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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DELTA AIR CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2546

COMMISSIONER OF CUSTOMS,
Respondent.
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6/30/80

D E C I S I O N

Petitioner Delta Air Corporation has appealed from the decision of respondent Commissioner of Customs dated November 9, 1972 declaring its Cessna aircraft PI-C1706 forfeited in favor of the Government of the Philippines for having allegedly violated Section 2530(a) of the Tariff and Customs Code.

The facts of the case are not in controversy. As alleged by petitioner in its petition for review and admitted by respondent in his answer:

> 1. Petitioner is a corporation organized and existing under the laws of the Philippines with offices at Manila Domestic Terminal, Pasay City; while respondent, who is being sued in his official capacity, is the government authority in charge of the enforcement of the Customs and Tariff Code of the Philippines and may be served with summons and other processes at the Bureau of Customs, Port Area, Manila;
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> 2. On February 20, 1970, a Cessna aircraft, PI-C1706 (not PI-C1707) belonging to petitioner was apprehended and detained by the Philippine Constabulary, Bulacan Provincial Command, allegedly for being loaded with imported untaxed cigarettes consisting of two (2) cases and 335 loose cartons of Champion brand at Plaridel Airport, Bulacan;

3. Subsequently, the Collector of Customs for the Port of Manila, Bureau of Customs, placed the aircraft before seizure proceedings under Seizure Identification No. 11405 filed by the Bureau of Customs; the case was later docketed as Customs Case No. 71-26;

4. The Anti-Smuggling Action Center (ASAC) acted as prosecutor in said case, and during the proceedings thereof, petitioner established the following:

a) At the time of its seizure, the aircraft was on charter from petitioner by certain Mr. and Mrs. Rosales for a flight from Manila to Calbayog where it was supposed to remain overnight and return the next day to Manila, for a consideration of ₱1,400.00, ₱700.00 of which was paid in advance;

b) Petitioner exercised due diligence of a good father of a family in the selection and supervision of Capt. Gener del Rosario who was the pilot of the aircraft, said captain having been hired by petitioner for his good record as a pilot;

c) Petitioner had completely no knowledge that its aircraft chartered by above Mr. and Mrs. Rosales was to be used or was actually used in carrying the imported untaxed cigarettes in question.

5. After the parties rested their cases, the Collector of Customs rendered a Decision on May 28, 1971, the dispositive portion of which reads:

> "WHEREFORE, by virtue of the authority vested in this office under Sec. 2312 of the Tariff and Customs Code, it is hereby ordered and decreed that the cigarettes subject of seizure in Seizure Identification No. 11405 be, as they are hereby declared, forfeited; while the seized plane be, as it is hereby declared, released upon proper identification and after the claimant has paid the fine of TWO THOUSAND PESOS (₱2,000.00) which is hereby imposed, within the period of fifteen (15) days from the date of

finality of this decision, but should claimant fail to pay the said fine the same shall be imposed against the plane as provided in Sec. 2532 of the Tariff and Customs Code. Claimant is further warned against the repetition of the offense on pain of suffering heavier penalty.

Let copies of this decision be furnished all concerned including the office having jurisdiction over air pilots for their information, guidance and appropriate action.

SO ORDERED.

A copy of such Decision is hereto attached as Annex "A" and made an integral part thereof;

6. After receipt of a copy of said Decision, petitioner, desirous of terminating the case as its legitimate business as an air travel operator was being prejudiced by such case faithfully complied with the Decision by paying on June 11, 1971 the ₱2,000.00 fine imposed. Xeroxed copies of the Statement of Fine dated June 11, 1971 and Receipt for the payment of fine dated June 11, 1971 are hereto attached as Annex "B" and "C" and made integral parts hereof;

7. On July 2, 1971, the Anti-Smuggling Action Center filed a Motion for Reconsideration of Decision of S.I. Nos. 11405 & 11405-A - Only As To Penalty Imposed On Aircraft PI-C1708, arguing that the Collector of Customs erred in not imposing on petitioner the penalty of forfeiture of the aircraft, and on July 14, 1971 the Collector of Customs issued an Order denying such Motion for Reconsideration. A copy of said Order is hereto attached as Annex "D" and made an integral part hereof;

8. On July 26, 1972 and July 27, 1972, the Anti-Smuggling Action Center filed with the Collector of Customs a Notice to Review and Notice of Appeal From Collector To Commissioner of Customs, respectively, appealing the Decision dated May 28, 1971 of the Collector of Customs as well as the Order dated July 14, 1971 denying the Motion for Reconsideration to respondent as Commissioner of Customs;

9. On November 9, 1972, deciding the appeal -- with no additional evidence adduced-- of the Anti-Smuggling Action Center, respondent promulgated a Decision, the dispositive portion of which reads:

> "WHEREFORE, the decision appealed from is hereby modified. The aircraft PIC 1708 (should be PI-C1706) CESSNA 206, belonging to the Delta Air Corporation is hereby declared forfeited in favor of the Government for having found to have violated Section 2530-A of the Tariff and Customs Code of the Philippines. It appearing that the subject aircraft had previously been released under Surety Bond CICP Bond No. 14745C(22)-00001 in the amount of One Hundred Thousand Pesos (₱100,000.00), the Collector of Customs of Manila is hereby directed to order the return of the subject aircraft to the Bureau of Customs. In case of failure to effect the return of said aircraft, then appropriate action should be taken against the said Surety Bond.
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> "SO ORDERED."

A copy of such Decision is hereto attached as Annex "E" and made an integral part hereof;

10. Petitioner was served a copy of said Decision on December 19, 1972;

11. On December 29, 1972, petitioner filed a Motion for Reconsideration of the above Decision contending, with authorities, that:

a) The Collector of Customs, after due hearing, has the authority to determine the penalty or penalties to be imposed in seizure cases; and

b) The right to appeal from a decision of the Collector of Customs to the Commissioner of Customs belongs only to movant-claimant (petitioner herein), the aggrieved party.

A copy of that Motion for Reconsideration is hereto attached as Annex "F" and made an integral part hereof;

12. On July 5, 1973, respondent issued an Order denying such Motion for Reconsideration. A copy of said Order is hereto attached as Annex "G" and made an integral part hereof;

13. On August 2, 1973, petitioner was served a copy of the above Order, hence this Petition for Review before this Honorable Court within the 30-day reglementary period for appeal, excluding the period during the pendency of the Motion for Reconsideration and after exhausting administrative remedies;

There seems to be no quarrel between the parties that the subject aircraft had violated Section 2530(a) of the Tariff and Customs Code which provides, insofar as pertinent hereto at the time this case arose, that "Any vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles into or from any Philippine port or place except a port of entry" shall be subject to forfeiture. As ruled by the Supreme Court in C.F. Sharp & Company, Inc. vs. Commissioner of Customs, L-23802, February 26, 1968, 22 SCRA 760:

> There is no question that M/L Cheton was apprehended carrying untaxed cigarettes of foreign origin without the necessary papers showing that they were entered lawfully through a port of entry. There is no question also that said cigarettes were liable for forfeiture pursuant to the Customs and Tariff Code. On the basis of the aforestated facts, the conclusion is inevitable that the M/L Cheton was used in connection with unlawful importation of said cigarettes. The burden was therefore shifted to the boat's owner to show that the carriage by M/L Cheton of the smuggled cigarettes was lawful. No such showing was made.

> Hence, the Court of Tax Appeals committed no error in ordering the forfeiture of the launch in question. By way of comment on petitioner's stand, it would be absurd to require the Government to prove that a vessel was engaged in smuggling, after it has already been caught red-handed, that is, loaded with smuggled goods.

The collision occurs at the proposition whether the Collector of Customs of Manila has the discretion to waive forfeiture and in lieu thereof impose a fine.

Four-square with the instant case on this point, in view of the exact similarity of the law involved and the issue litigated, is Francisco D. Balmocena vs. Commissioner of Customs, CTA Case No. 1585, July 31, 1966.

