

**SECRETARY OF FINANCE EDUARDO Z. ROMUALDEZ,
COMMISSIONER OF CUSTOMS JACINTO GAVINO AND MANILA
COLLECTOR OF CUSTOMS PEDRO PACIS, PETITIONERS, VS. HON.
FRANCISCO ARCA, AS PRESIDING...**

G.R. No. L-25924. April 18, 1969

Ponente: CASTRO, J.

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CASTRO, J.:

This is a petition for certiorari and prohibition with preliminary injunction, principally to enjoin the court below from enforcing its order of April 13, 1966 in civil case 64133, restraining the respondents below (petitioners herein) from enforcing the Department of Finance memorandum of December 8, 1965, the letter of the Secretary of Finance of February 15, 1966, to the Commissioner of Customs, and the memorandum of February 17, 1966 of the Commissioner of Customs addressed to all collectors of customs, and, after hearing, to dismiss the said civil case.

On December 8, 1965 the then Secretary of Finance Rufino Hechanova issued a memorandum for the Acting Commissioner of Customs, re-appraising the dutiable valuations of several types of remnants, as follows:

"1. Used clothing

\$0.30 per lb.

"2. Cotton Remnants

1.00-1.50 per lb.

"3. Rayon Remnants

1.50-2.50 per lb.

"4. Lace Remnants

2.00-3.00 per lb.

"5. Impregnated Fabrics

1.50-2.00 per lb."

In the early part of 1966, Secretary of Finance Romualdez created a special committee to re-examine the memorandum of December 8, 1965. After hearing the oral arguments of both the Textile Remnants Association and the Textile Mills Association of the Philippines, and after considering their respective memoranda, the special committee recommended to the petitioner Secretary the affirmance of the dutiable valuations contained in the aforementioned memorandum of December 8, 1965.

After studying the report of the special committee, the petitioner Secretary, in his letter of February 15, 1966 to the Commissioner of Customs, affirmed the dutiable valuations of imported remnants. On February 17, 1966 the petitioner Commissioner of Customs issued a memorandum to all collectors of customs and others concerned, directing observance of the dutiable values specified in the aforesaid letter of February 15, 1966 of Secretary Romualdez.

Claiming to be aggrieved by the enforcement of the new dutiable valuations, the respondents Norberto de la Merced and Nestor de la Merced, as remnants importers and in behalf of other importers of the same materials, filed with the Court of First Instance of Manila, a petition for prohibition with preliminary injunction against the herein petitioners.

Acting on the petition, the respondent Judge issued a restraining order ex parte on March 4, 1966. On March 16, 1966 the herein petitioners filed a "motion to dismiss petition, opposition to issuance of preliminary injunction and motion to dissolve restraining order."

After hearing on the incidents before the respondent court, the Textile Mills Association of the Philippines filed a motion to intervene, and the court allowed the said Mills Association to file its pleading, reserving, however, its resolution on the Mills Association's motion for intervention. On March 16, 1966 the Mills Association filed a motion to admit answer in intervention, attached to which was the answer itself. On March 17, 1966 the Mills Association filed a "motion to order respondent officials (a) to submit a complete list of imported remnants, used clothing and impregnated fabrics in the customs house, and (b) not to allow any release from customs during the pendency of the case." On March 29, 1966 the herein respondents importers filed an opposition to the motion to dismiss, and, on April 2, 1966, filed an opposition to the intervention of the Mills Association.

On April 13, 1966 the respondent court issued an order, denying the motion to dismiss, ordering the issuance of a writ of preliminary injunction, enjoining the petitioners from enforcing the dutiable values, allowing the withdrawal of the materials imported, and admitting the answer in intervention.

Hence the present recourse.

The issues may be summed up as follows: (1) Did the court below have jurisdiction over the petition filed therein? (2) Did the Secretary of Finance have power to issue the questioned memorandum? (3) Assuming that he had the power, did he comply with the requirements imposed by Congress? (4) Assuming that he had the power and that the requirements imposed by Congress were complied with, is the said memorandum void for want of publication?

1. The petitioners cite Section 7 of Republic Act 1125 in support of their contention that the respondent Court of First Instance of Manila did not have jurisdiction over the respondent's action. This section reads as follows:

"SEC. 7. Jurisdiction.— The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided—

"(1) Decisions of the Collector [now Commissioner] of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the

Bureau of Internal Revenue;

"(2) Decisions of the Commissioners of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and

"(3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto."

The petitioners obviously overlook the fact that the respondents' suit seeks, not a review of any decision of the Commissioner of Customs, but rather the nullification of the memorandum of the Secretary of Finance, on the ground that it violates "applicable" provisions of the Tariff and Customs Code.[1] Indeed, the respondents' action is one for certiorari and prohibition, jurisdiction over which belongs to the Court of First Instance.[2]

We therefore hold that the respondent judge had jurisdiction over the private respondents' action.

