

## FIRST DIVISION

**[ G. R. Nos. 145422-23, January 18, 2002 ]**

**ERWIN C. REMIGIO, PETITIONER, VS. SANDIGANBAYAN,  
FOURTH DIVISION, RESPONDENT.**

### D E C I S I O N

**PARDO, J.:**

#### The Case

The case is a petition for review on certiorari<sup>[1]</sup> of the decision of the Sandiganbayan<sup>[2]</sup> finding petitioner guilty beyond reasonable doubt of violation of Section 3602, in relation to Section 3601 of the Tariff and Customs Code of the Philippines, and sentencing him to an indeterminate penalty of [imprisonment for] eight (8) years and one (1) day, as minimum, to twelve (12) years, as maximum, and to pay a fine of P8,000.00, plus revocation of his license as customs broker.

#### The Facts

On August 15, 1988, a shipment of one (1) 40 feet Container Van No. NYKU 5046600 arrived at the Port of Manila from Hongkong via the S/S NORSUND. The packing list showed that the shipment was consigned to BORHAM TRADING, located at 37 Harvard Street, Quezon City. The packing list, invoice, bill of lading as well as the letter of credit supporting the importation showed that the 40 feet container van contained 25 MT of Sodium Bicarbonate with a gross weight of 25,000 kgs.

On August 19, 1988, petitioner Erwin C. Remigio, a customs broker, filed with the Collector of Customs, Port of Manila, Import Entry and Internal Revenue Declaration (Consumption Entry) No. 72259-88 covering the shipment. On the same date, Arthur Sevilla, Jr., a customs examiner, conducted an examination of Container Van No. NYKU 5046600 and in his Examiner's Return noted that the shipment contained 1000 bags of 25 kgs. Sodium Bicarbonate. He recommended that the shipment be subjected to Philippine Chamber of Commerce and Industry (PCCI) clearance and magna scale weighing.

After receiving the PCCI clearance, Arthur Sevilla, Jr. forwarded the Import Entry papers together with the PCCI clearance to Tomas P. Tuason, Customs Principal Examiner, Bureau of Customs and supervisor of Sevilla. Tomas Tuason, after checking all the requirements and supporting documents forwarded the same to the appraiser's group. The importer paid duties and taxes for the shipment in the amount of P22,972.00.

At around three o'clock in the afternoon of the same day, the Collector of Customs allowed the container van to leave the customs area to be delivered to the consignee Borham Trading. While the van was cruising along Quezon Boulevard in

front of Santo Domingo Church, Quezon City, agents of the Special Operations Group, Economic Intelligence and Investigation Bureau (EIIB) headed by Mr. Benjamin Kho intercepted the 40 feet container van and brought the same to Camp Aguinaldo, Quezon City for proper disposal.

Godofredo B. Camina, Jr., a Customs Examiner assigned to make an inventory of the container van at Camp Aguinaldo found that the same contained only 185 bags of sodium bicarbonate, and the following items: 8 pcs. Bridgestone Tires; 10 sacks dried fish; 4 ctns. Laser Printer OPC Kit 81; 10 pcs. Sharp PC-1150; 1 unit Mercedes Benz 280 SE 1983 Model; 4 BLR canvas of undetermined quantity with padlock; 143 rolls of Ramie; Plastic Cards (Male & Female); 5 bunds Jusi clothing materials; 156 pieces A1 mm leather brown gilt buckles; 24 boxes 18 mm black strap leather; 20 boxes 20 mm St. End (Metal); 20 boxes 14 mm St. End (Metal); 10 boxes 10 mm Gilt buckles; 3 bunds Handkerchief; 25 ctns 14 mm Gilt leather buckles; 16 ctns 10 mm Gilt buckles; 18 ctns 12 mm gilt leather buckles; 10 ctns 12 mm St. End metal; 10 ctns 14 mm St. End metal; 25 ctns 20 mm St. End (metal); 100 pcs. Catalogue magazine; 60 pcs. Assorted RTWs; 380 ctns Maling Pork Luncheon Meat; 1,000 pcs. Beta Song L-500; 15 packs Gold St. End plated 14 mm; 7 bund men's handkerchief; 1020 pcs. Rubber bracelet; 8 bunds handkerchief; Metal Gilt straps; 508 pcs. Children's watches; 100 pcs. Men's watches; 8 pcs. Laser Printer; 10 pcs. Sharp PC 1150 Pocket Computer; outlets; switches; boosters; towels; 1 unit KV2140 RWP Song TV with remote control; 3 units Sony SL-S480 Betamax; Casio Alarm Quartz; Chandelier 12 bulb outlet; Sanyo Stereo Casette recorder; 4 pcs. Original mag wheels Mercedes Benz; Chandelier 16 bulb outlet; Donato Ceiling lamp; 10 units Family Computer Nintendo Assorted ladies' bag; suiting materials; 60 packs bracelet; 5 bunds Jusi; T-shirts; jogging pants; short; clothing materials; shoes. The customs examiner determined that the correct duties and taxes that may be assessed on the shipment amounted to P1,643,057.00.

Special Agent Marcos de Mesa of the Customs Intelligence and Investigation Service, Bureau of Customs verified the given address of Borham Trading at 37 Harvard Street, Cubao, Quezon City, and found it to be non-existent.

On May 30, 1991, Special Prosecution Officer III Wilfredo R. Orenca filed with the Sandiganbayan two Informations<sup>[3]</sup> against customs examiner Arthur Sevilla, Jr. y Gayuso and petitioner Erwin Remigio y Cunanan for violation of Sections 3604, paragraphs (d) and (e) and Section 3602, in relation to Section 3601, paragraph 4, Tariff and Customs Code of the Philippines, as follows:

"Criminal Case No. 16772

"That on or about August 18, 1988 in the City of Manila, and within the jurisdiction of this Honorable Court, accused Arthur Sevilla, Jr. a public officer, he being the Acting Customs Examiner, Port of Manila, Bureau of Customs, Manila, duly assigned to conduct a 100% physical examination of the 40 footer container van, covered under Import Entry No. 72259-88, charged with the enforcement of the provisions of the Tariff and Customs Code of the Philippines, as amended, while in the performance of his official functions and taking advantage of his public position and committing the offense in relation to his office, did then and there willfully, unlawfully and feloniously conspire or collude with his co-accused customs broker Erwin C. Remigio to defraud the customs

revenue in the amount of P1,620,085.00 to the damage and prejudice of the government in the aforesaid amount.

"CONTRARY TO LAW."<sup>[4]</sup>

"Criminal Case No. 16773

"That on or about August 18, 1988, and sometime prior and/or subsequent thereto in the City of Manila and within the jurisdiction of this Honorable Court, accused Arthur Sevilla, Jr., a public officer, he being the Acting Customs Examiner, Port of Manila, Bureau of Customs duly assigned to conduct a 100% physical examination of the 40 footer container van covered under Import Entry No. 72259-88, while in the performance of his public functions, committing the offense in relation to his office and in conspiracy with his co-accused, Erwin C. Remigio, the Customs Broker of the shipment in question, did then and there wilfully, unlawfully and feloniously made an entry of the imported shipment in the said Import Entry, by means of a false examination return totally different from the true number, weight and classification of the shipments, per the inventory conducted, thereby enabling Erwin C. Remigio to pay the amount of only P22,972.00 as customs duties and taxes, when the correct amount legally due is P1,643,057.00, to the prejudice and damage of the government.

"CONTRARY TO LAW."<sup>[5]</sup>

Upon arraignment on June 28, 1991,<sup>[6]</sup> both accused, assisted by their respective counsel, entered a plea of not guilty to the charges. Trial ensued.

After trial on the merits, on October 19, 2000, the Sandiganbayan rendered a decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered acquitting accused Arthur G. Sevilla, Jr. in Criminal Cases Nos. 16772 and 16773.

"The bailbond posted by said accused for his provisional liberty is hereby ordered cancelled.

"Criminal Case No. 16772 is hereby ordered dismissed with respect to accused Erwin C. Remigio.

"In Criminal Case No. 16773, judgment is hereby rendered finding accused Erwin C. Remigio guilty of violation of Sec. 3602 in relation to Sec. 3601 of the Tariff and Customs Code and in accordance with the Indeterminate Sentence Law, he is hereby sentenced to suffer imprisonment of 8 years and 1 day as minimum to 12 years as maximum and to pay a fine of P8,000.00. His license as customs broker is likewise ordered revoked.

"SO ORDERED."<sup>[7]</sup>