

## ERWIN C. REMIGIO, PETITIONER, VS. SANDIGANBAYAN, FOURTH DIVISION, RESPONDENT.

*G.R. Nos. 145422-23. January 18, 2002*

Ponente: PARDO, J.

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### PARDO, J.:

#### The Case

The case is a petition for review on certiorari[1] of the decision of the Sandiganbayan[2] finding petitioner guilty beyond reasonable doubt of violation of Section 3602, in relation to Section 3601 of the Tariff and Customs Code of the Philippines, and sentencing him to an indeterminate penalty of [imprisonment for] eight (8) years and one (1) day, as minimum, to twelve (12) years, as maximum, and to pay a fine of P8,000.00, plus revocation of his license as customs broker.

#### The Facts

On August 15, 1988, a shipment of one (1) 40 feet Container Van No. NYKU 5046600 arrived at the Port of Manila from Hongkong via the S/S NORSUND. The packing list showed that the shipment was consigned to BORHAM TRADING, located at 37 Harvard Street, Quezon City. The packing list, invoice, bill of lading as well as the letter of credit supporting the importation showed that the 40 feet container van contained 25 MT of Sodium Bicarbonate with a gross weight of 25,000 kgs.

On August 19, 1988, petitioner Erwin C. Remigio, a customs broker, filed with the Collector of Customs, Port of Manila, Import Entry and Internal Revenue Declaration (Consumption Entry) No. 72259-88 covering the shipment. On the same date, Arthur Sevilla, Jr., a customs examiner, conducted an examination of Container Van No. NYKU 5046600 and in his Examiner's Return noted that the shipment contained 1000 bags of 25 kgs. Sodium Bicarbonate. He recommended that the shipment be subjected to Philippine Chamber of Commerce and Industry (PCCI) clearance and magna scale weighing.

After receiving the PCCI clearance, Arthur Sevilla, Jr. forwarded the Import Entry papers together with the PCCI clearance to Tomas P. Tuason, Customs Principal Examiner, Bureau of Customs and supervisor of Sevilla. Tomas Tuason, after checking all the requirements and supporting documents forwarded the same to the appraiser's group. The importer paid duties and taxes for the shipment in the amount of P22,972.00.

At around three o'clock in the afternoon of the same day, the Collector of Customs allowed the container van to leave the customs area to be delivered to the consignee Borham Trading. While the van was cruising along Quezon Boulevard in front of Santo Domingo Church, Quezon City, agents of the Special Operations Group, Economic Intelligence and Investigation Bureau (EIIB) headed by Mr. Benjamin Kho intercepted the 40 feet container van and brought the same to Camp Aguinaldo, Quezon City for proper disposal.

Godofredo B. Camina, Jr., a Customs Examiner assigned to make an inventory of the container van at Camp Aguinaldo found that the same contained only 185 bags of sodium bicarbonate, and the following items: 8 pcs.

Bridgestone Tires; 10 sacks dried fish; 4 ctns. Laser Printer OPC Kit 81; 10 pcs. Sharp PC-1150; 1 unit Mercedes Benz 280 SE 1983 Model; 4 BLR canvas of undetermined quantity with padlock; 143 rolls of Ramie; Plastic Cards (Male & Female); 5 bunds Jusi clothing materials; 156 pieces A1 mm leather brown gilt buckles; 24 boxes 18 mm black strap leather; 20 boxes 20 mm St. End (Metal); 20 boxes 14 mm St. End (Metal); 10 boxes 10 mm Gilt buckles; 3 bunds Handkerchief; 25 ctns 14 mm Gilt leather buckles; 16 ctns 10 mm Gilt buckles; 18 ctns 12 mm gilt leather buckles; 10 ctns 12 mm St. End metal; 10 ctns 14 mm St. End metal; 25 ctns 20 mm St. End (metal); 100 pcs. Catalogue magazine; 60 pcs. Assorted RTWs; 380 ctns Maling Pork Luncheon Meat; 1,000 pcs. Beta Song L-500; 15 packs Gold St. End plated 14 mm; 7 bund men's handkerchief; 1020 pcs. Rubber bracelet; 8 bunds handkerchief; Metal Gilt straps; 508 pcs. Children's watches; 100 pcs. Men's watches; 8 pcs. Laser Printer; 10 pcs. Sharp PC 1150 Pocket Computer; outlets; switches; boosters; towels; 1 unit KV2140 RWP Song TV with remote control; 3 units Sony SL-S480 Betamax; Casio Alarm Quartz; Chandelier 12 bulb outlet; Sanyo Stereo Casette recorder; 4 pcs. Original mag wheels Mercedes Benz; Chandelier 16 bulb outlet; Donato Ceiling lamp; 10 units Family Computer Nintendo Assorted ladies' bag; suiting materials; 60 packs bracelet; 5 bunds Jusi; T-shirts; jogging pants; short; clothing materials; shoes. The customs examiner determined that the correct duties and taxes that may be assessed on the shipment amounted to P1,643,057.00.

Special Agent Marcos de Mesa of the Customs Intelligence and Investigation Service, Bureau of Customs verified the given address of Borham Trading at 37 Harvard Street, Cubao, Quezon City, and found it to be non-existent.

On May 30, 1991, Special Prosecution Officer III Wilfredo R. Orenca filed with the Sandiganbayan two Informations[3] against customs examiner Arthur Sevilla, Jr. y Gayuso and petitioner Erwin Remigio y Cunanan for violation of Sections 3604, paragraphs (d) and (e) and Section 3602, in relation to Section 3601, paragraph 4, Tariff and Customs Code of the Philippines, as follows:

“Criminal Case No. 16772

“That on or about August 18, 1988 in the City of Manila, and within the jurisdiction of this Honorable Court, accused Arthur Sevilla, Jr. a public officer, he being the Acting Customs Examiner, Port of Manila, Bureau of Customs, Manila, duly assigned to conduct a 100% physical examination of the 40 footer container van, covered under Import Entry No. 72259-88, charged with the enforcement of the provisions of the Tariff and Customs Code of the Philippines, as amended, while in the performance of his official functions and taking advantage of his public position and committing the offense in relation to his office, did then and there willfully, unlawfully and feloniously conspire or collude with his co-accused customs broker Erwin C. Remigio to defraud the customs revenue in the amount of P1,620,085.00 to the damage and prejudice of the government in the aforesaid amount.

“CONTRARY TO LAW.”[4]

“Criminal Case No. 16773

“That on or about August 18, 1988, and sometime prior and/or subsequent thereto in the City of Manila and within the jurisdiction of this Honorable Court, accused Arthur Sevilla, Jr., a public officer, he being the Acting Customs Examiner, Port of Manila, Bureau of Customs duly assigned to conduct a 100% physical examination of the 40 footer container van covered under Import Entry No. 72259-88, while in the performance of his public functions, committing the offense in relation to his office and in conspiracy with his co-accused, Erwin C. Remigio, the Customs Broker of the shipment in question, did then and there wilfully, unlawfully and feloniously made an entry of the imported shipment in the said Import Entry, by means of a false examination return totally different from the true number, weight and classification of the shipments, per the inventory conducted, thereby enabling Erwin C. Remigio to pay the amount of only P22,972.00 as customs duties and taxes, when the correct amount legally due is P1,643,057.00, to the prejudice and damage of the government.

“CONTRARY TO LAW.”[5]

Upon arraignment on June 28, 1991,[6] both accused, assisted by their respective counsel, entered a plea of not guilty to the charges. Trial ensued.

After trial on the merits, on October 19, 2000, the Sandiganbayan rendered a decision, the dispositive portion of which reads:

“WHEREFORE, premises considered, judgment is hereby rendered acquitting accused Arthur G. Sevilla, Jr. in Criminal Cases Nos. 16772 and 16773.

“The bailbond posted by said accused for his provisional liberty is hereby ordered cancelled.

“Criminal Case No. 16772 is hereby ordered dismissed with respect to accused Erwin C. Remigio.

“In Criminal Case No. 16773, judgment is hereby rendered finding accused Erwin C. Remigio guilty of violation of Sec. 3602 in relation to Sec. 3601 of the Tariff and Customs Code and in accordance with the Indeterminate Sentence Law, he is hereby sentenced to suffer imprisonment of 8 years and 1 day as minimum to 12 years as maximum and to pay a fine of P8,000.00. His license as customs broker is likewise ordered revoked.

“SO ORDERED.”[7]

Hence, this appeal.[8]

#### The Issue

The issue raised is whether petitioner was guilty of violation of Section 3602, in relation to Section 3601 of the Tariff and Customs Code.

#### The Court’s Ruling

In its decision, the Sandiganbayan found petitioner guilty of violation of Section 3602, in relation to Section 3601 of the Tariff and Customs Code of the Philippines in Criminal Case No. 16773. However, the Sandiganbayan stated it had reason to believe the accused Remigio to be liable under the final paragraph of Section 3407. It provides:

“x x x

“Any person who files an entry or facilitates the processing or release of any shipment shall be liable for smuggling if the ostensible owner, importer or consignee is fictitious and the shipment is found to be unlawful. If the violator is a customs broker, his license shall also be revoked by the Commissioner of Customs. (R.A. 7651, June 4, 1993)”

Actually, petitioner was charged with violation of Section 3602, in relation to Section 3601 of the Tariff and Customs Code of the Philippines,[9] not Section 3407 of the same Code. What is worse, the above-quoted provision (Section 3407) did not exist in 1988. It was only introduced in 1993 with the enactment of R.A. No. 7651 on June 4, 1993. The law is settled that no statute, decree, ordinance, rule or regulation shall be given retrospective effect unless expressly so provided,[10] or favorable to the accused. An accused cannot be convicted of an offense, unless it is charged in the complaint or information.[11]

The Sandiganbayan convicted the petitioner of violation of Section 3602, in relation to Section 3601 of the Tariff and Customs Code, which provides:

“Sec. 3602. Various fraudulent practices against customs revenue.- Any person who makes or attempts to

make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, paper, or by any means of any false statement, written or verbal, by any means of any false or fraudulent practice whatsoever, or knowingly effects any entry of goods, wares or merchandise, at less than true weight or measures thereof or upon a false classification as to quality or value, or by the payment of less than the amount legally due, or knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon exportation of merchandise, or makes or files any affidavit, abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any willful act or omission, shall, for each offense, be punished in accordance with the penalties prescribed in the preceding section.”[12]

“Section 3602 of the Tariff and Customs Code enumerates the various fraudulent practices against customs revenue, such as the entry of imported or exported articles by means of any false or fraudulent invoice, statement or practice; the entry of goods at less than the true weight or measure; or the filing of any false or fraudulent entry for the payment of drawback or refund of duties. The term ‘entry’ in customs law has a triple meaning. It means (1) the documents filed at the customs house; (2) the submission and acceptance of the documents; and (3) the procedure of passing goods through the customs house.”[13]

Petitioner Remigio did not make or attempt to make an entry of imported articles by means of any false or fraudulent invoice, declaration, affidavit, letter, paper, or by means of any false statement, verbal or oral, or by means of any false or fraudulent practice whatsoever. In fact, it was the given address of the consignee Borham Trading that the Sandiganbayan found to be fictitious. (Page 14 No. 2 of the decision).”

Such situation is that contemplated in Section 3407 of the Tariff and Customs Code of the Philippines above quoted.

In the instant case, there is no evidence to show that the owner, importer or consignee in question, BORHAM TRADING is fictitious. The only evidence introduced was the report of an investigator that the address of the consignee appearing in the entry, the bill of lading and the packing list cannot be located. The investigator himself testified that Borham Trading was registered with the Bureau of Domestic Trade;[14] that a Letter of Credit covering the shipment was opened with the Metropolitan Bank[15] and the shipping documents, i.e., the bill of lading, the packing list were all in the name of Borham Trading at its given address.

While the investigator testified that at the time of the investigation the address of Borham Trading could not be located at Harvard Street, Quezon City, the investigator did not bother to check whether there was any change in the numbers of the buildings at Harvard Street.[16]

Accused Erwin C. Remigio, as customs broker, prepared the entry covering the shipment based on the bill of lading, the invoice, the packing list, letter of credit, the import entry declaration and the Central Bank Release Certificate. The given address of Borham Trading was at 37 Harvard Street, Quezon City. There was nothing in the documents to show that there was anything amiss in the shipment or the covering documents. A customs broker is not required to go beyond the documents presented to him in filing an entry on the basis of such documents.

Section 3601 provides that “x x x Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling and shall be punished with x x x.”

Accused Remigio did not fraudulently assist in the importation of any article contrary to law nor facilitated its

transportation, knowing the same to have been imported contrary to law. All accused Remigio did was to prepare the import entry based on the shipping and other documents required by the Bureau of Customs and file the same.

In “Farolan v. Court of Tax Appeals and Bagong Buhay Trading,[17] we declared that:

“x x The fraud contemplated by law must be actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately dared or resorted to in order to give up some right. As explained earlier, the import entry was prepared on the basis of the shipping documents provided for by the foreign supplier or shipper. Hence, Bagong Bantay Trading can be considered to have acted in good faith when it relied on these documents.”

On the other hand, Section 3407 of the Tariff and Customs Code of the Philippines is not a penal provision governing the conduct of a customs broker. The liability for smuggling is provided in Section 3601, which in the instant case has not been proved.

It is indeed ironical that co-accused Arthur Sevilla, Jr., the customs examiner who failed to do his duty of conducting a 100% examination of the shipment in violation of Sections 3604 and 3602 in relation to Section 3601, Tariff and Customs Code of the Philippines was acquitted, yet petitioner was convicted of acts which did not constitute a statutory offense at the time the event took place.

The Fallo

WHEREFORE, the Court REVERSES the decision of the Sandiganbayan[18] and ACQUITS the petitioner of the offense charged. Costs de oficio.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] Under Rule 45, Revised Rules of Court.

[2] In Crim. Cases Nos. 16772-73, promulgated on October 19, 2000. Palattao, J., ponente, Nario and Ferrer, JJ., concurring.

[3] Docketed as Criminal Cases Nos. 16772 and 16773.

[4] Sandiganbayan Record, Vol. I, pp. 1-2.

[5] Sandiganbayan Record, Vol. II, pp. 1-2.

[6] Certificate of Arraignment, Sandiganbayan Record, Vol. I, pp. 28-29.

[7] Petition, Annex “A”, promulgated October 19, 2000, Rollo, pp. 15-30. Palattao, J., ponente, Nario and Ferrer, JJ., concurring.

[8] Petition filed on October 30, 2000, Rollo, pp. 3-14.

[9] In Criminal Case No. 16773.

[10] Republic v. Sandiganbayan, 355 Phil. 181, 198 [1998].

[11] People v. Lozano, 357 Phil. 397, 412 [1998].

[12] As amended by R.A. 4712.

[13] *Rodriguez v. Court of Appeals* 248 SCRA 288 [1995].

[14] TSN, December 5, 1991, p. 18.

[15] TSN, *Ibid.*, p. 30.

[16] TSN, *Ibid.*, p. 2.

**[17] 217 SCRA 298, 304 [1993].**

[18] In Criminal Case No.16773.

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