

G.R. No. 208318 – THE COMMISSIONER OF CUSTOMS and the UNDERSECRETARY OF THE DEPARTMENT OF FINANCE, *Petitioners*, v. GOLD MARK SEA CARRIERS, INC., as the registered owner of the Barge “Cheryl Ann,” *Respondent*.

Promulgated:

JUN 30 2021

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## CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur. Contrary to the Court of Tax Appeals’ (CTA) holding, the Indorsements issued by the Department of Finance (DOF) and the Bureau of Customs (BOC) ordering the seizure and forfeiture of respondent’s barge “Cheryl Ann” in favor of the government should be reinstated.

However, I take this opportunity to convey my thoughts on Section 2530 (a) of the Tariff and Customs Code of the Philippines (TCCP) as applied to this case. The provision reads:

a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and/or transporting contraband or smuggled articles in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft or any other craft to forfeiture; *Provided, That the vessel, aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased*; (Emphasis, italics, and underscoring supplied)

To recount, respondent, in this case, mainly contended that the illegal articles, albeit found in its barge “Cheryl Ann,” is not sufficient to create a *prima facie* case against it for violation of Section 2530 (a) of the TCCP. Citing the proviso “*Provided, That the vessel, aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased*,” respondent claims that it is a common carrier, which thus exempts it from liability for “mere carrying or holding on board of contraband or smuggled articles in commercial quantities.” As proof thereof, respondent presented its Certificate of Registry and Certificate of Ownership.<sup>1</sup>

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<sup>1</sup> *Rollo*, p. 21.

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For its part, the CTA *En Banc* concurred with respondent's argument and declared it a common carrier exempt from the application of Section 2530 (a) of the TCCP, notwithstanding the existence of the Charter Agreement.<sup>2</sup>

I disagree with the CTA's ruling.

At the onset, it should be borne in mind that the rationale behind the proviso "*Provided, That the vessel, aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased*" stems from the recognition that common carriers are, by the very nature of their business, imbued with public interest.<sup>3</sup> Since common carriers are expected to offer their services to the general public indiscriminately,<sup>4</sup> it would have lesser control over sneaked-in goods/articles brought by the multitude of incoming and outgoing passengers that are able to board the vessel. Thus, as embodied in the limiting proviso, it is reasonable to not "subject such vessel, vehicle, aircraft or any other craft to forfeiture" by the "[t]he mere carrying or holding on board of contraband or smuggled articles in commercial quantities." To my mind, this situation (*i.e.*, being a common carrier that is not chartered or leased) is in stark contrast to the situation of private carriers, or common carriers which are chartered or leased, which, because of their private nature or the limitations brought about by the chartering or lease, are expected to have greater control over the goods/articles onboard the vessel.

Applying the foregoing, records disclose that respondent's barge was subject to a Charter Agreement. The CTA *En Banc* tried to bypass this qualification by stating that the Charter Agreement did not operate to convert respondent to a private carrier.<sup>5</sup> However, this interpretation does not square with the express wording of Section 2530 (a) of the TCCP, **which, for the proviso to operate, requires that the carrier is not only a common carrier, but one which is not chartered or leased.** It is well-settled that "when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation."<sup>6</sup> Further, "[w]here the law provided no qualification for the granting of the privilege, the court is not at liberty to supply any."<sup>7</sup>

Hence, despite respondent's evidence that it is a common carrier, the presence of a Charter Agreement negated its refuge sought under the proviso

<sup>2</sup> Id at 21-22.

<sup>3</sup> *Luque v. Villegas*, 141 Phil. 108, 122 (1969), citing *Fisher vs. Yangco Steamship Company*, 31 Phil. 1, 18-19 (1915).

<sup>4</sup> Article 1732 of the Civil Code, reads:

ART. 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.

<sup>5</sup> *Rollo*, pp. 22-23.

<sup>6</sup> *Bolos v. Bolos*, 648 Phil. 630, 637 (2010).

<sup>7</sup> *Acting Commissioner of Customs v. Manila Electric Company*, 168 Phil. 119, 123 (1977).

found in Section 2530 (a) of the TCCP. Moreover, respondent glaringly failed to adduce any other evidence to disprove its knowledge and participation in the unlawful importation of the cargo owners in this case. As such, the forfeiture of its vessel, as a consequence of its unlawful importation under Section 2530 (a) of the TCCP, must be reinstated.

For another, the CTA *En Banc* supported its conclusion that respondent's barge "Cheryl Ann" had no intent to unload in the Philippines by applying the legal principle of "accessory follows the principal", *i.e.*, that the barge was a mere accessory to the tugboat. It emphasized that the barge could not control its own destination, being merely tied up to the tugboat.<sup>8</sup>

However, I express reservations on the application of the principle of "accessory follows the principal" in this case, considering that its jurisprudential application is ordinarily related to controversies involving property law. As regarded in property law, the principle is meant to settle ownership disputes over properties which have merged by virtue of the right of accession.<sup>9</sup>

In any event, there is nothing in the relevant provisions of the TCCP which would suggest that the liability for the conveyance for unlawful importation can be premised on the application of the principle of "the accessory follows the principal." In fact, the TCCP provisions on seizure or forfeiture render liable each conveyance bearing illegal goods/articles, to wit:<sup>10</sup>

SECTION 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 subject to forfeiture:

a. Any vehicle, **vessel** or aircraft, **including cargo**, which shall be used unlawfully in the importation or exportation of articles or in **conveying and/or transporting contraband or smuggled articles in commercial quantities** into or from any Philippine port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft or any other craft to forfeiture; Provided, That the vessel, aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;

x x x x

k. Any **conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws**, with its equipage or trappings, and any vehicle similarly used, together with its equipage and appurtenances including the beast, steam or **other motive power drawing or propelling the same**. The mere conveyance of

<sup>8</sup> *Rollo*, pp. 19-20.

<sup>9</sup> *Villasi v. Garcia*, 724 Phil. 519, 531 (2014). See also, Articles 440, 466, and 470 of the New Civil Code.

<sup>10</sup> See Presidential Decree No. 1464 or the Tariff and Customs Code of the Philippines (June 11, 1978).

contraband or smuggled articles by such beast or vehicle shall be sufficient cause for the outright seizure and confiscation of such beast or vehicle, but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or his agent in charge thereof at the time, has no knowledge of the unlawful act;

x x x x

SECTION 2531. Properties Not Subject to Forfeiture in the Absence of Prima Facie Evidence. – The forfeiture of the vehicle, vessel, or aircraft shall not be effected if it is established that the owner thereof or his agent in charge of the **means of conveyance used as aforesaid has no knowledge of or participation in the unlawful act**: Provided, however, That a prima facie presumption shall exist against the vessel, vehicle or aircraft under any of the following circumstances: x x x (Emphases supplied)

**ACCORDINGLY**, I vote to **GRANT** the petition.

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice