REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE COMMISSIONER OF CUSTOMS, PETITIONER, VS. THE COURT OF TAX APPEALS AND AGFHA,INCORPORATED, RESPONDENTS.

G.R. No. 139050. October 02, 2001

Ponente: VITUG, J.

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VITUG, J.:

On 12 December 1992, a shipment of bales of textile gray cloth, under Bill of Lading No. HKT-138899, arrived at the Manila International Container Port (MICP) aboard the vessel "S/S ACX Daisy." The shipment's Inward Foreign Manifest stated that the bales of cloth were consigned to GQ GARMENTS, Inc., of 244 Escolta Street, Binondo, Manila. The Clean Report of Findings (CRF) issued by the Societe Generale de Surveilance (SGS), however, mentioned AGFHA, Incorporated, to be the consignee of the shipment. Forthwith, the shipping agent, FIL-JAPAN, requested for an amendment of the Inward Foreign Manifest so as to correct the name of the consignee from that of GQ GARMENTS, Inc., to that of AGFHA, Inc.

On 22 January 1993, FIL-JAPAN forwarded to AGFHA, Inc., the amended Inward Foreign Manifest which the latter, in turn, submitted to the MICP Law Division. The MICP indorsed the document to the Customs Intelligence Investigation Services (CIIS). The CIIS placed the subject shipment under Hold Order No. H/CI/01/2293/01, dated 22 January 1993, on the ground that GQ GARMENTS, Inc., could not be located in its given address at 244 Escolta Street, Binondo, Manila, and was thus suspected to be a fictitious firm. Forfeiture proceedings under Section 2530(f) and (l) (3-5) of the Tariff and Customs Code were initiated.

AGFHA, Inc., through its president Wilson Kho, filed a motion for intervention contending that AGFHA, Inc., is the lawful owner and actual consignee of the subject shipment. The motion for intervention was granted on 2 March 1993. Following a hearing, the Collector of Customs came up with a draft decision ordering the lifting of the warrant of seizure and detention on the basis of its findings that GQ GARMENTS, Inc., was not a fictitious corporation and that there was a valid waiver of rights over the bales of cloth by GQ GARMENTS, Inc., in favor of AGFHA, Inc. The draft decision was submitted to the Deputy Commissioner for clearance and approval, who, in turn, transmitted it to the CIIS for comment. The CIIS opposed the draft decision, insisting that GQ GARMENTS, Inc., was a fictitious corporation and that even if it did exist, its president, John Barlin, had no authority to waive the right over the subject shipment in favor of AGFHA, Inc.

The Deputy Commissioner, relying on the comment of the CIIS, rejected the draft decision of the Collector of Customs.

GQ GARMENTS, Inc., and AGFHA, Inc., filed a joint motion for reconsideration, which was given due course. Convinced that the evidence presented established the legal existence of GQ GARMENTS, Inc., and finding that a resolution passed by the Board of Directors of GQ GARMENTS, Inc., ratified the waiver of its president, the Collector of Customs in another draft decision granted the joint motion. The Office of the Commissioner of Customs, however, disapproved the new draft decision and denied the release of the goods; it ruled:

"1. x x x [I]t is quite suspicious that it took more than one month before the alleged error in the consignee was discovered by the shipper and by AGFHA, Inc., and by GQ Garments especially considering the fact that there is a CRF naming therein AGFHA as consignee of the subject shipment which means that the shipper was contracted by SGS so that the latter can inspect the subject shipment to be imported by consignee; that Mr. Wilson Kho admitted it was AGFHA who ordered the shipment by telephone call; that prior to this shipment there was no order placed in the name of GQ Garments from Indonesia; and that this is already the second of four shipments ordered by AGFHA, Inc., from Jakarta, Indonesia.

"2. Mr. Wilson Kho's explanation that the shipper committed an error in naming GQ GARMENTS as the consignee of the subject shipment because his business card contains the name of both GQ GARMENTS and AGFHA, Inc. appears to be an afterthought and self-serving. Moreover, he admitted that he is not an officer nor even a stockholder of GQ GARMENTS so why should his business card indicate his name as President/General Manager of GQ GARMENTS and AGFHA, Inc. That is clearly a misrepresentation.

"3. During the hearing on April 15, 1994, Mr. John John Barlin of GQ GARMENTS admitted that the letter dated February 11, 1993 purportedly signed by him (in which he allegedly informed the Collector of Customs that AGFHA, Inc., is the rightful owner of the subject shipment and that GQ GARMENTS is waiving its right over the same) actually came from Wilson Kho. In other words, the said letter is spurious.

"4. From the admissions of both Mr. Wilson Kho and Mr. John John Barlin, it is clear that GQ GARMENTS is actually owned by Mr. Wilson Kho and its corporate franchise appears to be being used to perpetrate fraud and other scheme to confuse authorities (pp. 1-4, Decision of Commissioner of Customs, Custom Case No. 94-017)"[1]

In deference to the directive of the Commissioner, the District Collector of Customs ordered the forfeiture of the shipment. On 14 October 1994, AGFHA, Inc., interposed an appeal to the Office of the Commissioner of Customs. The appeal was dismissed consistently with the Commissioner's earlier stand that disapproved the Collector of Customs' draft decision.

On 5 October 1995, AGFHA, Inc., filed a petition for review with the Court of Tax Appeals questioning the forfeiture of the bales of textile cloth. Finding merit in the plea of appellants, the Court of Tax Appeals granted the petition and ordered the release of the goods to AGFHA, Inc.

On 27 December 1996, the Commissioner of Customs then challenged before the Court of Appeals the decision of the tax court.

In its decision, dated 31 May 1999, the Court of Appeals dismissed the appeal for lack of merit. Quoting extensively from the assailed decision of the tax court, the appellate court ruled that the Bureau of Customs has failed to satisfy its burden of proving fraud on the part of the importer or consignee. It expounded thusly:

> "Section 2530 (f) and (1) 3-5 of the Tariff and Customs Code, provide that in order that a shipment be liable to forfeiture, it must be proved that fraud has been committed by the importer/consignee to evade payment of the duties due. To establish the existence of fraud, the onus probandi is on the part of the Bureau of Customs who ordered the forfeiture of the subject shipments. The BOC, however, failed.
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> "x x x x x x x x x
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> "'x x x This Court could not fathom any individual or collective importance of the x x x findings [of the BOC] as indicative of the actual commission of fraud or any attempt or frustration thereof. As defined, actual or intentional fraud consists of deception willfully and deliberately done or resorted to in order to induce another to give up some right. It must amount to intentional wrong-doing with the sole object of avoiding the tax.

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`The circumstances or findings presented by the [BOC] do not reveal x x x any kind of deception that could have been played upon [the] Bureau to give up some of its right, e.g., to collect correct taxes on properly declared shipment of goods.

`x x x x x x x x x

`[BOC] is saying that the shipper knew all along that AGFHA, Inc., was the real consignee due to the pre-inspection done by SGS and the corresponding issuance of the CRF naming AGFHA, Inc. as the consignee. So that in naming GQ GARMENTS Inc. as the consignee in the Bill of Lading and Inward Foreign Manifest, the same was intentional and deliberately done and not a case of error or inadvertence x x x.

`[The Court] could not believe that [BOC] assumed the above circumstance as a fact in his attempt to forfeit the subject shipment in favor of the government. The respondent is trying to second guess the act of the shipper that the latter had prior knowledge of AGFHA Inc., as the true consignee before the shipment. [The Court] deem[s] such conclusion as pure hearsay. Obviously, it is only the shipper and/or the SGS who could personally vouch for events that transpired prior to the shipment of the goods subject matter of this case.

`x x x [AGFHA Inc.] has offered the following controverting and convincing evidence x x x:

`1. Telex message from the shipping agent of shipper P.T. Mandala Subur Textile Industry to FIL-JAPAN Shipping Company Manila, requesting amendment of the Bill of Lading and other shipping records, to change consignee from GQ Garments, Inc. to Agfha, Inc.;

`2. Application for Amendment of the Inward Foreign Manifest filed by the shipper's agent, FIL-JAPAN Shipping Company, for approval with the Customs Law Division, Manila International Container Port (MICP), to change the name of the consignee from GQ Garments, Inc. to Agfha, Inc.

`3. Letter dated February 10, 1993 by Wilson Kho, president of Agfha, Inc. addressed to Atty. Buenaventura Maniego, District Collector of Customs, MICP, North Harbor, Manila manifesting the former's intention and willingness to pay the corresponding duties and taxes on the subject shipment based on a higher valuation indicated in the Clean Report of Findings (CRF) as recommended by the SGS, as against the lower valuation indicated in the invoice.

`4. Bill of Lading covering the subject shipment showing the shipper as P.T. Mandala Subur Textile Industry and the consignee as GQ Garments, Inc.

`5. The Clean Report of Findings (CRF) dated December 9, 1992 showing the consignee of the subject shipment as Agfha, Inc. and the shipper as P.T. Mandala Subur Textile Industry.

`6. Import Authority No. (IAN) 18.012.37679, assigned by the Central Bank of the Philippines appearing on the right hand portion of the CRF.

`The above evidence speak for themselves. If any deception is intended by petitioner Agfha, Inc., why would it apply for an Import Authority Number under its name? It knew for certain that the subject goods will be pre-inspected by SGS under its name.

"x x x x x x x x x

`x x x [AGFHA Inc.] expressed its willingness to pay the higher duties and taxes imposed on the subject shipment as indicated in the CRF. x x x From the very start up to the end, petitioner had been consistent in its actuations. It applied for an Import Authority with the Central Bank of the Philippines which authority was used by the SGS in making the necessary pre-inspection and issuing the CRF. It undertook remedial measures to amend the consignee in the Bill of Lading and Inward Foreign Manifest when the shipper made a mistake. It then manifested to pay the correct taxes and duties. The government stands to lose nothing.'"[2]

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The Court of Appeals attributed the error in indicating GQ GARMENTS, Inc., instead of AGFHA, Inc., in the Inward Foreign Manifest as being the consignee of the subject shipment to the shipping agent. It also noted the finding of the tax court that GQ GARMENTS, Inc., was, in fact, a registered importer with Registration No. 91-5624 per the Customs Intelligence and Investigation Service List of Registered Importers contained in Customs Memorandum Order No. 149-88 for the year 1991.

The BOC instituted the instant petition for review under Rule 45 of the Revised Rules of Court assailing the affirmance by the Court of Appeals of the tax court's decision of 04 November 1996.

The appeal is not meritorious.

Section 2530 (f) and (1) (3-5) provides:

> "Section 2530. Property Subject to Forfeiture Under Tariff and Customs Law. - Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture;
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> "x x x x x x x x x
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> "f. Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were entered to be used as instruments in the importation or exportation of the former.
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> "x x x x x x x x x
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> "1. Any article sought to be imported or exported:
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> "x x x x x x x x x
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> "(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;
>
> "(4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and
>
> "(5) Through any other practice or device contrary to law by means of which such articles was entered through a customhouse to the prejudice of the government."

The requisites for the forfeiture of goods under Section 2530(f), in relation to (1) (3-5), of the Tariff and Customs Code are: (a) the wrongful making by the owner, importer, exporter or consignee of any declaration or affidavit, or the wrongful making or delivery by the same person of any invoice, letter or paper - all touching on the importation or exportation of merchandise; (b) the falsity of such declaration, affidavit, invoice, letter or paper; and (c) an intention on the part of the importer/consignee to evade the payment of the duties due.[3]

Petitioner asserts that all of these requisites are present in this case. It contends that it did not presume fraud, rather the events positively point to the existence of fraud. Private respondent AGFHA, Inc., on the other hand, maintains that there has only been an inadvertent error and not an intentional wrongful declaration by the shipper to evade payment of any tax due. The resolution of this issue would entail a reevaluation of the attendant circumstances, a matter that cannot be freely undertaken by this Tribunal. It has been a settled rule that the Supreme Court is not a trier of facts.[4] Findings of the appellate court are generally binding and cannot be disturbed by this Court unless it is sufficiently shown that there has been no evidence on record to support such findings.[5] The assessment made by the appellate court carry even more weight when it is consistent with that of the trial court.[6] Consonantly, the factual determination of the Court of Tax Appeals, when supported by substantial evidence, will not be reversed on appeal unless it is clear that the said court has committed gross error

in the process.[7] The Collector of Customs, Court of Tax Appeals and the Court of Appeals are unanimous in concluding that no fraud has been committed by private respondent in the importation of the bales of cloth. The records do appear to sustain this conclusion.

Fraud must be proved to justify forfeiture.[8] It must be actual, amounting to intentional wrong-doing with the clear purpose of avoiding the tax.[9] Forfeiture is not favored in law nor in equity.[10] Mere negligence is not equivalent to the fraud contemplated by law.[11] What is here involved is an honest mistake, not even directly attributable to private respondent, which will not deprive the government of its right to collect the proper tax. The conclusion of the appellate court, being consistent with the evidence on record and not contrary to law and jurisprudence, hardly can be overturned by this Court.

WHEREFORE, the petition is hereby DENIED and the assailed decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Melo, (Chairman), Panganiban, and Sandoval-Gutierrez, JJ., concur.

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[1] Rollo, pp. 27-28.

[2] Rollo, pp. 31-36.

[3] Farolan, Jr., vs. Court of Tax Appeals, 217 SCRA 298; Farm Implement and Machinery Co. vs. Com. Of Customs, 24 SCRA 905.

[4] Hervas vs. Court of Appeals, 319 SCRA 776.

[5] Ceremonia vs. Court of Appeals, 314 SCRA 731; Guerrero vs. Court of Appeals, 285 SCRA 670.

[6] Boneng vs. People, 304 SCRA 252.

[7] CIR vs. Court of Appeals, 298 SCRA 83.

[8] Farm Implement and Machinery Co. vs. Com. of Customs, supra.

[9] Transglobe Int'l. Inc. vs. Court of Appeals, 302 SCRA 57.

[10] Farm Implement and Machinery Co. vs. Com. of Customs, supra.

[11] Aznar vs. CTA, 58 SCRA 519.

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