REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PETER C. UY, doing business under the name, firm or style of RITZ ENTERPRISES,
Petitioner,

- versus -

C.T.A. CASE NO. 6007

THE COMMISSIONER OF CUSTOMS and THE DISTRICT COLLECTOR OF CUSTOMS, MANILA INTERNATIONAL CONTAINER PORT (MICP),
Respondents.

Promulgated:

APR 19 2001

x - x

DECISION

The case at bar seeks for the reversal/setting aside of the decision of the Commissioner of Customs dated December 8, 1999, affirming the decision of the MICP District Collector dated August 13, 1999, which ordered the forfeiture in favor of the Government the subject importation.

As represented, Petitioner PETER C. UY, is a Filipino, of legal age, doing business under the name, firm or style of RITZ ENTERPRISES, with office address at Edison Avenue, Parañaque City.

On March 5, 1999, the shipment in question arrived at the MICP on board the vessel "Yangji" with Bill of Lading No. 52945380 and for which Import Entry No. 19724-99 was filed. Subject of Alert Order No. A/MI/030399-02, the shipment was subjected to a 100% examination, the result of which yielded motors of three (3) different sizes (182W-1/4 HP, 375W-1/2 HP and 3/4 HP), contrary to Petitioner-consignee's declaration of 2,700 ctns. of Industrial Supplies and 2,700 sets of Mini Motor AO4524-25W. On March 30, 1999, a warrant of seizure and distraint (WSD) was issued against the shipment.

On June 9, 1999, Petitioner filed a formal offer of settlement. After evaluation, the Customs District Collector's Office issued an Order accepting the same on June 21, 1999. But before the offer could be acted upon by the Customs Legal Service, Petitioner withdrew the settlement offer and the case was returned to the District Collector.

During the continuation of the seizure proceedings on August 9, 1999, Petitioner confirmed its withdrawal of the settlement offer and proceeded with the presentation of its documentary evidence. Without presenting any testimonial evidence, Petitioner rested and submitted the case for decision.

On August 13, 1999, Mr. Felipe A. Bartolome, District Collector of Customs, MICP, rendered a decision on the above seizure case, ordering the forfeiture of the subject importation, the pertinent portion of which states, to wit:

> "After due evaluation and careful study, we find that claimant has not satisfactorily proved that its shipment should not be held liable as charged, and that it has not incurred the liability of forfeiture under the law. Its defense that it merely relied on the SGS-CRF for the shipment and that it is in good faith because of it (sic) is insufficient to overcome the prima facie evidence of undervaluation and misdeclaration on record.
>
> WHEREFORE, by virtue of the power vested in me by law, let the above described shipment be FORFEITED in favor of the government, the same to be disposed of in the manner provided by law.

x x x x x x x x x

SO ORDERED."

On December 8, 1999, the Commissioner of Customs, affirmed the aforesaid decision of the District Collector of Customs, MICP, thus:

> "After evaluating the facts as presented and the evidence on record, We find no cogent reason to disturb the findings of the District Collector. Claimant's reliance on the SGS-CRF issued for the shipment and that it is in good faith is insufficient to overcome the evidence of misdeclaration and undervaluation as shown by the records. The shipment was declared as Mini Motor with a rated output of 25 W. However, the result of the inventory yielded that the shipment actually contain motors of different outputs, 182 W-1/4 HP, 375 W-1/2 HP and 3/4 HP, a misdeclaration that warrants forfeiture of the subject shipment.
>
> WHEREFORE, in view of the foregoing, the instant Appeal is hereby DENIED and the decision of the District Collector dated August 13, 1999 decreeing the forfeiture of the shipment under consideration is hereby AFFIRMED.
>
> x x x x x x x x x
>
> SO ORDERED."

Consequently, on February 9, 2000, Petitioner filed with this Court the instant Petition for Review.

On August 22, 2000, the subject importation consisting of motors of three (3) different sizes was ordered released by this Court to Petitioner, after the latter posted a Manila Insurance Co., Inc. Surety Bond in favor of the Bureau of Customs in the amount of P612,538.00.

On December 7, 2000, the case was submitted for decision based on the pleadings filed and the Customs records of the case.

In assailing the legality of forfeiture, Petitioner argued that he is not guilty of misdeclaration and undervaluation of the importation. He claimed that in preparing his Import Entry No. 19724-99, he merely relied on the accompanying Societe Generale de Surveillance (SGS) – Clean Report of Findings (CRF) No. CHN 460017 (Annexes E and F, Petition for Review), hence, it will be a mistake to accuse Petitioner of any wrongdoing and the forfeiture of his importation. Further, he asseverates that SGS not only ensures the inspected goods to conform to Philippine import regulations, it also verifies if the quantity and quality of the goods conform to contractual specifications agreed upon by the parties, which comprehensive inspection necessarily deter misdeclaration, substitution and overshipment. Petitioner vehemently denies the alleged fraud stating that there was no evidence to show that he had any knowledge or intention to make false representations in filling up the Import Entry. Likewise, Petitioner by invoking the decision of the Supreme Court in the case entitled **Farolan vs. Court of Tax Appeals and Bagong Buhay Trading, 217 SCRA 298,** asseverates the following:

1) Where the importer/consignee prepared the import entry on the basis of shipping document provided by the foreign supplier or shipper there is good faith and no fraud.

2) The fraud contemplated by law must be actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right.

3) There is no fraud, even if there is misdeclaration based on the use of the shipping documents prepared by the supplier, such violation does not warrant forfeiture for such act was not committed directly by the owner, importer, exporter, or consignee as set forth under the law.

Moreover, Petitioner submits that the assailed decision of the Respondents were not supported by sufficient evidence that would warrant the forfeiture of the subject importation. He articulated that the actions of the Respondents were not in accordance with Section 2535 of the Tariff and Customs Code of the Philippines (TCCP), *infra.*

Finally, Petitioner argued that since the matter in question involves the findings/reports of the SGS as evidence by the SGS-CRF cited earlier, the case should have been brought to the Bureau of Customs (BOC) – SGS Appeals Committee pursuant to Customs Memorandum Order (CMO) Nos. 39-92 and 3-95 and should not have proceeded as a seizure case under Section 2503 of the TCCP, in relation to Section 2530 of the same Code, quoted below:

> **Section 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 per cent (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 ten per cent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten per cent (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 per cent (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 articles/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.

When the undervaluation, misdeclaration, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to the penal provision under Section 3602 of this Code.

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 subjected to forfeiture:

x x x x x x x x x

(f) Any article the importation or exportation 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:

(1) x x x

(2) x x x

(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 documents 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.

On the other hand, Respondents maintain that there was *prima facie* evidence of fraud in the misdeclaration and/or undervaluation of the subject shipment. They proclaimed that it is undisputed that Petitioner had declared the subject shipment as 2,700 ctns. of Industrial Supplies and 2,700 sets of Mini motor A04524 with rated output of 25W, contrary to Respondents' examination and inventory which showed that the shipment actually consisted of motors of different sizes and wattages, i.e., 182W-1/4 HP, 375W-1/2 HP and 3/4 HP (Petition, Annex A, p. 2; Annex C, p. 2; Annex E) which is a clear case of misdeclaration and/or undervaluation.

The Respondents stressed that Petitioner's contention that there was no fraud since it merely relied on the accompanying Societe Generale de Surveillance - Clean Report of Findings (SGS-CRF) is of no moment. They said that the report itself states that the "computed duties payable are for reference purposes only" and "Final Assessment is for the Philippine Bureau of Customs" pursuant to Customs Memorandum Order (CMO) No. 52-94 dated December 19, 1994.

Furthermore, they argued that the citation of the case of **Farolan Jr. v. Court of Appeals, 217 SCRA 290 [1993]** is irrelevant since the consignee therein made its entry on the data prepared by its foreign suppliers or shippers. In this case, they said Petitioner "relied" on the report of the SGS, which is merely an agent of the Bureau of Customs. Needless to state, it is ultimately the consignee's obligation to personally verify the importation conforms to our customs laws. Thus, they articulated that to uphold Petitioner's stance would result in an absurd situation wherein a misdeclared or undervalued shipment could be "legally imported" through the simple expedient of taking the SGS-CRF at face value. Indeed, Sections 2503 and 2530 of the Tariff Code would be rendered ineffectual and nugatory.

Lastly, the Respondents likewise asseverated that there is nothing in CMO 39-92 or CMO 3-95 cited by Petitioner which precludes them from forfeiting the shipment pursuant to Section 2503 when there is *prima facie* evidence of fraud penalized under Section 2530(f) and (l) – 3, 4 and 5. They propounded that the aforesaid CMOs merely refer to the procedure to be undertaken when there is a question regarding the value and classification of the shipment as reported by the SGS.

The issue that comes to fore for our consideration is WHETHER OR NOT PETITIONER IS GUILTY OF MISDECLARATION AND/OR UNDERVALUATION UNDER SECTION 2503 OF THE TARIFF AND CUSTOMS CODE, AS AMENDED, THUS SUBJECTING THE IMPORTATION IN QUESTION TO FORFEITURE UNDER PARAGRAPHS (F) AND (L), SUB-PARAGRAPHS 3, 4 AND 5 OF SECTION 2530 OF THE SAME CODE.

After a circumspect study of the attending facts, the disquisition of the parties, the applicable laws, rules and regulations, the Court finds for the Respondents.

It is an undisputed fact in the case at bar that the importation in question consist of motors of different sizes and wattages, i.e., 182 W-1/4 HP, 375 W-1/2 HP and 3 [illegible] and not 2,700 ctns. of Industrial supplies and 2,700 sets of mini motor AD 4524 [illegible] rated output of 25W as declared by Petitioner in the import entry. Thus, there was indeed an apparent misdeclaration of the shipment on the part of Petitioner. This constituted a *prima facie* evidence of infringement of the provisions of the Tariff and Customs Code, specifically Section 2530, thereof, and provided sufficient basis for the seizure of the subject importation.

