AUYONG HIAN (HONG WHUA HANG),
Petitioner,

versus CTA CASE NO. 1560

COLLECTOR OF CUSTOMS,
COMMISSIONER OF CUSTOMS,
CONSOLIDATED TOBACCO
INDUSTRIES OF THE PHIL-
IPPINES, INC. (CTIP) and
LUZON STEVEDORING CORPORATION,
Respondents.

Jan. 31, 1968

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D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs which affirmed that of the Collector of Customs of Manila ordering the seizure and forfeiture of 600 hogsheads of Virginia leaf tobacco imported by petitioner from the United States.

There is no dispute as to the facts. For convenience, we will merely re-state the facts as found by the Supreme Court in Auyong Hian v. Court of Tax Appeals and Collector of Customs and Commissioner of Customs, G. R. No. L-25181, January 11, 1967, thus:

> The facts pertinent to this case, as shown in the record, may be briefly stated as follows: Petitioner Auyong Hian applied with the Import Control Commission, and was granted, four (4) no-dollar remittance licenses to import Virginia leaf tobacco with an aggregate value of two million dollars. He filed his application on June 29, 1953 and was

advised by the approval of his application the following day, June 30, 1953 - the day the Import Control Law (Republic Act 650) expired. While negotiations for the importation of Virginia leaf tobacco pursuant to said licenses were undertaken by the licensee, it was not until December 30, 1961 that 600 hogsheads of Virginia leaf Tobacco arrived in the Philippines aboard the "SS Fernstate". The Collector of Customs of Manila refused to release the said shipment of Virginia leaf tobacco to petitioner, apparently in view of his doubt as to the legality of the importation. For this reason, petitioner instituted an action for mandamus in the Court of First Instance of Manila, in Civil Case No. 496399 to compel the respondents Collector of Customs and Commissioner of Customs to release and deliver to petitioner the tobacco in question. On March 19, 1962, Judge Manuel Barcelona of the Court of First Instance of Manila issued an order directing the Collector of Customs and the Commissioner of Customs to release the tobacco to the petitioner upon the latter's filing a bond of ₱300,000.00. The Commissioner of Customs and the Collector of Customs filed a petition for certiorari to the Supreme Court questioning the jurisdiction of the Court of First Instance of Manila to order the release of the tobacco shipment and praying for the annulment of the order of said Court directing the release of the tobacco. This proceeding was before this Court in G. R. No. L-19597, entitled "Cesar Climaco, et al. vs. Manuel Barcelona, et al." On July 31, 1962, this Court through Mr. Justice Labrador, ruled that the Court of First Instance of Manila had no jurisdiction to issue the order directing the Commissioner of Customs and the Collector of Customs to release the 600 hogsheads of Virginia leaf tobacco in question to the petitioner, and incidentally declared that the importation of the tobacco was illegal upon the ground that the importation was made long after the Import Control Law had expired and that the importation was in contravention of

> the policy of the government as declared in Republic Acts Nos. 698 and 1194, notwithstanding the alleged approval of said importation by the President of the Philippines.
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> On November 8, 1962, the Collector of Customs instituted seizure proceedings, Seizure Identification No. 6669 against the 600 hogsheads of Virginia leaf tobacco consigned to the petitioner. On April 23, 1963, the Collector of Customs rendered his decision declaring said 600 hogsheads of tobacco forfeited to the government and ordered the sale thereof at public auction. The sale at public auction was set for June 10, 1963. The petitioner received a copy of said decision on May 7, 1963, and on May 21, 1963, the petitioner filed with the Collector of Customs his notice of appeal, in due form from the abovementioned decision of the Collector of Customs.
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> On December 7, 1964, the Commissioner of Customs rendered his decision on the appeal taken by Auyong Hian from the decision of the Collector of Customs of April 23, 1963, affirming said decision of the Collector of Customs. On December 9, 1964, Auyong Hian filed with the Commissioner of Customs his notice of appeal to the Court of Tax Appeals from the decision of the Commissioner of Customs.

On January 8, 1965, petitioner filed with this Court his petition for review. Upon motion of the Solicitor General, this Court, in its resolution of June 22, 1965, dismissed the appeal of petitioner for lack of jurisdiction. This opinion was premised on the fact that the main issue raised in the appeal - the legality of the importation of said tobacco - had already been decided by the

Supreme Court in two previous cases.[1] On appeal, the Supreme Court reversed our decision and declared that this Court has jurisdiction to entertain petitioner's appeal on the following grounds:

> "The Court of Tax Appeals declared itself without jurisdiction to entertain the appeal of Auyong Hian upon the ground that the Supreme Court had already ruled that the importation of the 600 hogsheads of tobacco was illegal, and that it cannot review, revise, much less overrule the decision of the Supreme Court. We believe that the stand taken by the Court of Tax Appeals is not correct. It appears to us that the Court of Tax Appeals had overlooked the fact that the appeal of Auyong Hian from the decision of the Commissioner of Customs had raised not only the question of the legality of the importation but also other matters which called for a ruling by the Court of Tax Appeals in the exercise of its appellate jurisdiction - especially the question of whether the tobacco thus imported were goods the importation of which was relatively prohibited or absolutely prohibited, and also the question regarding the disposal of the tobacco that was thus seized. The declaration by this Court in the Barcelona and Arca cases, _supra_, that the importation of the tobacco in question was illegal was not intended to stop the course of the administrative proceedings in relation to the importation of said tobacco. Let it be noted that when the Barcelona case was decided on July 31, 1962 the seizure proceedings against the 600 hogsheads of tobacco in question had not yet been instituted by the Bureau of Customs. It was not until November 8, 1962 when Seizure Identification No. 6669 was instituted. In the Barcelona case the question that was

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[1]Climaco v. Barcelona, G.R. No. L-19597, July 31, 1962; Collector of Customs v. Arca, G.R. No. L-21389, July 17, 1964.

before this Court was one regarding jurisdiction - that is, whether Judge Barcelona of the Court of First Instance of Manila had jurisdiction to order the Collector of Customs and the Commissioner of Customs to release to Auyong Hian the said 600 hogsheads of tobacco. Because in his order of release Judge Barcelona mentioned, among others, that Auyong Hian had imported said tobacco pursuant to valid licenses, this Court, on the basis of the pleadings and the record of that case, rendered a ruling that the licenses were invalid and so the importation of the tobacco was illegal.

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"Thus, in spite of the fact that this Court had declared that the tobacco in question was illegally imported, it at the same time took cognizance of the administrative proceedings that were going on in connection with that importation, and this Court recognized the jurisdiction of the Commissioner of Customs and the Court of Tax Appeals in connection with these administrative proceedings. x x x

"This Court declared in its decision, in the Arca case, that Auyong Hian would lose all rights over the tobacco in question 'at least while the order of seizure has not been set aside.' This Court has thus made it understood that the seizure proceedings were not yet closed, and there was no final decision yet on the matter. When this Court said that it 'will refrain from passing upon the administrative proceeding therein questioned' (in the appeal before the Commissioner of Customs); and 'that apparently the order of the Commissioner of Customs has not yet become final and the Court of Tax Appeals has already acquired exclusive jurisdiction over the subject matter pursuant to the appeal made by Auyong Hian', what was meant was that the Court of Tax Appeals is the body that should decide <u>those matters which this Court had refrained from deciding</u>." (Emphasis supplied.)

In line with the foregoing opinion of the Supreme Court, we will consider the herein appeal on the merits, but we have to confine ourselves to "those matters which this Court (the Supreme Court) had refrained from deciding."

After the case had been remanded to this Court, petitioner filed an amended petition for review to include Consolidated Tobacco Industries of the Philippines and Luzon Stevedoring Corporation as party-respondents.

The principal issue relates to the correctness and validity of the decisions of the Collector of Customs of Manila and of the Commissioner of Customs ordering the forfeiture and sale of the tobacco in question. The correctness and validity of the decision of the Collector of Customs is assailed on three grounds, viz.: firstly, it is alleged that petitioner was not given a chance to be heard; secondly, the seizure proceeding was instituted before the Bureau of Customs acquired jurisdiction over the tobacco; and, thirdly, the said tobacco is not subject to forfeiture because it was legally imported under valid licenses.

The records show that petitioner was given a notice of hearing in Seizure Identification No. 6669 (re the 600 hogsheads of Virginia leaf tobacco); that on the date of the hearing petitioner filed a motion for indefinite postponement, which was not acted upon or resolved by the proper Customs officials; that upon failure of petitioner to appear on the date of hearing, the hearing officer declared petitioner in default; and that the hearing was conducted thereafter in the absence of petitioner. Considering these circumstances, petitioner claims that the entire proceeding is illegal and void because he was not given a chance to be heard. We will not pass upon this question because this is one of those matters which the Supreme Court had not "refrained from deciding." We will, therefore, merely quote from the decision of the Supreme Court on this question.

> "The record shows that Auyong Hian received on November 21, 1962 notice of the hearing of the seizure proceedings scheduled for November 26, 1962. It is true he filed a motion to postpone the hearing, but it was for an indefinite period of time and only in the morning of the date of hearing. He did not bother to find out what action the Collector of Customs would take on his motion. Continuance of the seizure proceedings was made on December 6, and December 10, 1962, yet Auyong Hian did not take the trouble to find out about its status. The facts, therefore, show that Auyong Hian was not deprived of due process of law, but that he is guilty of abandonement or gross negligence in the protection of his rights, for which he alone is to blame." (Collector of Customs v. Arca, G. R. No. L-21389, July 17, 1964.)

