

QUE PO LAY, PLAINTIFF AND APPELLANT, VS. CENTRAL BANK OF THE PHILIPPINES, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-11019. November 28, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Articles consisting of three hundred twenty-nine (329) pieces of gold bars and one hundred seventy-four (174) pieces of U.S. money bills, U.S. money orders, U.S. treasury warrants and traveler's checks worth P271,895.02 were seized by the Collector of Customs of Manila on January 26, 1951 because of an attempt to export them- in violation of Section 1363, sub-paragraphs (f) and (m) 3 and 4 of the Revised Administrative Code and of Central Bank Circulars Nos. 20 and 21, in relation to Republic Act No. 265. The articles were found by customs secret service agents concealed in 50 bundles of salted dried fish while they were examining an export cargo about to be loaded on board a ship bound for Hongkong. For this shipment, one Chua Siy obtained an export entry from the Marine Division Bureau of Customs, for and in behalf of Que Po Lay, and the same was consigned to one Tong Sing of 1st Cannon Road, Hongkong. As said articles were neither declared in the export entry filed by the exporter nor were covered by a license from the Central Bank, they were seized and made subject of a seizure proceeding under the authority of the Collector of Customs (S. Iden. No. 1010).

The hearing of the seizure case was first set for May 21, 1951, but was finally postponed to June 19, 1951 with due notice served upon Atty. Prudencio de Guzman who appeared as counsel for Que Po Lay. At the hearing, however, neither Atty. de Guzman, nor his client appeared, wherefore Que Po Lay was declared in default, and there-upon the official in charge of the proceeding received the evidence. And on August 10, 1951, the Collector of Customs rendered decision declaring the forfeiture of the articles in favor of the Government. This decision was affirmed by the Commissioner of Customs on September 6, 1951.

On February 3, 1951, after the institution of the seizure proceedings, Que Po Lay and Chua Siy were charged before the Court of First Instance of Manila with a violation of Central Bank Circular No. 21, in connection with Section 34 of Republic Act No. 265, for alleged illegal exportation of 329 pieces of gold bars (Criminal Case No. 14787), while Que Po Lay was likewise charged in two other criminal cases before the same court with a violation of Central Bank Circular No. 20, in relation to Section 34 of Republic Act No. 265, for failure to sell foreign exchange to an agent of the Central Bank within one day from acquisition (Criminal Cases Nos. 14788 and 14789). In the first case, Que Po Lay and Chua Siy were acquitted on the ground that an attempted act to export gold without license is not punishable by law. In the other two cases, Que Po Lay was found guilty, but on appeal to the Supreme Court, the decision was reversed on the ground that Circular No. 20 of the Central Bank under which he was charged had no legal existence for not having been published in the Official Gazette at the time of the Commission of the offense (94 Phil., 640; 50 Off. Gaz. [10] 4850).

On October 24, 1951, after the accused were acquitted in Criminal Case No. 14787, Que Po Lay, through counsel, filed a motion in the same case praying that the Collector of Customs be directed to return to him the 329 pieces of gold bars in view of his acquittal, to which the Collector of Customs opposed contending that the pretended

return cannot be ordered for the reason that the gold bars had already been the subject of forfeiture proceedings pursuant to the provisions of the Revised Administrative Code. The issue having been heard, the court denied the motion ruling that since the Collector of Customs had exercised his authority under the law in connection with the forfeiture of said articles, it has no right to encroach upon such authority in the light of the provisions of the Revised Administrative Code.

On April 4, 1955, Que Po Lay filed a petition for re-consideration of the decision of the Collector of Customs in the seizure proceedings (S. Iden. No. 1010) praying that the same be set aside in view of the decision of the Supreme Court declaring inapplicable to him the pertinent circular of the Central Bank, but this petition was denied for the reason that said decision had long become final and conclusive. In view of the adverse ruling, Que Po Lay wrote a letter to the Governor of the Central Bank reiterating his request that the articles be returned to him advancing the same reasons he set forth in his petition for reconsideration, but the governor also denied his request on practically the same grounds and failing in this attempt, he appealed to the Secretary of Justice reiterating the same arguments, but this official also turned down the request invoking as reason the fact that the decision of forfeiture is now *res judicata*. As a last resort, he filed a petition for *certiorari* and *mandamus* with the Supreme Court seeking the same relief but this Court, in a short resolution, dismissed the petition because "the decision of the Collector of Customs and the Commissioner of Customs had become final since 1951" (G. R. No. L-10151).

It is because of these successive failures that Que Po Lay commenced the present action on March 24, 1956 in the Court of First Instance of Manila seeking to recover possession of all the confiscated articles worth P271,895.02. The action is based on the main ground that the decision of the Collector of Customs dated August 10, 1951 in Seizure Identification No. 1010 is a nullity, it having been issued without jurisdiction and without notice to the owner of the articles seized. Defendants filed separate motions to dismiss on the following grounds: (1) that the trial court has no jurisdiction of the subject matter of the action; (2) that the complaint states no cause of action; and (3) that assuming that there is a cause of action, the same is already barred by a prior judgment. These motions, after hearing, were sustained, whereupon plaintiff took the present appeal.

The issues posed in this appeal are: (1) Is the decision of the Collector of Customs, which was affirmed by the Commissioner of Customs in Seizure Identification No. 1010, valid and legal?; and (2) Are the notices given to plaintiff's counsel of the hearing and of the decision as well as the approval thereof by the Commissioner of Customs sufficient in law as to satisfy the requirement of due process?

It appears that the articles in question were seized by authority of the Collector of Customs on January 26, 1951 because some of his secret service agents, while inspecting 50 bundles of salted dried fish covered by Export Entry No. 1 to be loaded on board a ship, found concealed among the dried fish said articles which were neither declared in the export entry nor covered by an export license from the Central Bank, and in declaring the seizure of said articles, the Collector of Customs said in part in his decision:

"It appears that one Chua Siy filed an export entry with the Marine Division, for and in behalf of Que Po Lay, covering 50 cases supposed to contain salted dried fish (see copy of Export Entry No. 1). The exporter paid the amount of P4.00 as wharfage dues. Before the said 50 cases were loaded on board, the exporting vessel, they were first examined by the Customs Secret Service Agents, but upon examination, however, there were found in some of the cases gold bars, United States paper bills, money order, treasury warrants and traveler's checks concealed among the dried fish, which were neither declared in the export entry filed by the exporter, nor were they duly covered by the necessary license, in violation of Circulars Nos. 20 and 21, of the Central Bank of the Philippines, and therefore, subject to forfeiture in accordance with section 1363 (/) of the Revised Administrative Code, as amended by Republic Act No. 454. On the basis of these findings, they were seized and being made the subject of this seizure proceeding."

There is therefore enough justification for the Collector of Customs to order the seizure of the articles for the same were not declared by plaintiff in the export entry issued to him and instead he concealed them in 50 bundles of salted dried fish in an attempt to smuggle them out of the country without complying with the law.

But appellant contends that under the violation mentioned in the seizure report, which is Section 1363, subsection (f) of the Revised Administrative Code, as amended by Republic Act No. 454, the goods in question cannot be the subject of forfeiture because they are not merchandise of prohibited exportation, whereas Circular No. 20 of the Central Bank, which requires the delivery of foreign exchange to an agent of the Central Bank within one day from acquisition, does not apply to him as decreed by the Supreme Court for the reason* that the same has not been published in the Official Gazette as required by law.

There is indeed an error committed in the seizure report as regards the designation of the particular section of the law which has been violated by appellant, but this is of no moment, for this Court has already decided in a number of cases that what controls in a complaint or information is not the designation of the crime or of the violation charged, but the description of the same given in the body of the complaint or information (U. S. vs1. Burns, 41 Phil., 418)-1 Here it was explained that only a mere error was committed thru oversight in the designation of the law, but that the seizure report as well as the decision of the Collector of Customs clearly state the facts which constitute the acts committed, which fall under Section 1363 (m) 3 and 4 of the Revised Administrative Code, which, for ready reference, are here quoted:

"Sec. 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:

* * * * *

"(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:

* * * * *

"3. Upon the wrongful making by the owner, importer, exporter, or consignee of any merchandise, or by the agent of either, of any false declaration or affidavit, touching such merchandise and in connection with the importation or exportation of the same.

"4. Upon the wrongful making or delivery by the same person or persons, of any false invoice, letter or paper touching such merchandise and in connection with the importation or exportation of the same."

The mistake in designating the offense, if any, was therefore due to a mere oversight and not to lack of sufficient allegation of incriminatory facts. As a matter of fact, in the letter the Commissioner of Customs sent to the legal counsel of the Central Bank on February 12, 1951 giving an account of the seizure in question, he stated as follows:

"* * * The above-described articles were seized by the Acting Chief, Customs Patrol Service, and the seizure report was forwarded to the Collector of Customs for the port of Manila for the seizure and forfeiture proceedings in accordance with Chapter 39 of the Revised Administrative Code. The cause for the seizure is Section 1363 (/) and (m) 3 and U of the Revised Administrative Code, as amended, and Central Bank Circular No. 21 in relation to Republic Act No. 265.

* * * * *

"The gold bars and foreign exchange in question were properly seized under the above-quoted provisions of the Customs Law because the owner made false declaration in his export entry filed with this Office by stating therein that he was exporting to Hongkong dried salted fish but actually gold bars and foreign exchange were hidden inside the cases containing dried fish. Therefore, the Collector of Customs for Manila is clothed with the necessary power and authority to institute the seizure and forfeiture proceedings, not only on the dried

salted fish, but also on the gold bars and foreign exchange in the exercise of his quasi-judicial functions contrary to your allegation that the Central Bank has exclusive jurisdiction over, and full responsibility for, the enforcement of Exchange and Gold Regulations and prosecution of violation thereof." (Italics supplied)

There is therefore no point in the pretense that the seizure must fail because of the faulty designation of the law under which the same was effected. And with regard to the claim that Circular No. 20 of the Central Bank was declared inapplicable to appellant by the Supreme Court, the same also deserves scant consideration for the reason that said circular was mentioned in the seizure report merely as an additional ground to justify the seizure of the articles.

The second issue refers to lack of notice of the hearing as well as the decision of the Collector of Customs to appellant or his counsel for which reason, he claims, he was not able to protect his interest and was adjudged without due process of law. On this point, suffice it to state what the trial court said in its order of dismissal:

"* * * With respect to the first ground just mentioned, which is factual in nature, defendants have met plaintiff's naked allegation of lack of notice with the following decisive answer:

"The records in the Bureau of Customs which counsel for plaintiff is very familiar will show that formal notice of hearing was served by Atty. Pablo C. Mariano, then Chief of the Law Division of the Bureau of Customs, to Atty. Prudencio de Guzman by registered mail to his address at 201 Yorktown Bldg., Manila. According to the records Mr. de Guzman received the same on June 19, 1951. The transcript of the stenographic notes of the hearing on June 19, 1951 states that altho the hearing could have been formally started at 9:30 a.m. on June 19, 1951, the same was held in abeyance and actually started at 10:00 a.m. in order to wait for Mr. de Guzman or his client, claimant Que Po Lay. When, however, they did not appear claimant Que Po Lay was declared in default. Evidence for the prosecution was received and the hearing was terminated on July 2, 1951 at 10:00 a.m. when the last two witnesses, Secret Agents Aurelio Naiad and Primitivo de Jesus testified.

"The decision was promulgated on August 10, 1951. (Photostatic copy of the duplicate original of the decision appearing on page 18 of the Records of the

Bureau of Customs is hereto attached as Annex '2-Central Bank'). It appears from said official copy that Atty. de Guzman was furnished with a copy of said decision on August 13, 1951 and that after the decision has been approved by the Commissioner of Customs on September 6, 1951, again Atty. de Guzman was furnished with a copy of the decision personally thru an authorized representative from his law office on September 12, 1951. Not only that, copies of said decision were published on the bulletin board of the Bureau of Customs. The then Commissioner Alfredo Jacinto sent Mr. Que Po Lay a letter on September 12, 1951 addressed at 114 Elizondo St., Manila, enclosing a copy of the decision and advising him that if he would elevate the case to the Court of First Instance he should do so in fifteen (15) days after receipt of said letter in accordance with Sees. 1383 and 1385 of the Rev. Adm. Code. The records show that said letter to Mr. Que Po Lay was returned with a post-office mark 'unclaimed'. Apparently, Mr. Que Po Lay who has given his office address as '114 Elizondo St., Manila' has not filed a change of address and for all legal purposes said given address was considered as the proper place to which all writs, orders and processes for Mr. Que Po Lay should be addressed. Under our rules, service by registered mail is complete after the expiration of five (5) days from the date of first notice of the postmaster (Sec. 8, Rule 27 of the Rules of Court). But even disregarding this, the notice to claimant Que Po Lay's lawyer, Atty. Prudencio de Guzman, was considered notice to Que Po Lay.' "

We find the above finding supported by the evidence and we see no reason to rule otherwise. And considering that the decision of the Collector of Customs, as affirmed by the Commissioner of Customs, has long become final and conclusive, the same is now a bar to the present action.

"In his answer, respondent Rodolfo Sadia tries to justify the disposition made of the articles by respondent

judge contending; that the Commissioner of Customs had no jurisdiction to order their seizure and that all the proceedings conducted by him on the matter are null and void.

"This claim cannot now be invoked by respondent, nor can he dispute the validity of the seizure decree, it appearing that he failed to appeal from the decision of the Collector of Customs as approved by the Commissioner of Customs, as required by law. It appears that, following the seizure of the dutiable articles, a hearing was held after giving due notice to respondent Sadia and other necessary parties, and after the hearing the Collector of Customs, in &, decision rendered on April 14, 1952, decreed the forfeiture of the articles in favor of the Government. From this decision Sadia did not appeal. He cannot therefore dispute now the validity of said decision which had long become final. (Section 1383, Revised Administrative Code.)" (Commissioner of Customs vs. Encarnacion, et al., 95 Phil., 439; 50 Off. Gaz. [8] 3560).

Wherefore, the order appealed from is affirmed, with costs against appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

Order affirmed.

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