

GONZALO SY, DOING BUSINESS UNDER THE NAME AND STYLE OF GONZALO SY TRADING, PETITIONER-APPELLANT, VS. CENTRAL BANK OF THE PHILIPPINES, RESPONDENT-APPELLEE.

G.R. No. L-41480. April 30, 1976

Ponente: MARTIN, J.

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MARTIN, J.:

This is an appeal from the decision of the Court of First Instance of Manila in its Civil Case No. 81051, which was certified to Us by the Court of Appeals on August 28, 1975, raising the question of whether or not petitioner-appellant's Special Import Permit granted by the Central Bank of the Philippines authorizing it to import fresh fruits from Japan on a "no-dollar" basis has already expired when it made the importations under litigation.

The petitioner-appellant is a trading company engaged in the importation of fresh fruits like oranges, grapes, apples and lemons from the different parts of the world for the last nineteen years. On September 28, 1968, it wrote to the Deputy Governor of the Central Bank of the Philippines, Mr. Amado R. Briñas, requesting authority to import from the country of Japan on "no-dollar" basis fresh fruits in the total amount of US\$715,000.00. The pertinent portions of petitioner-appellant's letter[1] read:

"We are importers for the last 19 years. Our line of business is the importation of fresh fruits like fresh oranges, grapes and apples from various parts of the world.

"We are fully aware of the Central Bank policies and regulations with respect to imports particularly the effects of Central Bank Circular 260 to authorized agent banks. Our item of importations which is fresh fruits calls for 175% Special Time Deposit for 120-days. With the fast approaching Christmas season we are certain we cannot cope with the demands of our buyers of fresh fruits under this requirement imposed on importers. We have brought this matter to the attention of our various shippers of fresh apples from Japan for their proper guidance.

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In this connection, we respectfully request your good office for an authority or issue us Special Import Permit on No Dollar Basis, to enable us to receive the goods from our reliable and helpful suppliers who have complete trust and confidence in us. As manifested in their respective letters to us, we can pay or remit them the payment of the fruits shipped to us even after the season, which is around April of next year, and if our dollar position is favorable. We honestly believe, that this offer from our suppliers is very inducive and if possible, we would not like to miss this opportunity."

On October 2, 1968, Mr. Julian D. Mercado, the Executive Assistant to Deputy Governor Briñas, denied the request, stating that " * * * since only the transactions specifically enumerated in Central Bank Circular No. 247 dated July 21, 1967 are allowed as 'no-dollar importation', we regret to advise that your request cannot be given due course by this office." [2]

Petitioner-appellant sought a reconsideration of this denial on October 22, 1968 thru Deputy Governor Amado R. Briñas, explaining that their " * * * case is a very special one and different from regular importation," at the same time reminding that " * * * this item of fresh apples is very much needed in the coming Christmas season and we are confident that if our request be given consideration, we will be able to put good stock of fresh apples in the market at a cheaper cost for the benefit of the consuming public." [3]

Another letter was coursed by petitioner-appellant on November 6, 1968 to the Monetary Board of the Central Bank thru Deputy Governor Amado R. Briñas, requesting "your good office for an authority to import on no Letter of Credit basis, or issue us Special Import Permit for the amount of US\$715,000.00 on No-Dollar Basis, to enable us to import the fresh fruits which we need for Christmas, from our reliable and helpful suppliers." In this letter, petitioner-appellant points out that "the items called for such as apples, oranges and grapes are perishable in nature and can not be stored for a longer period of time, and the main purpose of this importation is to serve the requirements during the Christmas Season." [4]

On November 19, 1968, the Monetary Board of the Central Bank issued Resolution No. 2038 approving petitioner-appellant's request for Special Import Permit on No-Dollar Basis, [5] thus:

"The Board, by unanimous vote, authorized Gonzalo Sy Trading to import on a no-dollar basis, without letters of credit, fresh fruits from Japan valued at \$350,000.00, subject to the special time deposit of 100% which shall be held by the bank concerned for a period of 120 days as well as to the normal customs duties and taxes. It is understood that there shall be no commitment on the part of the Central Bank to provide foreign exchange to cover the said importation."

