REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMPAÑIA MARITIMA,
Petitioner,

versus C.T.A. CASE NO. 2492

ACTING COMMISSIONER
OF CUSTOMS,
Respondent.

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

# D E C I S I O N

This is an appeal from the decision of the respondent dated December 29, 1972, in Customs Case No. 70-2 (Manila S.I. No. 11150), declaring the forfeiture of one (1) Unit used Linkbelt Model 78 Crawler Crane and two (2) Units Yale Forklift for alleged violation of Section 2530(m-1 and 5) of the Tariff and Customs Code.

The facts, as stated in the decision sought to be reviewed are as follows:

> 1. That one (1) Unit Linkbelt Crane and two (2) units Yale Forklifts, consigned to one Antonio Aquino c/o Gateway Machinery & Equipment Corporation, arrived at the Port of Manila on July 18, 1967 ex S/S "Lingayen Gulf";
>
> 2. That consignee Antonio Aquino was found upon investigation to be a non-existent fictitious person;
>
> 3. That the carrying vessel is owned and operated by the Maritime Company of the Philippines;
>
> 4. That Maritime Company of the Philippines is a sister company of Compañia Maritima, claimant in this case;

(96)

5. That while the equipment were in transit, they were sold by one Joseph Roque, President and General Manager of Gateway Machinery & Equipment Corp., to the herein claimant Compañia Maritima;

6. That the amount paid by Compañia Maritima as purchase price of said equipment was deducted from the account of Gateway Machinery & Equipment Corp. with the Maritime Company of the Philippines;

7. That one of the conditions set forth in the deed of sale is that the seller certifies in the following tenor:

> "Of which I am the true and absolute owner per the following documents and shall forever warrant my title to the same agreeing to answer and be liable for any unpaid encumbrances, government fees and taxes existing previous to this date, if any." (Exh. 1-B)

8. That the subject shipment was originally destined for Tacloban City and upon arrival at the Port of Manila, the Maritime Company of the Philippines requested the Collector of Customs for permission to discharge it at shipside unto bonded lighter, for transfer to Pier 8, North Harbor, for delivery to original destination;

9. That Collector of Customs issued Shipside Permit No. 03532 dated July 19, 1967 (Exh. "C") and pursuant thereto, subject shipment was unloaded from carrying vessel and loaded unto lighter "Gloria" for transfer and discharge at Pier 8, North Harbor, Manila;

10. That prior to its actual transfer to Pier 8, North Harbor, Maritime Company of the Philippines filed an amendment of the original destination of the said shipment from Tacloban City to Zamboanga City, which request was duly approved by the Deputy Collector of Customs of Manila;

11. That per Customs Boat Note No. 09911,

the subject shipment was among those unloaded at Pier 8, North Harbor from lighter "Gloria", a fact acknowledged by Customs Wharfinger Cipriano Payos and Customs Guard Lauro Janolo;

12. That there is no evidence to prove that the subject shipment was delivered to its consignee at the port of destination which is Zamboanga City;

13. That there was likewise no evidence to prove that the corresponding customs duties and taxes due thereon were duly paid to the Bureau of Customs;

14. That the subject equipment were found in the possession of the claimant, Compañia Maritima, and they were being used by said Company in its business at Pier 8, North Harbor, Manila, on April 15, 1969, less than two (2) years from their arrival;

15. That at the time the subject shipment was unloaded at Pier 8, North Harbor, Manila from lighter "Gloria", claimant Compania Maritima was a duly authorized bonded common carrier, that is, duly authorized by the Bureau of Customs to handle and carry dutiable merchandise discharged shipside from international vessel to any port of the Philippines. (Pp. 46-47, CTA rec.; pp. 247-248, Customs rec.)

It appears that on April 15, 1969, the Collector of Customs for the Port of Manila issued a warrant for the seizure and detention of one unit used Linkbelt Model 78 Crawler Crane and two units used Forklift for non-payment of customs duty, taxes and other charges. By virtue of said warrant, the National Bureau of Investigation (NBI for short) seized from petitioner the said articles and, thereafter, seizure proceedings were instituted in the Bureau of Customs. After hearing, the Collector of Customs, on October 13, 1969, held that petitioner is a

(98)

third party purchaser in good faith and ordered the release of the said articles upon payment of the corresponding customs duty, taxes and other charges due thereon.

On November 5, 1969, the NBI filed an urgent motion for reconsideration of the Collector's decision. On May 4, 1970, the Collector of Customs reconsidered his decision of October 13, 1969 and declared the forfeiture of the said articles. On May 11, 1970, petitioner appealed to respondent.

In a decision dated September 14, 1970, respondent set aside the decision of the Collector of Customs and ordered the release of the seized articles to petitioner upon payment of duties, taxes and other charges due thereon. On September 25, 1970, the NBI moved to reconsider respondent's decision.

In a decision dated December 29, 1972, respondent set aside his decision of September 14, 1970 and decreed the forfeiture of the articles in question in favor of the Republic of the Philippines for violation of Section 2530 (m-1 and 5) of the Tariff and Customs Code. A copy of the same was received by petitioner on January 9, 1973. On February 7, 1973, petitioner filed a motion for reconsideration of the said decision. The motion was denied by respondent and a copy of the order of denial was served upon petitioner on February 23, 1973. Petitioner filed the petition for review with this Court on February 26, 1973.

This case was submitted for decision on the basis of the pleadings and the Customs records.

The issues raised in this case are as follows:

1. Whether or not an alleged Order dated April 28, 1970 denying the motion for reconsideration filed by the National Bureau of Investigation was actually promulgated by the Collector of Customs;

2. Whether or not this Court has jurisdiction to decide this case; and

3. Whether or not the equipments in question are subject to forfeiture.

We will first resolve the jurisdictional question. Under Section 11 of Republic Act No. 1125, petitioner has thirty (30) days from receipt of the Commissioner's decision within which to appeal to this Court. In the case at bar, it is to be noted that from January 9, 1973, when the final decision of respondent was received by petitioner, to February 7, 1973, the date the motion for reconsideration was filed, twenty-nine days had already expired. The running of the period was interrupted from the latter date to February 23, 1973 when the denial of the motion for reconsideration was received by petitioner. From February 23, 1973 to the filing of the present petition for review on February 26, 1973, another three days passed. All in all petitioner consumed a period of thirty-two days which is two days beyond the thirty-day period provided in Section 11 of Republic Act No. 1125.

The allegation of counsel for petitioner that he firmly believed that this Court did not hold office

(100)

on Saturdays, so that the petition for review filed the following working day should be deemed on time, is without merit.

The pertinent provision of Rule 3, Rules of the Court of Tax Appeals states:

> SEC. 3. The office of the Clerk of the Court of Tax Appeals shall be open for the purpose of receiving petitions, pleadings, motions, and the like, during the hours of eight to twelve A.M. and one to four P.M. on Mondays to Fridays, and from eight A.M. to one P.M. on Saturdays except on such days as may be designated by law or executive proclamation as being official holidays. (Underscoring supplied.)

Counsel should be aware that this Court is holding office on Saturdays. Moreover, knowing that the period to appeal is about to expire, he should have displayed alertness in safeguarding the interest of his client, and having failed to adopt such measures, he has himself to blame. (Phil. International Surety Co., Inc. v. Comm. of Customs, C.T.A. No. 760, November 7, 1963.)

Having reached the conclusion on the jurisdictional issue adverse to petitioner, we deem it unnecessary to consider the other issues.

WHEREFORE, the petition for review in the above-entitled case is hereby dismissed for lack of jurisdiction.

SO ORDERED.

Quezon City, October 14, 1975.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge

(101)