

SECOND DIVISION

[G.R. No. 126634, January 25, 1999]

TRANSGLOBE INTERNATIONAL, INC., PETITIONER, VS. COURT OF APPEALS AND COMMISSIONER OF CUSTOMS, RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

On 27 April 1992 a shipment from Hongkong arrived in the Port of Manila on board the "S/S *Sea Dragon*." Its Inward Foreign Manifest indicated that the shipment contained 1,054 pieces of various hand tools. Acting on information that the shipment violated certain provisions of the *Tariff and Customs Code* as amended, agents of the Economic Intelligence and Investigation Bureau (EIIB) seized the shipment while in transit to the Trans Orient container yard-container freight station. An examination thereof yielded significant results -

1. The 40 ft. van was made to appear as a consolidation shipment consisting of 232 packages with Translink Int'l. Freight Forwarder as shipper and Transglobe Int'l., Inc. as consignee;
2. There were eight (8) shippers and eight (8) consignees declared as co-loaders and co-owners of the contents of the van, when in truth the entire shipment belongs to only one entity;
3. Not one of the items declared as the contents of the van, i.e., various hand tools, water cooling tower g-clamps compressors, bright roping wire and knitting machine w(as) found in the van. Instead the van was fully stuffed with textile piece goods.^[1]

On those accounts which were deemed to constitute a violation of Sec. 2503 in relation to Sec. 2530, pars. (f) and (m), subpars. 3, 4 and 5, of the *Tariff and Customs Code*, the EIIB recommended seizure of the entire shipment. On 21 May 1992 District Collector of Customs Emma M. Rosqueta issued the corresponding warrant of seizure and detention.

The case was set for hearing on 2 June 1992 but petitioner Transglobe International, Inc., or its duly authorized representative, failed to appear despite due notice. Resetting was ordered to 19 June 1992, yet, for the same reason was further reset to 8 July 1992. Still petitioner or its representative was unable to appear which thus led to

its being declared in default. The case was then considered submitted for decision based on existing documents. On 26 August 1992 after finding that a violation of the cited provisions was indeed committed, District Collector Rosqueta decreed the forfeiture of the shipment in favor of the government to be disposed of in accordance with law.^[2]

Thereafter petitioner filed a petition for redemption of the shipment. On 2 October 1992 Hearing Officer Geoffrey G. Gacula recommended that the petition be given due course and that petitioner be allowed to effect the release of the shipment upon payment of P1,300,132.04 representing its domestic market value. Hearing Officer Gacula took into consideration the following -

Record shows that the shipment consists of goods which are in legal contemplation not prohibited, nor the release thereof to the claimant contrary to law x x x x the spirit and intent of Executive Order No. 38, to increase and accelerate revenue collection by the government thru redemption of forfeited cargoes, which would also benefit importers by giving them the chance to recover portions of their investment x x x^[3]

Chief of the Law Division Buenaventura S. Tenorio concurred in the recommendation. On the same day, District Collector Rosqueta recommended approval thereof and forwarded the case to respondent Commissioner of Customs Guillermo L. Parayno Jr. through Deputy Commissioner Licerio C. Evangelista.^[4] On 7 October 1992 the latter likewise recommended favorable action thereon.^[5] However respondent Commissioner Parayno Jr. denied the offer of redemption in his 1st Indorsement dated 27 November 1992 for these reasons -

1. The shipment was made to appear to be an innocuous consolidation shipment destined for stripping at an outside CY-CFS^[6] in order to conceal the textile fabrics;
2. The eight (8) co-loaders/consignees of the shipment are all fictitious;
3. Under Section 3B, CMO 87-92, offers of redemption shall be denied when the seized shipment is consigned to a fictitious consignee.^[7]

Thus respondent Commissioner Parayno Jr. instructed the Auction and Cargo Disposal Division of the Port of Manila to include the shipment in the next public auction.^[8] On 8 February 1993 reconsideration was denied.^[9] Petitioner moved for another reconsideration which was referred to District Collector Rosqueta for comment. Even after further review, she maintained her previous recommendation allowing redemption -

1. Since no entry has been filed so far, the consignee could not be faulted for misdeclaration under Section 2503 of the Tariff and Customs Code.

