

ESTANISLAO M. LEUTERIO, PETITIONER, VS. COMMISSIONER OF CUSTOMS, RESPONDENT.

G.R. No. L-21800. June 22, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The legal issue correctly presented by petitioner in this appeal simply is this: Was the forfeiture of the goods in question in accordance with law?

Primarily called to application is Central Bank Circular 45, pertinent part of which reads:

“NOW, THEREFORE, 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.”[1]

Now to the case. On May 22, 1955, a shipment[2] from Hongkong consigned to petitioner Estanislao M. Leuterio consisting of 34 bales of cotton cloth arrived at the port of Manila per S/S Frankfurt. It was accompanied by a bill of lading and a commercial invoice. The consignee, however, could not present a Central Bank release certificate or import license and a consular invoice.

On May 25, 1955, the shipment became the subject of seizure and forfeiture proceedings before the Collector of Customs for violation of Central Bank Circulars 44 and 45.[3]

On consignee's application, however, the Customs Collector of Manila released the shipment upon a bond posted by Paramount Surety & Insurance Co., Inc.

At that time, the issue of validity of the aforesaid circulars was squarely put in Pascual vs. Commissioner of Customs, L-10979. On June 30, 1959, this Court in said case of Pascual ruled in favor of validity.

Because of this, on March 9, 1960, the Manila Collector of Customs, in his decision, directed the forfeiture of the questioned shipment. But because it was released under bond, the Collector ordered Estanislao M. Leuterio and Paramount Surety & Insurance Co., Inc., jointly and severally, to pay its value in the sum of P19,986.53. The Commissioner of Customs affirmed.[4] Petitioner went to the Court of Tax Appeals.[5]

But then, on January 21, 1962, during the pendency of the case in the Court of Tax Appeals, the Central Bank issued Circular 133[6] providing for the gradual lifting of the restrictions on foreign exchange transactions. Petitioner thereupon argued before the Tax Court that Circular 133 repealed Circular 45, and that such repeal had the effect of extinguishing the penalty of forfeiture meted out in violation of Circular 45. He prayed that the forfeiture be stricken down as a nullity.

On July 2, 1963, the Tax Court, citing Pascual vs. Commissioner of Customs, *supra*, and Acting Commissioner of Customs vs. Leuterio, L-9142, October 17, 1959, affirmed in toto the Commissioner's decision, with costs.

1. We part with the premise that the shipment in question is upon a "no-dollar remittance" importation. No purchase of foreign exchange was necessary therefor.

Of course, petitioner correctly argues that no release certificate was required. Because, his case is governed by Circular 45 heretofore transcribed - not by Circular 44.[7]

But has petitioner presented an import license required under Circular 45? The answer is No. Without import license the importation is illegal. Copious jurisprudence is that any no-dollar shipment without license violates Circular 45, and that such shipment may be classified as merchandise the importation of which is effected contrary to law which may be seized and forfeited.[8]

Not that the requirement of the license is meaningless. The preamble of Circular 45 itself reads:

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

WHEREAS, imports payable at some later date represent a foreign exchange obligation which under the provisions of Central Bank Circular No. 20 is subject to license by the Central Bank;

WHEREAS, any act by which a resident debits or credits the account of a non-resident in any currency or the account of a resident in foreign currency is subject to license by the Central Bank (C.B. Circular No. 42);

WHEREAS, imports for which no foreign exchange is required or will be required of the banks are in practice frequently paid for through the blackmarket, and the stimulation of blackmarket activity in this instance would have the effect of encouraging evasion of Central Bank Circular No. 20 which requires the surrender to the Central Bank of foreign exchange earnings of residents;

WHEREAS, the import of goods paid for through the blackmarket is an evasion of the payment of the special excise tax on foreign exchange as provided for in Republic Act No. 814;

WHEREAS, since the foreign exchange control regulations affect all transactions having international financial implications, the purchase and sale of, and other dealings in, foreign exchange, whether through authorized agent banks or the blackmarket, are under the control of the Central Bank;

WHEREAS, the psychological effect of depreciating the peso-dollar rate in the blackmarket would be detrimental to attempts to maintain the stability of the peso (section 2 of Republic Act No. 265); and

WHEREAS, imports which are paid for through the blackmarket will prejudice the interests of domestic agricultural and industrial producers."

The philosophy behind the law is distilled in the following lifted in haec verba from *Capulong vs. Aseron*, L-22989; *supra*:

"x x x Evidently, the purpose of these circulars [44 and 45] is to keep a tab of the volume of imports that come into the Philippines in order to enable the Central Bank to make a survey and study of the appropriate measures that may be adopted to remedy the long-drawn financial crisis in the country."[9]

Correctly then was the shipment seized and forfeited.

2. On September 10, 1955, while proceedings in the Bureau of Customs in the present case were in progress, Congress enacted Republic Act 1410 prohibiting the so-called "no-dollar" importation. Petitioner seized upon this fact to say that Circulars 44 and 45 were repealed by Republic Act 1410.

Two dates are important: First, the shipment arrived in the Philippines on May 22, 1955; second, Republic Act 1410 was enacted only on September 10, 1955. Consequently, Republic Act 1410 will not apply.

Besides, Section 3 of Republic Act 1410 takes the present importation out of reach of said statute. Sec. 3 reads:

"SEC. 3. Any violation of this law or any provision hereof shall subject the articles imported to seizure and confiscation by the Collector of Customs without any right of redemption or release under bond, existing laws to the contrary notwithstanding: Provided, however, That goods and commodities in transit or previously imported on a no-dollar remit-tance basis at the time of the approval of this Act shall not be affected by the operation of this Act."

Less than three years back, we held that "[w]ith respect to the assertion that the enactment of Republic Act 1410 abated any liability incurred for violation of Central Bank Circular 45, suffice it to say that the importations in question do not come within the operation of said Act," because of Section 3 thereof heretofore quoted.[10]

3. Still, petitioner presses for consideration its claim that Central Bank Circular 133 repealed Central Bank Circular 45.

Circular 133, amending Circular 121 on foreign exchange transactions, governs dealings requiring purchase of foreign exchange. Given the premise that the present importation is on a no-dollar remittance basis, Circular 133 certainly has no relevance.

For the reasons given, the judgment of the Court of Tax Appeals under review is hereby affirmed.

Costs against petitioner.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro and Angeles, JJ., concur.
Fernando, J., did not take part.

[1] Approved by the Monetary Board on June 25, 1953; 49 O.C. No, 6, pp. 2191-2192.

[2] Entry No. 45885, series of 1955.

[3] Seizure Identification No. 3086.

[4] Customs Case 148.

[5] C.T.A. Case 977.

[6] Amendment to Central Bank Circular No. 121 on foreign exchange transactions.

[7] Circular 44 covers importations requiring purchase of foreign exchange. Section 14 of Circular 44 provides:

"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."

[8] Pascual vs. Commissioner of Customs, supra; Serree Investment Co. vs. Commissioner of Customs, L-20847-9, June 22, 1965; Chan Kian vs. Collector of Customs, L-20803, January 31, 1966; Capulong vs. Aseron, L-22989, May 14, 1966; Lazaro vs. Commissioner of Customs, L-22511, May 16, 1966; Capulong vs. Acting Commissioner of Customs, L-22990, May 19, 1966.

[9] Reiterated in Lazaro vs. Commissioner of Customs, supra; Capulong vs. Acting Commissioner of Customs, L-22990, supra; Capulong vs. Acting Commissioner of Customs, L-22991, January 16, 1968; Juana de la Cruz vs. Court of Tax Appeals, L-23335 & L-23451, February 29, 1968; Rosita de la Cruz vs. Court of Tax Appeals, L-23335 & L-23452, February 29, 1968.

[10] Lazaro vs. Commissioner of Customs, L-21790 & L-21794, December 24, 1965, reiterated in Lazaro vs. Commissioner of Customs, L-22512 & L-22514, December 22, 1967.

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