

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. NICASIO GUIAO Y DAVID, DEFENDANT AND APPELLEE.

G. R. No. L-12623. January 27, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On September 1, 1956, Nicasio Guiao y David was charged, in the Court of First Instance of Manila with having violated Section 2702 of the Revised Administrative Code, as amended by Section 1 of Republic Act No. 455, for having concealed in the back compartment of a car which he was driving "Sea Store cigarettes" consisting of three cartoons of king size Chesterfield, three cartoons of Camel, eight cartoons of regular size Chesterfield, seventeen loose packages of Chesterfield and twenty loose packages of Lucky Strike cigarettes "after the same have been imported, knowing the same to have been imported contrary to law." On May 2, 1957, the accused filed a motion to quash on the ground that the facts alleged in the information, do not constitute an offense, which was opposed by the City Fiscal. On July, 2, 1957, the court granted the motion and dismissed the case. The City Fiscal has appealed.

Section 2702 of the Revised Administrative Code, as amended by Section 1 of Republic Act 455, provides:

"Any person, who shall fraudulently or knowingly import or bring into the Philippines, or assist in so doing, any merchandise, contrary to law, or shall receive, conceal, buy, sell or in any manner facilitate the transportation, concealment, or sale of such merchandise, after importation, knowing the same to have been, imported contrary to law, shall be punished by a fine of not less than six hundred pesos but not more than five thousand, pesos and by imprisonment for not less than three months nor more than two years and, if the offender is an alien, he may be subject to deportation."

It would appear that any person who knowingly imports a merchandise contrary to law, or conceals such merchandise knowing that it has been imported contrary to law, commits an offense which is punishable under the provision of law above quoted. The trial court reached the conclusion, that the information filed against the accused does not allege an offense because in its opinion he did not import the cigarettes found in his possession because they are "Sea Store cigarettes" which were not imported within the meaning of the law, and the reason given by the court is as follows: "Such sea store cigarettes are for the use and consumption of the crew members of the vessel and not dutiable except the quantity in excess of the requirements for the vessel ***. They could not have been illegally or fraudulently imported and therefore the concealment of such sea store cigarettes by the accused does not come within the penal sanction, of Section 2702 of the Revised Administrative Code as amended by Section 1 of Republic Act 455, provides:

This reasoning is erroneous in the light of the facts alleged in the information. We agree with the statement that "Sea Store cigarettes" are not generally imported in the course of commercial transaction because they are brought by a vessel for the use and consumption of the members of its crew and are not for sale to the public, but the situation, herein obtained is different; they are not only "Sea Store cigarettes" but were brought to the Philippines in a suspicious manner undoubtedly for profit and that is what appears in the information. Thus, it is there, alleged

that the accused fraudulently or knowingly imported into the Philippines said "Sea Store cigarettes" concealed in the back compartment of his car "knowing the same to have been imported contrary to law." This is enough to constitute an offense. At least the information contains sufficient allegations to constitute such offense. The rest is, a matter of evidence which may be presented when the case is tried on the merits. Evidently, the dismissal of the case is premature .

In a similar case where the chief steward of a foreign vessel moored at the port of Manila took 30 cases of foreign cigarettes from the vessel's store and unloaded them without paying the import taxes and sold them., and upon discovery of the sale the owner of the vessel was required to pay the import taxes due thereon, this Court, in rejecting the defense that those cigarettes were not imported within the meaning of the law, said:

"But Tabacalera argues that the merchandise (a) had not been imported and (b) had not been imparted by the shipowner. In support of its first proposition it alleges that the shipowner was never engaged in the sale or distribution in the Philippines of cigarettes. That is immaterial. Its agents and officers brought or allowed to be brought into the country these cigarettes belonging to it. Consequently, it imported them. To import is to bring into a country merchandise from abroad,, (Customs Duties, sec. .4, 25 C.J.S.) (See art. 2702 of the Revised Administrative Code as amended by Republic Act No. 455.) In fact its master, actually acknowledged its liability for the importation (Exhibit 1).

"Again, it is alleged, there is no proof the cigarettes had been landed for purposes of sale or consumption. Surely they were hot clandestinely introduced in Manila merely to be destroyed or dumped into the sea. The buyers paid good money for them either for resale or for their own consumption."(Compañia General de Tabacos de Filipinas, et al. vs. The Collector of Internal Revenue, G. R. No. L-9071, January 31, 1957)

Wherefore, the order appealed from is set aside. The case is remanded to the lower court for further proceedings. No costs.

Paras, C.J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

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