REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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TRISHA SHIPPING LINES, INC. OPERATOR /OWNER OF THE VESSEL M/V TOWER OF DAVID
Petitioner,

C.T.A. CASE NO. 6599

Members:

- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

THE COMMISSIONER OF CUSTOMS, ANTONIO M. BERNARDO,
Respondent.

Promulgated:
FEB 0 9 2007 10:15 A.M

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DECISION

BAUTISTA, L., J.:

For review is respondent's Decision dated November 29, 2002 modifying the District Collector of Customs' Decision dated October 23, 2002 and ordering the forfeiture of the vessel M/V "Tower of David" in Seizure Identification No. 01-2002 (Tacloban).

This Court, based on the parties' Joint Stipulation of Facts and Issues and on the evidence presented, has established the following set of facts:

Petitioner is a corporation duly organized and existing by virtue of Philippine Laws and the owner of the vessel M/V "Tower of David". It was issued a Certificate of Public Convenience for the operation of the M/V "Tower of David" (Case No. CAG. 20-009) in route Cagayan de Oro City (as its homeport) to any port in the Philippines.[1]

In an advisory dated March 6, 2001,[2] Bureau of Customs ("BOC") Deputy Commissioner Ray M. Allas of the Intelligence & Enforcement Group advised all District Collectors of Customs that M/V "Tower of David" has docked twice at the port of Tacloban on March 1, 2002 and attempted to unload cargo allegedly consisting of 400 tons of rice. They are to report immediately upon sight or when M/V "Tower of David" docked in their respective ports.[3]

On March 21, 2002, the vessel M/V "Tower of David" was laden with 8,000 bags of rice and called the Port of Taclabon.

On same date, OIC-CIIS, VISMIN Region Halleck A. Valdez issued Hold Order No. CE-001-2002 against M/V "Tower of David" and the 8,000 bags of rice.

Subsequently or on March 23, 2002, the 8,000 bags of rice were allowed to be unloaded and placed in a private warehouse to secure the cargo from typhoon "Caloy".

On March 25, 2002, BOC Acting District Collector Eufemio S. Aguilar of the Port of Tacloban, requested OIC-CIIS Halleck A. Valdez to verify the authenticity of the documents of the cargo of rice loaded on board M/V "Tower of David" and make a findings in order for the BOC, Port of Tacloban to make appropriate action.

On March 25, 2002, BOC SA I-CIIS Ferdinand G. Laraga and Assistant OIC-CIIS Franz Angelo S. Muñoz of the Customs Intelligence and Investigation Service ("CIIS"), Port of Cebu, Visayas Region issued a Memorandum for OIC-CIIS Halleck A. Valdez. They found/observed:

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[1] Exhibit QQ.
[2] Should be 2002
[3] Exhibit 4.

"6. Viewed from above findings, it is very clear that the shipment in questioned **were not the same rice awarded by NFA to Mr. Ronnie Cornico last December 2001**. The discrepancy is observed to be sufficient for the issuance of Warrant of Seizure & Detention (WSD) order against the subject vessel & its cargoes for possible violation of the pertinent provision of the Tariff & Customs Code, as amended in relation to all other laws relevant thereto.

7. The incident warrants an in depth investigation."[4]

Finding a *prima facie* case of violation of Section 2530(f)(k)(l-1) of the Tariff and Customs Code, BOC Acting District Collector Eufemio S. Aguilar of the Port of Tacloban then issued a Warrant of Seizure and Detention (Tacloban Seizure No. 01-2002) on March 26, 2002 against M/V "Tower of David" and 8,000 bags of rice laden therein for the violation. Thereafter, a seizure proceeding was instituted against the 8,000 bags of rice and vessel M/V "Tower of David."[5]

On June 4, 2002, BOC Acting Spl. Investigator Jose B. Arguelles and Chief Investigator Nemesio C. Magno, Jr. of the Investigation & Prosecution Division, CIIS, issued a Memorandum for the Director of the CIIS. After they conducted an investigation, they concluded:

"Under the circumstances, the Collector of Customs of the Port of Tacloban was justified in holding the release of said rice cargo pursuant to CMO-20-2001 (implementing rules and regulation on the importation of rice and coastwise movement of rice shipment) and the subsequent issuance of a Warrant of Seizure and Detention against the vessel M/V Tower of David and the 8,000 bags of rice.

xxx xxx xxx"[6]

On October 23, 2002, District Collector of Customs Alfredo G. Coro rendered his Decision in the seizure proceedings [docketed as S.I. No. 01-2002 (Tacloban)] lifting the warrant of seizure and detention and ordering the release of M/V "Tower of David." The dispositive portion reads:

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[4] Exhibit 7.
[5] Exhibit 36.
[6] Exhibit 38.

"WHEREFORE, premises considered, and by virtue of the powers vested in me by law, the effects of the Warrant of Seizure and Detention against the subject 8,000 Bags of NFA Rice is hereby declared moot and academic for lack of jurisdiction for no proof of apprehension against thereof.

"It is further ordered and decreed that the Warrant of Seizure and Detention be LIFTED against the vessel MV 'Tower of David' for want of legal and factual basis and the same be RELEASED to its respective claimant or its duly authorized representative upon proper identification and compliance with existing rules and regulations pertinent thereto.

"Let the entire records of the case be forwarded to the Commissioner of Customs for AUTOMATIC REVIEW pursuant to the provisions of Section 2313 of the TCCP, as amended.

"SO ORDERED."[7]

Thus, pursuant to Section 2313 of the Tariff and Customs Code of the Philippines ("TCCP"), the said Decision and the entire records of S.I. No. 01-2002 (Taclocban) were forwarded to respondent for automatic review.

The respondent Commissioner issued his assailed Decision in S.I. No. 01-2002 (Tacloban) on November 29, 2002 and ruled that petitioner failed to prove the legitimacy of the transport of the subject rice. Respondent declared:

"Claimants miserably failed to present evidence to prove their assertions. They didn't bother to explain nor to reconcile the inconsistencies in the documents they submitted to the BOC. No explanation was made to the erasures in the roll book, much more on the removal of a page thereof. They did not offer any reason why the vessel has to conceal its itinerary nor why they have to falsify the clearance of the PCG. The claimants didn't clarify what really happened to the 8,000 bags of 'Prince Crown' rice of Rodolfo Arcamo.

"Claimants, having failed to present evidence to overcome such burden, their case must fail."[8]

The decretal portion reads:

"WHEREFORE, the foregoing considered, the Decision of the District Collector dated October 23, 2002 is hereby ordered Modified.

"There being no proof of apprehension of the subject rice, the WSD issued against it is hereby declared moot and academic.

[7] Exhibit AAA.
[8] Assailed Decision, p.4, Exhibit BBB.

"The decision of the District Collector ordering the lifting of WSD against M/V 'Tower of David' and its release to its claimant is hereby ordered REVERSED. M/V 'Tower of David' should be, as it is hereby ordered FORFEITED in favor of the government.

"SO ORDERED."[9]

The lone issue submitted for the Court's decision is: "Whether or not forfeiture will lie against the 8,000 bags of rice and the M/V Tower of David."

Petitioner submits that the respondent Commissioner gravely and seriously erred:

I. In declaring that the subject vessel M/V "Tower of David" be forfeited in favor of the government for violation of the TCCP, as amended, despite the failure of the prosecution to prove that the 8,000 bags of rice were imported; and

II. In declaring that the subject vessel M/V "Tower of David" be forfeited in favor of the government by simply relying on trivial and immaterial matters which are not grounds of forfeiture under the TCCP, as amended.

This Court, after carefully weighing the evidence on records and arguments raised by both parties, rules in favor of the petitioner.

Forfeiture of seized goods in the Bureau of Customs is a proceeding against the goods. It is in the nature of a proceeding *in rem*, that is, directed against the *res* or imported articles and entails a determination of the legality of their importation, and in the proceeding, it is in legal contemplation the property itself which commits the violation and is treated as the offender, without reference whatsoever to the character or conduct of the owner.[10]

Section 2530 of the TCCP enumerates the properties subject to forfeiture. We quote:

Section 2530. *Property Subject to Forfeiture Under Tariff and Customs Law.* – Any vehicle, vessel or aircraft and other objects shall, under the following conditions be subjected to forfeiture:

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[9] Assailed Decision, pp. 4-5, Exhibit BBB.
[10] *Transglobe International, Inc. vs. Court of Appeals*, 302 SCRA 57 [1999].

a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and/or transporting contraband or smuggled articles in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft or any other craft to forfeiture; Provided, That the vessel, or aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;

b. Any vessel engaging in the coastwise which shall have on board any article of foreign growth, produce, or manufacture in excess of the amount necessary for sea stores, without such article having been properly entered or legally imported;

c. Any vessel or aircraft into which shall be transferred cargo unladen contrary to law prior to the arrival of the importing vessel or aircraft at her port of destination;

d. Any part of the cargo, stores or supplies of a vessel or aircraft arriving from a foreign port which is unladen before arrival at the vessel's or aircraft's port of destination and without authority from the customs officials; but such cargo, ship or aircraft stores and supplies shall not be forfeited if such unlading was due to accident, stress of weather or other necessity and is subsequently approved by the Collector;

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;

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;

g. Unmanifested article found on any vessel or aircraft if manifest therefor is required;

h. Sea stores or aircraft stores adjudged by the Collector to be excessive, when the duties assessed by the Collector thereon are not paid or secured forthwith upon assessment of the same;

i. Any package of imported article which is found by the examining official to contain any article not specified in the invoice or entry, including all other packages purportedly containing imported articles similar to those declared in the invoice or entry to be the contents of the misdeclared package; Provided, That the Collector is of the opinion that the misdeclaration was contrary to law;

j. Boxes, cases, trunks, envelopes and other containers of whatever character used as receptacles or as device to conceal article which is itself subject to forfeiture under the tariff and customs laws or which is so designed as to conceal the character of such articles;

k. Any conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws, with its equipage or trappings, and any vehicle similarly used, together with its equipage and appurtenances including the beast, steam or other motive power drawing or propelling the same. The mere conveyance of contraband or smuggled articles by such beast or vehicle shall be sufficient cause for the outright seizure and confiscation of such beast or vehicle, but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or his agent in charge thereof at the time, has no knowledge of the unlawful act;

l. Any article sought to be imported or exported:
   (1) Without going through a customhouse, whether the act was consummated, frustrated or attempted;
   (2) By failure to mention to a customs official, articles found in the baggage of a person arriving from abroad;
   (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.

