REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LIBERTY AVIATION CORPORATION,
Petitioner,

- versus - C.T.A. Case NO. 3498

THE ACTING COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - - x

8/25/89

D E C I S I O N

This is a petition for review of the ruling of respondent Commissioner of Customs dated 9 June 1982, received by petitioner Liberty Aviation Corporation on 15 June 1982, affirming the decision of the Acting Collector of Customs at the Manila International Airport (now Ninoy Aquino International Airport) dated 19 October 1981 charging petitioner with having violated the terms and conditions of Ordinary Re-Export Bond No. C(9) 00913 previously posted for the release of the importation of one (1) unit Beechcraft King Air Model 200, S.N. BB-692 airplane under Section 105 of the Tariff and Customs Code, and requiring petitioner to pay the face value of said bond in the amount of P4,250,919.00.

The material facts as narrated by respondent in his answer and which are not disputed or denied by petitioner in his reply dated 5 July 1983 are:

On or about September 29, 1980, a shipment of one (1) unit Beechcraft King Air 200 with S.N. BB-692 including optional equipment and avionics, consigned to Liberty Aviation Corporation, arrived at the Manila International Airport. Said Aircraft was imported by petitioner "for demonstration flight only";

That upon arrival, the herein petitioner requested the Collector of Customs of the Manila International Airport for the conditional release of said aircraft free from duties pursuant to the provisions of Section 105(l) of the Tariff and Customs Code, as amended, posting the required re-export bond as provided for by law;

Upon posting of Ordinary Re-Export Bond No. C(9) 00913 dated September 30, 1980 (PN Bond No. 80/12471) duly issued by the Philippine American General Insurance Co., Inc. in the total amount of P4,250,919.00, and pursuant to the provisions of

Section 105(1) of the Tariff and Customs Code, as amended, the Collector of Customs approved said request for the conditional release of the said aircraft free from customs duty;

Under the terms and conditions of Re-Export Bond No. C(9) 00913, petitioner Liberty Aviation Corporation, as principal importer and Philippine American General Insurance Co., Inc., as surety, are jointly and severally bound to strictly observed and follow the conditions, to wit:

> NOW, THEREFORE, the condition of this obligation is such that if the aforementioned merchandise shall in good faith be actually exported beyond the limits of the Philippines within six (6) months and the export papers as evidence of such exportation satisfactory to the Collector of Customs be produced and presented to him, if the duties, taxes accruing upon said good shall be paid promptly on or before the expiration of this bond, then this obligation shall be null and void, otherwise, to remain in full force and effect."

In addition to the conditions set forth in the re-export bond, Section 105 of the Tariff and Customs Code, as amended, specifically prohibits the sale, among others, of articles entered conditionally free under said provision of law prior to the payment of duties, taxes and other charges due thereon;

> "x x x; Provided, That any article sold, bartered, hired or used for purposes other than that they were intended for without prior payment of duty, tax or other charges which would have been due and payable at the time of entry if the articles have been entered without the benefit of this section, shall be subject to forfeiture and the importation shall constitute a fraudulent practice against customs revenue punishable under Section Thirty Six hundred and two, as amended by this Code, x x x".

The subject Beechcraft King Air Model 200, including optional equipment and avionics, was never re-exported by petitioner during the lifetime of Re-Export Bond No. C(9) 00913, as no papers evidencing exportation thereon were ever presented to the Collector of Customs. Moreover, the corresponding duties, taxes and other charges due thereon were never paid to the Bureau of Customs during the lifetime of the re-export bond.

It appears further that although covered by a re-export bond posted pursuant to the provisions of Section 105 of the Tariff and Customs Code, the subject plane was sold to the Universal Equity Corporation, a domestic company. The sale was effected without the prior payment of customs duties, taxes and other charges which would have been due and payable at the time of entry of said aircraft had it not been entered pursuant to the provisions of Section 105(i) of the Tariff and Customs Code, as amended. The corresponding duties, taxes and other charges due on the subject aircraft remain unpaid up to the present.

Records show that it was the Beech Aircraft Corporation, a United States corporation, which sold the subject aircraft to the Universal Equity Corporation.

On April 2, 1981, petitioner requested the Collector of Customs at the Manila International Airport (now Ninoy Aquino International Airport) for the extension of the re-export bond covering the aircraft but the same was denied for lack of legal basis on April 15, 1981. The Deputy Collector for Assessment then demanded the payment of the taxes and duties due on the aircraft. Thereafter, petitioner sought the discharge of the bond but the same was denied. Instead, the Collector of Customs at the NAIA demanded from petitioner the payment of the amount representing the face value of the re-export bond, alleging that petitioner violated the terms thereof. In a final demand dated June 9, 1982, the then Acting Commissioner of Customs directed petitioner to remit the amount of P4,258,919.00 representing the face value of the Re-Export Bond No. C(9) 00913 since petitioner violated the conditions of said bond and the provisions of Section 105 of the Tariff and Customs Code.

Hence, this appeal.

The issue in this case is whether petitioner violated the terms and conditions of Re-Export Bond No. C(9) 00913, as well as the provisions of Section 105 of the Tariff and Customs Code, and thus liable for the payment of the face value of said bond in the amount of P4,258,919.00.

As thus shown above, there seems to be no dispute that:

(1) The subject Beechcraft King Air Model 200, including optional equipment and avionics, was never re-exported by petitioner during the lifetime of Re-Export Bond No. C(9) 00913.

(2) The corresponding duties, taxes and other charges due thereon were never paid by petitioner as importer or consignee to the Bureau of Customs during the lifetime of the re-export bond.

(3) Although covered by a re-export bond posted pursuant to the provisions of Section 105 of the Tariff and Customs Code, the subject plane was sold to the Universal Equity Corporation, a domestic corporation.

(4) The sale was effected without the prior payment of customs duties, taxes and other charges which would have been due and payable at the time of entry if said aircraft had not been entered pursuant to the provisions of Section 105(1) of the Tariff and Customs Code, as amended.

(5) The corresponding duties, taxes and other charges due on the subject aircraft remain unpaid up to the present.

Against this backdrop, and whatever the dialectics employed, it seems clear that:

(1) Petitioner clearly violated the terms and conditions set forth in the re-export bond previously posted for the conditional release of the subject aircraft free from customs duties and taxes.

(2) The sale of the aircraft violated the provisions of Section 105 of the Tariff and Customs Code, as amended, which specifically prohibits the

sale, among others, of articles entered conditionally free under said provision of law prior to the payment of duties, taxes and other charges due thereon.

(3) The sale of the aircraft in question which was conditionally released from customs custody pursuant to the provisions of Section 105 of the Tariff and Customs Code, as amended, will not absolve petitioner of the liability under the bond, considering that said sale was effected without prior payment of the corresponding duties, taxes and other charges due thereon. By such sale, petitioner violated the provisions of Section 105 of the Tariff and Customs Code which provides that subject aircraft should not be sold, bartered, hired or used for purposes other than that it was intended for without prior payment of duties, taxes and other charges which would have been due and payable at the time of entry if the saId aircraft has been entered without the benefits of Section 105(i) of the Tariff and Customs Code.

(4) Such being the case, the sale constitutes a fraudulent practice against customs revenue punishable under the penal provisions of the Tariff

and Customs Code. (Section 105 in relation to (Section 3602, both of the Tariff and Customs Code.)

As aptly stated by respondent, "the re-export bond duly posted by petitioner for the conditional release of the aircraft free from payment of customs duty and taxes pursuant to Section 105(1) of the Tariff and Customs Code, as amended, is a contract between the Bureau of Customs and the petitioner and her surety, wherein the latter guaranteed to faithfully fulfill the terms and conditions of said re-export bond, to wit: to re-export the said aircraft within the lifetime of the bond or to pay the corresponding duties, taxes and other charges due thereon during the lifetime of the bond. The fact that petitioner failed to re-export the said aircraft during the lifetime of the bond and petitioner likewise failed to pay the corresponding duties, taxes and other charges due thereon during the lifetime of said bond clearly show that petitioner violated the terms and conditions of the re-export bond. In view of the patent violation of the terms and conditions of the re-export bond as well as the provisions of Section

105 of the Tariff and Customs Code, petitioner is liable to pay the cash value of said bond, and not merely the duties and taxes due thereon."

We therefore find petitioner Liberty Aviation Corporation guilty of violating the terms and condition of Re-Export Bond No. C(9)00913, as well as the provisions of Section 105 of the Tariff and Customs Code, as amended. Accordingly, petitioner is hereby directed to pay respondent Commissioner of Customs the face value of said bond in the amount of P4,258,919.00, and the customs duties and taxes due on the subject aircraft.

WHEREFORE, the decision appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, August 25, 1989.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

(on leave)
CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

CERTIFICATION

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

AMANTE FILLER
Presiding Judge
Court of Tax Appeals