2. Upon the second issue, the authority of the Secretary of Finance to promulgate the questioned memorandum is based on Section 79(B) of the Administrative Code which provides as follows:

"The Department Head shall have power to promulgate, whenever he may see fit to do so, all rules, regulations, orders, circulars, memorandums, and other instructions, not contrary to law, necessary to regulate the proper working and harmonious and efficient administration of each and all of the offices and dependencies of his Department, and for the strict enforcement and proper execution of the laws relative to matters under the jurisdiction of said Department; but none of said rules or orders shall prescribe penalties for the violation thereof, except as expressly authorized by law."

In many respects, the case at bar is similar to *Interprovincial Autobus Co. v. Collector of Internal Revenue*,[3] which involved a regulation of the Department of Finance directing internal revenue offices "[to] see to it that the [documentary stamp] tax is paid in all cases where the bill of lading does not state that the shipment is worth P5 or less." The plaintiff, a common carrier, could not produce the stubs of the freight receipts issued by it during the period 1936-38, for which reason it was made to pay P0.04 on each of 194,406 receipts or a total amount of P7,776.24. In rejecting the claim that the regulations were void, the Supreme Court said:

"Did the Secretary of Finance infringe or violate any right of the taxpayer when he directed that the tax is to be collected in all cases where the bill of lading or receipt does not state that the shipment is worth P5 or less, or, in the language of the petitioner-appellant, when he (Secretary) created a presumption of liability to the tax if the receipts fails to state such value? It can not be denied that the regulation is merely a directive to the tax officers; it does not purport to change or modify the law; it does not create a liability to the stamp tax when the value of the goods does not appear on the face of the receipt. The practical usefulness of the directive becomes evident when account is taken of the fact that tax officers are in no position to witness the issuance of receipts and check the value of the goods for which they are issued. If tax officers were to assess or collect the tax only when they find that the value of the goods covered by the receipts is more than five pesos, the assessment and collection of the tax would be well-nigh impossible, as it is impossible for tax collectors to determine from the receipts alone, if they do not contain the value of the goods, whether the goods receipted for exceed P5, or not. The regulation impliedly required the statement of the value of the goods in the receipts, so that the collection of the tax can be enforced. This the petitioner-appellant failed to do and he (sic) now claims the unreasonableness of the provision as a basis for his exemption. We find that the regulation is not only useful, practical and necessary for the enforcement of the law on the tax on bills of lading and receipts, but also reasonable in its provisions.

"The regulation above quoted falls within the scope of the administrative power of the Secretary of Finance, as authorized in Section 79(B) of the Revised Administrative Code, because it is essential to the strict enforcement and proper execution of the law which it seeks to implement. Said regulations have the force and effect of law." [4]

The memorandum in the case at bar was issued pursuant to Section 79(B) of the Administrative Code, in the wake of official reports that the commercial documents accompanying the shipments (importations) of textiles did not state their correct current value. It is intended to be no more than a guideline to appraisers in the determination of the correct value of remnants at the time of importation. It is a regulation of a kind the validity of which was upheld in *Interprovincial Autobus*.

As correctly pointed out by the Solicitor General, "the Secretary of Finance issued his controverted memorandum as a value information to guide the Commissioner of Customs, the Collectors of Customs and customs appraisers in the determination of the correct market value or price of the remnants, used clothing and impregnated fabrics. The Secretary simply relayed to his subordinates in the Bureau of Customs the action to be taken in the assessment of the duties on said importation in case the importer fails to present clear and convincing evidence regarding the true valuation of his importation. In the assessment of the correct duties to be imposed, the appraiser must utilize all available data and information to guide him in arriving at the true value of the imported goods."

3. Hence, the case at bar does not, by any valid process of logic or reasoning, involve the fixing of tariff rates, and consequently whether the procedure laid down in the Tariff and Customs Code [5] was followed, is one which we do not here find relevant to discuss. And since the memorandum is neither a law (statute), nor an implementation of a law authorizing its issuance, and does not prescribe any penalty for its violation, [6] publication thereof is not necessary.

ACCORDINGLY, the petition is granted, and the respondent court is permanently enjoined from enforcing its order of April 13, 1966, and is hereby ordered to dismiss civil case 64133. Costs against the respondents Norberto de la Merced and Nestor de la Merced.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Capistrano and Teehankee, JJ., concur.
Barredo, J., took no part.

[1] Rep. Act 1937, Secs. 401(a), 1201 and 1409.

[2] Judiciary Act of 1948, Sec. 44(h).

[3] 98 Phil. 290 (1956).

[4] *Id.*, 294-95.

[5] "Sec. 40(a). Flexible Clause.— The President, upon investigation by the Commission and recommendation of the National Economic Council, is hereby empowered to reduce by not more than fifty per cent or to increase by not more than five times the rates of import duty expressly fixed by statute (including any necessary change in classification) when in his judgment such modification in the rates of import duty is necessary in the interest of national economy, general welfare and/or national defense."

[6] Civ. Code Art. 2; Rev. Adm. Code Sec. 11; cf. *Victorias Milling Co. v. Social Security Commission*, L-16704, March 17, 1962; *Philippine Blooming Mills Co. v. Social Security System*, L-21223, Aug. 31, 1966, 17 SCRA 1077; *People v. Que Po Lay*, 94 Phil. 640 (1954).

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