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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ALTO SALES CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2058

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

10/28/82

D E C I S I O N

This is an appeal by petitioner Alto Sales Corporation from the decision of respondent Commissioner of Customs dated April 10, 1968, decreeing the forfeiture of petitioner's importation of 75,000 kilos of foreign Virginia leaf tobacco for alleged violation of Section 2530(f) of the Tariff and Customs Code, in relation to Section 4 of Republic Act No. 4155.

This case was submitted for decision on the basis of the pleadings, customs records, and the memoranda of the parties.

As regards the issue of jurisdiction, petitioner presented evidence to support its contention that this Court has jurisdiction over the instant petition for review. On April 15, 1982, the Court issued a resolution that the jurisdictional question raised shall be resolved together with the merits of this case.

The facts of this case are briefly as follows:

Sometime on September 17, 1965, petitioner, a corporation duly organized and existing under the laws of the Philippines, entered into a contract with the Philippine Virginia Leaf Tobacco Administration, hereinafter referred to as PVTA for short, whereby said PVTA was to sell to petitioner, for purposes of exportation, 8,000,000 kilos of locally produced Virginia tobacco (Annex "A", Petition for Review, pp. 8-11, CTA rec.) thereby entitling petitioner, as a consequence, per the provisions of the pertinent laws, to import 2,000,000 kilos of foreign Virginia leaf tobacco for blending purposes. Accordingly, said PVTA have entered into an agreement with petitioner, under date of October 29, 1965, authorizing the latter to purchase and import the above stated quantity of foreign Virginia leaf tobacco. (Annex "B", Petition for Review, pp. 12-14, CTA rec.) These two agreements were duly approved by the Office of the President of the Republic of the Philippines. (Par. 2, Petition for Review, p. 1, CTA rec.)

As a consequence, petitioner placed an importation of foreign Virginia tobacco leaves and, on

February 7, 1967, a shipment of foreign Virginia tobacco weighing 75,600 kilos (126 hogshead of unmanufactured leaf tobacco and 42 hogshead of Barley leaf tobacco) arrived at the Port of Manila on board the vessel the SS "Toreador". But in view of the alleged lack of license or authority of petitioner to import the said shipment coming from the PVTA as provided for in Republic Act 4155, the Bureau of Customs issued a warrant of seizure and detention of said shipment on July 17, 1967. (pp. 1-2, 195-199, Customs rec.; Annex "C", pp. 17-19, CTA rec.)

After the administrative proceedings held in connection with forfeiture of the subject shipment in violation of Section 2530(f) of the Tariff and Customs Code, taken in relation to Republic Act No. 4155, the Collector of Customs of the Port of Manila rendered a decision on February 7, 1968 decreeing the forfeiture of the above-mentioned shipment. (par. 15, Petition for Review, p. 4, CTA rec.)

Petitioner, on February 16, 1968, filed a motion for reconsideration of the Collector's decision alleging that said decision is contrary to law and the facts of this case and, therefore, the same should be reconsidered. (p. 186, Customs rec.) However, the motion was denied by the Collector of Customs in his order dated February 20, 1968.

(p. 189, Customs rec.; Petitioner's Memo., p. 91, CTA rec.).

On February 27, 1968, petitioner appealed the decision of the Collector of Customs to the Commissioner of Customs (p. 194, Customs rec.; Petitioner's Memo., p. 91, CTA rec.) who, on April 10, 1968, rendered a decision affirming that of the former. (pp. 195-199, Customs rec., Petitioner's Memo., p. 91, CTA rec.). The aforesaid decision of the Commissioner was received by petitioner on May 13, 1968. (Par. 16, Petition for Review, p. 4, CTA rec.; see return card, p. 202, Customs rec.).

On June 10, 1968, petitioner filed a motion for reconsideration. (Petitioner's Memo., p. 91, CTA rec.). However, the said motion was denied by the Commissioner in his order dated August 7, 1968, and the same was sent to the petitioner sometime in November, 1969.(p. 206, Customs rec.). On December 18, 1969, petitioner through its counsel, received the order of denial of the request for reconsideration. (Par. 18, Petition for Review, pp. 5-6, CTA rec.). On December 22, 1969, petitioner interposed its appeal to this Court by way of Petition for Review. (p. 1, CTA rec.).

On June 9, 1975, the parties as aforesaid, submitted this case for decision on the basis of the pleadings, customs records, and their respective memoranda. (p. 86, CTA rec.) On December 15, 1976, the Court rendered a decision dismissing the instant case for lack of jurisdiction. (pp. 171-177, CTA rec.) However, the said decision dated December 15, 1976 dismissing this case was set aside and a resolution dated April 15, 1982 was rendered to the effect that the jurisdictional question in this case shall be resolved together with the issues on the merits. (pp. 290-291, CTA rec.)

The issues posed before this Court are as follows:

> 1. Whether or not this Court has jurisdiction over the instant Petition for Review; and
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> 2. Whether or not forfeiture of the subject shipment of 76,600 kilos of foreign Virginia leaf tobacco is valid and justified.

With regards to the first issue, petitioner contends that this Court has jurisdiction over the instant case. Federico C. Rosal, an employee of petitioner's counsel, had testified on the technical issue of jurisdiction that the filing of the petition for review was to be made on the last day of appeal which fell on a Saturday, or December 20, 1969. During that day, he arrived in the Court of Tax Appeals but he asserted that the Court was closed and that there were no personnel present to receive the Petition for Review. Petitioner, on this score, claimed that the filing of the petition for review on Monday, December 22, 1969, should, therefore, be considered as in compliance with Section 11 of Republic Act No. 1125. (Petitioner's Motion for Reconsideration, pp. 180-187, CTA rec.)

This Court is not fully convinced by the statement of the said witness, Federico C. Rosal. It is to be noted that during Saturdays, the regular office hours observed in the Court of Tax Appeals is from 8:00 A.M. to 1:00 P.M. It cannot be seriously said, therefore, by petitioner that the Court of Tax Appeals is closed during the said hours when Federico C. Rosal came to file the petition for review. At any rate, taking into consideration the fact that Federico C. Rosal may not have seen anyone of the employees then assigned and believing that substantial justice is better served by our taking jurisdiction over the case and it not being indubitable, and that the interest of both parties can best be obtained by deciding this case on the merits, we are, therefore, taking cognizance of the instant petition for review.

With regards to the second issue,petitioner contends (1) that the PVTA has refused, without any legal and factual basis, to comply with its obligation under the contract to sell to petitioner local Virginia tobacco thereby preventing petitioner to comply with its obligation, without its fault to secure a license to import said foreign Virginia tobacco; (2) that the importation of foreign Virginia tobacco by petitioner is not absolutely illegal but only relatively prohibited; (3) that petitioner could not effect the exportation of the local Virginia tobacco before the arrival of said imported foreign Virginia tobacco because PVTA had arbitrarily cancelled the aforesaid contract with petitioner long before the prohibited shipment of tobacco has arrived in the Port of Manila; and (4) that under the law, on the matter of exportation of local Virginia tobacco, the sole licensing authority is vested with the PVTA which is either empowered to permit or not to permit exportations and importations thereof; and that petitioner is powerless to do anything without the cooperation of PVTA which had continuously refused, without valid reason, to honor its commitments with petitioner under the contract entered into between the latter and the herein PVTA; (5) that under P.D. 62 dated November 20, 1972, the exportation of local Virginia tobacco is no longer a prerequisite to the importation of foreign Virginia tobacco; and lastly, (6) the government had already collected the taxes and duties on the questioned importation so that it would be unjust to hold the forfeiture of the tobacco in question and deny the petitioner from recovering the amount of ₱604,000.00, which is the resulting balance after deducting the duties and taxes which had been paid. (Petitioner's Memorandum, pp. 99-109, CTA rec.)

We find petitioner's contention without merit. The pertinent provisions of the law applicable is Section 2530(f) of the Tariff and Customs Code, in relation to Section 4 of Republic Act No. 4155, which provides:

> "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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> xxx xxx xxx
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> (f) Any articles of prohibited importation, the importation or exportation of which is effected or attempted contrary to law, and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as an instrument in the importation or exportation of the former."

Section 4 of said Republic Act No. 4155, states:

> "Sec. 4. Importation of Foreign Leaf Tobacco Only For Blending Purposes.- No person shall import leaf tobacco except as herein provided. When the Philippine Virginia Tobacco Administration Board believes that it is necessary to improved the quality of locally made Virginia cigarettes, the Philippine Virginia Tobacco Administration Board may authorize any Filipino citizen or Filipino controlled corporation or company to import, subject to rules and regulations, promulgated by the Philippine Virginia Tobacco Administration, foreign leaf for blending purposes; Provided, that the importer is required to purchase local Virginia leaf tobacco from the Philippine Virginia Tobacco Administration and export the same at the ratio of not more than one kilogram of imported foreign leaf tobacco to every four kilograms of exported local Virginia leaf tobacco purchased by the importer from the Philippine Virginia Tobacco Administration, which should be exported simultaneously or earlier than the importation. Provided, further, that no other tariff or taxes shall be imposed on high grade foreign leaf tobacco so imported except an amount equivalent to one hundred per centum of its landed costs."

The above-quoted provision of the law is clear and explicit. It clearly provides that any cargo, articles and other objects shall be subject to forfeiture, if said cargo, articles and objects are imported or exported contrary to law. In the instant case, the importation of 75,000 kilos of foreign Virginia tobacco by petitioner is no doubt done contrary to the existing law because it did not comply with the requirement of Section 4 of Republic Act No. 4155, i.e., the importer (petitioner) must purchase <u>local</u> Virginia leaf tobacco from PVTA and export the same at the ratio of not more than one kilogram of imported foreign leaf tobacco to every four kilograms of exported local Virginia leaf tobacco simultaneously or earlier than the date of importation.