Deputy Governor Amado R. Briñas communicated this approval of the request to petitioner-appellant, thru its Assistant Manager, Mr. E. B. Pidlaon, on November 21, 1968. [6]

On November 27, 1968, petitioner-appellant sent a letter [7] to the then Chairman of the Monetary Board, Mr. Eduardo Romualdez, reading:

"Thank you very much for your approval to our request for special permit to import on no-dollar basis, without letter of credit fresh fruits valued at US\$350,000.00.

We noted however, that 100% special time deposit for 120 days is required. We beg to point out that this particular importation is only for the Christmas Season, and if we will deposit the amount of about P1,400,000.00 which will not be touched for 120 days, and considering the fact that on this importation alone, we will pay the government in the form of customs taxes and duties, no less than P700,000.00, then we will be needing more than P3,000,000.00.

We beg to request therefore, for a reconsideration by your good office, and allow us to put up 20% special time deposit for 120 days instead of 100%."

The request was denied by the Deputy Governor Briñas in a letter, dated December 9, 1968. [8]

Thereafter, on February 25, 1969, petitioner-appellant made his first importation from Japan. [9] The bulk of the importations from August 7, 1969 thru November 5, 1969 came from San Francisco, California and Australia. [10] The importation on January 5, 1970, consisting of fresh oranges and lychees came from Taipei, Taiwan, [11] while those of March 16, 1970, consisting of fresh oranges, came from Israel. [12] For these importations, the Prudential Bank and Trust Company acted as the agent of the Central Bank in the issuance of the corresponding release certificates for the entry of the goods. By the beginning of June, 1970, the total amount used out of the \$350,000.00 Special Import Permit was already \$314,142.51, leaving a balance of \$35,857.49 [13]

As early as October 30, 1969, petitioner-appellant requested from Deputy Governor Amado R. Briñas [14] "an

amendment of the country of origin of our importations to include other countries except communist countries" since the fresh fruits from Japan "are seasonal (and) our shippers cannot fully fill up our requirements to comply with their total commitments to us without procuring from other sources like Australia, Taiwan, U.S.A. and other countries with whom we have trade relations."

On November 19, 1969, the Deputy Governor, Mr. Amado R. Briñas, replied:[15]

"This has reference to your letter dated October 30, 1969 requesting amendment of the country of origin of your importations of fresh fruits from Japan to include other countries except communist countries as authorized by Monetary Board Resolution No. 2038 dated November 19, 1968.

We regret to inform you that the authority granted to you by the Monetary Board per above-stated MB Resolution No. 2038, was intended only for the Christmas season of 1968 and does not extend through 1969. Furthermore, under existing regulations, importations of fruits are covered by the moratorium on the opening of letters of credit."

It so happened that two days after or on November 21, 1969, Director A. V. Antiporda, of the Foreign Exchange Department of the Central Bank, wrote to Mr. Renato L. Santos, Assistant Vice-President of the Prudential Bank and Trust Company, in reply to the letters of the latter, dated November 14 and 19, 1969,[16] furnishing the Foreign Exchange Department copies of the release certificates the Prudential Bank and Trust Company issued to Gonzalo Sy Trading. The pertinent portion of Antiporda's letter[17] reads:

"On the basis of your report that the total value of the shipments so far made by your client against the \$350,000.00 grant amounts to \$144,306.15 only, you may continue to issue release certificates to cover the No-Dollar Importations of fresh fruits by your client, subject to the same terms and conditions imposed by Monetary Board under the above-mentioned resolution.

Then, on April 17, 1970, the Assistant to the Governor, Mr. Cesar Lomotan, informed the Prudential Bank and Trust Company[18] that the authority granted to petitioner-appellant under MB Resolution No. 2038 was intended only for the Christmas season of 1968 and does not extend through 1969, enclosing therewith the letter, dated November 19, 1969, of Deputy Governor Briñas.

On May 27, 1970, petitioner-appellant notified Mr. Cesar Lomotan that the Prudential Bank and Trust Company refused to issue them any release certificate for their importations due to his letter of April 17, 1970. On June 3, 1970, petitioner-appellant sent a follow-up letter to Mr. Lomotan, reiterating "our request for a reconsideration on the matter and to allow us utilize the balance of our Permit in the amount of \$35,857.49." "In the same letter, petitioner-appellant advised that "we have shipments coming on June 4th and June 6th respectively which is within the balance of our permit."

