

ANDRES E. LAZARO, PETITIONER, VS. THE COMMISSIONER OF CUSTOMS, RESPONDENT. ANDRES E. LAZARO, PETITIONER, VS. THE COMMISSIONER OF CUSTOMS, RESPONDENT.

G.R. No. L-22512 & L-22514. December 22, 1967

Ponente: CONCEPCION, C. J.

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CONCEPCION, C. J.:

This is a petition for review of a decision of the Court of Tax Appeals.

On August 31, 1954, the SS "Templar" arrived at the port of Manila with a shipment, among others, of candies, dried shrimps, and celluloid combs, consigned to petitioner, Andres E. Lazaro, under customs entry No. 69463. For lack of the Central Bank release certificate required in Central Bank Circulars Nos. 44 and 45, in relation to Section 1363(f) of the Revised Administrative Code, the goods were subjected to seizure proceedings; but, on September 4, 1954, they were released to the petitioner upon a surety bond of the Pioneer Insurance and Surety Corporation — filed by him — in the sum of P4,822.00, based on the value of the goods, as appraised by the Bureau of Customs, including an estimated profit of 30% of the landed cost.

After appropriate proceedings, the Collector of Customs rendered a decision decreeing the forfeiture of the goods, and, as the same had already been released to the petitioner, ordering him to pay in cash the sum of P4,820.00, as the value thereof. This decision was, on appeal taken by petitioner, affirmed by the Commissioner of Customs, who directed the confiscation of said bond and ordered petitioner and his surety to pay, jointly and several-ly, in cash, said sum of P4,822.00, within thirty (30) days from notice. A reconsideration of the decision of the Commissioner of Customs having been denied, petitioner filed a second motion for reconsideration, with the same result. Petitioner appealed to the Court of Tax Appeals, which affirmed the decision of the Commissioner of Customs. Said Court having subsequently refused to reconsider its decision, two (2) petitions for review thereof by the Supreme Court have been filed for petitioner herein, one (L-22512) by Attys. De Leon & De Leon and Nicolas V. Benedicto, Jr., and another (L-22514) by Atty. Juan T. David.

Although petitioner's counsel in these two (2) cases have filed separate briefs, with their respective assignments of error, the issues raised in both are substantially the same. Petitioner maintains that Section 1363(f) of the Revised Administrative Code, which was applied by the Court of Tax Appeals, to sustain the decision of the Commissioner of Customs, is inapplicable to this case because said section refers to articles of "prohibited importation," to which category the goods in question do not he claims, belong; that Circulars Nos. 44 and 45[1] do not authorize the forfeiture of goods imported in violation thereof; that said circulars have been repealed by Circular No. 133, issued by the Central Bank on January 21, 1962, and abolishing control over foreign exchange and dispensing with the requirement, under Circular No. 44, of import licenses, and by Republic Act No. 1410, approved on September 10, 1955; that said repeals had abated any and all liabilities incurred in consequence of the violation of Circulars Nos. 44 and 45; and that, in any event, such liability should be limited to the value of the imported goods at the place of origin, as provided in Section 13(a) of the Philippine Tariff Act of 1909, as

amended, in relation to Section 1280 of the Revised Administrative Code, and should not include estimated profits.

These questions have already been decided by this Court adversely to petitioner's pretense. Indeed, in *Lazaro vs. Commissioner of Customs*[2] involving the same petitioner — we held that:

1. Despite the issuance of Central Bank Circular No. 133, importations made without the corresponding Central Bank release certificate violated said Circulars Nos. 44 and 45, in relation to Section 1363(f) of the Revised Administrative Code, for

"Central Bank Circular 133 did not repeal Circulars 44 and 45 with respect to the necessity of a release certificate. As a matter of fact, paragraph 6 of Circular 133 required imports to be re-released only upon presentation of a release certificate issued by the Central Bank. Not only that, section 14 of Circular 44 which states:

'14. No item of import shall be released by the Bureau of Customs without the presentation of a release certificate issued by the Central Bank or any authorized Agent Bank in a form prescribed by the Monetary Board.'

was deemed incorporated to Circular 133 by virtue of paragraph 8 thereof which we quote hereunder:

'8. All existing circulars, rules and regulations and conditions governing transactions in foreign exchange not inconsistent with the provisions of this Circular, are deemed incorporated hereto and made integral parts hereof by reference. '"

2. The passage of Republic Act No. 1410 did not abate any liability incurred for violation of Central Bank Circular No. 45, because Section 3 of said Act provides:

"x x x That goods and commodities in transit or previously imported on a no-dollar remittance basis at the time of the approval of this Act shall not be affected by the operation of this Act."

3. For purposes of seizure proceedings, the appraised value of the imported merchandise should not be market value in the country of origin, as provided in Section 13(a) of the Philippine Tariff Act of 1909, as amended, in relation to Section 1280 of the Revised Administrative Code, because:

"Rule 13(a) of the Philippine Tariff Act of 1909, as amended, relates to the appraisal of importations for purposes of determining the customs duties. (See *Lim Quim v. Collector of Customs*, 23 Phil. 509). For appraisal of importations in connection with seizure proceedings, the value of the importation in the local market should prevail, following section 1377 of the Revised Administrative Code which provides:

'Sec. 1377. Description and appraisal of seized property. - The collector shall also cause a list and particular description of the property seized to be prepared and appraisal of the same at its value in the local market to be made by at least two appraising officers under the revenue laws, if there are such officers at or near the place of seizure, but if there are not, then by two competent and disinterested citizens of the Philippines, to be selected by him for the purpose residing at or near the place of seizure which list and appraisal shall be properly attested by such collector and the persons making the appraisal.'" and

4. As regards the inclusion of the 30% estimated profit, as part of the appraised value of the goods involved in the present case,

"x x x the inclusion of the 30% estimated profits as part of the value of the importations in question was made, with the acquiescence and approval of the appellant. As a matter of fact, the amount of bonds posted by him upon release of the goods carried the 30% estimated profits. The payment of such estimated profits as part of

the value of the importations in the surety bonds therefore constitutes his contractual obligation in case of forfeiture."

In fact, the applicability of the aforementioned Circulars Nos. 44 and 45 to importations involving no-dollar remittances is well settled and the foregoing views have been upheld in a long line of decisions.¹

Lastly, petitioner had submitted the issues herein for decision, by the Court of Tax Appeals, "on the basis of the final ruling of the Supreme Court in the aforementioned cases" of Andres Lazaro v. Commissioner of Customs, L-21790 and L-21794, which, accordingly, are controlling in the present appeals.

WHEREFORE, the decision appealed from should be, as it is hereby, affirmed, with costs against the petitioner.

IT IS SO ORDERED.

Reyes, JBL, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Pursuant to par 14 of Circular No. 44:

"x x x No item of import shall be released by the Bureau of Customs without the presentation of a release certificate issued by the Central Bank or any Authorized Agent Bank in a form prescribed by the Monetary Board."

Circular No. 45 provides, inter alia, that:

"WHEREAS, practically all imports represent an immediate demand for foreign exchange or a potential demand for foreign exchange;

x x x x x

"x x x 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."

[2] G. R. Nos. L-21790 and L-21794, December 24, 1965

¹ Pascual v. Comm. of Customs, L-10979, June 30, 1961; Actg. Comm. of Customs v. Leuterio, L-9142, Oct. 17, 1951; Tong Teck v. Comm. of Customs, L-11947, June 30, 1959; Comm. of Customs v. Eastern Sea Trading, L-14279, Oct. 31, 1961; Comm. of Customs v. Santos, L-11911, Mar. 1962; Comm. of Customs v. Nepomuceno, L-11126, Mar. 1962; Seree Investment Co. v. Comm. of Customs, L-19564, Nov. 28, 1964; Seree Investment Co. v. Comm. of Customs, L-20847-49, June 22, 1965; Bombay Department Store v. Comm. of Customs, L-20460, Sept. 30, 1965; Seree Investment Co. v. Comm. of Customs, L-21217, Nov. 29, 1965; Yupangco & Sons, Inc. v. Comm. of Customs, L-22259, Jan. 19, 1966; Chan Kian v. Collector of Customs, L-20803, Jan. 31, 1966 and Phil. International Surety v. Comm. of Customs, L-22209, December 17, 1966.

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