

**GOLAY-BUCHEL & CIE., PETITIONER AND APPELLEE, VS.
COMMISSIONER OF CUSTOMS, RESPONDENT AND APPELLANT.
GOLAY-BUCHEL & CIE., PETITIONER AND APPELLANT, VS.
COMMISSIONER OF CUSTOMS, ...**

G. R. Nos. L-10994 and L-11012. December 29, 1959

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

On January 25, 1952, a shipment of 220 packets of marcassite stones from Switzerland arrived at the Manila International Airport. The shipment was consigned in the bill of lading to the Philippine National Bank for the account of C. C. Abella of 1312 V. Benavidez, San Juan, Rizal. The consular as well as the commercial invoice, however, showed that C. C. Abella of the same address was the "purchaser and consignee".

For lack of an import control license in violation of Republic Act No. 650 (Import Control Law), the shipment was seized by the customs authorities. Forfeiture proceedings were subsequently instituted and notice of the hearing was served upon Abella. Another copy of the notice was posted on the bulletin board of the customhouse.

At the hearing—originally set for October 20, 1952 but postponed to October 25 upon Abella's request—Abella denied that he was the same person mentioned in the bill of lading or that named as the purchaser and consignee in the consular and commercial invoices. He claimed that he had nothing to do with the shipment and even declared that he had not corresponded previously with Gola Buchel & Cie., a corporation doing business at Lausanne, Switzerland, and consignor of the shipment in question. Construing Abella's denial as an abandonment of the importation, the Collector of Customs of Manila on November 22, 1952 rendered decision ordering its forfeiture. Copy of the decision was furnished Abella and another copy, posted on the bulletin board of the customhouse. The decision was not appealed. Nevertheless, the Commissioner of Customs, in conformity with the practice followed, reviewed the case *motu proprio*, and, on January 12, 1953, affirmed the decision of the Collector. Thereafter, or on January 19, the Commissioner, pursuant to section 8 of Executive Order No. 401-A, forwarded the record of the case to the Board of Tax Appeals for review.

More than two months later, or on April 1, 1953, GolayBuchel & Cie., the consignor of the shipment in question, filed a "petition for review" with the Board of Tax Appeals stating, among other things, that some time during the month of December, 1951, it received an order from one C. C. Abella of 1312 V. Benavidez, San Juan, Rizal for the purchase of a quantity of marcassites; that upon receipt of a cablegram to the effect that an import license had been obtained, it shipped the merchandise by airplane on or about January 16, 1952; that it had not been notified the proceedings subsequently conducted by the Bureau of Customs after the shipment was seized for lack of ail import license; that it learned of the seizure of the shipment only on or about March 14, 1953; that since the consignee, C. C. Abella, disclaimed knowledge of the importation and denied that he was the consignee at the seizure proceedings, notice to him of the decision of the Collector of Customs, as approved by the Commissioner of Customs, decreeing the forfeiture of the merchandise in question in favor of the Republic of the Philippines

was not notice to petitioner; and that as petitioner was not a party to the seizure proceedings, it is not bound by the decision rendered therein and being the owner thereof, was entitled to the return of the merchandise. For relief the petitioner asked that judgment be rendered reversing the decision of the Commissioner and ordering the reshipment of the merchandise to the port of origin, or that the seizure proceedings be reopened in order that petitioner may have the opportunity to submit its evidence and explain its side of the case.

Required to answer by the Board of Tax Appeals, the Commissioner of Customs on May 2, 1953, through the Solicitor General, filed an answer, alleging by way of affirmative defenses that the seizure of the merchandise in question was in accordance with law and that the decision sought to be reviewed had already become final and could no longer be reviewed nor reopened by appeal.

On May 22, 1953, petitioner amended its "petition for review" by stating that during the month of December, 1951, it received merely a notice from C. C. Abella to the effect that he had applied for a license for certain articles including marcassites; that owing to an erroneous interpretation of Abella's notice, petitioner shipped the marcassites to the Philippines; and that upon being apprised by Abella of the mistake, it instructed its banker, the Philippine National Bank, to have the goods reshipped to Switzerland.

Acting upon the "petition for review," the Board of Tax Appeals on June 5, 1953 denied the same and sustained the Commissioner of Customs, But on June 25, the Board, upon petitioner's motion for reconsideration, suspended the effect of its decision and directed the Commissioner of Customs "to order the Collector of Customs for the port of Manila to reopen this case for the purpose of hearing the evidence and arguments that may be offered or presented by the petitioner or the Philippine National Bank, who should also be notified of the date of the new hearing."

At the rehearing before the Collector, after proper notices had been served, the petitioner corporation presented evidence consisting of a one-page letter alleged to be that of C. C. Abella dated December 13, 1951 and addressed to Golay-Buchel & Cie. of Lausanne, Switzerland, stating that a license had been applied for certain precious stones, among them the 220 packets of marcassites; another letter of Abella dated February 1, 1952 stating in substance that he had neither ordered from Golay-Buchel & Cie. nor instructed the latter to make any shipment; and a telegram addressed to Golay-Buchel & Cie. which reads "Please stop shipment Abella." Abella, who was presented by petitioner as a witness, also identified four other documents (exhs. D, E, F, and G), the originals of which were already part of the record of the case. On February 4, 1954 the Collector of Customs, considering that no important evidence had been presented as to materially alter the result of the case, reiterated his previous decree of forfeiture. That decree, on appeal, having been affirmed by the Commissioner, the petitioner filed a petition for review with the Court of First Instance of Manila. The case, however, was forwarded to the Court of Tax Appeals pursuant to Republic Act No. 1125 which created it and abolished the former Board of Tax Appeals.

On June 3, 1956, the Court of Tax Appeals, after hearing, rendered its decision, reversing that of the Commissioner of Customs and decreeing the release of the marcassite stones to petitioner subject to the condition that they be reshipped by the latter to the port of origin under the statutory and administrative regulations existing at the time of their shipment at the port of Manila. The decision was predicated on the theory that the review by the Commissioner of the decision of the Collector of Customs dated November 22, 1952 did not, under section 1381 of the Revised Administrative Code (which refers to proceedings in case of property belonging to unknown parties), necessitate the filing of an appeal since no claimant appeared before the Collector within 10 days after the seizure of the shipment in question. The decision of the Commissioner was in turn reviewed by the Board of Tax Appeals so that, according to the Court of Tax Appeals, the decision of the Collector of Customs had not become final and executory on June 30, 1953, when the Import Control Law (Republic Act No. 650) expired. And following the opinion of the Undersecretary of Justice (Op. No. 138, s. 1953), which held that all forfeiture

proceedings involving property imported in violation of the Import Control Law abated with the expiration of that law, the court ruled that the customs authorities had lost jurisdiction to proceed with the forfeiture proceedings. Not satisfied with the decision, the Commissioner of Customs filed with this Court a petition for review (G. R. No. L-10994), contending that the decision of the Collector of Customs dated November 22, 1952, which was not appealed, had already become final even prior to the expiration of the Import Control Law. The corporation Golay-Buchel & Cie. also filed its own petition for review (G. R. No. L-11012) alleging as its sole assignment of error that the court erred in not considering the evidence adduced to the effect that the marcassite stones were shipped to the Philippines by mistake. Upon joint motion by the parties, the cases were consolidated and are here decided together.

This Court in the case of *Roxas vs. Sayoc* (100 Phil., 448, 53 Off. Gaz. [17], 5642) has' already held that the expiration of the Import Control Law did not produce the effect of declaring legal the importation of goods which were illegally imported and the seizure and forfeiture thereof as ordered by the Collector of Customs illegal or null and void. Said this Court in that case:

"* * *Petitioner contends that upon the expiration of Republic Act No. 650 the Commissioner of Customs lost jurisdiction over the case and therefore his decision was null and void. This contention is untenable. It is a settled rule that a court, be it judicial or administrative, that has acquired jurisdiction over a case, retains it even after the expiration of the law governing the case. Herein, we are concerned with the effect of the expiration of a law, not with the abrogation of a law, and we hold the view that once the Commissioner of Customs has acquired jurisdiction over the case, the mere expiration of Republic Act No. 650 will not divest him of his jurisdiction thereon duly acquired while said law was still in force. * * *." (See also *Ang Beng et al vs. Comm. of Immigration*, 100 Phil., 801, 53 Off. Gaz. (13), 4448.)

The question, therefore, that arises is whether or not the seizure and forfeiture proceedings conducted by the customs authorities were valid, it being argued by the petitioner Golay-Buchel & Cie. that no notice of the proceedings was sent to the "owner" of the merchandise as required in sec. 1375 of the Revised Administrative Code, the 2nd paragraph of which provides that for the purposes of giving notice of the seizure of imported property and for the purposes of all other proceedings in the matter of such seizure, "the importer, consignee, or person holding the bill of lading shall be deemed to be the 'owner' of the merchandise included in the bill."

In the present case, there is reason to believe that Abella, who was duly notified of the seizure and forfeiture proceedings, was actually the importer and consequently the "owner" of the merchandise in question under section 1375 of the Revised Administrative Code. The consular invoice, which was duly authenticated by the American Consul at Geneva, Switzerland, who also acts there as Consul for the Philippines, shows that the 220 packets of marcassite stones were purchased from Golay-Buchel & Cie. by C. C. Abella. It is true that Abella denied having ordered the merchandise and that Golay-Buchel & Cie., the consignor or exporter, now contends that there was mistake in shipping the same. Abella's denial, however, and petitioner's contention cannot be given credence. Both are belied by the facts on record. Abella declared at the first hearing before the Collector of Customs that he had nothing to do with the importation and that he had not previously corresponded with the petitioner Golay-Buchel & Cie. At the hearing, however, before the Court of Tax Appeals— that is, after the expiration of the Import Control Law— he testified that he had in fact been dealing with petitioner on jewelry and precious stones since 1932 and that he had already bought similar goods from it. The record in fact shows that on December 13, 1951 he had written a letter to petitioner stating that a license has been applied for certain precious stones including 220 packages of marcassites "based on your quotation CIF," and that "as soon as the license shall come out for the above order I shall cable you to ship the above as soon as possible." Apparently, as observed by the Solicitor General, Abella, in denying any interest in the shipment hoped at the time to avoid criminal prosecution under Republic Act No. 650, which was then still in force. It will be remembered that the importation

without an import license issued in accordance with Republic Act No. 650 was punishable with a fine of not less than P2,000.00 nor more than P20,000.00, or imprisonment of not less than two years nor more than five years, or both, at the discretion of the court, besides the forfeiture of the goods imported. (Sec. 18, Rep. Act No. 650.)

Counsel for the petitioner corporation in contending that the marcassite stones were shipped to the Philippines through inadvertence or mistake, cites Abella's letter of December 13, 1951 already referred to. In that letter, according to petitioner, Abella merely sent a notice that "a license has been applied (for the marcassite stones indicated therein) based on your quotation CIF." It is claimed that petitioner's employee "who used to handle the orders of Mr. Abella" was led to believe by the letter that the import license applied for as stated therein was already issued or about to be issued by the Philippine authorities. And for that reason—as stated by petitioner's manager, Mr. Guignard, in his deposition—said employee "packed the marcassite stones * * * and, in accordance with our practice hereinafter described, turned them over to our forwarder, Messrs. Jacky, Maeder, Geneva, a company distinct and separate from our firm, with the instructions to ship the same as soon as we advised him of the receipt of the cable of instruction of Mr. Abella."

The letter in question consists of two pages. The first page—which only shows the statement that a license has been applied for certain precious stones including 220 packets of marcassites "based on your quotation CIF"—was introduced as evidence at the rehearing of the seizure proceedings before the Collector of Customs while the second page—containing the statement that "as soon as the license shall come out for the order I shall cable you to ship the above as soon as possible"—was presented only during the hearing before the Court of Tax Appeals. For ready reference, the letter is hereunder quoted as follows:

"Dec. 13, 1951

GOLAY BUCHEL & CIE
Lausanne, Suisse

ATTENTION: STONES DEPARTMENT

Gentlemen :

A license has been applied for the following based on your quotation CIF:

(Five kinds of precious stones as enumerated including 220 packages of "Real Marcassite Extra Quality" omitted.)

These prices of the white sapphires are based on your quotation you established in your letter to me dated August 23, 1950. I hope that in the absence of your present quotation of these items, you will be square with this firm in charging your present prices on these white sapphires which I am looking forward to have been further reduced.

As soon as the license shall come out for the above order I shall cable you to ship the above as soon as possible.

Yours truly,
(Sgd.) C. C. Abella

(Footnote)

Please take notice that the above prices as per your letter of Nov. 19th includes freight insurance and other expenses and to be shipped by air express. Please declare the white sapphires in your invoice as "Real White Sapphires". Omit any classification in your invoice as Imitation, Precious or Semi Precious."

We really do not see how the above letter could have been construed to mean that the application for license had

been favorably acted upon or that the license for the importation of the merchandise in question had already been issued. The letter is simply worded and we find it hard to believe that after dealing with Abella since 1932, petitioner's employee "who used to handle the orders of Mr. Abella" would make an erroneous interpretation of it. Besides, if such letter were the basis of the mistake made by petitioner's employee, it has not been explained why he packed only the marcassite stones when there were many items listed in the said letter. Neither has it been explained why petitioner's forwarder, which was given explicit instructions to ship the goods only when advised by petitioner upon the latter's receipt of the cable of instruction from Abella, "inadvertently or erroneously shipped the marcassite by plane without waiting for petitioner's instructions."

On the other hand, it is to be observed that Abella gave instructions in his letter not to ship until further notice as may readily be inferred from his assurance that "as soon as the license shall come out for the above order I shall cable you to ship the above as soon as possible." And petitioner itself in its petition filed with the Board, of Tax Appeals on April 1, 1953 stated that "sometime during the month of December 1951, petitioner received an order from one C. C. Abella, 1312 V. Benavidez, San Juan, Rizal, for the purchase of marcassites; that upon receipt of a cablegram informing petitioner that an import license had been obtained the said firm shipped the merchandise by airplane on or about January 16, 1952." Apparently, Abella, as promised in his letter, subsequently sent instructions by cablegram for the shipment of the marcassites.

Finally, according to Abella, he sent a cable to petitioner on February 2, 1952, to stop the shipment and also wrote to it a letter dated February 9, 1952 asking that the marcassites which were shipped "inadvertently or through mistake" be shipped back. We also note that the Philippine National Bank, which intervened in the transactions, knew about Abella's denial as evidenced by its letter to petitioner dated February 11, 1952. But oddly enough it took petitioner more than a year before it intervened in the seizure proceedings. In the circumstances, we are not inclined to believe that the marcassites were shipped to the Philippines by mistake or through inadvertence.

In conclusion, we hold that the forfeiture proceedings conducted in this case were valid and not null and void for lack of notice to the "owner" of the merchandise because Abella, who appears to be the importer and consequently the "owner" of the merchandise under section 1375 of the Revised Administrative Code, was duly notified of the seizure and forfeiture proceedings. And as he did not appeal from the decision of the Collector of Customs dated November 22, 1952, the same has—following the rule enunciated in the case of *Sy Man vs. Jacinto, et al.* (93 Phil., 1093)—already become final and executory.

In view of the foregoing, the decision appealed from is reversed, and the decision of the Commissioner of Customs declaring the forfeiture of the importation in question in favor of the Government is affirmed. No pronouncement as to costs.

Paras, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Barrera, JJ., concur.

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