

COLLECTOR OF CUSTOMS OF MANILA, PETITIONER, VS. INTERMEDIATE APPELLATE COURT, HEIRS OF BIENVENIDO FERRER AND HEIRS OF EDUARDO BRAVO, RESPONDENTS.

G.R. No. 65418. September 25, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

For resolution is the "Urgent Omnibus Petition for Contempt and Clarification/Declaration of Official Liability of the Collector of Customs of Manila in G.R. No. 65418" filed by private respondents.

The instant motion originated from a judgment rendered by this Court in the above-entitled case on June 18, 1985 affirming the decision of the then Intermediate Appellate Court in AC-G.R. CV No. 61644 which declared the Collector of Customs of Manila liable to herein private respondents for misdelivery of cargo.

The following facts are stated in the said decision of the Court:

"As background, it should be stated that in the execution pending appeal in Civil Case No. 42189 of the Manila Court of First Instance, plaintiffs Bienvenido Ferrer and Eduardo Bravo garnished on October 31, 1961 33 cases of rayon and synthetic textiles consigned in 1961 to (believe it or not) defendant Cotabato Palay & Corn Producers, Inc. The textiles were in the custody of the Collector of Customs of Manila.

"The garnished textiles were later transferred on December 19, 1963 to the bonded warehouse of Chavez, Salinas & Co. by the sheriff who directed the warehouseman not to release the goods without his written authorization. However, nine days later, or on December 28, 1963, through the use of two delivery permits with one Jose Santiago as the customs broker of the Cotabato Palay & Corn Producers, Inc., the textiles were released purportedly with clearance from the shipping agent and the sheriff.

"Nearly five years later, or on December 3, 1968, after the judgment for P90,000 was affirmed by the Court of Appeals, Collector Jose Viduya, totally unaware of the said release and assuming that the textiles were still in the custody of Chavez, Salinas & Co., sent a letter to the sheriff requesting for the release thereof. The warehouseman revealed that the textiles were no longer in his custody and that they were released five years earlier with the proper formalities.

"The investigation of the National Bureau of Investigation disclosed that the note of the sheriff attached to the delivery permits was a forgery. Persons suspected of the crime were charged. No customs employee was involved.

"The garnishers, Bravo and Ferrer, filed on May 19, 1969 in Civil Case No. 42189 a motion to compel the Collector and the sheriff to pay for the invoice value of the textiles in the sum of \$17,504.46. Judge Villazor denied the motion. He held that the Collector was not liable under section 3511 of the Tariff and Customs Code. The forgery of the delivery permits was a fortuitous event. The sheriff was not liable because the textiles were in the custody of the warehouseman.

"Ferrer and Bravo appealed to the Court of Appeals which reversed the ruling of Judge Villazor. The Appellate

Court held that because of the negligence of the customs employee serving as storekeeper in the bonded warehouse the Collector is liable for the misdelivery of the textiles. The Collector appealed to this Court."[1]

In upholding the liability of the Collector of Customs, this Court said:

"The controlling case is *Lung Chea Kung Kee & Co. vs. Aldanese and Chua Soco*, 45 Phil. 784, where it was ruled:

'When Collector of Customs is officially liable: Under the provisions of sections 1316 and 1408 of the Administrative Code, the Collector of Customs is officially liable for 'misdelivery of merchandise' where it was delivered by a subordinate employee without the surrender of a bill of lading or the exacting of a bond, even though such delivery was made without the knowledge, consent, or approval of the Collector.'

Section 1408 is identical to section 3511 while section 1316 covers delivery of merchandise without production of a bill of lading.

"WHEREFORE, the judgment of the Appellate Court is affirmed. No costs."[2]

Petitioner Collector of Customs, through former Solicitor General Estelito P. Mendoza, filed a motion for reconsideration[3] of the decision based on the following grounds:

"1. The factual findings of respondent Court to the effect that the Manila Collector of Customs is liable for the loss of the garnished goods; that the storekeeper was grossly negligent in not checking the genuineness of the sheriff's signature; and that the bonded warehouse did not have a facsimile of the sheriff's signature, should have been reviewed by this court as an exception to the general rule that 'factual findings of the Appellate Court are binding on this Court', since those findings are contrary to those of the trial court and the assailed judgment apparently resulted from misapprehension of facts. Such a review by this Court would show that the Collector of Customs cannot be 'exclusively liable for the loss of the goods' in question.

"2. The case of *Lung Chea Kung Kee & Co. vs. Aldanese and Chua Soco*, 45 Phil. 784, cited by this Court, is inapplicable to the case at bar.

"3. Assuming arguendo that Article (sic) 3511 of the Tariff and Customs Code of 1957 is applicable, the Collector of Customs can only be officially liable, not personally liable."

On July 22, 1985, this Court denied with finality said motion for reconsideration and ordered that entry of judgment be made.[4] Consequently, on August 5, 1985, entry of judgment was made declaring the decision of this Court dated June 18, 1985 final and executory as of said date.[5]

Thereafter, a second motion for reconsideration,[6] invoking virtually the same grounds relied upon in the first motion, was filed but was subsequently denied in a resolution dated October 16, 1985.[7]

Notably, in contending that the Collector of Customs of Manila cannot be held personally liable for the loss of the goods, the Solicitor General had averred in both motions for reconsideration that:

"In any event, the Collector of Customs cannot be personally liable for the loss of the goods.

The goods involved consist of textile with an invoice value of \$17,504.46 in 1961, or P70,017.84 at the then rate of P4.00 to a dollar. On the assumption that the Collector of Customs is liable at all for this value of the goods that were misdelivered, he could not be personally liable therefor, but only officially liable. Even this Court explicitly stated that the Collector of Customs 'is officially liable for a misdelivery of merchandise' either by himself or his subordinates."[8]

which contention, we repeat, was twice rejected by this Court.

Consequently, judgment having become final, private respondents moved for and were issued a writ of execution which was served upon Collector of Customs Guillermo Orbos who claimed that liability thereunder is official in nature. However, the Office of the Manila District Collector of Customs insisted that the money judgment is a personal liability of former Collector Jose T. Viduya. The official stand of the Office of the Collector of Customs was mainly based on the legal opinion of the Law Division, Bureau of Customs, Port of Manila, as contained in an office memorandum dated July 25, 1986, and the official opinion of Customs Commissioner Wigberto E. Tañada, contained in his 2nd Indorsement dated August 1, 1986 addressed to the Manila District Collector of Customs.[9]

As stated at the outset, private respondents filed the instant omnibus motion seeking the clarification of the collector's liability, said respondents opining that the same should be declared official in nature. They likewise charged in their motion that Isauro C. Garcia, Chief of the Legal and Intelligence Division, Bureau of Customs, Manila, had committed contempt of court for having allegedly prepared the official opinion of Customs Commissioner Tañada which declared that the liability of petitioner collector is personal, thereby constituting an unlawful interference with the decision of this Court allegedly finding said collector officially liable.

On the other hand, then Solicitor General Sedfrey A. Ordoñez, in his comment,[10] claims that former Collector of Customs Jose T. Viduya is personally liable; and that being a personal liability of the above-named former collector, who had long retired from government service, the same cannot be assumed or inherited by the present incumbent District Collector of Customs Guillermo Orbos.

1. The Office of the Solicitor General does not appear to have been consistent in its stand on the nature of the collector's liability. In the two motions for reconsideration filed by former Solicitor General Mendoza, as hereinbefore quoted, it is contended that the collector's liability is official and not personal.

As earlier stated, these two motions were denied by this Court. Thereafter, in the comment of Solicitor General Ordoñez on the omnibus motion of herein private respondents, it is asserted that said liability is personal.

If we are to follow, as we must, the inevitable implications of the repeated denials of the two motions for reconsideration filed by Solicitor General Mendoza, considering that it was squarely claimed and presented therein for resolution that the collector is not personally but officially liable, then the irresistible conclusion is that the Court in denying the same decided that, under the factual situation involved, the collector is personally liable. That this was its intendment is not without support.

2. The case of *Lung Chea Kung Kee & Co. vs. Aldanese, et al.*,[11] which was the basis of the Court's decision in the case at bar actually involved an interpretation of Section 1408 of the Administrative Code, now Section 3511 of the Tariff and Customs Code, which provided:

"SEC. 1408. Collector of customs not liable in respect of rulings in customs cases. - No collector or other officer of customs shall be in any way personally liable for or on account of any official ruling or decision as to which the person claiming to be aggrieved has the right to obtain either an administrative or judicial review under the provisions of this chapter; and except for a misdelivery of merchandise, a collector of customs shall not, in the absence of his own abuse of authority, be liable to any person for a loss occasioned either by his own official act or the act of his subordinates."

Interpreting said provision of law in said case, the Court explained:

"x x x It specifically provides that no collector or other officer of customs shall in any way be personally liable for or on account of any official ruling or decision for which an aggrieved claimant has the right of an administrative or judicial review. It then says:

‘And except for a misdelivery of merchandise, a collector of customs shall not, in the absence of his own abuse of authority, be liable to any person for a loss occasioned either by his own official act or the act of his subordinates.’ It provides that in the absence of his own abuse of authority, a collector of customs shall not be liable ‘to any person for a loss occasioned either by his own official act or the act of his subordinates.’ In other words, the section specifically provides that a collector shall not be personally liable for any official ruling, and that in the absence of his own abuse of authority, he shall not be liable ‘to any person for a loss occasioned either by his own official act or the act of his subordinates.’ But it will be noted that an exception for such liability is made ‘for a misdelivery of merchandise.’ x x x" (Underscoring supplied).

It can, therefore, be safely deduced that in said case this Court really intended to hold that the collector's liability was personal in character. It bears mention that what was quoted in the decision of this Court in the case at bar was merely the syllabus in the report of said Lung case thus giving rise to the seeming ambiguity, now subject of the present dispute between the parties, which, however, had shortly thereafter been clarified by the Court.

The aforesaid Lung Chea Kung Kee & Co. case was decided on March 6, 1924. Then, on September 25, 1924, the case of *The American Express Co., Inc. vs. Natividad*[12] was promulgated wherein that decision in Lung was discussed and clarified as follows:

"A second type of cases is disclosed by our decision in *Lung Chea Kung Kee & Co. vs. Aldanese and Chua Soco* ([1924], 45 Phil., 784). There, the merchandise was wrongfully delivered without surrender of the bill of lading or the execution of a bond. The plaintiff accordingly sought to recover the value of the merchandise from the collector of customs solely, and in this he was successful. While it has not escaped our notice that throughout the decision the modifying word 'officially' is used, to denominate the liability of the collector of customs, yet the judgment ultimately rendered was ‘in favor of the plaintiff and against Vicente Aldanese, as collector of customs’ (the last clause being undoubtedly merely descriptive of the personality of the defendant). At least in the later case of *Lung Chea Kung Kee & Co. vs. Wright* (R.G. No. 22512), the Insular Collector of Customs was not permitted to satisfy the judgment by drawing on Government funds." (Underscoring supplied).

It is apparent, therefore, that the law involved, as well as the existing jurisprudence thereon, intended to hold the collector personally liable in case of a misdelivery of goods. And, it is indubitable that the aforesaid cases and the doctrinal rules therein were before this Court and were necessarily taken into account in the judgment rendered in the present case.

Our application of the aforesaid pronouncements in *American Express* cannot be amendatory of or repugnant to the decision of the Court in the present case, for the reason that the interpretation given to the pertinent law in *American Express* is an integral clarificatory part of the ruling laid down in the preceding Lung case. Hence, when this Court adopted the doctrine in Lung, it necessarily incorporated therein the ruling in *American Express* as a component consideration since, to repeat, it was necessarily aware of such subsequent decision.

Furthermore, it must not be overlooked that we are here particularly concerned with the ascertainment of the intent and rationalization of the judgment of the Court in this case in the statutory and jurisprudential ambience in which it was rendered, and not to review or modify said judgment which was already entered on June 18, 1985. Much less should we rule upon what the law or the decision in this case should have been. If, as has been suggested, Section 3511 of the Tariff and Customs Code is already irrelevant to present conditions, that is a matter to be addressed to the legislature.

3. In *Lung Chea Kung Kee & Co. vs. Wright*,[13] we gave the following rationale for holding said Collector of Customs personally liable in case there is a misdelivery of goods:

"x x x There is no judgment against the Government. In common with other governments, the government of

the Philippine Islands is not liable for damages for the negligent acts of its regular officials and employees in the performance of their ordinary functions. (Merritt vs. Government of the Philippine Islands, 34 Phil., 311). The fund against which the warrant in this case is drawn is not the property of the Collector of Customs; it is a public fund and in the absence of specific statutory provision to the contrary, can only be used for the satisfaction of obligations of the Government. x x x"

WHEREFORE, former Collector of Customs Jose T. Viduya is hereby DECLARED personally liable to herein private respondents for the amount stated in the writ of execution issued by the trial court. The motion to cite for contempt is DENIED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Rollo, 94-96.

[2] Ibid., 97.

[3] Ibid., 98-109.

[4] Ibid., 119.

[5] Ibid., 120.

[6] Ibid., 128-141.

[7] Ibid., 144.

[8] Ibid., 108-109; 140-141.

[9] Ibid., 185-186, 188.

[10] Ibid., 196-221.

[11] 45 Phil. 784 (1924).

[12] 46 Phil. 207 (1924). The decision in Lung Chea Kung Kee & Co. vs. Aldanese, et al. was penned by Johns, J., with Araullo, C.J., Johnson, Street, Avanceña, Ostrand, and Romualdez, JJ., concurring and Malcolm, J., dissenting. The ponente in The American Express Co., Inc. vs. Natividad was Malcolm, J., with whom concurred Johnson, Street, Avanceña, Villamor, Ostrand, and Romualdez, JJ.

[13] 46 Phil. 44, 47 (1924).

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