

MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 308

CONSIDERING THE PREVENTIVE SUSPENSION OF MR. JOSE P. TRINIDAD,
UNDERSecretARY OF FINANCE, AS SUFFICIENT PUNISHMENT FOR
GRAVE NEGLIGENCE IN THE PERFORMANCE OF HIS DUTIES.

This is an administrative case against Mr. Jose P. Trinidad, Undersecretary of Finance, for grave misconduct in office and conduct prejudicial to the best interest of the service in that, in violation of Republic Act No. 35 as amended by Republic Act No. 901, he authorized the release tax free of eighteen shipments of steel sheets and one shipment of industrial machinery to the Great Oriental Manufacturer and Trader, a sole proprietorship owned by one Robert Tan, resulting in damage to the Government in the sum of ₱106,040.22 in duties and taxes that should have been collected on these shipments.

The Department of Finance adopted the policy that importations made directly by a tax-exempt industry and shipments which, though imported originally by a non-tax-exempt importer, were transferred while in transit to a tax-exempt industry were entitled to release tax free, subject to the following conditions: (1) that the goods be among those specifically mentioned in the grant of tax exemption as raw materials or as factory machinery and equipment; (2) that the goods imported be intended for the use of the tax-exempt industry in his tax-exempt industry; and (3) that if the tax-exempt industry was not the original importer, the shipment should have been transferred to him while in transit and before entering Philippine territorial waters. The respondent was entrusted with the implementation of this policy.

On June 22, 1956, Robert Tan, owner of the Great Oriental Manufacturer and Trader, was granted a tax exemption certificate for the operation of a galvanized iron plant at Lucena, Quezon, authorizing him to import tax free "black iron or steel sheets" as raw materials. Subsequently, he filed applications for tax-free release of certain importations. Except for the first shipment, the release of which appears to have been regular, it is significant to note the following facts regarding the remaining shipments:

1. None of the shipments was originally imported by Robert Tan and all the original importers were not tax exempt, so that if no tax-free release authority had been issued by the respondent, these shipments would not have been released by the Bureau of Customs without the payment of the corresponding duties and taxes.

2. Most of the original importers were in one way or another connected with Robert Tan; hence it can be inferred that the procedure followed by him had been deliberately adopted to evade the payment of duties and taxes.

3. The shipments did not consist of black iron or steel sheets, the only materials that Robert Tan was authorized to import tax free, but of galvanized iron, a finished product; and in the case of the shipment of industrial machinery, it did not consist of machinery usable in a galvanized iron factory but of industrial sewing machines for the manufacture of shoes and slippers.

4. Robert Tan never constructed a factory.

5. Robert Tan or the original importers appear to have sold all the shipments to third parties even before they were inspected by the Bureau of Commerce as required by Act No. 3595.

6. If these shipments had been really transferred to Robert Tan, the transfers could not have taken place while the shipments were in transit but after the goods had arrived in port.

If Robert Tan's applications had been carefully screened, his fraudulent scheme would have been discovered because of certain circumstances indicating fraud. Thus, it appears that in no case was the indorsement of the bill of lading to him or his firm dated, and he never once mentioned in his affidavit the date he allegedly acquired the shipment nor the consideration paid for it. Moreover, the code numbers of the Central Bank release certificates showed that the shipments consisted of galvanized iron, and this alone was sufficient to disclose Robert Tan's fraudulent scheme. Likewise, the photostats of the commercial invoices submitted by Robert Tan showed that the goods were branded, thereby indicating that they were not raw materials but finished products. Then, too, the suppression of the consular invoices in all of Robert Tan's shipments over the long period of time that these shipments covered and repeated eighteen times should have aroused suspicion. Again, the description given in the invoices and bills of lading was "plain steel sheets" or simply "steel sheets," whereas the tax exemption certificate granted to Robert Tan authorized the tax-free importation of "black iron or steel sheets" only. Finally, as regards the shipment of industrial machinery, the description was hopelessly vague and yet the Department of Finance processors did not inquire from Robert Tan what kind of machinery was contained in the shipment nor require any supporting record to establish that the shipment was for machinery to be used in a galvanized iron plant.

Notwithstanding the irregularities in the applications and supporting papers filed by Robert Tan, the Department of Finance processors recommended approval of the applications and submitted them to the respondent for action. Without even once going over the documents accompanying the applications and relying solely on the reports of his processors, the respondent approved the applications and signed the corresponding tax-free release authorities. With one exception, his approval appears to have been given as a matter of routine, within twenty-four hours after the papers were submitted to him.

The duties and taxes due on the shipments amounted to ₱106,040.22 and to collect the same, the Government has been constrained to file a suit against Robert Tan.

It appears that the respondent did not require his processors to determine the dates of the alleged transfers of shipments from the original importers or consignees to Robert Tan. Nor did he himself, when the papers were submitted to him, attempt to find out whether the shipments were transferred while in transit or after their arrival in port.

The respondent did not, in even one instance, check the supporting papers accompanying the importation in order to determine whether his processors' recommendation was justifiable. Had he done so, he would have noted certain irregularities, such as the suppression of consular invoices, the undated endorsements and the absence of statements as to the dates of the alleged transfers of shipments to Robert Tan.

In authorizing the tax-free release of the eighth shipment, the respondent imposed the condition that the raw materials be stockpiled subject to inspection by examiners of the Department of Finance. Yet he authorized the release of ten subsequent shipments without once ordering such an inspection.

The respondent knew that Robert Tan's factory was not and had never been in operation.

By way of defense, the respondent contends that the tax-free grant extends even to shipments transferred while in port. This contention is untenable since it is plain that once an importation begins--and it begins upon entry of the shipment into Philippine waters--duties and taxes attach to it. Moreover, his interpretation of the law runs counter to the established policy of the Department of Finance.

The respondent argues that if there have been irregularities in the processing of the shipments, these were committed by his subordinates, for whose mistakes he should not be blamed. This argument is pointless, for the respondent is not being held responsible for the mistakes of his subordinates but for his own grave neglect in not exercising effective supervision over them.

Finally, the respondent contends that the damages, if any, suffered by the Government were not due to his own acts but to the negligence of the Bureau of Customs which released the shipments, not to Robert Tan as his tax-exempt release authority required, but to the original importers or consignees. While perhaps technically the goods were released to someone else, the fact remains that without the tax-free release certificates the goods would not have been released to anyone unless the duties and taxes had been paid. But the evidence shows that they were in fact released to Robert Tan. Even granting, however, that the goods were not released to Robert Tan but to others, this would not in any way affect the respondent's liability in issuing the tax-free release certificates to Robert Tan.

In view of all the foregoing, the respondent is guilty of grave neglect in the performance of his duties, aggravated by the fact that he was aware that the use of tax exemption privileges resulted in a decline in government revenues and that the privilege was capable of being misused to evade the payment of duties and taxes. However, as it appears that the respondent was not impelled by any corrupt or dishonest motive and that he has had more than thirty years of satisfactory service, his preventive suspension is considered sufficient punishment for his offense. Accordingly, he is ordered reinstated in the service.

Done in the City of Manila, this 31st day of August, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the fourteenth.



By the President:



ENRIQUE C. QUEMA

Assistant Executive Secretary