

LIM HOA TING, PLAINTIFF AND APPELLEE, VS. CENTRAL BANK OF THE PHILIPPINES, DEFENDANT AND APPELLANT.*G. R. No. L-10666. September 24, 1958*

Ponente: MONTEMAYOR, J.

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The facts of the present case are not in dispute. In fact, the decision of the lower court was rendered on the pleadings, after defendant Central Bank of the Philippines had made certain admissions and answers to written interrogatories filed by the plaintiff. Consequently, the appeal by defendant Central Bank of the Philippines comes direct to us.

As an importer, plaintiff-appellee Lim Hoa Ting paid the defendant Bank the amount of P650.26 and P1,526.23 on November 11, 1954 and April 5, 1955, respectively, or a total of P2,176.49, representing the 17 per cent exchange tax on the sale of foreign exchange, for the payment of the costs and other charges incident to the importation into the Philippines of "mono-sodium glutamate". Before said dates, defendant had been refunding to the plaintiff the exchange taxes paid by him for the importation of the same substance mono-sodium glutamate, as it had also approved the applications for exemption from the same exchange taxes of other importers of the same commodity, in the aggregate amount of P3,215,416.72. The refunds were made under the provisions of Republic Act No. 601, as amended, Section 2 of which reads in part:

* * * the tax collected * * * on foreign exchange used for the payment of the cost, transportation and/or other charges incident to importation in the Philippines of stabilizers and flavors * * * shall be refunded to any importer making application therefor* * *."

In Appendix A of Republic Act No. 650, effective July 1, 1951, under which the Import Control Commission was created, which Appendix A contains a classification of commodities allowed importation, there appears under the heading "Chemicals, Drugs, Dyes, Medicines and Medical Equipment and Supplies" the following: "flavoring extracts : 'ajinomoto, vetsin, etc.'" "Ajinomoto" and "Vetsin" are trademarks of commercial products in the preparation of which, mono-sodium glutamate largely enters.

When the Import Control Commission was abolished by operation of law, its functions were assumed by the Monetary Board of the defendant Central Bank. Through a series of regulations implementing Circular No. 44, specifically, Regulation No. 1, to which is attached Appendix A, approved by the Monetary Board on June 30, 1953, there appears under item No. 510147, the following:

"Flavoring preparations—Mono-Sodium Glutamate" From this, it is apparent that defendant Central Bank, through the Monetary Board, had adopted the same classification of commodities to be allowed importation, in the sense that mono-sodium glutamate was considered and classified as a flavoring extract. That was the reason why all exchange taxes previously paid by importers of mono-sodium glutamate had been refunded, as already stated, under the provisions of Section 2, Republic Act No. 601, which authorized refund of exchange taxes on commodities and substances listed and classified as flavors.

However, on September 14, 1953, the officer in charge of the exchange tax administration of defendant Central Bank, submitted a memorandum to the Monetary Board, suggesting that mono-sodium glutamate be "no longer classified as a flavor", for the reason that if said substance is to be considered as a flavor when it is mainly used in the manufacture of the condiment commonly known as "Vetsin", then Lea and Perrin's sauce, onions, garlic, catsup and even common salt might also be considered flavors when they are really condiments and seasoning agents and, therefore, exchange taxes paid for their importation should also be refunded; and that moreover, since monosodium glutamate was classified as a flavor, its importation had increased considerably to the prejudice of the revenues of the state. Following said suggestion, the Monetary Board, on September 15, 1953, passed resolution No. 756, "eliminating 'mono-sodium glutamate as flavor' under existing Central Bank regulations on the use of foreign exchange for importation." This resolution, however, was not published in the Official Gazette.

It would appear, however, that the same officer in charge of the exchange tax administration in the Central Bank who had made the suggestion about the elimination of mono-sodium glutamate from the classification as flavors, changed his mind after he had had a conference with the Director of the Institute of Science and Technology on the meaning and scope of the terms "condiment" and "flavor". Said opinion is contained in a subsequent memorandum, dated August 3, 1955, of the said officer for the Monetary Board, wherein he states in part:

"The technical opinion of the Director of the Institute of Science and Technology on the interpretation of the terms 'condiment' and 'flavor' is reflected in a letter to Senator Primicias dated June 15, 1955, copy of which is hereto attached, in a case involving another article, the said opinion, however, being a general discussion of the interpretation of the terms 'condiment' and 'flavor'. According to the said opinion of the Director of Science and Technology, 'flavor' is a general term which includes those preparations regarded as condiments even if such preparations contain pepper, mustard, garlic, and other spices. In another part of the letter to Senator Primicias, the Director states the following: 'Republic Act No. 601, as amended (Republic Act Nos. 814, 871, and 1197) used the word "FLAVORS" and not "CONDIMENTS". inasmuch as the former embraces the limited meaning of the latter.'

"Prior to the departure of the Director of Science and Technology, the Legal Counsel, the Auditor, the Drug Consultant of the Office, and the undersigned had a long conference with him, and after the conference we were agreed that in view of the technical definition of the term 'flavor' we would have to consider Monosodium Glutamate as failing under the exemption provided for by law.

"In view of this, it is recommended that the Monetary Board reconsider its Resolution No. 756, of September 15, 1953, by holding that Mono-Sodium Glutamate falls under the term "flavors" which are exempt from the exchange tax."

Before submitting the above memorandum, the said officer in charge of the exchange tax administration of defendant Central Bank, acting on an inquiry from plaintiff's counsel about the refund of exchange taxes previously collected on the importation of mono-sodium glutamate, made the following reply:

"Please be informed that in a recent certification made by the Director of Science and Technology, mono-sodium glutamate is considered a 'flavor' and as such, the tax exemption provided for by the Exchange Tax Law covers the above-mentioned item of importation. You may, therefore, accordingly resume filing your applications for exemption and refund but through your negotiating bank, in accordance with the latest procedure promulgated by the Central Bank on the matter."

Acting upon said advice, plaintiff filed his application No. 422-7 for the refund of the two-amounts afore-mentioned, totalling P2,176.49, but the defendant Central Bank refused to make the refund, thereby precipitating the initiation of the present court proceedings for the collection thereof.

The trial court, citing the opinion of the Director of the Institute of Science and Technology and definitions given

in Webster's International Dictionary, including the Wall Street Journal and Scientific Monthly, came to the conclusion that mono-sodium glutamate comes under the definition of flavors and flavoring extracts, and therefore, exchange taxes paid for its importation were refundable, and in its decision ordered defendant Central Bank to make the refund in the following dispositive part of its decision:

"In view of the foregoing considerations, this Court hereby renders judgment, ordering the Central Bank to refund to the herein plaintiff the aggregate sum of P2,176.49, which represents plaintiff's payment of the 17 per cent exchange tax, covered by CBP Official Receipts Nos. 614833 and 689703, with costs against the defendant. There being no evidence in the record of this case to sustain the damages claimed by plaintiff in his complaint, and considering that actuation of the Central Bank, in refusing to refund to the plaintiff the aforesaid exchange tax, was made in good faith, no damages and attorney's fees is hereby granted to the plaintiff."

The defendant Bank is now appealing from that decision, and in support of its contention that mono-sodium glutamate is not a flavoring extract but rather a condiment, cites articles published in the Chemical Engineering Progress of the American Institute of Chemical Engineers, Science on the March in Scientific Monthly, and from the book entitled, "Foods, their Selection and Preparation" by Stanley and Kline. The defendant further claims that the term "flavor" refers only to the substances for the manufacture of soft drinks, ice cream, or drugs and medicines.

With no disrespect to the scientific opinions cited by the defendant Bank, we prefer to accept the opinion of our local Institute of Science and Technology, which holds that mono-sodium glutamate is a flavor or flavoring extract, and that it even includes condiments. Furthermore, according to the record, mono-sodium glutamate has in the past been consistently classified and considered as a flavor and flavoring extract, not only by the Import Control Commission, but also by its successor, the defendant Bank itself, to say nothing of the fact that the law itself seems to have favored this interpretation. This contemporaneous construction is highly persuasive:

"The practice and interpretive regulations by officers, administrative agencies, departmental heads and other officials charged with the duty of administering and enforcing a statute will carry great weight in determining the operation of a statute." (2 Sutherland, Statutory Construction, p. 516).

"In the construction of a doubtful and ambiguous law, the contemporaneous construction of those who are called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect." (Edwards Lessee vs. Darby, 12 Wheat. 206, 210).

Commenting on the above rule, Erwin N. Criswold of the Harvard Law School, wrote:

"Another reason why contemporaneousness is an important factor is its bearing on the need for certainty and predictability in our tax laws. This is where the notion of the Court's function in the scheme of judicial tax administration becomes important. A statute is enacted. A regulation is issued. It will, in the normal course of events, be five or six years, and very likely more, before the construction of the statute, in the light of the regulation, will come before the Supreme Court. In the meantime, people will go on living, and transactions will be conducted under the statute, perhaps all the transactions that are ever to be conducted under the statute. Thus, it seems that a strong argument can be made in favor of giving very heavy weight to a contemporaneous regulation, so that taxpayers may rely upon it and have some certainty that it will be followed by the courts. * *

*" (A Summary of the Regulations Problem, 54 Harvard Law Review, p. 398, 406).

It would seem that the main reason for the defendant Bank in holding to reclassify and remove it from the category of flavor or flavoring extract was for revenue purposes. Under the exemption or right to refund, said substance of mono-sodium glutamate had considerably increased in importation and the Bank sadly realized the loss of revenue to the Government. If the Government desires to make a reclassification so as to impose the exchange tax on the importation of this substance for revenue purposes, the Legislature can easily do so in the

form of an amendment to the law. We hold, as did the trial court, that the subsequent interpretation given by the defendant Bank not to consider mono-sodium glutamate as a flavor or flavoring extract, is rather arbitrary, if not beyond the scope of its powers and authority.

Furthermore, as already stated, Resolution No. 756 of the Monetary Board, as well as the revised classification, under which mono-sodium glutamate was no longer considered a flavor and so not exempted from the exchange tax, was not published in the Official Gazette. Consequently, it could not bind the plaintiff. Said this Court as regards the noneffectivity of Circular No. 20 of the Central Bank for lack of publication in the Official Gazette:

"However, section 11 of the Revised Administrative Code, provides that statutes passed by Congress shall, in the absence of special provision, take effect at the beginning of the fifteenth day after the completion of the publication of the statute in the Official Gazette. Article 2 of the New Civil Code (Republic Act No. 386) equally provides that the laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. It is true that Circular No. 20 of the Central Bank is not a statute or law but being issued for the implementation of the law authorizing its issuance, it has the force and effect of law according to settled jurisprudence. (See *U. S. vs. Tupasi Molina*, 29 Phil. 119 and authorities cited therein.) Moreover, as a rule, circulars and regulations especially like the Circular No. 20 of the Central Bank in question which prescribes a penalty for its violation should be published before becoming effective, this, on the general principle and theory that before the public is bound by its contents, especially its penal provisions, a law, regulation or circular must first be published and the people officially and specifically informed of said contents and its penalties." (*People vs. Que Po Lay*, 50 Off. Gaz., [10] 4850; 94 Phil., 640).

We notice that the trial court imposes costs on the defendant Bank, this despite its finding that the Central Bank acted in good faith. We believe that it is more in accord with justice to eliminate this portion of the award of the trial court, aside from the fact that defendant Bank is an agency of the Government charged with the administration of the exchange law. With this modification, the appealed decision is hereby affirmed. No costs in either instance.

Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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