While the shipment was misdeclared in the rider and the manifest, the consignee is innocent of the facts stated therein as it had no hand in their preparation or issuance. Law and regulation allow the amendment of the manifest at any time before the filing of entry in order to protect the innocent consignee.

2. Transglobe International, Inc., is a juridical person duly organized in accordance with the laws of the Philippines and is qualified as a consignee. It is not fictitious as evidenced by its Articles of Incorporation registered with the Securities and Exchange Commission.

3. The shipment consists of goods which are in legal contemplation not prohibited, nor the release thereof to the Claimant contrary to law, and the redemption offer is well within the purview of Executive Order No. 38.^[10]

Nevertheless, reconsideration was again denied on 1 July 1993.^[11] On 4 August 1993 the forfeiture of the shipment and denial of the request for redemption were affirmed by respondent Commissioner Parayno Jr.^[12]

In the appeal which was solely concerned with the propriety of redemption, the Court of Tax Appeals (CTA) expressed a different view. Relying on Sec. 1 of Executive Order No. 38, as applied in *Gazzingan v. Commissioner of Customs*^[13] since no fraud was found on the part of the redemptioner, the CTA directed on 27 June 1995 that petitioner be allowed to redeem the shipment upon payment of its computed domestic market value.^[14]

However respondent Court of Appeals sustained the denial of the redemption by respondent Commissioner of Customs. On 28 June 1996 it set aside the ruling of the CTA^[15] on the ratiocination that -

The findings of the Economic Intelligence and Investigation Bureau: 'that the shipment was made to appear to be an innocuous consolidation shipment destined for stripping at an outside CY-CFS in order to conceal the textile fabrics,' and 'that the eight (8) coloaders/consignees were all fictitious' had not been refuted during the seizure proceedings by respondent Transglobe International, Inc. The failure of respondent Transglobe to refute this fact negates its claim that no violation of the above cited provisions (Sec. 2503 in relation to Sec. 2530, pars. (f) and (m), subpars. 3, 4 and 5 of the *Tariff and Customs Code* as amended) had been committed. The findings of the EIIB above referred to remain unassailed and uncontradicted. Said findings clearly show badges of fraud x x x x The seizure of the property in question was made upon findings that the documents covering the said shipment were forged, thus:

FRAUD - the following cases herein enumerated demonstrate the presence

of fraud: 1.a. The use of forged or spurious documents x x x x
(Section 1, CMO-87-92).^[16]

On 3 September 1996 reconsideration was denied.^[17]

We now resolve the issue of whether petitioner should be allowed to redeem the forfeited shipment.

Petitioner asserts that it is not guilty of fraud because, as held in *Farolan Jr. v. Court of Tax Appeals*^[18] and *Aznar v. Court of Tax Appeals*,^[19] the fraud referred to is one that is intentional with the sole object of avoiding payment of taxes. While petitioner admits that it is the only consignee of the cargo and that the van contains textiles, contrary to those declared in the manifest and rider, it avers that these discrepancies do not evince deliberate evasion of taxes or payment of duties, especially considering that it is a duly registered domestic corporation, and that it has no knowledge or participation in the execution of the manifest and the rider thereon.

A violation of Sec. 2503 in relation to Sec. 2530, pars. (f) and (m), subpars. 3, 4 and 5, of the *Tariff and Customs Code* as amended was found by the Bureau of Customs. Section 2503 deals with undervaluation, *misclassification and misdeclaration in entry*. On the other hand, Sec. 2530, pars. (f) and (m), subpars. 3, 4 and 5 provides -

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 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 x x x x

m. Any article sought to be imported or exported x x x x

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;

(4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and

(5) Through any other practice or device contrary to law by means of which such article was entered through a customhouse to the prejudice of the government.

From the decision of the District Collector of Customs decreeing forfeiture, petitioner Transglobe International, Inc., filed a petition for redemption pursuant to Sec. 2307 of the Tariff and Customs Code as amended by Sec. 1 of E. O. No. 38^[20] which states -

Sec. 2307. Settlement of Case by Payment of Fine or Redemption of Forfeited Property. - Subject to approval of the Commissioner, the District Collector may, while the case is still pending except when there is fraud, accept the settlement of any seizure case provided that the owner, importer, exporter, or consignee or his agent shall offer to pay to the collector a fine imposed by him upon the property, or in case of forfeiture, the owner, exporter, importer or consignee or his agent shall offer to pay for the domestic market value of the seized article. The Commissioner may accept the settlement of any seizure case on appeal in the same manner (underscoring supplied) x x x x Settlement of any seizure case by payment of the fine or redemption of forfeited property shall not be allowed in any case where the importation is absolutely prohibited or where the release of the property would be contrary to law.

As a means of settlement, redemption of forfeited property is unavailing in three (3) instances, namely, when there is fraud, where the importation is absolutely prohibited, or where the release of the property would be contrary to law. Respondent Commissioner of Customs disallowed the redemption on the ground of fraud which consisted of the following: "The shipment was made to appear to be an innocuous consolidation shipment destined for stripping at an outside CY-CFS in order to conceal the textile fabrics; the eight (8) co-loaders/consignees of the shipment are all fictitious; and, under Section 3B, CMO 87-92, offers of redemption shall be denied when the seized shipment is consigned to a fictitious consignee."^[21] Respondent court sustained this ruling which it considered based on undisputed findings of the EIIB.

We rule that respondent Court of Appeals committed reversible error in rendering the assailed decision. The findings of respondent Commissioner of Customs which provided the bases for denying petitioner's offer of redemption were his own, not of the EIIB, and were merely stated in his 1st Indorsement with no evidence whatsoever to substantiate them. These findings prompted petitioner to seek reconsideration and dispute them with these claims -

x x x x First x x x x the shipment was not destined for stripping. It was then being transported to a CY-CFS operator where it would be examined by a customs appraiser who would determine the proper taxes and duties to be paid on the shipment. Second x x x x the petitioner is a legitimate corporation registered with the Securities and Exchange Commission in accordance with the laws of the Philippines x x x x^[22]

On petitioner's second motion for reconsideration, District Collector Rosqueta was silent on the first claim but upheld the second claim. According to her, petitioner is a

juridical person duly organized in accordance with the laws of the Philippines and is qualified as a consignee; it is not fictitious as evidenced by its Articles of Incorporation registered with the Securities and Exchange Commission.^[23] Despite these, respondent Commissioner of Customs maintained his denial of the redemption based on his previous unsubstantiated findings. It is settled that findings of fact of an administrative agency must be respected so long as they are supported by substantial evidence^[24] or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.^[25] Lacking support, the factual findings of respondent Commissioner of Customs cannot stand on their own and therefore not binding on the courts.

In the appeal before the CTA, respondent Commissioner of Customs contended that the seizure of the shipment was made also upon a finding that the documents covering it were forged, thus constituting fraud as defined in Sec. 1, par. 1. a., CMO-87-92. This Section is of the same tenor as Sec. 2530, pars. (f) and (m), subpars. 3, 4 and 5, which for emphasis deals with falsities committed by the owner, importer, exporter or consignee or importation/exportation through any other practice or device. In *Aznar*, as reiterated in *Farolan*, we clarified that the fraud contemplated by law must be actual and not constructive. It must be intentional, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right. The misdeclarations in the manifest and rider cannot be ascribed to petitioner as consignee since it was not the one that prepared them. As we said in *Farolan*, if at all, the wrongful making or falsity of the documents can only be attributed to the foreign suppliers or shippers.^[26] Moreover, it was not shown in the forfeiture decision that petitioner had knowledge of any falsity in the shipping documents. District Collector Rosqueta's comment on petitioner's second motion for reconsideration is enlightening: "While the shipment was misdeclared in the rider and the manifest, the consignee is innocent of the facts stated therein as it had no hand in their preparation or issuance."^[27] We mention in passing that in having thus stated, she in effect nullified her prior finding that petitioner violated the cited provisions of the *Tariff and Customs Code* as amended. Consequently, we agree with the finding of the CTA that fraud was not committed by petitioner in the importation of the shipment.

Taking into consideration the circumstances obtaining in the present case, namely, the absence of fraud, the importation is not absolutely prohibited and the release of the property would not be contrary to law, the Court deems it proper to allow the redemption of the forfeited shipment by petitioner upon payment of its computed domestic market value. Doing so is definitely in keeping with the two-way intent of E. O. No. 38, to wit, to expedite the collection of revenues and hasten the release of cargoes under seizure proceedings to the end that importers and exporters will benefit in the form of reduction in expenditures and assurance of return of their investments that have been tied up with their importations.^[28]

Finally, one may be tempted to argue that for failure to appear in the forfeiture

proceedings despite due notice, petitioner was in default and deemed to have admitted its violation of Sec. 2503, in relation to Sec. 2530, pars. (f) and (m), as found by District Collector of Customs Rosqueta, interpreted by the Court of Appeals as “badges of fraud,” and, as a consequence, petitioner is now estopped from claiming that in the proceedings for redemption there was no fraud on its part.

The argument surfs on a wrong premise. Forfeiture of seized goods in the Bureau of Customs is a proceeding against the goods and not against the owner. It is in the nature of a proceeding *in rem*, i.e., directed against the *res* or imported articles and entails a determination of the legality of their importation.^[29] In this proceeding, it is in legal contemplation the property itself which commits the violation and is treated as the offender, *without reference whatsoever to the character or conduct of the owner.*

^[30] The issue here is limited to whether the imported goods should be forfeited and disposed of in accordance with law for violation of the *Tariff and Customs Code*. Hence, the ruling of District Collector Rosqueta in the forfeiture case, insofar as the aspect of fraud is concerned, is not conclusive; nor does it preclude petitioner from invoking absence of fraud in the redemption proceedings. Significantly, while District Collector Rosqueta decreed the forfeiture of the subject goods for violation of the *Tariff and Customs Code*, she nevertheless recommended the approval of petitioner’s offer of redemption,^[31] and categorically acknowledged that as consignee there was no fraud on its part.^[32]

WHEREFORE, the petition is **GRANTED**. The Decision of respondent Court of Appeals of 28 June 1996 sustaining the denial of the redemption of the forfeited shipment and the Resolution of 3 September 1996 denying reconsideration are **SET ASIDE**. The Decision of the Court of Tax Appeals of 27 June 1995 ordering respondent Commissioner of Customs to allow petitioner Transglobe International, Inc., to redeem the forfeited shipment upon payment of its domestic market value amounting to P1,300,132.04 is **REINSTATED**.

SO ORDERED.

Mendoza, Quisumbing, and Buena, JJ., concur.

Puno, J., please see dissent.

^[1] *Court of Tax Appeals Records, Vol. I, pp. 147-148.*

^[2] *Id., p. 149.*

^[3] *Id., p. 150.*

[4] *Id.*, p. 151.

[5] *Id.*, p. 152.

[6] *Container Yard-Container Freight Station.*

[7] *CTA Records, Vol. I, p. 153.*

[8] *Ibid.*

[9] *Id.*, p. 159.

[10] *Id.*, p. 33.

[11] *Id.*, p. 163.

[12] *Id.*, pp. 38 and 39.

[13] *CTA Case No. 4428, 15 September 1994.*

[14] *Decision penned by Presiding Judge Ernesto D. Acosta with the concurrence of Associate Judges Manuel K. Gruba and Ramon O. de Veyra; CTA Records, Vol. I, p. 198.*

[15] *Decision penned by Justice Jose C. de la Rama with the concurrence of Justices Emeterio C. Cui and Eduardo G. Montenegro; Rollo, pp. 64-65.*

[16] *Id.*, pp. 62-64.

[17] *Id.*, p. 67.

[18] *No. L-42204, 21 January 1993, 217 SCRA 298.*

[19] *No. L-20569, 23 August 1974, 58 SCRA 519.*

[20] *Issued on 8 August 1986.*

[21] *See Note 7.*

[22] *CTA Records, Vol. I, pp. 4-5, 24-25.*

[23] See Note 10.

[24] *Rubenecia v. Civil Service Commission, G. R. No. 115942, 31 May 1995, 244 SCRA 640.*

[25] *Reno Foods, Inc. v. NLRC, G. R. No. 116462, 18 October 1995, 249 SCRA 379.*

[26] *Citing Farm Implement and Machinery Co. v. Commissioner of Customs, No. L-22212, 30 August 1968, 24 SCRA 905.*

[27] See Note 10.

[28] *Spelled out in the Whereas clauses.*

[29] *Vierneza v. Commissioner of Customs, No. L-24348, 30 July 1968, 24 SCRA 394.*

[30] See *United States v. Steamship "Rubi," 32 Phil. 228 (1915); Commissioner of Customs v. Pascual, L-31733, 20 September 1985, 138 SCRA 581.*

[31] *Exh. "D."*

[32] See Note 10.

DISSENTING OPINION

PUNO, J.:

The petition at bar seeks to reverse the Decision of the Court of Appeals in CA-GR SP No. 37866 which, in effect, barred herein petitioner Transglobe International, Inc. from redeeming its shipment from Hongkong which was seized by the Bureau of Customs after finding that the entries in its covering documents were false and fictitious.

It is respectfully submitted that the petition should be denied as petitioner failed to show that the Court of Appeals committed a reversible error in its ruling.

Section 2307 of the Tariff and Customs Code provides:

"Subject to the approval of the Commissioner, the District Collector may, while the case is still pending **except when there is fraud**, accept the settlement of any seizure case provided that the owner, importer, exporter, consignee or his agent shall offer to pay to the collector a fine imposed by

him upon the property, or in case of forfeiture, the owner, exporter, importer or consignee or his agent shall offer to pay for the domestic value of the seized article. The Commissioner may accept the settlement of any seizure case on appeal in the same manner.

x x x

"Redemption of forfeited property shall not be allowed in any case where the importation is absolutely prohibited or where the surrender of the property to the person offering the same would be contrary to law."

Under the foregoing provision, redemption is not allowed in three instances: (1) when there is fraud; (2) when the importation is absolutely prohibited; and (3) when the surrender of the property to the person offering the redemption would be contrary to law.

This case falls under the first instance. Respondent Commissioner of Customs has shown by clear and convincing evidence the existence of fraud in connection with the documentation of the seized goods. The undisputed facts reveal that the documents covering the shipment in question were falsified. The investigation conducted by the agents of the Economic Intelligence and Investigation Bureau (EIIB) yielded the following result:

1. The 40-foot van was made to appear as consolidation shipment consisting of 232 packages with Translink International Freight Forwarder as shipper and Transglobe International, Inc. as consignee;
2. There were eight (8) shippers and eight (8) consignees declared as co-loaders and co-owners of the contents of the van, when in truth the entire shipment belonged to only one consignee, petitioner Transglobe International, Inc. The other consignees were fictitious.
3. Not one of the items declared as the contents of the van, i.e., various hand tools, water cooling, tower G-clamps compressors, bright roping wire and knitting machines was found in the van. Instead, the van was fully stuffed with textile goods.

These were not refuted, and therefore deemed admitted, by petitioner. The EIIB this concluded that the shipment was made to appear to be an innocuous consolidation shipment destined for stripping at an outside Customs Yard-Customs Freight Services in order to conceal the textile fabrics. These falsities constitute fraud as defined in Section 1 of Customs memorandum Order No. 87-92, thus:

FRAUD - the following cases herein enumerated demonstrate the presence

of fraud:

- 1.a. the use of forged or spurious documents;
- 1.b. prima facie evidence of fraud under Section 2503 of the TCCP on undervaluation, misclassification, and misdeclaration in entry;
- 1.c. the use of false machinations, misrepresentation, concealment of facts that resulted in loss of revenues reaching levels that is unconscionable and unbecoming of a law-abiding taxpayer and citizen;
- 1.d. other cases similarly situated.

Thus, under the circumstances, petitioner may not be allowed to redeem the seized goods under Section 2307 of the Tariff and Customs Code.

I am not impressed by petitioner's pretension that it is innocent of the use of forged documents. Petitioner has admitted that it is the only consignee of the smuggled goods. It does not explain who else could have been responsible for the use of the forged documents. It is far fetched to assume that the criminal act can be attributed to the foreign suppliers or shippers for they do not have any motive to commit the falsification. Petitioner was summoned to shed light on the use of these forged documents in the seizure proceedings. Petitioner never appeared to explain.

I appreciate the majority's concern on the need for government to collect more taxes. But more important than this desideratum is the need to curb smuggling in our Bureau of Customs. The facts of the case at bar show an out and out attempt to smuggle highly dutiable textiles thru the use of forged documents. The use of forged documents is fraud under any habilitment. These textiles should be confiscated and sold at public auction. To allow their redemption is to sanction the circumvention of our laws.

IN VIEW WHEREFORE, I vote to **DENY** the petition.



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