On June 10, 1970, Deputy Governor Amado R. Briñas wrote petitioner-appellant that its request cannot be given due course, inviting attention to the basic letter of November 19, 1969, informing it that the Special Import Permit was intended only for the Christmas season of 1968 and does not extend through 1969.[19]

On June 5 and 16, 1970, the Collector of Customs for the Port of Manila, Mr. Jose T. Viduya, issued warrants of seizure and detention against:

1. 700 Cartons of Fresh Oranges, on board SS "Taviata";
2. 1,000 Cartons of Fresh Oranges, on board SS "Fernlake";
3. 500 Cartons of Fresh Oranges, on board SS "Arizona";
4. 100 Cartons of Fresh Lemons and 1000 Cartons of Fresh Oranges, on board SS "Turandot";

5. 560 Cartons of Fresh Apples on board SS "Anshun"; and

6. 1,662 Cartons of Fresh Apples, on board SS "Anshun"

consigned to petitioner-appellant, with a total FOB value of US\$17,568.49, "for having been imported in violation of Central Bank Circular No. 289, in relation to Section 2530(f) of the Tariff and Customs Code." [20]

On July 17, 1970, Deputy Governor Amado R. Briñas wrote to the Commissioner of Customs: [21]

"Since fresh fruits are classified as Non-Essential Consumer goods, and therefore banned under Circular No. 289 dated February 21, 1970, it is requested that the above shipments (fresh oranges, lemons and apples with total value of \$21,763.00) be subject to appropriate seizure proceedings. Likewise, all other importations of fresh fruits now under Customs custody should be subjected to appropriate seizure proceedings and any release certificates issued by the banks for such importations should be disregarded."

On July 30, 1970, the Collector of Customs issued a notice for the auction sale of the confiscated June 1970 shipment on the following August 12. Whereupon, petitioner-appellant, along with another importer, Tomas Y. de Leon, commenced an injunction suit before the Court of First Instance of Manila, docketed as Civil Case No. 80655, against the Commissioner and Collector of Customs for the Port of Manila. On August 26, 1970, the Manila Court of First Instance, presided over by trial Judge Federico C. Alikpala, ordered the release of the seized goods under bonds totalling P513,865.46. However, the Commissioner and Collector of Customs elevated the matter to this Court, seeking to have the August 26, 1970 order declared null and void. [22]

Meanwhile, the second shipment consigned to petitioner-appellant arrived at the Port of Manila on September 6 and 15, 1970. This shipment consisted of 1,000 cartons of fresh sunkist oranges, 1,000 cartons of fresh grapes and 100 cartons of fresh lemons, all valued at P71,549.49. Like the June, 1970 importation, this September, 1970 shipment was also seized by the Customs authorities.

On September 21, 1970, petitioner-appellant instituted before the Court of First Instance of Manila the subject petition for mandamus with damages which was docketed as Civil Case No. 81051. This case was consolidated with Civil Case No. 80655 assigned to the sala of trial Judge Federico C. Alikpala upon motion of petitioner-appellant. [23] In this petition, petitioner-appellant, prayed for the issuance of a writ of mandamus to direct the Central Bank of the Philippines to release the imported fruits and to provide the necessary release certificates therefore. Likewise, it prayed for the award of damages amounting to P838,495.28.

On November 26, 1970, this Court promulgated its decision in the Alikpala case [24] sustaining the Order of August 26, 1970, ordering the release of the June, 1970 importation upon bond, with a directive to the importers, Gonzalo Sy Trading and Tomas Y. de Leon, to cause the reinsurance of the bonds amounting to more than P340,000.00 not covered by reinsurance or to put up other surety bonds acceptable to the Collector of Customs. In the following month, December, 1970, the June, 1970 shipment was released to petitioner-appellant on bond.

On November 27, 1971, Judge Alikpala rendered judgment in Civil Case No. 81051 dismissing petitioner-appellant's complaint for mandamus with damages and ordering the Collector of Customs to proceed with the seizure proceedings it initiated against the June, 1970 importation and, if favorable to the government, to enforce the same against the surety bonds of petitioner-appellant posted upon the release of the goods in December, 1970. The shipment of September, 1970 was condemned and only the recovery of whatever charges and/or penalties against petitioner-appellant was ordered.

From this adverse judgment, petitioner-appellant appealed to the Court of Appeals, but the Appellate Court certified the case to Us as involving only pure questions of law.

We rule that the Special Import Permit granted to petitioner-appellant on November 19, 1968, allowing it to import fresh fruits from Japan on a "no-dollar" basis, has already lost its validity when the questioned importations of June and September, 1970 were made.

1. It is one of the first principles in the field of administrative law that a license or a permit is not a contract between the sovereignty and the licensee or permittee, and is not a property in any constitutional sense, as to which the constitutional prescription against impairment of the obligation of contracts may extend. A license is rather in the nature of a special privilege, of a permission or authority to do what is within its terms.[25] It is not in any way vested, permanent, or absolute. A license granted by the State is always revocable. As a necessary consequence of its main power to grant license or permit, the State or its instrumentalities have the correlative power to revoke or recall the same. And this power to revoke can only be restrained by an explicit contract upon good consideration to that effect.[26] The absence of an expiry date in a license does not make it perpetual. Notwithstanding that absence, the license cannot last beyond the life of the basic authority under which it was issued.[27]

The series of correspondence exchanged between petitioner-appellant and respondent-appellee in the case at bar plainly reveals that the Special Import Permit granted to petitioner-appellant covers only the Christmas season of 1968. As reflected in its first letter, dated September 28, 1968, the cause or the compelling reason why petitioner-appellant sought for the Special Import Permit on No-Dollar, Basis was because the importation of fresh fruits calls for 175% Special Time Deposit for 120 days and "(w)ith the fast approaching Christmas season" petitioner-appellant "cannot cope with the demands of [its] buyers of fresh fruits under this requirement imposed on importers." Upon denial of its request, petitioner-appellant explained to Deputy Governor Amado R. Briñas in its letter of October 22, 1968 that their " * * * case is a very special one" and that " * * * this item of fresh apples is very much needed in the coming Christmas season * * *." Complementary to this letter, petitioner-appellant pointed out to the Monetary Board in its letter of November 6, 1968 that "the items called for such as apples, oranges and grapes are perishable in nature and cannot be stored for a longer period of time, and the main purpose of this importation is to serve the requirements during the Christmas Season." After the Special Import Permit was granted by the Monetary Board on November 19, 1968, petitioner-appellant expressed its gratitude to the then Chairman of the Monetary Board, Mr. Eduardo Romualdez, in a letter of November 27, 1968 and, at the same time, requested that it be allowed "to put up 20% special time deposit for 120 days instead of 100%, again pointing out that "this particular importation is only for the Christmas season * * *." It was upon all these representations and assurances by petitioner-appellant that the Monetary Board of the Central Bank finally issued the Special Import Permit. As a result, the conclusion becomes inevitable that the Special Import Permit thus granted lasts only until the Christmas Season of 1968.

The omission of an expiry date in the Special Import Permit affords no legal basis for petitioner-appellant to conclude that the said permit is impressed with continuous validity, i.e., not merely limited to the Christmas Season of 1968. The totality of petitioner-appellant's representations which led to the issuance of the permit cannot be lightly glossed over. It was petitioner-appellant itself which furnished the life span of the permit, consistently pointing out that "the main purpose of this importation is to serve the requirements during the Christmas Season" of 1968. In the logical sequence of things, no imperative reason arises for the Monetary Board to still specify the expiry date of the permit. It would be far-fetched for the Monetary Board to grant more than what was asked for, considering that it was opposed to the granting of the permit from the very start, in view of the existing stringent policies against "no-dollar" importation of "non-essential consumer" goods like fresh fruits. That is why, the Monetary Board, while it thus issued the Special Import Permit, subjected the same to a "special time deposit of 100% which shall be held by the bank concerned for a period of 120 days as well as to the normal customs duties and taxes." This requirement was maintained by the Monetary Board even after

petitioner-appellant sought for a reconsideration thereof. Withal, it can be gleaned that petitioner-appellant's Special Import Permit bears all the marks of a mere special concession from the issuing authority, to the effect that no extensive privileges are licitly inferable from it.

Petitioner-appellant mistakenly asserts that the continuous validity of its Special Import Permit has already been passed upon by this Court in *Commissioner of Customs v Alikpala*.^[28] What was raised in that case is the question of whether the Collector of Customs for the Port of Manila has observed the rudiments of administrative due process in ordering the seizure and sale at public auction of petitioner-appellant's imported goods in particular that arrived in June, 1970, as well as the question of the legality of the Collector's order requiring only cash bond, surety bond not accepted, for the release of the goods. The Court made no ruling on the continuity of petitioner-appellant's Special Import Permit after the Christmas season of 1968. Petitioner-appellant's referral^[29] to the statement of the Court that the November 21, 1969 letter of Mr. A. V. Antiporda, Director of the Foreign Exchange Department, authorized the Prudential Bank and Trust Company to "continue to issue release certificates to cover the No-Dollar importations of fresh fruits by your client" misses the preceding prefatory statement of the Court in regard to the details of the case, thus: "For a proper understanding and resolution of the issues it is necessary to state the facts in greater detail, as they appear from the pleadings and memoranda submitted by the parties as well as from the different documents attached thereto and marked as annexes." In other words, the subsequent statement of the Court on the Antiporda letter is but a portion of its recital of the facts involved, without necessarily making a resolution thereon.

2. Controversy rises between petitioner-appellant and respondent-appellee on the receipt of Deputy Governor Briñas' letter, dated November 19, 1969, purportedly informing petitioner-appellant that its Special Import Permit "was intended only for the Christmas season of 1968 and does not extend through 1969." While petitioner-appellant contends that the said letter was never served upon it, respondent-appellee maintains that it is quite surprising for petitioner-appellant to disclaim receipt thereof when all prior and subsequent letters from the Central Bank have been satisfactorily received by it. This question is not of decisive import. The all-governing point is the reasonable assumption of petitioner-appellant's knowledge or awareness of the duration of its Special Import Permit, since it was petitioner-appellant itself which established the terminal date of its permit by representing that "the main purpose of this importation is to serve the requirements during the Christmas season" of 1968, upon which representation, the Monetary Board finally granted the permit. The equitable principle of estoppel forbids petitioner-appellant from taking an inconsistent position now and claims that the permit extends beyond the period it itself asked for. Where conduct or representation has induced another to change its position in good faith or the same is such that a reasonable man would rely thereon, the consequences of such conduct or representation cannot later on be disowned.^[30] The preliminary representations and assurances of petitioner-appellant, most important of which is the life span of the permit, are deemed incorporated into the Special Import Permit subsequently issued. At most, the letter of Deputy Governor Briñas may serve only to remind petitioner-appellant of the resolutive period of its permit. Whether there was such letter or not, the time limit proffered by petitioner-appellant and approved by the Central Bank controls.

3. The doctrine of "promissory estoppel" is invoked by petitioner-appellant to preclude respondent-appellee from contesting the legality of its importations. Petitioner-appellant draws authority from the letter of Director A. V. Antiporda, dated November 21, 1969, informing the Prudential Bank and Trust Company that it "may continue to issue release certificates to cover the No-Dollar. Importations of fresh fruits by your client" after noting that only \$144,306.15 has been utilized out of the \$350,000.00-permit. According to that doctrine, "an estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice."^[31] Like the related principles of *volenti non fit injuria*

(consent to injury), waiver, and acquiescence, it finds its origin generally in the equitable notion that one may not change his position and profit from his own wrongdoing when he has caused another to suffer a detriment by relying on his former promises or representations.[32] But, a promise cannot be the basis of an estoppel if any other essential element is lacking. Justifiable reliance or irreparable detriment to the promisee are requisite factors.[33] We failed to see in Antiporda's letter the making of a "promise", upon which petitioner-appellant could justifiably rely. On the contrary, while the letter advised the agent bank that it may continue issuing release certificates to cover petitioner-appellant's "no-dollar" importations of fresh fruits, it at the same time subjects the issuance of release certificates "to the same terms and conditions imposed by the Monetary Board" on the Special Import Permit, one of which is the resolutory term of 1968. That is the import of the Antiporda's letter *ex vi termini*. Director Antiporda could not have modified the Special Import Permit by creating a longer period, for the plain reason that no such authority resides in him. An administrative officer has only such powers as are expressly granted to him and those necessarily implied in the exercise thereof.[34] As earlier pointed out, it was the Monetary Board which issued the permit; correspondingly, it too possesses the sole power to modify the same.

On the gratuitous assumption that the Antiporda's letter purported to impress, albeit erroneously, that further importations could be made by petitioner-appellant beyond the Christmas season of 1968, the same produces no estoppel against the issuing authority. The long-settled jurisprudence states that the "doctrine of estoppel" does not operate against the Government, of which the Central Bank is an instrumentality, in its capacity as sovereign or asserting governmental rights; the Government is never estopped by the mistake or errors on the part of its agents. Moreover, estoppel cannot give validity to an act that is prohibited by law or against public policy.[35] The erroneous application of the statute and enforcement of the law do not block subsequent correct application thereof[36] or bar a future action in accordance with law.[37] To hold that merely the Antiporda's letter could be the basis for such estoppel would be going in the direction of suspending and repealing the conditions or terms of the Special Import Permit without any action on the part of the Monetary Board.[38]

4. The cases of *Ramos v. Central Bank*[39] and *Commissioner of Customs v. Auyong Hian*[40] cannot be relied upon by petitioner-appellant to foreclose the issue on the continuous validity of its Special Import Permit. In *Ramos*, the Court held that after the Central Bank has made express commitments to petitioners therein that it would support the Overseas Bank of Manila, and avoid its liquidation if the petitioners would execute (a) the Voting Trust Agreement turning over the management of OBM to the CB or its nominees, and (b) mortgage or assign their properties to the Central Bank to cover the overdraft balance of OBM, which petitioners did, the Central Bank may not retreat from its representations and liquidate the Overseas Bank of Manila, to the prejudice of petitioners, depositors and other creditors, under the rule of "promissory estoppel." The Central Bank cannot just unilaterally disregard its representations and promises to rehabilitate and normalize the financial condition of the OBM without violating Article 1159 of the Civil Code of the Philippines, which provides that "(o)bligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith," as well as Article 1315, stating that "(c)ontracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law." In other words, by making the foregoing representations and commitments to the OBM, the Central Bank had thereby assumed a contractual obligation in favor of the OBM such that it cannot unceremoniously ignore the same. No such kind of contractual obligation or commitments have been perfected between the Central Bank and the petitioner-appellant in the present case. The issuance of the Special Import Permit by the Monetary Board to the petitioner-appellant can hardly be considered as constitutive of a contractual obligation assumed by the Central Bank in favor of petitioner-appellant. This is because a permit is not, by its very nature, a contract but a mere special privilege. For a permit to be impressed with a contractual character, it must be categorically demonstrated that the very

administrative agency, which is the source of the permit, would place such a burden on itself.[41] Auyong Hian, on the other hand, tells of an importation of old newspapers in four shipments under a "no-dollar" arrangement, pursuant to a license issued by the Import Control Commission. When the last shipment arrived in Manila, the Customs authorities seized the same on the ground that the importation was made without the license required under Central Bank Circular No. 45.[42] While the seizure proceedings were pending before the Collector of Customs, the President of the Philippines, acting through its Cabinet, cancelled the aforesaid license for the reason that it was illegally issued "in that no fixed date of expiration is stipulated." On review, the Court held that the cancellation of the license on the sole ground that it does not bear any expiry date even if the importation had already been accomplished was inequitable. In the present case, however, no such cancellation of license or permit appears. The legality of the issuance of petitioner-appellant's Special Import Permit is not in question. On the contrary, what is being sought in this case is the enforcement of the terms and conditions of the Special Import Permit, one of which, is the resolutive period of 1968. As earlier discussed, after the lapse of this period, the permit can no longer yield any valid effect.

5. The authority of the Central Bank to regulate "no-dollar" imports, owing to the influence and effect that the same may exert upon the stability of our peso and its international value, cannot be seriously contested. Such authority clearly emanates from its broad powers to maintain our monetary stability and to preserve the international value of our currency[43] as well as its corollary power to issue such rules and regulations for the effective discharge of its responsibilities and, exercise of powers.[44] On February 21, 1970, the Central Bank promulgated its Circular No. 269, prohibiting the importation of "non-essential consumer" goods like fresh fruits. Section 5 thereof directs that "(a)uthorized agent banks may sell foreign exchange for imports except those falling under the UC, SUC, and NEC categories, without prior specific approval of the Central Bank." In the recent case of *Balmaceda v. Corominas*,[45] We ruled that "the entry of NEC ("non-essential commodities") is thus halted at bay." With regard to "no-dollar" imports, the Central Bank promulgated Circular No. 247 on July 21, 1967, specifically enumerating the items exempted from the requirement of release certificates. The enumeration mostly refers to personal effects and gifts of returning residents, tourists, immigrants, etc. Fresh fruits are not included. Circular No. 247 was amended by Circular No. 294 on March 10, 1970, providing that "(n)o-dollar imports not covered by Circular No. 247 shall not be issued any release certificates and shall be referred to the Central Bank for official transmittal to the Bureau of Customs for appropriate seizure proceedings." On March 20, 1970, Circular No. 295 was passed. This circular reiterates the exemption of the "no-dollar" imports enumerated under Circular No. 247 from the release certificate requirements, but imposes an express ban on all other "no-dollar" imports not covered by Circular No. 247. These include "fresh fruits" like fresh apples, oranges, grapes, and lemons.[46] It can thus be readily seen that petitioner-appellant's "fresh fruits" importations of June and September, 1970 violate the quoted Central Bank Circulars, hence, liable to seizure action by the Customs authorities. While the said goods may not be considered "merchandise of prohibited importation," they nevertheless fall within the other category of merchandise imported "contrary to law", because regulations issued pursuant to "customs law" form part thereof. The term "customs law" includes not only the provisions of said law proper but also any regulations made pursuant thereto like the aforementioned Central Bank circulars,[47] which also have the force and effect of law.[48] Consequently, violation of these circulars comes within the purview of Section 2530 (f) of the Tariff and Customs Code, which authorizes the forfeiture of "(a)ny article the importation or exportation of which is effected or attempted contrary to law." [49]

6. Petitioner-appellant disputes the disposition of the trial court directing the Collector of Customs to proceed against the surety bonds it posted for the release of its June, 1970 importation sometime in December, 1970. There is no doubt that the surety bonds were posted by petitioner-appellant in Civil Case No. 80655, which was terminated by the mutual agreement of the parties[50] after the Court has handed down its decision thereon on

appeal.[51] However, it must be remembered that the said surety bonds were undertaken by petitioner-appellant for the release of its June, 1970 importation. A fortiori, in any litigation where the release of this June, 1970 shipment is involved, the said surety bonds are answerable. The statutory undertaking of a bond is to answer for all damages that may result from an injunction should the court finally decide that the injunction was not proper or that the party in whose favor the injunctive writ was issued was not entitled thereto.[52] Although petitioner-appellant's surety bonds were filed in Civil Case No. 80655, the undertaking therein to answer for damages in case the release of the June, 1970 shipment is found improper attaches to the present case, Civil Case No. 81051. The case where the surety bonds were posted is but incidental. The all-important factor to consider is the event or judicial action secured by the bonds. Since the surety bonds in question were intended to secure the liabilities which petitioner-appellant may incur for the release of its June, 1970 importation, the said bonds can be proceeded against in any case where the propriety or impropriety of said release has been resolved. The bonds become immediately answerable for the undertaking once this condition has occurred.[53] It would be a useless expense of judicial time and effort if the surety bonds were yet to be litigated in another suit just to enforce the undertaking therein. This is specially true when the sufficiency or solvency of the bonds has been previously passed upon by the same trial judge hearing the second case. Besides, Civil Case No. 80655 has already been terminated by the mutual agreement of the parties such that no enforcement of the undertaking of the bonds could be easily made therein.[54]

ACCORDINGLY, the judgment of the lower court, subject matter of this present review, is hereby affirmed. Costs against petitioner-appellant.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] Exhibit 1-Respondent-Appellee; N.B.: Underscorings and subsequent ones furnished.

[2] Exhibit 1-A-Respondent-Appellee.

[3] Exhibit 2-Respondent-Appellee.

[4] Exhibit 3-Respondent-Appellee.

[5] Exhibit 4-Respondent-Appellee.

[6] Exhibit 5-Respondent-Appellee; Exhibit A-Petitioner-Appellant.

[7] Exhibit 6-Respondent-Appellee.

[8] Exhibit 7-Respondent-Appellee.

[9] Exhibit F-Petitioner-Appellant.

[10] Exhibits F-4 to F-40-Petitioner-Appellant, except Exhibit F-25, October 14, 1969; F-26, October 28, 1969; F-32, October 28, 1969; F-33, October 28, 1969, F-37, where the importations came from Japan.

[11] Exhibits F-67 and F-68-Petitioner-Appellant.

[12] Exhibits F-69 and F-70-Petitioner-Appellant.

[13] See Commissioner of Customs v. Alikpala, L-32542, November 26, 1970, 36 SCRA 213.

[14] Exhibit 8-Respondent-Appellee.

- [15] Exhibit 9-Respondent-Appellee.
- [16] Exhibit C, C-1-Petitioner-Appellant.
- [17] Exhibit B-Petitioner-Appellant.
- [18] Exhibit 18-Respondent-Appellee.
- [19] Exhibit 21-Respondent-Appellee.
- [20] Exhibits 12, 12-A to 12-E, Respondent-Appellee.
- [21] Exhibit 25-Respondent-Appellee; Action of Deputy Governor Briñas was confirmed by the Monetary Board in its Resolution No. 1410, September 1, 1970, Exhibit 26-Respondent-Appellee.
- [22] Commissioner of Customs v. Alikpala, see fn. 13.
- [23] See Order, dated September 24, 1970, of Manila CFI Judge Jose G. Bautista in Civil Case 81051.
- [24] See fn. 13.
- [25] Heslep v. State Highway Dept., 171 SE 914; Federal Land Bank of Wichita v. Board of Country Com's., 7 L. Ed. 199; Galvan v. Superior Court of the City and County of San Francisco, 452 F. 2d 930; 51 Am Jur 2d 25-26.
- [26] Doyle v. Continental Insurance Co., 24 L. Ed. 151.
- [27] Climaco v. Barcelona, L-19597, July 31, 1962, 5 SCRA 852-53.
- [28] See fn. 13, ante.
- [29] Brief, Petitioner-Appellant, at 20, 21.
- [30] See 402 F. 2d 893 (1968) and cases cited; also Sec. 3, Rule 131, Revised Rules of Court.
- [31] See 19 Am Jur 657-58; 31 C.J.S. 290.
- [32] Kelly Tire Service, Inc. v. Kelly-Springfield Tire Co., 338 F. 2d 248 (1964).
- [33] 31 C.J.S. 291.**
- [34] Makati Stock Exchange, Inc. v. SEC, L-23004, June 30, 1965, 14 SCRA 623.
- [35] Auyong Hian v. Court of Tax Appeals, L-28782, September 12, 1974; Republic v. Marcos, L-32941, July 31, 1973, 52 SCRA 244.
- [36] United Christian Missionary Society v. SSC, L-26712-16, December 27, 1969, 30 SCRA 990.
- [37] Zamora v. Court of Tax Appeals, L-23272, November 26, 1970, 36 SCRA 85:
- [38] Paulus v. Smith, 217 N.E. 2d 527.
- [39] L-29352, October 4, 1971, 41 SCRA 565.
- [40] 105 Phil. 561 (1959).
- [41] See Batchelder v. Central Bank, L-25071, July 29, 1972, 46 SCRA 104.
- [42] June 25, 1953.

[43] Sec. 2, RA 265 (Central Bank Act), June 15, 1948.

[44] Sec. 14, *idem*; See also *Commissioner of Customs v. Eastern Sea Trading*, L-14279, October 31, 1961, 3 SCRA 355; *Pascual v. Commissioner of Customs*, L-12219, April 25, 1962, 4 SCRA 1022.

[45] L-21971, September 5, 1975.

[46] *Geotina v. Court of Tax Appeals*, L-33500, August 30, 1971, 40 SCRA 362.

[47] *Lazaro v. Commissioner of Customs*, L-22511 & L-22343, May 16, 1966, 17 SCRA 39.

[48] *Geotina v. Court of Tax Appeals*, see fn. 46, *ante*; *Batchelder v. Central Bank*, fn. 41, *ante*.

[49] *Capulong v. Aseron*, L-22989, May 14, 1966, 17 SCRA 11.

[50] See appealed Decision of Judge Alikpala in Civil Case No. 81051.

[51] *Commissioner of Customs v. Alikpala*, see fn. 13, *ante*.

[52] *Aquino v. Socorro*, L-23868, Oct. 22, 1970, 35 SCRA 373.

[53] *Capital Insurance & Surety Co., Inc. v. Reyes*, L-20789, June 20, 1966, 17 SCRA 406.

[54] See *Santos v. Court of Appeals* 95 Phil. 360 (1954).

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