

**ROLANDO GEOTINA, AS COMMISSIONER OF CUSTOMS, PETITIONER,
VS. BROADWAY & #038; CO., HONGKONG, AND THE HONORABLE
COURT OF TAX APPEALS, RESPONDENTS.***G.R. No. L-30077. January 30, 1971*

Ponente: TEEHANKEE, J.

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Special civil action for annulment of respondent court's resolutions allowing the release for exportation upon bond to respondent foreign shipper, Broadway & Co. of Hongkong, of a cargo of 54 cases of human hair, pending said court's review and decision on the merits of said respondent's appeal from petitioner Commissioner of Customs' decision affirming forfeiture of said cargo for having been imported into the Philippines in violation of the Tariff and Customs Code.

Petitioner commissioner's principal contention is that respondent tax court's resolutions, insofar as it would allow such release and exportation pending its hearing and decision on appeal of the correctness of petitioner's decision decreeing the forfeiture of the cargo for having been smuggled into the country, constituted a prejudgment and therefore amounted to a grave abuse of discretion. Respondent company in turn, contends that the tax court acted within its discretion and authority, alleging that exportation at the most would only mean the absence of the physical custody of the goods by the government which could be indemnified by the bond of P260,000.00 representing the appraised value thereof.

This case had its origins in a shipment on October 23, 1966 of fifty-six cases of goods described as "Dried Fruits" in the Inward Foreign Manifest and Bill of Lading, consigned by respondent company to the Luzon Trading Corporation, Manila. Upon examination by representatives of the Bureau of Customs, it was found that the shipment consisted of fifty-four cases of human hair and two cases of mongo. The goods were thereupon seized under Seizure Identification No. 20544 for violation of Section 2530, paragraph m (4) of the Tariff and Customs Code.[1] On October 14, 1966, the collector of customs, after hearing, decreed the forfeiture of the seized goods for violation of the said provision of law. Appeal was taken to petitioner commissioner of customs who, in his decision of April 18, 1968, affirmed the action taken by the collector of customs.

Respondent company then filed with the Court of Tax Appeals on August 14, 1968 its petition for review of the customs commissioner's decision. It sought reversal of said decision ordering the forfeiture of the shipment on the ground that the goods were "Transit cargoes" destined for Bangkok and not intended to be imported in the Philippines. Respondent company further alleged that the shipment was made to "Luzon Trading Corporation, Manila, who has absolute option to tranship to Pakshand, Bangkok" and that one day before the arrival of the shipment, said consignee had written to the collector of customs "to make formal our exercise of the said option to tranship." Petitioner, as respondent in the case below, on August 28, 1968, filed his answer stressing that the seized importation was intended for the Philippines by the use of false documents executed by the owner, importer or consignee, in violation of the Tariff and Customs Code, the alleged "transshipment" being "merely a

device employed to conceal the true intent to import the goods illegally and a subterfuge to avoid apprehension."

As of the same date, August 28, 1968, respondent company filed a motion for the release of the 54 cases of human hair for exportation under bond in order "to avoid undue injury to the shipper-claimant resulting from the attendant delay in the disposition of this seizure case", offering to put up an amount equi-valent to 1-1/2 times their appraised value.

Petitioner commissioner's opposition dated September 14, 1968 squarely traversed respondent company's motion for release on all grounds, legal and factual. Contrary to respondent company's assertion of the possibility of deterioration and "undue injury," petitioner informed the tax court that the 54 cases of human hair were in excellent condition, adequately protected from pilferage and insects and not in a deteriorated state, and submitted its latest report of the cargo's examination dated July 10, 1968 conducted in the presence of the claimant-representative, that "the shipment was found intact both on quantity and weight." Petitioner commissioner, in urging the tax court to reject the motion for release, submitted that both this Court as well as the tax court itself, had allowed such releases of forfeited goods pending decision only for special urgent reasons such as deterioration of the goods in order to preserve the subject-matter of the action - a condition not present in the case at bar. Petitioner asserted as against respondent company's invoking the tax court's protection against possible pecuniary loss that "the paramount public interest (in the government's anti-smuggling policy) has great bearing on the matter of the release of imported goods to protect private rights, and the fact that an important public policy would be prejudiced by the release of the property is a compelling reason for denying the relief." Petitioner also called the tax court's attention that the 54 cases of human hair were appraised by it at a value of P258,325.00, and not P152,000.00 alleged by respondent company to have been the highest bid offered therefore at an auction sale conducted by petitioner, which was subsequently abandoned.

