

JOSE T. VIDUYA, AS COLLECTOR OF CUSTOMS OF THE PORT OF MANILA, PETITIONER, VS. EDUARDO BERTIAGO ALIAS EDUARDO BERDIAGO; AND HON. ANDRES REYES, AS PRESIDING JUDGE OF BRANCH VI, C...*G.R. No. L-29218. October 29, 1976*

Ponente: FERNANDO, J.

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An order of the lower court quashing a search warrant issued at the instance of petitioner Jose T. Viduya, then Collector of Customs of Manila, to gain custody of a seized vehicle pursuant to a warrant of seizure and detention against private respondent Eduardo Berdiago[1] was assailed in this certiorari and mandamus proceeding with a prayer for mandatory preliminary injunction.[2] The invocation by the then Solicitor General, now Associate Justice of this Court, Antonio P. Barredo, of the controlling force of *Papa v. Mago*[3] and the persuasive character attached to the ruling of an American leading decision, *Carroll v. United States*,[4] clearly indicative of the tenuous nature of the claim of private respondent that there was a violation of his constitutional right to be free from unreasonable search and seizure,[5] led to a resolution by the Court of July 12, 1968, requiring that respondents answer the petition and issuing the preliminary mandatory injunction sought requiring respondent Berdiago "to deliver the custody and possession of said car to respondent court; and furthermore requiring respondent court to take possession and custody of the said Rolls Royce car from respondent Berdiago or from whom-soever has possession and custody thereof and let petitioner to take delivery and custody thereof; * * *"[6] The stress, and quite understandably, in the extensively-researched answer filed on behalf of respondents by their able counsel, former Ambassador Amelito R. Mutuc, was on the primacy of the immunity the Constitution guarantees against an unreasonable search and seizure. More specifically, it was contended with vigor and plausibility that respondent Judge quashed the search warrant on a showing of lack of probable cause, a requirement not only of the Constitution but of the Rules of Court[7] and the Tariff and Customs Code.[8] While no objection could validly be raised against such a proposition, it cannot apply to this controversy. It is undoubted that prior to the issuance of a search warrant, there was a previous discovery of the failure to pay the correct amount of customs duties. That was probable cause enough. It led to the institution of a seizure and forfeiture proceeding. Moreover, the law has always looked with disfavor on attempts at nonpayment or underpayment of customs duties. It is essential that no undue obstacle be placed on intensive efforts to assure the collection of what is properly due the government. The *Mago* decision was thus merely a reflection of what has long been the settled doctrine on the matter in the Philippines. It is futile to assert then, considering the circumstances to be more specifically referred to, that the requirement of lack of probable cause was not met. We find for petitioner.

The petition includes as one of its Annexes the warrant of seizure and detention.[9] It was issued on the basis of reliable intelligence that fraudulent documents were used by respondent Berdiago in securing the release from the Bureau of Customs of a Rolls Royce car, Model 1966, 2 door, Hardtop with Motor No. CRX 1379, which arrived in the Port of Manila on January 8, 1968 on board the vessel, Jose Abad Santos, it being made to appear that such

car was a 1961 model instead of a 1966 one, thus enabling respondent to pay a much lower customs duty in the amount of P3, 255.00, when the correct amount due was P219,783.00.[10] There was, accordingly, a formal demand for the payment of the sum to cover the deficiency, respondent manifesting his willingness to do so but failing to live up to his promise contained in a letter of April 24, 1968, leading to Seizure Identification Case No. 10941 against the car.[11] As it was kept in a dwelling house at the Yabut Compound, Wakas, Barrio San Dionisio, Parañaque, Rizal, two officials of the Customs Police Service as duly authorized agents of petitioner, applied to respondent Judge for a warrant to search said dwelling house and to seize the Rolls Royce car found therein, pursuant to Section 2209 of the Tariff and Customs Code; he issued the search warrant on May 30, 1968.[12] Thereafter, on June 3, 1968, there was an urgent motion to quash the same by respondent Berdiago.[13] Then, on June 6, 1968, an opposition to said motion to quash was filed by petitioner, based on the allegation of a violation of Section 2209 of the Tariff and Customs Code.[14] It was moreover pointed out that respondent Berdiago could not rely on the constitutional right against unreasonable search and seizure because it was not shown that he owned the dwelling house which was searched.[15] Nonetheless, respondent Judge in the challenged order quashed such search warrant.[16] Hence this petition.

