

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LUIS GASKELL ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 45201. June 30, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The Government of the Philippine Islands brought this action to recover from the defendants Luis Gaskell, Exequiel Teotico and Luzon Surety Co., Inc., a certain amount of money representing the difference between the customs duties which the first-named defendant paid for merchandise imported and withdrawn by him from the Bureau of Customs and the customs duties to be paid by him under the law, the liability of the defendant corporation, as surety, being limited to the amount of the bond given and signed by it, plus the legal surcharges due and owing, legal interest, and the costs. Exequiel Teotico died during the pendency of the case, whereupon, the complaint was dismissed as to him upon petition of the plaintiff. The defendant Luis Gaskell interposed a cross-complaint against the Simplex Trading Company on the ground that this corporation was the real importer and owner of the imported merchandise, but the cross-complaint was by the court dismissed because the said corporation neither voluntarily appeared nor was duly summoned. The defendants Luis Gaskell and Luzon Surety Co., Inc., appealed from the judgment rendered in the case by the Court of First Instance of Manila, sentencing the first to pay to the plaintiff the sum of P68,478.03, with legal interest thereon from April 22, 1932, and the Luzon Surety Co., Inc., to the part of said amount left unpaid by said defendant up to the sum of P9,000, with legal interest thereon from the said date, plus the costs.

In 1930 the defendant Luis Gaskell was a licensed customs broker and did business as such in the Bureau of Customs under the style Manila Brokerage. Exequiel Teotico was his agent authorized to do business in his name with the Bureau of Customs in the port of Manila. During the period from April 24 and December 5, 1933, Luis Gaskell, represented by his agent Exequiel Teotico, and acting as holder or possessor of the bills of lading, imported merchandise described in Exhibits F, F-1, F-2 to Y, Y-1 and Y-2, holding out that he was the true importer thereof. The declarations required by law to be filed were sworn to by Exequiel Teotico as agent of Luis Gaskell and Manila Brokerage. The agent stated in the affidavit accompanying each declaration that the declared value of the merchandise was true and correct according to his knowledge and belief; he also filed in the Bureau of Customs in support of the declaration certified invoices purportedly referring to the merchandise and bills of lading issued to order and duly endorsed by the consignee mentioned therein, Luis Gaskell being the holder in due course of the aforesaid bills of lading. The employees of the Bureau of Customs, under the belief that the values declared were correct, assessed the duties which the merchandise should pay according to the values declared and thereafter the merchandise were delivered to Luis Gaskell through the Manila Terminal.

After the delivery of the merchandise and within one year from the payment of the duties thereof, the Bureau of Internal Revenue confiscated the files and books of account of the Simplex Trading Company, the indorser to Gaskell of the bills of lading of the merchandise, and among the documents seized were found invoices and bills

of lading referring to the merchandise delivered to Luis Gaskell. The merchandise described in these invoices and bills of lading were the same ones which had been declared by Luis Gaskell through his agent and delivered to him. Thus were discovered the discrepancies existing between the documents, whereupon, the Collector of Customs ordered a new assessment of the duties to be paid by the merchandise in accordance with the values which had been discovered on the commercial invoices found in the office of the Simplex Trading Company, The appraisers' division of the Bureau of Customs made a new assessment which was approved by the accounting division and by the Collector of Customs within one year from the entry of the merchandise, in accordance with the provisions of section 1283 of the Revised Administrative Code. Under the new assessment, Luis Gaskell and Manila Brokerage, under which firm he worked, owed for unpaid customs duties the sum of P32,595.24, which represented the difference between the duties paid by Gaskell and those which he should have paid. For failure to pay the duties on time and for undervaluation and misdescription of imported merchandise, Luis Gaskell and Manila Brokerage also owed for surcharges the sum of P35,882.79, under sections 1280 to 1290 of the Revised Administrative Code.

As to the liability of Luzon Surety Co., Inc., it appears that on December 26, 1929, and June 25, 1930, Luis Gaskell, as principal and representative of Manila Brokerage, and Luzon Surety Co., Inc., as surety, executed two bonds for P2,000 each in favor of the Government of the Philippines whereby they undertook and bound themselves, jointly and severally, to pay to the Collector of Customs the amount of duties and such other additional fees as may be found owing under the law for merchandise declared or imported by Luis Gaskell or the Manila Brokerage during the first and second semesters of the year 1930. Pursuant to these bonds Luis Gaskell, through his agent Exequiel Teotico, executed separate bonds attached to each of the declarations filed in connection with the imported merchandise. On December 26, 1929, Luis Gaskell, as principal and representative of the Manila Brokerage, and Luzon Surety Co., Inc., as surety, executed another bond for the sum of P2,000, and on January 1, 1930, they executed another bond for P3,000, both bonds being in favor of the Government of the Philippines Islands, whereby they bound themselves, jointly and severally, to indemnify the Government for any damage which it may suffer by reason of the violation of any of the conditions stated therein. After the discovery of the discrepancies aforementioned in the values of the merchandise and that there were owing from Gaskell customs duties and surcharges in the aforesaid amounts, the Collector of Customs demanded payment of Luis Gaskell, Manila Brokerage and the Luzon Surety Co., Inc., but they all refused to make such payment.

In their first assignment of error the appellants contend that the court erred in not holding that Luis Gaskell, in declaring the merchandise, acted as a mere customs broker and not as an importer; and in the second assignment of error they claim that the court likewise erred in not finding that the real owner and importer of the merchandise was Simplex Trading Company. The legal question raised by these two assignments of error is answered by section 15 of the Philippine Tariff Act of 1909, reading as follows :

"Sec. 15. Philippine Tariff Act 1909.—That all articles, good, wares, or merchandise imported into the Philippine Islands shall, for the purpose of this Act, be deemed and held to be the property of the person to whom the same may be consigned; but the holder of any bill of lading, drawn to order and indorsed by the consignor, shall be deemed the consignee thereof; and in case of the abandonment of any articles, goods or merchandise to the underwriters, the latter may be recognized as the assignee."

"The consignee of imported goods is deemed the owner for the purpose of the collection of the duties on the goods consigned." (T. D. 28182, citing 125 Fed. Rep., 181; T. D. 25093—U. S. v. Bishop.)

"The holder of the bill of lading is the consignee thereof." (T. D., 25092, 28182, 39400; Art. 257, U. S. Customs Regulations of 1923; Sec. 483, U. S. Tariff Act of 1930.)

Under this section 15 of the Philippine Tariff Act of 1909, the holder of a bill of lading, drawn to order and

indorsed by the consignor, shall be deemed the consignee of the merchandise, and this is the case of the appellant Luis Gaskell because according to the proven facts, through his agent Exequiel Teotico, he presented the bills of lading together with the certified invoices, and said bills of lading were drawn to order and indorsed by the consignee Simplex Trading Company. This same legal point was raised and resolved by this court in the case of *Government of the Philippine Islands vs. Gaskell*, (R. G. No. 39256, April 19, 1934), as follows: "The foregoing brings us to the question of defendant Gaskell's liability for the illegal entry of the goods. In this connection, the sixth, seventh, eighth, and ninth assigned errors will be discussed together. It is conceded that the bills of lading attached to Exhibits E to Y were indorsed in blank and handed over to the defendant Gaskell. As such holder, he is deemed the consignee of the goods and accordingly, liable for the payment of customs duties thereon. (Sec. 15, Philippine Tariff Act of 1909.) The point is made, however, that the indorsement was made in Gaskell's favor only as agent for the sole purpose of authorizing him to take possession of the goods. This is rebutted by the entry declarations Exhibits E to Y wherein the Manila Brokerage of which Gaskell was the manager appears to be the sole importer. It is also rebutted by Gaskell's bond Exhibit B executed not as mere customs broker but as importer." The appellant Gaskell cannot now successfully claim that he acted as a mere broker or agent of the consignee of the merchandise, because both in the declarations Exhibits F to Y filed by him through his agent as well as in the bonds given by him, he stated that he acted an importer and not as a mere broker. As to the contention that the Simplex Trading Company was the real owner and importer of the merchandise, what was said in connection with the first assignment of error refutes the argument advanced in support of the second assignment of error. Before the law and under the facts, the importer of the merchandise is the appellant Luis Gaskell, and while the Simplex Trading Company was actually the owner and consignee of the merchandise, the fact is that the latter company indorsed the bills of lading to Gaskell and under section 15 of the Philippine Tariff Act of 1909, the latter was legally the importer of the merchandise.

In the third assignment of error, the appellants contend that the court should have held that the true values of the merchandise are those shown by the declarations and other documents presented as Exhibits F, F-1, F-2 to Y, Y-1 and Y-2, especially in view of the fact that the declarations have been revised and approved after an examination and inspection of the same merchandise made by experts of the Bureau of Customs; in the fourth assignment of error the appellants contend that the court erred in holding that Luis Gaskell owes the sum of P32,594.24, which is the difference between the duties paid and those which he should have paid, on the sole basis of the assessment made by the Appraisers' Division, approved by the Accounting Division of the Bureau of Customs, considering that the revaluation is merely a copy of the values appearing in the commercial invoices and bills of lading seized from the office of the Simplex Trading Company; and in the fifth assignment of error it is alleged that the court should have dismissed the complaint against the appellant Luis Gaskell. These three assigned errors find no support either from the proven facts or the law. After the discovery that there had been a false declaration in the values of the merchandise withdrawn by Luis Gaskell, the Collector of Customs ordered a revaluation and this was made by taking as basis the true values of the merchandise as they appeared in the commercial invoices which had been seized from the office of the Simplex Trading Company. These invoices are the genuine ones, and according to Gaskell from them had been copied the certified copies of the invoices which he had presented together with the declarations which he had filed in order to withdraw the merchandise. Gaskell neither presented any evidence nor attempted to show that the values stated in the commercial invoices seized were not true or genuine. In view of this, the court did not commit any error in holding that the difference in values between the invoices was the amount which Gaskell owed the Government as customs duties which he should have paid. For these same reasons, the court did not likewise err in dismissing the complaint against the appellant Luis Gaskell.

In the sixth, seventh, eighth and ninth assigned errors, the appellants contend that the court erred in holding the Luzon Surety Co., In., liable upon the bonds executed and signed by it in favor of the Government of the

Philippine Islands. These assigned errors are not meritorious. A cursory reading of the bonds which have been executed shows that the liability of the surety, Luzon Surety Co. Inc., is inescapable. By these bonds, this company bound itself to pay, jointly and severally with Luis Gaskell, any import duties which the latter should fail to pay to the Government, or to indemnify the latter for any damages which it may suffer by reason of any violation of the Customs laws by Gaskell. Upon failure of Gaskell to pay the customs duties claimed by the Plaintiff, which he was legally bound to do, Luzon Surety Co., Inc., became liable in solidum under the terms of the bond which it voluntarily signed. For this reason, the court did not commit the errors assigned in finding it liable as surely to the extent of the said bonds.

In view of all the foregoing, the appealed judgment is affirmed, with the costs of this instance to the defendants and appellants. So ordered.

Avanceña, C. J., Villas-Real, Diaz, and Laurel, JJ., concur.

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