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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

March 18, 1964

ELEUTERIO TRIAS and
MANUELA LOPEZ,
Petitioners,

versus CASE NO. 1413

THE ACTING COMMISSIONER
OF CUSTOMS,
Respondent.

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DECISION

This is an appeal from the decision of the Commissioner of Customs in Customs Case No. 645 (Seizure Identification No. 6598) ordering the forfeiture in favor of the Republic of the Philippines of one (1) motor banca "M/B Princess Noela" and its cargo of assorted "blue seal" cigarettes and eleven (11) umbrellas.

The petitioners, husband and wife, and residents of Rosario, Cavite, are the registered owners of the M/B Princess Noela, a motor banca of 9.84 gross tons and 6.70 net tons with coastwise and fishing lisense (Pars. 1 & 2, Stipulation of Facts, pp. 40-42, CTA record., hereinafter referred to as Stifacts). On September 3, 1962, the M/B Princess Noela was apprehended by elements of the Philippine Navy while lying at anchor at Cañacao Bay, Cavite City, which is not a port of entry, but within the territorial jurisdiction of the Philippines (Par. 3, Stifacts).

After boarding and search, the M/B Princess Noela was found loaded with the following "blue seal" cigarettes without Bureau of Internal Revenue strip stamps:

40 cases Union cigarettes
13 " Chesterfield cigarettes
14 cartons Chesterfield cigarettes
11 cases Salem cigarettes
42 cartons Salem cigarettes
320 cartons assorted cigarettes

There were also 11 pieces of umbrellas. The foregoing unmanifested articles were found in one of the compartments and in the hull of the vessel (Par. 4, Stifacts). The M/B Princess Noela was brought to the headquarters of the Philippine Navy in Manila, and thereafter, seizure proceedings were instituted against the vessel and its cargo under Seizure Identification No. 6598, and criminal charges were preferred against its patron and crew with the Office of the City Fiscal of Cavite (Par. 5, Stifacts).

Petitioners Eleuterio Trias and Manuela Lopez are not among those charged criminally by the City Fiscal of Cavite City (Par. 7, Stifacts). At the time of apprehension of the vessel, it was under lease to one Nicanor Alberto, Municipal Councilor of Rosario, Cavite, by virtue of a lease agreement dated August 15, 1962, wherein it was stipulated that the vessel shall be used for fishing purposes and not for smuggling. The said agreement of lease was duly notarized and registered with the Bureau of Customs on August 20, 1962 (Par. 6, Stifacts).

On January 22, 1963, the Collector of Customs for the Port of Manila rendered a decision the dispositive portion of which reads:

> "WHEREFORE, by authority of Section 2312 of the Tariff and Customs Code, it is hereby ordered and decreed that the M/B 'Princess Noela' and its cargo of cigarettes and umbrellas subject of the instant proceedings be, as they are hereby declared, forfeited in favor of the Republic of the Philippines, the same to be disposed of in the manner provided for by law" (Par. 8, Stifacts; pp. 194-200, Customs Rec.).

On appeal by claimants Eleuterio Trias and Manuela Lopez, the decision of the Collector of Customs of Manila was affirmed by respondent Commissioner of Customs on April 8, 1963 (Par. 9, Stifacts; pp. 219-225, Customs rec.). Hence, the petitioners filed the present petition for review.

The question to be decided in this appeal is whether or not the motor banca "M/B Princess Noela" is subject to forfeiture under the Tariff and Customs Code, particularly paragraphs (a) and (b) of Section 2530 which provide as follows:

> "SEC. 2530. Property Subject to Forfeiture Under Tariff and Customs Laws.—Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:
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> "(a) Any vessel or aircraft, including cargo, which shall be used unlawfully in the importation or ex-

> portation of articles into or from any Philippine port or place except a port of entry; and any vessel which, being of less than thirty tons capacity shall be used in the importation of articles into any Philippine port or place except into a port of the Sulu sea where importation in such vessel may be authorized by the Commissioner, with the approval of the department head.
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> "(b) any vessel engaging in the coastwise trade which shall have on board any article of foreign growth, product or manufacture in excess of the amount necessary for sea stores, without such article having been properly entered or legally imported. (Underscoring supplied)

The petitioners contend that "not even a shred of evidence exist on record showing that the 'Princess Noela' was utilized in the transport or carriage of articles from a foreign port into a Philippine port or place which is not a port of entry." Hence, the petitioners insist that "the offense charged had not been duly proven and the penalty of forfeiture was improper." (Pp. 3-4, & 6, Petitioners' Memorandum; pp. 46-53, CTA rec.)

We find the contention of the petitioners without merit. They have lost sight of the fact that smuggling or illegal importation in the Philippines may cover two stages, especially in cases where the foreign articles are imported into a Philippine port which is not a port of entry, as in the instant case. The first stage begins when the carrying vessel enters the jurisdiction of the

Philippines with the intention to unload therein, and the second stage starts when the carrying vessel from the foreign port unloads its cargo within the jurisdiction of the Philippines ~~into~~ another vessel, usually of lesser tonnage, ~~for~~ final shipment to any place in the Philippines. The latter stage includes the period when the vessel is already lying at anchor in the Philippines but is still loaded with the smuggled goods. And the illegal importation is never deemed legally terminated because the duties, taxes and other charges due upon the imported articles are never paid (Sec. 1202, Tariff & Customs Code).

In the case at bar, it is an admitted fact that the M/B Princess Noela was apprehended by elements of the Philippine Navy while lying at anchor at Cañacao Bay, Cavite City, which is not a port of entry, loaded with blue seal cigarettes without Bureau of Internal Revenue strip stamps (Pars. 3 & 4, Stifacts). From the very nature of its unmanifested cargo, the same were imported foreign articles and the taxes due thereon were not paid. In short, they were illegally imported cigarettes. As a matter of fact, there is no appeal with regard to the cigarettes and that the forfeiture of the same is admittedly in accordance with law.

Considering all the established circumstances under which the motor banca M/B Princess Noela was apprehended, we are of the opinion and so hold that its cargo consisted of smuggled cigarettes, and that the said motor banca was used in its illegal importation and should therefore be forfeited in favor of the government, pursuant to paragraph (a) of Section 2530, in relation to Section 2312 of the Tariff and Customs Code. As correctly pointed out by the respondent, to sustain petitioners' argument that it was never proven that their vessel was actually used in the bringing of tax-unpaid cigarettes from a foreign port would open a wide avenue to circumvent the law, thus creating a situation where smugglers would be untouchable by merely making use of fishing boats in introducing goods of foreign origin under the shield that said vessel had not been from any foreign port (See pp. 219-225, Customs rec.). Certainly, a vessel used in smuggling need not be boarded and searched while it is on the run in order to be apprehended and be held subject to forfeiture, nor does the violation of our customs laws vanish when the said vessel is apprehended while already lying at anchor, as in the instant case.

Moreover, the vessel in question is also subject to forfeiture under paragraph (b) of Section 2530 of the Tariff and Customs Code. As contended by the petitioners, their motor banca M/B Princess Noela did not come from a foreign port, hence it must have come from a place in the Philippines transporting its cargo of blue seal cigarettes to a coastwise port - Cañacao Bay, Cavite City - and therefore, engaged in coastwise trade. When apprehended in said coastwise port, it had on board articles of foreign manufacture - blue seal imported cigarettes - very much in excess of the amount necessary for sea stores, without such articles having been properly entered or legally imported. As stated above, its cargo was actually declared forfeited in favor of the government in seizure proceedings duly conducted by the Bureau of Customs. To our mind, the conditions for subjecting a vessel to forfeiture mentioned in paragraph (b) of Section 2530 of the Tariff and Customs Code are also present in the instant case, and therefore the motor banca M/B Princess Noela should be forfeited in favor of the government on this additional ground.

With regard to the fact that the vessel was under lease to Municipal Councilor Nicanor Alberto of Rosario, Cavite at the time of its apprehension is of no moment. The lack of knowledge or consent by the petitioners as the owners of the M/B Princess Noela is not a bar nor a defense in a proceeding directed against the said vessel itself for a forfeiture proceeding is *in rem* and the thing in such a case is primarily considered as the offender, or rather that the offense is attached primarily to the thing.

> ". . .because forfeiture is in rem, directed against the property seized, the courts have upheld the condemnation and forfeiture of property used for illegal purposes although the user was acting without authority from the true owner, without right, contrary to the wishes of that owner, and while the latter was ignorant of such use of his property. x x x" (23 Am. Jur. 603)

WHEREFORE, in view of the foregoing considerations, the decision appealed from is hereby affirmed. The motor banca "M/B Princess Noela" and its cargo of assorted blue seal cigarettes and eleven (11) umbrellas are hereby declared forfeited in favor of the Republic of the Philippines, the same to be disposed of in accordance with law, with costs against the petitioners.

SO ORDERED.

Manila, Philippines, March 12, 1964.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge