COMMISSIONER OF CUSTOMS, PETITIONER, VS. COURT OF TAX APPEALS, LAS ISLAS FILIPINAS FOOD CORPORATION AND PAT-PRO OVERSEAS CO., LTD., RESPONDENTS.

G.R. Nos. 171516-17. February 13, 2009

Ponente: CORONA, J.

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CORONA, J.:

Respondent Las Islas Filipinas Food Corporation (LIFFC) owned and operated an industry-specific customs bonded warehouse catering to food manufacturers.[1] Among the conditions for its establishment and operations was securing an import allocation from the Sugar Regulatory Administration (SRA) every time it imported sugar for its clients.[2]

On February 20, 2004, Pat-Pro Overseas Company, Ltd. (PPOC), a Thai company, appointed LIFFC as its "exclusive offshore trading, storage and transfer facility" in the Philippines for its local and foreign transshipment[3] operations.[4] Pursuant to this appointment, it shipped ten (10) twenty-foot containers of refined sugar to LIFFC.

The shipment of refined sugar arrived in Manila on April 24, 2004. Because LIFFC failed to present an import allocation from the SRA, the shipment became subject of Alert Order No. A/IE/20040719-101.[5] On July 16, 2004, a decree of abandonment was issued due to LIFFC's failure to file an import entry.[6] Thereafter, the Collector of Customs issued a warrant of seizure and detention[7] on July 27, 2004 in view of the SRA's advice that no import allocation had been granted to LIFFC.[8]

On August 16, 2004, LIFFC and PPOC (respondents) moved to quash the decree of abandonment.[9] However, in an order dated September 21, 2004,[10] the motion was denied (for being filed out of time as the decree of abandonment had already attained finality on August 3, 2004).

Respondents appealed the September 21, 2004 order to the Commissioner of Customs asserting that they were deprived of due process. They alleged that they were never notified of the issuance of the decree of abandonment.

After reviewing the evidence on record, the Commissioner found that respondents were not informed of the abandonment proceedings. Thus, in a decision dated February 4, 2005, he set aside the decree of abandonment and ordered the institution of proceedings for seizure and forfeiture.[11]

Pursuant to the February 4, 2005 decision of the Commissioner, the Republic instituted proceedings for the seizure and forfeiture of respondents' importation.[12] It contended that, because respondents imported the refined sugar without securing an import allocation from the SRA, the shipment should be forfeited pursuant to Section 2530 (f) and (1)-5 of the Tariff and Customs Code of the Philippines (TCCP).[13]

Respondents, on the other hand, asserted that the refined sugar was merely transshipped to the Philippines while PPOC was looking for a buyer in the international market. Thus, an import allocation from the SRA was unnecessary.

In decisions dated February 14, 2005 and February 16, 2005, the Collectors held that because LIFFC did not secure an import allocation from the SRA, the shipment was an illegal importation of refined sugar. They ordered its forfeiture in favor of the government.[14]

On appeal,[15] the Commissioner affirmed the decisions of both Collectors.[16]

On April 15, 2005, respondents appealed to the Court of Tax Appeals (CTA) via petitions for review[17] contending that the Commissioner erred in affirming the February 14, 2005 and February 16, 2005 decisions of the Collectors.[18] They insisted that an import allocation from the SRA was unnecessary inasmuch as the refined sugar was sent to the Philippines only for temporary storage and warehousing and would be shipped eventually to PPOC's final buyer.

On April 20, 2005, respondents filed a motion to release cargo for exportation upon filing of a surety bond. The Commissioner opposed the said motion on the basis of Section 2301 of the TCCP which provides:

> Section 2301. Warrant for Detention of Property-Cash Bond. – Upon making any seizure, the Commissioner shall issue a warrant for the detention of the property; and if the owner or importer desires to secure the release of the property for legitimate use, the Collector shall, with the approval of the Commissioner of Customs, surrender it upon the filing of a cash bond, in an amount fixed by him, conditioned upon the payment of the appraised value of the article and/or any fine, expenses and costs which may be adjudged in the case: Provided, That such importation shall not be released under any bond when there is prima facie evidence of fraud in the importation of the article: Provided, further, That articles the importation of which is prohibited by law shall not be released under any circumstances whatsoever: Provided, finally, That nothing in this section shall be construed as relieving the owner or importer from any criminal liability which may arise from any violation of law committed in connection with the importation of the article. (emphasis supplied)

The Commissioner argued that the shipment could not be released inasmuch as respondents had no import allocation from the SRA. Thus, there was prima facie evidence of fraud in the importation of refined sugar.

In a resolution dated July 12, 2005, the CTA granted the motion and ordered the release of the shipment subject to LIFFC's filing of a continuing surety bond.[19]

The Commissioner moved for reconsideration but it was denied.[20] The CTA ordered respondents to comply with the July 12, 2005 resolution within 10 days. However, the release of the shipment was held in abeyance for several months as respondents failed to comply with the conditions imposed by the said resolution.[21] It was released only on January 6, 2006[22] when respondents finally complied with all the conditions stated in the July 12, 2005 resolution.

On March 1, 2006, the Commissioner filed this petition[23] seeking the annulment of the six resolutions (dated July 12, 2005, July 20, 2005, September 27, 2005, November 8, 2005, December 13, 2005 and January 6, 2006) issued in CTA Case Nos. 7198 and 7199.[24]

On March 20, 2006, we issued a temporary restraining order enjoining the implementation of the said resolutions.

The Commissioner basically contends that the CTA committed grave abuse of discretion when it disregarded Section 2301 of the TCCP and ordered the release of respondents' shipment of refined sugar.

We grant the petition.

Section 2301 of the TCCP states that seized articles may not be released under bond if there is prima facie evidence[25] of fraud in their importation. Fraud is a "generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to secure an advantage and includes all

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surprise, trick, cunning, dissembling and any unfair way by which another is cheated."[26] Since fraud is a state of mind, its presence can only be determined by examining the attendant circumstances.

Under Section 1202 of the TCCP,[27] importation takes place when merchandise is brought into the customs territory of the Philippines with the intention of unloading the same at port.

An exception to this rule is transit cargo[28] entered for immediate exportation. Section 2103 of the TCCP provides:

> Section 2103. Articles Entered for Immediate Exportation. – Where an intent to export the article is shown by the bill of lading, invoice, manifest or other satisfactory evidence, the whole or part of a bill (not less than one package) may be entered for immediate exportation under bond. The Collector shall designate the vessel or aircraft in which the articles are laden constructively as warehouse to facilitate the direct transfer of the articles to the exporting vessel or aircraft.
>
> Unless it shall appear by the bill of lading, invoice, manifest, or other satisfactory evidence, that the articles arriving in the Philippines are destined for transshipment, no exportation thereof shall be permitted except under entry for immediate exportation under irrevocable domestic letter of credit, bank guaranty or bond in an amount equal to the ascertained duties, taxes and other charges.
>
> Upon the exportation of the articles, and the production of proof of lading of same beyond the limits of the Philippines, the irrevocable domestic letter of credit, bank guaranty or bond shall be released.

For an entry for immediate exportation to be allowed under this provision, the following must concur:

> (a)
>
> there is a clear intent to export the article as shown in the bill of lading, invoice, cargo manifest or other satisfactory evidence;
>
> (b)
>
> the Collector must designate the vessel or aircraft wherein the articles are laden as a constructive warehouse to facilitate the direct transfer of the articles to the exporting vessel or aircraft;
>
> (c)
>
> the imported articles are directly transferred from the vessel or aircraft designated as a constructive warehouse to the exporting vessel or aircraft and
>
> (d)
>
> an irrevocable domestic letter of credit, bank guaranty or bond in an amount equal to the ascertained duties, taxes and other charges is submitted to the Collector (unless it appears in the bill of lading, invoice, manifest or satisfactory evidence that the articles are destined for transshipment).

None of the requisites above was present in this case. While respondents insist that the shipment was sent to the Philippines only for temporary storage and warehousing, the bill of lading clearly denominated "South Manila, Philippines" as the port of discharge.[29] This not only negated any intent to export but also contradicted LIFFC's representation. Moreover, the shipment was unloaded from the carrying vessel for the purpose of storing the same

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at LIFFC's warehouse. Importation therefore took place and the only logical conclusion is that the refined sugar was truly intended for domestic consumption.

Furthermore, while respondents insisted that an import allocation was unnecessary, they filed an application, albeit belatedly, in the SRA for the shipment of refined sugar. Respondents' web of conflicting statements and actuations undoubtedly proves bad faith, if not outright fraud.

All things considered, pursuant to Section 2301 of the TCCP, the shipment of refined sugar should not be released under bond.

WHEREFORE, the petition is hereby GRANTED. The July 12, 2005, July 20, 2005, September 27, 2005, November 8, 2005, December 13, 2005 and January 6, 2006 resolutions of the Court of Tax Appeals in CTA Case Nos. 7198 and 7199 are REVERSED and SET ASIDE.

The March 20, 2006 temporary restraining order enjoining the implementation of the assailed CTA resolutions is hereby made permanent.

The Court of Tax Appeals is ordered to expeditiously decide CTA Case Nos. 7198 and 7199.

Costs against respondents Las Islas Filipinas Food Corporation and Pat-Pro Overseas Co., Ltd.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Azcuna, and Leonardo-De Castro, JJ., concur.

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[1] Memorandum signed by Geminiano D. Jara and noted with concurrence by Alvin R. Guiam. Dated January 22, 2004. Annex "J," rollo, pp. 68-73. See also letter addressed to LIFFC signed by Cecil R. Sison. Dated March 3, 2004. Annex "O," id., p. 85.

On September 23, 2004, the Bureau of Customs (BoC) suspended LIFFC's license to operate an ICBW. Annex "LL," id., pp. 117-118.

[2] Disposition form dated February 23, 2004. Annex "M," id., pp. 81-82.