It should be stressed that both parties waived their rights to present evidence and merely submitted the case for decision on the basis of the records and pleadings. As to who has the burden of proof in seizure or forfeiture proceedings is explicitly answered by Section 2535 of the TCCP, which provides that the same shall lie upon the claimant, provided that the existence of probable cause first be shown before the filing of the forfeiture proceedings. The term "probable cause", which has been held synonymous with "reasonable cause", means less than the evidence which will justify condemnation. It imports a seizure made under circumstances which warrant suspicion **(Sanchez vs. Commissioner of Customs, BTA Case No. 185, November 2, 1954, citing U.S. vs. One Bag of Paradise and Choura Feathers, N.Y., 365 F. 301, 167, CCA 473; Associate Banking Corp. vs. Commissioner of Customs. et. al., CTA Case No. 2448, August 6, 1976; Metropolitan Garment Corp. vs. Ramon Farolan, CTA Case No. 3959, April 16, 1986; Mayer Steel Pipe Corp. vs. Hon. Alfredo Pio de Roda, et. al., CTA Case No. 2823, February 18, 1987).** Said Section 2535 of the TCCP provides, thus:

> **SEC. 2535.** ***Burden of Proof in Seizure and/or Forfeiture.*** In all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provision of the tariff and customs laws, **the burden of proof shall lie upon the claimant:** Provided, That probable cause shall be first shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding sections of this Code (emphasis Ours).

As discussed above there was probable cause thus, it is incumbent upon Petitioner to prove that his allegations are correct and that the Respondents' assertions were wrong. Ironically, Petitioner failed to discharge this duty. No evidence whatsoever was presented by Petitioner to support his allegations. He merely submitted his case on the basis of the pleadings and records.

It is not amiss to mention that when an importer challenges by legal steps the correctness or the validity of the actions of the Commissioner of Customs, the question to be decided is not whether the Commissioner was wrong but whether the importer was right, the burden being on the latter to establish the correctness of his own intentions. In seizure and forfeiture proceedings, the burden of proof lies upon the claimant (see **Feeder International Line PTE., Ltd. vs. Court of Appeals, et. al., 197 SCRA 843; Commissioner of Customs vs. Star Ferry, 227 SCRA 317).** The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that public officials of the state who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law (see **Inter-provincial Autobus Co., Inc. vs. Collector of Internal Revenue, 19 PHIL 290).** This is true in the instant case where Respondents' special and affirmative defenses, the validity of which as shown from the records of the case, have the effect of null. Petitioner's cause of action, if not controverted by adequate and competent evidence.

Moreover, in the recent case entitled **Commissioner of the Bureau of Customs vs. Selective Timber Export Philippines, Incorporated, CA-G.R. SP No. 47643, October**

11, 1999, the Court of Appeals explicitly ruled that (1) good faith cannot avoid forfeiture, as forfeiture proceedings are in the nature of proceedings in *rem* and, directed against the *res*, and not the persona, and (2) the importer cannot simply shift the blame of the erroneous or defective declaration in the import entry unto its supplier, over which our courts have no jurisdiction.

Pertinent portions of said decision are quoted below:

> "Hence, the Respondent cannot simply shift the blame of the erroneous or defective declaration in the import entry unto its supplier, over which our courts have no jurisdiction and cannot thus assert their coercive and punitive authority – reason enough for such supplier to scornfully and contumaciously snap its fingers at our courts, which can only watch helplessly by, as right and justice are being systematically subverted. To sustain the Respondent's stance is to put obedience to our customs and tariff laws at the mercy of the exporter or supplier, who, even as the latter disdainfully runs rings around those laws, blatantly act in conspiracy with the likes of respondent herein who pharisaically make an outward show of fealty to the same laws, while in fact ingeniously violating them. That would be legal suicide. That would be to furnish or equip the law with the very instrument of its own transgression and undoing. That would be to allow or permit indirectly what the law forbids or prohibits directly. x x x
>
> Thus it is that to legal intents and purposes, the respondent has failed to overcome the prima facie evidence of knowledge, or scinter, that the shipment in question was fraudulently misdeclared. Needless to say, owing to the respondent's failure to overthrow this prima facie presumption, such presumed or construed knowledge has now attained a conclusive or jure et de jure character."

We do not think any different conclusion ought to be reached in the case at bar. the circumstances of this case are on all fours with the above-cited case decided by the Court of Appeals.

Finally, this Court stressed that it is in total acquiescence with Respondents' contention that there is nothing in CMO 39-92 and CMO 3-95 which precludes the Respondents from forfeiting the shipment pursuant to Section 2503 of the TCCP when there is *prima facie* evidence of fraud penalized under Section 2530(f) and (l), 3, 4 and 5 of the same Code.

IN THE LIGHT OF ALL THE FOREGOING, the decision of the Commissioner of Customs dated December 8, 1999, forfeiting the subject shipment in favor of the government is hereby **AFFIRMED** *in toto.* Accordingly, the Manila Insurance Co., Inc. Surety Bond in the amount of P612,538.00, which was earlier posted by Petitioner for the release of the said shipment is hereby **ORDERED FORFEITED** in favor of the Bureau of Customs – MICP. No costs.

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