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THIRD DIVISION

[G.R. No. L-42204. January 21, 1993]

HON. RAMON J. FAROLAN, JR., in his capacity as Commissioner of Customs, *petitioner, vs.* **COURT OF TAX APPEALS and BAGONG BUHAY TRADING,** *respondents.*

SYLLABUS

1. **TAXATIONS; TARIFF AND CUSTOMS CODE; PROPERTY SUBJECT TO FORFEITURE; CITED. —** *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 subjected to forfeiture. Any article sought to be imported or exported. (3) On the strength of a *false* declaration or affidavit or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article; (4) On the strength of a *false* invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and (5) Through *any other practice or device contrary to law* by means of which such articles was entered through a customhouse to the prejudice of government.

2. **ID.; ID.; ID.; REQUISITES. —** Under Section 2530, paragraph m, subparagraphs (3) and (4), the requisites for forfeiture are: (1) the wrongful making by the owner, importer, exporter or consignee of any declaration or affidavit, or the wrongful making or delivery by the same persons of any invoice, letter or paper — all touching on the importation or exportation of merchandise; and (2) that such declaration, affidavit, invoice, letter or paper is false. In the case at bar, although it cannot be denied that private respondent caused to be prepared through its customs broker a false import entry or declaration, it cannot be charged with the wrongful making thereof because such entry or declaration merely restated faithfully the data found in the corresponding certificate of origin, certificate of manager of the shipper, the packing lists and the bill of lading which were all prepared by its suppliers abroad. If, at all, the wrongful making or falsity of the documents above-mentioned can only

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be attributed to *Bagong Buhay's* foreign suppliers or shippers. With regard to the second requirement on falsity, it bears mentioning that the evidence on record, specifically, the decisions of the Collector of Customs and the Commissioner of Customs, do not reveal that the importer or consignee, *Bagong Buhay* Trading had any knowledge of any falsity on the subject importation. Since private respondent's misdeclaration can be traced directly to its foreign suppliers, Section 2530, paragraph m, subparagraphs (3) and (4) cannot find application.

3. ID.; ID.; ID.; ID.; FRAUD UNDER SUBPARAGRAPH 5 MUST BE INTENTIONAL, ACTUAL AND NOT CONSTRUCTIVE, AND COMMITTED BY IMPORTER OR CONSIGNEE TO EVADE PAYMENT OF DUTIES DUE. — Applying subparagraph (5), fraud must be committed by an importer/consignee to evade payment of the duties due. We support the stance of the Court of Tax Appeals that the Commissioner of Customs failed to show that fraud had been committed by the private respondent. The fraud contemplated by law must be actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right. As explained earlier, the import entry was prepared on the basis of the shipping documents provided by the foreign supplier or shipper. Hence, *Bagong Buhay* Trading can be considered to have acted in good faith when it relied on these documents.

4. POLITICAL LAW; STATE IMMUNITY FROM SUIT; BUREAU OF CUSTOMS ENJOYS IMMUNITY FROM SUIT; CASE AT BAR. — We opine that the Bureau of Customs cannot be held liable for actual damages that the private respondent sustained with regard to its goods. Otherwise, to permit private respondent's claim to prosper would violate the doctrine of sovereign immunity. Since it demands that the Commissioner of Customs be ordered to pay for actual damages it sustained, for which ultimately liability will fall on the government, it is obvious that this case has been converted technically into a suit against the state.

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APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jorge G. Macapagal counsel for respondent.
Aurea Aragon-Casiano for Bagong Buhay Trading.

D E C I S I O N

ROMERO, *J.:*

This is a petition for review on *certiorari* which seeks to annul and set aside the decision of the Court of Tax Appeals dated December 27, 1974 (CTA Case No. 2490) reversing the decision of the Commissioner of Customs which affirmed the decision of the Collector of Customs.[1]

The undisputed facts are as follows:

On January 30, 1972, the vessel S/S "Pacific Hawk" with Registry No. 170 arrived at the Port of Manila carrying, among others, 80 bales of screen net consigned to *Bagong Buhay* Trading (*Bagong Buhay*). Said importation was declared through a customs broker under Entry No. 8651-72 as 80 bales of screen net of 500 rolls with a gross weight of 12,777 kilograms valued at $3,750.00 and classified under Tariff Heading No. 39.06-B of the Tariff and Customs Code[2] at 35% *ad valorem.* Since the customs examiner found the subject shipment reflective of the declaration, *Bagong Buhay* paid the duties and taxes due in the amount of ₱11,350.00 which was paid through the Bank of Asia under Official Receipt No. 042787 dated February 1, 1972. Thereafter, the customs appraiser made a return of duty.

Acting on the strength of an information that the shipment consisted of "mosquito net" made of nylon dutiable under Tariff Heading No. 62.02 of the Tariff and Customs Code, the Office

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[1] Customs Case No. 72-79 entitled "*Republic of the Philippines versus 80 bales screen net*, Entry No. 8651 (72) ex S/S 'Pacific Hawk,' Reg. No. 170 marks B.B.T. Manila, *Bagong Buhay* Trading, Claimant."

[2] Should be Tariff Heading No. 39.02-B.

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of the Collector of Customs ordered a re-examination of the shipment. A report on the re-examination revealed that the shipment consisted of 80 bales of screen net, each bale containing 20 rolls or a total of 1,600 rolls.[3] Re-appraised, the shipment was valued at $37,560.00 or $0.15 per yard instead of $.075 per yard as previously declared. Furthermore, the Collector of Customs determined the subject shipment as made of synthetic (polyethylene) woven fabric classifiable under Tariff Heading No. 51.04-B at 100% *ad valorem*. Thus, Bagong Buhay Trading was assessed P272,600.00 as duties and taxes due on the shipment in question.[4] Since the shipment was also misdeclared as to quantity and value, the Collector of Customs forfeited the subject shipment in favor of the government.[5]

Private respondent then appealed the decision of the Collector of Customs by filing a petition for review with the Commissioner of Customs. On November 25, 1972 the Commissioner affirmed the Collector of Customs.[6] Private respondent moved for reconsideration but the same was denied on January 22, 1973.[7]

From the Commissioner of Customs, private respondent elevated his case before the Court of Tax Appeals. Upon review, the Court of Tax Appeals reversed the decision of the Commissioner of Customs. It ruled that the Commissioner erred in imputing fraud upon private respondent because fraud is never presumed and thus concluded that the forfeiture of the articles in question was not in accordance with law. Moreover, the appellate court stated that the imported articles in question should be classified as "polyethylene plastic" at the rate of 35% *ad valorem* instead of "synthetic (polyethylene) woven fabric" at the rate of 100% *ad valorem* based upon the results conducted by the Bureau of Customs Laboratory. Consequently, the Court

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[3] *Rollo*, pp. 227-228, Exhibits "D" and "D-1".

[4] *Rollo*, pp. 229-230.

[5] *Rollo*, pp. 42-43, Annex C.

[6] *Rollo*, pp. 48-51, Annex E.

[7] *Rollo*, pp. 54-55, Annex G.

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of Tax Appeals ordered the release of the said article upon payment of the corresponding duties and taxes.(C.T.A. Case No. 2490)[8]

Thereafter, the Commissioner of Customs moved for reconsideration. On November 19, 1975, the Court of Tax Appeals denied said motion for reconsideration.[9]

On August 20, 1976, private respondent filed a petition asking for the release of the questioned goods which this Court denied. After several motions for the early resolution of this case and for the release of goods and in view of the fact that the goods were being exposed to the natural elements, we ordered the release of the goods on June 2, 1986. Consequently, on July 26, 1986, private respondent posted a cash bond of ₱149,443.36 to secure the release of 64 bales[10] out of the 80 bales[11] originally delivered on January 30, 1972. Sixteen bales[12] remain missing.

Private respondent alleges that of the 143,454 yards (64 bales) released to *Bagong Buhay*, only 116,950 yards were in good condition and the 26,504 yards were in bad condition. Consequently, private respondent demands that the Bureau of Customs be ordered to pay for damages for the 43,050 yards[13] it actually lost.[14]

Hence, this petition, the issues being: a) whether or not the shipment in question is subject to forfeiture under Section 2530-M subparagraphs (3), (4) and (5) of the Tariff and Customs Code; b) whether or not the shipment in question falls under

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[8] *Rollo*, pp. 30-37, Annex A.

[9] *Rollo*, pp. 38-41, Annex B.

[10] Consisting of 143,454 yards.

[11] Consisting of 160,000 yards — the total yardage of the questioned goods.

[12] Consisting of 16,546 yards.

[13] Derived by adding 26,504 yards in bad order condition plus 16,546 yards missing.

[14] *Rollo*, p. 372.

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Tariff Heading No. 39.06-B (should be 39.02-B) of the Tariff and Customs Code subject to *ad valorem* duty of 35% instead of Tariff Heading No. 51.04-B with *ad valorem* of 100% and c) whether or not the Collector of Customs may be held liable for the 43,050 yards actually lost by private respondent.

Section 2530, paragraph m, subparagraphs(3), (4) and (5) states:

"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 subjected to forfeiture.

x x x x x x x x x

m. Any article sought to be imported or exported.

x x x x x x x x x

(3) On the strength of a *false* declaration or affidavit or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;

(4) On the strength of a *false* invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article; and

(5) Through *any other practice or device contrary to law* by means of which such articles was entered through a customhouse to the prejudice of government. (Italics supplied).

Petitioner contends that there has been a misdeclaration as to the quantity in rolls of the shipment in question, the undisputed fact being that the said shipment consisted of 1,600 rolls and not 500 rolls as declared in the import entry. We agree with the contention of the petitioner. In declaring the weight of its shipment in an import entry, through its customs broker as 12,777 kilograms when in truth and in fact the actual weight is 13,600 kilograms, an apparent misdeclaration as to the weight of the questioned goods was committed by private respondent. Had it not been for a re-examination and re-appraisal of the shipment by the Collector of Customs which yielded a difference of 823 kilograms, the government would have lost revenue derived from customs duties.

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Although it is admitted that indeed there was a misdeclaration, such violation, however, does not warrant forfeiture for such act was not committed directly by the owner, importer, exporter or consignee as set forth in Section 2530, paragraph m, subparagraph (3), and/or (4).

In defense of its position denying the commission of misdeclaration, private respondent contends that its import entry was based solely on the shipping documents and that it had no knowledge of any flaw in the said documents at the time the entry was filed. For this reason, private respondent believes that if there was any discrepancy in the quantity of the goods as declared and as examined, such discrepancy should not be attributed to *Bagong Buhay*.[15]

Private respondent's argument is persuasive. Under Section 2530, paragraph m, subparagraphs (3) and (4), the requisites for forfeiture are: (1) the wrongful making by the owner, importer, exporter or consignee of any declaration or affidavit, or the wrongful making or delivery by the same persons of any invoice, letter or paper — all touching on the importation or exportation of merchandise; and (2) that such declaration, affidavit, invoice, letter or paper is false.[16]

In the case at bar, although it cannot be denied that private respondent caused to be prepared through its customs broker a false import entry or declaration, it cannot be charged with the wrongful making thereof because such entry or declaration merely restated faithfully the data found in the corresponding certificate of origin,[17] certificate of manager of the shipper,[18] the packing lists[19] and the bill of lading[20] which were all prepared by its

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[15] *Rollo*, p. 143 and Brief for Respondent-Appellee, p. 9.

[16] *Farm Implement and Machinery Co. v. Commissioner of Customs*, L-22212, August 30, 1968, 24 SCRA 905.

[17] Exhibit "4", p. 220, Customs Records.

[18] Exhibit "5", p. 239, Customs Records.

[19] Exhibit "6", pp. 217-218, Customs Records.

[20] p. 193, Customs Records.

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suppliers abroad. If, at all, the wrongful making or falsity of the documents above-mentioned can only be attributed to *Bagong Buhay's* foreign suppliers or shippers.

With regard to the second requirement on falsity, it bears mentioning that the evidence on record, specifically, the decisions of the Collector of Customs and the Commissioner of Customs, do not reveal that the importer or consignee, Bagong Buhay Trading had any knowledge of any falsity on the subject importation.

Since private respondent's misdeclaration can be traced directly to its foreign suppliers, Section 2530, paragraph m, subparagraphs (3) and (4) cannot find application.

Applying subparagraph (5), fraud must be committed by an importer/consignee to evade payment of the duties due.[21] We support the stance of the Court of Tax Appeals that the Commissioner of Customs failed to show that fraud had been committed by the private respondent. The fraud contemplated by law must be actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right.[22] As explained earlier, the import entry was prepared on the basis of the shipping documents provided by the foreign supplier or shipper. Hence, *Bagong Buhay* Trading can be considered to have acted in good faith when it relied on these documents.

Proceeding now to the question of the correct classification of the questioned shipments, petitioner contends that the same falls under Tariff Heading No. 51.04 being a "synthetic (polyethylene) woven fabric." On the other hand, private respondent contends that these fall under Tariff Heading No. 39.06 (should be 39.02), having been found to be made of polyethylene plastic.

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[21] Farm Implement and Machinery Co., *Id.* at Footnote 11.

[22] *Aznar v. Court of Tax Appeals*, No. L-20569, August 23, 1974, 58 SCRA 519.

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Heading No. 39.02 of the Tariff and Customs Code provides:

"39.02 – Polymerisation and copolymerisation products (for example, polyethylene, polytetrahaloethylene, polyisobutylene, polystyrene, polyvinyl chloride, polyvinyl acetate, polyvinyl chloroacetate and other polyvinyl derivatives, polyacrylic and polymethacrylic derivatives, coumaroneindene resins).

The principal products included in this heading are:

(1) *Polymerization products of ethylene or its substitution derivatives*, particularly the halogen derivatives.

Examples of these are polyethylene, polytetrafluro-ethylene and polychlorotrifluro-ethylene. Their characteristic is that they are translucent, flexible and light in weight. They are used largely for insulating electric wire."[23]

On the other hand, Tariff Heading No. 51.04 provides:

"51.04 — Woven fabrics of man-made fibers (continuous) including woven fabrics of monofil or strip of heading No. 51.01 or 51.02"

"This heading covers *woven fabrics* (as described in Part [I] [C] of the General Explanatory Note on Section XI) *made of yarns of continuous man-made fibers*, or of monofil or strip of heading 51.01 and 51.02; it includes a very large variety of dress fabrics, linings, curtain materials, furnishing fabrics, tyre fabrics, tent fabrics, parachute fabrics, etc.[24] (Italics supplied)

To correctly classify the subject importation, we need to refer to chemical analysis submitted before the Court of Tax Appeals. Mr. Norberto Z. Manuel, an Analytical Chemist of the Bureau of Customs and an Assistant to the Chief of the Customs Laboratory, testified that a chemical test was conducted on the sample[25] and "the result is that the attached sample submitted

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[23] Commentaries on the Revised Tariff and Customs Code of the Philippines, Vol. II, pp. 1170-1171, 1984 Revised Edition, Montano A. Tejam.

[24] *Ibid*, p. 1351.

[25] TSN, p. 96, Hearing of May 11, 1972.

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under Entry No. 8651 was found to be made *wholly of polyethylene plastic*."[26]

A similar result conducted by the Adamson University Testing Laboratories provides as follows:

"The submitted sample, being insoluble in 10% sodium carbonate; hydrochloric acid, glacial acetic acid, toluene, acetone, formic acid, and nitric acid, does not belong to the man-made fibers, *i.e.*, cellulosic and alginate rayons, poly (vinyl chloride), polyacrylonitrile, copolymer or polyester silicones including Dolan, Dralon, Orlin, PAN, Redon, Courtelle, *etc*., Tarylene, Dacron; *but it is a type of plastic not possessing the properties of the man-made fibers*.[27] (Italics supplied)

Consequently, the Court of Tax Appeals, relying on the laboratory findings of the Bureau of Customs and Adamson University correctly classified the questioned shipment as polyethylene plastic taxable under Tariff Heading No. 39.02 instead of synthetic (polyethylene) woven fabric under Tariff Heading 51.04, to wit:

"While it is true that the finding and conclusion of the Collector of Customs with respect to classification of imported articles are presumptively correct, yet as matters that require laboratory tests or analysis to arrive at the proper classification, the opinion of the Collector must yield to the finding of an expert whose opinion is based on such laboratory test or analysis unless such laboratory analysis is shown to be erroneous. And this is especially so in this case where the test and analysis were made in the laboratory of the Bureau of Customs itself. It has not been shown why such laboratory finding was disregarded. There is no claim or pretense that an error was committed by the laboratory technician. Significantly, the said finding of the Chief, Customs Laboratory finds support in the 'REPORT OF ANALYSIS' submitted by the Adamson University Testing Laboratories, dated September 21, 1966."[28]

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[26] *Rollo*, p. 251, Exhibit "F", Italics supplied.

[27] Exhibit "I", p. 223, Records, *Rollo*, p. 248.

[28] *Rollo*, pp. 35-36.

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On the third issue, we opine that the Bureau of Customs cannot be held liable for actual damages that the private respondent sustained with regard to its goods. Otherwise, to permit private respondent's claim to prosper would violate the doctrine of sovereign immunity. Since it demands that the Commissioner of Customs be ordered to pay for actual damages it sustained, for which ultimately liability will fall on the government, it is obvious that this case has been converted technically into a suit against the state.[29]

On this point, the political doctrine that "the state may not be sued without its consent," categorically applies.[30] As an unincorporated government agency without any separate juridical personality of its own, the Bureau of Customs enjoys immunity from suit. Along with the Bureau of Internal Revenue, it is invested with an inherent power of sovereignty, namely, taxation. As an agency, the Bureau of Customs performs the governmental function of collecting revenues which is definitely not a proprietary function. Thus, private respondent's claim for damages against the Commissioner of Customs must fail.

WHEREFORE, the decision of the respondent Court of Tax Appeals is *AFFIRMED*. The Collector of Customs is directed to expeditiously re-compute the customs duties applying Tariff Heading 39.02 at the rate of 35% *ad valorem* on the 13,600 kilograms of polyethylene plastic imported by private respondent.

SO ORDERED.

Gutierrez, Jr., Bidin, Davide, Jr., and *Melo, JJ.,* concur.

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[29] *Syquia v. Almeda Lopez,* 84 Phil 312.

[30] Sec. 3, Article XVI, General Provisions, 1987 Constitution.