REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASTRO AIR TRANSPORT, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3052

THE COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - x

1/9/86

D E C I S I O N

This is an appeal interposed by petitioner from the decision of respondent Commissioner of Customs dated October 30, 1979, forfeiting petitioner's Aircraft CV-440, Registry No. N-90907, Identification No. 2930-78, for loading various unmanifested cargoes in commercial quantity in violation of the provisions of Section 2530(a), the Tariff and Customs Code, in relation to Central Bank Circular 247, as amended.

The Court, in its resolution dated July 20, 1984, had submitted the above-entitled case for decision based on the pleadings and Customs record.

Petitioner is a corporation organized and existing under the laws of the Philippines with office address at West Maintenance Area, Domestic Airport, Pasay City, Metro Manila (Paragraph I Petition p. 1, CTA rec.) It is the owner of an aircraft Convair 440, with Registry No. N 90907, and has a value of ₱175,000.00 or $50,000.00 in the year 1977. (pp. 17, 25 and 96, CTA. rec.) On September 23, 1978, petitioner herein entered into a "Charter Agreement" with Athens (M) SDN. BHD., with address at 1st floor Terminal Building Senae Airport, Johore, Bahru, Malaysia, whereby the petitioner was to provide and deliver the subject aircraft at Seletar Airport in Singapore at the disposal of the charterer for several months. In the transaction of the afore-mentioned charter agreement, petitioner was represented by one Atty. Victor Tantoco, as its attorney in fact, and authorized to sign in its behalf in the said contract. (see Charter Agreement, pp. 6-7 pp. 67-68, Customs rec.; see also Heading III par. 1, Petition, admitted in par. 3 Answer pp. 2 and 35, CTA. rec.) Sometime on September 30, 1978, the aforesaid aircraft left Manila for Singapore piloted by one Captain Osias Mission and co-pilot Fredelito Juane, with Atty. Victor Tantoco as attorney-in-fact representing the petitioner for the purpose of receiving the down-payment from the charterer pursuant to the charter agreement. However, upon arrival of the subject aircraft in Singapore, the charterer asked for the cancellation of the agreement for the reason that it would not be financially feasible to continue with the charter agreement. (see Heading III, Par. 2, Petition, admitted in par. 3, Answer pp. 2 and 35, CTA rec.; see also affidavits executed by Paul Marinas, pp. 1-3 and Jed Juane pp. 4-5, and 69, Customs rec.) Having failed to receive the down payment in view of cancellation of the charter contract, Atty. Victor Tantoco, the petitioner's representative, immediately returned to Manila on October 4, 1978, after informing the crew that the charterer is liable for damages. Thereafter, the pilot and co-pilot took upon themselves to negotiate in their own initiative with the charterer, Jamal Jamuladdin, and as a result of the said negotiation, they received goods in commercial quantity as payment for damages arising from the cancellation of the aforesaid charter contract. (see Testimony of co-pilot Fredelito Juane, pp. 124-125; and pp. 118-119, Customs rec.)

At about 4:00 P.M. of October 7, 1978, the subject aircraft left Singapore bound to Manila. (see Affidavit of Paul Marinas pp. 1-3 Customs rec.) However, the said aircraft made a stop over at Kota Kinabalu when the pilot noticed the plane's low fuel supply at about 4:00 P.M. of October 8, 1978. The subject aircraft thereafter left Kota Kinabalu for Manila.

In the meantime, informed of the scheduled arrival of the subject aircraft from Singapore by Atty. Victor Tantoco, Mrs. Paz Capistrano, Assistant Administrative Officer of Aero Service Corporation, on October 7, 1978, verbally notified customs and immigration authorities about the expected arrival of the subject aircraft at 10:00 P.M. of the same date. (See affidavit of Mrs. Paz Capistrano, pp. 70-71, Customs rec.; and her testimony, p. 140, Customs rec.)

Acting on the confidential information received by team members under Mission Order No. 016-78 dated October 5, 1978, the National Customs Police immediately conducted surveillance of the landing premises while waiting for the arrival of subject aircraft. (See Report of National Customs Police pp. 92-94, Customs rec.) In the evening of October 8, 1978, at about 8:15 P.M., the subject aircraft arrived and landed directly and proceeded to the Domestic Airport, where customs police, with two customs examiners, a customs inspector and an immigration officer were on hand to meet it. (See Testimony of Bienvenido Bumanlag, p. 193 see also pp. 92-94 Customs rec.) After the crew and passengers alighted from the aircraft, Mrs. Paz Capistrano handed a manifest to the Customs Inspector, Resurrecion Regala, reflecting therein (Manifest) the word "Nil" under the column contents for cargo (See manifest, p. 91, Customs rec.) which means that no cargo was loaded on board the subject aircraft. Thereafter, the hand carried baggages of the crew and passengers were examined and the same were cleared and subsequently released to them. (Testimony of Sgt. Federico Vinuya, p. 226, Customs rec.)

