

RECENT DECISIONS

Administrative Law—Seizure and Forfeiture of Smuggled Goods —Finality of Award of Collector of Customs.

REPUBLIC OF THE PHIL. v. 259 PIECES OF JEWELRY,
G. R. No. L-3281, Prom. June 28, 1951

The Revised Administrative Code divides the liabilities to which imported goods which are attempted to be smuggled in may be subjected into payment of surcharges,¹ forfeiture,² and seizure.³ In the first two instances, fraudulent intent is immaterial and need not be shown. A surcharge can be imposed if an importer undervaluates his goods⁴ and the mere failure of an importer to declare merchandise in his baggage to the proper customs officer is sufficient ground for forfeiture.⁵ But seizure can be availed of only after the im-

¹ Secs. 1288 to 1291 of the Revised Administrative Code provide for surcharges imposable by the collector. For failure to pay liquidated charges a surcharge of 5% is imposed; for failure to supply invoice, the collector may instead of requiring a bond for the subsequent production of the authentic invoice impose a surcharge of 25% of the duties, but in no case to be less than 10 pesos. Surcharge are also imposed for undervaluation and misdescription in entry and upon the refusal of a party to give evidence or submit documents for examination.

² Sec. 1363 (m-2) of the Revised Administrative Code provides: Property subject to forfeiture under customs laws—vessels, cargo, merchandise, and other objects and things shall under the conditions hereinbelow specified be subject to forfeiture:

(m) Any merchandise, the importation or exportation of which is effected or attempted in any of the ways or under any of the conditions hereinbelow described:

(2) Upon the failure of a person entering merchandise which has arrived from abroad in baggage to declare the same before the proper customs officer.

³ Sec. 1292. Failure to Declare Baggage.—Whenever any article subject to duty is found in the baggage of any person arriving within the Philippines, which was not, at the time for making such entry of baggage mentioned to the Collector or other proper customs officials before whom such entry was made by the person making the entry, such article shall be seized and the person in which baggage it is found may be required to pay treble the value of such article unless it shall be established to the satisfaction of the collector that the failure to mention or declare was without fraud.

⁴ An importer need not act fraudulently in order that a surcharge may be imposed upon him, an undervaluation of the merchandise being sufficient. But if the declaration is fraudulent, the merchandise is subject to seizure. *Li Teck San vs. Collector of Customs*, 55 Phil. 482; cf. *U.S. v. One Pearl Necklace*, 111 F. 164, 168; *U.S. v. Harts*, 131 F. 886, 140 F. 843; *One Pearl Chain v. U.S.* 123 F. 371, 375; *Dodge v. U.S.* 131 F. 849; 195 U.S. 632; *U.S. v. Chesbrough*, 176 F. 778.

⁵ The Philippine law on Customs Duties was based on the Revised Statutes of the United States on Customs Duties. *People v. Ang Hok Hin*, 57 Phil. 567. See *United States Code Annotated*, Title 19, Customs Duties. Originally, Sec. 16 of Act of June 22, 1874, 18 Stat. 189 provided for forfeiture only if intent to defraud was present. But this section was repealed by Sec. 2802 and evil or fraudulent intent is no longer a necessary ingredient in incurring penalty of forfeiture. *U.S. v. Harts*, 131 F. 886. See *Ynchausti & Co. vs. Wright*, 47 Phil. 866.

porter fails to prove to the satisfaction of the collector that the failure to declare or mention was without fraud. Fraud is therefore presumed.⁶

The 259 pieces of jewelry in this case were concealed in a manner as to clearly show fraudulent intent. The jewels worth \$25,726.00 were discovered when customs officials broke open the unusually thick bottom of a Chinese vase which constituted part of the claimant's baggage and which vase he declared at only \$15.00.⁷ Hence as to liability to seizure under Sec. 1292 of the Revised Administrative Code, there could be no question.

The Collector of Customs however subjected the jewelry to forfeiture or waiver of forfeiture upon the payment of a fine in an amount equal to three times the appraised value of the goods.

