

**REPUBLIC OF THE PHILIPPINES  
COURT OF TAX APPEALS  
QUEZON CITY**

**ILDEFONSO S. MAMINTA**, in his capacity  
as the owner-claimant of 28,000 bags of sugar  
loaded on board the vessel M/V "Affy" / M/V  
"Neilsen Earl",

Petitioner,

- versus -

C.T.A. CASE NO. 6116

**RENATO A. AMPIL**, in his capacity as  
Commissioner of Customs, **ROLANDO E.  
YEBES**, in his capacity as District Collector  
of Customs, Port of Cebu, and **THE ACTING  
CHIEF, Auction, Cargo and Disposal Division,  
Bureau of Customs, Port of Cebu**,

Respondents.

Promulgated:

OCT 11 2001

*CRP/Arden Arnes*

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**DECISION**

The case at bar seeks the setting aside of the decision rendered by the Commissioner of Customs dated May 31, 2000 which affirmed the decision of the District Collector of Customs, Port of Cebu forfeiting the subject shipment consisting of 28,000 bags of sugar in favor of the government for violation of SRA rules and regulations and Sections 906, 907, 2503 in relation to Section 2530 of the Tariff and Customs Code of the Philippines (TCCP), as amended.

As represented, Petitioner **ILDEFONSO S. MAMINTA**, is the claimant of the subject shipment consisting of 28,000 bags of sugar loaded on board the vessel M/V

“Neilsen Earl”, with postal address at Unit 57, AIC Gold Tower, Garnet corner Sapphire Road, Ortigas Center, Pasig City.

On or about October 25, 1999, the Customs Intelligence and Investigation Service (CIIS), Intelligence Division (Visayas Region) received information that an unknown vessel would enter Cebu waters on November 4, 1999, carrying illegally imported sugar. Subsequently, said office coordinated with Task Force ADUANA (TFA) so that assistance can be given by the Philippine Navy and Air Force in the enforcement of the Tariff and Customs laws (see Commissioner of Customs Decision in Customs Case No. 2000-02 dated May 31, 2000, pp. 20 to 29, docket).

On November 5, 1999, TFA Commander, Col. Teodoro Torralba informed the CIIS, Intelligence Division that the Philippine Navy monitored and located the vessel which was anchored off the waters of Carnasa island. As such, Alert Order No. CE-0048-99 was issued by the District Collector upon the request of the CIIS (*ibid*).

Thereafter, elements of the CIIS, TFA and the Air Force, proceeded to Carnasa Island to implement the Alert Order. The vessel was found to carry suspected illegally imported sugar of which the Captain of the vessel, Robert Asinero, could not show any document relative thereto (*ibid*).

Furthermore, the sacks of sugar bore markings “Central Azucarera de Bais”, but verification with the Resident Manager of this sugar central, Mr. Roberto dela Rosa, revealed that the shipment of sugar did not come from them (*ibid*).

Subsequently, a Warrant of Seizure and Detention was issued by the District Collector on November 6, 1999 for the imputed violation of the Sugar Regulatory

Commission Rules and Regulations and Sections 906, 907, 2503 in relation to Section 2530 of the TCCP (*ibid*).

On November 17, 1999, the Acting Chief of the Law Division, Port of Cebu, issued a Notice of Hearing, notifying the “unknown claimant” of the hearing scheduled on December 2, 1999 at 9:00 o’clock in the morning. The notice was posted on the same date in the bulletin board conformably with the provisions of Section 2304, of the TCCP (*ibid*).

On December 1, 1999, PHERWIN Shipping Corporation, thru counsel, Atty. Avelino V. Sales, Jr. filed a Motion for Intervention, claiming among others, that it has reasonable grounds to believe that vessel M/V “AFFY” is the same M/V Neilson Earl which is registered under its name. Likewise, on the same date, Atty. Avelino V. Sales, Jr. filed a Motion to Re-Set Hearing (*ibid*).

In the hearing of December 2, 1999, the Hearing Officer issued an ORDER granting the Motion to Re-Set, and thus, re-scheduled the same to December 20, 1999. However, no one appeared to claim the shipment of sugar prompting the government prosecutor to manifest to the Hearing Officer that the unknown claimant be declared as in default and that she be allowed to present documentary evidence as the basis for the forfeiture of the shipment of sugar (*ibid*).

On December 17, 1999, the District Collector rendered a decision forfeiting the entire 28,000 bags of sugar in favor of the government, the dispositive portion of which reads as follows:

“Wherefore, in view of the foregoing, by the power vested in this office by law, it is hereby ordered and decreed that the shipment of 28,000 bags of sugar is hereby FORFEITED in favor of the government and to be disposed of in the manner provided for by law.

Let copies of this PARTIAL DECISION be furnished to all parties and officers concerned to (sic) their information and guidance.

SO ORDERED.”

Petitioner, in his letter to the Commissioner dated December 20, 1999, claimed that he is the owner of the aforesaid sugar which consisted only of 27,000 bags and not 28,000 bags as reported. That the seized commodity was supposed to be shipped to Manila pending final arrangement with his buyer. Accordingly, before they could proceed and finalize some documents as requested by the vessel’s owner/charterer, the vessel together with its cargoes were seized by the Bureau of Customs without any legal basis (*ibid*).

He alleged further that the swiftness of the forfeiture of his merchandise prevented him from claiming the same from the Port of Cebu which was aggravated by the disappearance of the owner/charterer of the vessel as he was at a loss as to what actually transpired that led to the apprehension of the vessel and his cargo (*ibid*).

On March 14, 2000, Petitioner in furtherance to his letter dated December 20, 1999, submitted his Affidavit together with the supporting documents for the evaluation by the Office of the Commissioner of Customs on his request for reconsideration of the decision of forfeiture rendered by the District Collector (*ibid*).

During the pendency of the case, Petitioner, Mr. Ildefonso S. Maminta, in his letter dated March 28, 2000, made a manifestation that he is willing to settle the case by payment of the fine as a condition for the release of the subject sugar, pursuant to Section 2307 of the TCCP, as amended (*ibid*).

On the other hand, the government prosecutor filed an opposition to the Appeal with Motion to Sell the Cargo Thru Public Auction. It alleged, *inter alia*, that the 28,000 bags of sugar are undocumented and appellant's submission on appeal of the sales invoice and official receipt purportedly showing that the bags of sugar were locally purchased does not cure the violation that attaches to the res. The origin and authenticity of the Sales Invoice issued by 722 Resources to Mr. Maminta appears to be doubtful because a close scrutiny of the same would show that the sugar allegedly sold to herein appellant was not properly described therein. Neither was it signed by the person who accepted the goods in behalf of Mr. Maminta (*ibid*).

On May 31, 2000, Respondent Commissioner of Customs affirmed the decision of the District Collector, Port of Cebu and denied the offer of settlement made by herein Petitioner, the decretal portion of the Commissioner's decision states, to wit:

“WHEREFORE, above premises considered, the appeal of ILDEFONSO S. MAMINTA is hereby DISMISSED for lack of merit, and the decision appealed from is hereby AFFIRMED. Consequently, the offer of settlement is hereby DENIED.

Let copies of this Decision be furnished to all parties and offices concerned for their information and guidance.

SO ORDERED.”

The next day, or on June 1, 2000, Petitioner filed with this Court the instant Petition for Review with Prayer for Preliminary Injunction and for the Issuance of a Temporary Restraining Order. On same date, Petitioner also filed a Motion to Release Goods Under Surety Bond.

On June 13, 2000, the Court granted the prayer of Petitioner for the issuance of a Temporary Restraining Order (TRO). Respondent was ordered to cease and desist from holding the public auction of the 28,000 bags of sugar on June 14, 2000 and thereafter for a period of fifteen (15) days during the pendency before the Court of the Motion to Release the Goods Under Bond (see pages 52 to 53, CTA records).