It is also alleged that the decision appealed from is illegal on the ground that -

> "For all legal purposes, the tobacco shipment in question was not completely under the custody and control of the Collector of Customs. Its importation could be deemed completed only after a consumption entry and withdrawal entry shall have been accomplished, and the necessary customs duties, special import tax and other charges are paid (Sec. 1248-RAC; Secs. 1303, 1906-TCCP). Said shipment not being covered by consumption entry and withdrawal entry, same could not have been the object of a warrant of seizure and detention. Therefore, the warrant in question having been prematurely issued, it cannot be the legal basis of the seizure proceedings. And the whole proceeding is a nullity, considering that no sufficient and valid notice for the subsequent hearings of December 6 and 10, 1962 had been served upon herein petitioner." (Page 50, Memorandum for Petitioner, dated October 18, 1967.)

The contention that the seizure proceeding is illegal for lack of jurisdiction on the part of the Collector of Customs to issue the warrant for the seizure and detention of said tobacco, because its importation had not yet been completed, overlooks the express provision of Section 2530(f) of the Tariff and Customs Code which imposes the penalty of forfeiture on any article imported, or attempted to be imported, in violation of Customs Law. It is not necessary that the importation of an article be complete to justify seizure and forfeiture; it is enough that there be merely an attempt to import the same in violation of Customs Law. In this case, petitioner has never signified any intention to re-export the tobacco in question after its arrival and discharge at the port of Manila. On the contrary, he has consistently and vigorously sought the delivery of the tobacco to him because of his belief that he is rightfully entitled to it by reason of the alleged valid licenses issued to him to import the same.

If the theory of petitioner is to be believed, no seizure proceeding against an imported article can be instituted unless the importer first pays the customs duties and other taxes and charges due on the importation. Surely petitioner would not want to pay the corresponding customs duties, taxes and other charges on said tobacco only to have the same forfeited in favor of the Government. To state the theory is to reveal its absurdity.

On the question in regard to the legality of the importation, we reiterate our previous opinion that the Supreme Court having already decided the issue, this Court has no power to review, revise or reverse the same. This is one of those matters which the Supreme Court had not "refrained from deciding" in the Barcelona and Arca cases, supra, and, therefore, we do not feel free to express a different opinion, at least in the present case, which involves the very same tobacco which was declared by the Highest Court to have been illegally imported.

Much stress has been placed upon the statement made in the decision of the Supreme Court of January 11, 1967 (Auyong Hian v. Court of Tax Appeals, G.R.

No. L-25181) remanding this case to this Court for trial on the merits to the effect that the opinion expressed in the Barcelona case as to the illegality of importation of the tobacco in question was made "incidentally", and for this reason this Court is urged to reopen the question and to render our own judgment on the matter. To this, we regret we cannot accede.

It may be that the opinion of the Supreme Court on the illegality of the said importation as expressed in the Barcelona case is merely incidental in the sense that it was not the principal issue in that case but the jurisdiction of the Court of First Instance of Manila over customs cases involving seizure and forfeiture of articles imported in violation of Customs Laws. We believe, however, that said "incidental" opinion and decision on the legality of the importation are not less valid and effective than the decision on the issue of jurisdiction.

We have carefully reviewed the decision of the Supreme Court in the Barcelona case and found that the decision dwelt mainly on the issue whether or not the tobacco importation in question was legal, while the jurisdictional issue was barely touched in the opening statement and in the dispositive portion of the decision. The statement of the issue as found in the body of the decision reads:

> "The question that is, therefore, squarely presented for decision of this Court is whether, under the facts and circumstancesabove indicated, the petitioner has the clear legal right to make the importation in question and the respondents the clear legal duty to allow entry and release of said importations."

No mention was made of the jurisdictional issue.

And the dispositive portion of the decision states:

> "For all the foregoing considerations, and considering that the importations subject of the action were made on December, 1961, long after the Import Control Law expired on June, 1953 and at a time when the clearly expressed policy of the government as enunciated in Republic Acts Nos. 698 and 1194, is to prohibit the importation of Virginia leaf tobacco, except when the indigenous production is insufficient, We are constrained to declare, as we hereby declare, that the importation in question has been illegally made, notwithstanding the alleged approval thereof by the President. And we, therefore, hereby grant the petition and set aside the order of the court below of March 19, 1962 and the writ of preliminary injunction issued in accordance therewith, and furthermore declare that the defenses set up in Civil Case No. 49639 of the Court of First Instance of Manila are valid, meritorious and legal for which reason we further order that said Civil Case No. 49639 be dismissed."

It is to be noted that the judgment of the Supreme Court declaring the said tobacco importation illegal was not merely incidental in the sense that it was immaterial, impertinent, or unnecessary in the determination of the issues raised in that case. In fact, it is clear from a reading of the entire decision that the opinion in regard to the jurisdiction of the Court of First Instance was predicated solely upon the opinion that the importation was illegal. That the Supreme Court rendered a decision on the illegality of said importation can not be denied. We can not, therefore, pass on the said issue because the Supreme Court, in its decision of January 11, 1967, expressly declared that we may pass upon and decide only those matters which it had "refrained from deciding."

There is another point worth mentioning. The decision in the Barcelona case was not left uncontested. Petitioner filed four motions for reconsideration and/or rehearing which were all directed against the decision declaring the said importation illegal. Petitioner was apparently not concerned with the decision ordering the dismissal of Civil Case No. 49639 of the Court of First Instance of Manila for lack of jurisdiction. We are quoting below the four resolutions denying the said motions for reconsideration.

> 1. "After a study of the grounds of the printed motion for reconsideration filed by counsel for respondents in Case L-19597 (Cesar Climaco, etc., et al. vs. Hon. Manuel Barcelona, etc., et al.), IT IS FOUND that the motion should be, as it is hereby DENIED." (Resolution dated Sept. 17, 1962.)
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> 2. "The second motion for reconsideration filed by counsel for respondent in L-19597 (Cesar Climaco, etca et al. vs. Hon. Manuel Barcelona, etc., et al.) is DENIED, and this denial is FINAL." (Resolution dated Oct. 8, 1962.)

3. "The decision in case L-19597 (Cesar Climaco, etc., et al. vs. Honorable Manuel P. Barcelona, et al.), have become final, the manifestation and motion, dated October 12, 1962, filed by respondent Auyong Hian is hereby ordered returned to said respondent. Mr. Justice Padilla took no part." (Resolution dated Oct. 16, 1962.)

4. "In case L-19597 (Cesar Climaco, etc., et al. vs. Hon. Manuel P. Barcelona, et al.), the manifestation of respondent Auyong Hian praying (1) that his motion of October 12, 1962 be considered; and (2) that a 'rehearing be ordered wherein your respondent will be given another opportunity to adduce additional evidence . . .', is DENIED." (Resolution dated Nov. 14, 1962.)

We would like to draw attention to the resolutions on the second and third motions for reconsideration. It is stated therein that the denial of the said motion is <u>final</u>. In effect, the Supreme Court said that its decision is final and may not, therefore, be reopened. To what decision do the resolutions refer as being considered final? Certainly, it could not refer solely to the decision declaring the Court of First Instance of Manila without jurisdiction over the case because the question was not raised in the motions for reconsideration. It must have referred also to the decision declaring the said tobacco importation illegal. When the Supreme Court declared that its decision was already final, it simply means just that, which is to say that it is irrevocable. And yet petitioner would want us to declare that said decision of the Supreme Court has no binding force and may be disregarded for having been rendered "incidentally." We refuse to tread on forbidden grounds.[1]

Of equal, if not more, significance is the decision in the Arca case, G.R. No. L-21389, July 17, 1964, supra. In clear and unambiguous language, the Supreme Court said:

> "There is no question that the importation of the tobacco leaf in question was illegal, having been made in clear violation of the policy contained in Republic Acts Nos. 698 and 1194. To this effect is the decision of this Court in Climaco vs. Judge Barcelona, et al., G.R. No. L-19597 (July 31, 1962). The tobacco, therefore, is subject to forfeiture in accordance with Section 2530(f) of the

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[1] A Judge of the Court of First Instance was chided for refusing to apply a doctrine laid down by the Supreme Court in another case. Said the Supreme Court: "Now, if a Judge of a lower Court feels, in the fulfillment of his mission of deciding cases, that the application of a doctrine promulgated by this Superiority is against his way of reasoning, or against his conscience, he may state his opinion on the matter, but rather than disposing of the case in accordance with his personal views he must first think that it is his duty to apply the law as interpreted by the Highest Court of the Land, and that any deviation from a principle laid down by the latter would unavoidably cause, as a sequel, unnecessary inconveniences, delays and expenses to the litigants. And if despite of what is here said a Judge, by delicate or acute qualms of conscience, still believes that he cannot follow Our rulings, then he has no other alternative than to place himself in the position that he could properly avoid the duty of having to render judgment on the case concerned (Art. 9, C.C.), and he has only one legal way to do that." (Rep. v. Santos, 104 Phil. 551.) It is true that this opinion was not without a dissenting vote; but it would be too risky to speculate on the possibility that the Supreme Court might change its opinion.

We may also state that the instant case presents a more serious and difficult problem. The Court of Tax Appeals is being asked not merely to disregard a prior ruling of the Supreme Court and to apply a different rule in a different case; we are here being urged to reverse a final decision of said Court in the same case

> Tariff and Customs Code (formerly Section 1363(f), Revised Administrative Code), x x x." (Emphasis supplied.)

This opinion of the Supreme Court is but a reaffirmation of its decision in the Barcelona case, specifically the resolutions on the second and third motions for reconsideration declaring that said decision was already final and refusing to reconsider the same. If, as stated by the Supreme Court in 1964, there is no more question as to the illegality of the said importation, the insistence of petitioner that it is still an open question now, after the lapse of about four years,[1] is beyond our comprehension.