In the present case, the vessel M/V "Tower of David" is sought to be forfeited for the alleged violation of Section 2530(f) (k) (l-1) of the TCCP. Under the above-quoted section, the BOC has the burden of proving that the subject vessel was actually used for the transport of articles, either: (a) the importation or exportation of which was effected or attempted contrary to law; (b) the importation or exportation were prohibited; (c) which, in the opinion of the Collector, have been used or were entered to be used as instruments in the importation or exportation of prohibited articles; or (d) the importation or exportation thereof were consummated, frustrated or attempted without going through a customhouse.

In the administrative level, it was not established that the 8,000 bags of rice laden in M/V "Tower of David" were prohibited importation; contraband or smuggled or did not go through a customhouse. The evidence of the case, both testimonial and documentary, weighs in favor of petitioner and shows that: Mr. Cornico won the bidding held by the NFA; the letter of agreement requires Mr. Cornico to re-bag the sacks of rice won in the bidding; the NFA issued a Shipping Clearance for Rice/Corn No. NFA-7-CBU—P-0035 in favor of Mr. Cornico for the shipping of the 8,000 bags of rice from Cebu City to Tacloban City; he sent a transmittal message to NFA Tacloban City; and, more importantly, sample taken from one bag taken by the Customs officials from the vessel "resembles" the stock bought by Mr. Chong from the NFA. In contrast, respondent has failed to prove that the 8,000 bags of rice laden in M/V "Tower of David" were imported in contravention with the Customs law and, therefore, subject to forfeiture pursuant to Section 2530 of the TCCP. The Court also notes that both the Collector and respondent Commissioner have ruled that there was no proof of apprehension of the subject rice and, thus, the warrant of seizure and detention issued against the shipment was declared moot and academic. As there was no basis for the forfeiture of the subject shipment, there was therefore no basis for the forfeiture of the subject vessel. Petitioner, at this point, was able to discharge its duty necessary to establish the merit of its case against respondent.[11]

Now, the burden of going forward with evidence is shifted on the respondent to prove that M/V "Tower of David" is subject to forfeiture under the TCCP. Basic is the rule that evidence shall be weighed according to the proof which the party was in the power of one side to have produced, and in the power of the other to have contradicted, and the reasonableness of the evidence given, in view of the surrounding circumstances and the inherent probabilities, should be considered in determining its weight.[12]

Unfortunately, respondent failed to discharge the burden of proving his case against the petitioner by presenting greater weight of evidence[13] and this Court is not convinced that the vessel M/V "Tower of David" is subject to forfeiture. The discrepancies in the vessel's documents and suspicious documents collated by the investigating officials of the BOC from the vessel's crew are not strong and persuasive for this Court to conclude that the vessel should be forfeited. There was no iota of evidence that M/V "Tower of David" was

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[11] Section 1, Rule 131, Revised Rules of Court.
[12] Peralta, *Perspective of Evidence*, 2005 ed., p. 533, citing Francisco, *The Revised Rules of Court in the Philippines, Evidence, Part II*, 1991 ed., p. 430.
[13] Francisco, *Evidence*, 1994 ed., pp. 554-555.

actually transporting articles subject to forfeiture as provided in the quoted Section 2530 of the TCCP.

It must be stressed that in the present case, the evidence on disputed facts are in equipoise. Thus, if the evidence touching a disputed fact is equally balanced, or it if does not produce a just, rational belief of its existence, or if it leaves the mind in a state of perplexity, the party holding the affirmative as to such fact must fail.[14] In the case at bench, the BOC failed to discharge its burden and, hence, the forfeiture of the vessel M/V "Tower of David" must likewise fail.

The degree of proof required in forfeiture proceedings is merely substantial evidence, which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[15] This Court, despite being mindful of the government's serious efforts to curb smuggling activities and prosecute and punish the offenders, cannot turn blind and affirm the respondent Commissioner's assailed Decision without basis in fact and law.

IN VIEW OF THE FOREGOING, the Petition for Review is hereby *GRANTED.* The Decision of the respondent Commissioner dated November 29, 2002 is hereby **REVERSED** and **SET ASIDE** and the Decision of the District Collector of Customs dated October 23, 2002 is hereby *REINSTATED.* Accordingly, respondent is **ORDERED to RELEASE** the vessel M/V "Tower of David" to petitioner.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[14] Francisco, *Evidence*, 1994 ed., p. 555.
[15] *Feeder International Line, Pte., Ltd. vs. Court of Appeals*, 197 SCRA 842, 849 [1991].

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division