On June 27, 2000, the Court, after hearing, denied Petitioner's "Motion to Release Goods Under Surety Bond" and lifted the TRO which it issued last June 13, 2000. The Court said that should the Commissioner proceed with the sale of the sugar, the proceeds of the sale shall be held as a special fund which shall be disposed of only in accordance with the final decision of the Court. Likewise, in said resolution the Court ordered the Respondents to file their Answer to the petition within fifteen (15) days from receipt of this resolution, which they did on July 10, 2000 (see pages 65 to 66, CTA records).

On June 11, 2001, the case was submitted for decision based on the pleadings filed plus the records of the case *sans* the memoranda of both parties.

In assailing the legality of forfeiture, Petitioner contends that Respondent Commissioner erred in affirming the decision of the District Collector of the Port of Cebu on grounds, among others, that (1) he presented overwhelming evidence that prove that the subject article are not imported but were purchased locally, (2) the inability of the

ship captain to produce documents relative to his cargo and the disclaimer of Central Azucarera de Bais that the sugar did not come from them does not prove that the apprehended refined sugar is imported, (3) the government miserably failed to dispute or contradict by competent evidence that the goods were purchased locally, (4) he cannot be faulted for the unmanifested cargo because he has no participation whatsoever in the preparation and issuance of the cargo manifest, (5) the delay on his part to participate in the seizure proceedings at the Port of Cebu is not fatal to his claim as he was able to file a timely appeal, and (6) the decision of forfeiture would have caused great injustice and irreparable damage to herein Petitioner because of the failure of Respondent District Collector to observe the minimum requirement demanded under the TCCP before a Warrant of Seizure and Detention is issued.

In their Answer, Respondents prayed for the dismissal of the case based on grounds stated in their Special and Affirmative Defenses, thus:

- “10. Petitioner’s allegation that the partial decision of the District Collector rendered on December 17, 1999 decreeing the forfeiture of subject sugar is primarily due to the failure of the Petitioner to contest or participate in the seizure proceedings is bereft of consideration. The record would show that the decision of forfeiture was based on the evidence presented. It is undisputed that when the vessel M/V “Affy” was apprehended, the master of the vessel likewise failed to explain the details of the voyage. This established the presumption that the bags of sugar subject of this petition came from an illegal source.
11. As to the allegation that due notice requirement was not complied with, Respondents maintain that such requirement was properly observed in accordance with Section 2304 of the Tariff Code – notice to unknown claimant. Ordinarily, if, within fifteen (15) days after the notification prescribed by the aforesaid provision of the Tariff Code, no owner or agent can be found or appears before the Collector, the latter shall declare

the property forfeited in favor of the government to be sold at auction in accordance with law (see Section 2306, TCCP). In the case at bar, however, taking into account that the right to due process is of paramount consideration, the District Collector forfeited the subject sugar only after the prosecution submitted its uncontroverted evidence.

12. While it is admitted that herein Petitioner made an offer to settle this controversy in accordance with E.O. 38 amending Section 2307 of the Code, such offer, however, has to be denied in view of the fact that the failure of the Petitioner to produce the required documents specially SRA Permit to Transport amounts to the presumption that the sugar in question comes from an illegitimate source, hence, fraudulent. Thus:

Section 2. The permit shall be evidence of the origin of the sugar and failure to obtain such permit and to present the same to the Coast guard and/or Bureau of Customs shall be prima facie evidence that the sugar has entered illegally into the Philippines and subject to such legal action as may be authorized.

13. The fact that the sugar subject of herein Petitioner came from an illegitimate source in view of the absence of the documents to support its transportation is bolstered by the disclaimer issued by Central Azucarera de Bais that the sugar did not come from them. This disclaimer amply established that the sugar was re-bagged to conceal its identity.”

