
(Jacobs)
Ten (10) cartons of chocolate (Black
Magic)
Three (3) cartons of Milk Chocolate
Five (5) cartons of Kitkat Chocolate
Three (3) cartons of Whole Buts (Chocolate)
Two (2) cartons of Milady Candy
Two (2) cartons of Del Monte Pickles
One (1) carton of Del Monte Catsup
(p. 000036, Customs Record)

The remainder of the goods were declared forfeited for violation of Section 1 (c) of Republic Act No. 1410, in relation to Section 3 of the same Act.

On September 5, 1958, petitioner filed a motion for reconsideration (pp. 00033-000037, Customs Record), which was denied by the Collector of Customs of Manila in an Order, dated September 15, 1958 (pp. 000038-000039, Customs Record).

On September 19, 1958, the petitioner, through his counsel, filed a written waiver of his right to appeal from the decision (p. 000041, Customs Record). Due to the importance of this waiver in the disposition of this case, and for ready reference, the same is reproduced below in full:

September 19, 1958

The Collector of Customs
Manila

S i r:

Re: Seizure Iden. No. 5714

In connection with your order dated September 15, 1958, which was received by the undersigned on September 19, 1958, please be informed that the claimant in the above-cited case is waiving his right to appeal from your decision promulgated on August 5, 1958, and as such, it is respectfully requested that said decision be considered as final and executory to effect the immediate release of the articles specifically ordered therein to be released to the claimant.

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Hoping for your kind and generous attention on the matter, I am

Very respectfully yours,

(Sgd.) DIOSCORO G. PINEDA
Counsel for Claimant
San Fernando, Pampanga

Three days after the filing of the foregoing waiver, that is, on September 22, 1958, petitioner through another lawyer, Atty. Juan T. David, filed a petition (p. 000042, Customs Record), manifesting that he was "abiding with that portion of the decision which authorizes the release to him of the articles enumerated therein" and that he was "appealing against that portion which decrees the forfeiture of a portion of the seized merchandise." He asked for the immediate release of the goods. This petition was denied by the Collector of Customs in his order, dated September 26, 1958 (pp. 000043-000044, Customs Record).

On October 2, 1958, petitioner, again through his lawyer filed an appeal with the respondent Commissioner of Customs (pp. 000045-000046, Customs Record). Acting on this appeal, the Chief Legal Officer, Law Division, of the Bureau of Customs, in an indorsement dated March 16, 1959, forwarded the records of Seizure Identification No. 5714 to the Commissioner of Customs, stating among others:

"Inasmuch as the aforesaid decision of this Office dated August 5, 1958, has already become final and executory and res adjudicata, this Office believes that appeal therefrom does not lie. The letter of Atty. Juan T. David is nevertheless forwarded to that Office, this Office treating

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the same as an appeal from its Order dated September 26, 1958, not as an appeal from the decision on the merits of the seizure case." (P. 000048, Customs Record)

On January 12, 1960, the herein respondent rendered a decision affirming in toto the decision of the Collector of Customs, dated January 5, 1958, and the Order, dated September 26, 1958 (pp. 000052-000067, Customs Record).

On January 26, 1960, petitioner filed his motion for reconsideration of the afore-mentioned decision of the respondent (pp. 000069-000076, Customs Record) which was denied in an order dated January 4, 1961 (pp. 000091-000096, Customs Record). On January 24, 1961, the present petition for review was filed with this Court.

Basically, there ~~are~~ only two issues to be resolved in this case, namely: (1) Whether or not the waiver of the right to appeal, filed on September 19, 1958, had the effect of rendering the decision of the Collector of Customs, dated August 5, 1958, final and conclusive; and, (2) in the negative, whether or not the petitioner is entitled to the release of the goods in question.

The first issue, being jurisdictional and therefore prejudicial, will be taken up first. On this question, the answer is in the affirmative.

The waiver was filed by an attorney of record of the petitioner, Atty. Dioscoro G. Pineda. It was expressed in clear and unequivocal terms. It asked

that the decision of the Collector of Customs, promulgated on August 5, 1958, be declared final and executory, in order to effect the immediate release of the articles specifically ordered therein to be released. They were released to and duly accepted by petitioner. The act of the agent is the act of the principal. But even granting for the sake of argument that the filing of the waiver by Atty. Pineda was unauthorized, the acceptance by the petitioner of the goods released pursuant to the said waiver is a ratification of said waiver, and has rendered the waiver valid and binding upon petitioner. Having accepted the benefits of the waiver by accepting the goods, he cannot now be allowed to dispute the validity of said waiver, and consequently the conclusiveness of the decision of the Collector of Customs, dated August 5, 1958, by asserting that said waiver was withdrawn with the filing of the subsequent appeal by Atty. David. Having elected to ask for execution, he is deemed to have abandoned his appeal. One who complains of a judgment must be consistent in his conduct with reference to it. If he recognizes its validity, he will not be heard to say that it is erroneous. If he was dissatisfied with the decree in his favor, he had the option to have it reviewed in a proper proceeding, or to enforce it and receive its benefits; but he cannot pursue both courses, since one is inconsistent with the other. (Rafael Verches v. Elena Rios, 48 Phil. 16; Desbarats vs

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Devera, 46 O.G. 4936.)

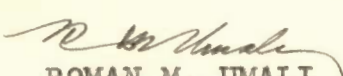
The decision of the Collector of Customs of Manila, dated August 5, 1958, having become final in consequence of petitioner's waiver, petitioner can no longer appeal from that decision to the Commissioner of Customs, and much less to this Court.

Having reached the conclusion that this Court has no jurisdiction to entertain the instant appeal, we find it unnecessary to pass upon the other issue as to the legality of the forfeiture of the goods subject of the forfeiture proceeding in Customs Case No. 31 (S. I. No. 5714).

✓ WHEREFORE, the herein petition for review is hereby dismissed, with costs against petitioner.

SO ORDERED.

Quezon City, January 30, 1965.


ROMAN M. UMALI
Associate Judge

I CONCUR:


AUGUSTO M. LUCIANO
Acting Presiding Judge