

CESAS CLIMACO, AS COMMISSIONER OF CUSTOMS AND TEOTIMO ROJA, AS COLLECTOR OF CUSTOMS OF THE PORT OF MANILA, PETITIONERS, VS. THE HON. JUDGE MANUEL P. BARCELONA AND AUYONG HIAN, R...

G. R. No. L-19597. July 31, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is a petition for certiorari to set aside a writ of preliminary mandatory injunction, issued on March 20, 1962 by the Court of First Instance of Manila, Hon. Manuel P. Barcelona, presiding, in Civil Case No. 49639 of that court, entitled Auyong Hian, et al. vs. Cesar Climaco, et al. The court orders respondents Cesar Climaco and Teotimo Roja, respondents in said case, to allow entry of the importation of about 600 hogsheads of Virginia leaf tobacco which arrived in the port of Manila on or about December 30, 1961, imported by Auyong Hian under authority of licenses Nos. 17166, 17169, 17196, and 17199, issued by the defunct Import Control Commission on May 8, 1953, under the provisions of Republic Act No. 650. The order sought to be set aside is as follows:

"Complaint having been filed before this Court of First Instance of Manila in the above-entitled cause, against the defendants Cesar Climaco, et al. above mentioned, praying that a writ of preliminary mandatory injunction be issued against said defendants for the performance of certain acts in the complaint and more particularly described hereafter; upon considering said complaint and affidavit by plaintiff, Auyong Hian and it appearing to the satisfaction of the Court that this is a case where a writ of preliminary mandatory injunction should issue, sufficient reasons having been alleged, and the bond required by law having been given in the sum of THREE HUNDRED THOUSAND pesos, Philippine currency (P500,000.00) to the satisfaction of the Court.

"It is hereby ordered by the undersigned Judge of the Court of First Instance that, until further orders, you, the said above named respondents and all your attorneys, representatives, agents, and any other person assisting you, to forthwith allow entry of the importation subject of this action, pursuant to the warehousing entry presented by petitioner Auyong Hian, doing business under the name and style of Hong Whua Hang, and to release the same from such bonded warehouse wherein it may be stored, upon payment of the proper and lawful taxes and duties thereon."

In said Civil Case No. 49639 of the Court of First Instance of Manila, Auyong Hian filed the petition which gave rise to the above proceedings, alleging the following facts: That he was issued import control licenses Nos. 17166, 17169, 17196 and 17199 under the provisions of the Import Control Law, and that upon payment of the corresponding license fees said licenses were issued and released to him by the President of the Philippines, copies of the licenses and releases appearing in annexes to his petition; that he imported Virginia leaf tobacco under the authority of said licenses; that said importation consisting of 600 hogsheads of Virginia leaf tobacco arrived at the port of Manila on or about December 30, 1961; that upon arrival of the importation he presented the corresponding import entry papers and invited the attention of the respondents to the provisions of Republic Act No. 650, especially section 7 thereof, which declares it to be the ministerial duty of the Bureau of Customs to

allow the entry of imported items covered by the import license; that subsequently, on January 18, 1962, petitioner tendered and filed photostatic copies of the import licenses, and that notwithstanding the demands of the petitioner, respondents have not made any definite action or even made a reply to petitioner's representations and requests; that notwithstanding the period of time that has elapsed since the importation was made and demands made for the release, respondents have neglected the performance of their duty to release the importation; that the Virginia leaf tobacco imported is highly perishable in nature and delay in the release thereof would cause the petitioner serious and irreparable injury, and that it is his right to have the said importation released under the law. He prayed in consequence that a writ of preliminary injunction issue ordering respondents to allow entry of and to release, to petitioner or his nominees, the importation subject of the action upon payment of the proper and lawful taxes and duties, and after hearing on the merits, that judgment be rendered in favor of petitioner finally and perpetually commanding respondents to respect and recognize petitioner's import control licenses Nos. 17166, 17169, 17196 and 17199 and to allow the entry of and to release to petitioner all importations under said licenses, upon payment of the proper and lawful taxes and duties. The petition contains a prayer for the issuance of a writ of preliminary injunction.

The petition has appended thereto copies of the licenses and the receipts evidencing payment of the fees thereon on November, 1961, a memorandum of petitioner's attorney on the right of the petitioner to have the importation allowed entry, dated January 6, 1962, and similar memoranda, dated January 15, 1962, January 17, 1962 and February 12, 1962.

The respondents appeared through the Solicitor General and filed an opposition to the issuance of the writ of preliminary injunction, alleging that the Court of First Instance has no jurisdiction to order the release of the importation; that petitioner is not entitled as a matter of right and equity to the right of importing the tobacco in question and that the imported tobacco, being under customs custody, the court has no jurisdiction to order its release. It is alleged in support of the above allegations that no entry in the prescribed form has been presented, that the Court of First Instance has no jurisdiction to review the actuation's of the customs authorities in any case involving the seizure, detention or release of any property, and that foreign Virginia leaf tobacco may be imported only upon the conditions prescribed by Republic Act No. 1194. It is also alleged that the licenses issued to the petitioner by virtue of which the importations were made were issued by the Import Control Commission which ceased to exist since June 30, 1953 and the law under which the licenses were issued had ceased to exist eight years before; that the law in force at the time of the importation is Republic Act No. 1194, under which only cigarette manufacturers which had paid specific taxes may qualify as importers and petitioner herein is not qualified under the law to import Virginia leaf tobacco, etc.

The above allegations are the same as what respondents have presented in opposition to the prayer for preliminary injunction.

On March 19, 1962, the court issued an order that upon the petitioner's filing a bond of P300,000 the writ of preliminary injunction be issued commanding the Commissioner of Customs and the Collector of Customs to forthwith allow entry of importation and to release the same from such bonded warehouse wherein it may be stored, upon payment of the proper and lawful taxes and duties thereon. In issuing the above order the court ruled as follows:

"However, for the purpose of determining the propriety or advisability of granting the writ of preliminary mandatory injunction, the averments in the verified petition, to the mind of the Court, clearly justify the issuance thereof, it appearing from the allegations therein that petitioner is the owner, holder and licensee of import control licenses Nos. 17166, 17169, 17196 and 17199, Annexes A, B, C and D, issued and released to him by the President of the Philippines under Republic Act No. 650, otherwise known as the Import Control

Law, for which he paid the corresponding license fees, Annexes E, F, G and H; that in pursuance of said licenses, which have never been revoked or canceled up to the present, he imported six hundred (600) bags of Virginia leaf tobacco worth three million (P3,000,000.00) pesos, which arrived at the Port of Manila on December 30, 1961; that upon the arrival of said importation, he presented the corresponding import entry papers (now attached to the affidavit of Lauro A. Villanueva, licensed customs broker) and forthwith made representations to respondents for the entry and release to him of such importation, inviting the latter's attention to the effect that they had no authority to qualify or question the validity his aforesaid licenses under Section 2, of Republic Act No. 650, and that it was their ministerial duty to allow entry of said importation upon presentation of the corresponding licenses under Section 7 of the same law; that despite petitioner's demands made on numerous occasions to respondents to allow entry and release to him said importation, in spite of the clear and mandatory provisions of Republic Act No. 650, cited above, and notwithstanding that petitioner apprised respondents by means of memoranda, Annexes I, and K, of the decision of the Supreme Court in Commissioner of Customs vs. Auyong Hian, 105 Phil., 561, as well as Opinion No. 349, series of 1954, Opinion No. 3, series of 1960, Opinion No. 32, series of 1961 and Opinion No. 145, series of 1961, all of the Secretary of Justice, upon the bases of which the President of the Philippines exercised his authority and power under Republic Act No. 650 and issued and released to petitioner the import control licenses in question, all said representations and request have failed to elicit any action, order or response from respondents; * * * "

The reasons given by the court below for declaring that the importation was made legally are the decision of this Court in the case of Commissioner of Customs vs. Auyong Hian, 150 Phil., 561, and the fact that the President had issued the licenses in accordance with the supposed opinions of the Secretary of Justice Nos. 32 and 145, series of 1961.

An examination of the licenses shows that the same were approved by the Import Control Commission on June 29, 1953. The following statement is contained in each of the licenses:

"This license is valid from date of issue until fully consummated, provided that this license must be presented to an Authorized Agent (Negotiating Bank) of the Central Bank, and Bank Credit established within thirty (30) days after date of release. It is not transferable/assignable without authority from the Import Control Commission and is subject to revocation for cause. Commodities covered by this license must be shipped from the country of origin before the expiry date of the license, and are subject to Sec. 13 of Republic Act No. 650."

The following provision of Republic Act No. 650 is to be noted:

"SEC. 8. Unless extended in accordance with the rules and regulations, import -licenses issued under this Act and which are not used within thirty days after their issue by the opening of a letter of credit or a similar transaction shall be null and void. Import licenses are non-transferable."

The petitioner has not shown that steps were ever taken to open the. corresponding letters of credit amounting to \$500,000 to cover the payment of the Virginia leaf tobacco to be imported, as required by the above-quoted provision of the law. Neither is it shown that immediately, or within a reasonable time after the approval of the licenses and their issuance, steps were taken to order the tobacco to be shipped to the Philippines. Certainly this was not done because the licenses were not fully complete until November 2, 1961, when the corresponding fees chargeable on the licenses were paid to the Office of the President.

The question that is, therefore, squarely presented for decision of this Court is whether, under the facts and circumstances above indicated, the petitioner has the clear legal right to make the importation in question and the respondents the clear legal duty to allow entry and release of said importations.

We have carefully reviewed our decision in the above-cited case Of Commissioner of Customs vs. Auyong Hian and we find that the license in that case, No. 16679, was issued on June 12, 1953 and on the strength of said

license importation of old newspapers was immediately effected and four shipments thereof arrived thereafter, the first in July, 1953, the second in September, 1953, the third in May, 1954 and the fourth in November, 1954. The reason for the decision is that at the time the license was canceled importation had already been effected. We reasoned thus:

"Was this power properly exercised in the instant case? The answer must of necessity be in the negative, for it appears that the license issued to respondent to import the shipment in question was canceled on the only ground that it does not bear any expiry date even if the importation had already been made and the shipment had already reached the port of Manila. Had the license been canceled on that ground before the importation had been effected, the same may be justified for indeed a license as a rule must be limited in point of time, but not when the importation has been accomplished and the importer had made commitments with the dealer and assumed other obligations incident thereto. * * *" (Commissioner of Customs vs. Auyong Hian, *supra*)

The above case cannot be applied as a precedent to be followed in the case at bar for the following reasons:

- Importation was effected immediately in the said case of Commissioner of Customs vs. Auyong Hian, whereas in the case at bar importation was not made until more than eight years after the date of the license;
- Republic Act No. 650, under which the licenses were issued, expressly provides that it is to continue in effect only until June 30, 1953. Hence orders for importation thereunder may be made only within a reasonable time after June 30, 1953, as in the earlier case of Auyong Hian. The fact that the licenses in the case at bar contain no expiry date does not make them perpetual; the license can not live beyond the life of the law which authorized its issuance; every license issued under Republic Act 650 is supposed to expire on the same date that the Act, under which it was issued, is to expire; licenses issued under the Act automatically lapse or become ineffective upon the expiration of the Act, without need of cancellation.
- The items imported in the first case of Auyong Hian are old issue newspapers, the importation of which is not prohibited, whereas in the case at bar the importation is of Virginia leaf tobacco, which was limited in 1953 to 50% of the total importation in 1950, and in succeeding years, to 25% of the total importation;
- At the time of the importation in the case at bar, i.e. December, 1961, the law that was in force is Republic Act No. 1194, under the provisions of which the importation of Virginia, leaf tobacco would be allowed only in accordance with the provisions of Section 2 thereof, which contains the following limitations: (a) importation is to be allowed among legitimate manufacturers of Virginia-type cigarettes only; (b) upon proper allocation by the Central Bank, and (c) only where there is a certification that the indigenous production of Virginia leaf tobacco in the Philippines is insufficient to maintain the manufacture in the country at a level equal to that manufactured in the preceding fiscal year.

The importation in question, therefore, is a gross violation of the policy contained in Republic Act Nos. 698 and 1194, limiting the Virginia leaf tobacco importation only to such amounts as could not be met with by the local production of Virginia leaf tobacco, hence clearly illegal.

The supposed approval of the licenses by the President has been alleged as a ground for the validity of the importation. The president may not extend the life of licenses issued under Republic Act No. 650; he can not make the illegal importation valid; he has no legal authority to do so and his act would be clearly violative of the express provisions of Republic Act 1194.

For all the foregoing considerations, and considering that the importations subject of the action were made on December, 1961, long after the Import Control Law expired on June, 1953 and at a time when the clearly expressed policy of the government as enunciated in Republic Acts Nos. 698 and 1194, is to prohibit the importation of Virginia leaf tobacco, except when the indigenous production is insufficient, We are constrained to

declare, as we hereby declare, that the importation in question has been illegally made, notwithstanding the alleged approval thereof by the President. And we, therefore, hereby grant the petition and set aside the order of the court below of March 19, 1962 and the writ of preliminary injunction issued in accordance therewith, and furthermore declare that the defenses set up in Civil Case No. 49639 of the Court of First Instance of Manila are valid, meritorious and legal for which reason we further order that said Civil Case No. 49639 be dismissed.

With costs of all the proceedings in this Court and in the court below against Auyong Hian. So ordered.

Bengzon, C.J., Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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