

FIRST DIVISION

[G.R. No. 129680, September 01, 1999]

**CARRARA MARBLE PHILIPPINES, INC., PETITIONER, VS.
COMMISSIONER OF CUSTOMS, RESPONDENT.**

D E C I S I O N

DAVIDE, JR., C.J.:

In this petition for review on certiorari, petitioner urges us to set aside the decision^[1] and resolution^[2] of the Court of Appeals in CA-G.R. SP No. 42976 affirming the decision of the Court of Tax Appeals (CTA). The CTA upheld the legality of the forfeiture proceedings conducted by the Collector of Customs of articles illegally withdrawn from Customs custody, and ordered their delivery to the winning bidder in the auction sale.

As summarized by the Court of Appeals, the antecedents of the case are as follows:

On April 10, 1987, the Collector of Customs conducted a public auction sale of various articles duly declared abandoned after appropriate proceedings. Included in the sale was Lot 15 advertised as "15 tons more or less, of marble processing machine and grinding machine, rusty and in junk condition," stored at the Mina Amapola CY-CFS, Taguig, Metro Manila, since 1979. Lot 15 was awarded to Engr. Franklin G. Policarpio as the highest bidder thereof, after payment of P61, 250.00.

On April 21, 1987, after Engr. Policarpio had taken delivery of said lot, he wrote the Collector of Customs informing him that the following items supposed to be part of Lot 15 were missing: a Special Circular Saw (for vertical and horizontal cutting of strips Model Block Tailor BK-1200 with switch gear and contractor control and reinforcement main motor) and a Diamond Sawing Machine (Model TBS 500D, including switch gear cabinet with contractor for all motors).

The missing machineries were later found installed in the compound of petitioner Carrara Marble Philippines, Inc., Lipa City, Batangas, true to the information furnished by Engr. Policarpio himself.

Consequently, for alleged violations of Section 2536 (non-payment of duties and taxes) and Section 2530[e] (illegal removal of articles from the warehouse) of the Tariff and Customs Code (TCC), the aforesaid machineries were seized (per Warrant of Seizure and Detention dated May 29, 1991) from the compound of petitioner at Banay-banay, Lipa City.

During the seizure and forfeiture proceedings, Carrara Marble Philippines,

Inc., failed to present evidence of payment of duties and taxes on the subject machineries. In its defense, it claimed, that the machineries were purchased locally from a certain Jaina Perez as evidenced by two notarized deeds of absolute sale dated December 20, 1985 (for the trimming machine) and October 28, 1986 (for the high speed blocksaw). Meanwhile, Engr. Policarpio intervened in said proceedings, claiming ownership over the subject machineries as the successful bidder in the public auction sale conducted by the Bureau of Customs wherein said machineries were part of Lot 15.

In a letter dated November 14, 1992, petitioner offered to settle the case in accordance with Article 2307 of the TCC. However, said offer was refused by the District Collector of Customs on the ground that said articles were already auctioned off and awarded to Engr. Policarpio.

Thereafter, the Collector of Customs on June 24, 1992, declared the machineries forfeited in favor of the government. Petitioner appealed from the Collector of Customs' decision to the Commissioner of Customs who, on July 2, 1993, affirmed said decision.

From said Decision of the Commissioner of Customs, appeal by way of a petition for review was further taken by herein petitioner Carrara Marble Philippines, Inc., to the Court of Tax Appeals. Engr. Franklin Policarpio, as intervenor, also appealed the same decision of the Commissioner of Customs to the Tax Court, which was docketed as CTA Case No. 5057, and entitled "Engineer Franklin Policarpio vs. The Honorable Commissioner of Customs and Deputy Commissioner of Customs Licerio Evangelista." [3]

The CTA allowed Mary Ann Luz Puno and other individuals claiming to be minority stockholders and receivers of petitioner to intervene in the proceedings. The intervenors' prayer for possession of the machineries was granted conditioned upon the posting of a cash bond. However, they submitted the case for decision on 4 March 1996 without posting the bond.

On 7 May 1996, the CTA dismissed the petition for review filed by petitioner; affirmed the authority of the Customs Commissioner to seize the machineries; and ordered the Commissioner to deliver the articles to Policarpio as the highest bidder in accordance with its decision in CTA Case No. 5057. [4]

The intervenors moved for the reconsideration [5] of the CTA's decision. On 8 October 1996, the CTA denied [6] the motion for reconsideration.

On appeal, the Court of Appeals sustained the CTA and dismissed the petition for lack of merit, capitalizing on the contract of sale between the Bureau of Customs and Policarpio, which allows a refund in case of loss or short-delivery. In case a refund is made, it is as if duties, taxes and charges on the articles remained unpaid. Consequently, importation could not be considered terminated, and the Collector of Customs was still authorized to seize the articles pursuant to Section 2530(e) of the Tariff and Customs Code (TCC).

The Court of Appeals noted that petitioner's argument that with the termination of importation the Bureau of Customs lost its jurisdiction over the *res* was premised upon Policarpio's ownership of the property. Such premise conflicted with petitioner's pretension of being a buyer in good faith and for value, and foreclosed the possibility of a compromise. The notarized deeds of sale were merely *prima facie* evidence of ownership which failed to prove petitioner's claim over the property. Section 2535 of the TCC laying the burden of proof on the claimant still applied. The Court of Appeals concluded that the jurisdiction of the Collector of Customs in forfeiture proceedings extends to all questions incidental thereto including the authority to determine the true ownership of forfeited property.

Petitioner then filed on 6 June 1997 a motion for reconsideration^[7] of the decision of the Court of Appeals. That motion was, however, denied for failure to state the material dates showing that it was filed on time, as required by Section 1, Rule 9, of the Revised Internal Rules of the Court of Appeals.

Hence this petition.

Petitioner insists that the purpose of Section 1, Rule 9 of the Revised Internal Rules of the Court of Appeals requiring motions for reconsideration to state material dates is to show that they were filed on time. It had substantially complied with that requirement because its Compliance^[8] dated 28 May 1997 indicated that it received the challenged decision on 23 May 1997; thus, its filing of the motion for reconsideration was well within the reglementary period prescribed by law.

Petitioner likewise contends that the Bureau of Customs had no jurisdiction over the *res* because importation had terminated. Forfeiture as a remedy of the government is authorized under Section 2530 of the TCC only when and while the articles are in the custody or within the jurisdiction of customs authorities or in the hands or subject to the control of the importer. When the articles were awarded to Policarpio as the winning bidder in the auction sale, taxes, duties and charges due on them were considered paid; the government was compensated, and so it no longer stood to suffer damages from the importation. Furthermore, with the legal permit for withdrawal of the articles having been granted, the government lost its lien over the property. The "possibility" of a refund in case of short delivery under the warranty in Policarpio's deed of sale only extends the definition of importation.

Asserting its "prior right" over the machineries, petitioner also argues that the Bureau of Customs was without authority to seize the same. There was no probable cause that would warrant seizure and forfeiture of the subject articles. Neither was there evidence that the articles were part of Lot 15. Petitioner acquired the machineries in good faith and for value, as confirmed by two notarized deeds of sale; and it was unaware that they were imported. Hence, resort should have been through judicial process under Article 433 of the Civil Code. Besides, before forfeiture proceedings can be instituted as provided for in Section 2530 of the TCC, there must be fraud upon the government. Fraud cannot be presumed; and without evidence that petitioner acquired the machineries fraudulently, it must be presumed the owner of the articles.

Moreover, petitioner maintains that no justifiable reason existed for denying its offer of a compromise in accordance with Section 2307 of the TCC. There was no fraud in

the importation of the property. Neither did petitioner's offer signify that it waived previous defenses and admitted liability.

Finally, petitioner reiterates that the Bureau of Customs had neither authority to seize the articles to determine their true ownership nor jurisdiction to decide questions of ownership.

Respondent sees the matter differently. It accuses petitioner of forum-shopping and of employing delaying tactics and maneuvers which hamper the ends of justice. Respondent contends that petitioner's substantial compliance with Section 1, Rule 9 of the Revised Internal Rules of the Court of Appeals notwithstanding, the law allows dismissal of the motion for reconsideration for failure to comply with the material data rule.

Respondent also insists that the Bureau of Customs had jurisdiction over the machineries. As held by the CTA and the Court of Appeals, the loss of the machineries would mean their non-delivery to Policarpio, thus creating an obligation on the part of the government to refund a proportionate amount of the purchase price paid by Policarpio. Fraudulent removal of the machineries from the warehouse under Customs supervision made Section 2530 of the TCC applicable.

Respondent further points out that petitioner was unable to prove that the subject items were indeed sold to it by Jaina Perez. The latter and the notaries public who notarized the alleged deeds of sale were not presented as witnesses. Besides, said items were stolen; so the alleged seller had no right to pass on to petitioner as buyer. Likewise, petitioner's failure to present receipts validating its ownership of the property was sufficient cause for instituting seizure and forfeiture proceedings. Pursuant to Section 2535 of the TCC, the burden of proof was shifted to petitioner, who, however, failed to substantiate its good faith and lack of knowledge of the importation.

Finally, respondent claims that settlement of seizure cases is not allowed under Section 2307 of the TCC where the importation is absolutely prohibited or the release of the property is contrary to law, which is what obtains in this case. Petitioner's offer of compromise puts it in estoppel and negates its argument questioning the jurisdiction of the Bureau of Customs.

The questions for our resolution are the following:

- (1) Was the dismissal of the petition by the Court of Appeals under Section 1, Rule 9 of its Revised Internal Rules of Procedure correct?
- (2) Was the forfeiture of articles in the possession of a third party made after the sale at public auction proper?
- (3) Has the importation been terminated?
- (4) Who has the right to retain possession over the machineries?

Petitioner cannot find fault with the denial of its motion for reconsideration. It admitted non-compliance with the requisites of Section 1, Rule 9 of the Revised Internal Rules of Procedure of the Court of Appeals, for indeed nothing in the motion