REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SANLY CORPORATION AND ERA RADIO AND ELECTRICAL SUPPLIES,
Petitioners,

- versus -

C.T.A. CASE NO. 5927

HON. SECRETARY OF FINANCE,
Respondent.

Promulgated:
OCT 17 2000

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DECISION

Petitioners seek for the reversal and setting aside of the 3rd Indorsement issued by the Respondent Secretary of Finance on May 10, 1999 which affirmed the decision of the District Collector of Customs, San Fernando, La Union, forfeiting in favor of the government the 249 boxes of Agfa photo papers, cameras, films, batteries and the vehicle used in transporting the same for violation of Sections 2530(f) (m-5) and 2530(k), respectively, in relation to Sections 2536 and 3601 of the Tariff and Customs Code of the Philippines.

Petitioner Sanly Corporation, Inc. is a domestic corporation engaged in the business of selling household supplies, furniture and photographic supplies, among others. Petitioner ERA Radio and Electrical Supply is likewise a domestic corporation and owner of the vehicle used in the transportation of the subject goods, a Mitsubishi Canter Van with Plate No. UTA 994.

This case originated when an affidavit-complaint was filed on February 3, 1998 by Atty. Rodrigo Sta. Ana, Vice-President for Legal Affairs of Photokina Marketing Corporation, with the National Bureau of Investigation-Cordillera Autonomous Region (NBI-CAR) in Baguio City against Sanly Corporation for selling Agfa papers/merchandise without proper documentation (Annex D, Petition for Review).

At around 3:15 p.m. of February 3, 1998, joint elements of EIIB-CAR and NBI-CAR apprehended the subject vehicle loaded with the subject goods along Session Road, Baguio City when Mr. Victor Tupaz, Sales Manager of Sanly, failed to show the agents import documents (see Spot Report, p. 326 BOC rec., Joint Affidavit, pp. 305-306, BOC rec., TSN, Seizure Proc., March 27, 1998). Thereafter, the seized goods and vehicle were brought to NBI-CAR headquarters in Baguio City where an inventory was made (see Inventory Receipt dated Feb. 3, 1998, p. 328, BOC rec.). Subsequently, warrants of seizure and detention were secured (WSD No. 01-98 for the goods and WSD No. 01-98-A for the vehicle) from the Collector of Customs, PEZA, Baguio City (see Annex C, Petition and p. 324, BOC rec., TSN, p. 76, March 27 1998 hearing, BOC rec.).

During the hearing on the merits of the seizure-forfeiture proceedings (SBP Seizure Identification Nos. 01-98 and 01-98-A), the Motion to Intervene filed by Atty. Sta. Ana was granted for the sole purpose of assisting the government in the establishment of a probable cause for the eventual forfeiture of the seized goods and vehicle (see TSN, p. 3, March 27, 1998 hearing, BOC rec., p. 114).

After due trial, the hearing officer from the Legal Department, Bureau of Customs, Manila, recommended the decision dated June 10, 1998 ordering the release of the subject goods and vehicle having determined that the Agfa photo papers under seizure have passed through a customshouse and have legally left the jurisdiction of the Bureau of Customs. Said decision was indorsed to Sub-port Collector of Customs Valentin Tolentino on June 25, 1998 who adopted and signed the same on August 3, 1998 (Annex E, Petition).

Considering that the decision of Collector Tolentino was adverse to the government, it was automatically elevated for review to the Commissioner of Customs, in accordance with Section 2313 of the TCCP, as amended by Republic Act No. 6751. The entire records of the cases were then transmitted to the Appellate Division of the Bureau on September 9, 1998. Also, by reason of the favorable decision rendered, Collector Tolentino granted the request of claimants for the Provisional Release of the subject goods and vehicle under bond pending appeal and finality of the decision.

On November 9, 1998, Atty. Adelina SE Molina, Chief of Staff of the Commissioner, for and in behalf of the Commissioner, remanded the decision of Collector Tolentino inasmuch as his decision could not be given due course in view of the non-observance of Customs Memorandum Order No. 7-91 (p. 538, BOC rec.).

Petitioners-claimants filed a Motion for Reconsideration thereof but it remained unacted. Instead, the decision of Collector Tolentino was tossed from the Office of the Commissioner of Customs to the District Collector of Customs, San Fernando, La Union and vice-versa.

On December 1, 1998, the District Collector of Customs, in his 5th Indorsement, re-forwarded the case folders to the Office of the Commissioner and suggested that all controversial issues in the said decision be taken up in the process of automatic review (pp. 534-535, BOC rec.).

The Commissioner of Customs, on even date, returned the records of the case to the District Collector of Customs and directed the latter to decide the case within ten (10) days from the receipt thereof (p. 539, BOC rec.).

Consequently, District Collector Ernesto Urbano rendered his decision on the case reversing the earlier decision of Collector Tolentino and ordered the subject articles forfeited in favor of the government. However, the question involving the disposition of the vehicle was not tackled (pp. 514-517, BOC rec.).

Both the intervenor and claimants sought reconsideration of the decision of the District Collector. Yet, District Collector Urbano instead of ruling on the motions for reconsideration forwarded the expediente of the cases together with the pending motions to the Office of the Commissioner with the suggestion of treating said motions as timely appeal.

But the Office of the Commissioner returned the records back to the District Collector concerned with the instruction that the twin motions must be resolved by him.

On January 26, 1999, the District Collector of Customs finally rendered an Order denying herein Petitioners' motion whilst granting the intervenor's motion (p. 449, BOC rec.). Hence, the subject vehicle was decreed forfeited in favor of the government.

On February 11, 1999, Petitioners herein filed their notice of appeal with the office of the Commissioner assailing both the decision of December 8, 1998 and order of January 28, 1999 rendered by the said District Collector of Customs (Annex F, Petition).

On April 15, 1999, Deputy Commissioner of Customs, Emma Rosqueta, promulgated a decision which reversed and set aside the aforesaid decision and order of the District Collector. She ruled that the decision of the District Collector of the Port of San Fernando, La Union was devoid of any merit for being unsubstantiated and unsupported by the required quantum of evidence to sustain the decision of forfeiture. Further, the claimants have maintained and proved that they legitimately acquired the photo supplies in question from a local supplier (Annexes B & G, Petition).

The above decision was elevated to the Office of the Secretary of Finance on April 16, 1999 for automatic review.

The Secretary of Finance issued the assailed 3rd Indorsement on May 10, 1999 which was received by the Commissioner of Customs on July 14, 1999 (Annex A, Petition).

Petitioners allege that they learned of the said indorsement on August 6, 1999 enabling them to file the instant petition only on August 24, 1999.

It is the position of the Petitioners that the Respondent erred:

> (1) In declaring that the subject articles consisting of Agfa photo papers, films, cameras and batteries be forfeited in favor of the government for the alleged violation of Section 2530(f) and (m) (sic) in relation to Sections 2536 and 3601 of the TCCP, as amended, despite the fact that the raiding team composed of agents were not armed with the required authorization from the Commissioner of Customs as ordained by Section 2536; and

> (2) In declaring that the subject motor vehicle (Mitsubishi Canter Van) with Plate No. UTA 994 be forfeited in favor of the government for alleged violation of Section 2530(k) in relation to Sections 2536 and 2301 of the TCCP.

Respondent, on the other hand, by way of Special and Affirmative Defenses, repleads and incorporates by way of reference all the foregoing provisions of the Tariff and Customs Code, to wit:

> **SEC. 2203.** ***Persons Having Police Authority***. For the enforcement of the tariff and customs laws, the following persons are authorized to effect searches, seizures and arrests conformably with the provision of said laws.
>
> a. Officials of the Bureau of Customs, district collectors, deputy collectors, <u>police officers</u>, agents, inspectors and guards of the Bureau of Customs;
>
> b. Offices of the Philippine Navy and other members of the Armed Forces of the Philippines and national law enforcement agencies when authorized by the Commissioner;
>
> c. Officials of the Bureau of Internal Revenue on all case falling within the regular performance of their duties, when the payment of internal revenue taxes are involved;
>
> d. Officers generally empowered by law to effect arrests and execute processes of courts, when acting under the direction of the Collector. (Underscoring supplied)
>
> **SEC. 2211.** ***Right to Search Vehicles, Beasts and Persons.*** It shall be lawful for a person exercising authority as aforesaid to open and examine any box, trunk, envelope or other container, wherever found when he has reasonable cause to suspect the presence therein of dutiable or prohibited article or articles introduced into the Philippines contrary to law, and likewise to stop, search and examine any vehicle, beast or person

> reasonably suspected of holding or conveying such article as aforesaid.
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> 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 subject to forfeiture:
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> x x x x x x x x x
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> a. Any vehicle, vessel, 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, aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;
>
> 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.

A reply to Respondent's Comment/Answer was filed by the Petitioners on December 6, 1999 (p. 125, CTA rec.). In the meantime, a Motion for Release of Motor Vehicle was filed by the Petitioners on October 15, 1999 which this Court granted only on May 31, 2000 when Petitioners finally complied with the requirements relative therefor (p. 204, CTA rec.).

On January 14, 2000, counsel for the Petitioners with conformity of counsel for the Respondent, filed a

Motion to File Memorandum in lieu of Pre-Trial Brief and Submit Case for Judgment on the Pleadings/Evidences on Record (p. 143, CTA rec.). This case was submitted for decision on May 31, 2000 sans Respondent's memorandum.

The main issue boils down to whether or not the seized goods and vehicle are subject to forfeiture for violation of Sections 2530(f) and (m) and 2530(k), respectively, in relation to Sections 2536 and 3601 of the Tariff and Customs Code of the Philippines, as amended.

A corollary issue nonetheless needs to be resolved: Whether or not the questioned 3rd Indorsement of the Respondent was issued beyond the period required by law thereby rendering the decision of the Deputy Commissioner of Customs final and executory.

A painstaking review of the records in this case and the evidence extant, arguments of the parties, applicable laws, rules and regulations and jurisprudence in point, We rule against the Petitioners.

First, We resolve the corollary issue.

Section 2313 of the TCCP, as amended by R.A. No. 7651 is hereunder quoted for clarity:

> SEC. 2313. *Review by Commissioner.* - The person aggrieved by the decision of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification in writing by the Collector of his action or decision, file a written notice to the Collector with a copy furnished to the Commissioner of his intention to appeal the

> action or decision of the Collector to the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector or take such steps and make such orders as may be necessary to give effect to his decision: *Provided*, That when an appeal is filed beyond the period herein prescribed, the same shall be deemed dismissed.
>
> If in any seizure proceedings, the Collector renders a decision adverse to the Government, such decision shall be automatically reviewed by the Commissioner and the records of the case elevated within five (5) days from the promulgation of the decision of the Collector. The Commissioner shall render a decision on the automatic appeal within thirty (30) days from receipt of the records of the case. If the Collector's decision is reversed by the Commissioner, the decision of the Commissioner shall be final and executory. However, if the Collector's decision is affirmed, or if within thirty (30) days from receipt of the records of the case by the Commissioner, no decision is rendered or the decision involves imported articles whose published value if Five million pesos (P5,000,000) or more, such decision shall be deemed automatically appealed to the Secretary of Finance and the records of the proceedings shall be elevated within five (5) days from the promulgation of the decision of the Commissioner or of the Collector under appeal, as the case may be: *Provided, further*, That if the decision of the Commissioner or of the Collector under appeal, as the case may be, is affirmed by the Secretary of Finance, or if within thirty (30) days from receipt of the records of the proceedings by the Secretary of Finance, no decision is rendered, the decision of the Secretary of Finance, or of the Commissioner, or of the Collector under appeal, as the case may be shall become final and executory. (Emphasis supplied.)

Petitioners in claiming that the 3rd Indorsement of the Respondent was issued beyond the thirty-day period allowed by law, stated that the same was merely ante-dated considering that the Office of the Commissioner of Customs received said indorsement only on July 14, 1999. Besides, intervenor therein even filed its memorandum attacking the validity of the decision of the Commissioner of Customs. Furthermore, on June 16, 1999, Petitioners submitted the requested documents by the Office of the Secretary.

The sequence of events so narrated is not sufficient to prove the allegation that the 3rd Indorsement in question was ante-dated. The document speaks for itself and the receipt thereof by the Office of the Commissioner on July 14, 1999 is a circumstance beyond the control of the Respondent. The same is true with regard to the receipt by the Office of the Secretary of the alleged requested documents on June 16, 1999. Moreso, the filing by the intervenor of its memorandum on May 18, 1999. The Respondent can always render a decision with or without the memorandum of the respective parties.

Therefore, We accept the 3rd Indorsement of the Secretary as dated.

Proceeding to the main issue, the basis for the seizure of the subject goods was Section 2530(f) whereas the seizure of the subject vehicle was based on Section 2530(k). It is necessary to quote Section 2530(k) aside from the earlier cited provisions (Sec. 2530(a) & (f)), as well as Sections 2536 and 3601 invoked by the parties.

SEC. 2530. *Property Subject to Forfeiture Under Tariff and Customs Law.* -

xxx xxx xxx

k. Any conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws, with its enquipage 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.

SEC. 2536. *Seizures of Other Articles.* - The Commissioner of Customs and Collector of Customs and/or any other customs officer, with the prior authorization in writing by the Commissioner, may demand evidence of payment of duties and taxes on foreign articles openly offered for sale or kept in storage, and if no such evidence can be produced, such articles may be seized and subjected to forfeiture proceedings : Provided, however, That during such proceedings the person or entity from whom such articles have been seized shall be given the opportunity to prove or show the source of such articles and the payment of duties and taxes thereon.

SEC. 3601. *Unlawful Importation.* - Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling and shall be punished with: xxx

Petitioner Sanly claims that it is not an importer. It alleged that it purchased the goods in question from a local supplier, Jose M. Reyes General Merchandise which proprietor, Jose M. Reyes, issued Invoice Nos. 016, 017, 018 and 019 (Attachments to Annex H, Petition). Mr. Jose M. Reyes also executed an affidavit to support said averments (p. 468, BOC rec.).

Sanly likewise asserts that the subject articles were legitimately purchased by Jose M. Reyes General Merchandise from HMR Philippines, Inc. which was an authorized importer. To bolster this declaration, an affidavit executed by Yolanda U. Yabut, sales supervisor of HMR Philippines, Inc.. was presented by Sanly. In said affidavit, it was stated that the the proper duties and taxes were duly paid on HMR's importation from Australia of office equipment and photopaper supplies on July 28, 1997 and that Jose M. Reyes General Merchandise bought rolls of photopapers and other products from HMR on several occasions (p. 467, BOC rec.).

We do not agree with the findings of the Deputy Commissioner Rosqueta that Petitioners-claimants had sufficiently proved that they legitimately acquired the photo supplies in question from a local supplier.

We do not give much credence to the above documents submitted by the Petitioners for they appear to be spurious. Moreover, Mr. Jose M. Reyes was never presented in the seizure proceedings to verify the issuance of the sales invoices by him. Nor was he presented to affirm the truthfulness of the contents of his affidavit. Furthermore, Jose M. Reyes General Merchandise is found to be an unlicensed firm since 1994, *i.e.*, no mayor's permit to conduct business (see TSN, April 2, 1998, p. 94, BOC rec., p. 195). In fact, the investigation conducted resulted to the discovery that the business address so given was a residential apartment (ibid, p. 90, BOC, rec., p. 200). Yolanda U. Yabut was not presented either. Indubitably, there was no opportunity for the government to cross-examine them. Thus, the same documents can be considered hearsay. A sworn statement is absolutely inadmissible in evidence for being hearsay, where the affiant himself never took the witness stand during trial (People v. Santos, *et al.* G.R. No. 62072, Nov. 11, 1985). In other words, Petitioner Sanly failed to establish that the subject goods were not smuggled.

Smuggling is the offense of importing or exporting prohibited articles without paying the duties chargeable upon them. (Black's Law Dictionary, 6th Ed., p. 1389.) Importation begins when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unload and is deemed terminated upon payment of the duties, taxes and other charges and dues upon the articles and the legal permit for withdrawal shall have been granted (**Rodriguez vs. Court of Appeals**, 248 SCRA 288). Under Section 2530, articles subject to forfeiture can be classified into two: (1) articles of prohibited importations or contraband; and (2) articles which are merely relatively prohibited, *i.e.*, those that are permitted to be imported but the importation of which is effected contrary to law. Thus, there is unlawful importation or smuggling if goods are entered into the country without the proper duties and taxes having been paid.

In the case at bar, the articles in question, are not prohibited. But Petitioners failed to establish the fact of lawful importation. Under Section 2530 of the Tariff and Customs Code, the same shall be forfeited in favor of the Government.

It bears emphasis that the customs entry relative to the importation by HMR referred to rolls of expired photo paper and film (p. 395, BOC rec.). However, in the Motion to File Bond for Release of Seized Goods for Legitimate Use filed by the Petitioners-claimants (p. 482, BOC rec.) Petitioners described the seized goods as "highly perishable requiring a special compartment with regulated temperature so as to maintain the quality and usefulness of the same". Logically, the expired photo papers and films are not highly perishable. These contradictory asseverations only lead to no other conclusion than that the photopapers referred to in the customs entry covering the importation by HMR are not the photopapers subject of this case. We note in particular that the description and quantity in said customs entry do not match the articles seized.

IN THE LIGHT OF ALL THE FOREGOING, We hereby **DENY** the instant petition and the Indorsement of the Respondent Secretary of Finance dated May 10, 1999 is hereby **UPHELD**.

Accordingly, the 249 rolls of Agfa photo papers, cameras, films, batteries and the vehicle used in transporting the same, the Mitsubishi Canter with Plate No. UTA-994, are hereby **ORDERED FORFEITED** in favor of the government for violation of Section 2530(f) in relation to Section 2536 and 3601 of the Tariff and Customs Code of the Philippines. Likewise, the surety bond earlier posted for the provisional release of the subject vehicle is FORFEITED in favor of the government.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

(Dissenting)
ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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