Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

REDSON TEXTILE MANUFACTURING CORP.,
Petitioner,

- versus - **C.T.A. CASE NO. 4399**

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

7/20/93

D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs dated September 6, 1989 affirming the decision of the District Collector of Customs of the Port of Manila dated August 3, 1988 decreeing the forfeiture of petitioner's goods, consisting of thread and knitted sweaters, for alleged violation of Section 2530 (e) of the Tariff and Customs Code of the Philippines (TCCP) in relation to Customs Memorandum Order No. 11-80 (CMO 11-80) and the Garments and Textile Export Board's (GTEB) rules and regulations.

Petitioner Redson Textile Manufacturing Corporation (RTMC) is registered with the Board of Investments (BOI) as export producer of knitted garments and as such operates a Bonded Manufacturing Warehouse (BMW No. 603). In its manufacturing business, it is supplied with semi-finished or finished product (thread, yarns and accessories) as its material inputs of products manufactured or processed for export trade consisting of sweaters and garments. These products are supplied by Continental Manufacturing Corporation (CMC), a sister company of RTMC and likewise a BOI registered export producer and operator of a bonded manufacturing warehouse.

On November 14, 1986, agents of the Customs Intelligence and Investigation Division (CIID) apprehended two vehicles loaded with thread and knitted sweaters while they are about to leave the warehouse of petitioner at Brixton St., Mandaluyong, Metro Manila. Investigation showed the goods were bound for its sub-contractors, Pagawa, Inc. and E.S. Needlecraft, for washing embroidery and knitting. Said contractors do not appear to be accredited with the Bureau of Customs and the GTEB when verified. Further, the transfer was neither covered by any boatnote nor was it underguarded by customs guards. Accordingly, the CIID in a memorandum dated December 3, 1986 recommended to the Collector of Customs, Port of Manila that a warrant of seizure and detention be issued against the aforementioned goods for violation of Section 2530 (e) of the TCCP, as amended in relation to CMO 11-80 and GTEB rules and regulations. (p.20, Customs Records.)

Petitioner prayed for the dismissal of the seizure proceedings and for the immediate release of the goods under "seizure", they being articles not of prohibited importation or exportation ("Motion to Dismiss", p. 29-32, Customs Records). This was denied by the Collector of Customs in his order dated May 7, 1987 finding that the allegations and grounds cited have no legal leg to stand on. ("Order", p. 49-50, Customs Records) After hearing on the merits, the Collector of Customs decreed that the articles subject of this case be forfeited in favor of the government ("Decision", p. 99-101, Customs Records.) Petitioner submitted said decision for review by the Commissioner of Customs on the ground that the same is contrary to law and jurisprudence. (p. 107, Customs Records.) The Commissioner of Customs affirmed the decision of the Collector of Customs on September 6, 1989, finding no reason to reverse it. ("Decision", p. 109-110, Customs Records.) Hence, the instant petition for review was filed with this Court on October 27, 1989 ("Appeal Brief", p. 1-10, CTA records.)

Initially, it was not clear as to which provision of the Tariff & Customs Code was supposedly violated - Section 2530 (e) or Section 2530 (f) but the same was, however, threshed out from the records and determined to be the former, quoted below:

> **Section 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:
>
> xxx xxx xxx
>
> e. Any article which is fraudulently concealed in or removed contrary to law from any public or private warehouse, container yard or container freight station under customs supervision; (Underscoring supplied.)
>
> xxx xxx xxx

Interrelated to the above and claimed as not having been complied with were CMO 11-80 and GTEB Rules and Regulations. Cited below are the requirements under CMO 11-80:

xxx xxx xxx

B. WITHDRAWAL OF RAW MATERIALS FROM THE BONDED WAREHOUSE

xxx xxx xxx

2. Subcontracting

a. <u>The Operator shall seek the approval first of the Commissioner for subcontracting to another bonded manufacturing warehouse or to any custom's duly-accredited subcontractor by writing a request stating the names of the subcontractor and the work/process to be done.</u>

b. Before the transfer is made, inventory and identification of the materials to be subcontracted, shall be conducted by the CBW officer. A form (Annex B) as in requisition shall be prepared containing the description of materials to be transferred, quantity and the requisition ship number(s) that cover them. The Document Processor (BMWD) handling the logbook of the warehouse shall be duly furnished with a copy for recording purposes.

c. <u>The transfer shall be covered by a boatnote and shall be underguarded until received by the CBW Officer/Subcontractor concerned.</u>

d. Return of the finished products to the original warehouse shall be in the same manner, duly covered by a boatnote, and shall be subject to identification and re-inventory of the CBW Officer.

> e. All materials, including wastages, if any shall be returned to the BMWD of all sub-contracting jobs and their status. (Underscoring supplied.)

xxx xxx xxx

The aforecited legal requirements spelled out in CMO 11-80 and GTEB Rules and Regulations were not controverted by petitioner. However, petitioner assailed the factual bases of the decisions and insisted on its exemption from observing customs rules and regulations.

The appeal of petitioner raised the argument that no evidence allegedly support the respondent's findings that the subcontractors (Pagawa, Inc. and E.S. Needlecraft) were not accredited with the GTEB and the Bureau of Customs and that the articles subject of this case were being shipped by petitioner to the subcontractors without guard and boatnotes. Likewise challenged by petitioner is the capability of the Bureau of Customs to assign customs guard for every request of bonded warehouse. Despite these assertions however, petitioner failed to show the accreditation of the subcontractors with the GTEB and the Bureau of Customs and also failed to produce any document indicating that the transfer was covered by a boatnote and underguarded by a Customs guard. On the other hand, the sworn statements of petitioner's warehouseman-in-charge, Rodolfo Madla (Annex "B", p. 14-15, CTA records), its export-import manager, Samuel C. Genove (Annex "B-1", p. 16-18, CTA records) and driver of the truck, Reggie B. Valete (p. 12, Customs records) were presented by respondent to refute petitioner's charge that there is no evidence to support its findings. There is likewise no basis for petitioner's claim that the Bureau of Customs has no capability to field a customs guard for every bonded warehouse since petitioner did not even attempt to request the Bureau to provide it a guard.

Exemption from observing customs rules and regulations claimed by petitioner was premised on the Endorsement dated January 28, 1974 by then Secretary of Finance (Cesar Virata) to the Commissioner of Customs which states:

xxx xxx xxx

> ".... this Department (Finance) will interpose no objection to the approval of the within representation of Continental Manufacturing Corporation, or any other BOI registered export producer

for that matter, that its sale of yarns (or any manufactured product) to its sister companies (or any company) which are likewise registered export producers; shall be considered as "export sale" and that the transaction meets the requirements for the liquidation of the warehousing entries and cancellation of the corresponding surety bonds covering the products subject of sale, which proposition may be effected under either of the following arrangement:

1. That the sale by the vendor to the vendee of yarns or any manufactured product is considered "export sale" and therefore exempt from the payment of sales tax. However, the bonds posted by the vendor on the imported materials that went into manufacture of the products subject of sale shall remain subsisting until such time when the vendee can show proof of actual exportation of the registered export product; or

2. That the sale by the vendor to the vendee of the products referred to above is likewise considered "export sale" and free from sales tax and the bonds posted by the vendor on the imported raw materials used in the manufacture of the products sold canceled provided the vendee posts an equivalent bond to subsists until the registered manufactured product shall have been actually exported."

> Either of the foregoing alternative that may be availed of is subject to the prior approval of the Board of Investments under such rules and regulations established by said Board implementing the provisions of Section 3 (b) of Republic Act No. 6135 and that the transactions shall be maintained in separate records of accounts of both vendor and vendee."

xxx xxx xxx

The statutory basis of the said Endorsement according to petitioner is Section 3 (b) of Republic Act No. 6135, otherwise known as the "Export Incentive Act of 1970" quoted below:

xxx xxx xxx

> (b) "Registered export producer" shall mean any person, corporation, partnership or other entity organized and existing under Philippine laws, (1) registered with the Board in accordance with this Act, (2) engaged or proposing to engage in the manufacture or processing of export products as hereinbelow defined, and (3) directly exporting its export products, or selling them (a) to a registered export trader that subsequently exports the said products, or (b) to other export producers who utilize said products as direct inputs in products subsequently manufactured or processed by them and thereafter exported.

xxx xxx xxx

In general, said Act was intended to invigorate the country's export trade as a means of accelerating economic growth by granting certain incentives and exemptions to registered export producers, export traders and service exporters. The benefits and incentives by which registered export producers are entitled are: tax credit, reduced income tax, tax exemption on imported capital equipment, tax credit on domestic capital equipment, and exemption from export tax. (Section 7, RA 6135.)

The issue before Us is whether the decree of forfeiture of petitioner's goods for violation of Section 2530 (e) of the Tariff and Customs Code in relation to CMO 11-80 and the GTEB rules and regulations was valid in view of petitioner's claim of exemption from complying with customs rules and regulations.

The familiar and settled rule is that in all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provisions of the tariff and custom laws, the burden of proof shall lie upon the claimant. (Section 2535, Tariff and Customs Code.) However, the Bureau of Customs must establish two factors, namely: (1) that a reasonable ground of presumption exists that a charge is well founded, and (2) that the seizure and/or forfeiture proceedings was made under the conditions and along the lines described in the Tariff and Customs Code.

In the case at bar, the articles subject of seizure and/or forfeiture were found violative of Section 2530 (e) of the TCCP in relation to CMO 11-80 and GTEB Rules and Regulations. The procedures provided under the law in such cases were likewise duly observed as discussed earlier. Petitioner/claimant was not heard to claim and to present evidence that it has complied therewith, relying heavily on the alleged exemptions.

By no stretch of the imagination can a reading of the Endorsement dated January 28, 1974 and its statutory basis, Section 3 (b) of R.A. 6135 (Export Incentive Act of 1973), warrant a conclusion that petitioner is exempted from observing customs rules and regulations. To be excluded from the ambit of the law, one must clearly and squarely point to a statutory provision which say so in unequivocal terms. Otherwise, all fair doubts will be resolved against him.

WHEREFORE, the instant petition for review is hereby dismissed for lack of merit. We affirm respondent Commissioner of Customs' decision upholding the decree of forfeiture issued by the Collector of Customs, Port of Manila against petitioner's goods.

SO ORDERED.

Quezon City, Metro Manila, July 20, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR;

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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.**

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals