

**KURT NILSEN, DAGPIN LUNOGREN, HELGE HELGSESEN, IN THEIR
CAPACITY AS CREW MEMBERS OF THE S/S 'FERNside';
AND MACONDRAY & COMPANY, INC., IN ITS CAPACITY AS
AGENT OF THE S/S 'FERNside'...**

G.R. No. L-27149. March 14, 1979

Ponente: FERNANDO, J.

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FERNANDO, J.:

The failure to make out a case for the reversal of the assailed decision of respondent Court of Tax Appeals sustaining the actuation of the Commissioner of Customs affirming a forfeiture decreed by the Acting Collector of Customs, is understandable. The goods, subject of such proceedings, consisted of 108 cartons of unmanifested cigarettes found inside the cabins of petitioners, crew members of the vessel Fernside. The Customs authorities started the seizure proceedings in accordance with the Tariff and Customs Code.[1]

The nature of the case and the facts are set forth in the appealed decision thus: "This is a petition to review the decision of the respondent Commissioner of Customs dated December 14, 1964, affirming that of the Acting Collector of Customs in Seizure Identification No. 6496, decreeing the forfeiture of twelve (12) cartons Salem cigarettes, nine (9) cartons Salem cigarettes, eight (8) cartons Salem cigarettes, one (1) carton Chesterfield cigarettes, seventy-nine (79) cartons Salem cigarettes and two (2) cartons Kent cigarettes for violation of Section 2530(g) of the Tariff and Customs Code, in relation to Section 1005 of the same Code. It appears that the cigarettes in question were discovered inside the cabin of three crew members of a foreign vessel, named S/S 'FERNside', during a search conducted by a team of customs agents in the Port of Manila on July 10, 1962. Since the said cigarettes were not manifested at the time of discovery and were found in the cabin, apparently concealed, they were seized by the customs agents for violation of Section 2530(g) of the Tariff and Customs Code, and, subsequently, were made subject of Seizure Identification No. 6496 with Kurt Nilsen, Dagpin Lunogren and Helgsesen, crew members of S/S 'FERNside' and Macondray & Company, Inc., agent of said vessel, appearing as claimants. On July 1, 1964, after due hearing, the Acting Collector of Customs rendered a decision decreeing the forfeiture of the seized cigarettes, which decision, on appeal to the Commissioner of Customs, was affirmed by the latter in his decision dated December 14, 1964." [2]

The issue was set forth in the appealed decision thus: "The principal issue raised for our determination is whether the articles in question are subject to forfeiture for violation of Section 2530(g) of the Tariff and Customs Code, in relation to Section 1005 of the same Code, the pertinent portions of which, respectively, provide as follows: Sec. 2530. Property Subject to Forfeiture Under Tariff and Customs Laws. - Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture: * * * (g) Unmanifested article found on any vessel or aircraft, if manifest therefor is required. * * * Sec. 1005. Manifest Required of Vessel From Foreign Port. - Every vessel from a foreign port must have on board a complete manifest of all her cargo. * * * Every vessel from a foreign port must have on board complete manifest of passengers and their baggage, in the prescribed form, setting forth their destination and all particulars required by the immigration laws; and every

such vessel shall have prepared for presentation to the proper customs official upon arrival in ports of the Philippines a complete list of all sea stores then on board. * * * "[3]

The well-written decision of the late Associate Judge Ramon L. Avanceña of respondent Court then proceeded to set forth the contention of petitioners: "Petitioners maintain that under the above-quoted law the cigarettes in question are not subject to forfeiture inasmuch as they do not constitute cargo of the vessel but are part of the sea stores or provision of the ship that need no manifest. We are in accord with the petitioners that sea stores need no manifest for the consistent ruling of the Supreme Court is that it is enough that they are contained in 'a complete list of all ship's stores'. * * * However, it is not correct to say that said cigarettes were part of the sea stores because in point of fact they were not. The cigarettes were not found in the slope chest where generally they are kept but in the crew's cabin, apparently concealed, and were not in the list of sea stores." [4]

Why the decision reached necessarily had to be adverse to petitioners was explained in a clear and logical manner: "In fine, the cigarettes in question did not appear in the manifest, did not appear in the sea stores list, and no claim has been made that they were in the passenger baggage manifest or crew's declaration. The only reasonable inference is that they were unmanifested cargoes. Cargo has been construed by our Supreme Court to include all goods, wares, and merchandise aboard ship which do not form part of the ship's stores (U.S. v. Islas Filipinas, supra). It has also been said that the word 'cargo' refers to the 'entire lading of the ship which carries it' and includes all goods, wares and merchandise, effects, and indeed everything of every kind or description, found on board, except such things as are used or intended for use in connection with the management or direction of the vessel, and are not intended for delivery at any port of call, and except also, perhaps, 'passengers or immigrants and their baggage.' (U.S. v. S.S. Rubi, 32 Phil. 228). This broad definition of cargo obviously embraces the cigarettes in question." [5]

How then could petitioners nurture the legitimate expectation that a reversal of the Court of Tax Appeals decision is warranted? As noted at the outset, we affirm.

1. This Court, in *Balbas v. Domingo*, [6] affirming a decision of the Court of Tax Appeals, reiterated the authoritative doctrine with reference to the force and effect to which an appraisal of the facts by the Court of Tax Appeals is entitled. Thus: "No other conclusion is possible in view of the well-settled principle that this Court is bound by the finding of facts of the Court of Tax Appeals, only questions of law being open to it for determination. As stated in another decision, 'only errors of law, and not rulings on the weight of evidence, are reviewable by this Court.' The facts then as above ascertained cannot be disturbed. In our latest decision, there is a categorical assertion that where the question is one of fact, it is no longer reviewable." [7] That doctrine has been adhered to in subsequent cases. [8]

2. Nor is the force of the above controlling concept minimized by allegations of petitioners which, if justified, could give rise to a procedural due process question on the ground of arbitrariness on the part of respondent Court, when it concluded that the cartons of cigarettes in question fell under the category of unmanifested cargoes. What had been set forth earlier would indicate that it so considered them, but only after a thorough scrutiny of the undoubted facts. As was set forth by the late Judge Avanceña, the cigarettes "were not found in the slope chest where generally they are kept but in the crew's cabin, apparently concealed, and were not in the list of sea stores." [9] It thus arrived at the "reasonable inference" that they were in fact unmanifested cargoes as "the cigarettes in question did not appear in the manifest, did not appear in the sea stores list, and no claims has been made that they were in the passenger baggage manifest or crew's declaration." [10] Nor is that all. To indicate the circumspection that characterized the decision-making process of respondent Court, there is this appraisal of the evidence for petitioners: "We find no merit in the testimony of Dominador Bergaño, Chief of Claims of petitioner Macondray & Co. to the effect that the cigarettes in question were in the list of sea stores and that they had been released to the crew for consumption and receipted for by them. This witness learned of the seizure two days after it took place after which he conducted an investigation for petitioner Macondray &

Co. that represented the vessel. He is in no position to have knowledge of his own as to what transpired during the seizure. On the other hand, considering the circumstances of this case, his testimony is hardly probable. If the same were true, for sure petitioners would have presented the sea stores list, the receipts for the cigarettes, and the crew's declaration, for these are vital pieces of evidence for them, but this was never done. It is idle for him to explain that these papers were brought by the officers of the vessel. The ship is liable to penalties for unmanifested cargoes, and the ship's officers certainly had every interest to leave said papers for evidence to forestall penalties against the ship. Port regulation, furthermore, allows the vessel to release only 1 carton of cigarettes for each member of the crew for every 25 hours of stay in port but significantly enough 12 cartons of Salem, 9 cartons of Salem, 8 cartons of Salem and 1 carton of Chesterfield, quantities of cigarettes far in excess of regulations, were found in the possession of Kurt Nilsen, Dagpin Lunogren and Helge Helgesen, respectively, while 79 cartons of Salem and 1 carton of Kent had no claimant."^[11]

There is nothing, therefore, in the appealed decision that could be fitly stigmatized as indicative of arbitrariness or caprice, the presence of which would give rise to a valid procedural due process objection.

WHEREFORE, the appealed decision of respondent Court of Tax Appeals is affirmed. With costs.

Antonio, Concepcion, Jr., Santos, and Abad Santos, JJ., concur.

Barredo, J., no part.

Aquino, J., concur. The case is a smuggling case pure and simple.

The Tax Court need not be a party herein because the case is before this Court on appeal. It is similar to an appeal from the decision of the Court of Appeals. Chief Justice Moran notes that in such a case the Court of Appeals need not be made a party-respondent (2 Comments on the Rules of Court, 1970 Ed., p. 481).

[1] The relevant provisions of the Tariff and Customs Code are Sections 1005 and 2530(g).

[2] Annex B, Decision, 1-2.

[3] Ibid, 2-3.

[4] Ibid, 3.

[5] Ibid, 5.

[6] L-19804, October 23, 1967, 21 SCRA 444.

[7] Ibid, 44. The cases cited follow: Sanchez v. Commissioner of Customs, 102 Phil. 37 (1957); Castro v. Collector of Internal Revenue, 114 Phil. 1032 (1962); Commissioner v. Priscila Estate, 120 Phil.125 (1964); Philippine Guaranty v. Com-missioner of Internal Revenue, L-22074, Sept. 16, 1965, 15 SCRA 1; Republic v. Razon, L-17642, May 24, 1967, 20 SCRA 234.

[8] Cf. Alhambra Cigar and Cigarette Mfg. Co. v. Commissioner of Internal Revenue, L-23226, Nov. 28, 1967, 21 SCRA 1111; Reyes v. Commissioner of Internal Revenue, L-24020-21, July 29, 1968, 24 SCRA 198; Chu Hoi Horn v. Court of Tax Appeals, L-22046, Oct. 29, 1968, 25 SCRA 809; Dy Peh v. Collector of Internal Revenue, L-19375, May 26, 1969, 28 SCRA 216; Coca-Cola Export Corp. v. Commissioner of Internal Revenue, L-23604, March 15, 1974, 56 SCRA 5; Commissioner of Internal Revenue v. Philippine Planters Investment, L-24293, March 28, 1974, 56 SCRA 194; Aznar v. Court of Tax Appeals, L-20569, Aug. 23, 1974, 58 SCRA 522; Consolidated Mines v. Court of Tax Appeals, L-18843-44, Aug. 29, 1974, 58 SCRA 618; Vi Ve Chemical Products v. Commissioner of Customs, L-28693, Sept. 30, 1974, 60 SCRA 52; Nasiad v. Court of Tax Appeals, L-29318, Nov. 29, 1974, 61 SCRA 238; American Rubber Co. v. Collector of Internal Revenue, L-25965, June 30, 1975, 64 SCRA 569; Commissioner of Internal Revenue v. P. J. Kiener Co., L-24754, July 18, 1975, 65

SCRA 142; Commissioner of Internal Revenue v. Ayala Securities Corp., L-29485, March 31, 1976, 70 SCRA 204.

[9] Annex B, Decision, 3.

[10] Ibid, 5.

[11] Ibid, 4-5.

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