In that case, the petitioner therein, who is engaged in the fishing industry, is the owner-operator of the vessel M/B "Don Gerardo-B", together with seven other fishing boats. While the M/B "Don Gerardo-B" was docked at Pier 4, North Harbor, Manila, Customs and PCAPE (now ASAC) agents duly armed with a search warrant searched the boat. Fifty-four cases of "Old Gold" blue seal cigarettes and other assorted highly dutiable articles, such as playing cards, printed bedsheets and haslenut milk blocks, were discovered inside the front end of Hatch No. 4 of the boat, which were all of foreign origin the corresponding taxes and duties of which were not paid.

Seizure proceeding was thus commenced against the fishing boat for violation of Section 2530(a)(b)(c) of the Tariff and Customs Code by the Collector of Customs of Manila. It was shown during the hearing at the Bureau of Customs that the owner-operator of the fishing boat had express instruction requiring the crew members to comply strictly with Customs Rules and Regulations, but the blue seal cigarettes and other untaxed items were loaded on board the vessel without the knowledge and consent of the captain and other crew members. The Collector of Customs rendered a decision decreeing the forfeiture of the fishing boat which, upon appeal, was affirmed in toto by the Commissioner of Customs. Petitioner therein thus appealed to this Court arguing, among others, that assuming arguendo that the vessel involved is subject to seizure, the Collector of Customs committed grave abuse of discretion in imposing the penalty of forfeiture instead of a fine considering the mitigating circumstance of lack of knowledge of the claimant-petitioner. This Court, speaking through the then Presiding Judge Roman M. Umali, ruled that it is discretionary for the Collector of Customs to waive forfeiture and in lieu thereof, impose a fine. Because of its decisive effects on the case at bar, we will quote at length from the decision.

> At first, this Court entertained serious doubt whether or not a fine may be imposed upon an offending vessel or aircraft for violation of Section 2530 of the Tariff and Customs Code. For this reason, an order was issued on February 28, 1966, requiring both parties to submit memorandum on the question whether or not a fine may be

imposed in lieu of forfeiture in cases arising under Section 2530 of said Code. Both counsel for petitioner and the office of the Solicitor General express the view that there is sufficient authority for the imposition of a fine in lieu of forfeiture, citing Sections 2312, 2532 and 2533 of the Tariff and Customs Code.

Under the old Customs Law, it was expressly provided that a fine could be imposed in lieu of forfeiture. (Sec. 1365, Adm. Code.) This discretionary power to impose a fine in lieu of forfeiture was recognized in Venancio Carreon Tong Tek v. Com., C.T.A. No. 135, Nov. 21, 1956, affd., in G.R. No. L-11947, June 30, 1959, 58 O.G. 5444. Notwithstanding the failure of Congress to reenact Section 1365 of the Administrative Code as part of the new Tariff and Customs Code, we agree with the Solicitor General and counsel for petitioner that such discretionary power exists. In seizure proceedings against a vessel or aircraft for violation of Section 2530 of the Tariff and Customs Code, it is no defense that the owner or owners had no knowledge of the offense or of the attempt to commit the offense charged. It would, therefore, be patently unjust, not to say highly arbitrary, to order the seizure and forfeiture of an ocean liner or an aircraft engaged in international trade, which cost millions of pesos, for an illegal act of a member of the crew of the vessel or aircraft, or by a mere passenger, without the knowledge or consent of the owner or owners of the vessel or aircraft.

In this case, it is admitted that the owners of the vessel in question, petitioner and his wife, had no knowledge of the illegal act of a member of the crew of the vessel in surreptitiously loading and concealing the aforesaid articles in said vessel; that petitioner, prior to the apprehension of the vessel, had issued a memorandum instructing the members of the crew of the fishing vessel not to load contraband articles in said vessel nor to engage in any activity in connection with blue seal cigarettes; and that the owner of said contraband articles was immediately dismissed by petitioner and was subsequently

> prosecuted for violation of the revenue laws. In view of these circumstances, we find that the imposition of a fine of ₱10,000.00,in lieu of forfeiture, would be an adequate penalty. In arriving at this conclusion, we have also taken into account the fact that the seizure of the vessel and its subsequent impounding by the Bureau of Customs resulted in the deterioration thereof and caused damages to petitioner in the amount of approximately ₱50,000.00, according to an estimate made by appraisers of said Bureau.

