

THIRD DIVISION

[G.R. No. 139050, October 02, 2001]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
COMMISSIONER OF CUSTOMS, PETITIONER, VS. THE COURT OF
TAX APPEALS AND AGFHA, INCORPORATED, RESPONDENTS.**

DECISION

VITUG, J.:

On 12 December 1992, a shipment of bales of textile gray cloth, under Bill of Lading No. HKT-138899, arrived at the Manila International Container Port (MICP) aboard the vessel "S/S ACX Daisy." The shipment's Inward Foreign Manifest stated that the bales of cloth were consigned to GQ GARMENTS, Inc., of 244 Escolta Street, Binondo, Manila. The Clean Report of Findings (CRF) issued by the Societe Generale de Surveillance (SGS), however, mentioned AGFHA, Incorporated, to be the consignee of the shipment. Forthwith, the shipping agent, FIL-JAPAN, requested for an amendment of the Inward Foreign Manifest so as to correct the name of the consignee from that of GQ GARMENTS, Inc., to that of AGFHA, Inc.

On 22 January 1993, FIL-JAPAN forwarded to AGFHA, Inc., the amended Inward Foreign Manifest which the latter, in turn, submitted to the MICP Law Division. The MICP indorsed the document to the Customs Intelligence Investigation Services (CIIS). The CIIS placed the subject shipment under Hold Order No. H/CI/01/2293/01, dated 22 January 1993, on the ground that GQ GARMENTS, Inc., could not be located in its given address at 244 Escolta Street, Binondo, Manila, and was thus suspected to be a fictitious firm. Forfeiture proceedings under Section 2530(f) and (l) (3-5) of the Tariff and Customs Code were initiated.

AGFHA, Inc., through its president Wilson Kho, filed a motion for intervention contending that AGFHA, Inc., is the lawful owner and actual consignee of the subject shipment. The motion for intervention was granted on 2 March 1993. Following a hearing, the Collector of Customs came up with a draft decision ordering the lifting of the warrant of seizure and detention on the basis of its findings that GQ GARMENTS, Inc., was not a fictitious corporation and that there was a valid waiver of rights over the bales of cloth by GQ GARMENTS, Inc., in favor of AGFHA, Inc. The draft decision was submitted to the Deputy Commissioner for clearance and approval, who, in turn, transmitted it to the CIIS for comment. The CIIS opposed the draft decision, insisting that GQ GARMENTS, Inc., was a fictitious corporation and that even if it did exist, its president, John Barlin, had no authority to waive the right over the subject shipment in favor of AGFHA, Inc.

The Deputy Commissioner, relying on the comment of the CIIS, rejected the draft decision of the Collector of Customs.

GQ GARMENTS, Inc., and AGFHA, Inc., filed a joint motion for reconsideration, which

was given due course. Convinced that the evidence presented established the legal existence of GQ GARMENTS, Inc., and finding that a resolution passed by the Board of Directors of GQ GARMENTS, Inc., ratified the waiver of its president, the Collector of Customs in another draft decision granted the joint motion. The Office of the Commissioner of Customs, however, disapproved the new draft decision and denied the release of the goods; it ruled:

"1. x x x [I]t is quite suspicious that it took more than one month before the alleged error in the consignee was discovered by the shipper and by AGFHA, Inc., and by GQ Garments especially considering the fact that there is a CRF naming therein AGFHA as consignee of the subject shipment which means that the shipper was contracted by SGS so that the latter can inspect the subject shipment to be imported by consignee; that Mr. Wilson Kho admitted it was AGFHA who ordered the shipment by telephone call; that prior to this shipment there was no order placed in the name of GQ Garments from Indonesia; and that this is already the second of four shipments ordered by AGFHA, Inc., from Jakarta, Indonesia.

"2. Mr. Wilson Kho's explanation that the shipper committed an error in naming GQ GARMENTS as the consignee of the subject shipment because his business card contains the name of both GQ GARMENTS and AGFHA, Inc. appears to be an afterthought and self-serving. Moreover, he admitted that he is not an officer nor even a stockholder of GQ GARMENTS so why should his business card indicate his name as President/General Manager of GQ GARMENTS and AGFHA, Inc. That is clearly a misrepresentation.

"3. During the hearing on April 15, 1994, Mr. John John Barlin of GQ GARMENTS admitted that the letter dated February 11, 1993 purportedly signed by him (in which he allegedly informed the Collector of Customs that AGFHA, Inc., is the rightful owner of the subject shipment and that GQ GARMENTS is waiving its right over the same) actually came from Wilson Kho. In other words, the said letter is spurious.

"4. From the admissions of both Mr. Wilson Kho and Mr. John John Barlin, it is clear that GQ GARMENTS is actually owned by Mr. Wilson Kho and its corporate franchise appears to be being used to perpetrate fraud and other scheme to confuse authorities (pp. 1-4, Decision of Commissioner of Customs, Custom Case No. 94-017)"^[1]

In deference to the directive of the Commissioner, the District Collector of Customs ordered the forfeiture of the shipment. On 14 October 1994, AGFHA, Inc., interposed an appeal to the Office of the Commissioner of Customs. The appeal was dismissed consistently with the Commissioner's earlier stand that disapproved the Collector of Customs' draft decision.

On 5 October 1995, AGFHA, Inc., filed a petition for review with the Court of Tax Appeals questioning the forfeiture of the bales of textile cloth. Finding merit in the plea of appellants, the Court of Tax Appeals granted the petition and ordered the release of the goods to AGFHA, Inc.

On 27 December 1996, the Commissioner of Customs then challenged before the Court of Appeals the decision of the tax court.

