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[G.R. No. L-7470. October 31, 1956]

COMMISSIONER OF CUSTOMS, PETITIONER, VS. ROMEO H. VALENCIA, RESPONDENT.

D E C I S I O N

CONCEPCION, J.:

The Commissioner of Customs seeks a review, by certiorari, of a decision of the Board (now Court) of Tax Appeals, reversing that of the former, who affirmed a decision of the Collector of Customs for the Port of Manila, directing the forfeiture of five (5) cases of pencils imported into the Philippines from Hongkong, but "Made in Japan". Said forfeiture was ordered pursuant to Circular Letter No. 564 of the Bureau of Customs, dated August 21, 1950, reading:

> "TO ALL COLLECTORS OF CUSTOMS, CHIEFS OF UNITS AND DIVISIONS, MANILA CUSTOMHOUSE, IMPORTERS AND OTHERS CONCERNED:
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> "There is quoted hereunder, for your information, guidance and compliance, a pertinent portion of the 1st indorsement of the Secretary of Finance dated August 17, 1950, as follows:
>
> 'Respectfully returned to the Commissioner of Customs, Manila.
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> * * * * * *
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> 'In line with the foregoing objectives, the values of the different commodities coming from Occupied Japan which may be exported to the Philippines during the period from July 1, 1950 to June 30, 1951, have been fixed in the Trade Plan adopted under the Trade Agreement between the Government of the Republic of the Philippines and SCAP acting in respect of Occupied Japan, signed at Tokyo on May 18, 1950, as follows:

'1. Textiles and manufactures	$3,500,000.00
'2. Iron and steel products.....	4,500,000.00
'3. Machinery and equipment.....	2,400,000.00
'4. Special machinery and equipment for manufature of special products.....	2,500,000.00
'5. Other metal manufactures.....	3,300,000.00
'6. Glass & Procelain products.....	50,000.00
'7. Chemical & chemical products.....	250,000.00
'8. Farm equipment	1,200,000.00
'9. Ships, fishing boats & equipment.....	5,000,000.00
'10. Others consisting of essential raw materials, equipment & supplies.....	2,300,000.00
Total.....	$25,000,000.00

"The importation of the foregoing articles is subject to license by the Import Control Administration under Section 1 of Executive Order No. 328, series of 1950, which also requires that 'All licenses issued shall be clearly marked as having been specifically granted under the Philippine-SCAP Trade and Financial Agreements'. Since the Japan-made goods imported into the Philippines from the United States and Hongkong are presumably not covered by licenses clearly marked in the manner just stated, their importation defeats the objectives herein-before mentioned and constitutes a violation of Sections 1 and 8 of Executive Order No. 328, Such importations are subject to forfeiture under the provisions of Section 14 of the said Executive Order, which section, as well as Section 15 of the same Order also indicates the penalties to which the erring importers are subject for the offenses committed by reason of said importations. These two sections are quoted below for ready reference:

> 'SEC. 14. Any commodity exported or imported in violation of this Order and of the rules and4 regulations promulgated by the licensing agencies shall be subject to forfeiture, and the guilty party shall be subject to penalties and disqualified in accordance with existing laws from obtaining any other license.'
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> 'SEC. 15. Any violation by an importer of the provisions of this Order and of the rules and regulations promulgated by the licensing

> agencies shall serve as a ground for the immediate revocation of his license to do business in the, Philippines, and in the case of an alien shall be regarded as sufficient cause for his deportation.' "It is requested that proper action be taken in the premises,
>
> (SGD.) PIO PEDROSA
> *Secretary*"

> "Conformably with the foregoing, officials and employees of this Bureau are hereby enjoined to enforce strictly the terms of the Philippine-SCAP Trade and Financial Agreements and the provisions of Executive Order No. 328, series of 1950 published in Circular Letter No. 550, dated July 28, 1950. As required in Section 1 of Executive Order No. 328, all licenses issued shall be clearly marked as having been specifically granted under the Philippine-SCAP Trade and Financial Agreements.
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> "Importations of Japanese articles, goods, wares, or merchandise from any foreign country *other than Japan are in violation* of the said Executive Order No. 328 and the same are subject to seizure and forfeiture." (Annex A.) (Italics supplied.)

The issue hinges on the interpretation of Executive Order No. 328, series of 1950, issued on June 22, 1950, to implement a Trade Agreement and a Financial Agreement, both dated May 18, 1950, between the Republic of the Philippines and the Supreme Commander for the Allied Powers (SCAP), acting on behalf of Occupied Japan. Among other things, it was stipulated in said Trade Agreement that, pending the conclusion of peace between Occupied Japan and the Allied Powers, the contracting parties would adopt an annual Trade Plan covering all transactions involving goods and/or services procured for delivery either from the Philippines to Occupied Japan, or from the latter to the Philippines; that all trade between both countries shall be conducted in accordance with provisions of said Trade Agreement and of the Financial Agreement executed simultaneously therewith; that the parties would permit the importation and exportation of the commodities specified in the Trade Plan, in no case exceeding the corresponding amount indicated for each of them; and, that no transaction outside the Trade Plan shall be permissible, without the consent of both.

Upon the other hand, the Financial Agreement provided, in substance, that the aforementioned transactions shall be invoiced in U. S, dollars and would be credited and debited in favor of and against the account of the corresponding parties by their respective principal financial agent banks; that payment of the net balance, if (any, at the end of each month, in favor or against either party, shall be made in the manner stipulated in said Financial Agreement; and that the representatives of the contracting parties were "authorized to negotiate and conclude all technical details pertaining to the implementation" of said Financial Agreement.

On July 22, 1950, the President of the Philippines issued Executive Order No. 328, prescribing rules and regulations to carry out said Agreements and the Trade Plan therein visualized. The Executive Order provided that "no commodity may be exported to or imported from Occupied Japan without an export or import license * * * from the Central Bank of the Philippines or the Import Control Administration," which were "designated respectively as the export and import licensing agencies of the Philippine Government"; that "all licenses issued shall be clearly marked as having been specifically granted under" said Agreements; that the annual exports and imports of the Philippines to and from Occupied Japan, as contained in the Trade Plan shall be allocated and the licenses therefor * * * shall be iseued" in the manner therein stated; and that "any commodity exported or imported in violation of" said Executive4 Order and of the rules and regulations promulgated by the licensing agencies therein mentioned "shall be subject to forfeiture and the guilty party shall be subject to penalties and disqualified in accordance with existing laws from obtaining any other license".

Trade Plans specifying the goods that could be exported, pursuant to the terms of the Trade Agreement, from Occupied Japan to the Philippines, and from the Philippines to Occupied Japan, and the aggregate value of such goods, were adopted from time to time. The articles exportable from Occupied Japan to the Philippines, from July 1950 to July 1951, are set forth in the above-quoted Circular Letter No. 564. The Trade Plans for subsequent modi- followed substantially the same pattern, with slight modifications as to the sum allocated to each item and with the addition of a few other items. It is not disputed that pencils are within tlie purview of said Trade Plans.

In June, 1953, respondent Romeo M. Valencia, Imported into the Philippines, through the Port of Manila, five (5) cases of wooden pencils. Although the origin thereof, according to the corresponding import license and shipping papers, was Hongkong, it turned out that said goods were "Made in Japan", and it was so stated in the paper band with which each

package of pencils was bound. Believing, therefore, that this importation violated Executive Order No. 328, and the above-quoted Circular Letter No. 664, because respondent's import license was neither marked as having been specifically issued under said Agreements, nor granted pursuant to the provisions thereof, the customs officers for the Port of Manila took possession of said articles under Seizure Identification No. 1231. Valencia pleaded good faith, upon the ground that he had merely relied upon a communication of the exporter in Hongkong, stating that the same was the country of origin of the imported goods. After appropriate proceedings, the Collector of Customs for said Port rendered a decision finding that the importation was contrary to Executive Order No. 328 and Circular Letter No. 564, and that Valencia's good faith could, at most, mitigate his liability, by exempting him from the penalties and disqualifications mentioned in said Executive Order, and decreeing that said goods be forfeited to the Government.

This was, on appeal taken by Valencia, affirmed by the Commissioner of Customs, upon the ground that the former had "not introduced or presented any argument to dispute or overthrow either the findings of fact and/or conclusions of law" made in the decision of the Collector of Customs for the Port of Manila and that there was, therefore, no valid ground for disturbing the same. Valencia sought a review by the Board (now Court) of Tax Appeals, two members—constituting a majority—of which held that the action taken by said customs officials should be reversed. One member of the Board dissented from this view and voted for affirmance of the decision of the Commissioner of Customs. The case is now before us on appeal taken by the Government.

The decision of the Board of Tax Appeals is based upon the theory that, although "Made in Japan", the pencils in question are not within the purview of the aforementioned Agreements and Trade Plan and of Executive Order No. 328, although imported by Valencia from Hongkong. This question, however, was never taken up either, before the Commissioner of Customs, or before the Collector of Customs for the Port of Manila. The *only* issue before the latter was the *effect of Valencia's alleged good faith upon his liability for the importation in question.* Thus, he implicitly, but, clearly, conceded that the goods imported were *subject to the terms of said Agreements and of Executive Order No. 828. No other question* was raised by him on appeal to the Commissioner of Customs. In other words, the issue submitted to the Board of Tax Appeals was substantially different and distinct from that which the Collector of Customs for the Port ot Manila and the Commissioner of Customs were called upon to decide. Such change in the nature of the case may not be made on appeal, specially when the purpose of the latter is to seek a review of the action taken by an administrative body, forming part of a coordinate branch of the

Government, such as the Executive department. The general rule, I under the principles of Administrative Law in force in this jurisdiction, is that decisions of administrative officers shall not be disturbed by the courts, except when the former have acted without or in excess of their jurisdiction, or with grave abuse of discretion. In the case at bar, it is not disputed that the aforementioned Customs officials had, not only the authority, but, also, the duty to pass upon the propriety of Seizure Identification No. 1231. Their decision thereon, one way or the other, does not affect said jurisdiction. Moreover, they could not have committed any abuse of discretion upon a question that had not been decided by them, or even raised before them.

At any rate, Executive Order No. 328 merely implements the Trade and Financial Agreements, which are in the nature of treaties between the signatories thereto. The interpretation and construction thereof depends, therefore, upon the. intention of the parties thereto. In this connection, it appears that, answering an official query on said Agreements, the Secretary of Finance gave an opinion, which was concurred in by the Secretary of Foreign Affairs, the pertinent part of which reads:

> "A review of the pertinent records show that in the formulation of the trade agreement with Occupied Japan through the Supreme Commander for the Allied Powers (SCAP), the Committee in charge realised that an unrestricted trade with Occupied Japan even on a barter basis would result in the entry of cheap Japanese goods and frustrate the industrialization plans of the Philippines for good.. The Committee was quick to realize this danger in view of the relative cheapness of Japanese wares. To preclude the excessive inflow of non-essential Japanese goods, therefore, the said Committee limited the kind and quantity of imports only to that which it considered beneficial to the country's economy, and as an essential complement to this selective import program, care was exercised in excluding from the import list Japanese goods that may compete with the products of industries that are already established lacolly and/or those intended to be established in the near future. In other words, the general idea was to contain the impact of Occupied Japan's economy on that of the Philippines only to an extent that would help this country grow industrially. The Committee felt that to do less, or to permit indiscriminate importation from Occupied Japan can very easily work to the perpetuation of the raw-material economy that the Philippines now has. It foresaw that guided solely by profit motives, importers would always find in Occupied Japan a lucrative source of cheap commodities to sell if a

restrictive import list were not adopted."

Considering that, by reason of the nature and subject of the Trade and Financial Agreements, the Departments of Foreign Affairs and Finance were called upon to have a hand in the making thereof, as well as to attend to its enforcement, and that moreover, the Secretary of Finance formed part of the committee created to carry out the provisions of said Agreements, it goes without saying that his aforementioned opinion (which is, also that of the Secretary of Foreign Affairs), is entitled to great weight. This notwithstanding, the majority members of the Board of Tax Appeals rejected the same, for the following reasons:

"After a most careful and minute perusal of Executive Order No. 328 of 1950 we must come to the conclusion that the same was not intended to be an instrument for the control of the importation of Japanese made articles into the Philippines or of Philippine products into Occupied Japan, nor was it meant to be used as a tool to foster the industrialization of the Philippines by impeding the influx of cheaply made Japanese wares into the markets of. the Philippines. It is simply a law, based on a treaty which sought to establish a temporary system of barter between the two countries, calculated to save the dollar reserves of both so precious to the rehabilitation of their respective economies. It is not concerned with the origin of the commodities. It does not prohibit the importation without license of the 'made-in-Japan' articles but it bans the unlicensed importation from Japan of articles made anywhere. There is nothing in the Executive Order in question making it illegal for Philippine products to be imported into Japan from ports or places outside, the Philippines or for Japanese products shipped to the Philippines from ports or places outside of Japan.

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"It might be contended that Japanese products may always be deemed to have been imported from Japan, even if brought from another port or place, for the reason that they always originate there- This allegation, however, would be erroneous. Merchandise brought into one country, unless entering in transit, mingle with the goods of that country and, when exported therefrom, are considered to be part of that country's exports. 'Country of importation' and 'country of origin' are terms having different meanings in our customs and tariff laws. It is part of our politico-economic history that at the time free trade was

> established between the United States of America and the Philippines, the framers of the law, in order to limit such trade to the products originating in those countries as well as imported directly from each one into the other, considered it necessary to provide in the law itself that the freedom of trade therein established was limited to articles 'the growth, product or manufacture of the United States coming in direct shipment under a through bill of lading' and covered by an appropriate 'certificate of origin', with identical reciprocal conditions in the case of Philippine importations into the United States. Had the President intended Executive Order No. 328, series of 1950, to cover, not only commodities imported from Japan but also commodities produced in Japan and exported to the Philippines from any other country he would have used a different language than that in which his Order is worded."

It would appear, from the foregoing, that the decision of the Board of Tax Appeals was based, mainly, upon two grounds, viz: (1) Executive Order No. 328 merely implements "*a treaty* which sought to establish a temporary system of barter between the two countries, *calculadated to save the dollar reserves* of both"; and (2) " 'country of importation' and 'country of origin' are terms having different meanings in our customs and tariff laws."

The first ground seems to be predicated exclusively upon our *Financial* Agreement with SCAP. This may be deduced from the phrase "a treaty", *in singular*, used in the decision appealed from, and from the reference, therein made, to the dollar saving device. Indeed, pursuant to said Financial Agreement, all transactions covered by the Trade Agreement shall be invoiced *in dollars*, and, after offsetting the corresponding credits and debits, at the end of each month, the net balance shall be paid in dollars, under the conditions set forth in Article V of said Trade Agreement.

The Board of Tax Appeals has apparently overlooked this *Trade* Agreement, as well as the circumstance that the Financial Agreement merely implements the same, by establishing *the procedure for the payment* of the accounts arising from the transactions made under said Trade Agreement. In other words, the latter was the principal agreement, the Financial Agreement being merely accessory or *auxiliary* thereto. Had the primary objective of said Financial Agreement been to protect the dollar reserves, it would have been unnecessary to enter into the Trade Agreement and to provide therein for the adoption of Trade Plans. In order to save dollars, all we have to do is to limit our importations from Japan to not more than the value of our exports thereto, regardless of the *nature of the goods* involved.

The stipulation in the Trade' Agreement limiting the exports to, and the imports from, the contracting parties to the *commodities* specified in the Trade Plans therein provided, indicates clearly that the conservation of dollar reserves is merely incidental to a more important goal. This, according to said opinion of the Secretary of Finance (which is shared by the Secretary of Foreign Affairs), was to prevent that the industrialization plans of the Philippines may be frustrated by the unrestricted trade with Japan, even on a barter basis< which may "result in the entry of cheap Japanese goods." This view is fully borne out by the Trade Plans adopted in pursuance of said Trade Agreement, and, particularly, by the nature of the goods specified in said Trade Plans.

The silence of the Trade and Financial Agreements as regards the industrialization of the Philippines is easily understandable. To begin. with, treaties are, generally, limited to the broad outlines of the agreements reached by the contracting parties. Secondly, the latter seldom, if ever, state their *motives* for such agreements. Thirdly, each party has, usually, a motive of its own, other than that of the other. Fourthly, the provision in 'the Trade Agreement for the *periodic adoption of Trade Plans* kept the door open for subsequent agreements on the details of the Trade relations between the contracting parties, including their respective goals, if a meeting of minds, in connection therewith, were necessary.

Again, the orthodox interpretation of customs and tariff laws does not offer a safe guide for the construction of the Trade and Financial Agreements in question. Said laws are promulgated, mainly, under the power of taxation. The principal objective thereof is to *raise funds* for. the support of the Government. Upon the other hand, said Agreements were entered into in the exercise of the *police power* of the State. The major purpose thereof was to *regulate* the flow of goods and services from the Philippines to Occupied Japan and vice-versa. That the creation or protection of sources of revenue was not its primary concern is clearly deducible from paragraph l(i) of the Trade Agreement, reading:

> "Nothing in this Agreement shall be deemed to exempt the products listed in the trade plan from the payment of the ordinary customs duties, excise taxes, administrative charges and/or fees at rates not higher than those applicable to similar products when imported under similar terms and conditions from third countries by either party."

Wherefore, the,decision of the Board of Tax Appeals is hereby reversed, and that of the Commissioner of Customs affirmed, with costs against respondent Romeo M. Valencia. So

ordered.

Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., Endencia and *Felix, JJ.,* concur.

Date created: October 10, 2014