[3] Transshipment is defined as the act of sending an exported product through an intermediate country before routing it to the country intended to be its final destination. In maritime law, it is the act of taking the cargo out of one ship and loading it in another. See Nague, HANDBOOK ON THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED, AND THE CUSTOMS BROKERS ACT OF 2004 AND ITS IMPLEMENTING RULES AND REGULATIONS 1[st] ed., 412 citing BLACK'S LAW DICTIONARY, 5[th] ed.

[4] Memorandum of Agreement between LIFFC and PPOC. Annex "L," rollo, pp. 79-80.

[5] Annex "X," id., p. 95.

[6] Decree of abandonment no. 2004-065 issued by district collector Ronnie C. Silvestre of Customs District II-A (South Harbor, Manila). Annexes "U" and "EE," id., pp. 91-92, 103-104.

[7] Issued by district collector Reynaldo S. Nicolas of Customs District II-B (Manila International Container Port). Dated July 27, 2004. Annex "AA," id., p. 98.

[8] SRA administrator James C. Ledesma in his July 19, 2004 letter to the Bureau of Customs stated:

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"[M]ay we inform you that as of the date hereof, our office has not issued any authority/clearance to [LIFFC] to import sugar for domestic market. Additionally, the SRA has no sugar importation program for the year 2004 and has even exported our excess sugar to the world market. LIFFC has a pending application with this office for import allocation as CBW operator but has yet to meet certain requirements." (emphasis supplied) Annex "W," id., p. 94.

The SRA subsequently disapproved LIFFC's application for import allocation. Since LIFFC applied for an allocation only after the sugar arrived in the Philippines, it was not in good faith. Letter dated July 29, 2004. Annex "BB," id., p. 99.

[9] Annex "II," id., pp. 112-113.

[10] Annex "JJ," id., pp. 114-115.

[11] Penned by Customs Commissioner George M. Jereos. Id., pp. 120-123.

[12] Docketed as Seizure Identification Nos. 2005-013 (in Customs District II-A) and 04-066 (in Customs District II-B).

[13] Customs Code, Sec. 2530 states:

Section 2530. Property Subject to Forfeiture Under Tariff and Customs Laws.--Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture:

x x x x x x x x x

(f)

Any article the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles, which, in the opinion of the Collector have been used, are or were entered to be used as instruments in the importation or exportation of the former;

x x x x x x x x x

(1)

Any article sought to be imported or exported:

x x x x x x x x x

(5)

Through any other practice or device contrary to law by means of which such articles were entered through a customshouse to the prejudice of the government. (emphasis supplied)

[14] Decision penned by district collector Felipe A. Bartolome of Collection District II-B dated February 14, 2005 and decision penned by district collector Ronnie C. Silvestre of Collection District II-A dated February 16, 2005.

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Annexes "QQ" and "RR," respectively, rollo, pp. 130-145.

[15] Docketed as Customs Case Nos. 2-2005 and 1-2005, respectively.

[16] Decisions penned by Commissioner Alberto D. Lina. Dated March 21, 2005. Annexes "TT" and "UU" respectively, rollo, pp. 140-151.

[17] Section 7 of RA 1125 (as amended) grants exclusive appellate jurisdiction to the CTA to review by appeal decisions of the Commissioner of Customs involving the detention or release of property. Section 11 thereof provides that the appeal shall be made by filing a petition for review under a procedure analogous to Rule 42 of the Rules of Court.

[18] Docketed as CTA Case Nos. 7198 and 7199. The petitions were subsequently consolidated.

[19] Resolution penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Lovell R. Bautista and Caesar A. Casanova of the First Division of the Court of Tax Appeals. Dated July 12, 2005. Annex "A," rollo, pp. 50-52.

See amendment as per the July 20, 2005 resolution. Annex "B," id., pp. 53-54.

[20] Resolution dated September 27, 2005. Annex "C," id., pp. 55-56.

[21] Resolutions dated November 8, 2005 and December 13, 2005. Annexes "D" and "E" respectively, id., pp. 57-62.

[22] Resolution dated January 6, 2006. Annex "F," id., pp. 63-64.

[23] Under Rule 65 of the Rules of Court.

[24] Rollo, pp. 2-49. The petition was accompanied by a prayer for the issuance of temporary restraining order and/or writ of preliminary injunction to enjoin the implementation of the six assailed orders.

[25] Prima facie evidence is defined as "evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence." See Wa-acon v. People, G.R. No. 164575, 6 December 2006, 510 SCRA 429, 438.

[26] Yap-Sumnidad v. Harrigan, 430 Phil. 612 (2002).

[27] Section 1202. When Importation Begins and Deemed Terminated. - Importation begins when the carrying vessels or aircraft enters the jurisdiction of the Philippines with intention to unlade therein. Importation is deemed terminated upon payment of duties, taxes and other charges due upon the articles or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction. (emphasis supplied)

[28] See Customs Code, Sec. 3519 which provides:

Sec. 3519. Words and Phrases Defined.

x x x x x x x x x

> "Transit cargo" is article arriving at any port from another port or place noted in the carrier's manifest and destined for transshipment to another local or foreign port.

x x x x x x x x x

[29] Annex "S," rollo, p. 89.

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