In Manila Star Ferry, Inc. vs. Commissioner of Customs, CTA Cases Nos. 1836, 1837 and 1839, September 30, 1969, where the factual setting is similar to that in the case at bar, this Court unequivocally reiterated the foregoing rule in the following words:

> In proceedings for forfeiture of an article for violation of Customs Law, lack of knowledge or consent of the owner in regard to the violation does not relieve the offending vessel from liability, although such fact may be considered in the determination of the appropriate penalty. (U.S. v. Rubi, 32 Phil. 228). In this case, considering that the said vessels were merely hired by persons who made use of them illegally without the knowledge or consent of the owners thereof, and in line with the decisions of this Court in previous cases (See Balmocena v. Commissioner, C.T.A. No. 1585, July 31, 1966; Pascual v. Commissioner, C.T.A. No. 1608, Sept. 30, 1969), we have decided to impose, in lieu of forfeiture, a fine of ₱5,000.00 each on the lighter "ORESTES" and the tugboat "UN-L-106."

There is no valid reason for us not to apply to petitioner herein the ruling of the Court in Balmocena and Manila Star Ferry, Inc., supra, as well as other cases cited therein, for Delta Air Corporation is similarly situated. Respondent Commissioner of Customs admits in his answer that:

(a) At the time of its seizure, the aircraft was on charter from petitioner by certain Mr. and Mrs. Rosales for a flight from Manila to Calbayog where it was supposed to remain over-night and return the next day to Manila, for a consideration of ₱1,400.00, ₱700.00 of which was paid in advance;

(b) Petitioner exercised due diligence of a good father of a family in the selection and supervision of Capt. Gener del Rosario who was the pilot of the aircraft, said captain having been hired by petitioner for his good record as a pilot;

(c) Petitioner had completely no knowledge that its aircraft chartered by above Mr. and Mrs. Rosales was to be used or was actually used in carrying the imported untaxed cigarettes in question.

In view of these circumstances and considering that the subject aircraft was merely hired by persons who made use of it illegally without the knowledge or consent of the owner-petitioner hereof, in line with the aforementioned decisions, it seems clear that the Collector of Customs may waive the penalty of forfeiture and in lieu thereof impose a fine.

In his answer to the petition for review, respondent avers however as special and affirmative defenses that:

5. The Commissioner of Customs has the authority to approve, modify, or reverse the action or decision in this case of the Collector of Customs (Section 2313 of the Tariff and Customs Code of the Philippines);

6. The Tariff and Customs Code grants the party aggrieved by the decision of the Collector of Customs fifteen (15) days within which to appeal to the Commissioner of Customs (Sec. 2313, ibid). Partial performance or execution of the decision by the party favored by said decision is no bar to the right of the party aggrieved to appeal, nor does such partial performance render the decision of the Collector of Customs final;

7. The Collector of Customs, when presiding over a seizure proceeding, sits as an independent judge or tribunal wherein the Government and the private party are given equal opportunities to present evidence in their behalf (Gov't of P.I. and McCoy vs. Gale and McMicking, 24 Phil. 95, Pacis vs. Averia, L-22526, Nov. 29, 1966). When the decision of the Collector of Customs is adverse to the Government, the latter becomes the "person aggrieved" who is given the right to appeal under said Section 2313. The term "person aggrieved" does not preclude the Government from appealing, since Section 3514 of the Tariff and Customs Code of the Philippines defines the term "person" as follows:

> "'Person' whether singular or plural refers to an individual, partnership, association, company or any other kind of organization."

Since the Government is a judicial person (Art. 44, Civil Code of the Philippines), the appeal taken by it in this case from the decision of the Collector of Customs is, therefore, allowed by law.

As already stated above, after receipt of a copy of the decision of the Collector of Customs of Manila imposing a fine of ₱2,000.00 on petitioner, the latter, desirous of terminating the case as its legitimate business as an air travel operator was being prejudiced by such case faithfully complied with the decision by paying on June 11, 1971 the ₱2,000.00 fine imposed. However, on July 26, 1972 and July 27, 1972, the Anti-Smuggling Action Center (ASAC), allegedly on behalf of the Government of the Philippines, filed with the Collector of Customs a notice to review and notice of appeal from collector to commissioner of customs, respectively, appealing the decision dated May 28, 1971 of the Collector of Customs as well as the order dated July 14, 1971 denying the motion for reconsideration to respondent Commissioner of Customs. And on November 9, 1972 respondent Commissioner of Customs promulgated a decision modifying the judgment appealed from by declaring forfeited in favor of the Government the Cessna aircraft PI-C1706 in question.

The next issue that presents itself therefore is: Whether or not the Anti-Smuggling Action Center can still elevate the decision of the Collector of Customs on appeal to respondent Commissioner of Customs after full compliance and satisfaction thereof by petitioner.

Section 2307 of the Tariff and Customs Code, at the time this case arose, provides as follows:

> SEC. 2307. Settlement of Case by Payment of Fine or Redemption of Forfeited Property. - If, in any seizure case, the owner or agent shall, while the case is yet before the Collector

> of the district of seizure, pay to such Collector the fine imposed by him or, in case of forfeiture, shall pay the appraised value of the property, or, if after appeal of the case, he shall pay to the Commissioner the amount of the fine as finally determined by him, or, in case of forfeiture, shall pay the appraised value of the property, such property shall be forthwith surrendered, and all liability which may or might attach to the property by virtue of the offense which was the occasion of the seizure and all liability which might have been incurred under any bond given by the owner or agent in respect to such property shall thereupon be deemed to be discharged.
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> Redemption of forfeited property shall not be allowed in any case where the importation is absolutely prohibited or where the surrender of the property to the person offering to redeem the same would be contrary to law.

Adverting to the terms of the law, it is quite apparent that the importer or owner of the goods seized, by making payment and redeeming the property seized under the decision of the Collector of Customs, may terminate the case right there and there. The statute at the time this case arose employs the words - "If, in any seizure case, the owner or agent shall, while the case is yet before the Collector of the district of seizure, pay to such Collector the fine imposed by him or, in case of forfeiture, shall pay the appraised value of the property x x x such property shall be forthwith surrendered, and all liability which may or might attach to the property by virtue of the offense which was the occasion of the seizure and all liability which might have been incurred under any bond given by the owner or agent in respect to such property shall thereupon be deemed to be discharged." If under the above provisions, in a seizure case the owner or agent may, while the cause is yet before the collector, pay the fine imposed, or in case of forfeiture, pay the appraised value of the property, and thereafter such property shall be surrendered and all liability which may attach to said property by virtue of the offense causing the seizure is to be deemed discharged, the conclusion to be drawn is that it is within the power and right of an importer, owner or agent to end the case in the office of the Collector, thereby precluding any intervention by the Commissioner in the way of reviewing and revising the decision of the Collector. (Sy Man vs. Jacinto, 93 Phil. 1093.)

It may be argued that if the elevation of a seizure case to and review thereof by the Commissioner lies within the owner's exclusive power and discretion, then in cases where the Collector in his decision commits a blunder prejudicial to the interests of the Government, or renders a decision through fraud or in collusion with the importer or owner of the article, the Government cannot protect itself, specially in smuggling cases which imperil the nation's economy and breed corruption in the officialdom. It is true that reverence for precedent, simply as precedent, should not always be the rule, specially under any bond given by the owner or agent in respect to such property shall thereupon be deemed to be discharged." If under the above provisions, in a seizure case the owner or agent may, while the cause is yet before the collector, pay the fine imposed, or in case of forfeiture, pay the appraised value of the property, and thereafter such property shall be surrendered and all liability which may attach to said property by virtue of the offense causing the seizure is to be deemed discharged, the conclusion to be drawn is that it is within the power and right of an importer, owner or agent to end the case in the office of the Collector, thereby precluding any intervention by the Commissioner in the way of reviewing and revising the decision of the Collector. (Sy Man vs. Jacinto, 93 Phil. 1093.)

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At any rate, settlement of the case under Section 2307 of the Tariff and Customs Code by payment of the fine or redemption of the forfeited property does not extinguish the offender's criminal liability under Section 3601 of the same Code. Section 2307 expressly states that what are deemed discharged thereunder are only "all liability which may or might attach to the property by virtue of the offense which was the occasion of the seizure and all liability which might have been incurred under any bond given by the owner or agent in respect to such property." It limits the effects of the aforesaid settlement to liability that attaches to the property, or to the bond that replaces the property. It does not speak of the liability that falls on the person or offender. (People vs. Desiderio, L-20805, November 29, 1965, 15 SCRA 402.)

Nevertheless, the Government is not entirely without remedy in cases of erroneous decisions rendered against its interest by collectors of customs in seizure cases.

As pointed out by the Supreme Court in Sy Man vs. Jacinto:

> The argument is not without merit; but we must bear in mind that the law is promulgated to operate on ordinary, common, routine cases. The rule is and the law presumes that in seizure cases Collectors of Customs act honestly and correctly and as Government officials, always with an eye to the protection of the interests of the Government employing them. If mistakes are committed at all more often than not they are in favor of the Government and not against it, and that is the reason why when the importer feels aggrived by their decision, he is given every chance and facility to protest the decision and appeal to the Commissioner. Cases of erroneous decisions against the interest of the Government of decisions rendered in collusion and connivance with importers are the exception. To protect the Government in such exceptional cases, we find that in every seizure case, section 1378 of the Revised Administrative Code (section 2302 of the Tariff and Customs Code) requires the Collector to immediately notify the Commissioner and the Auditor General (Chairman of the Commission on Audit). It may be that this requirement has for its main purpose the recording of and accounting for the articles seized so that in case of confiscation the Commissioner and the Auditor General (Chairman of the Commission on Audit) will know what articles have become government property. But the notice will also inform the Commissioner and the Auditor General (Chairman of the Commission on Audit) of the seizure. If the seizure is important or unusual, the Commissioner may, if he so desires, order the Collector as his subordinate to withhold action on the seizure, or hold in abeyance, within a reasonable time, the promulgation of his decision until after he had conferred with the Commissioner or the latter had studied the case and given suggestions. At that stage of the proceedings before definite action is taken by the Collector, and a decision rendered by him, it would seem that any action by him as a subordinate is still subject to the supervisory authority and

> control of the Commissioner as his Chief, and the latter may still influence and direct the Collector's action if he finds occasion for doing so.

While it is true that the authority of the collector of customs to settle seizure cases under Section 2307 of the Tariff and Customs Code is now subject to the approval of the Commissioner of Customs as provided under the Tariff and Customs Code of 1978, effective June 11, 1978, revenue laws are prospective in operation unless the legislative intent that the statute operates retrospectively is distinctly expressed or necessarily implied. (51 Am. Jur. 359; Lorenzo vs. Posadas, 64 Phil. 353; Commissioner vs. Filipinas Cia de Seguros, 107 Phil. 1055.) And there is nothing in the new Tariff and Customs Code which provides, expressly or from which it can necessarily be implied, that Section 2307 as amended has retroactive effect.

It appearing that petitioner Delta Air Corporation has already paid the fine of ₱2,000.00 imposed against its Cessna aircraft PI-C1706 by the Collector of Customs of Manila in accordance with his decision dated May 28, 1971, all liability which might have attached to the said aircraft by virtue of the offense which was the occasion of the seizure and all liability which might have been incurred under any bond given by petitioner in respect to such aircraft are hereby deemed discharged pursuant to Section 2307 of the then in force Tariff and Customs Code. Accordingly, the decision of respondent Commissioner of Customs dated November 9, 1972 declaring the aircraft PI-C1706 Cessna 206 belonging to Delta Air Corporation forfeited in favor of the Government for having violated Section 2530(a) of the then in force Tariff and Customs Code cannot be sustained. Surety Bond ICP Bond No. B-14745C(22)-00001 in the amount of ₱100,000.00 filed by petitioner in the Bureau of Customs for the release of the subject aircraft is therefore considered cancelled.

WHEREFORE, the judgment appealed from is hereby declared of no effect. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, June 30, 1980.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge