OFFICE OF THE OMBUDSMAN, PETITIONER, VS. PRISCILLA S. CORDOVA, DEPUTY COLLECTOR FOR ASSESSMENT, BUREAU OF CUSTOMS, RESPONDENT.

G.R. No. 188650. October 06, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The Department of Finance-Revenue Integrity Protection Service (DOF-RIPS), by Complaint-Affidavit[1] executed by two of its legal officers, charged on October 11, 2007 before the Office of the Ombudsman (OMB) Priscilla S. Cordova (respondent), Deputy Collector for Assessment of the Bureau of Customs, Port of Subic, together with Atty. Baltazar Morales (Morales), Chief of the Assessment Division, for violating, inter alia, Section 3(a) and (e) of Republic Act No. 3019,[2] the pertinent provisions of the Tariff and Customs Code, as amended, Republic Act No. 6713,[3] and the pertinent provisions of the Revised Penal Code in connection with their alleged participation in the alleged smuggling of sixteen (16) high-end luxury vehicles consigned to Hidemitsu Trading Corporation (Hidemitsu Trading), 14[4] of which were taken out of the Subic Bay Freeport Zone (SBFZ) without paying the required taxes and duties therefor.

The Complaint-Affidavit alleged that respondent's act of issuing the 14 Certifications[5] that "per our record the following appears: FULLY PAID (IMPORTATION) . . ." and Certificates of Payment[6] attesting to the full payment of taxes due to the 14 vehicles, enabled their release from SBFZ without paying the required taxes and duties therefor.[7] Morales was accused of coordinating and conspiring with respondent.[8]

After preliminary investigation, the OMB, finding probable cause to hold respondent liable which may warrant her dismissal from the service, issued Order[9] dated November 12, 2007 placing respondent under preventive suspension without pay during the pendency of the administrative case, but not to exceed a total period of six (6) months. The Order was issued pursuant to Section 9 of Administrative Order (AO) No. 7, as amended, vis-à-vis Section 24 of Republic Act (RA) No. 6770.[10]

Section 9 of AO No. 7 reads:

> SECTION 9. Preventive Suspension. Pending investigation, the respondent maybe preventively suspended without pay if, in the judgment of the Ombudsman or his proper deputy, the evidence of guilt is strong and (a) the charge against such officer or employee involves dishonesty, oppression or gross misconduct or gross neglect in the performance of duty; or (b) the charge would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the just, fair and independent disposition of the case filed against him.

Upon the other hand, Section 24 of RA No. 6770 reads:

> SECTION 24. Preventive Suspension. The Ombudsman or his deputy may preventively suspend any officer or employee under his authority pending an investigation if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression, grave misconduct or neglect in

> the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

In granting the prayer for preventive suspension of respondent, OMB ratiocinated as follows:

> It became readily apparent from the pieces of evidence presented that there is a strong basis for this Office to grant the preventive suspension prayed for. The accusatory allegations contained in the complaint constitute an act of Dishonesty and Grave Misconduct which, if proved true, could warrant her removal from government service.
>
> The evidence of guilt was given strength by the documentary evidence proving her possible participation in the anomalous release of the subject vehicles. The presence of her name and signature in the Certifications brings forth the prima facie presumption that she deliberately made a misrepresentation by making it appear in the said Certificates that the taxes due on the subject vehicles were paid when, in truth and in fact, it was not.[11] (underscoring supplied)

With respect to Morales, the OMB dismissed the complaint against him after noting that all that was proffered to substantiate the accusation against him was his being the right-hand man and trusted lieutenant of respondent.

Respondent assailed the OMB's November 12, 2007 Order via Certiorari, Prohibition, and Injunction[12] before the Court of Appeals, contending that the suspension order was issued without giving her due notice and an opportunity to be heard; and that the evidence of her guilt is not strong because the supporting documents attached to the Complaint-Affidavit do not pertain to the vehicles allegedly smuggled. Respondent likewise sought injunctive relief against Commissioner Napoleon Morales (Commissioner Morales) of the Bureau of Customs (BOC) for his efforts to enforce the OMB Order.[13]

By Decision[14] of February 27, 2009, the Court of Appeals set aside the OMB Order for having been issued with grave abuse of discretion.

In setting aside the OMB Order, the appellate court, citing Hagad v. Gozo-Dadole,[15] held that while preventive suspension can be decreed on an official under investigation after charges are brought and even before the charges are heard, evidence sufficiently strong to justify the imposition of preventive suspension was wanting. For, the appellate court reasoned, the engine and serial numbers of the allegedly smuggled vehicles enumerated in the Complaint-Affidavit were indeed different from those of the vehicles reflected in the Certificates of Payment and Certifications issued by respondent.

The OMB moved for reconsideration but the motion was, by Resolution[16] of June 23, 2009, denied. OMB assailed the appellate court's issuances by petition for review filed with the Court, docketed as G.R. No. 188650. DOF-RIPS, together with Commissioner Morales, filed a separate petition for review, docketed as G.R. No. 187166. By Resolution[17] of August 19, 2009, the Court consolidated the petitions.

In G.R. No. 188650, the OMB posits that while there may be discrepancies in the description of the vehicles in the Certificates of Payment and Certifications issued by respondent vis-à-vis those of the vehicles listed in the Complaint-Affidavit, these could be mere typographical errors, or could have been deliberately made by respondent and her office to hide the irregularities attendant to the smuggling of the vehicles.[18]

On the other hand, in G.R. No. 187166, DOF-RIPS and Commissioner Morales point out that 14 of the 16 vehicles in question were subjected to seizure and forfeiture proceedings before the Office of the Collector of Customs during which the same set of evidence consisting of, among others, the Certificates was presented; and that the vehicles were eventually forfeitured.[19] They assert that a comparison of the description of the vehicles listed in the Complaint-Affidavit with that reflected in the Consolidated Decision[20] dated June 15, 2007 of the

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Collector of Customs in the Port of Subic reveals no discrepancies.

In her Comment,[21] respondent, reiterating her claim that the Certificates of Payment and Certifications show that the vehicles subject thereof are not the same vehicles smuggled out of the SBFZ,[22] argues that those certifications were proffered, not by the Republic of the Philippines or the BOC but, by Hidemitsu Trading purportedly to prove payment of taxes/customs duties thereon; and that the BOC's forfeiting of the vehicles in favor of the government for non-payment of taxes/customs duties shows that the certificates were not favorably considered by BOC as evidence of payment.[23]

The petition is meritorious.

A comparison of the engine and chassis numbers of the vehicles listed in the Complaint-Affidavit with those listed in the Certificates of Payment and Certifications shows that the serial numbers of at least three of the 14 vehicles subject of the Complaint-Affidavit match the serial numbers of those subject of the Certificates of Payment, viz:

Serial Numbers in the
Complaint Affidavit

Serial Numbers reflected in the
Certificate of Payment

BMW 750 Li -WBAHN83516DT62802[24]

BMW - WBAHN83516DT62802 (Annex "A")[25]

BMW 750 Li - WBAHN83506DT60605[26]

BMW 750 Li - WBAHN83506DT60605 (Annex "A-5")[27]

AUDI A8I - WAUML44E16N018196[28]

AUDI - WAUML44E16N018196 (Annex "A-10")[29]

To the Court, this fact suffices to justify petitioner's preventive suspension of respondent under the earlier-quoted provision of Section 24 of R.A. 6770.

Whether the Certificates of Payment and Certifications issued by respondent were proffered by Hidemitsu Trading as evidence of payment of taxes/customs duties or by the BOC for its purposes is thus immaterial.

WHEREFORE, the petition is GRANTED. The Court of Appeals Decision dated February 27, 2009 and Resolution dated June 23, 2009 are REVERSED and SET ASIDE. The November 12, 2007 Order of petitioner, the Office of the Ombudsman, for the preventive suspension of respondent is REINSTATED.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and Sereno, JJ., concur.

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[1] Rollo of G.R. No. 188650, pp. 170-189.

[2] Anti-Graft and Corrupt Practices Act.

[3] Code of Conduct and Ethical Standards for Public Officials and Employees.

[4] Rollo of G.R. No. 188650 , p. 175 - Two (2) of the 16 abovementioned luxury vehicles, namely, the Mercedes Benz S550 (WDDNG71X17A060630) and S350 (WDBNF67J26A484664), where still inside the SMBA, and thus, had not been smuggled out,

contrary to previous report.

[5] Annexes "B" to "B-13" inclusive, Rollo of G.R. No. 188650, pp. 204-217.

[6] Annexes "A" to "A-13" inclusive, id. at 190-203.

[7] Id. at 185.

[8] Id. at 186-187.

[9] Id. at 152-160.

[10] The Ombudsman Act of 1989.

[11] Rollo of G. R. No. 188650, pp. 156-157.

[12] Id. at 91-151.

[13] Id. at 95.

[14] Id. at 42-53. Penned by Justice Japar B. Dimaampao, with the concurrence of Justices Rebecca de Guia Salvador and Sixto C. Marella, Jr.

[15] G.R. No. 108072, 251 SCRA 242, 243 (1995).

[16] Id. at 56-59.

[17] Rollo of G.R. No. 187166, pp. 146-147.

[18] Id. at 27.

[19] Rollo of G.R. No. 187166, pp. 19-20.

[20] Id at pp. 135-140.

[21] Rollo of G.R. No. 188650 , pp. 260-273.

[22] Id. at 266.

[23] Id. at 270.

[24] Id. at 176.

[25] Id. at 190.

[26] Id. at 174.

[27] Id. at 195.

[28] Id. at 174.

[29] Id. at 200.

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