

102 Phil. 37

[G.R. No. L-8556. September 29, 1957]

**BENITO SANCHEZ, PETITIONER AND APPELLANT, VS. COMMISSIONER OF
CUTOMS, RESPONDENT AND APPELLEE.**

D E C I S I O N

REYES, J.B.L., J.:

Appeal from a decision of the Court Of Tax Appeals affirming the order of the Commissioner of Customs decreeing the forfeiture in favor of the Government of the three (3) cases of merchandise covered by Seizure Identification No. 1276.

It appears that the three cases in question arrived in Manila from Hongkong on October 17, 1953 on the S.S. "Benreoch" cosigned to petitioner-appellant Benito Sanchez. The merchandise was entered in the ship's manifest (Exh. E) and declared in appellant's affidavit and pro-forma invoice (Exh. J) and Constructive Warehousing Entry No. 68096 (Exh. I) as "commercial samples" of "no commercial value". Upon actual examination at the Parcel Department of the Bureau of Customs on November 13, 1953, however, the cases were found to contain various kinds of merchantable articles such as lotions, saccharine, cotton bedspreads, rayon pajamas, rayon textiles, cowhide shoes and slippers, rayon dresses, etc. in quantity, appraised by the Customs Examiner at the total value of \$5,877.25 and liable for customs duties, taxes, and surcharges in the total amount of P17,449.52. Wherefore, the merchandise was seized for violation of Section 1292 and 1363 (m) -3, -4, and -5 of the Revised Administrative Code, and after due hearing, the Collector of Customs ordered the forfeiture of the goods in favor of the government, to be sold at public auction in conformity with law if found salable, otherwise to be destroyed, which order was affirmed by the Commissioner of Customs. On appeal to the Court of Tax Appeals by the importer, the order of forfeiture was likewise affirmed by the Court of Tax Appeals.

Petitioner-appellant asserted that the three cases in question were a misshipment from his Hongkong consignor, in that two or three days after their arrival on October 17, 1953, he

received a cablegram from the consignor advising him that said three cases were misshipped to him and requesting that they be shipped back to Hongkong (Exh.A); that this cablegram was later confirmed by a letter from the shipper dated October 23, 1953 explaining that the samples sent to appellant "were quite inferior from those which we expected to ship originally" and asking appellant to approach the shipping company and instruct them to ship "the aforesaid samples back to Hongkong" (Exh. C); that on October 23, 1953, appellant wrote the shipping agents of the carrying vessel requesting them to send back to Hongkong the three cases in question on any available vessel as soon as possible (Exh. B); that on October 27, 1953, the steamship agents requested the Bureau of Customs for permission to re-ship the cargo in question on the M/S "Aros" leaving November 1st (Exh. D); that on November 1 said agents filed in behalf of appellant an application for export license with the Export, Control Commission to reexport to said goods to Hongkong, and on November 6, license was granted, valid from the date of issuance until November 13, 1953 (Exh. G); that on November 9, 1953, Constructive Warehousing Entry No. 68096 was filed by the Allied Brokerage Corporation, as customs broker for appellant, stating among other things that the merchandise were "for immediate re-exportation, contents unknown, sent to Manila by mistake, hence to be returned to point of origin"; and that it was only on November 13, 1953, when the three cases in question were examined at the Parcel Section of the Bureau of Customs, that appellant came to know for the first time that they contained various merchantable articles like lotion, saccharine, textiles, shoes and slippers, etc.

The Court of Tax Appeals, however, refused to believe appellant's claim that he did not know of the real contents of the three cases in question and his theory of a misshipment. Noting several suspicious circumstances surrounding the alleged misshipment, namely:

- (1) The failure of appellant to take immediate steps to re-export the goods, after he had allegedly been informed by the cosignor that they were a misshipment and not the samples of toys intended for him, although appellant needed his samples for the fast approaching Christmas season;
- (2) That while appellant had allegedly already received as early as October 19 or 20 a cablegram from Hongkong requesting the re-exportation of the goods, it was only on November 5, 1953 that the application for license to reexport the same was filed by appellant and said license expired on November 13, 1953 without the having been reexported;
- (3) That Constructive Warehousing Entry No. 68096 was prepared was prepared

by appellant only on November 14, 1953, after his export license had expired;

(4) That while the shipping agents allegedly requested the Bureau of Customs to re-ship the cases in question on the M/S "Aros" in a letter dated October 27, 1953 sailing November 1st, the export license had not been applied for and the constructive warehousing entry prepared to have the goods leave on the M/S "Aros" on November 1st, but said documents were prepared and filed after the ship had already left; and

(5) The evidence of appellant that the cablegram Exh. A, was received not on October 17 or 18 as he alleged, but on November 17, 1953; and the false statements in the letter Exh. C supposedly received by appellant from his consignor asking for the return 'the three cases in question, which letter still spoke of samples which "were quite inferior from those which we expected to ship originally", when the truth is that the cases in question contained various merchantable articles and not samples of Christmas toys;

the Court concluded that petitioner had failed to prove the innocence of the three cases in question; that petitioner must have imported said goods with the intention to defraud the government of its lawful revenue, and that only when he failed to have them cleared under the pretended status of commercial samples without commercial value that he tried to make it appear that they were a misshipment and subject to re-exportation.