Petitioner did not dispute the fact that when the said shipment of 75,000 kilos of foreign Virginia tobacco arrived at the Port of Manila, this importation was not covered with authority or license to import the same. The absence of license or authority to import the said tobacco in question is on account of petitioner's failure to comply with the said requirement of Section 4 of Republic Act 4155. Summing up petitioner's assertions, however, the non-compliance by petitioner of the requirements in Section 4 of Republic Act 4155 has been attributed to the PVTA's fault or due to the latter's alluded failure to comply religiously with the terms and/or conditions set forth in the contract entered into between them, i.e., to sell to it local Virginia leaf tobacco. Hence, due to PVTA's actuations, petitioner was then compelled to file a civil action for specific performance before the Court of First

Instance of Rizal in which the question of whether there was a violation of contract by the PVTA, by the cancellation of the contract with petitioner in question, was apparently raised and litigated. Finally, a decision (pp. 151-159, CTA rec.) was penned by Judge Guardson R. Lood dated April 8, 1974, dismissing the case of specific performance, decidedly favoring the PVTA, and holding therein that petitioner had not complied with its obligation to secure an export license from the Central Bank.

It now being plain that the cancellation made by the PVTA of the contract with petitioner being valid, the subject shipment of imported Virginia tobacco leaf which arrived at the Port of Manila on February 7, 1967, imported by Alto Sales Corporation did not possess the requisite license or authority for its importation , thus justifying the forfeiture of the aforesaid shipment.

Petitioner also claims that it would be unjust to forfeit the tobacco in question and at the same time deny the petitioner from recovering the amount of ₱604,000.00, which amount is allegedly the balance resulting after the duties and taxes due the government had been deducted from the value of the shipment. In short, petitioner in justifying the release of the tobacco in question has based its arguments on the principle of equity and justice. It is worth noting, that the records do not show that there was payment made as regards the aforesaid duties and taxes on the subject importation. There is no way by which we can verify the asserted balance of ₱604,000.00, after crediting the duties and taxes paid, proof of which we do not have on hand, from the total value of the importation of foreign Virginia tobacco leaves. At any rate, assuming that payment on said duties and taxes were made, this, however, does not justify the release of said shipment which was illegally imported from the beginning. Furthermore, this principle of equity and justice is applicable only in the absence of specific provision of law governing the matter in issue. In the instant case, since there exist a provision of law, i.e., Section 2530(f), in relation to Section 4 of Republic Act No. 4155, which has not been complied with by herein petitioner, the forfeiture of the tobacco in question is, therefore, valid and justified.

Also petitioner contends that, granting the importation of foreign Virginia tobacco is illegal, it is, however, not absolute but only relative and hence permits a cure or remedy. Again, we cannot subscribed to the said argument.

In the case of Auyong Hian vs. Court of Tax Appeals, et al., No. L-28782, September 12, 1974, 59 SCRA 126, the Supreme Court held:

> "Although the illegal imported subject tobacco may not be absolutely prohibited, but only qualified by prohibition under Sec. 102(k) of the Tariff and Customs Code, for it may be imported subject to certain conditions, it is nonetheless prohibited and is a contraband (Comm. of Customs vs. CTA & Dichoso, L-33471, Jan. 31, 1972), and the legal effects of the importation qualifiedly prohibited articles are the same as those of absolutely prohibited articles. (Geotina vs. Court of Tax Appeals, No. L-33500, August 30, 1971, 40 SCRA 362, 379, 383; Comm. of Customs vs. CTA & Dichoso, supra.)"

Lastly, petitioner claims that Presidential Decree 62 allows the importation of foreign leaf tobacco for blending purposes at the ratio of not more than one (1) kilogram of local Virginia tobacco purchased without the necessity of exporting the latter. And that time while it is under the said decree, the local Virginia tobacco purchased need not be exported, this does not, however, automatically legalize the importation made by petitioner of the 75,000 kilos of foreign Virginia tobacco. As we have noted, nothing in the records will show that petitioner purchased local Virginia tobacco as prerequisites under said P.D. 62. Assuming that purchases were made of local Virginia tobacco, it does not, however, follow that the consequent importation of Virginia tobacco illegally done from the outset can be legalized with the promulgation of P.D. 62. To enforce P.D. 62 on petitioner's importation of the subject shipment made in the year 1967 would be in effect giving a retroactive application of the aforesaid law to the case at bar, which to our mind can not legally be done.

WHEREFORE, finding no error in the decision of respondent Commissioner of Customs appealed from, the same should be, as it is hereby affirmed. With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, October 28, 1982.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Did not take part.

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge