

THE COMMISSIONER OF CUSTOMS AND THE COLLECTOR OF CUSTOMS, PETITIONERS, VS. EASTERN SEA TRADING, RESPONDENT.

G.R. No. L-14279. October 31, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Petition for review of a judgment of the Court of Tax Appeals reversing a decision of the Commissioner of Customs.

Respondent Eastern Sea Trading was the consignee of several shipments of onion and garlic which arrived at the Port of Manila from August 25 to September 7, 1954. Some shipments came from Japan and others from Hongkong. Inasmuch as none of the shipments had the certificate required by Central Bank Circulars Nos. 44 and 45 for the release thereof, the goods thus imported were seized and subjected to forfeiture proceedings for alleged violations of section 1363 (f) of the Revised Administrative Code, in relation to the aforementioned circulars of the Central Bank. In due course, the Collector of Customs of Manila rendered a decision on September 4, 1956, declaring said goods forfeited to the Government and—the goods having been, in the meantime, released to the Commissioner of Customs vs. Eastern Sea Trading consignee on surety bonds, filed by the same, as principal, and the Alto Surety & Insurance Co., Inc., as surety, in compliance with orders of the Court of First Instance of Manila, in Civil Cases Nos. 23942 and 23852 thereof directing that the amounts of said bonds be paid, by said principal and surety, jointly and severally, to the Bureau of Customs, within thirty (30) days 'from notice.

On appeal taken by the consignee, said decision was affirmed by the Commissioner of Customs on December 27, 1956. Subsequently, the consignee sought a review of the decision of said two (2) officers by the Court of Tax Appeals, which reversed the decision of the Commissioner of Customs and ordered that the aforementioned bonds be cancelled and withdrawn. Hence, the present petition of the Commissioner of Customs for review of the decision of the Court of Tax Appeals.

The latter is based upon the following premises, namely: that the Central Bank has no authority to regulate transactions not involving foreign exchange; that the shipments in question are in the nature of "no-dollar" imports; that, as such, the aforementioned shipments do not involve foreign exchange; that, insofar as a Central Bank license and a certificate authorizing the importation or release of the goods under consideration are required by Central Bank Circulars Nos. 44 and 45, the latter are null and void; and that the seizure and forfeiture of the goods imported from Japan cannot be justified under Executive Order No. 328[1] not only because the same seeks to implement an executive agreement[2]—extending the effectivity of our Trade[[3]] and Financial Agreements with Japan—which (executive agreement), it believed, is of dubious validity, but, also because there is no governmental agency authorized to issue the import license required by the aforementioned executive order.

The authority of the Central Bank to regulate no-dollar imports and the validity of the aforementioned Circulars Nos. 44 and 45 have already been passed upon and repeatedly upheld by this Court (Pascual vs. Commissioner of

Customs, 105 Phil., 1039; 56 Off. Gaz., [47] 7169; Acting Commissioner of Customs vs. Leuterio, L-9142 [October 17, 1959]; Commissioner of Customs vs. Pascual, 106 Phil., 488; Commissioner of Customs vs. Serree Investment Co., 108 Phil., 1; 58 Off. Gaz., [32] 5413, Commissioner of Customs vs. Serree Investment Co., 110 Phil., 148; 59 Off. Gaz., [6] 900, for the reason that the broad powers of the Central Bank, under its charter, to maintain our monetary stability and to preserve the international value of our currency, under section 2 of Republic Act No. 265, in relation to section 14 of said Act—authorizing the bank to issue such rules and regulations as it may consider necessary for the effective discharge of the responsibilities and the exercise of the powers assigned to the Monetary Board and to the Central Bank—connote the authority to regulate no-dollar imports, owing to the influence and effect that the same may and do have upon the stability of our peso and its international value.

The Court of Tax Appeals entertained doubts on the legality of the executive agreement sought to be implemented by Executive Order No. 328, owing to the fact that our Senate had not concurred in the making of said executive agreement. The concurrence of said House of Congress is required by our fundamental law in the making of "treaties" (Constitution of the Philippines, Article VII, Section 10 [7]), which are, however, distinct and different from "executive agreements", which may be validly entered into without such concurrence.

"Treaties are formal documents which require ratification with the approval of two-thirds of the Senate. Executive agreements become binding through executive action without the need of a vote by the Senate or by Congress.

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" * * * the right of the Executive to enter into binding agreements without the necessity of subsequent Congressional approval has been confirmed by long usage. From the earliest days of our history we have entered into executive agreements covering such subjects as commercial and consular relations, most-favored-nation rights, patent rights, trademark and copyright protection, postal and navigation arrangements and the settlement of claims. The validity of these has never been seriously questioned by our courts.

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"Agreements with respect to the registration of trade-marks have been concluded by the Executive with various countries under the Act of Congress of March 3, 1881 (21 Stat. 502). Postal conventions regulating the reciprocal treatment of mail matters, money orders, parcel post, etc., have been concluded by the Postmaster General with various countries under authorization by Congress beginning with the Act of February 20, 1792 (1 Stat. 232, 239). Ten executive agreements were concluded by the President pursuant to the McKinley Tariff Act of 1890 (26 Stat. 667, 612), and nine such agreements were entered into under the Dingley Tariff Act of 1897 (30 Stat. 151, 203, 214). A very much larger number of agreements, along the lines of the one with Rumania previously referred to, providing for most-favored-nation treatment in customs and related matters have been entered into since the passage of the Tariff Act of 1922, not by direction of the Act but in harmony with it.

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"International agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties. But international agreements embodying adjustments of detail carrying out well-established national policies and traditions and those involving arrangements of a more or less temporary nature usually take the form of executive agreements.

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"Furthermore, the United States Supreme Court has expressly recognized the validity and constitutionality of executive agreements entered into without Senate approval." (39 Columbia Law Review, pp. 753-754) (See, also, U.S. vs. Curtis-Wright Export Corporation, 299 U.S. 304, 81 L. ed. 255; U.S. vs. Belmont, 301 U.S. 324, 81 L. ed. 1134; U.S. vs. Pink, 315 U.S. 203, 86 L. ed. 796; Ozanic vs. U.S. 188 F. 2d. 288; Yale Law Journal, Vol. 15, pp. 1905-1906; California Law Review, Vol. 25, pp. 670-675; Hyde on International Law [Revised Edition], Vol. 2, pp. 1405, 1416-1418; Willoughby on the U.S. Constitutional Law, Vol. I [2d. ed.], pp. 537-540; Moore, International Law Digest, Vol. V, pp. 210-218; Hackworth, International Law Digest, Vol. V, pp. 390-407). (Italics supplied.)

In this connection, Francis B. Sayre, former U. S. High Commissioner to the Philippines, said in his work on "The Constitutionality of Trade Agreement Acts":

"Agreements concluded by the President which fall short of treaties are commonly referred to as executive agreements and are no less common in our scheme of government than are the more formal instruments—treaties and conventions. They sometimes take the form of exchanges of notes and at other times that of more formal documents denominated 'agreements' or 'protocols'. The point where ordinary correspondence between this and other governments ends and agreements—whether denominated executive agreements or exchanges of notes or otherwise—begin, may sometimes be difficult of ready ascertainment. It would be useless to undertake to discuss here the large variety of executive agreements as such, concluded from time to time. Hundreds of executive agreements, other than those entered into under the trade-agreements act, have been negotiated with foreign governments. * * * It would seem to be sufficient, in order to show that the trade agreements under the act of 1934 are not anomalous in character, that they are not treaties, and that they have abundant precedent in our history, to refer to certain classes of agreements heretofore entered into by the Executive without the approval of the Senate. They cover such subjects as the inspection of vessels, navigation dues, income tax on shipping profits, the admission of civil aircraft, customs matters, and commercial relations generally, international claims, postal matters, the registration of trade-marks and copyrights, etc. Some of them were concluded not by specific congressional authorization but in conformity with policies declared in acts of Congress with respect to the general subject matter, such as tariff acts; while still others, particularly those with respect to the settlement of claims against foreign governments, were concluded independently of any legislation." (39 Columbia Law Review, pp. 751, 755.)

The validity of the executive agreement in question is thus patent. In fact, the so-called Parity Rights provided for in the Ordinance Appended to our Constitution were, prior thereto, the subject of an executive agreement, made without the concurrence of two-thirds (2/3) of the Senate of the United States.

Lastly, the lower court held that it would be unreasonable to require from respondent-appellee an import license when the Import Control Commission was no longer in existence and, hence, there was, said court believed, no agency authorized to issue the aforementioned license. This conclusion is untenable, for the authority to issue the aforementioned licenses was not vested exclusively upon the Import Control Commission or Administration. Executive Order No. 328 provided for export or import licenses "from the Central Bank of the Philippines or the Import Control Administration" or Commission. Indeed, the latter was created only to perform the task of implementing certain objectives of the Monetary Board and the Central Bank, which otherwise had to be undertaken by these two (2) agencies. Upon the abolition of said Commission, the duty to provide means and ways for the accomplishment of said objectives had merely to be discharged directly by the Monetary Board and the Central Bank, even if the aforementioned Executive Order had been silent thereon.

Wherefore, the decision appealed from is hereby reversed and another one shall be entered affirming that of the Commissioner of Customs, with costs against respondent-appellee, Eastern Sea Trading. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Paredes, Dizon, and De Leon, JJ., concur.

[1] Dated June 22, 1950. It provides, inter alia, that from and after said date, 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, and that the annual exports and imports to the Philippines and from Occupied Japan, as contained in the Trade Plan shall be allocated and the licenses therefor shall be issued only to bona fide Philippine exporters and importers, subject to the provisions of section 9 of said Executive Order and to such rules and regulations as may be prescribed by the Import Control Administration and the Central Bank of the Philippines.

[2] According to a communication dated April 24, 1957 of the then Acting Secretary of Foreign Affairs (Exhibit F). Japan was subrogated into the rights, obligations and interests of the SCAP and Japan on March 19, 1952, and since then the agreements have been extended mutatis mutandis 18 times, the current one to expire at the end of April, 1957.

[3] The Trade Agreement, dated May 18, 1950, provides, inter alia, for the adoption of a trade plan, on an annual basis, between the Philippines and Occupied Japan; that, subject to exceptions, all trade shall be conducted in accordance with the Financial Agreement between the two countries, and through specified channels; that subject to exchange, import and export control restrictions, both countries would permit the importation from and exportation to each other of the commodities specified in the trade plan, within specified limits; that consultations would be held for necessary modifications of the trade plan; that a machinery would be established to ensure accurate and up-to-date information regarding the operation of the agreement and to ensure the implementation of the trade plan; and that the parties would do everything feasible to ensure compliance with the export-import control, exchange control and such other controls pertaining to international trade as may be in force in their respective territories from time to time. The agreement, likewise, specifies the method of revision or cancellation thereof, the procedure for the review of the trading position between the parties and the time of its effectivity (upon "exchange of formal ratification", pending which, "it shall take effect upon signature by authorized representatives as modus vivendi between the parties)."

[4] The Financial Agreement, dated May 18, 1950, provides, inter alia, that all transactions covered by the Trade Agreement shall be invoiced in U.S.A. dollars and shall be entered into the account of each party to be maintained in the books of the principal financial agent banks designated by each party; that debits and credits shall be offset against each other in said accounts and payments shall be made on the net balance only; that the Agreement may be revised in the manner therein stated; that the representatives of both parties may negotiate and conclude all technical details relative to the implementation of the agreement; and that the same shall be effective upon exchange of formal ratification, pending which it shall take effect upon signature of the agreement as a modus vivendi between the parties.

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