

UTE PATEROK, PETITIONER-APPELLANT, VS. BUREAU OF CUSTOMS AND HON. SALVADOR N. MISON, RESPONDENTS-APPELLEES.

G.R. Nos. 90660-61. January 21, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Before us is a special civil action for certiorari filed by Ute Paterok, the petitioner herein, seeking the annulment of the decision[1] rendered by the public respondent, the Bureau of Customs, through its Commissioner, the Hon. Salvador N. Mison, approving the order[2] of forfeiture issued by the District Collector of Customs against the shipment of one (1) unit of Mercedes Benz of the petitioner in favor of the government.

The antecedent facts are as follows:

In March 1986, the petitioner shipped from Germany to the Philippines two (2) containers, one with used household goods and the other with two (2) used automobiles (one Bourgetti and one Mercedes Benz 450 SLC). The first container was released by the Bureau of Customs and later on, the Bourgetti car, too. The Mercedes Benz, however, remained under the custody of the said Bureau.

In December 1987, after earnest efforts to secure the release of the said Mercedes Benz, the petitioner received a notice[3] of hearing from the legal officer of the Manila International Container Port, Bureau of Customs informing the former that seizure proceedings were being initiated against the said Mercedes Benz for violation of Batas Pambansa Blg. 73 in relation to Section 2530(F) of the Tariff and Customs Code of the Philippines (TCCP), as amended, and Central Bank Circular (CBC) 1069.

While the said case was pending, the petitioner received only on April, 1988, a letter[4] informing her that a decision ordering the forfeiture of her Mercedes Benz had been rendered on December 16, 1986 by the District Collector of Customs. The petitioner had not been informed that a separate seizure case was filed on the same Mercedes Benz in question before the said District Collector, an office likewise under the Bureau of Customs.

The petitioner later found out that on November 13, 1986, a Notice of Hearing set on December 2, 1986, concerning the said Mercedes Benz, was posted on the bulletin board of the Bureau of Customs at Port Area, Manila.

The petitioner, thereafter, filed a motion for new trial[5] before the Collector of Customs, Port of Manila, but the latter, in an order[6] dated May 30, 1988, denied the same, invoking the failure of the former to appear in the said hearing despite the posting of the notice on the bulletin board.

Moreover, the Collector of Customs contended that a reopening of the case was an exercise in futility considering that the forfeited property, a Mercedes Benz 450 SLC, had an engine displacement of more than 2800 cubic centimeters and therefore was under the category of prohibited importation pursuant to B.P. Blg. 73.

Subsequently, the petitioner filed a petition for review[7] with the Department of Finance, which petition the latter

referred to the public respondent. The petitioner likewise addressed a letter[8] to the Hon. Cancio Garcia, the Assistant Executive Secretary for Legal Affairs, Office of the President, Malacañang, requesting the latter's assistance for a speedy resolution of the said petition.

Finally, the public respondent rendered a decision on September 22, 1989 affirming the previous order of the Collector of Customs for the Forfeiture of the Mercedes Benz in question in favor of the government.

Hence, this petition for certiorari alleging that:

III-1. THE RESPONDENT-APPELLEE (Bureau of Customs) ERRED IN THE RULING THAT A NOTICE OF HEARING POSTED IN [sic] THE BULLETIN BOARD IS SUFFICIENT NOTICE AND FAILURE OF PETITIONER-APPELLANT TO APPEAR CAUSED HER DECLARATION IN DEFAULT;

III-2. ERRED IN RULING THAT THEIR OFFICE WAS LEFT WITH NO ALTERNATIVE BUT TO FORFEIT THE SHIPMENT AS MANDATED BY BATAS PAMBANSA BLG. 73;

III-3. ERRED IN RULING THAT THE RESPONDENT OFFICE FINDS THE RE-OPENING OF THE CASE AN EXERCISE IN FUTILITY AND THAT THERE IS NO POINT IN DISTURBING THE DECISION DECREETING THE FORFEITURE OF THE SHIPMENT.[9]

As regards the first assignment of error, we agree with the petitioner that a notice of hearing posted on the bulletin board of the public respondent in a forfeiture proceeding where the owner of the alleged prohibited article is known does not constitute sufficient compliance with proper service of notice and procedural due process.

Time and again, the Court has emphasized the imperative necessity for administrative agencies to observe the elementary rules of due process.[10] And no rule is better established under the due process clause of the Constitution than that which requires notice and opportunity to be heard before any person can be lawfully deprived of his rights.[11]

In the present case, although there was a notice of hearing posted on the bulletin board, the said procedure is premised on the ground that the party or owner of the property in question is unknown. This is clear from the provisions of the TCCP relied upon by the public respondent, namely, Sections 2304 and 2306, captioned "Notification of Unknown Owner" and "Proceedings in Case of Property Belonging to Unknown Parties," respectively, wherein the posting of the notice of hearing on the bulletin board is specifically allowed.

But in the case at bar, the facts evidently show that the petitioner could not have been unknown. The petitioner had previous transactions with the Bureau of Customs and in fact, the latter had earlier released the first container consisting of household goods and the Bourgetti car to the former at her address (as stated in the Bill of Lading). Moreover, there was a similar seizure case[12] that had been instituted by the Manila International Container Port, docketed as S.I. No. 86-224, covering the same Mercedes Benz in question and involving the same owner, the petitioner herein.

If only the public respondents had exercised some reasonable diligence to ascertain from their own records the identity and address of the petitioner as the owner and the consignee of the property in question, the necessary information could have been easily obtained which would have assured the sending of the notice of hearing properly and legally. Then, the petitioner would have been afforded the opportunity to be heard and to present her defense which is the essence of procedural due process. But the public respondent regrettably failed to perform such basic duty.

Notwithstanding the procedural infirmity aforementioned, for which the Court expresses its rebuke, the petition nonetheless can not be granted.

This brings us to the second and third assignments of error raised by the petitioner.

Batas Pambansa Blg. 73, a law intended to promote energy conservation, provides that:

SEC. 3. Towards the same end and to develop a more dynamic and effective program for the rational use of energy, the following acts are hereby prohibited:

(a) The importation, manufacture or assembling of gasoline-powered passenger motor cars with engine displacement of over 2,800 cubic centimeters or Kerbweight exceeding 1,500 kilograms, including accessories.[13]

The petitioner does not dispute the fact that the motor car in question, a Mercedes Benz 450 SLC, has an engine displacement of over 2,800 cubic centimeters which clearly falls within the prohibited importation specified in the law aforequoted and as such, is liable for seizure and forfeiture by the public respondents.

On the other hand, the petitioner claims that the said prohibition involves only "direct" and not "indirect" importation as when both the shipper and the consignee are one and the same person which is the case at bar. Be that as it may, the law is clear and when it does not make any distinction on the term "importation", we likewise must not distinguish. "Ubi lex non distinguit nec nos distinguere debemus."

Finally, the petitioner invokes Sec. 2307 of the TCCP, as amended by Executive Order No. 38, dated August 6, 1986, which provides an alternative in lieu of the forfeiture of the property in question, that is, the payment of fine or redemption of the forfeited property. But the last paragraph of the said section, as amended, categorically states that:

Redemption of forfeited property shall not be allowed in any case where the importation is absolutely prohibited or where the surrender of the property to the person offering to redeem the same would be contrary to law. (Emphasis ours)[14]

Inasmuch as it would be contrary to law, i.e., B.P. Blg. 73, to allow the petitioner to redeem the Mercedes Benz in question, there is therefore no alternative, as correctly claimed by the public respondents, but to forfeit the same.

We can not agree with the proposition that the Collector of Customs is authorized to release the motor vehicle in question to the petitioner which, in effect, would absolve the latter from any liability.

In the matter of disposing of contrabands, Section 2609(c) of the Tariff and Customs Code specifically provides that the prerogative of the Collector of Customs is not the release of the contraband like the Mercedes Benz in question but its sale, which presupposes a prior custody pursuant to forfeiture and seizure proceedings as in the case at bar.

As thus worded:

SEC. 2609. Disposition of Contra-band. -- Article of prohibited importation or exportation, known as contraband, shall, in the absence of special provision, be dealt with as follows:

...

(c) Other contraband of commercial value and capable of legitimate use may be sold under such restrictions as will insure its use for legitimate purposes only ...

There is nothing in the Code that authorizes the Collector to release the contraband in favor of an importer. The Code, on the other hand, is clear that the thing may be disposed of by sale alone "under such restrictions as will insure its use for legitimate purposes." To be sure, the restrictions to be prescribed by the Collector must coincide with the purpose underlying Batas Blg. 73, that is, to conserve energy. Hence, he can not allow its use (after sale),

in this case a Mercedes Benz with an engine displacement of more than 2,800 cubic centimeters, that would set at naught that purpose. He must make sure that the engine is changed before it is allowed to ply Philippine soil.

In all cases, forfeiture is a must.

WHEREFORE, the petition for certiorari is DISMISSED. No costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Bidin, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Padilla, J., see dissenting opinion.

[1] Annex "J-1", Rollo, 46.

[2] Rollo, 18-19.

[3] Id., 16.

[4] Id., 17.

[5] Id., 20-30.

[6] Id., 30-31.

[7] Id., 32-42.

[8] Id., 44-45.

[9] Id., 7.

[10] *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940), *Crespo v. Provincial Board of Nueva Ecija*, 160 SCRA 66 (1988).

[11] *Cebu Stevedoring Co., Inc. v. Regional Director*, 168 SCRA 315 (1988).

[12] Rollo, 87.

[13] Id., 123.

[14] Id., 126.

DISSENTING OPINION

PADILLA, J.:

I am constrained to dissent from the, as usual, well-written decision of Mr. Justice Sarmiento. The reasons for my dissent are as follows:

The decision states:

"The petitioner does not dispute the fact that the motor car in question, a Mercedes Benz 450 SLC, has an engine displacement of over 2,800 cubic centimeters which clearly falls within the prohibited importation specified in the law aforequoted and as such, is liable for seizure and forfeiture by the public respondents." (pp. 6-7, decision) The

law relied upon is Section 3(a) of BP 73 which provides:

"SEC. 3. Towards the same end and to develop a more dynamic and effective program for the rational use of energy, the following acts are hereby prohi-bited:

(a) The importation, manufacture or assembling of gasoline-powered passenger motor cars with engine dis-placement of over 2,800 cubic centi-meters or Kerb-weight exceeding 1,500 kilograms, including accessories."

But, Sec. 11 of the same BP 73 provides that:

"Any person who willfully violates any provision of Section three hereof or any rule or regulation promulgated pursuant to the authority granted in this Act shall, upon conviction, be punished by a fine of not less than one thousand pesos but not more than five thousand pesos, or by imprisonment of not less than one month nor more than one year, or both, in the discretion of the court: Provided, That if the violation is committed by a juridical person, the penalty herein provided shall be imposed on the official and/or employee thereof responsible for the violation: Provided, further, That if the violation is committed by a government official or employee including those in government-owned or controlled corporations, he shall, in addition to the penalty provided above, be subject to disciplinary administrative proceedings and penalties: Provided, finally, That any passenger motor vehicle manufactured or assembled in violation of Section 3 (a) hereof shall, after proper proceedings, be confiscated and forfeited in favor of the Government." (Underlining supplied.)

It would thus appear that, under the forequoted provisions of Sec. 11 of BP 73, only passenger motor vehicles manufactured or assembled in violation of Section 3 (a) thereof shall be confiscated and forfeited in favor of the Government.

The Mercedes Benz in the case at bar, having been admittedly imported, but not manufactured or assembled in violation of Sec. 3 (a) of BP 73, is not, therefore, subject to confiscation and forfeiture in favor of the government.

On the other hand, Sec. 2609 of the Tariff and Customs Code provides:

"SEC. 2609. Disposition of Contraband. - Article of prohibited importation or exportation, known as contraband, shall, in the absence of special provision, be dealt with as follows:

xxx xxx xxx

c. Other contraband of commercial value and capable of legitimate use may be sold under such restrictions as will insure its use for legitimate purposes only; but if the thing is unfit for use or the Collector is of the opinion that, if sold, it would be used for unlawful purposes, it shall be destroyed in such manner as the Collector shall direct." (Underlining supplied.)

The questioned Mercedes Benz is decidedly of commercial value and capable of legitimate use, which may be sold under such restrictions as will insure its use for a legitimate purpose, by changing its engine with an engine with a displacement of not more than 2,800 cubic centimeters or the vehicle may be ordered re-exported to Germany.

In short, the petitioner may be criminally prosecuted for the act of importing the subject motor vehicle but, at the same time, the vehicle may be released to her subject to such restrictions and conditions as may be imposed by the Collector of Customs, one of which should be the changing of the engine of the vehicle with an engine with a displacement of not more than 2,800 cubic centimeters or that the vehicle may be ordered re-exported to Germany at the expense of petitioner-importer.

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