However, they found the subject aircraft loaded with cargoes contrary to the "Nil" recording in the manifest, and considering that it was already midnight, the Customs and Military Authorities decided to seal the plane. (Testimony of Resurrecion Regala, p. 174, Customs rec.)

On November 10, 1978, on instructions or orders by the Chief of the Aircraft Operation Division, Bayani Fernandez, Customs Inspector Oscar Letim went to the Aero Service Hangar to assist and coordinate with the Military Authorities under Col. Jose Zumel regarding the transfer of the sealed aircraft from the Aero Hangar to the Manila International Airport for the very purpose of examining and unloading the cargoes. (See report of investigators, dated Nov. 3, 1978, p. 56, Customs rec.) Customs Inspector Oscar Letim (See also pp. 205-207, of the Customs rec.) testified that when he alighted from the aircraft, the co-pilot of the subject aircraft presented to him a cargo manifest for his signature but he refused to accept and sign the same (see subsequent manifest p. 99 Customs rec.), and his second and subsequent manifest was received by Col. Zumel on the same date, October 10, 1978. (Testimony of Oscar Letim, pp. 203-204, Customs rec.)

In the course of their search, it was discovered that beneath the flooring of the aft Belly Section of said aircraft, were commercial quantity of goods, such as, 167 units of 3 band Radio Cassettes and boxes of grapes, valued in the amount of ₱1,454,388.83. (See p. 101, Customs rec.; p. 59, Report of Investigators, and Inventory reports pp. 20-23, Customs rec.) Consequently, the aforesaid cargoes in commercial quantity, having appeared to be unmanifested, a warrant of seizure and detention was issued against these cargoes by Agustin Arcangel, Officer-In-Charge, Customs District No. III on October 9, 1978, for violation of Section 2530 (a) of the Tariff and Customs Code, as amended and Central Bank Circular No. 247 as amended, in relation to Section 2530(f) of the same Code. (See Seizure Identification No. 2930-A-78, p. 107, Customs rec.) Considering also that the said unmanifested cargoes in commercial quantity were loaded and brought in by the subject aircraft CV 440, with Registry No. 90907, a warrant of seizure and detention was also issued on October 9, 1978 against the aforementioned aircraft. (Seizure Identification No. 2930, p. 109, Customs rec.) Administrative hearings have been conducted at the Legal Division at the Airport Customs House, and after the aforesaid formal hearing, the District Collector of Customs of Manila, on January 26, 1979, rendered a decision forfeiting the subject goods in commercial quantity as well as the aircraft which loaded and brought the goods in the country. (See pp. 264-270, Customs rec.) This decision was appealed to the Commissioner of Customs and on December 30, 1979, the latter affirmed in-toto, the decision of the former (pp. 276-281 Customs rec.) and on January 10, 1980, petitioner interposed its appeal to this Court with respect only to the forfeiture of the aircraft.

The sole issue submitted for decision is whether or not petitioner's aircraft, Convair 440, with Registry No. 90907, could be forfeited for loading and bringing in this country goods in commercial quantity in violation of Section 2530(a) of the Tariff and Customs Code.

The provision of the law relied upon by respondent, in justifying the forfeiture of the subject aircraft, is hereby quoted as follows:

> SEC. 2530. Property Subject to Forfeiture Under Tariff and Customs Law.- Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subject forfeiture:
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> a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or conveying and/or transporting contraband or smuggled articles in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of contraband or smuggled article in commercial quantities shall subject such vessel, vehicle, aircraft or any other craft to forfeiture; Provided, That the vessel, aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;

Petitioner contends that the forfeiture of its subject aircraft has no basis because there exists no attempt to smuggle cargoes since the said cargoes are covered by manifest, and if there was any violation, it was only a failure to supply the requisite manifests to the official concerned. Besides, petitioner has nothing to do and had absolutely no knowledge that the aircraft was transporting the said cargoes, and when the pilot and co-pilot were negotiating for the payment in kind of the damages due to the unilateral cancellation of the charter agreement by the charterer, they were only acting by themselves without the consent and authority from the petitioner. (p. 7-8, CTA rec.)

