

AUYONG HIAN (HONG WHUA HANG), PETITIONER, VS. COURT OF TAX APPEALS, COLLECTOR OF CUSTOMS, COMMISSIONER OF CUSTOMS, CONSOLIDATED INDUSTRIES OF THE PHILIPPINES, INC. (CTIP), AND L...*G.R. NO. L-28782. September 12, 1974*

Ponente: ZALDIVAR, J.

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This is the fifth time that a case involving the 600 hogsheads of Virginia leaf tobacco is before this Court. The first case was the case of "Cesar Climaco, et al., vs. Hon. Manuel Barcelona," G.R. No. L-19597, July 31, 1962[1], hereinafter referred to as the Barcelona case; the second, the case of Collector of Customs, et al., vs. Hon. Francisco Arca, et al.," G.R. No. L-21839, July 17, 1964,[2] hereinafter referred to as the Arca case; the third, the case of "Auyong Hian vs. Judge Gaudencio Cloribel, et al.," G.R. No. L-24704, July 10, 1967[3] hereinafter referred to as the Cloribel case; and the fourth, "Auyong Hian vs. Court of Tax Appeals, et al.," G.R. No. L-25181, January 11, 1967,[4] which was an appeal from the resolution of the Court of Tax Appeals in CTA Case No. 1560, dismissing Auyong Hian's petition for review of the decision of the Commissioner of Customs that affirmed the decision of the Collector of Customs upon the ground of lack of jurisdiction, and which will be hereinafter referred to as the "First CTA Case".

The instant case, the fifth, is a petition for review of the decision of the Court of Tax Appeals in its CTA Case No. 1560, dated January 31, 1968, finding without merit petitioner's appeal from the decision of the Commissioner of Customs that affirmed the decision of the Collector of Customs of Manila which ordered the seizure and forfeiture of the 600 hogsheads of Virginia leaf tobacco imported by petitioner from the United States. The instant case may well be called the "Second CTA Case".

The antecedent facts, and the proceedings that spawned the instant case, briefly stated, are as follows:

On June 29, 1953, the Import Control Commission approved petitioner Auyong Hian's application for four no-dollar remittance licenses to import Virginia leaf tobacco with an aggregate value of two million dollars, of which approval petitioner was advised on the following day, June 30, 1953 - the day when the effectivity of the Import Control Law (Republic Act No. 650) expired. In October, 1961, the Office of the President approved the use of the aforesaid licenses, and petitioner paid the license fees on November 2, 1961. On December 30, 1961 600 hogsheads of Virginia leaf tobacco arrived in the Port of Manila aboard the "SS Fernstate", consigned to petitioner.

Inasmuch as the Collector of Customs of Manila, apparently doubting the legality of the importation, refused to release the shipment of said Virginia leaf tobacco, petitioner filed in the Court of First Instance of Manila an action for mandamus (Civil Case No. 49639), to compel the Collector of Customs and the Commissioner of Customs to release the tobacco to petitioner. On March 19, 1962 Judge Barcelona issued an order to release the tobacco shipment to petitioner. The Collector of Customs and the Commissioner of Custom then filed with the

Supreme Court a petition for certiorari to annul the order of release. This was the Barcelona case. On July 31, 1962 this Court, in its decision, ruled that the Court of First Instance of Manila had no jurisdiction to issue the (questioned) order releasing the tobacco shipment; and this Court incidentally declared that the importation of the tobacco, notwithstanding the alleged approval of the importation by the President of the Philippines, was illegal upon the ground that the importation was made long after the expiration of the effectivity of the Import Control Law, and that the importation contravened the government policy as declared in Republic Acts No. 698 and 1194.[5]

On November 8, 1962, the Collector of Customs instituted seizure proceedings against the 600 hogsheads of tobacco, and issued a warrant of seizure and detention, in Seizure Identification Case No. 6669. On April 23, 1963 the Collector of Customs rendered a decision declaring the tobacco forfeited to the government, and ordering the sale thereof at public auction on June 10, 1963. Petitioner received copy of the decision on May 7, 1963. From this decision petitioner filed, on May 21, 1963, his notice of appeal to the Commissioner of Customs. On December 7, 1964, the Commissioner of Customs affirmed the decision of the Collector of Customs.

On January 8, 1965 petitioner filed in the Court of Tax Appeals, in CTA Case No. 1560, a petition for review by way of appeal from the decision of the Commissioner of Customs. On June 22, 1965 the Court of Tax Appeals dismissed the petition upon the ground that it had no jurisdiction to entertain the appeal because the Supreme Court had already decided in the Barcelona and Arca cases that the importation in question was illegal. From this resolution Auyong Hian appealed to the Supreme Court. This was the "First CTA Case" that We have earlier adverted to. This Court, on January 11, 1967[6] remanded the case to the Court of Tax Appeals for further proceedings, and for decision, on matters that this Court had refrained from deciding.

After the case has been remanded to the Court of Tax Appeals, petitioner filed in said court an amended petition for review to include the Consolidated Tobacco Industries of the Philippines (hereinafter referred to as CTIP) and the Luzon Stevedoring Corporation, as parties-respondents.

After hearing, respondent Court of Tax Appeals, in its decision dated January 31, 1968, found the appeal to be without merit and dismissed the same, with costs against petitioner. This is the decision that is now sought to be reviewed in the instant petition for review before this Court.

While this case was pending decision, the Solicitor General, on February 22, 1972, filed a "motion for leave", praying that pending final determination of the case, respondents Collector of Customs and Commissioner of Customs be authorized to refund to the CTIP the storage charges of the tobacco in question pursuant to Section 2605-c of the Tariff and Customs Code. In a resolution dated February 28, 1972 this Court deferred action on the petition of the Solicitor General until the case is considered on the merits.

In the present appeal, petitioner Auyong Hian assigns twelve (12) errors allegedly committed by the Court of Tax Appeals in its decision of January 31, 1968 dismissing the appeal from the decision of the Commissioner of Customs. The points raised in the assignment of errors boil down to the question of whether or not the Court of Tax Appeals had correctly sustained the decision of the Commissioner of Customs which affirmed the decision of the Collector of Customs in connection with the seizure, forfeiture and the sale of the 600 hogsheads of Virginia leaf tobacco that were imported into the country at the instance of petitioner Auyong Hian. It must be recalled that in the Barcelona and Arca cases, supra, this Court had categorically held that the importation of the 600 hogsheads of Virginia leaf tobacco was illegal. It was for this reason that the Court of Tax Appeals, in its resolution of June 22, 1965, in CTA Case No. 1560 (First CTA Case), dismissed the appeal of Auyong Hian from the decision of the Commissioner of Customs. But this Court, in the first CTA Case held that the Court of Tax Appeals, had jurisdiction to pass upon the appeal of Auyong Hian from the decision of the Commissioner of

Customs because the appeal involved matters related to the administrative proceedings in connection with the seizure, forfeiture and sale of the tobacco in question. Here is what this Court said:

x x x "It appears to Us that the Court of Tax Appeals had overlooked the fact that the appeal of Auyong Hian from the decision of the Commissioner of Customs had raised not only the question of the legality of the importation but also other matters which called for a ruling by the Court of Tax Appeals in the exercise of its appellate jurisdiction – especially the question of whether the tobacco thus imported were goods the importation of which was relatively prohibited or absolutely prohibited, and also the question regarding the disposal of the tobacco that was thus seized. The declaration by this Court, in the Barcelona and Arca cases, supra, that the importation of the tobacco in question was illegal was not intended to stop the course of the administrative proceedings in relation to the importation of said tobacco. Let it be noted that when the Barcelona case was decided on July 31, 1962 the seizure proceedings against the 600 hogsheads of tobacco in question had not yet been instituted by the Collector of Customs. It was not until November 8, 1962 when Seizure Identification No. 6669 was instituted. x x x"

And so this Court, in the First CTA case, declared the Court of Tax Appeals as possessed of jurisdiction to pass upon the questions raised by Auyong Hian in his appeal from the decision of the Commissioner of Customs regarding administrative matters relating to the seizure proceedings of the 600 hogsheads of tobacco in question.

(1) Auyong Hian claims that he was not given a chance to be heard in the seizure proceedings. He claims that he filed a motion for postponement of the hearing scheduled for November 26, 1962 based on some valid reasons, that said motion for postponement was not acted upon by the hearing officer, or if it was acted upon at all the hearing officer did not notify him of the action taken on said motion, and that he was not notified about the subsequent hearing because he was declared in default by the hearing officer. Auyong Hian maintains that there can not be a declaration of default in purely administrative proceedings. In short, it is the contention of Auyong Hian that in the seizure proceedings of the 600 hogsheads of tobacco in question he was not afforded the benefits of due process of law.

It is a settled doctrine that due process is applicable to administrative proceedings (*Asprec vs. Itchon, et al.*, L-21685, April 30, 1966, 16 SCRA 921, 925; *Cornejo vs. Gabriel*, 41 Phil. 188, 193); that the essence of due process is the requirement of notice and hearing (*Algabre vs. Court of Appeals*, L-24458-64, July 31, 1969, 26 SCRA 1130, 1140); that the presence of a party at a trial is not always of the essence of due process, and all that due process requires is an opportunity to be heard (*Asprec vs. Itchon, et al.*, supra).

In this connection, the Court of Tax Appeals made the following findings:

"The records show that petitioner was given a notice of hearing in Seizure Identification No. 6669 (re the 600 hogsheads of Virginia leaf tobacco); that on the date of hearing petitioner filed a motion for indefinite postponement, which was not acted upon or resolved by the proper Customs officials; that upon failure of petitioner to appear on the date of hearing, the hearing officer declared petitioner in default; and that the hearing was conducted thereafter in the absence of petitioner." (Decision CTA Case No. 1560; Record, pp. 32-33)

Petitioner's having filed a motion for postponement, even if the motion is not entirely groundless, confers on him no right either to assume that the motion for postponement would be granted or to be absent at, and shy away from, the hearing. Petitioner was consequently guilty of carelessness and neglect when he failed to appear at the trial. He cannot rightfully claim that the hearing officer was guilty of abuse of discretion in refusing to grant the postponement (*Sarreal vs. Hon. Tan, et al.*, 92 Phil. 689, 692). And after a party has been declared in default, he is not entitled to notice of the order placing him in default; neither is he entitled to notice of proceedings subsequent to default (*Lim Toco vs. Go Fay*, 80 Phil. 166, 168). Petitioner, therefore, has no cause to complain that he was

not afforded a chance to be heard or that he was denied his day in court.

The contention of petitioner that in administrative proceedings a party can not be declared in default is untenable. If a respondent in an administrative proceeding cannot be declared in default when he fails to appear, as required, the continuance of an administrative proceeding would be dependent on the will and caprice of said party to the proceedings, and would render helpless the officer or board conducting an administrative proceeding. We hold that if the party duly summoned, or duly notified, to appear at an administrative investigation, refuses to appear, he may be declared in default, and the investigation may proceed without his presence.

Petitioner's first assignment of error is not only not sustained by the facts. It is furthermore negated by the pronouncements of this Court which has already passed directly on the issue of whether or not petitioner Auyong Hian was deprived of due process of law in the seizure proceedings. In the Arca case, respondent therein claimed that the decision in the seizure proceedings was arbitrary because the hearing officer and the Collector of Customs declared Auyong Hian in default without notifying him of the action taken on his motion to postpone the seizure proceedings.

This Court rejected the contention saying:

"The record shows that Auyong Hian received on November 21, 1963 notice of hearing on the seizure proceedings scheduled for November 26, 1962. It is true that he filed a motion to postpone the hearing, but it was for an indefinite period of time and only in the morning of the date of hearing. He did not bother to find out what action the Collector of Customs would take on his motion. Continuation of the seizure proceedings was made on December 6, and December 10, 1962, yet Auyong Hian did not take the trouble to find out about its status. The facts, therefore, show that Auyong Hian was not deprived of due process of law, but that he is guilty of abandonment or gross negligence in the protection of his rights, for which he alone is to blame."

This pronouncement, though found only in the opinion, cannot be accurately called, as contended by petitioner, an obiter dictum just because it was not incorporated in the dispositive portion of the decision. This Court has already remarked that the dispositive part does not always constitute a judgment and that the judicial pronouncements in the body of the decision must be considered. (Millare, et al. vs. Millare, et al., 106 Phil. 298-299.) An obiter dictum has been defined as an opinion expressed by a court upon some question of law which is not necessary to the decision of the case before it (Bouvier's Law Dictionary, third revision, Vol. I, p. 863). Although the question of whether petitioner Auyong Hian was deprived of due process in the seizure proceedings was not the precise issue in the Arca case, for this Court itself said that the legal question posed in that case was:

"Who has a better right to the tobacco in question, petitioner Collector of Customs who has ordered the seizure and declared the forfeiture thereof as a result of Manila Seizure Identification No. 6669, or respondent Tomas Cloma in whose favor a writ of attachment was issued by the Court of First Instance of Manila covering said shipment in Civil Case No. 53874, brought by Cloma against Auyong Hian for services rendered to the latter?" (Collector of Customs vs. Arca, L-21389, July 17, 1964, 11 SCRA 529, 534-535).

Yet, the pronouncement made by this Court upon said question cannot be said to be totally extraneous, and was not necessary, to the adjudication of the case before it, for to arrive at the conclusion that the Collector of Customs had a better right, by virtue of the seizure proceedings, that had already been terminated before Cloma's action was brought, the validity and legality of the seizure proceedings, and necessarily the issue of the deprivation of due process, had to be passed upon. With respect to a court of last resort, all that is needed to render its decision authoritative is that there was an application of the judicial mind to the precise question adjudged, and that the point was investigated with care and considered in its fullest extent (Alexander vs. Worthington, 5 Md. 488, cited in Bouvier's Law Dictionary, third revision, Vol. I, p. 864). A perusal of the decision in the Arca case shows that the precise question of deprivation of due process was extensively and explicitly discussed with a view to settle it,

and consequently the pronouncement on said point cannot be considered a dictum.

2. Petitioner anchors the alleged invalidity of the seizure proceedings on his having been deprived his day in court. This basis has been shown to be untenable.

Petitioner, however, tried to emasculate respondents' argument by asserting that the declaration of the illegality of the tobacco importation was incidentally-made; hence it has no binding force.

An analysis of the Barcelona case shows that even if the pronouncement therein made regarding the illegality of the importation was incidentally made, it did not and could not mean that the pronouncement was extraneous to the subject matter and that it was, therefore, unauthoritative.

The Barcelona case was a petition for certiorari to set aside a writ of preliminary mandatory injunction issued by the Hon. Judge Manuel P. Barcelona in Civil Case No. 49639 of the Court of First Instance of Manila, ordering the respondents therein, Cesar Climaco and Teotimo Roja, to allow entry of the 600 hogsheads of Virginia leaf tobacco imported under authority of licenses Nos. 17166, 17169, 17196, and 17199 issued by the defunct Import Control Commission on May 8, 1953 under the provisions of Republic Act No. 650. Respondents therein opposed the issuance of the writ of preliminary injunction, alleging among other things that the Court of First Instance had no jurisdiction to order the release of the importation on the ground that the importer Auyong Hian was not entitled as a matter of right and equity to import the tobacco, for the licenses, under which the importation was made, were issued under a law that ceased to exist eight years before the importation, and that the importation was a violation of Rep. Act No. 1194 at the time of importation; and that the imported tobacco, being under customs custody, could not be ordered released by the Court of First Instance which had no jurisdiction to review the actuations of customs authorities in any case involving the seizure, detention or release of any property.

One of the reasons given by the respondent court therein for granting the writ of preliminary mandatory injunction was that the importation was legal on the ground that the President had issued the licenses in accordance with the supposed opinions of the Secretary of Justice Nos. 32 and 145, series of 1961.

Although the principal question therein was the court's jurisdiction and the primary relief prayed for by petitioners was to set aside the preliminary mandatory injunction dated March 20, 1962, the resolution thereof hinged on another question, which was, to quote the Court:

"The question that is, therefore squarely presented for the decision of this Court is whether, under the facts and circumstances above indicated, the petitioner has the clear legal right to make the importation in question and the respondents the clear legal duty to allow entry and release of said importation."

The above question in turn depended on whether the importation was legally made.

This Court in the dispositive portion of its decision in said case ruled for the reasons therein given that:

"x x x We are constrained to declare, as we hereby declare, that the importation in question has been illegally made x x x And We, x x x therefore, hereby grant the petition and set aside the order of the court below on March 19, 1962 and the writ of preliminary injunction issued in accordance therewith x x x ..."

Said ruling regarding the illegality of the importation, contained in the dispositive portion cannot be said, as claimed by petitioner, unauthoritative and not binding.

Said declaration of illegality was reiterated in the Arca case thus:

"There is no question that the importation of the tobacco leaf in question was illegal, having been made in clear violation of the policy contained in Republic Acts Nos. 698 and 1194." (Collector of Customs vs. Arca, L-21389, July 17, 1964, 11 SCRA 529, 535.)

3. Petitioner's insistence that the tobacco importation was valid and legal together with the grounds asserted to sustain the same is not tenable.

This Court already had occasion to examine in the Barcelona case the import licenses claimed to be valid by petitioner. To the petition in said case were appended copies of the licenses and the receipt evidencing payment of the fees thereon in November, 1961. The alleged reason that said licenses were valid because the President had issued them in accordance with the supposed opinions of the Secretary of Justice Nos. 32 and 145, series of 1961 was already passed upon. This Court said that:

"An examination of the licenses shows that the same were approved by the Import Control Commission on June 29, 1953. The following statement is contained in each of the licenses:

"This license is valid from date of issue until fully consummated, provided that this license must be presented to an Authorized Agent (Negotiating Bank) of the Central Bank, and Bank Credit established within thirty (30) days after date of release. It is not transferable/assignable without authority from the Import Control Commission and is subject to revocation for cause. Commodities covered by this license must be shipped from the country of origin before the expiry date of the license, and are subject to Sec. 13 of Republic Act No. 650.'

"The following provision of Republic Act No. 650 is to be noted:

'Sec. 8. Unless extended in accordance with the rules and regulations, import licenses issued under this Act and which are not used within thirty days after the issue by the opening of a letter of credit or a similar transaction shall be null and void. Import licenses are non-transferable.'

"The petitioner has not shown that steps were ever taken to open the corresponding letters of credit amounting to \$500,000 to cover the payment of the Virginia leaf tobacco to be imported, as required by the above-quoted provision of the law. Neither is it shown that immediately, or within a reasonable time after the approval of the licenses and their issuance, steps were taken to order the tobacco to be shipped to the Philippines. Certainly this was not done because the licenses were not fully completed until November 2, 1961, when the corresponding fees chargeable on the licenses were paid to the Office of the President." (Climaco vs. Barcelona, L-19597, July 31, 1962, 5 SCRA 850-851.)

and after discussing why the decision in Commissioner of Customs vs. Auyong Hian, G.R. No. L-11719, April 29, 1959 could not be applied to the said case, this Court concluded that:

"The importation [of the tobacco] in question, therefore, is a gross violation of the policy contained in Republic Acts Nos. 698 and 1194, limiting the Virginia leaf tobacco importation only to such amounts as could not be met with by the local production of Virginia leaf tobacco, hence clearly illegal."

"The supposed approval of the licenses by the President has been alleged as a ground for the validity of the importation. The President may not extend the life of licenses issued under Republic Act No. 650; he cannot make the illegal importation valid; he has no legal authority to do so and his act would be clearly violative of the express provisions of Republic Act 1194." (Climaco vs. Barcelona, L-19597, July 31, 1962, 5 SCRA 846, 848, 850, 853.)

In the Arca case, this Court again said:

"There is no question that the importation was illegal having been made in clear violation of the policy contained in Republic Acts Nos. 698 and 1194. To this effect is the decision of this Court in Climaco vs. Judge Barcelona, et al., G.R. No. L-19597, July 31, 1962." (Collector of Customs vs. Arca, No. L-21389, July 17, 1964, 11 SCRA 529, 535.)

Petitioner's claim that the Government is estopped to deny the validity of the license cannot be seriously defended. Time and again, this Court has ruled that the doctrine of estoppel is not applicable against the

Government suing in its capacity as sovereign or asserting governmental rights; the Government is never estopped by mistake or errors on the part of its agents. (Republic vs. Go Bon Lee, L-11499, April 29, 1961, 1 SCRA 1166, 1170; Republic vs. Philippine Rabbit Bus Lines, Inc., L-26862, March 30, 1970, 32 SCRA 211, 218; Luciano vs. Estrella, L-31622, August 31, 1970, 34 SCRA 769, 776.) Moreover, estoppel cannot give validity to an act that is prohibited by law or is against public policy. (Republic vs. Go Bon Lee, *supra*.)

The tobacco importation in question was, therefore, subject to seizure and forfeiture in accordance with Section 2530 of the Tariff and Customs Code and the Collector of Customs had the power to order the seizure in accordance with the provisions of Section 2205 of the Tariff and Customs Code, as has already been ruled by this Court in the Arca case.

But the Court of Tax Appeals, insists petitioner, should have decided whether the importation was absolutely prohibited or merely prohibited, on the ground that in this Court's decision in the Court of Tax Appeals case, it was said that "the question of whether the tobacco thus imported were goods the importation of which was relatively prohibited or absolutely prohibited" "called for a ruling of the Court of Tax Appeals in the exercise of its appellate jurisdiction." (19 SCRA 10, 22). Petitioner also claims that the respondent Court of Tax Appeals erred when it did not hold that the importation was at worst, only relatively prohibited. In the decision of the Court of Tax Appeals sought to be reviewed, it appears that the Tax Court discussed the classification of articles subject to forfeiture under the Customs Law, and the rights of the importer to the delivery of the imported article under Sections 2301 and 2307 of the same Code, and it concluded that the failure to declare the tobacco imported as merely qualifiedly prohibited did not affect the substantive rights of petitioner. Said the Tax Court:

"There is no evidence of record to show that petitioner herein exercised or attempted to exercise any of the rights afforded an importer under Sections 2301 and 2307 of the Tariff and Customs Code. x x x At any rate, even if he sought the release of said tobacco by filing a bond for its appraised value or by paying the redemption price, it is evident that the same could not have been granted because the delivery of said tobacco to him would be contrary to law. x x x... It is quite plain that the failure of respondents to declare said tobacco as an article which merely qualifiedly prohibited has not adversely affected the substantive right of petitioner." (Decision – CTA Case No. 1560, Record, pp. 47-48.)

The Court of Tax Appeals did not commit a reversible error on this point. There is no question, as this Court has declared, that the importation made in December, 1961, of tobacco leaf in question was illegal. The same was made in clear violation of the policy enunciated in Republic Act No. 698, approved May 9, 1952 limiting the importation of foreign leaf tobacco, and also of its amendatory Act, Republic Act No. 1194, approved August 25, 1954. These statutes not only limit the importation of Virginia leaf tobacco but also provide that the "Virginia-type leaf tobacco authorized to be imported therein shall be allocated and distributed by the Monetary Board of the Central Bank among legitimate manufacturers of Virginia-type cigarettes; that the licenses for such importation shall be issued x x x by the Central Bank x x x that the leaf-tobacco imported without the necessary license issued under said Act shall be forfeited to the Government" (Sec. 2). Said importation is also subject to forfeiture under Sec. 2530 of the Tariff and Customs Code.

The substantive right of petitioner is not affected, as declared by the Tax Court, by the failure to declare whether the importation was absolutely or qualifiedly prohibited.

Although the illegally imported subject tobacco may not be absolutely prohibited, but only qualifiedly prohibited under Sec. 102 (K) of the Tariff and Customs Code, for it may be imported subject to certain conditions, it is nonetheless prohibited and is a contraband (Comm. of Customs vs. CTA & Dichoco, L--33471, Jan. 31, 1972), and the legal effects of the importation of qualifiedly prohibited articles are the same as those of absolutely prohibited articles (Geotina vs. Court of Tax Appeals, No. L-33500, August 30, 1971, 40 SCRA 362, 379, 383;

Comm. of Customs vs. CTA & Dichoco, supra).

Under Sec. 2301 of the Tariff and Customs Code, upon making any seizure, the Collector of Customs shall issue a warrant for the detention of property; and if the owner or importer desires to secure the release of the property for legitimate use, the Collector may surrender it upon the filing of a sufficient bond, in an amount to be fixed by him, conditioned for the payment of the appraised value of the article and/or any fine, expenses and costs which may be adjudged in the case, provided, the articles the importation of which is prohibited by law shall not be released under bond. Pursuant, thereto, the importer of the subject tobacco, the importation of which is prohibited by law, has no right that the tobacco be released to him even if he puts up a bond to be determined by the Collector of Customs.

Sec. 2307 of the Tariff and Customs Code, which authorizes in a seizure case the settlement of the case by payment of fine or the redemption of forfeited property, also provides that:

"Redemption of forfeited property shall not be allowed in any case where the importation is absolutely prohibited or where the surrender of the property to the persons offering to redeem the same would be contrary to law." (Italics supplied.)

Petitioner Auyong Hian would, accordingly, not even be entitled to redeem, even if he wanted to, the forfeited tobacco, for the surrender to him of said tobacco would be contrary to law, because petitioner could not really be legally entitled to import it inasmuch as he was not a legitimate manufacturer of Virginia-type cigarettes, among whom alone shall be allocated and distributed by the Monetary Board of the Central Bank the Virginia-type leaf tobacco authorized to be imported. (Sec. 2, Rep. Act No. 1194.)

What has been said above would have applied even if petitioner had attempted to exercise the right of redemption under Sec. 2307 of the Tariff and Customs Code. The fact, however, as found by the Court of Tax Appeals is –

"That there is no evidence or record to show that petitioner herein exercised or attempted to exercise any of the rights afforded an importer under Section 2307 of the Tariff and Customs Code. All that he sought 'was the release of tobacco in question upon payment of the duties and taxes due thereon because of his insistence that the importation was made in accordance with law.'"

4. What has been said in the third assignment of error suffices to dispose of the fourth and fifth assignments. Therein it was shown that pursuant to the provisions of Republic Acts Nos. 650 and 1194, petitioner was disqualified to import the Virginia-leaf tobacco, he not being a legitimate manufacturer of this type of cigarette, and under the provisions of Secs. 2301 and 2307 of the Tariff and Customs Code, the tobacco could not be delivered to him, even if he had made attempts to put up a bond. Neither could the tobacco be legally delivered to him even if he had attempted to redeem it. Hence, the alleged error committed by the Court of Tax Appeals in finding that petitioner did not attempt to exercise any of the rights afforded an importer under Section 2307 of the Tariff and Customs Code, even if sustained, would not affect the outcome of the instant petition.

5. Petitioner's contention that the sale to the CTIP was invalid cannot be upheld.

It has been shown in the previous discussion that the decision of the Collector of Customs in ordering the forfeiture and sale of the subject tobacco was correct and legal. Seized property, other than contraband, pursuant to Sections 2601 and 2602 of the Tariff and Customs Code, shall be sold, or otherwise disposed of, upon the order of the Collector of the port where the property in question is found. The property shall be sold at public auction after ten days notice conspicuously posted at the port and such other advertisements as may appear to the Collector to be advisable in the particular case (Sec. 2603). If the article seized, however, is perishable, the Collector may proceed to advertise and sell the same at auction upon notice as he shall deem to be reasonable

(Sec. 2607).

Implementing his decision dated May 9, 1963, to have the seized tobacco sold to buyers who could meet certain qualifications and conditions, and after having created a Committee to implement the decision, the Collector of Customs issued a notice of sale (Exhibit 6-Customs), setting the public auction sale "at June 10, 1963 at 9:00 A.M. and every morning thereafter until terminated," which notice of sale was given the requisite publication at least ten days before the auction sale (before June 10, 1963) in accordance with Section 2603 of the Tariff and Customs Code. The sale, therefore, could not have been invalid, for lack of public notice.

Two prospective bidders – the respondent CTIP and the Philippine Associated Resources – registered with the Special Bidding Committee – but only the CTIP was found to be a qualified bidder.

On June 10, 1963, the date set for the public auction sale, the Collector of Customs was served the writ of preliminary injunction issued by Judge Francisco Arca in Civil Case No. 53824 directing the former to desist from holding the auction sale. This writ was served upon him at 8:55 A.M. (pp. 270-272, 329, 360 t.s.n., Brief for Respondent CTIP, p. 48), but before the writ was served, the CTIP had submitted its bid at around 8:00 A.M. (Ibid., p. 48), and these facts were not impugned by petitioner (See Petitioner's Reply Brief, pp. 26-27). At any rate, even if the bid were submitted after the Collector had been served with the writ of preliminary injunction, his act would not constitute a violation of the writ for the submission and reception of a bid could not constitute a consummated sale. But on June 17, 1963 the Supreme Court issued a preliminary injunction in L--21389 (Arca case) prohibiting Judge Arca from executing or enforcing the writ of preliminary injunction issued by him against the petitioner in Civil Case No. 53874 (11 SCRA 529, 532-533).

On June 26, 1963, the bid of the CTIP was finally approved and the tobacco was awarded to it. This took place before 5:00 p.m. However, at 5:38 p.m. of the same day another restraining order from the Supreme Court in the Arca case directed the Collector to desist temporarily from continuing with the public auction of the tobacco until July 3, 1963. Before the Collector received the restraining order, CTIP had already paid P500,000 on account of its approved and accepted bid of P1,500,000.00 and had filed the required surety bond of P1,000,000 to guarantee the exportation of the locally grown tobacco. It is clear, therefore, that at the time the bid of the CTIP was approved and at the time payment was made, there was no restraining order either of the CFI or of the Supreme Court enjoining the sale.

But even assuming *arguendo* that at the time the sale was made there was already a restraining order enjoining it, the sale would still not be null and void. A restraining order like injunction operates upon a person as it is granted in exercise of equity jurisdiction, and an injunction has no *in rem* effect to invalidate an act done in contempt of an order of the court except where by statutory authorization the decree is so framed as to act *in rem* on property. (Town of Fond Du Lac vs. City of Fond Du Lac, 22 Wis. 2d 525, 126 NW 2d 206). In 42 Am. Jur. 2d, pp. 1144-1145, we read:

"Where an injunction is granted and the decree operates in *personam*, an act done in violation of injunction is not a nullity. On the contrary, the act is ordinarily valid and legally effective, except as to the person who obtained the injunction and those claiming under him, and as to them, the act is valid unless and until they attack it in a proper manner. If an injunction prohibits the defendant from transferring property, but he transfers the property in violation of the injunction, and the transfer is made to an innocent third person, the transferee obtains good title and the injunction does not affect his rights."

Neither may petitioner's contention that the continuation of the sale for more than three days, i.e. from June 10 to June 26, 1963 would render the sale void, because it is violative of Section 2607 of the Tariff and Customs Code, be sustained. Said section in part provides:

"Section 2607. Disposition of article liable to deterioration. – Perishable articles shall not be deposited in a bonded warehouse; and, if not immediately entered for export or for transportation from the vessel or aircraft in which imported or entered for consumption and the duties and taxes paid thereon, such articles may be sold at auction, after such public notice, not exceeding three days, as the necessities of the case permit."

The three days mentioned in said section refers to the period of public notice, not to continuation of the sale as contended by petitioner.

Untenable also is petitioner's contention that the Collector had no right to have the tobacco sold because the Bureau of Customs was not yet the owner of the tobacco at the time of the sale. This contention loses sight of the fact that the Collector of Customs when sitting in forfeiture proceedings, constitutes a tribunal upon which the law confers jurisdiction to determine all questions touching the forfeiture and further disposition of the illegally imported merchandise. (Commissioner of Customs vs. Cloribel, L-20266, Jan. 31, 1967, 19 SCRA 234; Auyong Hian vs. Court of Tax Appeals, L-25181, January 11, 1967, 19 SCRA 10). The Tariff and Customs Code requires the Collector, upon making any seizure to issue a warrant for the detention of the property (Section 2301); to make in writing, after hearing, a declaration of forfeiture (Section 2312), and to sell or otherwise dispose of the property under customs custody (Sec. 2602). The forfeiture constitutes a statutory transfer of the right of property. Title is vested in the government by administrative forfeiture, although such title may not be absolute, but resolvable subject to the right of redemption on the part of the owner of the forfeited merchandise (Sec. 1388 Administrative Doe). The consequence of this forfeiture was already declared by this Court in the Arca case when it said:

"It is to be noted that the seizure proceedings had already been terminated and the tobacco shipment declared forfeited to the Government, thereby ceasing to be the property of Auyong Hian x x x The seizure proceedings were taken by the Collector of Customs in the exercise of its jurisdiction of the customs law (Secs. 2205 and 2530, Tariff and Customs Code) x x x" (11 SCRA 529, 537).

And this Court continued:

"Auyong Hian, therefore, had lost all his rights to the shipment, not only because we declared the licenses void and the shipment illegal in the case of Climaco vs. Barcelona, G.R. No. L-19597, but also because the seizure proceedings have been found to be regular and had deprived Auyong Hian of his rights to the shipment as importer; at least while the order of seizure has not been set aside." (11 SCRA 529, 538.)

Petitioner, however, insists that the Collector could not sell the forfeited tobacco after he lost jurisdiction thereof upon the perfection of the appeal on May 21, 1963 to the Commissioner of Customs. Petitioner seems to imply that the sale, if any, should have been made by, or at least with, the approval of the Commissioner of Customs. This is what happened. When the Collector of Customs approved, on June 26, 1963, the offer of the CTIP, his action was backed by prior approval of the Commissioner of Customs. To this effect we read in the appealed decision, thus:

"Apparently, to preclude any doubt as to the regularity of the sale, the Collector of Customs, on June 11, 1963, sought the advice of the Secretary of Finance, and the latter referred the matter to the Secretary of Justice, who, at that time, was the Chairman of the Cabinet Committee on Public Bidding of Tobacco. In an indorsement dated June 24, 1963, signed by the Secretary of Justice and all the members of the said Cabinet Committee, the sale was approved. The indorsement of the Cabinet Committee was transmitted to the Secretary of Finance and the Commissioner of Customs, who informed the Collector of Customs of such approval (See Exhs. "E", "F" and "G", CTIP, pp. 205-211, CTA Records). When, therefore, the Collector of Customs approved on June 26, 1963, the recommendation 'of the Special Bidding Committee to accept the offer of Consolidated Tobacco Industries of the Philippines, his action had the prior approval of the Commissioner of Customs, the Secretary of Finance and the Cabinet Committee.'" (Brief for Petitioner, pp. 140-141.)

Neither can the inadequate consideration, even if true, invalidate the sale to the CTIP.

The other factor which, according to petitioner, militates against the validity of the sale is the measly sum of P1,500,000 paid by the CTIP for the tobacco which had a value, according to petitioner, of P7,000,000. What is really the value of the imported tobacco? According to the Tax Court, the records show that when the tobacco arrived in the Philippines, petitioner filed an Affidavit and Pro Forma invoice giving the invoice value of the tobacco as \$103,453 and an appraised value, for tax purposes, of P227,675. Petitioner contends that this declaration was merely its invoice value and does not include the other expenses incurred in the importation. Because of these different declarations, the Tax Court confessed it was at a loss as to which of petitioner's declaration was to be believed. When it suits petitioner's purpose he claims that the tobacco was worth P227,675.00. For other purposes the value was P7,000,000. If the claim of petitioner that the tobacco was really worth P7,000,000.00, then there will be another cause for forfeiture which would be petitioner's filing a false declaration under section 2530 (m) of the Tariff and Customs Code.

We cannot say that the appraisal of the value of the tobacco was incorrect. According to the Tax Court, the Collector of Customs took precautionary measures to insure a correct appraisal of the tobacco. The appraisal was made by a competent appraiser of the Bureau of Customs, and both the Commissioner of Customs and the Secretary of Finance, who exercise supervisory authority over the Collector of Customs and who were consulted on the matter, approved the sale, or at least, interposed no objection to the sale. Anent this matter it has been said that an appraisal made by the Commissioner of Customs under Section 1377 of the Revised Administrative Code is presumed to be correct, unless the contrary is proven by the importer. (*Lazaro vs. Commissioner of Customs*, L-22511 and L-22343, May 16, 1966, 17 SCRA 36, 41 and cases cited therein.)

But, assuming arguendo, that the consideration paid for the forfeited tobacco was inadequate, such inadequate consideration is not a ground for the invalidity of a contract. Anent this matter Article 1355 of the Civil Code provides:

"Except in cases specified by law, lesion or inadequacy of cause shall not invalidate a contract, unless there has been fraud, mistake or undue influence."

Petitioner has not shown that the instant sale is a case exempted by law from the operation of Art. 1355; neither has petitioner shown that there was fraud, mistake or undue influence in the sale. Hence, this Court cannot but conclude with the Court of Tax Appeals that "In these circumstances, we find no reason to invalidate the sale of said tobacco to Consolidated Tobacco Industries of the Philippines."

The Court of Tax Appeals is claimed to have erred also in holding that the subject tobacco was deteriorating. We note, that the imported tobacco has a very unique nature. According to petitioner, it is highly perishable, but in spite of the lapse of several years, it has not deteriorated. In Civil Case No. 49639 of the Court of First Instance of Manila, petitioner herein averred that the Virginia leaf tobacco imported is highly perishable in nature so that delay in the release thereof would cause him irreparable injury (*Climaco vs. Barcelona*, L-19597, July 31, 1962, 5 SCRA 846, 848). In his "petition to release tobacco under bond" dated March 14, 1967, filed with respondent court, he alleged that:

"16. That considering the time that has elapsed since the arrival in Manila of the 600 hogsheads of Virginia leaf tobacco same may be deteriorated unless sooner disposed of x x x"

Now he claims that the tobacco has not deteriorated.

But let us give petitioner the benefit of the doubt. We do not see, however, how the deterioration or not of the tobacco will affect the outcome of this petition. Hence, it is unnecessary to deal on it further.

Petitioner's contention that the Court of Tax Appeals erred in holding that he had no legal personality to question the legality of the sale, should be sustained. Even if petitioner had lost all his rights to the tobacco shipment after the same has been seized and forfeited, such loss of right was still subject to a contingency – that is, "at least while the order of seizure has not been set aside." It is unwarranted to conclude that the loss of his rights to the tobacco while the seizure has not been set aside carried with it the loss of his legal personality to question the legality of the sale. The Tariff and Customs Code itself expressly gives to any person aggrieved by the decision or action of the Collector of Customs in any case of seizure, the right to have the decision reviewed by the Commissioner of Customs (Section 2313), and from the decision of the latter, he has a right to appeal to the Court of Tax Appeals (Section 2402), and from the latter's decision to the Supreme Court.

Neither can it be accurately said that petitioner has no right to have the contract of sale to the CTIP annulled, on the ground that he was not a party bound either principally or subsidiarily by the contract. (Art. 1397 Civil Code.) Petitioner seeks the declaration of the nullity of the sale not as a party to the sale, but because he had an interest that was affected by the sale. This Court has held that a person who is not a party obliged principally or subsidiarily in a contract may exercise an action for nullity of the contract if he is prejudiced in his rights with respect to one of the contracting parties, and can show the detriment which would positively result to him from the contract in which he had no intervention. (*Ibanez vs. Hongkong and Shanghai Bank*, 22 Phil. 572, 584-585; *Teves vs. People's Homesite and Housing Corporation, et al.*, L-21498, June 27, 1968, 23 SCRA 1141, 1147-1148). It would be stating the obvious that in the instant case the petitioner will suffer detriment as a consequence of the sale, in case it is not set aside.

As a matter of fact, this Court has recognized the personality of petitioner to question the legality of the sale when in the Court of Appeals case, L-25181, this Court remanded the case to the Court of Tax Appeals to decide the validity of the administrative proceedings and the question regarding the disposal and sale of the tobacco that was seized. It was therein implied that petitioner had personality to question the sale.

The error assigned regarding the amount of warehousing charges that had accumulated is immaterial to the decision of the instant case, and whether the Court of Tax Appeals did commit the error or not, will not affect the result of the case. This point, therefore, need not be commented on.

This Court recognizes that petitioner has the right to take all legal steps to enforce his legal and/or equitable rights to the tobacco in question. One who makes use of his own legal right does no injury. *Qui jure suo utitur mullum damnum facit*. If damage results from a person's exercising his legal rights, it is *damnum absque injuria*. The consequent delay in the delivery of the tobacco is an incident to said exercise of his rights. But, again, whatever might be petitioner's motive in this regard will hardly affect the outcome of this case.

6. The property, subject of litigation is not by that fact alone, in *custodia legis*. "When property is lawfully taken, by virtue of legal process, it is in the custody of the law, and not otherwise." (*Gilman vs. Williams*, Wis. 334, 76 Am. Dec. 219.)

In the case of *Millare et al., vs. Millare et al.*, 106 Phil. 203, 299, a motion for contempt was filed in this Court by appellant charging respondents with having committed contempt by selling or otherwise disposing the land in question pending the appeal. This Court held that there being no attachment, injunction or receivership issued with respect to the land, and in view of the conclusion reached on the merits of the case, there was no reason to declare the respondents guilty of contempt. This ruling is in point in the instant case. At the time the CTIP took possession of the tobacco and disposed it on September 12, 1967, there was no existing order of the Court of Tax Appeals restraining such possession and disposition. By specific order of the Court of Tax Appeals, it declared that the restraining order previously issued by it was of no further effect on September 12, 1967 due to appellants'

failure to post the bond required.

It has been shown above, furthermore, that petitioner herein was not entitled to the tobacco, consequently he had no right to the proceeds of the sale, and to have the proceeds thereof deposited.

7. Regarding the "Motion for Leave" filed by the Solicitor General's Office praying authority to refund the storage charges of the subject tobacco to the CTIP, this Court notes that the same is not in issue in the instant case, and, therefore, abstains from making any resolution regarding the matter. The claim of the CTIP for refund must be prosecuted administratively.

WHEREFORE, the instant petition for review is dismissed, and the decision of the Court of Tax Appeals, appealed from is affirmed.

IT IS SO ORDERED.

Fernando, Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] 5 SCRA 846.

[2] 1 SCRA 529.

[3] 20 SCRA 631.

[4] 19 SCRA 10.

[5] 5 SCRA 846, 853.

[6] 19 SCRA 10.

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