The issue that comes to fore for our consideration is WHETHER OR NOT THE SHIPMENT CONSISTING OF 28,000 BAGS OF SUGAR LOADED ON BOARD M/V “NEILSEN EARL” IS SUBJECT TO FORFEITURE IN FAVOR OF THE GOVERNMENT FOR VIOLATION OF SECTION 2530(G) IN RELATION TO SECTIONS 906 AND 907 OF THE TARIFF AND CUSTOMS CODE.

For a better understanding of the issue, Sections 2530(g), 906 and 907 of the Tariff and Customs Code are hereinbelow quoted, thus:

**SECTION 2530. *Property Subject to Forfeiture Under Tariff and Customs Law.*** - 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

- g. Unmanifested article found on any vessel or aircraft if manifest therefore is required;

X X X

X X X

X X X

**SECTION 906. *Requirement of Manifest in Coastwise Trade.*** - Manifests shall be required for cargo and passengers transported from one place or port in the Philippines to another only when one or both of such places is a port of entry.

**SECTION 907. *Manifest Required Upon Departure from Port of Entry.*** - Prior to departure from a port of entry, the master of a vessel licensed for the coastwise trade shall make out and subscribe duplicate manifests of the whole of the cargo and all of the passengers taken on board such vessels, specifying in the cargo manifests the marks and numbers of packages, the port of destination and names of the consignees, together with such further information as may be required and in the passenger manifests the name, sex, age, residence, port of embarkation, and destination of all passengers, together with such further information as may be required. He shall deliver such manifests to the Collector of Customs or other customs officials duly authorized, before whom he shall swear to the best of his knowledge and belief, in respect to the cargo manifests, that the goods therein described, if foreign, were imported legally and that the duties, taxes and other charges thereon have been paid or secured to be paid, and with respect to the passenger manifests, that the information therein contained is true and correct as to all passengers taken on board. Thereupon, the said Collector of Customs or customs official, shall certify the same on the manifests, the original of which he shall return to the master with a permit specifying thereon, generally, the landing on board such vessel and authorizing him to proceed to his port of destination retaining the duplicates.

After a circumspect study of the attending facts, the disquisition of the parties, the applicable laws, rules and regulations, the Court rules in favor of the Respondents.

Section 2530(g) of the TCCP is clear and unambiguous that any unmanifested article found on any vessel or aircraft is liable for forfeiture if manifest therefore is required. Sections 906 and 907 of same TCCP provides that manifest shall be required for CARGO and PASSENGERS transported from one port to another.

In the case at bar, it was undisputed that no manifest was presented by the Captain of the vessel when the cargo was seized. This was admitted by the Petitioner in his Petition for Review, paragraph 6.8. Thus, there was a clear infringement of the provisions of the Tariff and Customs Code, hence, the shipment of sugar is liable to forfeiture as unmanifested cargo under Section 2530(g) of the TCCP in relation to Sections 906 and 907 of the same Code.

The defense of Petitioner that he cannot be faulted for the unmanifested cargo because he has no participation whatsoever in the preparation and issuance of cargo manifests is without merit since the fact remains that the cargo was UNMANIFESTED when manifest therefor was required. As clearly stated in the above provisions of the Tariff and Customs Code, it is enough that the cargo was unmanifested and that there was no showing that payment of duties and taxes thereon has been made to subject the same to forfeiture. As such, since the records do not show that Petitioner submitted the proper manifests to the customs authorities with respect to the cargo of sugar, the penalty of forfeiture was correctly imposed by the Respondents.

Moreover, it should be stressed that both parties waived their rights to present evidence and merely submitted the case for decision on the basis of the records and pleadings. As to who has the burden of proof in seizure or forfeiture proceedings is

explicitly answered by Section 2535 of the TCCP, which provides that the same shall lie upon the claimant, provided that the existence of probable cause must first be shown before the filing of the forfeiture proceedings. The term “probable cause”, which has been held synonymous with “reasonable cause”, means less than the evidence which will justify condemnation. It imports a seizure made under circumstances which warrant suspicion. (**Sanchez vs. Commissioner of Customs, BTA Case No. 185, November 2, 1954, citing U.S. vs. One Bag of Paradise and Choura Feathers, N.Y., 365 F. 301, 167, CCA 473; Associated Banking Corp. vs. Commissioner of Customs, et. al., CTA Case No. 2448, August 6, 1976; Metropolitan Garment Corp. vs. Ramon Farolan, CTA Case No. 3959, April 16, 1986; Mayer Steel Pipe Corp. vs. Hon. Alfredo Pio de Roda, et al., CTA Case No. 2823, February 18, 1987).** Said Sec. 2535 TCCP provides, thus:

**SEC. 2535. *Burden of Proof in Seizure and/or Forfeiture.*** In all proceedings taken for the seizure and/or forfeiture of any vessel, vehicle, aircraft, beast or articles under the provisions of the tariff and customs laws, **the burden of proof shall lie upon the claimant:** Provided, That probable cause shall be first shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding section of this Code (emphasis ours).

After a careful study of the facts and records of the case, the Court finds that the requirement of the law that the existence of probable cause should first be shown before filing of the forfeiture proceedings, had been fully complied with. The fact that the ship captain of the carrying vessel of the cargo failed to produce the document required by the authorities when the vessel and cargo was apprehended and the fact that the Central

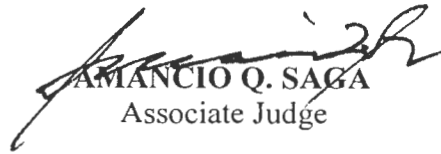
Azucarera de Bais, the sugar central, denied that the sugar was sourced from them albeit the bags of sugar bore the markings "Central Azucarera de Bais", constituted *prima facie* evidence of infringement of the provisions of the Tariff and Customs Code, particularly Sections 2530, 906, 907, thereof, and provided sufficient basis for the seizure of the subject cargo. Probable cause having been shown, it is incumbent upon Petitioner to prove that his allegations are correct and that the Respondents' assertions were wrong. Petitioner must prove by substantial evidence that the 28,000 bags of sugar were not illegally imported by him. Petitioner, however, failed to satisfactorily discharge this burden. No evidence whatsoever was presented by Petitioner to support his allegations. Instead Petitioner submitted this case on the basis of the pleadings and the records.

It is not amiss to mention that when an importer challenges by legal means the correctness or the validity of the actions of the Commissioner of Customs, the question to be decided is not whether the Commissioner was wrong but whether the importer was right, the burden being on the latter to establish the correctness of his own contentions. In seizure and forfeiture proceedings, the burden of proof lies upon the claimant (read **Feeder International Line PTE., Ltd. vs. Court of Appeals, et. al., 197 SCRA 843; Commissioner of Customs vs. Star Ferry, 227 SCRA 317**). The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that public officials of the state who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law (see **Inter-provincial Autobus Co., Inc. vs. Collector of Internal Revenue, 19 PHIL 290**).

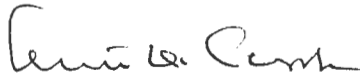
This is true in the instant case where Respondent's Special and Affirmative defenses, the validity of which as shown from the records of the case, have the effect, if not controverted by adequate and competent evidence, of nullifying Petitioner's cause of action.

**IN THE LIGHT OF ALL THE FOREGOING**, the decision of Respondents forfeiting the entire cargo of Petitioner, consisting of 28,000 bags of sugar, in favor of the government is hereby affirmed *in toto*. No costs.

**SO ORDERED.**

  
**AMANCIO Q. SAGA**  
Associate Judge

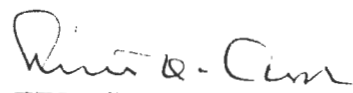
**WE CONCUR:**

  
**ERNESTO D. ACOSTA**  
Presiding Judge

  
**JUANITO C. CASTANEDA, JR.**  
Associate Judge

### **CERTIFICATION**

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

  
**ERNESTO D. ACOSTA**  
Presiding Judge