Respondent, on the other hand contends that forfeiture of the subject aircraft is justified because the cargoes loaded thereto were unmanifested and, furthermore, it belongs to the category of articles the importation of which is contrary to Central Bank Regulation 247, rendering the said cargoes forfeitable together with the aircraft which transported the same, since seizure proceeding is directed against the "res" (thing) and the knowledge, consent, and good or bad faith of the petitioner is immaterial. (p. 40, CTA rec.)

As regards the contention of petitioner to the effect that the cargoes at the time of its arrival were manifested and therefore forfeiture of aircraft is unjustified is without merit. To begin with it is to be noted that there is no dispute to the fact that upon arrival of the subject aircraft, the pilot presented to Mrs. Paz Capistrano the manifest which, in turn, handed it to the Customs Inspector Resurrecion Regala wherein the word "nil" appears under the column cargo was indicated, meaning, that no cargo was loaded in the aforesaid aircraft. This aforesaid aircraft upon its arrival immediately proceeded to its hangar at the domestic airport. (See Testimony of Sgt. Federico Venuya, p. 228 Customs rec.; See also affidavit of Resurrecion Regala, pp. 89-90, Customs rec.) Petitioner insisted that the aforesaid commercial cargoes in quantity were actually manifested, but said manifest was only left in the personal belongings of the co-pilot, Captain Juane, which manifest was purportedly inside the plane when the said aircraft was sealed by Customs police, and said manifest was presented to Col. Zumel in due time i.e., on October 19, 1978, when the authorities decided to unseal the aircraft and unloaded the cargoes in question. (See Affidavit of co-pilot Captain Juane pp. 79-81, Customs rec.; also testimony of said co-pilot p. 132, Customs rec.)

We are not convinced that the subject cargoes were then manifested before their arrival. The fact is that the first manifest presented shows that word "nil" appears under the column cargo, which means that no cargo at all was loaded in the said aircraft. If it is true that the goods were manifested, then the word "NIL" should not have been placed under the column cargoes in the first manifest. It is also noted that the petitioner has not controverted the original manifest and if there really existed a subsequent manifest at the time of the arrival of the said cargoes, the pilot should have immediately presented it to the proper authority together with the original manifest considering that the manifest is a vital document required by every vessel or aircraft coming from foreign countries, and considering that the pilot in command has the primary obligation to have the necessary papers presented to the proper authority upon landing of its aircraft in the country, and having failed to present the cargo manifest upon its arrival of the said aircraft, we are of the belief that the law was clearly violated in this case and, therefore, forfeiture of the said cargoes are justified. Furthermore, it appears that when the cargoes were discovered by the authorities in commercial quantities beneath the flooring of the aforesaid aircraft, this clearly indicates that the cargoes were smuggled and hidden from the proper authorities. We take note that when the aforesaid cargoes were brought into the country, the pilot and co-pilot were so evasive that they could not pin-point who the owner is of the aforesaid cargoes, which is indeed very unusual, considering that the loading were conducted under the direct supervision of the said pilots (pp. 72-81, and 74-76, Customs rec.) Above all, as can be gathered from the very administrative hearing, there exists no claimant over the aforesaid goods, nor did anyone enter its appearance to defend the legality of the importation despite due notice of the aforesaid hearing before the Legal Division at the Airport Customs House. This shows that the subsequent manifest was merely prepared and presented to the proper authority after the discovery of the smuggled goods in commercial quantity. With all these circumstances, we are convinced that the subject cargoes were unmanifested, and, therefore, forfeiture is justified pursuant to the provision of the said law of the Tariff and Customs Code.

We agree with petitioner that the records of the instant case will reveal that no evidence whatsoever has been established by respondent to show that the petitioner has really knowledge or has consented that the aforesaid cargoes should be loaded in its subject aircraft. During the hearing before the Court, petitioner was able to establish thru the testimony of the President of petitioner's corporation, Mr. Roque Anlan, to the effect that the loading of the cargoes were exclusively done by the pilot and co-pilot without the blessing of the petitioner herein, and that petitioner was expecting that the aircraft will be manned by its regular pilot, Captain Valerio, and not Captain Mission and co-pilot, Captain Jucno. The substitute pilots have never been authorized by petitioner herein. The substitution of pilots was effected apparently by petitioner's lawyer Victor Tantoco, due to the absence of the regular pilot Captain Valerio and in good faith.

Mr. Roque Ablan declared under oath:

Q. Now, pursuant to this contract, do you know what was done with that aircraft Convair 440 bearing Serial No. N-90907?

A. Yes, sir, I was informed because I was out of the country. I make periodical calls to my office when I am out of the country, and I was told that based on the charter agreement, it went to Singapore to fulfill a contract that was signed by my representative.

Q. And you are referring to this contract Exhibit H?

A. Yes, however, I ---

Q. Was it able to leave for Singapore? Do you know if it was able to leave for Singapore?

A. Yes, sir, but as I was trying to clarify my answer ---

Q. Okay, go ahead.

A. --- I was so mad because the pilot that was supposed to fly was, at the last hour, changed and Captain Mission and Captain Juarne were the ones who flew the aircraft to Singapore.

Q. Who was the pilot that was supposed to fly this aircraft to Singapore, if you remember?

A. I authorized only Captain Valerio to fly the aircraft.

Q. Now, when did you come to know that instead of Capt. Valerio, the pilots that flew the aircraft were Capt. Mission and Capt. Juanno?

A. At the day it flew.

Q. After it has flown?

A. I would not be able to ascertain at that time because when I called up my office, my law office, they told me that it was Capt. Mission and Captain Juane that was going to man the aircraft or was flying the aircraft, and I do not know it at that time that I talked to them the aircraft has already flown.

Q. I see.
Now, Mr. Ablan, I mean, you said that you constantly get in touch with your office, where were you at that time, that was the time when this aircraft flew to Singapore?

A. It was so fast I do not know whether I was still in Moscow or I was still in New York.

Q. But you were in one of those two places?

A. Yes, in that week I was in two places.

Q. Now, did you know while you were in one of those two places what happened to this aircraft after it has flown to Singapore?

A. The next time I called up my office, I was informed that the charterer were not complying with the agreement, so, I told them; If that is the case, send the aircraft home.

Q. Now, do you know if the aircraft, this particular aircraft was brought back from Singapore after failure of the charterer to comply with its commitment?

A. Yes, I found out later on that it went home, but I do not know when it was supposed to leave, I do not know who was going to be riding in it except that I instructed then that the captain and his co-pilot and my representative --- no, and the two bring the aircraft home immediately, because I said, If they could not meet or comply, they should send back the aircraft.

Q. Now, <u>did you authoriz[e] anybody</u>, <u>particularly the crew of this aircraft</u>, <u>to load any cargo on its way back from Singapore to Manila?</u>

A. <u>No, as a matter of fact</u>, <u>as I told you</u>, <u>I do not even want these two pilots to fly this aircraft, more reason I do not want them to do anything</u>.

Q. Did you come to know before the departure of this aircraft from Singapore to Manila that it was carrying any cargo.

A. No.

Q. When did you for the first time come to know if you did that this aircraft arrived in Manila with cargoes?

A. Well, the next thing I knew was when I called up Manila they told me that it has been apprehended for allegedly carrying narcotics. So I have to fly home immediately and I instructed my law office to send people to the constabulary anti-narcotics to make a thorough examination of the aircraft and told my lawyer to have all the goods that were brought in to be confiscated."

(Pp. 8-13, Hearing of Nov. 23, 1982. <u>Underlining supplied.</u>)

The same witness Mr. Roque Ablan further testified as follows:

Q. Yes, but somebody in your company did approve the appointment of these two pilots to fly them to Singapore?

A. They were not, I would say, appointed but they were only taken as substitute, the practice in the airport is, when there are pilots that on stand by, and even in commercial airlines they have stand by pilots, and they put them in just so they would not pay any penalties for a contract that is existing. But as far as I know, these two pilots were taken in as substitute but I have not approved of their substitution.

Q. You, as an officer of the company, did not approve the designation of these two pilots to fly the aircraft to Singapore but somebody in your company must have approved the designation of these two pilots.

A. Yes, I would supposed so.

Q. Do you know who in your company approved the designation of these two pilots to fly the aircraft to Singapore?

A. I believe it was Mr. Tantoco. He was also the one authorized to look into the contract.

Q. And Mr. Tantoco was also authorized to designate in the absence of Mr. Valerio whoever was available to fly the aircraft?

A. No.

Q. So would you like this Court now to believe that Mr. Tantoco took it upon himself to designate somebody else to fly that Aircraft?

A. Yes.

Q. Not sanctioned by the company?

A. No, because he never even asked my legal officer or two of my directors who were at that time in Manila.

Q. So now you want this Court to believe that it was a personal act of Mr. Tantoco in designating these two pilots in place of Capt. Valerio?

A. It was a personal act in good faith in order that we will not be paying damages for the non-operation of the flight from Manila to Singapore.

(T.S.N. pp. 21-23, Hearing of November 23, 1983. Underlining supplied.)

Definitely, petitioner had no knowledge nor consented to the commission of the acts by the substitute pilots when the subject aircraft were loaded with commercial quantity of goods. These acts were considered personal acts of the substitute pilots which petitioner had nothing to do with. No evidence whatsoever was established by respondent linking petitioner of having knowledge and/or consented to the illegal act committed by the substitute pilots by loading and bringing in the commercial quantity of cargoes thru the said airplane. Furthermore, it is noted that the owner of the subject aircraft, petitioner herein, defended himself that he came to know only of the illegal act of loading the commercial quantity of cargoes by the substitute pilots after the subject aircraft was apprehended by the proper authority. (T.S.N. pp. 12-13, Hearing of November 23, 1982.) The most recent jurisprudence on this subject of forfeiture however is the principle that: The fact that petitioner has no knowledge of the illegal act of the pilot of an aircraft does not make the aircraft immune from forfeiture because this action of forfeiture against the aircraft is a proceeding *in rem*; hence, it is directed against the *res*. This is the holding of the Supreme Court in its decision in the case of Commissioner of Customs vs. Court of Tax Appeals, et. al., G.R. No. L-31733, promulgated on September 2, 1985, and we quote:

> The imperative question presented to Us in this appeal is whether or not the motor boat M/B "Maria Victoria-P" is subject to forfeiture under the Tariff and Customs Code, particularly paragraphs (a) and (b) of Section 2530.
>
> xxx xxx xxx
>
> M/B "Maria Victoria-P" was a vessel duly authorized to engage in coastwise trade. It is undisputed and, in fact, established that it was used in the illegal importation of blue seal cigarettes. Thus, the law applicable is paragraphs (a) and (b), Section 2530 of the Tariff and Customs Code which states:
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> > "SEC. 2530. Property Subject to Forfeiture Under Tariff and Customs Law. -- Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subject to forfeiture:
> >
> > > "a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and or transporting contraband, or smuggled article in commercial quantities into or from any Philippine port or place, and any vessel which, being of less than thirty tons capacity shall be used in the importation of articles into any Philippine Port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle,

> aircraft or any other craft to forfeiture: Provided, That the vessel, vehicle, aircraft or any other craft is not used as a duly authorized common carrier and as such a carrier it is not chartered or leased;
>
> "b. Any vessel engaging in the coastwise trade which shall have on board any article of foreign growth, produce, or manufacture in excess of the amount necessary for sea stores, without such article having been properly entered or legally imported."

Pursuant to the aforesaid provision, the vessel is clearly subject to forfeiture in favor of the Government. Forfeiture proceedings are in the nature of proceedings *in rem* (Vierneza vs. Commissioner of Customs, 24 SCRA 394) and are directed against the *res*. The fact that private respondent has allegedly no actual knowledge that M/S "Maria Victoria-P" was used illegally does not render the vessel immune from forfeiture. This is so because the forfeiture proceedings in this case was instituted against the vessel itself. Private respondent's defense that he has no actual knowledge that the vessel was used illegally is personal to him but cannot absolve the vessel from liability of forfeiture. (Underlining ours.)

Moreover, the aforequoted provision prescribes in an unequivocal term the imposition of the penalty of forfeiture in cases of unlawful importation of foreign articles regardless of whether such importation occurred with or without the knowledge of the owner of the vessel. (Underscoring ours.)

In United States vs. Steamship "Rubi" (32 Phil. 239); this Court, in resolving the question of whether or not the innocence of the owner in the illegal importation of foreign articles can withdraw the ship from the penalty of confiscation, said:

> "The vessel which commits the aggression is treated as the offender, without any reference whatsoever to the character or conduct of the owner. x x this is done from the necessity of the case, as the only adequate means of suppressing the offense or wrong. xx xx The doctrine also is familiarly applied to cases of smuggling and other misconduct under our revenue laws; and x x x embargo and non-intercourse acts. xx xx The same thing applies to proceeding *in rem* or seizures in admiralty. xx xx the acts of the master and crew, in cases of this sort, bind the interest of the owner of the ship, whether he be innocent or guilty."

WHEREFORE, the decision of the Commissioner of Customs appealed from is hereby AFFIRMED, with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, January 9, 1986.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge
In the result.

ALEX Z. REYES
Associate Judge