

AUYONG HIAN (HONG WHUA HANG), PETITIONER, VS. COURT OF TAX APPEALS, COLLECTOR OF CUSTOMS, COMMISSIONER OF CUSTOMS, CONSOLIDATED TOBACCO INDUSTRIES OF THE PHILIPPINES, INC. (CTIP...*G.R. No. 28782. November 27, 1981*

Ponente: BARREDO, J.

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Motion for reconsideration filed by respondent Consolidated Tobacco Industries of the Philippines, Inc. (CTIP) of the decision in this case promulgated on September 12, 1974 insofar only as said decision refrains from ruling on the matter of the refund to said respondent of the storage charges alleged to have been advanced by it in order to secure the release of the tobacco sold to it at the public auction sale thereof after having been seized and confiscated by the government, the same having been illegally imported, as ruled in the very decision in this case, and directs that said matter be prosecuted administratively. It is prayed that such directive be withdrawn and that the Court itself decide the issue of whether or not movant is entitled to said refund.

In the comment on said motion as well as further representations made by the Solicitor General in relation thereto, it is expressly stated that the Commissioner of Customs has already "taken the unyielding position that the claim for refund is without legal basis in view (allegedly) of the explicit provisions of Section 2605 of the Tariff and Customs Code", to use the very words of the comment dated November 13, 1974. Apart from this, it appears that the Bureau of Customs and the Department of Finance do not seem to see eye to eye on the matter at issue, as may be gleaned from the fact that notwithstanding the more favorable posture of the Secretary of Finance, as indicated in his 1[st] Indorsement of October 31, 1974, copy of which is attached to the counter-comment of respondent dated November 22, 1974, the genuineness of which has never been questioned, the Bureau of Customs is viewing the matter differently. In other words, the Bureau of Customs does not only prefer that the matter in issue be prosecuted by respondent administratively but has practically announced that if such were done, respondent's claim for refund would be definitely denied by them. Thus, should respondent pursue the administrative course directed in Our decision, it is a foregone conclusion that it would not have any chance, since the mind of those who are supposed to pass upon his claim, at least in the first instance, is already made up. Under these circumstances, there is more than sufficient ground to believe that the administrative proceeding would result in denial of due process to respondent, considering that the authorities who will act as judges, at least in the first instance, can no longer be expected to be entirely impartial.

"Elementary due process requires a hearing before an impartial and disinterested tribunal." (Geotina vs. Gonzales, 41 SCRA 66.) Reiterating the same cardinal point in Martinez vs. Gironella, 65 SCRA 245, We held that:

"It cannot be denied that elementary due process requires that a case be heard by a tribunal that is impartial and disinterested. And if the accused has been the victim of an unfair and partial trial, this court will certainly not hesitate to order a new trial in the interest of justice.

x x x

“A Judge has the duty not only to render a just and impartial decision but also render it in such a manner as to be free from any suspicion as to its fairness and impartiality, and also as to the judge’s integrity. (citing *Geotina v. Gonzales*, supra.).....”

There is also a long line of decisions leaving no room for doubt as to the indispensability of an impartial judge in due process.[1] Such being the case, and considering that from the memoranda of the parties, it is obvious that anyway the basic point in dispute here is purely legal – apart from the obvious possibility that the dispute will ultimately have to be brought to this Court – We have no alternative but to consider the directive in Our decision. We are now persuaded that it would be in the best interest of justice, if this Court were to resolve respondent’s claim for refund aforementioned here and now on the basis of all that appears in the records before Us, there being no indication after all that there are still other relevant facts not yet brought to Our attention relevant to the matter in dispute.

The following background facts stated in the Memorandum of the Office of the Solicitor General dated March 31, 1976 are not disputed by movant:

"1. The 600 hogsheads of Virginia type tobacco were stored at Customs Bonded Warehouse No. 81, operated by Consolidated Terminals, Inc. on June 25, 1962 (Please see Warehousing Warrant No. 030 and 031, dated June 25, 1962, Exh. T and T-1, pp. 56-57, Records in *Auyong Hian vs. CTA*, Case No. 1560).

"2. On November 8, 1962, seizure proceedings (S.I. No. 6669) was instituted against the tobacco as an illegal importation pursuant to Republic Acts No. 698 and 1194 such that on April 23, 1963, a decision on the seizure case was rendered by the collector, Port of Manila, declaring the 600 hogsheads of tobacco forfeited in favor of the government.

"3. The Special Committee which was created for the disposal of the forfeited tobacco ordered and scheduled the sale thereof through public bidding on June 10, 1963, as per 'Notice of Sale' dated May 9, 1963 (Exh. 'HH', pp. 123--124, Records in *Auyong Hian vs. CTA*, supra) wherein the terms and condition of the sale were specified therein as follows:

'1. The above-mentioned articles shall be sold to the highest bidder as determined in Paragraph No. 4(a) hereof and who could qualify to the terms and conditions mentioned in Paragraph No. 4(b) hereof, the said articles may, three days before the date of sale, be inspected by any registered prospective bidder upon showing to the Special Bidding Com-mittee that his/her/its qualifications are in order.

'2. A deposit in cash, or bank manager's or cashier's or certified check pay-able to the Collector of Customs, Manila, the amount of ONE MILLION PESOS (P1,000,000.00) will be required from every prospective bidder before he/she/it can participate in the bidding. All deposits should be deposited with the Customs Cashier, who in turn will issue temporary receipts therefor.

'3. Every prospective bidder is required to register his/her/its name and ad-dress within the period prescribed herein with the Chairman of the Special Bidding Committee (Chief, Law Division, Room 315 Manila Customhouse), together with his/her/its Tax Certificates A and B or C and B, as the case maybe) for the current year, and must submit not later than June 5, 1963 the papers or documents called for or required in No. 4 (b) hereof.

(a) If the highest bid offered, which shall be for no less than the entire lot subject to sale, is sufficient to cover the amount of the redemption value (appraised value plus customs duties and taxes), thereof, it shall be accepted and the bidder thereof shall be required to pay the bid price immediately after the bidding.

(b) Each prospective bidder must submit to the Special Bidding Committee Chairman, as stated in Paragraph No. 3 hereof, evidence showing the following:

- 1) That it must be a bonafide manufacturer of Virginia-type cigarettes and which must buy the subject seized property for its exclusive use taking into account the imperative necessity of using the seized property for blending the type or brand of cigarettes it manufactures, as well as the volume of its production;
- 2) That it has purchased from ACCFA low-grade tobacco, or from farmers and/or through their FACOMAS at the ratio of six (6) kilos of low-grade tobacco to one kilo of the imported Virginia leaf tobacco;
- 3) That it must not have previous or pending case or cases involving gross violation of customs and/or revenue laws; and
- 4) That it must be able to pay the bid price of the seized property, immediately upon award of the purchase thereof, in cash, or in bank cashier's or manager's check or bank certified check payable to the Collector of Customs, Manila;

(c) Only prospective bidders whose qualifications have been found or approved by the said Committee as meeting the foregoing terms and conditions and a list of the names of which shall be prepared and submitted to this Office not later than June 6, 1963 will be entitled to participate in the bidding. The deposit of the highest bidder shall be credited in his favor and shall pay the balance immediately upon official ascertainment that he/she/it is the highest bidder and failure to pay said balance will be sufficient cause to cancel his/her/its offer and he/she/it shall be disqualified to participate in any subsequent bidding thereafter conducted and the amount of P5,000.00 to be deducted from his/her/its deposit of P1,000,000.00 shall be forfeited as penalty therefor.

"5. The above-mentioned articles are offered for sale "AS IS" and the Bureau of Customs gives no warranty as to their condition.

"6. Goods that are subject to some other requirements, like the affixture of BIR stamps, approval of the Bureau of Health etc., shall be delivered only after compliance with those requisites.

"7. The right is reserved to waive any defect or formality, to reject any or all bids, to withdraw the above articles from the sale and to accept such bids as may be more advantageous to the Government.

"8. Storage fees shall be imposed on articles awarded but not claimed within TEN (10) days from the date of approval of the sale.

"9. Any contemplated change or schedule in the bidding day shall be with the approval and consent of the Collector of Customs.'

((SGD) PEDRO PACIS

AActing Collector of Customs

"4. At the scheduled sale of the forfeited tobacco, CTIP turned out to be the 'highest bidder' so much so that on June 26, 1963, the Collector, through the Chairman of the Special Bidding Committee approved the final sale subject to the condition that the balance of the purchase price in the amount of P500,000.00 should be paid within five (5) days from receipt thereof and that the said tobacco will be released in favor of CTIP upon the posting of a surety bond in the amount of P1,000,000.00 to guarantee CTIP's undertaking to export locally grown tobacco. For ready reference, we quote hereunder said letter which is marked Exh. SS. p. 154, Records in Auyong Hian vs. CTA, Id).

'June 26, 1963

The Consolidated Tobacco Industries
of the Philippines, Inc.

Manila

Gentlemen:

In connection with your bid offer to purchase the 600 hogsheads of Virginia leaf tobacco subject of Manila Seizure Idn. No. 6669, in the amount of P1,500,000.00 and to export locally grown tobacco at the ratio of 6 kilos for every kilo of imported Virginia leaf tobacco, please be informed that the Acting Collector of Customs has accepted and approved the same.

Your deposit in the amount of P1,000,000.00 will be credited in your favor and the balance of P500,000.00 should be paid within five (5) days from receipt hereof. The release of said tobacco to you however, will only be made upon your posting of a surety bond in the amount of P1,000,000.00 to guarantee the exportation of the aforementioned locally grown tobacco.

Very truly yours,

ss/ JOSE T. VIDUYA

tt/ JOSE T. VIDUYA

CChairman

SSpecial Bidding Committee"

Additional to the foregoing, it is likewise incontrovertible that notwithstanding compliance by movant with all the requirements of the above-quoted letter, movant was unable to secure delivery of the tobacco purchased by it in view of the pendency of several court proceedings filed by petitioner, Auyong Hian, wherein such delivery was judicially enjoined. When the last of those injunctions was lifted, and before another one could be obtained by said petitioner, movant demanded delivery of the tobacco but the Consolidated Terminals, Inc. (or Luzon Stevedoring Co., Inc.) in whose warehouses the tobacco was stored refused to release the same without its being paid the storage fees due as of then. Apprehensive that a new injunction might be secured by Auyong Hian, which would further delay its getting delivery of the tobacco, and because the Bureau of Customs could not immediately make the corresponding payment, movant paid the Consolidated Terminals, Inc. the storage fees demanded in the amount of P823,768.20 on September 13, 1967, under an express understanding, according to movant, with the Bureau of Customs, thru then Collector of Customs, Pedro Pacis, that the same would be refunded to it.

As stated in Our decision, during the pendency of the main case here, the Solicitor General sought authority from the Court to effect "the refund to CTIP (movant) — of an amount equal to cover the storage charges for the period or time normally consumed in a regular importation, i.e., excluding the storage charges brought about by the delay incident to the institution of the seizure proceedings, since in any case this amount would be chargeable to the importer; here we are anticipating the remote possibility (remote in view of the pronouncements of this Honorable Court in *Cesar Climaco et al. vs. Manuel Barcelona, et al.*, G.R. No. L-19597, prom. July 31, 1962; *Collector of Customs vs. Arca*, G.R. No. L-21383, prom. July 17, 1964 and *Auyong Hian vs. Court of Tax Appeals, et al.*, G.R. No. L-25181, June 11, 1967) that petitioner will obtain a reversal of the decision of the Court of Tax Appeals now under review." And, it is precisely the matter referred to in that motion of the Solicitor General that the Court had directed in the decision herein to be prosecuted administratively, but which We now feel ought to be already resolved here in view inter alia of the unyielding negative position of the Bureau of Customs, by reason of which movant is not certain it will be afforded due process. It is expected that this resolution should put an end

to all the aspects of the subject tobacco importation without further unnecessary loss of time and effort prejudicial to all concerned, particularly the courts.

Upon the foregoing premises, the fundamental issue to be resolved boils down to what is the proper construction that should be given to Section 2605 of the Tariff and Customs Code which provides as follows:

"Sec. 2605. Disposition of Proceeds. - The following charges shall be paid from the proceeds of the sale in the order named:

- a. Expenses of appraisal, advertisement and sale.
- b. Duties except in the case of abandoned and forfeited articles.
- c. Taxes and other charges due the Government.
- d. Government storage charges.
- e. Arrastre and private storage charges.
- f. Freight, lighterage or general average, on the voyage of importation, of which due notice shall have been given to the Collector."

in the light of the aforequoted terms and conditions under which movant's bid to purchase the tobacco in question was accepted and approved by the customs authorities.

As can be seen, among the items, apart from customs duties etc., that are deductible from the proceeds of any public auction sale of goods confiscated by the Bureau of Customs is that for "arrastre and private storage fees," meaning evidently, that should any such arrastre and/or storage fees corresponding to the goods sold be due, the same should be paid out of the amount that the winning bidder has paid, as accepted by the customs authorities. Indeed, in connection with the tobacco herein involved, in the letter of the Collector of Customs dated February 25, 1970 addressed to the Solicitor General, it was expressly admitted that "Under Section 2605-e of the same Code (the Customs and Tariff Code) expenses for the storage is deductible from the proceeds from the sale of the tobacco." According to the Solicitor General in his motion for leave referred to in our decision, "the same view is expressed by Acting Commissioner of Customs in his letter to the undersigned counsel dated June 8, 1971 and December 3, 1971." [2]

We are of the considered opinion that the section of the Customs and Tariff Code cited cannot have any other intent. This must be so because until after goods sold by the Bureau of Customs in an auction sale shall have been delivered either actually or constructively to the winning bidder, ownership thereof remains with that office. Such is the unequivocal provision of Article 1477 of the Civil Code which says, "The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof." Accordingly, it is but logical and proper that, unless otherwise expressly stipulated, all expenses incurred for the preservation and keeping or storage of the goods sold should be borne by the Bureau until their actual or constructive delivery to the buyer. Relatedly, Condition No. 8 of the Notice of Sale provides that "Storage fees shall be imposed on article awarded but not claimed within ten (10) days from the date of approval of the sale." To Our mind, this provision, indicates that responsibility for storage fees would pass to the buyer only upon the occurrence of the contingency so stated and not earlier. Movant did claim the tobacco it had purchased within the ten-day period stipulated the Bureau of Customs was the one not ready to comply.

The Government's reliance on Article 1476 of the Civil Code is obviously inapposite. The tobacco here in question was not delivered to movant until September 22, 1967 in view of court injunctions, the last of which was dissolved only on April 8, 1965. While of course it cannot be said that the delay was due to the fault of the Bureau

of Customs, much less, however, could any blame be attributed to the movant. But as between these parties, there can be no doubt that responsibility for any expenses or damages arising during the pendency of the injunction should be the liability of the owner of the goods who is under obligation to warrant its title and right to sell and deliver the same to the buyer free from any adverse claim. As a matter of fact, it was precisely for fear that the storage charges for which the Bureau would be liable would be bigger than on May 18, 1965, Acting Collector Pedro Pacis addressed the following self-explanatory letter to the holder of the tobacco in question:

"The Storekeeper

Customs Bounded Warehouse No. 81

Manila

Sir:

In connection with the 600 hogsheads Virginia Leaf Tobacco involved in Manila Seizure Identification No. 6669, which are presently stored in Customs Bounded Warehouse No. 81 and which, pursuant to Section 2607 of the Tariff and Customs Code, were sold to, and fully paid for by, the Consolidated Tobacco Industries of the Philippines, Inc. after its bid was approved by the Cabinet Committee on Public Bidding of Tobacco, please be informed that the Supreme Court's order of July 3, 1963 against the delivery of the property issued subsequent to the said purchaser's having earlier complied with the condition of award, was superseded by another order of the Supreme Court, per its Resolution of April 8, 1965, which among others reads:

'RESOLVED, that the writ of preliminary injunction issued by it be considered dissolved and of no further effect.'

In view thereof and in line with the advice of the Solicitor General in his 1st Indorsement to this Office dated April 22, 1965 and again in his 1st Indorsement to the Commissioner of Customs dated May 17, 1965, immediate release of the said property to the Consolidated Tobacco Industries of the Philippines, Inc. should be effected to avoid further accumulation of storage charges and to forestall any untoward incident that may take place affecting the property before the Government is relieved of its obligation to deliver the same to the aforesaid awardees.

Whatever storage charges are due in favor of the operator of the aforementioned warehouse should be forwarded to this Bureau for settlement pursuant to law.

Very truly yours,

((SGD.)) PEDRO PACIS

Acting Collector of Customs"

(Pp. 483-484, Record.)

We cannot accept the contention in the Government's Memorandum of March 31, 1976 that Condition No. 5 in the Notice of Sale to the effect that "The above-mentioned articles (the tobacco) are offered for sale 'AS IS' and the Bureau of Customs gives no warranty as to their condition" relieves the Bureau of Customs of liability for the storage fees in dispute. As we understand said Condition No. 5, it refers to the physical condition of the tobacco and not to the legal situation in which it was at the time of the sale, as could be implied from the right of inspection to prospective bidders under Condition No. 1. It has no bearing at all on the obligation of the Bureau of Customs, as seller, under Article 1495 of the Civil Code "to transfer the ownership and deliver, as well as warrant the thing which is object of the sale." This warranty is as to the right to sell and capacity to deliver. What is more, applying Condition No. 5 literally, there is reason to hold that, had the tobacco here in issue suffered any deterioration after the sale, but before its delayed actual release to movant, the latter could be entitled to indemnity

for any damage resulting from such deterioration. (Article 1170, Civil Code.)

In its aforementioned Memorandum, the Government contends that assuming it is liable, it should refund to movant only P47,382.36 corresponding to the period from June 25, 1962, when the tobacco was stored to June 26, 1963 when the bid was finally approved by the Bureau of Customs. That contention is devoid of legal justification. Under the law on sales, once the object and the price are agreed upon, it becomes the inescapable obligation of the seller to immediately deliver the object to the buyer, unless a period for such delivery has been otherwise stipulated. In this particular case, the bid of movant was approved by the Bureau of Customs subject to the condition that the tobacco in question was to be "released in favor of CTIP (movant) upon the posting of a surety bond in the amount of P1,000,000.00 to guarantee CTIP's undertaking to export locally grown tobacco." (Letter of June 26, 1963 of Jose T. Viduya, Chairman, Special Bidding Committee) That this condition was duly complied with does not appear to be controverted. But such compliance notwithstanding, release was delayed, not only because of any court injunction but due also to seeming difference of opinion at the time between the Collector and the Commissioner of Customs as to who between them was supposed to order such release. (See pp. 26-27, Annex A of the Petition.) Surely, this circumstance cannot be taken against movant.

The Government contends also that it would not be equitable to make the Bureau of Customs liable for the refund demanded by movant, since the auction sale netted only P1.5 M, whereas if the importation were allowed in 1961, the Government would have realized not less than P3 M. The argument is not persuasive, if only because the Court has precisely found the importation to be illegal. We cannot see how any consideration of inequity can be predicated on the hypothesis that something judicially declared illegal was legal. Quite the other way around, the stand of the Government is what appears to be inequitable, for whereas, the amount of P1.5 M paid by movant fully covers all the items enumerated in Section 2605, including the amount paid by movant for private storage fees, still the Government refuses to refund movant, notwithstanding that the provision just cited expressly ordains that the said amount for storage fees is deductible from the accepted bid price. In effect, the Government is trying to unjustly enrich itself at the expense of movant.

IN VIEW OF ALL THE FOREGOING, the decision of this Court in the above-entitled case of September 12, 1974 is hereby modified only in the sense that the administrative remedy therein suggested for the refund of storage fees above discussed is hereby declared unnecessary and the Collector of Customs and/or the Commissioner of Customs are hereby ordered to refund to movant Consolidated Tobacco Industries of the Philippines, Inc. (CTIP) the amount of Eight Hundred Twenty-Three Thousand Seven Hundred Sixty-Eight Pesos and Twenty Centavos (P823,768.29) paid by said movant to Luzon Stevedoring Corporation on September 13, 1967, without interest. In all other respects, the said decision stands.

Aquino, Concepcion, Jr., Fernandez, and De Castro, JJ., concur.

Fernandez, J., designated to sit with the Second Division.

Abad Santos, J., no part.

[1] Gutierrez vs. Santos, L-15824, May 30, 1961, 2 SCRA 249; Del Castillo vs. Javelona, L-16742, Sept. 29, 1962, 6 SCRA 146; People vs. Gomez, L- 22345, May 29, 1967, 20 SCRA 293; Austria vs. MAsaque, L-22536, Aug 31, 1967, 20 SCRA 1247; Pimentel vs. Salanga, L-27934, Sept. 18, 1967, 21 SCRA 160; Zaldivar vs. Estenzo, L-26065, May 3, 1968, 23 SCRA 533; Luque vs. Kalayaan, L-26826, Aug. 29, 1969, 29 SCRA 165; Paredes vs. Gopengco, L-23710, Sept 30, 1969, 29 SCRA 688; Geotina vs. Gonzales, supra; Tobias vs. Ericta, Adm. Case No. 242-J, July 29, 1972, 46 SCRA 83; Mateo Jr., vs. Villaluz, L-34756, March 31, 1973, 50 SCRA 18; Umale vs. Villaluz, L-33508, May 25, 1973, 51 SCRA 84; Palang vs. Zosa, L-38229, Aug. 30, 1974, 58 SCRA 776; People vs. Ancheta, L-39993, May 19, 1975, 64 SCRA 90; Martinez vs. Gironella, supra.

[2] See also the letter of Acting Collector Pedro Pacis of March 18, 1965, *infra*. There is also the letter of March 29, 1966 of Commissioner of Customs Jacinto T. Gavino to the Solicitor General reading thus:

"The Honorable

The Solicitor General

Manila

Sir:

This is in reply to your letter dated March 24, 1966, requesting advice on the stand of this Office regarding the release of the 600 hogsheads Virginia leaf tobacco by Collector Pedro Pacis to the Consolidated Tobacco Industries of the Philippines, Inc. (CTIP) for purposes of comment to be submitted to the Supreme Court on the petition to lift the preliminary injunction filed by the CTIP.

After a careful examination of the records of the case involving this commodity, we found the following:

1. That on June 26, 1963, the Collector of Customs, thru the Chairman of the Special Bidding Committee, Jose Viduya, had accepted the bid offer of the CTIP to purchase the said tobacco for the sum of P1,500,00. By virtue of such acceptance, the CTIP paid the sum of P1,500,00 and had exported 6 kilos of local Virginia tobacco for every kilo of the 600 hogsheads in question in compliance with the conditions set forth in the public bidding;
2. That the auction sale conducted by the Bureau regarding said tobacco, was approved by a Cabinet Committee (composed of Secretary of Justice, Juan R. Liwag, Chairman, Secretaries Cornelio Balmaceda and Rufino Hechanova, Deputy Auditor General Jesus Yriarte and Governor Andres Castillo, as members), under a 1st Indorsement dated June 24, 1963;
3. The validity and regularity of the forfeiture and sale in public bidding, were passed upon and upheld by the Supreme Court in the case of Collector of Customs vs. Arca, G.R. No. L-21389, promulgated July 17, 1964;
4. That on April 22, 1965, the then Solicitor General Arturo A. Alafritz, rendered an opinion "agreeing to the delivery of the tobacco to the CTIP as justified under Section 2607 of the Tariff and Customs Code, and then finally, on May 17, 1965, the Solicitor General, again rendered an opinion favoring the release in this wise.

"Finally, in a resolution of the Supreme Court on April 8, 1965, in the same case, the Court considered dissolved the writ of preliminary injunction previously issued by it. As of now therefore, there exists no legal impediment to said release, notwithstanding the appeal taken by Auyong Hian to the Court of Tax Appeals with respect to the legality of the seizure and forfeiture proceedings against the tobacco and not on the disposition thereof. Had not the Supreme Court issued the injunction in the Arca Case in June, 1963, the Collector of Customs could have released the leaf tobacco in question even during the pendency of the seizure and forfeiture proceedings, subject of course to any existing valid liens, for he is so authorized by the aforesaid Section 2607 to use his discretion in making such a disposition, if the circumstances presently surrounding the said leaf tobacco warrant the exercise of his discretion under the law."

3. On May 18, 1965, the Collector of Customs issued the Order of Release wherein he stated as follows:

"In view thereof and in line with the advice of the Solicitor General in his 1st Indorsement to this Office dated April 22, 1965 and again in his 1st Indorsement to the Commissioner of Customs dated May 17, 1965, immediate release of the said property to the Consolidated Tobacco Industries of the Philippines Inc. should be effected to shove off further accumulation of storage charges and to forestall any untoward incident that may take place affecting the property before the Government is relieved of its obligations to deliver the same to the aforesaid

awardees."

As stated in your letter of March 24, 1966, it is your opinion that the Replevin case in the Court of First Instance of Manila docketed as Civil Case No. 61109, entitled "Republic of the Philippines vs. Consolidated Tobacco Industries of the Philippines", had been filed primarily to clarify as to who has the authority to release the tobacco, and not for any other purpose. Under the given circumstances, unless your Office as counsel for the government finds other legal impediments in the release thereof, this Office is constrained to concur in the action by the Collector of Customs of Manila.

The Office has taken this position because it is conscious of the fact that any unnecessary delay in the disposition of the case will only expose the subject commodity to the danger of deterioration thus risking the possibility of losing not only P1,500,000 as the agreed price for the tobacco but also the storage charges due thereon in the amount of P4,000 a month since May 18, 1965.

Very truly yours,

JACINTO T. GAVINO

Commissioner of Customs"

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