

LIM HU, PETITIONER AND APPELLEE, VS. CENTRAL BANK OF THE PHILIPPINES, ET AL., RESPONDENTS AND APPELLANTS.*G.R. No. L-8157. July 31, 1956*

Ponente: BENGZON, J.

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Pursuant to the provisions of Circular No. 45 of the Central Bank, Lim Hu applied for license to import certain commodities from Hongkong on the basis of the so-called "no-dollar remittance". His application was denied. Thereafter he started in the Manila court of first instance proceedings to compel said institution to issue the license or permit the importation contending that the above-mentioned circular was null and void, said Bank having no legal power to promulgate it.

The case was submitted upon a stipulation of facts, on the strength of which, the Manila court rendered judgment in accordance with the petitioner's complaint, annulled the circular, and declared that the importation could be made, subject only to customs law. The Bank appealed.

It was stipulated "that on August 3, 1953, Lim Hu filed applications for the importation into the Philippines from Hongkong of fresh garlic, soy sauce, fresh eggs, hams, fresh onions and fresh potatoes * * * on a no-dollar remittance basis, pursuant to the requirements of Central Bank Circular No. 45".

It was also stipulated that, to pay for the above consumer goods in Hongkong, Lim Hu stated he would use a credit of \$500,000 of John Martin, in said city, with the latter's consent, Martin and Lim Hu having entered into an agreement that the latter would take charge of the importation into and sale in the Philippines of said goods, investing the proceeds in certain kinds of business in this country.

Circular No. 45 provided in part:

"Now therefore, the Monetary Board, in pursuance of Central Bank Circular No. 20 and other circulars and notifications issued in pursuance thereto, hereby requires any person or entity who intends to import or receive goods from any foreign country for which no foreign exchange is required or will be required of the banks, to apply for a license from the Monetary Board to authorize such import."

And Circular No. 20 restricting gold and foreign exchange transactions, subjected to license by the Central Bank the proposed arrangement between Lim Hu and John Martin.

Defending the validity of its Circular No. 45 the Bank alleges "it has authority to issue such regulation as maybe necessary to exercise its power * * * to license (temporarily) all transactions in gold and foreign exchange" (section 14 [a] in connection with section 74 Republic Act No. 265) ; and that the term foreign,exchange is applicable "to foreign currency and notes and coins, letters of credit, drafts, bills of exchange, or other instruments having international financial implications" (section 2 paragraph [i] Central Bank Circular No. 31), And in connection with the proposed transaction, the Bank says, John Martin a non-resident would thereby acquire an interest in Philippine pesos resulting from the sales of the imported goods, and the effect of the operation would

be an exchange of John Martin's money in Hongkong with Philippine pesos here. Lim Hu even covenanted to render to John Martin "semi-annual accounting of the moneys and properties" involved in the importation. (Annex C, Motion for New Trial.) Hence it was a transaction in foreign exchange, subject to regulation, concludes the Bank in sustaining this appeal.

On the other hand Lim Hu's counsel argues that "the application for license by petitioner is without foreign exchange" and therefore beyond the power of the Bank to regulate.

Of course, it may readily be seen that, for the purposes of this importation Lim Hu did not have to buy foreign exchange, i. e., did not have to remit money from Hongkong. However, whether the transaction would have "international financial implications" as dealing with foreign drafts or promissory notes—that is the question, which for reasons stated below, we find it unnecessary to decide.

With the approval of Republic Act No. 1296 effective June 16, 1955 and Republic Act No. 1410 effective September 10, 1955 a writ of mandamus may not now be issued to allow this importation, because after June 16, 1955 Lim Hu could not be permitted to import onions, potatoes and garlic (Republic Act No. 1296) —with or without foreign exchange—and under Republic Act No. 1410 this importation under the so-called "no-dollar remittance" may not be permitted.[1] If it be argued that Lim Hu's application had been submitted before the passage of the two laws, the reply would be that no saving clause was inserted in said statutes exempting from their prohibition all applications for importation previously filed.

The resultant situation is that, because this importation can not now be permitted, the Central Bank may not be required to grant petitioner's application for license.

Wherefore, the lower court's order allowing the importation, should be, as it is hereby, reversed and the petition for mandamus denied. No costs.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[1] See *Millarez vs. Amparo*, 97 Phil., 282, 51 Off. Gaz. (7) 3462.

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