

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 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