Since there is now no question that the said tobacco leaf importation made by petitioner is illegal; that the seizure proceeding had in the office of the Collector of Customs was regular; and that the Collector of Customs has power to issue a warrant of detention and seizure of an article imported in violation of Customs Law before its importation is completed by the payment of customs duties and other taxes and charges, there can be no question as to the legality and correctness of the decision of the Collector of Customs ordering the forfeiture and sale of said tobacco. It follows that there can

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[1] About 6 years from the date the decision in the Barcelona case became final in 1962.

also be no question as to the correctness and validity of the decision of the Commissioner of Customs sustaining said decision of the Collector of Customs.

There seems to be some merit in the contention that the decision of the Supreme Court on the legality of said importation was rendered in excess of its jurisdiction because the jurisdiction of said Court in seizure cases arising under Customs Law is purely appellate, in which case said decision would be null and void.

> "At any rate, the Supreme Court had no jurisdiction to pass upon the legality of the subject importation at the time it decided the Barcelona case because the only question before it in said certiorari proceedings was whether or not Judge Barcelona had jurisdiction to order the Collector of Customs to release the subject importation. To underscore the point, it is pertinent to ask: If Judge Barcelona as a presiding judge of a Court of First Instance did not have the power to hear and determine the case, does it not necessarily follow that he also did not have the power to pass upon the legality or illegality of the subject importation simply because the exclusive primary jurisdiction of the Collector of Customs on such importation must and had to be respected? Obviously, Judge Barcelona did not have such power at the time the case was brought to him, or at any other time for that matter. And since Judge Barcelona did not have the power to hear and determine the case, much less the power to pass upon the legality of the importation, by what right did the Supreme Court declare at that time that the importation was illegal? Did the mistake of the petitioner in bringing a mandamus proceedings in the Court of First Instance of Manila and the challenge by certiorari of the presiding judge's actuations confer jurisdiction upon the Supreme Court to rule on its illegality?

Did the assumption of Judge Barcelona of a non-existing jurisdiction confer upon the Supreme Court at the time the case was brought to it such power or jurisdiction? Can the Supreme Court by the exercise of an assumed power thereby create or confer such power unto itself? Did the Supreme Court have sufficient evidence and records on the legality of the subject licenses when it decided the Barcelona case?

"Painful as it may be, the petitioner has raised these questions with due respect to the Supreme Court, objectively and without malice, for the sole purpose of bringing into focus the fact that it had no jurisdiction to pass upon the legality of the subject importation when it decided the Barcelona case. Perhaps this was the reason why it had so painstakingly spoken its mind candidly and clearly in the later Auyong Hian case, although of course, it could not deny that once upon a time in the Barcelona case it observed incidentally that the subject importation was illegal." (Pp. 38-39, Memorandum for Petitioner, Oct. 18, 1967.)

But, assuming the correctness of petitioner's theory, it may be asked: Who is to determine whether or not the Supreme Court exceeded its jurisdiction in a particular case (i.e., the Barcelona and Arca cases)? Surely, not the Court of Tax Appeals. If any remedy exists, the remedy lies elsewhere. Unfortunately, we are not aware of any law or of any provision of the Constitution providing for such a contingency.

The decisions of respondents Collector of Customs and Commissioner of Customs are assailed on the ground that "the holding that the importation is illegal is ambiguous because Section 2307 of the Tariff and Customs Code recognizes two (2) kinds of illegality which the decision does not distinguish." It is alleged that articles subject to seizure and forfeiture under Customs Law are classified as "relatively prohibited which permits redemption, and absolutely prohibited (like opium and gambling devices, etc.) which does not permit of redemption." (See pages 6 and 12, Amended Petition for Review.) This is one of the issues which, according to the Supreme Court in its decision of January 11, 1967, should be passed upon and considered by us.

We agree with petitioner that articles subject to forfeiture under Customs Law are classified into two, viz.: (1) articles of prohibited importation or contraband; and (2) articles which are merely relatively prohibited, i.e., those which are permitted to be imported but the importation of which is effected contrary to law.[1] These articles are subject to forfeiture under Section 2530 of the Tariff and Customs Code.

The rights of an importer to the delivery of an imported article which is the subject of seizure and forfeiture proceeding under Customs Law are governed by Sections 2301 and 2307 of the Tariff and Customs Code, which provide:

> SEC. 2301. Warrant for Detention of Property—Bond.—Upon making any seizure, the Collector shall issue a

[1] See Sections 2301, 2307, 2601 and 2609, Tariff and Customs Code.

> warrant for the detention of the property; and if the owner or importer desires to secure the release of the property for legitimate use, the Collector may surrender it upon the filing of a sufficient bond, in an amount to be fixed by him, conditioned for the payment of the appraised value of the article and/or any fine, expenses and costs which may be adjudged in the case: Provided, That articles the importation of which is prohibited by law shall not be released under bond.
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> 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 find 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.

Section 2301 authorizes the Collector of Customs, after issuance of the warrant of detention and before hearing of the seizure case, to surrender the property to the owner for legitimate use upon the filing of a sufficient bond, in an amount to be fixed by the Collector, conditioned for the payment of the appraised value of the article, including expenses and costs. While the case is pending hearing in the office of the Collector of Customs or in the office of the Commissioner of Customs, in case of an appeal from the decision of the former, the property seized may likewise be surrendered to the importer under Section 2307 upon payment by the latter of the appraised value of the property, in which case the seizure proceeding shall be considered terminated, "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."

(It is to be noted that Section 2301 refers to cases where an importer may secure the release of an article under seizure upon the filing of a bond to guarantee payment of its appraised value in case the article is finally declared forfeited. In other words, the release under bond of the article under Section 2301 is without prejudice to the continuation of the seizure proceeding. On the other hand, Section 2307 refers to cases where the importer admits the liability of the article for forfeiture and agrees to pay the appraised value of such article by way of redemption. This is so because, upon forfeiture, the only right available to the importer is the right to repurchase the article at its appraised value. Both the right of the importer to secure release of the article under bond pursuant to Section 2301 and his right of redemption under Section 2307 cannot be exercised with respect to an article of prohibited importation or, if the article is not of prohibited importation, where the delivery of such article to the importer would be contrary to law.)

There is no evidence of record to show that petitioner herein exercised or attempted to exercise any of the rights afforded an importer under Sections 2301 and 2307 of the Tariff and Customs Code. All that he sought was the release of the tobacco in question upon payment of the duties and taxes due thereon because of his insistence that the importation was made in accordance with law.[1] At any rate, even if he sought the release of said tobacco by filing a bond for its appraised value or by paying the redemption price, it is evident that the same could not have been granted because the delivery of said tobacco to him would be contrary to law. The Supreme Court has already declared in the Barcelona case that petitioner was not qualified to make the importation of said tobacco leaf. Therefore, delivery to

[1]See "Urgent Petition for Release" dated March 14, 1967, filed by counsel for petitioner, p. 455, C. T. A. Records.

him of said tobacco, by way of redemption, would be contrary to law. It is quite plain that the failure of respondents to declare the said tobacco as an article which is merely qualifiedly prohibited has not adversely affected the substantive rights of petitioner.

As already adverted to, the Collector of Customs in ordering the forfeiture of the tobacco in question also ordered that the same be sold at public auction, instead of its destruction by burning. The said tobacco was actually sold to the Consolidated Tobacco Industries of the Philippines, one of the respondents herein. Petitioner questions the legality of the sale on various grounds, mainly, that the sale was made without benefit of public bidding; that the sale to the Consolidated Tobacco Industries was rigged and pre-arranged; and that the selling price is grossly inadequate.

It is elementary that one who has no right or interest in the property sold has no right or personality to question the legality of the sale. Petitioner has no right or interest in the tobacco in question and the sale thereof would not, therefore, adversely affect him. To quote from the decision in the Arca case, <u>supra</u>:

> "It is to be noted that the seizure proceedings had already been terminated and the tobacco shipment declared forfeited to the Government, thereby ceasing to be the property of Ayyong Hian, when

Civil Case No. 53874 was brought by Cloma. The seizure proceedings were taken by the Collector of Customs in the exercise of its jurisdiction of the customs law (Secs. 2205 and 2530, Tariff and Customs Code.). x x x

"Auyong Hian, therefore, had lost all his rights to the shipment not only because We declared the licenses void and the shipment illegal in the case of Climaco vs. Barcelona, G. R. No. L-19597, but also because the seizure proceedings have been found to be regular and had deprived Auyong Hian of his rights to the shipment as importer; at least while the order of seizure has not been set aside."

However, for the satisfaction of all concerned, we should like to state that, after a careful review of the records and the evidence presented by the parties, we are convinced that the sale was regular. Under the law, seized property, other than contraband, which is subject to forfeiture shall be sold, or otherwise disposed of, upon the order of the Collector of the port where the property in question is found (Secs. 2601-2602, Tariff and Customs Code). The property shall be sold at public auction after ten days' notice conspicuously posted at the port and such other advertisement as may appear to the Collector to be advisable in the particular case (Sec. 2603, id.). And in the case of perishable articles, Section 2607 provides:

"Sec. 2607. Disposition of Articles Liable to Deterioration. - Perishable articles shall not be deposited in a bonded warehouse; and, if not immediately entered for export or for transportation from the vessel or aircraft in which imported or entered for consumption and the duties and taxes paid thereon, such articles may be sold at auction, after such public notice, not exceeding three days, as the necessities of the case permit.

"When seizure shall be made of property which, in the opinion of the Collector, is liable to perish or be wasted or to depreciate greatly in value by keeping, or which cannot be kept without great disproportionate expense, whether such property consists of live animals or of any article, the appraiser shall so certify in his appraisal, then the Collector may proceed to advertise and sell the same at auction, upon notice as he shall deem to be reasonable.

"The same disposition may be made of any warehoused article when in the opinion of the Collector it is likely that the cost of depreciation, damage, leakage or other causes, may so reduce its value as to be insufficient to pay the duties, taxes and other charges due thereon, if it should be permitted to be so kept and be subject to sale in the usual course."

The tobacco in question was sold at public auction to the highest bidder, after due publication. The tobacco was sold to the Consolidated Tobacco Industries of the Philippines for ₱1,500,000 after compliance with the requirements of Republic Act No. 1194. Again, to quote from the decision in the Arca case:

"x x x. Therefore, pursuant to Sections 2312 and 2609 of the said Code, the Collector declared the tobacco forfeited in favor of the Republic of the Philippines, and ordered the sale thereof in accordance with Section 2607 of said Code, to buyers who could meet with the necessary qualifications and conditions of the law. For this purpose, said Collector created a Special Bidding Committee to implement the decision and to take charge of the sale at public auction of the tobacco in question.

"Notice of the sale was accordingly published and advertised to the public (Annex 'C' of Petition). At the auction sale there were only two bidders, the herein intervenor Consolidated Tobacco Industries of the Philippines (CTIP), Inc. and the Philippine Associated Resources. The former was declared as the qualified bidder (as per notice to it by the Collector on June 7, 1963), so it submitted its bid in writing. (Annex 'E', CTIP's Petition for Intervention.) The CTIP's bid was for ₱1,500,000 and was approved by the Collector of Customs on June 26, 1963 (Annex 'G', Ibid.). Thereafter, the company paid the balance of ₱500,000 to complete the price of ₱1,500-000 (its deposit of ₱1,000,000 having been credited in its favor)."

Apparently, to preclude any doubt as to the regularity of the sale, the Collector of Customs, on June 11, 1963, sought the advice of the Secretary of Finance, and the latter referred the matter to the Secretary of Justice, who, at that time, was the Chairman of the Cabinet Committee on Public Bidding of Tobacco. In an indorsement dated June 24, 1963, signed by the Secretary of Justice and all the members of the said Cabinet Committee, the sale was approved. The indorsement of the Cabinet Committee was transmitted to the Secretary of Finance and the Commissioner of Customs, who informed the Collector of Customs of such approval (See Exhs. "E", "F" and "G", CTIP, pp. 205-211, CTA Records). When, therefore, the

Collector of Customs approved, on June 26, 1963, the recommendation of the Special Bidding Committee to accept the offer of Consolidated Tobacco Industries of the Philippines, his action had the prior approval of the Commissioner of Customs, the Secretary of Finance and the Cabinet Committee.

However, subsequent events transpired which impelled the Commissioner of Customs to change his mind. When the Collector of Customs ordered the delivery of the tobacco to Consolidated Tobacco Industries of the Philippines, the Commissioner entertained doubt as to the regularity of the delivery, although such delivery was made after prior consultation with the Solicitor General. As a consequence, the Commissioner sought to nullify the actuations of the Collector of Customs in regard to the delivery of said tobacco and filed with this Court a motion to compel the buyer and the Collector to return the same to the Bureau of Customs. This motion was denied by this Court on the ground that it is not the proper forum wherein controversies between the Commissioner and the Collector of Customs may be ventilated. Thereafter, the Commissioner filed the case with the Court of First Instance of Manila which was later dismissed at the instance of the Commissioner himself. The reason given for the action of the Commissioner in instituting the action in court was "to clarify the question of who between the Commissioner of Customs and the Collector of Customs has the authority to release the tobacco in question" to the buyer, and that after further consideration the Commissioner concurred in the action taken by the Collector.(See Exh. 3, Resp., pp. 664-670, CTA Records). There is, therefore, no question as to regularity of the sale.

Much has been said about the supposed gross inadequacy of the price for which the tobacco was sold to the Consolidated Tobacco Industries of the Philippines. Petitioner claims that it had a value of ₱7,000,000 but was sold only for ₱1,500,000. Examination of the records show that when the tobacco arrived in the Philippines, petitioner filed an Affidavit and Pro-Forma Invoice giving the invoice value of the tobacco as $102,453 and an appraised value, for tax purposes, of ₱227,675.(See page 863, Vol. I, Customs Records; also Import Entry and Internal Revenue Declaration, page 360, id.). We are at a loss as to which of petitioner's declarations is to be believed. When it suits his purpose, he claims the tobacco has a value of ₱227,675; for other purposes, the value is ₱7,000,000. If the present claim of petitioner is correct, said tobacco is liable for forfeiture not only because of the invalidity of the licenses under which the importation was made but also because of petitioner's filing of a false declaration. Under

Section 2530(m) of the Tariff and Customs Code, an imported article is subject to forfeiture - x x x

> "(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.
>
> "(4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.
>
> "(5) Through any other fraudulent practice or device by means of which such article was entered through a customhouse to the prejudice of the government."

It appears to us, however, that the Collector of Customs took precautionary measures to insure a correct appraisal of the tobacco. The appraisal was made by a competent appraiser of the Bureau of Customs, and both the Commissioner of Customs and the Secretary of Finance, who exercise supervisory authority over the Collector of Customs and who were consulted on the matter, approved the sale, or at least, interposed no objection to the sale. The only objection to the sale of the tobacco on the ground of inadequacy of price comes from a biased source. In this connection, account must be taken of the fact that the buyer was also required to comply with Republic Act No. 1194 which requires exportation of tobacco leaf produced locally, as a condition for the approval of said sale, which thereby entailed a considerable loss to the buyer.

In these circumstances, we find no reason to invalidate the sale of said tobacco to Consolidated Tobacco Industries of the Philippines, assuming that we have the power to do so in this proceeding.

When this case was remanded to this Court, there was still pending in the Supreme Court another case involving the same tobacco (Auyong Hian v. Judge Gaudencio Cloribel, G. R. No. L-24704) wherein petitioner sought, among others, to compel Consolidated Tobacco Industries of the Philippines to return the tobacco to the Bureau of Customs, which tobacco had previously been ordered by the Collector of Customs delivered to said buyer, and to enjoin Consolidated Tobacco Industries from disposing of and/or interferring in any manner with said tobacco. The Supreme Court issued a writ of preliminary injunction upon the filing by petitioner of a bond for ₱5,000.00. Subsequently, upon petition of Consolidated Tobacco Industries, petitioner was required to raise the bond to ₱1,000,000, and petitioner was given 15 days within which to comply with the requirement. Petitioner sought a reduction of the amount of the bond, but this was denied in an order dated March 17, 1967. At the same time, petitioner was given thirty days from receipt of said order within which to file the injunction bond of ₱1,000,000. Petitioner was unable to file said injunction bond of ₱1,000,000 up to the time when the case (G. R. No. L-24704) was finally dismissed by the Supreme Court in its resolution of July 10, 1967. In its order, the Supreme Court dissolved the writ of preliminary injunction previously issued by it "without prejudice to the party or parties concerned filing his/its/their motions/petitions/ manifestations before the Court of Tax Appeals in CTA Case No. 1560 now pending in said court."

Upon motion of petitioner, this Court, in its resolution of July 14, 1967, issued a writ of preliminary injunction against respondents herein restraining them from disposing of or interferring with said tobacco, subject to the condition that petitioner filed within thirty days from notice thereof, a bond for ₱1,000,000, the same amount which was required by the Supreme Court in G. R. No. L-24704. In an urgent motion dated August 8, 1967, petitioner requested extension of thirty days within which to file the bond, which request was granted. Again, petitioner failed to file the bond, but on September 7, 1967, he filed another motion for extension of time within which to file the bond, this time for a period of two months from September 12, 1967.

In our resolution of September 11, 1967, we denied the motion for extension of time to file the bond. We were convinced that petitioner was in no position to file the required bond considering the time that was given him since the matter was pending in the Supreme Court and in this Court, because, by his own admission, he has become bankrupt. (See motion of Petitioner, dated September 7, 1967.) Obviously, petitioner's insistence in deferring delivery of the tobacco to the buyer was solely to prejudice the latter and also the Government. At the time, it was shown that the storage and warehousing charges had accumulated to about ₱1,000,000 and was increasing by ₱4,800 monthly (See Answer of Luzon Stevedoring Corporation dated June 29, 1967, pp. 607-611, CTA Records). Added to this was the fact that the tobacco was already deteriorating and further delay might render the tobacco useless. There was no alternative but to deny petitioner's motion.

In consequence of the denial of the motion of petitioner for another extension of time to file the injunction bond and the lifting of the writ of preliminary injunction, Consolidated Tobacco Industries of the Philippines took delivery of said tobacco. Petitioner filed a motion to declare in contempt the members of the board of directors of said corporation, including its President and Vice-President, and the President, Executive Vice-President and the General Manager of the Luzon Stevedoring Corporation, operator of the warehouse where the tobacco was deposited.

Considering that the sale of said tobacco to Consolidated Tobacco Industries of the Philippines was legally made and that petitioner has no right or interest in said tobacco, its delivery to the buyer can in no way be considered in contempt of this Court. Section 2607 of the Tariff and Customs Code authorizes the Collector of Customs to sell seized property, even during the pendency of the seizure proceeding, if such property "is liable to perish or be wasted or to depreciate greatly in value by keeping, or which cannot be kept without great disproportionate expense, whether such property consists of live animals or of any article, x x x upon notice as he shall deem to be reasonable." The power to sell carries with it the obligation to deliver the property sold. Here, the property was legally sold and was delivered to the right party.

Finding without merit the herein appeal and the petition to declare in contempt the officers of Consolidated Tobacco Industries of the Philippines and the Luzon Stevedoring Corporation, the same are hereby dismissed, with costs against petitioner.

SO ORDERED.

Quezon City, January 31, 1968.

ROMAN M. UMALI
Presiding Judge

I CONCUR:

RAMON L. AVANCEÑA
Associate Judge

Associate Judge Estanislao R. Alvarez did not take part.