The basic issue in this case is essentially one of fraud, namely, whether or not appellant had wrongful or fraudulent intent in declaring the three cases in question in the bill of lading and shipping manifest, and in his affidavit and pro-forma invoice, as "commercial samples" of "no commercial value". The question of intent to defraud being a question of fact, and the lower court having made the finding that appellant had tried to import the goods in question fraudulently under the guise of "commercial samples" to avoid payment of duties, we are bound by such finding, it being the settled rule that in petitions to review decisions of the Court of Tax Appeals, only questions of law may be raised and may be passed upon by this Court (*Gutierrez v. C.T.A. and Collector of Internal Revenue vs. Gutierrez*, 54 Off. Gaz. (9) 2912; 101 Phil., 713).

Besides, we find the lower court's finding of appellant's fraudulent intent to be reasonably supported by the evidence. Appellant's failure to immediately notify the Bureau of Customs of the alleged misshipment so that the cases in question could be reexported without any delay; the supposed letter from the consignor that referred to the goods as "samples" when

in truth they contained various merchantable articles other than toy samples; and the delay in appellant's preparation and filing of the papers necessary for the re-exportation of the merchandise these circumstances reasonably support the conclusion reached by the Court of Tax Appeals that appellant must have known all along of the true contents of the three cases that arrived under his name, but which had been falsely declared as "commercial samples" so that he could evade payment of duties and taxes, and that it was only after appellant had failed to effect their illegal re-lease that he had made them appear to be a misshipment. Indeed, it is hard to believe that the merchandise would have found their way into the Philippines under appellant's name if he had not imported them in the first place. The supposed cablegram and letter from the consignor informing him that they were a misshipment do not help appellant any, for there is serious doubt as to actual date of receipt of the cablegram (whether a few days after the arrival of the goods on October 17, 1953, as claimed, or on November 17, 1953, as stated by appellant's representative during the hearing in the Bureau of Customs); while the letter, the date of receipt of which had not been established, did not admit the real contents of the cases but still falsely referred to them as containing "samples" (of Christmas toys), when the consignor should and must have known that they contained various merchantable articles other than toy samples. The Customs authorities in fact found, inter alia, textiles, over 1000 pairs of embroidered rayon pajamas, 296 lbs. of saccharine, and 628 bottles of Coty L' Origan lotion.

The three cases in question having been imported into this country through false documents, invoices, declarations, etc, stating them to be "commercial samples" of "no commercial value", when in truth they contain various articles of merchantable and dutiable quality, and the Court of Tax Appeals having found that appellant had wrongful or fraudulent intent in making such false entries to avoid the payment to the government of its lawful revenue, said merchandise is subject to seizure and forfeiture under Sec. 1363 of the Rev. Adm. Code, to wit:

"Sec. 1363. *Property subject to forfeiture under customs laws.*- Vessels, cargo, merchandise, and other objects and things shall, under the conditions herein below specified be subject to forfeiture:

* * * * *

(m) Any merchandise the importation or exportation of which is

effected or attempted in any of the ways or under any of the conditions herein below described -

* * * * *

3. Upon the wrongful making by the owner, importer, exporter, or consignee of any merchandise, or by the agent of either, of any false declaration or affidavit, touching such merchandise and in connection with the importation or exportation of the same.

4. Upon the wrongful making or delivery by the same person or persons, of any false invoice, letter or paper touch such merchandise and in connection with the importation or importation of the same,

5. Upon the causing or procurance, by the same person or sons, of any merchandise to be entered or passed at any custom house by any other fraudulent practice, devise, or omission means whereof the Government is or might be deprived of its full duties on such merchandise.”

To allow the importer to re-export the goods in question her he had failed to establish their innocence, would not only depriving the government of its lawful revenue, but, as correctly pointed out by the Solicitor General, would be a dangerous precedent and would open wide the avenue for more frauds.

The judgment appealed from is, therefore, affirmed. Costs against petitioner-appellant Benito Sanchez, So ordered. So ordered.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Endencia and Felix, JJ., concur.

