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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NEW SKIN CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5976

NELSON TAN in his Official Capacity as Commissioner of the Bureau of Customs
Respondent.

Promulgated:
JUL 06 2001

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DECISION

This is an appeal from the resolution of then Commissioner of Customs Nelson Tan dated December 8, 1999 reversing the decision of the Acting District Collector of Customs Felicitacion R. Geluz dated September 30, 1999 and decreeing the forfeiture of the subject shipment in favor of the government.

The antecedent facts follow.

On April 4, 1999, fourteen (14) packages (shipment, for brevity) arrived in the Philippines on board the vessel APL China V.34 covered by Bill of Lading N . LA99939MNLA, LA99939MNLB and LA99939MNLC and declared under the following entries:

a. Informal Import Declaration and Entry No. 18572 in the name of Leslie F. Ocol
   4 pkgs. STC. Exercise Equipment for Personal Use.

b. Informal Import Declaration and Entry No. 17790 in the name of Celia T. Villarin
   4 pkgs. STC. Exercise Equipment for Personal Use.

c. Import Entry and Internal Revenue Declaration No. 40589 in the name of Edisa V. Serranilla
6 pkgs Exercise Equipment for Personal Use.

On April 22, 1999, Informal Entry Division (IED) Examiner Paz Lubas recommended to the District Collector of the Manila International Container Port (MICP) the issuance of a Warrant of Seizure and Detention (WSD) against the shipment consigned to Leslie F. Ocol and Celia T. Villarin for lack of SGS Clean Report of Findings (CRF) and for violation of Section 2503 of the Tariff and Customs Code of the Philippines (TCCP), in relation to Section 2530 (f) and (l) (3, 4 & 5) of the TCCP, as amended (p. 39, Customs Records), it appearing that the shipment was grossly undervalued and was declared as exercise equipment for personal use when it was found to be of commercial quantity. As a result thereof, WSD Seizure Identification (SI) No. 99-080 was filed against the said shipment on May 4, 1999 (p. 40, Customs Records).

On May 10, 1999, Customs Examiner Jocelyn C. Obsum reported to the District Collector of Customs, MICP, that the shipment consigned to Ms. Edisa V. Serranilla was misdeclared and undervalued (p. 58, Customs Records). Hence, WSD SI No. 99-083 was likewise filed against the shipment on May 11, 1999 (p. 12, Customs Records).

Thus, on June 29, 1999, the above consignees offered to redeem the shipment and executed for the purpose, a Joint Affidavit stating therein that there was an error in the issuance of the WSD against their shipment because apparently, the warrants issued against them were for a total of 20 packages of exercise equipment when it should only be 14 (pp. 59-60, Customs Records).

On August 31, 1999, while the offer to redeem was under consideration, Petitioner, through counsel, filed a Motion to Intervene, claiming that it is the real owner of the shipment subject matter of the seizure proceedings (p. 69, Customs Records). In support thereof, Petitioner attached to the said motion its SEC Registration Certificate under the Foreign Investments Act of 1991, its Subic Bay Metropolitan Authority (SBMA) Certificate of Registration and Tax Exemption No. 95-0011 dated March 16, 1999, its Memorandum of Agreement with Behavior Modification Incorporated (doing business under the name BMI Slimmers World International) under which the latter undertook to provide Petitioner the needed services relative to its purchases/importation of its capital equipment/raw materials and their subsequent release from the Bureau of Customs, the pertinent Purchase Order, Invoice and Bill of Lading covering the subject shipment and the wire transfer evidencing payment of the shipment.

On September 14, 1999, the Motion to Intervene was granted and Petitioner was included as Claimant–Intervenor in SI Nos. 99-080 and 99-083.

On September 30, 1999, Acting District Collector of Customs Felicitacion R. Geluz rendered its decision in Seizure Identification Nos. 99-080 and 99-083, lifting WSD Nos. 99-080 and 99-83 and ordering the transshipment of the subject equipment to herein Petitioner at Subic Bay Freeport Zone as originally intended (pp. 160-164, Customs Records), after taking into account the following considerations:

1. The subject shipment is consigned to New Skin Corporation and the bill of ladings and invoices presented by Edisa V. Seranilla and Celia T. Villarin are fictitious while the commercial invoice presented by New Skin Corporation, reflecting the true value of the shipment are authentic and genuine;

2. Ms. Leslie Ocol repudiated her being a consignee;

3. The Memorandum of Agreement entered into by and between Petitioner and Behavior Modification, Inc.; and

4. Non-appearance of Edisa V. Seranilla and Celia T. Villarin during the scheduled hearings.

When the said decision was elevated to the Appellate Division of the Bureau of Customs, its Acting Chief James F. Enriquez, together with Atty. Gallant D. Soriano, Director III of the Legal Service and Emma M. Rosqueta, Deputy Commissioner, concurred with the decision of the District Collector (pp. 157-159, Customs Records) and recommended its approval to the Commissioner. However, on December 8, 1999, the then Commissioner of Customs Nelson Tan issued a resolution reversing the decision of the District Collector dated September 30, 1999 and ordered the forfeiture of the shipment in favor of the government to be disposed of in accordance with law.

Hence, the case before Us.

In his Answer filed on March 1, 2000, Respondent claimed, among others, that:

"21. Upon review of the records, it was noted that the subject shipment was declared as exercise equipment for personal use, with a declared value of $480.00/consignee. However, the customs examiner and the spot-checker found the said shipment to be in commercial quantity and with a value of $52,080.00, thus making the shipment grossly undervalued.

22. Said undervaluation is beyond the minimum threshold limit set forth by law. Thus, the subject shipment shall *ipso facto* be forfeited in favor of the Government to be disposed of pursuant to law. Sec. 2503 of the TCCP, as amended, reads:

> "**SEC. 2503.** ***Undervaluation, Misclassification and Misdeclaration in Entry.*** – When the dutiable value of the imported articles shall be so declared and entered that the duties,

based on the declaration of the importer on the face of the entry, would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by percent (sic)(10%) than should be legally collected based on the tariff classification, of when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: *Provided*, That an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement, or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute a *prima facie* evidence of fraud penalized under Section 2530 of this Code: Provided, further, That any **misdeclared or undeclared imported article/items found upon examination shall ipso facto be forfeited in favor of the Government to be disposed of pursuant to the provisions of this Code**.

23. The foregoing undervaluation and misdeclaration shall likewise constitute a *prima facie* evidence of fraud penalized under Section 2530 of the TCCP, as amended, which provides that:

> "**SEC. 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 subjected to forfeiture:
>
> x x x   x x x   x x x
>
> f. Any article the importation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and

all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or exportation of the former.

x x x x x x x x x

l. Any article sought to be imported or exported:

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation 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; and

(5) Through any other practice or device contrary to law by means of which such articles was entered through a customhouse to the prejudice of the government.

24. Therefore, the Commissioner of Customs correctly acted on the subject shipment.

25. Clearly, petitioner has no cause of action against the Commissioner of Customs.

26. Besides, the instant petition is fatally defective, being verified by counsel for Petitioner and not the Petitioner itself through any of its officers (**Far Eastern Shipping Co. vs. CA, G.R. No. 130068,** and **Manila Pilots Association vs. Philippine Ports Authority, G.R. No. 130150, prom. Oct. 1, 1998**)."

The sole issue to be resolved by this Court has been agreed upon by the parties in their Joint Manifestation filed on July 28, 2000: Whether or not the acts of Mesdames

Edisa Seranilla, Leslie Ocol and Celia T. Villarin are binding on the subject shipments and on the real consignee to warrant the forfeiture of the same.

We rule in the negative.

Article 1881 of the Civil Code of the Philippines provides:

"***The agent must act within the scope of his authority. He may do such acts as may be conducive to the accomplishment of the purpose of the agency.***"

Consequently, the principal cannot be bound in case the agent acts in excess of his authority. In the Memorandum of Agreement entered into by and between Petitioner and Behavior Modification, Inc. (BMI), the latter was given the authority to secure the release of Petitioner's importation and engage the services of a Customs broker for such purpose (p.78, Customs Records). While there were no specific instructions given to BMI in the execution of the agency, this Court finds that the unlawful acts of the broker engaged by BMI in obtaining bills of lading in their own names and of grossly undervaluing the subject shipment cannot be considered to be conducive to the accomplishment of the purpose of the agency and may not be imputed against herein Petitioner in the absence of evidence to support the charge. The Purchase Order dated February 12, 1999 (p. 48, Customs Records), the invoice dated March 2, 1999 (p. 49, Customs Records) and the wire transfer evidencing payment of the shipment to its supplier, all of which reflected the true value of the shipment, indicate the lack of intention on the part of Petitioner as well as BMI to defraud the government. To forfeit, therefore, the shipment of Petitioner in view of the fraud perpetrated by its broker would be unfair. The letter of the broker, Fame Cargo International, to Slimmers World dated July 27, 1999 requesting the latter to give them more time to release the shipment for which reason they issued a check dated

August 19, 1999 in the amount of P411,090.52 until the cargo is released, further bolsters our conclusion that Petitioner and BMI had nothing to do with the misdeclaration and undervaluation committed by Edisa Seranilla. Records show that the name of Leslie Ocol appearing in the Informal Import Declaration and Entry No. 18572 was merely used by the broker to carry out their unlawful acts considering that Leslie Ocol herself denied participation in the Joint Affidavit executed by the supposed three "consignees" for the purpose of redeeming the shipment. We also noted the difference in the signature of Leslie Ocol appearing in the said affidavit (pages 21 to 22, CTA Records) as compared to her genuine signatures in the Purchase Order (p. 48, CTA Records) and her Memo to ING (p. 75, Customs Records).

It is also worthy to note that under Section 2530 (l) of the TCCP, any article sought to be imported or exported shall be subjected to forfeiture in case of a false declaration/affidavit or the false invoice/other document executed by the owner, importer, exporter or consignee. Edisa Seranilla and Celia Villarin are neither the importers/consignees nor the owners of the shipment. Since Petitioner is the consignee of the exercise equipment (p. 87, CTA Records, Joint Manifestation), it follows that the same cannot be forfeited on the strength of a false declaration it did not make.

Finally, the lack of SGS Clean Report of Findings was amply explained by the fact that Petitioner is duly registered with the SBMA and is exempted from inspection by the Societe Generale de Surveillance under Article IV of the Certificate of Registration and Tax Exemption No. 95-0011.

WHEREFORE, in view of all the foregoing, the Court finds the instant petition meritorious and in accordance with law. Accordingly, the resolution of the then Commissioner of Customs Nelson Tan dated December 8, 1999 is hereby **REVERSED** and the decision of the Acting District Collector of Customs, Felicitacion R. Geluz, dated September 30, 1999 in SI Nos. 99-080 and 99-083 is hereby **UPHELD**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge