Lit

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FEEDER INTERNATIONAL LINE PTE, LTD. by its Agent FEEDER INTERNATIONAL (PHILS.), INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4166

THE HONORABLE COMMISSIONER OF CUSTOMS,
Respondent.

12/14/88

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D E C I S I O N

This is a petition filed by petitioner Feeder International Line PTE, Ltd., seeking a review and reversal of the decision of respondent Commissioner of Customs dated May 13, 1987, affirming the decision rendered by the District Collector of Customs, Port of Iloilo, on March 19, 1987, finding the vessel M/T "ULU WAI" guilty of violating Section 2530(a) of the Tariff and Customs Code of the Philippines (PD 1464), as amended, and its cargo of 1,100 metric tons of Gas Oil and 1,000 metric tons of Fuel Oil guilty of violating Section

2530(a), (f) and (1)-1 of the same Code and ordering the forfeiture of the said vessel and its cargo.

There is no substantial dispute on the facts as stated in the decision of the District Collector of Customs of Iloilo and as adopted in the decision of respondent Commissioner of Customs, to wit:

> The M/T "ULU WAI" entered Philippine territorial waters and on May 14, 1986 anchored at the vicinity of Guiuanon Island which is under the territorial jurisdiction of the Port of Iloilo, without notifying the Iloilo Customs authorities. The presence of the vessel only came to the knowledge of the Iloilo Customs authorities by information furnished by civilian informers in the area.
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> Acting on the said information, Collector Gil B. Armada, Acting District Collector of Iloilo, dispatched a Customs Team on May 19, 1986 to verify the report.
>
> The Customs Team confirmed the presence of the vessel and found out that she was loaded with 1,100 metric tons of gas oil and 1,000 metric tons of fuel oil. A tugboat M/T "Cathead" and a barge "Semirara No. 8104" were alongside the vessel.
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> Likewise, the Customs Team found out that the vessel did not have on board the required ship's and shipping documents, except for a clearance from the port authorities of Singapore clearing the vessel for "Zamboan".

In view thereof, the vessel and its cargo was held and a Warrant of Seizure and Detention over the same was issued, after due investigation.

Likewise, in the course of the hearing, the plaintiff and defendants thru counsels agreed on a stipulation of facts which were duly approved by the hearing officer.

The facts stipulated are as follows:

1. That the existence and identity of M/T "ULU WAI", subject of SI-2-86, herein identified as Exh. "A", is admitted;

2. That the existence and identity of 1,100 metric tons of gas oil, subject of SI-2-86-A, herein identified as Exh. "B", is admitted;

3. That the existence and identity of 1,000 metric tons of fuel oil, subject of SI-2-86-A herein identified as Exh. "B-1", is admitted;

4. That M/T "ULU WAI" left Singapore May 6, 1986 and was cleared by Singapore customs authorities for Zamboanga, Philippines;

5. That subject vessel arrived at Guiuanon Island, Municipality of Nueva Valencia, Sub-province of Guimaras, Province of Iloilo, Philippines, about 1120HRS, May 14, 1986;

6. That subject vessel was boarded by Customs and Immigration authorities for the first time

in the afternoon of May 19, 1986, at about 1600HRS;

7. That an apprehension report dated May 21, 1986, submitted by the Team Leader of the Customs and Immigration Team, Roberto Intrepido, marked and identified as Exh. "C" is admitted;

8. That at the time of boarding, the Master of subject vessel could not produce any ship and/or shipping documents regarding her cargo except the Port Clearance Certificate No. 179999 issued by the Port of Singapore Authority dated May 4, 1986, marked as Exh. "D" which is hereby admitted;

9. That on May 26, 1986, the Master of the M/T "ULU WAI" Capt. Romeo E. Deposa filed a Marine Protest dated same date, which Marine Protest, marked and identified as Exh. "E", is hereby admitted;

10. That the sworn statement of said Capt. Romeo E. Deposa, marked and identified as Exh. "F", given on May 26, 1986 before Atty. Hernando Hinojales, Customs Legal Officer, is admitted;

11. That the sworn statement of Mr. Antonio Torres, Owner's representative of M/T "ULU WAI", marked and identified as Exh. "G" given before Atty. Hernando Hinojales on May 28, 1986, is admitted;

12. That the sworn statement of Wilfredo Lumagpas, Master of M/T "Cathead" given before Lt. Dennis Azarraga on June 4, 1986 marked and identified as Exh. "H", is admitted;

13. That the existence of Fixture Note No. FN-M-86-05-41 entered into by and between the National Stevedoring & Lighterage Corporation and the Far East Synergy Corporation, marked and identified as Exh. "I", is admitted; and

14. That the Preliminary Report of Survey Sounding Report dated June 17, 1986, signed by J.P. Piad, Surveyor of Interport Surveying Services, Inc. and duly attested by Ernesto Cutay, Chief Officer of the M/T "ULU WAI", marked and identified as Exh. "J" is also admitted.

Likewise, the records show that after the government had rested its case on September 1, 1986 in the consolidated seizure proceedings (Seizure Identification No. 2-86 for the vessel and Seizure Identification No. 2-86-A for the cargo) which were instituted on May 30, 1986 and jointly heard initially on July 7, 1986, petitioner Feeder International Line PTE, Ltd., owner/claimant of the vessel "ULU WAI" and its cargo, filed a "Motion To Dismiss and To Quash Warrants of Seizure and

Detention" on December 5, 1986 on the ground that the government failed to establish the existence of probable cause on the basis of the evidence presented, but said motion was denied by the District Collector of Customs of Iloilo on December 12, 1986.

Consequently, on January 13 and 20, 1987, petitioner presented its evidence consisting of the testimonies of Mr. Wilson Lim, President of Feeder International (Phils.), Inc. and Captain Romeo Deposa, Master of the vessel M/T "ULU WAI" and Exhibits "1", "2", "3", "3-A", "3-B", "3-C", "4", "4-A", "4-B", "4-C", "5", "6", "7", "8" and "9" to establish the defense that the vessel M/T "ULU WAI" drifted to Guiuanon Island, Guimaras, Iloilo, "in distress" and that her cargo of gas oil and fuel were covered by the necessary shipping documents, namely:

> 1. Local Purchase Order dated April 28, 1986 issued by Pogun Construction SDN - BHD with offices at Pogun House, Tuanon Road, Kota Kinabalu, Sabah, East Malaysia. (Exh. 2)
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> 2. Bill of Lading issued on May 5, 1986 by Feeder International Line PTE, Ltd., with address at 10 Anson Road,

International Plaza, Singapore, covering the shipment in bulk 2,100 tons of gas oil and fuel oil, with Far East Synergy Corporation, Zamboanga, Philippines, as the consignee, and Sabah as the Port of Discharge and Singapore as the port of loading. (Exhs. 3, 3-A & 3-C)

3. The manifest containing the details of the shipment and that Feeder International Line PTE, Ltd. is the shipper and Far East Synergy Corporation is the consignee. (Exh. 4)

On March 19, 1987, the District Collector of Customs of Iloilo rendered his decision in said seizure proceedings (S.I. Nos. 2-86 and 2-86-A), the dispositive portion of which states:

> "WHEREFORE, premises considered, the M/T 'ULU WAI' is hereby found guilty of violating Section 2530(a) of the Tariff and Customs Code of the Philippines (PD 1464), as amended, while cargo of 1,100 MT Gas Oil and 1,000 MT Fuel Oil are hereby found guilty of violating Section 2530(a), (f) and (l)-1 under the same Code and are hereby forfeited in favor of the Republic of the Philippines."

which decision, on appeal, was affirmed *in toto* by the Commissioner of Customs in his decision dated May 13, 1987.

Hence, the present petition for review.

The issue for resolution is whether or not the vessel M/T "ULU WAI" and its cargo are liable to forfeiture for violation of Section 2530(a), (f) and (1)-1 of the Tariff and Customs Code, which pertinently provides as follows:

> "Section 2530. Property Subject to Forfeiture under the Tariff and Customs Law. - Any vehicle, vessel or aircraft, cargo x x x 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 the conveying and/or transporting contraband or smuggled articles in commercial quantities to or from any Philippine port or place x x x;
> >
> > xxx xxx xxx
> >
> > "f. Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation x x x;
> >
> > xxx xxx xxx
> >
> > "1. Any article sought to be imported or exported.
> >
> > (1) Without going through a customs house, whether the act was consummated, frustrated or attempted;
> >
> > xxx xxx xxx

The facts and circumstances borne by the evidence adduced in the seizure proceedings sufficiently establish that an illegal importation, or at least an attempt thereof, has been committed in this case with the use of the vessel M/T "ULU WAI", thus warranting the forfeiture of said vessel and its cargo under the foregoing provisions of the Tariff and Customs Code.

Admittedly, the vessel M/T "ULU WAI", of Hunduran Registry, came from Singapore loaded with a cargo of 1,100 metric tons of Gas Oil and 1,000 metric tons of Fuel Oil and anchored on May 14, 1986 at Guiuanon Island, Guimaras, Iloilo, which was within the territorial jurisdiction of the Philippines. It did not notify the Iloilo port or customs authorities of its arrival and when it was boarded by customs and immigration officers on May 19, 1986, after being informed of its presence, the captain or master of the vessel, Romeo Deposa, could not submit any shipping documents except a Port Clearance Certificate issued by the Singapore Port authority (Exhs."D" & "5") showing, among others, that its cargo was "bunker oil" and its destination was "Zamboan" (or as admitted, Zamboanga). Furthermore, at the time the vessel was apprehended by said customs team, a tugboat named M/T "Cathead" and a barge, "Semirara No. 8104", contracted by the consignee of the cargo, were alongside the vessel for the purpose of transferring its cargo to the barge and bringing it to Manila. Said tugboat and barge actually arrived and went alongside M/T "ULU WAI" at Guiuanon Island, Iloilo, on May 18, 1986 but the unloading of the oil could not be effected immediately because of the presence of water in the barge and it still needed cleaning.

The intent to unload or transfer the oil from the vessel M/T "ULU WAI" to the barge and to bring the same to Manila is evidenced by: (1) Sworn Statement of Wilfredo Lumagpas, Master of the M/T "Cathead" (Exh. "H", pp. 281-282, Customs rec.); (2) Fixture Note or Charter Contract (No. FN-M 86-05-41) between the National Stevedoring & Lighterage Corporation, owner/operator of the tugboat M/T "Cathead" and barge Semirara 8104 and the Far East Synergy Corporation, consignee of the cargo and ch terer; (Exhs. "I" and "I-1", p. 279, Customs rec.) and; (3) testimony of Mr. Salvador

Asencio, Jr., Operations Superintendent of Cebu Operations of National Stevedoring and Lighterage Corporation. And the fact why the oil had not been transferred to the barge until the customs authorities arrived because the barge needed cleaning and it might contaminate (or spoil) the oil is likewise substantiated by the testimonies of Salvador Asencio, Jr. (t.s.n., July 9, 1986 hearing, p. 306, Customs rec.) and Wilfredo Lumagpas, Master of M/T "Cathead" (see pp. 6-7, t.s.n., July 28, 1986 hearing, p. 308, Customs rec.) and his sworn statement (Exh. "H", pp. 281-282, Customs rec.).

Under Section 1202 of the Tariff and Customs Code:

> "Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unload therein. x x x"

and Section 2530 of the same Code, as heretofore cited, seeks to penalize by forfeiture even an attempt to smuggle or import contrary to law articles into the Philippines. The law does not contemplate to penalize only the importation into the country of contrabands or articles absolutely prohibited but also articles relatively prohibited or those the importation of which requires compliance with the requirements of law. Indeed, oil is not per se prohibited but its importation is regulated under Central Bank Circular No. 1029, requiring as a prerequisite thereof a permit or clearance from the appropriate agency of the Philippine government.

Petitioner contends, however, that the cargo of oil was not intended to be imported into the Philippines but to Sabah, Malaysia. It claims that the oil was merely to be inspected by the consignee in Zamboanga before its final delivery to Sabah, but on the way to Zamboanga on May 11, 1986, the vessel's auxilliary generator and radio facilities broke down; That being in distress, the vessel proceeded to Guiuanan Island, Guimaras, Iloilo, which was near Iloilo City and where the needed spare parts could be purchased; That except for the Port Clearance certificate from Singapore Port Authority (Exhs. "D" & "5"), the shipping documents covering the shipment of oil, namely: (1) Local Purchase Order by Pogun Construction SDN BHD with office at Pogun House, Kota Kinabalu, Sabah, East Malaysia; (2) Bill of lading covering the shipment dated May 5, 1986 issued by petitioner Feeder International (Exh. 3); and (3) Manifest (Exh. 4), were not turned over by the captain to the customs team when they boarded the vessel on May 19, 1986 because said documents were taken earlier by Mr. Antonio Torres, the vessel's local representative/agent, when he came on board on May 15, 1986; That, in fact, not a drop of oil has been unloaded from the vessel to the barge.

A critical and circumspect examination of the evidence and records of the case impels us to reject petitioner's postulation.

The shipping documents presented as evidence by petitioner to support its petition are of doubtful credibility and cannot, as respondent argues, be given evidentiary weight, considering the following factors:

(1) Said documents were presented only more than eight (8) months after the customs authorities boarded the vessel M/T "ULU WAI". The Tariff and Customs Code requires that the shipping documents

must be with the vessel and must be presented by the master upon arrival in the Philippines. If indeed such documents already existed at the time the vessel M/T "ULU WAI' anchored at Guiuanon Island, and they were just taken by the shipagent, Antonio Torres, who boarded the vessel on May 15, 1986 or 4 days prior to the arrival of the customs team, why were not said shipping documents submitted to the customs authorities at least within a reasonable time considering that they were vitally required by law to be presented by the master, agent or owner of the vessel upon arrival from a foreign port?

(2) If it is true that the document such as the Local Purchase Order of the buyer of oil, Pogun Construction SDN BHD of Kota Kinabalu, Sabah, Malaysia, was turned over by the captain of the vessel to the shipagent, Mr. Antonio Torres, when he boarded the vessel on May 15, 1986, why is it that in his sworn statement to the customs authorities on May 28, 1986 at the Iloilo customshouse (Exh. "G"), Antonio Torres bluntly stated that he did not know who was the buyer of

the oil? Surely, if he had the Purchase Order, he would know who the buyer is. And if he had also the shipping documents such as the bill of lading and cargo manifest, why was it that in the same sworn statement, Mr. Antonio Torres' knowledge about the cargo and port of destination came from information given only by the vessel's owner and not from the very shipping documents which indicate such data? (See p. 4, sworn statement of Antonio Torres [Exh. "G"], pp. 285 & 287, Customs rec.)

(3) Moreover, the captain of the vessel M/T "ULU WAI" Romeo Deposa, in his sworn statement to the customs authorities on May 26, 1986, enumerated the documents he allegedly gave to Mr. Antonio Torres when the latter boarded the vessel on May 15, 1986, but did not mention as among them the Local Purchase Order of Pogun Construction SDN and the Bill of Lading. Thus:

> Q. Could you enumerate the documents you give to Mr. Torres?
>
> A. Yes, sir. They are license of the vessel, all licenses of the officers, passports, seaman books, crew lists, coasting manifest. (Exh. "F", p. 289, customs rec.)

In fact, he also said in the same sworn statement that he did not know the consignee of the oil. Certainly, if he had the shipping documents such as the bill of lading on board the vessel from Singapore, he would know the consignee. (Exh. "F", p. 290, Customs rec.)

Additionally, it also appears from the sworn statement of Mr. Antonio Torres, the shipagent, that it was the main generator of the vessel that was damaged and not the auxilliary generator contrary to the statement of Romeo Tepora, captain of the vessel. (See p. 284, customs rec.) And the Port Clearance Certificate issued by the Port of Singapore Authority (Exhs. "D" & "5", p. 300, Customs rec.) indicates that the cargo of the "ULH WAI" is "bunker oil" and not gas or fuel oil. Likewise, why did the captain file the marine protest only on May 26, 1986 or 12 days from the date it anchored or 7 days after customs authorities boarded the vessel when the Customs Code requires him to do so within 24 hours after arrival, if indeed the vessel was in distress?

Verily, the questionable, conflicting and negating factors aforesaid belie petitioner's defense that there was no intention to smuggle or import illegally the cargo of gas and fuel oil into the Philippines. And the persuasion is strong that the purported shipping documents (Exhs. "2", "3", and "4"), which were offered in evidence by petitioner only during the customs hearing on January 13 and 20, 1987, could have been prepared only after the apprehension of the vessel and the institution of the seizure proceedings.

At any rate, as discussed heretofore, we find ample evidence that the cargo of oil was to be unloaded from the vessel M/T "ULU WAI" at Guiuanon Island, Iloilo and brought to Manila. The testimony of Wilfredo Lumagpas, master of the tugboat M/T "Cathead" which went alongside and secured the M/T "ULU WAI" and that of Salvador Asencio, Jr., an official of the National Stevedoring and Lighterage Corporation, which own said tugboat and barge, as well as the Fixture note or Charter Contract (Exh. "I") between National Stevedoring and the consignee for the use of the tugboat and barge in the unloading of the oil from the vessel and shipping said cargo to Manila, are substantial and credible enough to prove the illegal importation or an attempt thereof.

The argument that not a drop of oil has actually been unloaded from the vessel to the barge is of no moment. For, as stated earlier, the law envisions that even an attempt to illegally import constitutes a violation and is punishable. It is not necessary that the act of illegal importation or smuggling be consummated or terminated. It would suffice that the vessel from a foreign port enters the territorial jurisdiction of the Philippines with intent to unload articles of prohibited importation or articles which are relatively prohibited, i.e., articles which must comply with import requirements.

We quote with approval respondent's position in his memorandum on this point:

> Petitioner contends that since "not a drop of oil was unloaded (from the vessel) when boarded by Iloilo Customs Authorities," there was not violation of Section 2530(a), (f) and (1-1) of the Tariff and Customs Code because said section contemplates "at least a showing of (an) overt act to load and or discharge its cargo in the Philippines.

> Respondent respectfully submits that petitioner's contention is an erroneous interpretation of Section 2530(a), (f) and (l)-1 in relation to Sections 3514 and 1202 of the Tariff and Customs Code. It is not necessary for a violation of said Section 2530(a), (f) and (l-1) to exist that the cargo be actually unloaded. It is enough to show that an "intent to unload" exists because "importation" as so defined in the Tariff and Customs Code merely contemplates an "intent to unload" in any port or place within the jurisdiction of the Philippines. (pp. 188-189, CTA rec.)

As a matter of fact, in one case decided by this Court and affirmed by the Supreme Court **(Asaali, et al., vs. The Commissioner of Customs,** G.R. No. L-24170, December 16, 1968), involving the seizure of five sailing vessels and their cargo of foreign manufactured cigarettes without a license or permit to engage in importation, the forfeiture was justified although the interception by the customs team was made in the high seas.

> The first two errors assigned by petitioners would impugn the jurisdiction of the Bureau of Customs to institute seizure proceedings and thereafter to declare the forfeiture of the vessels in question and their cargo. They would justify their stand thus: "In the light of the fact that the vessels involved with the articles laden therein were apprehended and seized on the high seas, beyond the territorial waters of the Philippines, the said vessels could not

have touched any place or port in the Philippines, whether a port or place of entry or not, consequently, the said vessels could not have been engaged in the importation of the articles laden therein into any Philippine port or place, whether a port or place of entry or not, to have incurred the liability of forfeiture under Section 1363(a) of the Revised Administrative Code."

Such a contention was advanced by petitioners before the Court of Tax Appeals. It met the repudiation that it deserved. Thus: "We perfectly see the point of the petitioners but considering the circumstances surrounding the apprehension of the vessels in question, we believe that Section 1363(a) of the Revised Administrative Code should be applied to the case at bar. It has been established that the five vessels came from Sandakan, British North Borneo, a foreign port, and when intercepted, all of them were heading towards Tawi-tawi, a domestic port within the Sulu sea. Laden with foreign manufactured cigarettes, they did not possess the import license required by Republic Act No. 426, nor did they carry a permit from the Commissioner of Customs to engage in importation into any port in the Sulu sea. Their course announced loudly their intention not merely to skirt along the territorial boundary of the Philippines but to come within our limits and land somewhere in Tawi-tawi towards which their prows were pointed. As a matter of fact, they were about to cross our aquatic boundary but for the intervention of a customs patrol which, from all appearances, was more than eager to accomplish its mission."

The sense of realism and the vigorous language employed by the late Judge Luciano in rejecting such a plea

> deserve to be quoted. Thus: "To entertain even for a moment the thought that these vessels were probably not bound for a Philippine port would be too much a concession even for a simpleton or a perennial optimist. It is quite irrational for Filipino sailors manning five Philippine vessels to sneak out of the Philippines and go to British North Borneo, and come a long way back laden with highly taxable goods only to turn about upon reaching the brink of our territorial waters and head for another foreign port."

WHEREFORE, the decision of respondent Commissioner of Customs dated May 13, 1987, ordering the forfeiture of the vessel M/T "ULU WAI" for violation of Section 2530(a) of the Tariff and Customs Codes, as amended, and its cargo of 1,100 metric tons of Gas Oil and 1,000 metric tons of Fuel Oil for violation of Section (a) (f) and (l)-1 of the same Code, is hereby affirmed. With costs.

SO ORDERED.

Quezon City, Metro Manila, December 14, 1988.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals