

THE COMMISSIONER OF CUSTOMS, PETITIONER, VS. THE COURT OF TAX APPEALS AND EUSEBIO DICHOCO, RESPONDENTS.

G.R. No. L-33471. January 31, 1972

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

Petition for certiorari with preliminary injunction, to annul and set aside two resolutions of respondent Court of Tax Appeals in CTA Case No. 2206, the first dated March 24, 1971, ordering petitioner Commissioner of Customs to release under bond to respondent Eusebio Dichoco the shipment of 438 packages of foodstuffs; and the second, dated April 19, 1971, denying the motion of petitioner for reconsideration of the order of March 24, 1971 and giving him three days within which to comply with said order.

A shipment of 438 packages of foodstuffs, declared in the name of respondent Eusebio Dichoco, hereinafter referred to as private respondent, under Entry No. 109924 (70) arrived on December 16, 1970 at the Port of Manila on board the S/S "St. Isidro." The shipment was covered by a "Customs No-Dollar Declaration," dated December 15, 1970. Against this shipment the Collector of Customs of Manila issued, on December 28, 1970, in S. I. Case No. 12055, a warrant of seizure and detention for violation of Section 2530 (f) of the Tariff and Customs Code, in relation to Central Bank Circulars Nos. 247, 289, 294, and 295 and section 102 (k) of the said Code. On the same date, private respondent requested the release of the shipment upon the posting of a cash bond, which request, although favorably recommended by the Collector of Customs, was denied by the Commissioner of Customs. However, the proper taxes and duties amounting to P25,998.00 were imposed on the shipment and paid by private respondent. After hearing, the Collector of Customs issued his decision, on January 19, 1971, decreeing the seizure and forfeiture of the shipment "for the simple reason that claimants failed to comply with the regulations, that is, with the Central Bank circulars requiring the production of release certificates for importations similar to the subject articles." On appeal, the Commissioner of Customs affirmed the decision on January 21, 1971.

On January 27, 1971 private respondent filed before respondent court a "petition for review, with a motion for release of goods under bond," upon the grounds that the decision appealed from was not supported by substantial evidence and that the goods seized did not constitute prohibited importation as contemplated in Sections 2530 (f) and 102 (k) of the Tariff and Customs Code. In his answer filed before respondent court, the Commissioner of Customs alleged that "the goods having been imported without the release certificate required by the Central Bank," are "subject to forfeiture" and the goods being of "prohibited importation," may not be released under bond pursuant to the last paragraph of Section 2301 of the Tariff and Customs Code.

The respondent Court, in its resolution of February 3, 1971, granted the motion to release the goods subject to the condition that a cash bond in the sum of P43,854.59 be filed by private respondent with the Bureau of Customs. The bond having been filed, respondent Court issued an order, dated February 9, 1971, directing petitioner to release the shipment. Petitioner filed on March 2, 1971 a motion for reconsideration upon the ground that the importation in question, classified as non- essential consumer goods, is banned by Central Bank Circulars No.

289, dated February 21, 1970, No. 294 of March 10, 1970, and No. 295 of March 20, 1970, and "acquired the status of prohibited importation or importation contrary to law" and cannot be released under bond. Private respondent filed his opposition dated March 4, 1971. Respondent court in its resolution dated March 8, 1971, granted the motion for reconsideration, declaring that "Section 2301 of the Tariff and Customs Code provides that articles the importation of which is prohibited by law can not be released under bond" and set aside its resolutions of February 3 and February 9, 1971. Private respondent filed a motion for reconsideration of respondent court's resolution of March 8, 1971, and said court, in its resolution of March 24, 1971, reversed its resolution of March 8, 1971 reinstated the resolution of February 3, 1971, ordering the immediate release of the foodstuffs.

Upon motion of private respondent dated April 6, 1971, respondent court issued an order, dated April 12, 1971, requiring petitioner to appear on April 16, 1971 and show cause why he should not be declared in contempt of Court for non-compliance with the resolution of March 24, 1971. Petitioner filed on April 16, 1971 his "Motion for Reconsideration and Explanation," explaining why he should not be held in contempt and at the same time praying for the reconsideration of the order of March 24, 1971, which ordered the release of the goods upon the ground that, goods imported without release certificates required by the Central Bank are "merchandise of prohibited importation" and cannot therefore be released under any kind of bond.

In its resolution, dated April 19, 1971, respondent court found petitioner's explanation for his failure to comply with the order of March 24, 1971 satisfactory, but denied the motion for reconsideration upon the ground that it was filed 23 days after his receipt of the resolution, and ordering him to comply, within three days, with the order of March 24, 1971.

On April 22, 1971 petitioner filed an "Urgent omnibus Motion and Manifestation," praying the respondent court to reconsider and set aside its order of March 24 and April 19, 1971 and reinstate its order of March 8, 1971; that the case be immediately set for hearing on the merits; and to excuse him from complying with the order of April 19, 1971. Respondent court denied the omnibus motion in its order dated April 27, 1971.

Hence the present petition before this Court.

Herein petitioner contends that the importation of the foodstuffs in question is prohibited and the articles thus imported may be subject to forfeiture under Section 2530 (f) and 102 (k) of the Tariff and Customs Code; that the foodstuffs in question being articles of prohibited importation cannot be released under bond; and that respondent court acted with grave abuse of discretion, amounting to lack of jurisdiction, in ordering the release of the foodstuffs in question. The petitioner prays that pending the determination of this case on its merits, a writ of preliminary injunction be issued ex parte enjoining the implementation of respondent court's resolutions dated March 24, 1971 and April 19, 1971; and that after due proceedings said resolutions be declared null and void and ordered set aside.

This Court, by resolution dated May 5, 1971, issued a temporary restraining order, and required respondents to file an answer. On May 6, 1971 a temporary restraining order was issued restraining respondent Court of Tax Appeals, its agents, representatives, etc. from enforcing the resolutions dated March 24, 1971 and April 19, 1971 issued in its C.T.A. Case No. 2206; more specifically from directing petitioner Commissioner of Customs to release under bond to respondent Eusebio Dichoco the shipment of foodstuffs in question pending final judgment of the case and from citing or declaring said petitioner in contempt of court for failure to release said foodstuffs, etc.

An answer was filed, by counsel, for both respondent Court of Tax Appeals and Eusebio Dichoco. In their answer, respondents allege special and affirmative defenses, contending that the instant petition is fatally defective, and certiorari does not lie; that there is no legal basis for the injunction; and that the importation was not a "prohibited

importation" and can be released under bond pursuant to Section 2301 of the Tariff and Customs Code. Respondents pray for the dismissal of the petition and the dissolution of the temporary restraining order.

Private respondent Eusebio Dichoco, in contending that the instant petition is without basis in fact and in law, does not deny that "articles of prohibited importation cannot be released under bond" as provided in section 2301 of the Tariff and Customs Code. He, however, vigorously denies that the "foodstuffs in question are articles of prohibited importation." He argues that the Tariff and Customs Code distinguishes articles of "prohibited importation" from those that can be imported "only upon conditions prescribed by law" or "importation effected contrary to law." He further argues that Section 102 of the Tariff and Customs Code, which enumerates the articles of "prohibited importations," refers to contraband or absolutely prohibited articles and concludes in its sub-paragraph (k) with a general statement, "all other articles the importation of which is prohibited by law." Respondent maintains that under the well known rule of ejusdem generis, this general statement must be restricted only to those articles which are absolutely prohibited or those considered contraband. Respondent then insists that foodstuffs belong to that kind of importation that are, under Section 1207 of the Tariff and Customs Code, "subject to importation only upon conditions prescribed by law," as distinguished from articles "of prohibited importation," mentioned in the same section; that said foodstuffs, furthermore, can be classified under "importation effected contrary to law" as distinguished from "prohibited importation" mentioned in section 2530 of the same Code. Respondent likewise argues that section 2307 also distinguishes different kinds of importations when it provides that there can be no redemption "where the importation is absolutely prohibited," but allows redemption of other kinds of importation including forfeited foodstuffs. Respondent claims that section 2601 also makes the same distinction when it provides that "seized property, other than contraband" shall be subject to sale. Respondent points out that both the Central Bank and the Bureau of Customs, through their authorized counsel, admitted that the foodstuffs are "not prohibited importation under section 102 of the Tariff and Customs Code," which admission bars them from asserting the contrary.[1] It is, therefore, asserted by respondent that the imported foodstuffs in question are not contraband, and are not, as stated by respondent court, among the prohibited importations enumerated in Section 102 of the Tariff and Customs Code,[2] and so said foodstuffs may be released under bond as provided in Section 2301 of the same Code. Respondent likewise points out that both the Central Bank and the Bureau of Customs have been releasing outright imported foodstuffs to selected importers. Respondent also urges that the purpose of the release of the importation in question is legitimate, for said foodstuffs are intended to be eaten, and eating is always legitimate; and that the release under bond of the foodstuffs which are fast deteriorating would be beneficial for all parties concerned. Petitioner argues, finally, that Customs Administrative Order No. 19-70, dated October 20, 1970, contravenes the Tariff and Customs Code.[3]

We cannot sustain the stand of the respondents.

The importation in question is a prohibited importation under Section 102 (k) of the Tariff and Customs Code which provides, in part, as follows:

"SEC. 102. Prohibited Importations. - The importation into the Philippines of the following articles is prohibited:

* * * * *

k. All other articles the importation of which is prohibited by law."

Respondents contend that this last paragraph must, by application of the principles of ejusdem generis, be restricted only to those articles the importation of which is "absolutely prohibited," or to contraband. This contention is not acceptable. In the first place, the specific things enumerated in paragraphs (a) to (j), inclusive, of Section 102 have no distinguishable common characteristics and they differ greatly from one another, and the rule

of ejusdem generis "applies only where the specific words preceding the general expression are of the same nature. Where they are of different general, the meaning of the general word remains unaffected by its connection with them." (Black, On Interpretation of Laws, 2nd ed., p. 218; 50 Am Jur, p. 248).

Moreover, calling contraband only the things "absolutely prohibited by law" is a misnomer, for contraband means any article the importation or exportation of which is prohibited by law (Black, Law Dictionary).

Section 102, when examined, shows that it prohibits the importation of two categories of articles, namely those which are absolutely prohibited, for example, those enumerated in paragraphs b, c, d, f, h, and j, and those articles which are qualifiedly prohibited, that is, those that may be imported subject to certain conditions or limitations, for example, those enumerated in paragraphs a and i. Accordingly the general provision in paragraph k, to wit: "all other articles the importation of which is prohibited by law" cannot be so restricted as to comprise only those articles the importation of which is absolutely prohibited like explosives. Articles of prohibited importation cover not only absolutely prohibited articles but also qualifiedly prohibited articles. Paragraph (k) is comprehensive in the sense that it prohibits the importation of all articles not mentioned in the preceding provision but prohibited by other existing statutes (Tejam, Commentaries on the Tariff Code of the Philippines, Vol. I, p. 6A). The legal effects of the importation of qualifiedly prohibited articles are the same as those of absolutely prohibited articles *Geotina vs. Court of Tax Appeals*, No. L-33500, August 30, 1971, 40 SCRA 362, 379, 383.)

The laws which prohibit importation mentioned in Section 102 (k) include the pertinent Central Bank Circulars which have the force and effect of laws. "Customs law" includes not only the provisions of the Tariff and Customs Code but also all other laws and any regulation made pursuant thereto that is subject to enforcement by the Bureau of Customs or otherwise subject to its jurisdiction (Sec. 3514 of Tariff and Customs Code) and articles imported in violation of Central Bank Circulars have the status of "merchandise of prohibited importation" (*Chan Kian vs. Collector of Customs of Manila*, Jan. 31, 1966, No. L-20803, 16 SCRA 133, 136; *Seree Investment Co. vs. Commissioner of Customs*, No. L-21217, Nov. 29, 1965, 15 SCRA 431, 434; *Bombay Department Store vs. Commissioner of Customs*, No. L-20460, Sept. 30, 1965, 15 SCRA 104, 107-108). It cannot be gainsaid that the importation in question violated Central Bank Circulars, inasmuch as in the words of petitioner Commissioner of Customs in its decision of January 21, 1971, "it was established thru the admission of claimant (Dichoco) that the necessary release certificate in connection with his importation was not secured from the Central Bank. In view thereof, the collector after instituting the necessary seizure proceedings forfeited the 438 packages of foodstuffs for alleged violation of Central Bank Circulars Nos. 247, 289, 294 and 295 in relation to Section 2530 (f) and Section 102 (k) of the Tariff and Customs Code"[4] If the importation in question was made contrary to Central Bank circulars, then said importation is an importation prohibited by law. That importation, even if it be termed "importation effected contrary to law," as respondents call it, is nonetheless a "prohibited importation."

This Court had held:

"Thus, it is now settled that the goods imported without release certificates required in Circulars Nos. 44 and 45 are 'merchandise of prohibited importation' as this expression is used in said section 1363 (f). To this effect have been, among others, *Commissioner vs. Eastern Sea Trading*, *Commissioner vs. Santos*, *Commissioner vs. Nepomuceno*, *Pascual vs. Commissioner of Customs*, *Seree Investment Co. vs. Commissioner of Customs*, and *Lazaro vs. Commissioner of Customs*." (*Sare vs. Commissioner of Customs*, G.R. No. L-22988, June 30, 1969, 28 SCRA 715, 718.)[5]

As a matter of law, no release certificate may be issued to such importation, although it is a no-dollar importation, because Circular No. 295 provides that:

"'No-dollar' imports not covered by Circular No. 247 shall not be issued any release certificate * * *"

and the foodstuffs imported by private respondent Dichoco are not among the items listed in Circular No. 247 for which no release certificates are needed. The reason for this is to protect the country's international reserve, because every import of goods or merchandise requires an immediate or future demand for foreign exchange (Pascual vs. Commissioner of Customs, 105 Phil. 1039, 1045).

The law also prohibits the release under bond of the imported foodstuffs in question. This is provided in Section 2301 of the Tariff and Customs Code which provides:

"Sec. 2301 - Warrant for Detention of Property Bond - Upon making any seizure, the Collector shall issue a warrant for the detention of the property; and if the owner or importer desires to secure the release of the property for legitimate use, the Collector may surrender it upon the filing of a sufficient bond, in an amount to be fixed by him, conditioned for the payment of the appraised value of the article and/or any fine, expenses and costs which may be adjudged in the case: Provided, That articles the importation of which is prohibited by law shall not be released under bond." (Italics supplied.)

Customs Administrative Order No. 19-70, dated October 20, 1970, also provides that "all importations seized and forfeited for violation of Central Bank circulars shall not be allowed to be released under bond, either surety or cash, nor allowed to be redeemed * * *." This order cannot be said to contravene section 2301 or the Tariff and Customs Code, as contended by private respondent. Anent this matter, this Court has held that:

"Respondent importer's petition before the tax court was filed to seek judgment 'sustaining [the importer's] right to the discharge of its importation from the carrying vessel and its release under bond to it and declaring Customs Administrative Order No. 19-70 null and void' as an alleged unauthorized and arbitrary modification or amendment of the provisions of section 2301 of the tariff and customs code. As already shown above, the said administrative reiteration of the express prohibition of the cited section against the release under bond of prohibited articles seized and held for forfeiture by the customs authorities. The tax court of course made no pronouncement of the alleged nullity of the said administrative order, the validity of which cannot be gainsaid * * *" (Geotina vs. Court of Tax Appeals, L-33500, August 30, 1971, 40 SCRA 362, 384-385).

It may be pertinent to note that Sec. 3 of Republic Act No. 1410 "An Act to prohibit the so-called 'No-dollar Imports' except under certain conditions" also provides that "any violation of this law or any provision hereof shall subject the articles imported to seizure and confiscation without any right of redemption or release under bond, existing laws to the contrary notwithstanding."

Private respondent also contends that there were some importations of non-essential consumer goods that were released by the Bureau of Customs and the Central Bank. This is true. In the record We find, for example, that an importation of fresh oranges, lemons and grapefruits by Savoy Philippines Hotel was issued Release Certificate No. 20134, dated March 31, 1971 by the Central Bank of the Philippines; that an importation of cheese by Savoy Philippines Hotel was also issued Release Certificate No. 19980 dated January 20, 1971; and that an importation of Danish cheese by Hotel Intercontinental, Manila, was also issued Release Certificate No. 39704, dated March 4, 1971.[6] These importations, however, cannot be said to have been made "contrary to law" and were prohibited importations, because the importations were authorized and were covered by "release certificates," approved pursuant to M. B. Resolution No. 383 dated March 4, 1970.[7] The authority granted may be justified because it was given to hotels that cater to tourists visiting the country and are, therefore, dollar earners. In order that the Central Bank might not be accused of arbitrarily favoring certain importers, this Court, speaking through Mr. Justice Teehankee, has suggested:

"But it might perhaps be desirable that the Central Bank spell out such exceptions and the cases where it will grant 'prior specific approvals' as against the standing prohibition for the guidance of all concerned, so that it may not be charged with acting arbitrarily and without any definite set of rules and guidelines that assures

equal treatment and equal application of its circulars to all." (Geotina vs. Court of Tax Appeals, No. L-33500, August 31, 1970, 40 SCRA 362, 380-381.)

The reason advanced by private respondent for the release of the importation in question is that foodstuffs are intended to be eaten, and eating is always legitimate. This argument is beside the point. The issue in the present case is whether or not the foodstuffs were imported contrary to law, and not whether the purpose for which the articles were imported is licit or illicit. Even if the purpose or importing the foodstuffs be legitimate, that purpose alone will not justify the prohibited importation, because this is a case where the end does not justify the means.

The final reason advanced by private respondent, that the release under bond of the deteriorating foodstuffs would be beneficial to all parties concerned, does not cleanse the importation of its illegality and will not justify their release under bond. The Tariff and Customs Code expressly prohibits the release under bond of articles of prohibited importation. Because "articles of prohibited importation" are not allowed to be imported, the government expects no revenue from such banned articles. Regarding this point, this Court has held:

"It is utterly fallacious, therefore, when such banned goods are nevertheless sought to be imported in violation of law, to assume that it is to the interest of the Government, where the goods are perishable to release them to the importer under bond to secure payment of the appraised value thereof in case they are finally declared forfeited in favor of the Government.

"For the code expressly prohibits the release under bond of such articles of prohibited importation. The Government expects no revenue from such banned articles, since they are not allowed to be imported. Otherwise, the law's prohibition would be rendered totally nugatory since such banned articles, which are mostly luxury items, are in great demand and command sky-high prices assuring great profit to the smuggler. The smuggler would have the greatest profit motive to wreak havoc upon our currency by purchasing dollars at the highest black market rates to purchase and bring in these high-profit luxury items. Should he succeed in smuggling them in, his venture is a complete success. If he is caught, then all he has to do is put up a bond for the release of the goods 'to secure payment of the appraised value thereof' to the Government, and he can still realize a substantial profit from the sale of the banned goods thus released to him. All the measures designed by the Central Bank to strengthen and stabilize our peso and to check the unregulated flow of foreign exchange from the country with the ultimate end of setting aright the country's economy and financial position would thereby be set at naught." (Geotina vs. Court of Tax Appeals, No. L-33500, August 30, 1971, 40 SCRA 362, 383-384.)

Another issue raised by private respondent is that the instant petition for certiorari is procedurally defective upon the grounds that the disputed resolution of March 24, 1971 was already final and unappealable because of the failure of petitioner to file a timely motion for reconsideration. Regarding this point, it may be said that if private respondent meant that the order of March 24, 1971 had become unassailable and the lapse of fifteen days had given it conclusiveness, said contention can not be sustained because the order complained of is interlocutory, and an interlocutory order is such that it is always subject to correction and amendment before final judgment is rendered in the case.

Private respondent also argues that petitioner has not shown that respondent court committed grave abuse of discretion or error of jurisdiction in issuing the order complained of. Under Section 1 of Rule 65 of the Rules of Court, certiorari may issue not only when the inferior court has acted with grave abuse of discretion, but also when it has acted without or in excess of its jurisdiction. Although a court has jurisdiction over the subject matter and the parties it has been held that if a court has no power to give certain kinds of relief, and it acts otherwise, it is acting without jurisdiction (14 Am Jur 2d, p. 786). It has been shown that the trial court could not, under the law and decisions of this Court, order the release of the forfeited imported foodstuffs, under bond, and in ordering its release it had acted without or in excess of its jurisdiction.

Private respondent furthermore contends that petitioner had an adequate remedy, that is appeal. Suffice it to state that a petition for certiorari is the proper procedure for obtaining a relief from, or review of, an interlocutory order. (14 Am Jur. 2d. p. 789.)

Private respondent finally urges that the instant petition is defective in that the copies of the orders subject thereof were not certified. This contention has no merit. The Rules of Court should be liberally construed, for they are intended to secure a method by which the issues may be properly laid before the court. When those issues are already clear before the court, the deficiency in the observance of the rules should not be given undue importance. What is important is that the case is decided upon the merits and that it should not be allowed to go off on procedural points. (Co Tiamco vs. Diaz, 75 Phil. 672.)

IN VIEW OF THE FOREGOING, the questioned resolutions of respondent Court of Tax Appeals, dated March 24, 1971 and April 19, 1971 in its CTA Case No. 2206 entitled "Eusebio Dichoco, petitioner, vs. Commissioner of Customs, respondent" are annulled and set aside, and the restraining order issued by this Court on May 5, 1971 is made permanent. No pronouncement as to costs. It is so ordered.

Concepcion, C.J., Reyes, J. B. L., Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Makalintal, J., took no part.

[1] Annex 11 of the Answer, p. 207, Record.

[2] Resolution of February 3, 1971 in CTA Case No. 2206; Record, p. 37.

[3] Memorandum for respondents, pp. 251-258, Record.

[4] Annex C of petition, pp. 32-33, Record.

[5] Section 1363 (f) of the Revised Administrative Code is now Section 2530 (f) of the Tariff and Customs Code.

[6] See Annexes 15, 16 and 17 to the Answer, pp. 212, 213 and 214, Record.

[7] Record, pp. 287-289.

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