REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JOSE PASCUAL,
Petitioner,

-versus- C.T.A. CASE No. 1608

COMMISSIONER OF CUSTOMS,
Respondent.

x- - - - - - - - - - - - - -x

Sept. 23/64

D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs in Customs Case No. 736 (Seizure Identification No. 3006) declaring the forfeiture in favor of the Government of the motor boat "M/B Maria Victoria-P", formerly Doña Mercedes.

Petitioner, a businessman and resident of Mercedes, Camarines Norte, is the registered owner of the "M/B Maria Victoria-P," a motor boat duly licensed by the Bureau of Customs to engage in coastwise trade.

On December 4, 1963, petitioner, through his duly authorized representative, Jose Jaloc, captain of said motor boat, went to Bulalakao, Mindoro, to catch fish. After three days of fishing all the fishing nets were destroyed. The captain notified petitioner in Manila about the nets and the latter advised the former to bring the boat back to Manila. The captain failed to bring the boat back to Manila on the date expected by petitioner, so the latter sent a telegram addressed to the captain but no answer was received. Petitioner sent Mr. Artemio Buenvenuto to Mindoro on December 13, 1963 to fetch the boat. Not finding the boat in Mindoro, Mr. Buenvenuto sent a telegram to petitioner notifying him that the boat had left Mindoro. Petitioner, after receiving the telegram, notified the Philippine Navy on December 13, 1963 that his boat was missing and at the same time expressing the fear that it might be used illegally. This fact is borne out by the records of the Philippine Navy. (See pp. 4-5, Decision of Respondent; pp. 309-310, Customs records.)

On December 16, 1963, the "M/B Maria Victoria-P" was apprehended by the elements of the Philippine Navy, five miles off the coast of the Municipality of Naic, Cavite. After boarding and search, the boat was found loaded with the following "blue seal" cigarettes:

> 105 cases and 90 packs of Salem cigarettes, &
> 414 cases of Union cigarettes

which were found on the astern part of the middle compartment of the fishing boat. During the seizure proceeding in the office of the Collector of Customs, it was alleged that the cigarettes were alleged to have been loaded under duress and use of superior force exerted upon the captain of the boat by one Fructuoso Maniego, an agent of one Datu Jacob of Jolo, Sulu. The cigarettes having been abandoned, they were accordingly declared forfeited in favor of the Government.

It appears that the boat in question is mortgaged to the DBP, a corporation owned by the Government by virtue of a chattel mortgage dated August 22, 1961, which prompted the DBP to enter its appearance, through its counsel, at the hearing of Seizure Identification Nos. 8006 and 8006-A.

On July 3, 1964, the Collector of Customs rendered a decision declaring the motor boat forfeited in favor of the Government. Petitioner filed a motion for reconsideration on August 18, 1964 with the Collector of Customs, which motion was denied in an order dated August 26, 1964.

On appeal by petitioner, the decision of the Collector of Customs was affirmed by the Commissioner of Customs on November 10, 1964, which was received by petitioner on December 8, 1964. Petitioner filed a motion for reconsideration of the decision of the Commissioner on December 18, 1964, which motion was denied by the latter in an order dated January 14, 1965, and received by petitioner on March 30, 1965. Hence, this appeal.

The question to be resolved in this appeal is whether or not the motor boat "M/B Maria Victoria-P" is subject to forfeiture under the Tariff and Customs Code, particularly paragraphs (a), (b) and (c) of Section 2530.

Petitioner contends that the decision of the respondent, affirming the decision of the Collector of Customs ordering the seizure and forfeiture of the above-named vessel, as well as its order denying petitioner's motion for reconsideration of the aforementioned decision are without any factual basis and are not supported by the evidence.

The "M/B Maria Victoria-P" was declared forfeited in favor of the Government pursuant to Section 2530 (a), (b) and (c) of the Tariff and Customs Code which read 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 exportation 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 manu-

facture 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."

There is no question that the vessel was used in the illegal importation of blue seal cigarettes. Consequently, the said vessel is subject to the penalty imposed by Section 2530 of the Tariff and Customs Code. (C. F. Sharp & Co. v. Commissioner of Customs, G.R. No. L-23803, Feb. 26, 1968.) Considering, however, that petitioner, owner of the vessel, took all the necessary action to prevent the vessel from being used illegally by notifying the Philippine Navy of the disappearance of this vessel, the penalty of forfeiture appears to us excessive. In a similar case, this Court imposed a fine, in lieu of forfeiture, for the following reasons:

"At first, this Court entertained serious doubt whether or not a fine may be imposed upon an offending vessel or aircraft for violation of Section 2530 of the Tariff and Customs Code. For this reason, an order was issued on February 28, 1966, requiring both parties to submit memorandum on the question whether or not a fine may be imposed in lieu of forfeiture in cases arising under Section 2530 of said Code. Both counsel for petitioner and the office of the Solicitor General express the view that there is sufficient authority for the imposition of a fine in lieu of forfeiture, citing Sections 2312, 2532 and 2533 of the Tariff and Customs Code.

"Under the old Customs Law, it was expressly provided that a fine could be imposed in lieu of forfeiture. (Sec. 1365, Adm. Code.) This discretionary power to impose a fine in lieu of forfeiture was recognized in Venancio Carreon Tong Tek v. Comm., C.T.A. No. 135, Nov. 21, 1956, affd. in G. R. No. L-11947, June 30, 1959, 58 O.G. 5444. Notwithstanding the failure of Congress to reenact Section 1365 of the Administrative Code as part of the new Tariff and Customs Code, we agree with the Solicitor General and counsel for petitioner that such discretionary power still exists. In seizure proceedings against a vessel or aircraft for violation of Section 2530 of the Tariff and Customs Code, it is no defense that the owner or owners had no knowledge of the offense or of the attempt to commit the offense charged. It would, therefore, be patently unjust, not to say highly arbitmary, to order the seizure and forfeiture of an ocean liner or an aircraft engaged in international trade, which cost millions of pesos, for an illegal act of a member of the crew of the vessel or aircraft, or by a mere passenger, without the knowledge or consent of the owner or owners of the vessel or aircraft.

"In this case, it is admitted that the owners of the vessel in question, petitioner and his wife, had no knowledge of the illegal act of a member of the crew of the vessel in surreptitiously loading and concealing the aforesaid articles in said vessel; that petitioner, prior to the apprehension of the vessel, had issued a memorandum instructing the members of the crew of the fishing vessel not to load contraband articles in said vessel nor to engage in any activity in connection with blue seal cigarettes; and that the owner of said contraband articles was immediately dismissed by petitioner and was subsequently prosecuted for violation of the revenue laws. In view of these circumstances, we find that

> the imposition of a fine of ₱10,000.00, in lieu of forfeiture, would be an adequate penalty. In arriving at this conclusion, we have also taken into account the fact that the seizure of the vessel and its subsequent impounding by the Bureau of Customs resulted in the deterioration thereof and caused damages to petitioner in the amount of approximately ₱50,000.00, according to an estimate made by appraisers of said Bureau." (Balmocena v. Commissioner of Customs, C.T.A. No. 1585, July 31, 1966.)

In this case, petitioner has a better claim to leniency than the owner of the vessel in the Balmocena case in view of his action in officially notifying the Philippine Navy of the disappearance of his vessel with the warning that it might have been used illegally.

In view of the foregoing, the decision appealed from is hereby modified, and petitioner is hereby ordered to pay a fine of ₱5,000.00 within thirty days from the date this decision becomes final.

SO ORDERED.

Quezon City, September 30, 1969.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge