

**COLLECTOR OF CUSTOMS FOR THE PORT OF MANILA, PETITIONER,
VS. HON. FRANCISCO ARCA, AS PRESIDING JUDGE OF BRANCH I,
COURT OF FIRST INSTANCE OF MANILA AND TOMAS CLOMA,
RESPONDENTS....**

G. R. No. 21389. July 17, 1964

Ponente: LABRADOR, J.

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LABRADOR, J.:

Petition for certiorari and prohibition with preliminary injunction, to set aside the orders dated June 5 and June 6, 1963 as well as the writ of preliminary injunction dated June 7, 1963, issued by the respondent Court of First Instance of Manila, Hon. Francisco Area, presiding, against herein petitioner, in Civil Case No. 63874 of said court.

The series of incidents leading to the present petition may be summarized as follows: On November 8, 1962, petitioner Collector of Customs instituted seizure proceedings (Manila Seizure Identification No. 6669), and subsequently issued warrant of seizure and detention of 600 hogsheads of Virginia leaf tobacco consigned to Auyong Hian and deposited at the Bureau of Customs, Manila. In the decision of this Court in *Climaco vs. Auyong Hian*, G.R. No. L-19597, promulgated July 31, 1962, We declared that the importation of said tobacco was illegal, as the importation was made in gross violation of the policy contained in Republic Acts Nos. 398 and 1194. Notice of the seizure proceedings, scheduled for hearing on November 26, 1962 at 2:00 o'clock p.m. was received by Auyong Hian on November 21, 1962. In the morning of the scheduled date of hearing Auyong Hian filed a letter asking for an indefinite postponement of the hearing on the ground that Civil Case No. 49639 of the Court of First Instance of Manila (G.R. No. L-19597 of this Court adverted to above), was still pending final decision. (Entry of judgment in case L-19597 was made on October 18, 1962.) The petition for respondent was denied and Auyong Hian was declared in default.

The seizure proceedings continued on December 6 and 10, 1962, in the absence of Auyong Hian who, it appears, did not bother to find out for himself what action was taken on his petition for postponement. Austin Co., Inc. and Sanford Tobacco Co., Tnc, who claim to be the owners, shippers and consignees of the subject Virginia leaf tobacco intervened, claiming that they had entered into contracts of sale with Auyong Hian covering said shipment, but had, pursuant to said contracts, consigned the same to themselves because payment of the purchase price was not made in full; and that the seizure proceedings against the shipment in question was improper because the importation was made on the strength of actual licenses issued by the Government.

On April 23, 1963, the Collector of Customs denied the claim of the intervenors on the ground that the bills of lading covering the shipments had already been duly endorsed by them as shippers, and hence under the law, they had ceased to have any right or interest in the shipment in accordance with Section 1203 of the Tariff and Customs Code. Therefore, pursuant to Sections 2312 and 2609 of the said Code, the Collector declared the tobacco forfeited in favor of the Republic of the Philippines, and ordered the sale thereof in accordance with

Section 2607 of said Code, to buyers who could meet with the necessary qualifications and conditions of the law. For this purpose, said Collector created a Special Bidding Committee to implement the decision and to take charge of the sale at public auction of the tobacco in question.

Notice of the sale was accordingly published and advertised to the public (Annex "C" of Petition). At the auction sale there were only two bidders, the herein intervenor Consolidated Tobacco Industries of the Philippines (CTIP), Inc. and the Philippine Associated Resources. The former was declared as the qualified bidder (as per notice to it by the Collector on June 7, 1963), so it submitted its bid in writing. (Annex "E", CTIP's Petition for Intervention.) The CTIP's bid was for P1,500,000 and was approved by the Collector of Customs on June 26, 1963 (Annex "G-I", Ibid.) Thereafter the company paid the balance of P500,000 to complete the price of P1,500,000 (its deposit of P1,000,000 having been credited in its favor).

On May 4, 1963, herein respondent Tomas Cloma instituted Civil Case No. 53874 in the Court of First Instance of Manila against Auyong Hian, for the collection of alleged fees for services rendered to the latter in obtaining from the President of the Philippines confirmation or activation of Import Control Licenses Nos. 17166, 17169, 17196 and 17199 in the name of Auyong Hian. It was by virtue of these licenses that the latter was enabled to import the 600 hogsheads of Virginia leaf tobacco in question (which as already heretofore pointed out, was declared by this Court to be illegal). Cloma at the same time applied for a writ of attachment, which respondent judge granted on May 14, 1963, upon Cloma's filing a bond in the amount of P20,000.

On May 16, 1963, the sheriff of Manila served a copy of the order of attachment upon herein petitioner, informing that the 600 hogsheads of Virginia leaf tobacco subject of Manila Seizure Identification No. 6669 were subject of the court order. Whereupon petitioner executed an affidavit captioned "Third-Party Claim" and served the same upon the sheriff of Manila in accordance with Section 14 of Rule 59 of the Rules of Court. In said affidavit petitioner informed the sheriff that the tobacco in question had been declared forfeited by the Government as having been illegally imported as per decision of this Court in G.R. No. L-19597. Petitioner claimed that the tobacco was in custodia legis of his office and the Same could not be the subject of attachment. Cloma moved to dismiss the third-party claim and applied for a restraining order and/or preliminary injunction ex parte. In said motion he questioned the validity of the seizure proceedings conducted by herein petitioner, and sought to restrain the latter from selling the 600 hogsheads of Virginia leaf tobacco involved. Petitioner herein objected, but respondent judge nevertheless issued on June 5, 1962 the writ of preliminary injunction restraining the Collector of Customs from enforcing his decision dated April 23, 1963 in Seizure Identification No. 6669 and ordering him to desist from proceedings with the sale at public auction of the forfeited leaf tobacco set for June 10, 1963. Petitioner's motion to have the said order reconsidered was denied on June 6, 1963, so respondent Cloma filed a surety bond for the sum of P20,000. Respondent judge issued a writ of preliminary injunction on June 7, 1963. The above orders of the lower court dated June 5, June 6, and June 7, 1963 are the subject of the instant petition for certiorari.

Acting upon the prayer contained in the present petition, We issued a writ of preliminary injunction prohibiting respondent judge from executing or enforcing the writ of preliminary injunction issued by him against petitioner in Civil Case No. 53874, and from enforcing and/or giving effect to the order of attachment and other pertinent orders issued in said case.

Auyong Hian filed a petition for leave to intervene (granted June 25, 1963) and, later, an urgent motion ex parte praying this Court that, pending decision of herein petition, a writ of preliminary injunction be issued restraining the Collector of Customs or his agents from seizing and selling the 600 hogsheads of tobacco in question and enforcing his decision of April 23, 1963 which was pending review by the Commissioner of Customs. Basis of intervenor's motion ex parte is the claim that enforcement of said decision would cause great injustice and damage

to him and render any favorable decision by the Commissioner of Customs on his appeal ineffectual and without any further benefit to him. Finding from the verified answer of the intervenor to the present petition that the order of the Collector of Customs in the seizure proceedings covering the tobacco in question had been timely appealed to the Commissioner of Customs, before whom the administrative proceedings is still pending, We issued on June 26, 1963 a restraining order, upon intervenor's filing a bond in the amount of P20,000, directing the Collector of Customs to desist temporarily from continuing with the public auction of the tobacco, until July 3, 1963, and ordering the said Collector to show cause why a preliminary writ of injunction should not issue. After due hearing, this Court resolved to grant intervenor Auyong Hian's petition upon his filing a bond of P50,000, without prejudice to petitioner's filing within live days from the court's resolution an opposition on the merits to the petition of intervenor; and likewise allowing the Consolidated Tobacco Industries of the Philippines, Inc. to file a petition for intervention, which it did on July 9, 1963.

The CTIP's petition in intervention alleges that it was the qualified bidder at the public auction sale of the tobacco in question and its bid had already been approved by the Collector, and prays that (1) Auyong Hian's petition for intervention be dismissed; (2) the writ of preliminary injunction issued against the Collector of Customs be lifted and dissolved; and (3) Auyong Hian be ordered to pay damages for P100,000 or any amount which this Court may award on account of the injunction issued at his instance; etc.

On July 3, 1963, respondent Cloma filed his answer to the present petition, making specific denials and offering special and affirmative defenses, and in general questioning the validity of the April 23, 1963 decision of the Collector of Customs.

On May 5, 1964, Auyong Hian filed a "Manifestation" in this Court based on newly discovered evidence (Annex "A" to "Manifestation"). The evidence consists of a copy of a "Contract to Buy And Sell" executed between Consolidated Tobacco Industries of the Philippines, Inc. and La Suerte Cigar & Cigarette Factory, dated June 5, 1963 (or five days before the day set for the auction sale of the tobacco in question), whereby the former agreed to sell and the latter to buy, the 600 hogsheads of imported Virginia and/or Burley leaf tobacco then stored at the Bureau of Customs, and whereby the CTIP, Inc. received P1,000,000 as advance payment on account of the total purchase price of said tobacco. The newly-discovered evidence, Auyong Hian argues, bolsters his claim that the cost of the tobacco in question is not merely P1,500,000 but P7,000,000, more or less, and the auction sale set for June 19, 1963 was rigged and pre-arranged as indicated by the prior sale of June 5, 1963 by the CTIP, Inc.

This Court, having found that intervenor Auyong Hian had made a timely appeal from the decision of the Collector of Customs of April 23, 1963 to the Commissioner of Customs before whom the appeal is still pending action (see Resolution of June 26, 1963), will refrain from passing upon the validity of the administrative proceedings therein questioned and will instead proceed to determine the respective rights of the parties to the present action.

The legal question posed by the present petition, considering the above facts and circumstances, is: 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 the said shipment in Civil Case No. 53874, brought by Cloma against Auyong Hian for services rendered to the latter?

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 Act 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. The tobacco, therefore, is subject to forfeiture in accordance with Section 2530 of the Tariff and Customs Code (formerly Section 1363[f], Revised

Administrative Code), which reads:

"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:

"(f) Any article of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law, and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former."

And the Collector of Customs had the power to order theseizure in accordance with the provisions of Section 2205 of the Tariff and Customs Code, thus:

"SEC. 2205. Exercise of Power of Seizure and, Arrest.—It shall be within the power of a customs' official or person authorized as aforesaid, and it shall be his duty to make seizure of any vessel, aircraft, cargo, articles, animal or other movable property when the same is subject to forfeiture or liable for any fine imposed under the customs and tariff laws, and also to arrest any person subject to arrest for violation of any customs and tariff laws, such power to be exercised in conformity with the law and the provisions of this Code."

This Court has had occasion in the past to uphold the action of the Collector of Customs in ordering the seizure of goods or articles imported or exported in violation of existing laws and regulations, and their forfeiture in favor of the Government. (See *Tong Tek, et al. vs. The Commissioner of Customs*, 105 Phil., 1071; *Pascual vs. The Commissioner of Customs*, 105 Phil., 1039; *Commissioner of Customs vs. Pascual*, 106 Phil., 488; *Commissioner of Customs vs. Serree Investment Co.*, May 16, 1960.)

Respondent Cloma justifies the issuance of the writ of attachment dated May 14, 1963 he secured in the court below by the alleged illegality of the seizure proceedings which culminated in the April 28, 1963 decision of the Collector of Customs. He claims that said decision is arbitrary because the hearing officer and the petitioner herein declared claimant Auyong Hian in default without notifying him of the action taken on his motion to postpone the seizure proceedings, and for lack of notice to respondent Cloma of the said proceedings. So Cloma claims that the sale at public auction was null and void as not authorized by Republic Act No. 1194 and as violative of Section 2601 of the Tariff and Customs Code.

The record shows that Auyong Hian received on November 21, 1963 notice of the hearing of the seizure proceedings scheduled for November 26, 1962. It is true, 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.

As to the lack of notice to respondent Cloma of the seizure proceedings, the same may not be taken against the Collector of Customs who had no way of knowing Cloma's supposed interest in the questioned shipment. The seizure proceedings began on November 8, 1962 and decision thereon was rendered on April 23, 1963, whereas Cloma's action against Auyong Hian (CFI Civil Case No. 53874) was brought only on May 4, 1963, six months after the start of the seizure proceedings. As the Collector of Customs had no way of knowing the alleged claim of Cloma against the subject of the seizure proceedings, said Collector could not be expected to give him notice of the said proceedings; the absence of notice to him does not affect the validity of the proceedings.

Respondent Cloma also claims that as the Court of First Instance of Manila has acquired jurisdiction to try the merits of the complaint in Civil Case No. 53874, it has likewise, the power to issue ancillary writs and processes as well as interlocutory orders in the exercise of its jurisdiction, like the writ of attachment issued on May

14,1963, in favor of respondent Cloma, covering the questioned shipment; and that by virtue of petitioner's filing of a third-party claim in said civil case, petitioner had become a party thereto and made subject to the jurisdiction and authority of respondent court

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, when Civil Case No. 53874 was brought by Cloma. The seizure proceedings were taken by the Collector of Customs in the exercise of its jurisdiction of the customs law (Sees. 2205 and 2530, Tariff and Customs Code). As early as 1913 the exercise by the Collector of Customs of such jurisdiction had already been recognized, thus:

"The Insular Collector of Customs (now Collector of Customs), when sitting in forfeiture proceedings as provided by Act No. 355 (now Republic Act No. 1937), constitutes a tribunal upon which the law expressly confers jurisdiction to hear and determine all questions touching forfeiture and further disposition of the subject matter of such proceeding." (Govt. of the Phils., vs. Gale, 24 Phil., 95).

In a much recent case (Po Eng vs. Commissioner of Customs, 110 Phil., 83), this Court, ruling on the jurisdiction of the Collector of Customs to seize and forfeit the goods involved therein, said:

"In accordance with Section 1250 of the Revised Administrative Code, the Collector of Customs has jurisdiction, indeed has the duty to exercise jurisdiction to prevent importation or otherwise secure compliance with all legal requirements in the case of merchandise of prohibited importation or subject to importation only upon conditions prescribed by law. In the exercise of this jurisdiction, he may subject to forfeiture cargoes and other objects of prohibited importation, in accordance with Section 1363 (f), Revised Administrative Code."

And in the aforementioned case of Climaco vs. Judge Barcelona, wherein the illegality of the importation of the subject tobacco was declared, this Court upheld the action of the Collector of Customs in refusing to release the tobacco in question when it set aside the order of the lower court requiring such release as well as the writ of preliminary injunction issued in accordance therewith.

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.

It is further to be noted that the right of Cloma asserted in Civil Case No. 53874, CFI of Manila, is not a right against the shipment itself, but a contractual right to require Auyong Hian to pay him an amount for securing the revalidation of the licenses. It is a personal right that he had against Auyong Hian and not a real right against the property that Auyong Hian had imported, and, therefore, not subject to attachment as the property of Auyong Hian (Rule 57, Sec. 1, Rules of Court). Consequently, the issuance of the writ of attachment against the tobacco shipment is, for the various reasons above indicated, absolutely null and void. As a direct consequence of the invalidity of the writ of attachment, and Cloma's lack of any right or interest over the tobacco shipment subject of the seizure proceedings, the issuance of the writ of preliminary injunction to stop the seizure proceedings is also absolutely null and void, as the same was issued with grave abuse of discretion or authority on the part of respondent judge.

Whether the purchaser at the auction sale should or must comply with the conditions imposed on all Virginia tobacco by Republic Act No. 1194, especially Sec. 2 thereof authorizing the Monetary Board to allocate and distribute the leaf tobacco among legitimate manufacturers, We do not now decide, as the matter is not in issue before us. For the purpose of the present suit it is sufficient to note that Sec. 2601 of the Tariff and Customs Code subjects to sale seized property after liability to sale had been established by proper administrative or judicial

proceedings in conformity with the provisions of the Tariff and Customs Code.

In view of the foregoing, the petition for certiorari and injunction is granted, and the orders of respondent judge of first instance dated June 5 and 6, and the writ of preliminary injunction dated June 7, 1963 and other pertinent orders issued by him, are set aside, and respondent judge is hereby declared without jurisdiction over the shipment involved in Manila Seizure Identification No. 6669 and to pass upon the validity of the actuations of petitioner Collector of Customs. Pending action by the Commissioner of Customs on the appeal taken by Auyong Hian from the April 23, 1963 decision of the Collector of Customs in the above-mentioned seizure proceedings, the writ of preliminary injunction issued by this Court against said Collector restraining him from proceeding with the sale of the subject tobacco to intervenor Consolidated Tobacco Industries of the Philippines, Inc., shall continue to, remain in full force and effect. Costs against respondent Tomas Cloma.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Regala and Makalintal, JJ., concur.

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