To repeat, the plea of petitioner must be heeded. A case of a grave abuse of discretion on the part of respondent Judge when he quashed the search warrant had been shown. What lessens the gravity of such lapse from controlling doctrines was the commendable attitude displayed in stressing the worth of a constitutional right. Where attempts at evasion of payment of customs duties are concerned, however, this Court has not been disposed to be as receptive to claims of its violation, especially where they rest on no substantial basis.

1. In the leading case of *Papa v. Mago*,[17] with Justice Zaldivar as ponente, there is this pronouncement, which, as aptly noted by the then Solicitor-General Barredo, calls for application: "The Bureau of Customs has the duties, powers and jurisdiction, among others, (1) to assess and collect all lawful revenues from imported articles, and all other dues, fees, charges, fines and penalties, accruing under the tariff and customs laws; (2) to prevent and suppress smuggling and other frauds upon the customs; and (3) to enforce tariff and customs laws. The goods in question were imported from Hongkong, as shown in the 'Statement and Receipts of Duties Collected on Informal Entry.' As long as the importation has not been terminated the imported goods remain under the jurisdiction of the Bureau of Customs. Importation is deemed terminated only upon the payment of the duties, taxes and other charges upon the articles or secured to be paid, at the port of entry and the legal permit for withdrawal shall have been granted. The payment of the duties, taxes, fees and other charges must be in full. The record shows, * * * that the duties, taxes and their charger had not be been paid the in full. Furthermore, a comparison of the goods on which duties ad been assessed, as shown in the 'Statement and Receipts of Duties Collected on Informal Entry' and the 'compliance' itemizing the articles found in the bales upon examination and inventory, shows that the quantity of the goods was underdeclared, presumably to avoid the payment of duties thereon. * * * The articles contained in the nine bales in question, were, therefore, subject to forfeiture * * *. And this Court has held that merchandise, the importation of which is effected contrary to law, is subject to forfeiture, and that goods released contrary to law are subject to seizure and forfeiture." [18]

2. Nor did Mago announce a novel doctrine. It is merely a recognition of the state power to assure that fraudulent schemes resorted to by importers would be doomed to failure. That same year in 1968, in *Asaali v. Commissioner of Customs*,[19] the opinion stressed in rather emphatic language why it must be thus: "The policy relentlessly adhered to and unhesitatingly pursued to minimize, if not to do away entirely, with the evil and corruption that smuggling brings in its wake would be frustrated and set at naught if the action taken by respondent Commissioner of Customs in this case, as affirmed by the Court of Tax Appeals, were to be set aside and this appeal from the decision of the latter were to succeed. Fortunately, the controlling principles of law do not call for a contrary conclusion. It cannot be otherwise if the legitimate authority vested in the government were not to be

reduced to futility and impotence in the face of an admittedly serious malady that at times has assumed epidemic proportions." [20] Moreover, as far back as 1920, in *Uy Kheytn v. Villareal*, [21] there was the explicit affirmation of the principle that "dutiable articles on which the duties have not been paid" belong to a different category from the search and seizure "of a man's private papers" as they "rightfully belong to the custody of the law." [22]

3. There is this clarification of the matter in the opinion of Justice Zaidivar in *Mago*: "Petitioner Martin Alagao and his companion policemen had authority to effect the seizure without any search warrant issued by a competent court. The Tariff and Customs Code does not require said warrant in the instant case. The Code authorizes persons having police authority under Section 2203 of the Tariff and Customs Code to enter, pass through or search any land, inclosure, warehouse, store or building, not being a dwelling house; and also to inspect, search and examine any vessel or aircraft and any trunk, package, box or envelope or any person on board, or stop and search and examine any vehicle, beast or person suspected of holding or conveying any dutiable or prohibited article introduced into the Philippines contrary to law, without mentioning the need of a search warrant in said cases. But in the search of a dwelling house, the Code provides that said 'dwelling house may be entered and searched only upon warrant issued by a judge or justice of the peace * * *.' It is our considered view, therefore, that except in the case of the search of a dwelling house, persons exercising police authority under the customs law may effect search and seizure without a search warrant in the enforcement of customs laws." [23] There is justification then for the insistence on the part of private respondent that probable cause be shown. [24] So respondent Judge found in issuing the search warrant. Apparently he was persuaded to quash it when he noted that the warrant for seizure and detention came later than its issuance. In thus acting, respondent Judge apparently overlooked that long before the search warrant was applied for, to be specific on April 15, 1968, the misdeclaration and underpayment was already noted and that thereafter on April 24, 1968, private respondent himself agreed to make good the further amount due but not in the sum demanded. [25] As the car was kept in a dwelling house in Wakas, Barrio San Dionisio, Parañaque, Rizal, petitioner through two of his officers in the Customs Police Service [26] applied for and was able to obtain the search warrant. Had there been no such move on the part of petitioner, the duties expressly enjoined on him by law noted in the *Mago* opinion, namely, to assess and collect all lawful revenues, to prevent and suppress smuggling and other frauds, and to enforce tariff and customs law would not have been performed. While therefore, it is to be admitted that his warrant of seizure and detention came later, on July 5, 1968 to be exact, than the search warrant, which was issued on May 30, 1968, there were indubitable facts in existence at that time to call for its issuance. Certainly there was probable cause as defined in *United States v. Addison*, [27] identifying it with "such reasons, supported by facts and circumstances, as will warrant a cautious man in the belief that his action, and the means taken in prosecuting it, are legally just and proper." [28] There was evidently a need for the issuance of a search warrant. It ought not to have been thereafter quashed.

4. That is about all, except for a reference in the petition to an excerpt from *Carroll v. United States*, [29] tracing such an approach to the landmark *Boyd* decision cited in *Uy Kheytn*. It was emphasized therein in the opinion of Chief Justice Taft that what was said by Justice Bradley in *Boyd* stated the doctrine that had gained approval and acceptance. It was summarized thus: "The seizure of stolen goods is authorized by the common law; and the seizure of goods forfeited for a breach of the revenue laws or concealed to avoid the duties payable on them, has been authorized by English statutes for at least two centuries past; and the like seizures have been authorized by our own revenue acts from the commencement of the government." [30] So it is in this jurisdiction - and for a very good reason. It is not for this Court to do less than it can to implement and enforce the mandates of the customs and revenues laws. The evils associated with tax evasion must be stamped out - without any disregard, it is to be affirmed, of any constitutional right. The facts, appreciated in their true light, fail to show that the issuance of the search warrant contravened the immunity against unreasonable search and seizure. Its being quashed then

amounted to a grave abuse of discretion.

WHEREFORE, the writ of certiorari is granted and the order of June 20, 1968 of respondent Judge denying the petition for custody of the car by petitioner and quashing the search warrant nullified and set aside. The writ of preliminary mandatory injunction issued by this Court is maintained in full force and effect, the custody and possession of the Rolls Royce car, model 1966, 2 door Hardtop with Motor No. CRX 1379 to remain in the custody of the Customs authorities until the termination according to law of the seizure and forfeiture proceeding. Costs against private respondent.

Antonio, Aquino, Concepcion, Jr., and Martin, JJ., concur.

Barredo, J., did not take part.

[1] The caption of the petition stated that such a name is an alias for Eduardo Bertiago. The other respondent is the then Judge Andres Reyes of the Court of First Instance of Rizal, now an Associate Justice of the Court of Appeals.

[2] Pars. II, IV, IX, Annex K.

[3] L-27360, February 28, 1968, 22 SCRA 857.

[3] 267 US 132 (1925).

[5] According to Article III, section 1, par. 3 of the 1935 Constitution then enforced: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized." Under the present Constitution, Article IV, section 3, this provision has been expressly modified to include a warrant of arrest. Also, now for the issuance of warrant, not only a judge but also "such other responsible officer may be authorized by law."

[6] Petition, 15.

[7] Rule 126, Section 3 of the Rules of Court provides: "Requisites for issuing search warrant. —A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined by the municipal or city judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. No search warrant shall issue for more than one specific offense."

[8] Section 2209 of the Tariff and Customs Code, Rep. Act No. 1937 reads: "Search of Dwelling House. - A dwelling house may be entered and searched only upon warrant issued by a judge or justice of the peace, upon sworn application showing probable cause and particularly describing the place to be searched and person or thing to be seized."

[9] Petition, Annex C of the Petition reads: "[Greetings:] [Whereas,] the above-described article is subject to forfeiture for having been imported in violation of 2530(m) 3, 4 and 5 of the Tariff and Customs Code. [Whereas,] the said articles are at present in the custody of Eduardo Berdiago alias Eduardo Bertiago, with given address at 70 Estrella St., Bel-Aire Village, Makati, Rizal. [Wherefore, by virtue of the authority vested in me by law, and in compliance with Finance Department Order No. 96-67 as published in Customs Memorandum Circular No. 133-67 dated July 25, 1967, you are hereby ordered to forthwith seize the aforementioned articles and detain them

under your custody pending termination of the seizure proceedings thereof and/or until further orders. [So Ordered.]"

[10] Ibid, par. II.

[11] Ibid.

[12] Ibid, par. III.

[13] Ibid, par. IV.

[14] Ibid, par. VI.

[15] Ibid, par. VII.

[16] Ibid, Annex K.

[17] L-27360, February 28, 1968, 22 SCRA 857.

[18] Ibid, 865-867. In support of the view that seizure and forfeiture proceedings lie: Pascual v. Commissioner of Customs, 105 Phil. 1039 (1959) and De Joya v. Lantin, L-24037, April 27, 1967, 19 SCRA 893.

[19] L-24170, December 16, 1968, 26 SCRA 382

[20] Ibid, 385.

[21] 42 Phil. 886.

[22] Ibid, 899 citing *Boyd v. United States*, 116 US 616 (1886).

[23] 22 SCRA 857, 871-872.

[24] Cf. *Alvarez v. Court of First Instance*, 64 Phil. 33 (1937); *People v. Sy Juco*, 64 Phil. 667 (1937); *Rodriguez v. Villamiel*, 65 Phil. 230 (1937); *Pasion Vda. de Garcia v. Locsin*, 65 Phil. 689 (1938); *Yee Sue Koy v. Almeda*, 70 Phil. 141 (1940); *Cruz v. Dinglasan*, 83 Phil. 333 (1949); *People v. De la Peña*, 97 Phil. 669 (1955); *Oca v. Maiquez*, L-20749, July 30, 1965, 14 SCRA 735; *Stonehill v. Diokno*, L-19550, June 19, 1967, 20 SCRA 383; *Bache and Co. v. Ruiz*, L-32409, Feb. 27, 1971, 37 SCRA 823; *Asian Surety & Insurance Co. v. Herrera*, L-25232, Dec. 20, 1973, 54 SCRA 312; *Roldan, Jr. v. Arca*, L-25434, July 25, 1975, 65 SCRA 336; *Lim v. Ponce de Leon*, L-22554, Aug. 29, 1975, 66 SCRA 299; *Lopez v. Commissioner of Customs*, L-27968, Dec. 3, 1975, 68 SCRA 320.

[25] Petition, par. II and Answer II, 2nd paragraph.

[26] Major Enricus Figueroa and Lieutenant Colonel Osmundo Victoriano.

[27] 28 Phil. 566 (1914).

[28] Ibid, 570.

[29] 267 US 132 (1925). *Boyd*, as previously noted, was an 1886 American Supreme Court decision reported in 116 US 616.

[30] Ibid, 149-150.

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