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SECOND DIVISION

[G.R. No. 65418. June 18, 1985]

COLLECTOR OF CUSTOMS OF MANILA, *petitioner, vs.* **INTERMEDIATE APPELLATE COURT, HEIRS OF BIENVENIDO FERRER and HEIRS OF EDUARDO BRAVO,** *respondents.*

SYLLABUS

TAXATION; COLLECTOR OF CUSTOMS; LIABILITY FOR MISDELIVERY OF GOODS.— It is clear from Section 1907 of the Tariff and Custom Code that the withdrawal from the bonded warehouse must be authorized by the proper person and that under Section 3511 the Collector is liable for misdelivery. The reason is that misdelivery could easily be avoided if the necessary precautions are taken. For the protection of the shipper, consignee or the person interested in the cargo, the Collector is held liable even if the misdelivery was made by his subordinate. Any action against the subordinate may prove futile.

APPEARANCES OF COUNSEL

Mariano C. Virata for private respondents.

D E C I S I O N

AQUINO, *J.*:

This case is about the liability of the Collector of Customs of Manila for misdelivery of cargo which had been garnished.

As background, it should be stated that in the execution pending appeal in Civil Case No. 42189 of the Manila Court of First Instance, plaintiffs Bienvenido Ferrer and Eduardo Bravo garnished on October 31, 1961 33 cases of rayon and synthetic textiles consigned in 1961 to (believe it or not) defendant Cotabato

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Palay & Corn Producers, Inc. The textiles were in the custody of the Collector of Customs of Manila.

The garnished textiles were later transferred on December 19, 1963 to the bonded warehouse of Chavez, Salinas & Co. by the sheriff who directed the warehouseman not to release the goods *without his written authorization*. However, nine days later, or on December 28, 1963, through the use of two delivery permits with one Jose Santiago as the customs broker of the Cotabato Palay & Corn Producers, Inc., the textiles were released purportedly with clearance from the shipping agent and the sheriff.

Nearly five years later, or on December 3, 1968, after the judgment for ₱90,000 was affirmed by the Court of Appeals, Collector Jose Viduya, totally unaware of the said release and assuming that the textiles were still in the custody of Chavez, Salinas & Co., sent a letter to the sheriff requesting for the release thereof. The warehouseman revealed that the textiles were no longer in his custody and that they were released five years earlier with the proper formalities.

The investigation of the National Bureau of Investigation disclosed that the note of the sheriff attached to the delivery permits was a *forgery*. Persons suspected of the crime were charged. No customs employee was involved.

The garnishers, Bravo and Ferrer, filed on May 19, 1969 in Civil Case No. 42189 a motion to compel the Collector and the sheriff to pay for the invoice value of the textiles in the sum of $17,504.46. Judge Villasor denied the motion. He held that the Collector was not liable under Section 3511 of the Tariff and Customs Code. The forgery of the delivery permits was a fortuitous event. The sheriff was not liable because the textiles were in the custody of the warehouseman.

Ferrer and Bravo appealed to the Court of Appeals which reversed the ruling of Judge Villasor. The Appellate Court held that because of the negligence of the customs employee serving as storekeeper in the bonded warehouse the Collector is liable for the *misdelivery of the textiles*. The Collector appealed to this Court.

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The Tariff and Customs Code of 1957 provides:

"SEC. 1907. *Withdrawal of articles from bonded warehouse.*— Articles entered under bond may be withdrawn at any time for consumption, for transportation to another port, for exportation or for delivery on board a vessel or aircraft engaged in foreign trade for use on board such vessel or aircraft as sea stores or stores for aircraft after liquidation of the entry. The withdrawal must be made by a person or firm named in the original warehouse entry, or by a person or firm duly authorized by the former, whose authority must appear in writing upon the face of the withdrawal."

"SEC. 3511. *Collector not liable in respect of ruling in customs cases.* — No Collector or other official of customs shall be in any way personally liable for or on account of any official ruling or decision as to which the person claiming to be aggrieved has the right to obtain either an administrative or judicial review, and *except for a misdelivery of articles* a Collector shall not, in the absence of abuse of authority, he liable to any person for a loss occasioned either by his own official act or the act of his subordinates."

Sections 1907 and 3511 were not amended by Presidential Decree No. 34.

The Solicitor General contends that the Appellate Court erred in holding the Manila Collector of Customs liable for the loss of the garnished goods and in finding that the storekeeper was grossly negligent in not checking the genuineness of the sheriff's signature and that the bonded warehouse did not have a facsimile of the sheriff's signature. These contentions raise factual issues. As a rule, the factual findings of the Appellate Court are binding on this Court.

On the other hand, it is clear from Section 1907 that the withdrawal from the bonded warehouse must be authorized by the proper person and that under Section 3511 the Collector is liable for misdelivery.

The reason is that misdelivery could easily be avoided if the necessary precautions are taken. For the protection of the shipper, consignee or the person interested in the cargo, the Collector is held liable even if the misdelivery was made by his subordinate. Any action against the subordinate may prove futile.

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The controlling case is *Lung Chea Kung Kee & Co. vs. Aldanese and Chua Soco*, 45 Phil. 784, where it was ruled:

"*When Collector of Customs is officially liable.* — Under the provisions of sections 1316 and 1408 of the Administrative Code, the Collector of Customs is officially liable for a misdelivery of merchandise' where it was delivered by a subordinate employee without the surrender of a bill of lading or the exacting of a bond, even though such delivery was made without the knowledge, consent, or approval of the Collector."

Section 1408.is identical to Section 3511 while Section 1316 covers delivery of merchandise without production of a bill of lading.

WHEREFORE, the judgment of the Appellate Court is affirmed. No costs.

SO ORDERED.

Makasiar (Chairman), *Concepcion Jr.*, *Abad Santos*, and *Cuevas*, *JJ.*, concur.

Escolin, *J.*, took no part.

SECOND DIVISION

[G.R. No. 68374. June 18, 1985]

HORACIO LUNA and LIBERTY HIZON-LUNA, *petitioners, vs.* **INTERMEDIATE APPELLATE COURT, HON. ROQUE A. TAMAYO, as Presiding Judge of Regional Trial Court, NCJR, Branch CXXXII, Makati, Metro Manila, MARIA LOURDES SANTOS, and SIXTO SALUMBIDES,** *respondents.*