

LUZ M. GIGARE, PETITIONER, VS. THE COMMISSIONER OF CUSTOMS, RESPONDENT.

G.R. No. L-21376. August 29, 1966

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Petition for review of a decision of the Court of Tax Appeals affirming that of the Commissioner of Customs, decreeing the forfeiture, in favor of the Government, of 519 cartons of "Chesterfield" cigarettes with blue seals, but without internal revenue stamps.

As set forth in the decision appealed from:

"It appears that at high noon on April 19, 1957 several customs agents conducted a search on board the Vessel F/S 'Bais' while said vessel was docked at the port of Jolo. The search party discovered several cartons of 'Chesterfield' cigarettes, which bore blue seals, but not internal revenue strip stamps concealed in different parts of the vessel. The wrappers of the cigarettes indicated that the same were manufactured in the United States of America. Said cigarettes were seized by the customs agents, allegedly for violation of Section 1363 (m-1) of the Revised Administrative Code and Section 174 of the National Internal Revenue Code, after issuing a receipt therefor to petitioner, who purchased them in the open market of Jolo.

"Later, in the office of the patrol division of the Collector of Customs of Jolo, petitioner, fearing detention, denied ownership of the 519 cartons of 'Chesterfield' cigarettes. However, in a communication dated May 15, 1957, she claimed ownership over the same.

"At the time the cigarettes in question were seized, petitioner was a transient in Jolo, She was neither an agent nor an importer in either Jolo or Manila."

Based upon the foregoing facts, the Court of Tax Appeals concluded that the cigarettes in question had been illegally imported into the Philippines and, accordingly, affirmed the order of forfeiture issued by the Commissioner of Customs. Hence this petition for review by petitioner Luz M. Gigare, who had admittedly purchased the aforementioned cigarettes in the open market in Jolo.

She maintains that said commodities are "not merchandise of prohibited importation, the importation of which is contrary to law", and that, in any event, they are not liable to forfeiture, because: (a) our laws permit the importation of foreign cigarettes, provided that the corresponding tax thereon is paid; (b) the foreign character of the cigarettes in question and the alleged importation thereof have not been, it is claimed, established; and (c) appellant's knowledge of said importation and of the non-payment of aforementioned tax has not been sufficiently proven. This pretense is clearly untenable.

Since, admittedly, the internal revenue tax on the cigarettes in dispute has not been paid, it is clear that the importation thereof is prohibited by law, and that said cigarettes fall within the category of "merchandise of prohibited importation", the importation of which is contrary to law and may justify its forfeiture, as provided in Sections 1363 and 1364 of the Revised Administrative Code, [1] and repeatedly held by this Court. [2]

Moreover, the blue seals affixed on said commodities prove satisfactorily that they are foreign products. Again, the importation thereof into the Philippines is attested by the presence of said products within our jurisdiction.

As regards appellant's knowledge of these facts, the Court of Tax Appeals, has aptly observed:

"Were the cigarettes in question illegally imported into the Philippines? We are of the opinion that the Commissioner of Customs should be sustained in his finding that the cigarettes in question were imported illegally. The absence of Philippine internal revenue strip stamps on cigarettes indicates that they are either manufactured clandestinely within the Philippines or imported illegally into the country. In the case at bar, concomitant circumstances militate against the clandestine manufacture within the Philippines of the cigarettes. The affixture of blue seals on the packs of cigarettes, the wrappers, the purchase of the cigarettes in the open market of Jolo, a place where American and other foreign-made cigarettes are, of common knowledge, frequently smuggled from Borneo (*Lim Bak vs. Collector of Customs*, BTA Case No. 180, August 28, 1954), and the failure of petitioner to show that the cigarettes in question were locally manufactured rule out the possibility that the cigarettes in question were manufactured in the Philippines. Consequently, we are constrained to conclude that these cigarettes were foreign (American) made. They were merchandise of prohibited importation, the importation of which was contrary to law, and should be forfeited under Section 1363 (f) of the Revised Administrative Code.

"The 'blue seal' cigarettes at bar having been illegally brought into the country, they are likewise subject to forfeiture under Section 1363 (m-1) of the Revised Administrative Code for the reason that they were imported into the country without going through a customhouse. Our conclusion may seem harsh on petitioner, considering that she is being deprived of her property although she is merely the buyer, and not the illegal importer, of the cigarettes. 'Revenue laws are of a harsher nature than any others, and necessarily so; for, the devices of ingenious men render it indispensable for the legislature to meet their illicit practices with severer penalties' (*United States vs. the SS 'Islas Filipinas'*, 28 Phil. 291, 296).

"The fact that petitioner is merely a buyer of the cigarettes in the open market of Jolo does not render the cigarettes immune from the penalty of forfeiture. This is so because forfeiture proceedings are instituted against the res (cigarettes) (*Origet vs. U.S.*, 125 U.S. 240, 31 Lued 743; *Coffey vs. United States*, 116 U.S. 436, 29 Lued 684, 687; *The Palmyra, Escurra, Master*, 12 Wheaton 1, 6 Lued 531, 537) and, by express provision of Section 1364 of the Revised Administrative Code, the forfeiture shall also occur while the merchandise is in the hands or subject to the control of some person who shall receive, conceal, buy, sell, or transport the same with knowledge that the merchandise was imported contrary to law. Petitioner cannot but be charged with the knowledge that the cigarettes in question were imported contrary to law, for if it were otherwise, why were these cigarettes concealed on board the vessel F/S 'Bais'? Why did she deny ownership over said cigarettes? For what plausible reason was she afraid of detention? What impelled her to believe that she would be detained by the customs authorities? To uphold the claim of petitioner and forego the forfeiture would be giving a chance to accessories after the fact of smugglers of foreign cigarettes to ply their trade with impunity and with the sanction of the courts. What the executive department could not then curb, that is, rampant smuggling of foreign cigarettes, the courts should not tolerate (*Republic of the Philippines vs. Goco*, 50 O. G. 1662, 1667)."

WHEREFORE, the decision appealed from should be, as it is hereby affirmed, with costs against petitioner-appellant, Luz M. Gigare.

IT IS SO ORDERED.

Reyes, Barrera, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, and Castro, JJ., concur.
Regala, J., on leave.

[1] Section No. 1363. Property subject to forfeiture under customs laws. - Vessels, cargo, merchandise, and other objects and things, shall under the conditions hereinbelow specified, be subject to forfeiture.

x x x x x

(f) Any merchandise of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law, and all other merchandise which, in the opinion of the collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former.

x x x x x

(m) Any merchandise the importation or exportation of which is effected or attempted in any of the ways or under any of the conditions hereinbelow described.

1. Upon importation or exportation, either consummate or frustrate, without going through a customhouse.

Section 1364. Conditions affecting forfeiture of merchandise. - As regards imported and exported merchandise, or merchandise whereof the importation or exportation is merely attempted, the forfeiture shall occur only when and while the merchandise is in the custody of the customs authorities or in the hands or subject to the control of the importer, exporter, original owner, consignee, agent or other persons effecting the importation, entry or exportation in question, or in the hands or subject to the control of some person who shall receive, conceal, buy, sell or transport the same or aid in any such acts, with knowledge that the merchandise was imported, or was subject of an attempt at importation or exportation, contrary to law. (Underscoring ours.)

[2] Rubic vs. Auditor General, 53 Off. Gaz. 2141; Roxas vs. Sayoc, 53 Off. Gaz. 5642; Choik Cun vs. Comm. of Customs, L-12519, Apr. 29, 1959; Sanchez vs. Comm. of Customs, 54 Off. Gaz. 361; Bombay Dept. Store vs. Comm. of Customs, L-20489, June 22, 1965; Leuterio vs. Comm. of Customs, 53 Off. Gaz. 6520; Chan Kian vs. Collector of Customs of Manila, L-20803, Jan. 30, 1966; Lazaro vs. Comm. of Customs, L-21790, & L-21794, Dec. 24, 1965; Serree Investment Co. vs. Comm. of Customs, L-20847-9, June 22, 1965; Comm. of Customs vs. Nepomuceno, L-11126, Mar. 31, 1962; Comm. of Customs v. Santos, L-11911, Mar 30, 1962; Comm. of Customs v. Eastern Sea Trading, L-14279, Oct. 31, 1961; Pascual v. Comm. of Customs, L-9836, Nov. 18, 1959; Actg. Comm. of Customs v. Leuterio, L-9142, Oct. 17, 1959; Pascual v. Comm. of Customs, L-10979, June 30, 1959; Tong Tek v. Comm. of Customs, L-11947, June 30, 1959; and People v. Que Po Lay, 50 OG 4850.

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