

REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

TRI-MARK VENTURES
TRADING CORPORATION,
Petitioner,

C.T.A. CASE NO. 6575

Members:

CASTAÑEDA, JR., Chairperson
UY, and
PALANCA-ENRIQUEZ, JJ.

-versus-

Promulgated:

COMMISSIONER OF CUSTOMS,
Respondent.

SEP 18 2007

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DECISION

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 101 of the Tariff and Customs Code of the Philippines, as amended*, importation of firearms should be authorized by law; otherwise they fall within the class of articles of prohibited importation, subject to seizure and forfeiture.

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THE CASE

This is a Petition For Review filed by Tri-Mark Ventures Trading Corporation (hereafter “petitioner”) appealing the Decision dated September 19, 2002, rendered by then Commissioner of Customs, Commissioner Antonio M. Bernardo, in Customs Case No. 2002-06(NAIA S.I. No. 022-2002) dismissing petitioner Tri-Mark Ventures Trading Corporation’s appeal.

THE FACTS

The facts, as culled from the records, are as follows:

Petitioner is a corporation established and existing under the laws of the Republic of the Philippines. It was registered with the Securities and Exchange Commission on October 16, 1989 under S.E.C. Registration No. 169557. It is the sole and exclusive distributor of Heckler and Koch products in the Philippines.

On November 15, 1999, petitioner, as a licensed dealer of firearms and ammunition, was issued an “Authorization” valid until November 14, 2000, to import various firearms, their major parts, and ammunition for commercial purposes, enumerated and described as follows:

Quantity	
<i>Firearms</i>	<i>Kind/Caliber</i>
700 pcs	Revolver/Pistol, Calibers .22, .25, .32, .380, 9mm & .38 only(Low-powered handguns)

aml

692 pcs	Revolver/Pistol, Calibers .357, .41, .44 & .40 only (high-powered handguns)
250 pcs	Shotgun, 410 GA, 16 GA & 12 GA only
100 pcs	Rifle, Caliber .22 only
NOTE: THIS DOES NOT INCLUDE FIREARMS THAT ARE MILITARY TYPE, AUTOMATIC AND WITH BURST OF THREE (3)	
<i>Ammunition</i>	
50,000 rounds	Revolver/Pistol, Cartridges, Calibers .22, .25, .32, .380, 9mm, .38, .357, .41, .44, .40 & .45
50,000 rounds	Shotgun Shells, Gauges 410; 20; 16 & 12 Only
50,000 rounds	Rifle Cartridges, Caliber .22 only
<i>Major Firearm Parts</i>	
100 pcs	Barrel, Various makes and calibers
100 pcs	Receiver, Various makes and calibers
100 pcs	Slide, Various makes and calibers
100 pcs	Conversion Kit, Various makes and calibers

On January 8, 2001, the PNP issued a “License to Operate” under License No. 1309, granting petitioner an Indentor’s License to Deal in Firearms, Ammunitions, Spare Parts and Accessories for Sale to the Armed Forces of the Philippines and the Philippine National Police, valid until January 7, 2003.

On October 16, 2001, petitioner was issued a “License to Operate No. 1322” by the Philippine National Police (PNP) to deal in firearms and ammunitions valid until October 15, 2003, in accordance with *Sections 883 and 884 of the Revised Administrative Code and Section 24(f) of RA 6975*.

On March 29, 2002, a shipment of both high-powered and commercial firearms consigned to petitioner arrived at the Ninoy Aquino International Airport from England aboard KE 321, under Airway Bill



No. MAWB 180-9124-4753. The shipment consisted of the following:

5 pcs.	USP .45 Compact Black, complete with two 8rd magazines (empty) and User Handbook Serial Nos. 29-024289 to 29-024293
20 pcs.	USP .45 Stainless, complete with two 12rd magazines (empty) and User Handbook Serial Nos. 25-047655 to 25-047674
20 pcs.	USP .45 Black, complete with two 12rd magazines (empty) and User Handbook Serial Nos. 25-068198 to 25-068217
15 pcs.	US .45 Compact Stainless, complete with two 8rd magazines (empty) and User Handbook Serial Nos. 29-018001 to 29-018015
25 pcs.	G36KE Cal. 5.56mm Assault Rifle, complete with 3X Magnification and red dot collimator, one 30rd magazine (empty), carrying sling and User Handbook Serial Nos. BD001036 to BD001060
10 pcs.	MP5 PDW Cal. 9mm Sub-machine Gun, complete with one 30rd magazine (empty), carrying sling and User Handbook Serial Nos. AC001260 to AC001269
108 pcs.	G36 Magazines 30rd (empty)

On April 11, 2002, a “Warrant of Seizure and Detention” was issued against petitioner for violation of *Sections 10(a) and 2530(f) of the Tariff and Customs Code of the Philippines, as amended* (hereafter “TCCP”).

Thereafter, a seizure identification case was filed against the said shipment where petitioner appeared as the claimant. A number of hearings ensued for the presentation of the evidence for the petitioner. Several hearings were cancelled upon motion of petitioner. On June 25, 2002, petitioner filed a Manifestation and Motion praying that the resolution of the case be deferred until the Chief of the Firearms and



Explosive Division (FED) shall have completed the documents of the shipment, which was denied by the District Collector.

On July 1, 2002, District Collector Celso P. Templo rendered his Decision ordering the seizure of the subject shipment, the dispositive portion of which reads as follows:

“WHEREFORE, by virtue of the authority vested by law in this office, it is hereby ordered and decreed that the subject shipment be forfeited in favor of the government, the same to be disposed of in the manner provided for by law.

Let copies of this Decision be furnished all offices and parties concerned.

SO ORDERED.”

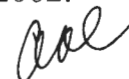
Petitioner appealed the Decision to the Commissioner of Customs who, on September 19, 2002 rendered a Decision dismissing the appeal and affirming the Decision of the District Collector of Customs, the dispositive portion of which reads as follows:

“WHEREFORE, foregoing considered, the appeal is hereby DISMISSED for lack of merit and the Decision appealed from is hereby AFFIRMED in toto.

SO ORDERED.”

Petitioner’s Motion for Reconsideration was likewise denied in an Order dated November 6, 2002.

Hence, this Petition For Review filed on December 19, 2002.

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On January 13, 2003, respondent filed a Motion to Dismiss on the ground that the petition was filed out of time, which this Court denied for lack of merit in a Resolution dated May 12, 2003.

On June 30, 2003, respondent, through the Office of the Solicitor General, filed his Answer, raising the following special and affirmative defenses:

- 1) The subject shipment of the petitioner is not covered by a prerequisite permit/license/authority to import duly issued by the Philippine National Police at the time of importation; thus, the same is liable to seizure and forfeiture pursuant to the Tariff and Customs Code of the Philippines, as amended.
- 2) The petitioner was not deprived of its right to due process of law in the administrative proceedings *a quo*.
- 3) The petition for review is barred by the statute of limitations as it was filed out of time.

On September 8, 2003, petitioner filed a "Motion for Leave of Court to Amend its Petition for Review and to Admit its Amended Petition for Review", on the ground that petitioner, through oversight, failed to state the exact quantity and description of the firearms and accessories subject of the seizure proceedings by the Bureau of Customs, which the Court granted in a Resolution dated December 9, 2003 and the Amended Petition for Review was admitted.



Thereafter, the petitioner presented Ferdinand Trinidad, as witness, and documentary exhibits, which were admitted by the Court except for *Exhibits "B", "C", "G", "H", "I", "L", and "M"* for failure of petitioner to present the original copies of said exhibits for comparison. Upon Motion For Reconsideration filed by petitioner, the Court admitted *Exhibits "B", "C", "G", "H", "L" and "M"*, but only as part of the testimony of the witness who testified thereon.

On the other hand, respondent presented Mario Abceo, as witness, and documentary exhibits marked as *Exhibits "1" to "5"*, which were all admitted by the Court.

Thereafter, both parties were ordered to file their simultaneous memoranda, afterwhich the case shall be deemed submitted for decision.

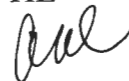
Both parties having complied thereto, the case was deemed submitted for decision.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE HONORABLE
COMMISSIONER OF CUSTOMS, ANTONIO M.
BERNARDO, DEPRIVED PETITIONER OF ITS
RIGHT TO DUE PROCESS OF LAW WHEN HE



SUSTAINED THE DECISION OF DISTRICT COLLECTOR CELSO P. TEMPLO UPHOLDING THE ORDER OF SEIZURE OF TRI-MARK'S SHIPMENT.

II

WHETHER OR NOT PETITIONER SHOULD BE FAULTED FOR RELYING ON THE ASSURANCE OF THE PNP THAT THE IMPORT PERMIT FOR THE HIGH-POWERED FIREARMS WAS FORTHCOMING AND THEREBY HEEDING THE PNP'S ADVICE TO SHIP THE GOODS TO THE PHILIPPINES.

III

WHETHER OR NOT THE HONORABLE CUSTOMS COMMISSIONER ANTONIO M. BERNARDO COMMITTED GRAVE ABUSE OF DISCRETION IN REFUSING TO RELEASE THE SIXTY (60) PIECES OF COMMERCIAL FIREARMS IN FAVOR OF PETITIONER AS CONSIGNEE THEREOF, CONSIDERING THAT THE SAME WERE COVERED BY A VALID IMPORT PERMIT.

IV

IS THE SUBJECT SHIPMENT LIABLE FOR FORFEITURE.

Principal Issue

The principal issue centers on whether or not the subject shipment are prohibited importations subject to seizure and forfeiture under the *TCCP, as amended*.

THE COURT'S RULING

We deny the Petition.

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Sections 101 and 2530 of the TCCP, as amended, provide as follows:

“SEC. 101. Prohibited Importations. — The importation into the Philippines of the following articles is prohibited:

a. **Dynamite, gunpowder, ammunitions and other explosives, firearms, and weapons of war, and parts thereof, except when authorized by law. xxx”**

“SEC. 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 subject to forfeiture:

xxx xxx.

(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;

xxx xxx.”

The law is very clear. *Section 101(a) of the TCCP, as amended*, is explicit in providing that “dynamite, gunpowder, ammunitions, other explosives, firearms and weapons of war and parts thereof, except when authorized by law, are prohibited importations, and are thus liable to seizure and forfeiture in favor of the government.



In conjunction thereto, *Section 2 of the Implementing Rules and Regulations of P.D. No. 1866, as amended*, provides:

“SEC. 2. Manufacture, sale, acquisition or possession, of firearm, ammunition or explosives. – Any person or entity desiring to import, manufacture, deal in, receive, acquire, buy, sell dispose or possess any firearm, part of firearm, ammunition, explosives or machinery, tool or implement used or intended to be used in the manufacture of any firearm, parts of firearm, ammunition, or explosives shall first secure the necessary permit/license/authority from the Chief of Constabulary, except in the case of application to manufacture firearms, ammunition or explosives, the corresponding permit/license shall be issued only with prior approval of the President.”

In the parties’ Joint Stipulation of Facts and Issues, petitioner admitted that it has no permit/license/authority to import the subject shipment at the time of the importation. Furthermore, respondent presented a Certification, issued by Police Senior Superintendent Ernesto Belen, Chief of the Firearms and Explosives Division of the PNP stating that “petitioner has no valid/current Authority To Import High powered Rifles as of the date” (*Exhibit “J”*). Clearly, therefore, there is sufficient legal basis for the seizure and forfeiture of the subject shipment in favor of the government.

Petitioner’s assertion that it imported such articles on the basis of the information given by the officials of the PNP that its license is

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forthcoming; thus it may proceed with its importation, cannot be sustained.

Record shows that up to the time the articles arrived, no license has yet been received from or issued by the PNP authorizing the importation or possession of the subject firearms. Neither was it forthcoming, considering the length of time that had elapsed since the application of petitioner for the said renewal or issuance of the permit to import. The Authorization issued on November 15, 1999 by the Police Deputy Director General of the PNP, OIC Edmundo L. Larroza, was valid only until November 14, 2000 (*Exhibit "F"*). If indeed a permit to import was forthcoming, the PNP should have already issued the same.

It bears stressing that a pending application for the renewal or issuance of the permit to import cannot be considered a permit/license/authority to import itself. To consider the same as such would be violative of the aforequoted *Section 2 of the Implementing Rules and Regulations of PD 1866, as amended*, which expressly provides "any person or entity desiring to import, x x x shall first secure the necessary permit/license/authority from the Chief of Constabulary x x x."



Likewise, petitioner's contention that it was deprived of its right to due process of law in the administrative proceedings is devoid of merit.

Record shows that petitioner was accorded its right to due process of law by giving it ample opportunity to present evidence, but instead petitioner employed dilatory tactics to delay the proceedings. As aptly ruled by District Collector Celso P. Templo of the Bureau of Customs in his decision, dated July 1, 2002, in Seizure Identification No. 022-2002:

"Such request for deferment must be denied by this Office. It is in total contravention to the understanding mutually agreed upon between the government and claimant on the last hearing on June 6, 2002. Besides, this Office should not be at the mercy of claimant as to when it can produce and present to this Office the required Import Permit from the FED, PNP, to cover this shipment. The series of sudden and untimely withdrawals of counsels for claimant is deemed by this Office as claimant's flimsy dilatory tactics just to unnecessary prolong the proceedings of this case. This should not be countenanced. As it is, claimant has miserably failed to rebut the charge that subject firearms and spares were not duly covered by the required Import Permit from the FED, PNP, upon their arrival on March 29, 2002."

The above ruling and findings was affirmed by then Commissioner of Customs in his decision dated September 19, 2002 in Customs Case No. 2002-06, to wit:

"Obviously, as opined by the District Collector a quo, the delays of this proceedings before the Law Division as well as the delay before this Office caused by Appellant is a attempt on its part to buy time in the hope that the import permit will eventually be given to it by the FED-PNP.



However, if FED-PNP is inclined of awarding herein Appellant the much sought after import permit, the same should have been awarded long time ago during the pendency of this case before the Law Division. But none was given and nothing is forthcoming. Hence, we are constrained to resolve this case expeditiously taking into consideration the sensitive nature of this shipment of which, if mishandled, there is a great danger of the same falling into the wrong hands.”

Moreover, *Section 2535 of the TCCP, as amended*, provides:

“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.”

Pursuant to the aforequoted provision, the burden of proof in seizure and/or forfeiture proceedings shall lie upon the claimant, provided that probable cause shall first be shown for the institution of such proceedings.

The term “probable cause”, which has been held synonymous with “reasonable cause”, means less than the evidence which will justify condemnation. It implies 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).

After a careful study of the evidence on record, the Court finds that the legal requirement of showing first the existence of probable cause before filing of forfeiture proceedings, has been fully met. The undisputed fact that petitioner failed to present a valid license/permit/authority to import the subject firearms and ammunitions, is prima facie evidence of violation of the provisions of the *TCCP*, as amended, particularly *Section 2530* thereof.

Probable cause having been shown, it is now incumbent upon petitioner to prove that its allegations are correct and that respondent's findings were wrong. Petitioner must prove by substantial evidence that its importation of the various firearms and ammunitions is valid and legal. Records of this case, however, show that petitioner miserably failed to discharge this burden. Petitioner claims that such importation was done at the behest of the officers of the PNP. Other than this self-serving allegation, no other evidence was presented by petitioner to support this allegation.

It must be stressed that proceedings for the forfeiture of goods illegally imported are not criminal in nature since they do not result in the



conviction of the wrongdoer nor in the imposition upon him of a penalty, proof beyond reasonable doubt is not required in order to justify the forfeiture of the goods. In this case, the degree of proof required is merely substantial evidence which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion (*Feeder International Line, PTC Ltd. vs. Court of Appeals, 197 SCRA 849*). This respondent Bureau of Customs has sufficiently established, which the petitioner failed to rebut.

All told, We find the appealed decision to be in accordance with law and the evidence on record. We, therefore, affirm the same.

WHEREFORE, premises considered, the instant Petition For Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

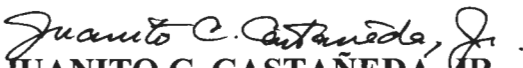
WE CONCUR:


JUANITO C. CASTANEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice

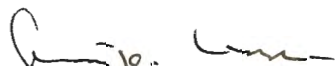
ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ERNESTO D. ACOSTA
Presiding Justice