Respondent court nonetheless issued its resolution of October 11, 1968 granting respondent company's motion for release, upon the latter's filing of "a surety bond in the amount of P260,000.00 to guarantee payment of the appraised value of said goods." It premised its action on the apprehension that a prolonged storage of the goods was likely to cause deterioration, loss or damage; that the importation is not absolutely prohibited, and that the filing of the surety bond would adequately protect the government's interest.

Petitioner filed his motion for reconsideration, asserting that the release and exportation granted by the tax court before final adjudication on the merits of the case would violate the provisions of section 1907 of the Tariff and Customs Code which requires that the exporter first present a warehousing entry for withdrawal of articles stored inside a customs bonded warehouse (where the articles were placed after their seizure for the purpose of the forfeiture proceedings), since respondent company could not present any such warehousing entry for immediate exportation as the human hair cargo is not covered by either a consumption entry or a warehousing entry. The tax court denied reconsideration per its resolution of December 26, 1968 and turned down petitioner's counter-proposal for the sale at public auction of the cargo, ruling that "anent (petitioner commissioner's) suggestion that the subject importation be sold at public auction, the proceeds thereof to be deposited with the Bureau of Customs or with any person to be designated by this Court, and the amount to be disposed of in accordance with the final decision in this case, it cannot legally be done because (respondent company) has the right, before final judgment, to ask for the release of the goods not of prohibited importation for transshipment to Bangkok under a sufficient bond to answer for the appraised value thereof in case of forfeiture." It subsequently issued on January 7, 1969 its order approving the surety bond filed by respondent company and ordering the release and delivery to respondent company of the 54 cases of human hair. Hence, this petition.

On January 29, 1969, the Court adopted a resolution requiring respondents to answer, at the same time granting the writ of preliminary injunction against enforcement of the tax court's questioned resolutions as prayed for by

petitioner. In the respondent company's answer filed on February 19, 1969, there was no denial of the substantial facts as above alleged but the Court's attention was invited to what it considered "vital facts" which in its opinion would suffice for the dissolution of the preliminary injunction issued as well as the dismissal of the petition. It would stress that a day before the arrival of the vessel where the cargo of human hair was shipped, the Luzon Trading Corporation as consignee named in the covering manifest as well as in the covering bill of lading addressed a letter to the Collector of Customs for the Port of Manila giving formal notice that it was exercising its "absolute option to tranship to Pokshand, Bangkok", and that on the day of the arrival of the vessel but before it docked, such application for transshipment was approved by the Collector for South Harbor, Jose Viduya. Respondent would argue then that there was no valid cause for seizure, the same being "transit cargo" and not imported goods, its transshipment to its ultimate port of destination, Bangkok, having been already authorized by the competent officials of the Bureau of Customs. Respondent would thus insist on the regularity and legality of the shipment and that no grave abuse of discretion, if it is submitted by them, could thus be imputed to the tax court in issuing the order for the exportation under bond of the cargo.

The petition was heard on the merits on May 5, 1969, and respondent was given a period of thirty days within which to submit a memorandum in lieu of oral argument. Petitioner was likewise granted leave to submit a reply within thirty days from receipt of such memorandum. Accordingly, the memorandum for respondents was duly filed on June 23, 1969, and respondent stressed its contentions that there was a legal basis for the issuance of the release order by the Court of Tax Appeals, that the provisions of the Tariff and Customs Code alleged to have been violated did not apply to the case at bar, that there is no prejudgment made by the tax court in allowing the release of the goods in question, and that while human hair may not be perishable it was subject to deterioration. On the other hand, petitioner reiterated his counter-arguments in refutation thereof in his memorandum submitted on August 25, 1969.

The Court finds the petition more than warranted, and accordingly nullifies and sets aside the resolutions of the tax court allowing the release under bond of the goods in question for exportation.

On the factual premise of the tax court's resolutions, to wit, "that although said goods may not yet have deteriorated, a prolonged storage is likely to cause deterioration, loss or damage," the Court finds that since admittedly there was in fact no deterioration of the cargo of human hair, there did not exist sufficient urgent and compelling reason for the tax court to order the release and exportation of the cargo, pending its review and decision on the merits of respondent's appeal from petitioner commissioner's decision affirming the forfeiture of said cargo under section 2530, paragraph m (4) of the Tariff and Customs Code. At the initial stage in which the appeal was then before the tax court, the issues just having been joined, and in the absence of arbitrariness or oppression on the part of petitioner commissioner in the forfeiture of the cargo - none having been averred or found by the tax court - the subject matter of the appeal before it was the said cargo of human hair which must be taken to have been duly forfeited by decision of petitioner customs commissioner. Such decision of forfeiture stands unless duly overturned after hearing by the tax court and necessarily the forfeited goods should be allowed to remain in the custody of petitioner commissioner and should not be ordered disposed of, much less released, pending the appeal, absent any overriding reason to do so. The certification of January 21, 1969,[2] submitted with the petition, that the forfeited shipment of human hair "is still in the same condition and quantity as reported in the re-examination report dated September 11, 1968" shows that the said goods have been well preserved and stands unrefuted by respondent, who invokes the loss that the government would incur from a depreciation in value of the forfeited goods, even if the seized articles are finally forfeited to the government, in view of the length of time it takes to finally decide such proceedings. The non-perishable nature of human hair appears to be in fact stressed by both contending parties, with respondent stating in its answer of February 18, 1969 that "it could not believe that human hair, which is the most durable part of the human body, could have deteriorated by

its storage, especially considering that the said human hair was treated by chemical preservative",[3] and leading petitioner to comment on March 24, 1969 in opposition to respondent's motion to dissolve preliminary injunction on "the uncontroverted fact that there is no urgent necessity of releasing the 54 cases of human hair, since both parties agree that these articles are not perishable."

On the legal issues of the tax court's resolutions, the Court finds that the question of releasing the forfeited cargo for exportation and transshipment to Bangkok under the facts at hand is so meshed with the legal issues on the merits of the appeal yet to be decided by the tax court that it is premature and amounts to grave abuse of discretion at this stage to allow the cargo's release and exportation.

The forfeiture by petitioner of the cargo of human hair was predicated on his finding that such goods were imported to the Philippines contrary to the applicable provisions of the Tariff and Customs Code. Respondent would challenge such a ruling by elevating the matter to the tax court. It would insist that there was no such importation, such cargo in fact being destined for Bangkok. It would thus challenge the validity of the forfeiture. The tax court in the disposition of the petition for review, was called upon to rule squarely on the matter. If petitioner's decision would be supported by the facts as found by it, then the forfeiture stands. On the other hand, if respondent could with reason justify its assertion that such goods were in fact intended to be transhipped to Bangkok and that there was no importation, then such a declaration of forfeiture should be set aside. It would thus appear that there is no middle ground. The parties stand on opposite poles. The issue posed calls for a clear-cut determination and certainly it is at best premature to allow without such a decisive resolution thereof the release for exportation and transshipment of the goods.

It must be borne in mind that as stated above, the covering documents of the shipment expressly indicate that it is the consignee, Luzon Trading Corporation, Manila, that has the "absolute option" and claims to have exercised a day before the shipment's arrival such option to tranship the cargo to Bangkok yet it is the consignor and shipper, respondent Broadway & Co., Hongkong who is solely prosecuting the petition for review of the petitioner commissioner's decision of forfeiture. The question of respondent's personality and interest to prosecute the petition may have to be resolved as a prejudicial question. Petitioner commissioner's decision pending review by the tax court makes certain findings in this regard which require prior clarification and resolution, viz: the first place, why did the owner have to declare the cargo as 'dried fruits' and not human hair, which is not a contraband? Again, if the intention was to tranship the goods to Bangkok, why did the owner have to consign them to a Manila firm (Luzon Trading Corporation) which had no legal existence?"[4] Petitioner commissioner further concluded in his decision, from his failure to see, and that of respondent company to supply, plausible answers to "intriguing questions" posed by him[5] that respondent's questioned acts "are traces of their frantic effort to exculpate the cargo from the penalty of forfeiture by sheltering under the argument of transshipment to camouflage their dubious intention to illegally introduce the cargo into the country." Until such seemingly well-grounded finding of petitioner that the right of transshipment asserted by respondent company was but an illegal device shall have been fully explained away by respondent to the satisfaction of the tax court, said court's resolution in denying petitioner's motion for reconsideration that respondent company "has the right, before final judgment, to ask for the release of the goods not of prohibited importation for transshipment to Bangkok under a sufficient* bond" must perforce be set aside as pre-judging the very issue of the authenticity** and existence of such alleged right of transshipment which the tax court has yet to decide.

The desirability of the tax court avoiding the issuance of such an order that would have the effect of prejudging the matter is thus evident. Under the circumstances what was most appropriate was for it to rule squarely on the merits of the appeal before it. Nothing would have been lost and certainly this certiorari proceeding could have been avoided if such a course were followed. Then there would have been no question at all of any imputation

that there was a grave abuse of discretion on the part of respondent court. At any rate, more than two years having elapsed from the challenged ruling, it is not beyond the realm of probability that such a definitive disposal of the matter and decision on the merits would be forthcoming from respondent court.

WHEREFORE, the writ of certiorari prayed for is granted and the writ of preliminary injunction issued on January 29, 1969 is hereby made permanent. Respondent court's resolutions of October 11, 1968 and December 26, 1968 as well as its implementing order of January 7, 1969 are hereby annulled and declared to be of no force and effect. With costs against respondent Broadway & Co.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, and Villamor, JJ., concur. Barredo and Makasiar, JJ., did not take part.

[1] "Sec. 2530. Property subject to forfeiture under tariff and customs laws. - Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:

x x x x x

m. Any article sought to be imported or exported:

xxxx

(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."

[2] Annex "I", Petition.

[3] Rollo, pp. 45, 68.

[4] Rollo, p. 20.

[5] "The clear intention of the claimant is further manifest-ed by other established circumstances of the case which will conclusively prove that the shipper-claimant and the consignee had pre-arranged the legal argument of transshipment as their defense in case their scheme to de-fraud the revenue is exposed and detected. For what could have been the valid reason in giving the consignee the option to tranship the cargo to Bangkok when the shipper-claimant could have shipped the cargo directly to Bangkok? It would appear unbelievable and highly insensible for a businessman engaged in the business of imports and exports to adopt a circuitous route in transporting his cargo and spend more for shipping and handling charges, when he has the full knowledge and opportunity to transport his cargo in a more speedy and less expensive way. If the intention was to trans-ship the cargo to Bangkok on board the M/V "LINDOS", why was there no shipping order obtained for the purpose? And, again, if such intention was really true, why did the consignee request, in securing the amended permit to transfer, that the cargo be transhipped on board the M/V "PRES. ROXAS" when the said vessel was not bound for Bangkok but for the United States? And, lastly, why must the shipping documents misrepresent the true contents of the shipment?" Commissioner's decision, Rollo, p. 23.

* Editor's Note: Should be read "sufficient."

** Editor's Note: Should be read "authenticity."

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