

## FRANCISCO PASCUAL, PETITIONER, VS. THE COMMISSIONER OF CUSTOMS, RESPONDENT.

*G.R. No. L-12219. April 25, 1962*

Ponente: BAUTISTA ANGELO, J.

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### BAUTISTA ANGELO, J.:

A shipment consisting of 5 packages of toffee and 23 packages of chocolate consigned to Francisco Pascual arrived at the Port of Manila on August 9, 1954 on board the "SS KINA" under Bill of Lading No. M-9 dated August 7, 1954 and a commercial invoice dated August 6, 1954 in the amount of \$550.00, which shipment was not covered by a release certificate issued by the Central Bank or any of its duly authorized agents. In view of the absence of a release certificate the Collector of Customs seized the shipment pursuant to the provisions of Section 1363 (f) of the Revised Administrative Code, in relation to Central Bank Circulars Nos. 44 and 45. The shipment was later released under a surety bond in the amount of P1,790.00.

After the seizure proceedings were heard, the Collector of Customs on January 21, 1955 rendered decision forfeiting the shipment and ordering its importer to pay within 30 days the amount of P1,790.00 subject to the condition that if said amount is not paid the surety bond would be forfeited. On February 1, 1955, the importer appealed the decision to the Commissioner of Customs who on February 12, 1955 affirmed it in toto.

In due time, the importer elevated the case to the Court of Tax Appeals contending that the seizure of his shipment was illegal not only because the same does not involve a dollar allocation but also because the Central Bank has no authority under the law to issue Circular Nos. 44 and 45 which prohibit its importation. After hearing was held, the Court of Tax Appeals brushed aside the contention of the importer and affirmed the decision of the Commissioner of Customs. Thereupon, it ordered the surety bond executed by the Reliance Surety and Insurance Company, Inc. in the amount of P1,790.00 forfeited, with costs against the importer. The latter interposed the present appeal.

One of the issues raised in connection with the shipment in question is that the Central Bank has no authority under its charter to issue Circular No. 44 which prohibits the release by the customs authorities of any importation not covered by a certificate issued by said bank or any of its duly authorized agents. The portion of the circular which is particularly objected to is Section 14 which provides: "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."

Since the submission of this case to the Court of Tax Appeals for determination which calls for an interpretation of the validity of Circular Nos. 44 and 45 of the Central Bank, several cases involving a similar question have been decided by this Court which now constitute a precedent decisive in the present case. Thus, we held therein that the Central Bank has authority to issue said circulars even if the same have the effect of regulating no-dollar importation "for the reason that the broad powers of the Central Bank, under its charter, to maintain our monetary stability and to preserve the international value of our currency, under Section 2 of Republic Act No. 265, in

relation to Section 14 of said Act—authorizing the bank to issue such rules and regulations as it may consider necessary for the effective discharge of the responsibilities and the exercise of the powers assigned to the Monetary Board and to the Central Bank—connote the authority to regulate no-dollar importations owing to the influence and effect that the same may and do have, upon the stability of our peso and its international value" (The Commissioner of Customs, et al. vs. Eastern Sea Trading, G. R. No. L-14279, October 31, 1961; *Italics supplied*).<sup>[1]</sup> There can therefore be no question that the Central Bank has authority under its charter to issue Circular No. 44 even if its scope covers no-dollar importation as apparently is the shipment under consideration.

But it is contended that there is nothing in Circular No. 44 which provides for the seizure of merchandise which may be imported in violation thereof even if it be maintained that the same has been validly issued and so the seizure of said merchandise by the Collector of Customs has been made without authority of law. However, while it is true that said circular does not provide for the penalty of forfeiture in case of a violation thereof, it is nonetheless true that the same is subject to enforcement by the Bureau of Customs and as such is deemed part of the customs law under Section 1419 of the Revised Administrative Code. It may, therefore, be said that the shipment in question which was imported in violation of Circular No. 44 is subject to forfeiture under Section 1363 (f) of the Revised Administrative Code which specifically provides that all merchandise imported contrary to law is subject to forfeiture. Moreover, although a circular duly issued is not strictly a statute or a law it has however the force and effect of law according to the settled jurisprudence in this jurisdiction. A case we have recently decided is *Po Eng Trading vs. Commissioner of Customs*, (110 Phil., 83) wherein we held:

"Central Bank Circular No. 44, implementing Republic Act 265, has the affect of a Customs law as defined in the last paragraph of Section 1419, Revised Administrative Code. In accordance with Section 1250 of the Revised Administrative Code, the Collector of Customs has jurisdiction, indeed, has the duty to exercise jurisdiction to prevent importation or otherwise secure compliance with all legal requirements in the case of merchandise of prohibited importation or subject to importation only upon conditions prescribed by law. In the exercise of this jurisdiction, he may subject to forfeiture cargoes and other objects of prohibited importation, in accordance with Section 1363 (f), Revised Administrative Code."

There is no point to make a distinction between merchandise of "prohibited importation" and those "imported contrary to law" used in Section 1363 (f) of the Revised Administrative Code considering that no such distinction is made in Central Bank Circular No. 44. This circular punishes the importation of any merchandise whether prohibited or otherwise if the same is effected without the release certificate issued by said bank or any of its authorized agents. The distinction that petitioner makes is therefore of no legal consequence.

It is finally contended that the penalty of forfeiture imposed by the customs authorities under Section 1363 (f) of the Revised Administrative Code is unauthorized even if the same is violative of Central Bank Circular No. 44, for the reason that the only penal clause contained in its charter for such violation is a fine or imprisonment and not forfeiture. Petitioner invokes Section 34 of Republic Act No. 265 which provides that any person or entity who violates said Act, "shall be punished by a fine of not more than P20,000.00 or by imprisonment of not more than five years", which being a special law should prevail over the provisions of the Revised Administrative Code. The trial court has correctly answered this question in its resolution dated March 26, 1957 on the motion for reconsideration filed by petitioner, which we hereunder quote with approval:

"Petitioner has lost sight of the fact that his act of 'importing contrary to law' entails two penalties—one penalty for violation of Central Bank Circular No. 44 as prescribed by Section 34 of Republic Act No. 265 directed principally against the person of the offender and which may be had in a criminal prosecution involving an action in personam, and the other penalty of forfeiture imposed by Section 1363 (f) of the Revised Administrative Code directed primarily against the goods rather than the offender and which may be had in action in rem (see *Origet vs. U.S.* 125, U.S. 240, 246-247; 31 L. Ed. 743, 746-747). The two penalties being

distinct and different, the forfeiture may be enforced against the goods by proceedings in rem independently of the criminal prosecution against the offender (*Origet vs. U.S.*, supra). The imposition of one does not preclude the imposition of the other, for it is a well-established rule that forfeiture proceedings stand independent of and are wholly unaffected by any criminal proceeding in personam (23 Am. Jur. 618). For while punishment for the crime and forfeiture of the goods might be coincident, they are not necessarily so (*U.S. vs. 25 pkgs. of Panama Hats*, 231 U.S. 358, 362, 58 L. Ed. 267, 269). Thus, while it is true that the Bureau of Customs is not authorized to impose the penalty prescribed by section 34 of Republic Act No. 265 for violation of Central Bank Circular No. 44, there is nothing to preclude the Bureau of Customs from imposing the penalty of forfeiture of the goods or merchandise the importation of which has been effected or attempted contrary to law in accordance with section 1363 (f) of the Revised Administrative Code."

Wherefore, the decision appealed from is affirmed, with costs against petitioner.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Paredes, and Dizon, JJ., concur.

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[1] *Pascual vs. Comm. of Customs*. 105 Phil. 1039; 56 Off. Gaz., [47] 7169; *Actg. Comm. of Customs vs. Leuterio* L-9142, Oct. 17, 1959; *Commissioner of Customs vs. Pascual*, 106 Phil., 488; *Commissioner of Customs vs. Serree Investment Co.*, 108 Phil., 1; 58 Off. Gaz. [32] 5413; *Commissioner of Customs vs. Serree Investment Co.*, 110 Phil., 148; 59 Off. Gaz., [6] 900; *The Commissioner of Customs vs. Santos, et al.*, supra; p. 580.

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