With regards to forfeiture, a proper disclosure seasonably made is a valid defense to such liability. A disclosure is proper if it is sufficient to put the customs officers to an inquiry as to the dutiable nature of the contents of the package.⁸ A mere generalization as to the nature of the baggage without specifying its contents is not

⁶ The burden of proof has now shifted from the government to the importer. In *U.S. v. Lim Cay Pit*, 28 Phil. 418, in a criminal prosecution for a violation of Act No. 355 for having made a false declaration for entry relative to the value of merchandise which the accused was at the time importing, it is incumbent on the government to prove that the declaration as to value was false and that the accused knew it was false. The knowledge of the falsity can be proven by both direct and circumstantial evidence. The fact that the accused gave different values to the same merchandise at different times is not sufficient proof of criminal knowledge. Because of the failure to show knowledge, the accused was acquitted.

The burden of proof is upon importer to overcome the presumption of legal collection of duties that their exaction was unlawful. The question is, not whether the collector was wrong but whether the importer is right. *Manila Railroad Company vs. Collector of Customs*, 52 Phil. 950.

It is a general rule in the interpretation of all statutes levying taxes or duties upon citizens not to extend their provisions beyond the clear import of the language used or pointed out, although standing upon a close analogy. Revenue statutes are in no just sense either remedial laws or laws founded on a permanent public policy and therefore they are not to be liberally construed. *Froelich and Kuttner v. Collector of Customs*, 18 Phil. 461.

⁷ See *U.S. v. One Bag of Crushed Wheat*, 166 F. 562 where a plan to smuggle is shown by the manner of packing and invoicing. Laces and silk were packed as fruit and invoiced as such.

The government is not particularly interested in the truth or falsity of statements as such. The act on customs duties is not a code of moral laws enacted to command truth and punish falsehood. It is to aid in collecting revenue for the United States. *U.S. vs. 99 Diamonds*, 139 F. 961. Fraud in the importation of goods must be such that if consummated it would result in depriving the United States of revenue.

⁸ There is no way by which the government could protect itself except by some declaration on the part of the importer. *One Pearl Chain v. U.S.*, 123 F. 371, 375. Any time before completion of entry, a disclosure sufficient to put customs officer to an inquiry as to dutiable character of contents of package is sufficient mention as would prevent seizure and forfeiture. *Dodge v. U.S.*, 131 F. 849.

the sufficient mention required by law.⁹ The disclosure is seasonably made if it is given when the goods have not yet been taken through the lines of customs authorities, but are delivered to the customs officers on board the vessel itself at the time when or before the obligation to make entry and pay duties arises.¹⁰ But where disclosure is attempted only after the discovery of the jewels attempted to be smuggled in, the defense will not lie.

Granting that an importer lacks sufficient funds to pay customs duties upon arrival, still it is his duty to disclose his merchandise when required to do so and at the same time he may request postponement of inspection and delivery until such time as is convenient for him. Disclosure should be made even if corresponding duties can not yet be paid for lack of funds.¹¹

The immateriality of fraudulent intent in forfeiture and its being presumed in the absence of satisfactory proof to the contrary in case of seizure is explained by the differences in liabilities and penalties.¹² The fine of three times the value of the goods in case

⁹ A passenger who described his pieces of baggage as consisting of certain numbers of trunks, valises, etc. and who said nothing as to what articles were contained therein did not make the sufficient mention required by law. *U.S. v. Sixteen Bolts of Silk*, 139 F. 1008; *Harts v. U.S.*, 140 F. 843.

¹⁰ The general rule is that importation of merchandise for purposes of revenue and other purposes is complete the moment the vessel enters the waters of the country. *U.S. v. Chu Loy*, 37 Phil. 510; cf. *Callahan v. U.S.*, 53 F. 2d 467, where it was held that importation takes place whenever merchandise is brought within territorial waters of the United States with intent to illegally bring merchandise into the country.

A passenger's articles were seized before she was called upon to complete her entry and she is not responsible if she mentions the articles as required by law when she first makes her entry. Her declaration prior to examination was "wearing apparel, value not known." She was then directed to a roped off area but before she could complete her entry, the pearl chain and silk wearing apparel were seized. *U.S. v. One Pearl Chain*, 139 F. 513.

Goods intended to be smuggled in may not be seized while persons importing them may yet change their minds and observe necessary formalities in due season. *id.*

An accused who denied having anything to declare before declaration was required at port of entry but who on being searched while entry was being made admitted that his bag contained diamonds was not guilty of smuggling. *Rittermann v. U.S.* 12 F. 2d 849.

A passenger concealed Mexican gold coin on his person with intent not to declare it. But the coin was held not subject to forfeiture because possession thereof was disclosed as soon as opportunity to do so was afforded. *Lozano v. U.S.*, 17 F. 2d 7.

¹¹ The claimant in this case never pretended that his omission to declare was due to inadvertence or ignorance. He explained that he was afraid he might be held up on his way from the airport to his Manila residence if he took with him the jewels on the night of his arrival. He also said that he was able to raise the necessary amount to pay customs duties, compensating tax, and other fees only on the day of the discovery of the jewels without his knowledge and one day after, his arrival from Bangkok.

¹² Under Sec. 1363 taken in conjunction with Secs. 1356, 1366, 1388 a fine cannot be greater than the appraised value of the seized article while under Sec. 1292 the fine is triple the value. Sec. 1365 provides for waiver of forfeiture and the imposition in lieu thereof of a fine upon the property in such amount as the nature of the case shall

of seizure is not excessive.¹³ Neither does the fact of appellants having been previously convicted and fined by the courts in a criminal case for the same act of smuggling subject him to double jeopardy.¹⁴

indicate as proper. Sec. 1366 provides for the enforcement of fines and forfeitures by the seizure of the vessel or property subject to the fine and forfeiture. Sec. 1388 provides for the settlement of a cause by the payment of the fine or redemption of forfeited property. In case of forfeiture only the appraised value of the property is required to be paid.

Sec. 1320. Abandonment of merchandise.—The owner of imported merchandise may, within 10 days after entry, abandon to the government all or part of the merchandise included in an invoice and be relieved from the payment of duties thereon, provided the portion so abandoned shall amount to ten per centum or more of the total of the invoice and be not less than one package. The property so abandoned shall be delivered by the importer at such places within the port of arrival as the collector of customs may direct; and on the failure of the importer to comply with the directions of the collector in this respect, the importer shall be liable for any expense incident to the disposition of the property. (This section can not apply to this case because it refers only to invoiced goods.)

¹³ The danger of real hardship or injustice arising from the imposition of harsh or oppressive penalties is substantially provided against by the discretion conferred upon the Collector of Customs under the supervision of the Courts whereby he may impose a penalty from a nominal amount to the extent allowed by law. *U.S. vs. Steamship Rubi*, 32 Phil. 228.

Where a person takes a direct part in the illegal importation of a large quantity of opium and profits thereby, a penalty of 2 years imprisonment and a fine of ₱1,000 is not excessive. *U.S. vs. Pons*, 34 Phil. 729.

¹⁴ Information under this section for forfeiture of goods is a civil action. A civil proceeding to enforce the collection of a surcharge is distinct from criminal liability for failure to declare an article. Before the penalties in a criminal action can be imposed, a higher grade of culpability has to be established than that under this section. See *U.S. v. Chesbrough*, 176 F. 778.

A stricter interpretation is required under criminal prosecution and more evidence is necessary. Thus in the case of a Chinaman who declared as dried fish, dried cut radish, and cuttlefish 26 cases of Japanese artificial silk testile, the court held that he could not be subjected to imprisonment for illegal importation of merchandise as the law sought to be applied, Section 2702 was taken from Sec. 3082 of the Revised Statutes and at the time it was enacted the current interpretation in the United States of that section was that it was limited to smuggling or "the bringing of merchandise into the United States contrary to law." Silk and dried fish are not prohibited articles of importation. Hence he was acquitted. *People v. Ang Hok Hin*, 57 Phil. 567.