

CESAR CLIMACO, AS COMMISSIONER OF CUSTOMS, TEOTIMO ROJA, AS COLLECTOR OF CUSTOMS OF MANILA, CENTRAL BANK OF THE PHILIPPINES, AGRICULTURAL CREDIT AND COOPERATIVE FINANCING ADMINI...

G.R. No. L-19440 and L-19447. April 18, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

In G. R. No. L-19440 petitioners seek the review and reversal of a writ of preliminary injunction issued by Judge Higinio B. Macadaeg on January 22, 1962 in Civil Case No. 47659 of the Court of First Instance of Manila, entitled. "Adolfo Columbres, et al., Plaintiffs, vs. The Agro-Industrial Products, Inc., the Philippine Virginia Tobacco Administration, the Commissioner of Internal Revenue, the Central Bank of the Philippines, the Commissioner of Customs, Agricultural Credit and Cooperative Financing Administration, Vicente Araneta, and Collector of Customs, Defendants," which, in part, reads as follows:

"In view of the foregoing and upon the filing of a bond by the Agro-Industrial Products, Inc. in the amount of P500,000.00, let a writ of preliminary mandatory injunction be issued,

- To compel the ACCFA or its Administrator, Vicente Araneta to comply with its agreement with herein defendant to sell to herein defendant its low grade tobacco in the prescribed ratio of 4 kilos for every kilo of imported Virginia tobacco within the limitation of and as authorized by the authority issued by the President of the Philippines and the Presidential Directive and thereafter to immediately issue the certificate of the corresponding purchase made by herein defendant of the ACCPA low grade tobacco in the prescribed ratio or 4 kilos of ACCPA tobacco to every kilo of imported tobacco and to deliver such certificate to the Central Bank of the Philippines;
- To compel the Monetary Board of the Central Bank of the Philippines or its governor, upon receipt of such certificate of purchase from the ACCPA, to immediately issue the release certificate for the Virginia tobacco imported by herein defendant and consigned to the Fimco of the Philippines, Inc.; and
- To compel the Commissioner of Customs and his deputy, the Collector of Customs for the Port of Manila and all their subordinates, employees and all persons acting under them, upon presentation of such release certificate of the Central Bank to immediately effect the release and delivery of the said imported tobacco shipments to the herein defendant or its nominees, upon payment of the duties, etc. payable thereon as above stated.

So ordered,"

In G. R. No. L-19447 petitioners also seek the review and reversal of the above-quoted order of Judge Macadaeg.

The facts giving rise to both cases in the Court of First Instance of Manila may be briefly stated as follows: On March 28, 1960, Agro-Industrial Products, Inc., hereinafter referred to as the Agro, through its vice-president and

general manager, wrote a petition to the President of the Philippines offering to purchase, over a period of two years, certain surplus low grade Virginia leaf tobacco of the Agricultural Credit & Cooperative Financing Administration (ACCFA), amounting to nearly 20 million kilos and the expected surplus for the current year, estimated at five million kilos, the said leaf tobacco to be purchased to be paid for at the price of \$1.316 per kilo for grade D and \$1.4 per kilo for grade E, payment therefor to be made every 90 days. The Agro also bound itself, by virtue of a Commodity Loan Agreement that the Fimco of the Philippines, Inc. has with the Nippon Trading Corporation, as approved by the Central Bank, to import on credit basis a minimum quantity of commodities sufficient to cover the purchase of the said 20 to 25 million kilos of local low grade Virginia leaf tobacco, said importation to come from the United States during a period of two years and to be resold to local cigarette manufacturers. Under the offer made by the Agro, the Central Bank would not be required to authorize any dollars to cover the transactions involved in the contract of the Agro, no banned item shall be imported, and imports or exports shall not be negotiated with communist countries. To bolster the proposal it is claimed that the importation of the high grade American tobacco will result in an increase in the Philippine sugar quota in the United States; that the transaction will increase government revenues to the extent of P67,000,000 in specific taxes by reason of increased consumption of good quality cigarettes, etc.

Upon its receipt the above proposal was endorsed by the Office of the President to the Commissioner of Internal Revenue, requesting for information on the following facts: (1) the need, if any, of imported Virginia leaf tobacco for blending purposes; (2) an estimate of existing stock of said imported leaf and how long it will last; and (3) the effect on collection of taxes if no importation is authorized.

On May 25, 1960, the Commissioner of Internal Revenue returned the basic communication, with the following information :

"x x x in order that cigarette manufacturers could maintain the taste and aroma of their cigarettes under the P12.00 per thousand class, it is necessary that imported Virginia leaf tobacco is used for blending purposes. The estimated existing stock of imported Virginia leaf tobacco held by some cigarette manufacturers is about 1,534,534 kilos, which will last them four (4) months to consume. It is believed that if the taste and aroma of cigarettes under the P12.00 per thousand class are not maintained, because of lack of imported Virginia leaf tobacco for blending purposes, the smoking public would just as well shift to cigarettes of the lower tax bracket, which would in effect reduce specific tax collections."

The President created a special committee of the Cabinet to study the proposal of the Agro and the administrative bodies concerned furnished the following information: On March 29, 1961, the general manager of the Agro again submitted a letter to the President, through the said special Cabinet committee on tobacco, renewed its offer for the purchase of 22.5 million kilos of ACCFA's useful D and E tobacco at cost price, the same to be paid to the ACCFA; to purchase (import) in three years 15 million kilos of blending tobacco for local cigarette manufacture at government price, and that in consideration of the purchase of a total of 67.5 million kilos of local tobacco, said Agro shall be permitted to import the shortage or the requirements of cigarette manufacturers of high grade American blending tobacco for three years, as such shortage is denoted by the Secretary of Justice before the special Cabinet committee on tobacco and certified to by the Bureau of Internal Revenue under the letter of Commissioner Melecio Domingo, dated May 25, 1960, that is, 4.5 million kilos for one year plus 15% annual increase. As arguments in favor of the proposal, the Agro claimed that to solve the problem of the ACCFA, and the problem of its surplus low grade tobacco, the President should authorize the importation of blending tobacco on the basis of a report from the Bureau of Internal Revenue of the amount needed to maintain the level of production of the manufactured tobacco, that the importation will result in the production of good quality cigarettes at reasonable prices making the smuggling of blue-seal cigarettes no longer profitable. The letter also contains a claim that it had been able to devise a means for establishing a modern tobacco, cigar and cigarette

manufacturing plant, etc.

The commodity loan agreement hereinabove mentioned, in favor of the Fimco of the Philippines, Inc., upon the latter's petition, was amended by the Central Bank on March 18, 1958, to include an authorization for the Agro, through the Fimco, to import high grade Virginia leaf tobacco for blending purposes, upon its purchasing low grade (D & E) ACCFA surplus tobacco stock.

It also appears that as early as September 30, 1960 the ACCFA had outstanding obligations to the Central Bank in the amount of P59,500,000; that as of November 15, 1960 ACCFA's loan with the Central Bank amounted to P134,500,000, of which P59,500,000 was past due; that on March 18, 1960, the manager of the ACCFA had requested for an extension for the payment of its overdue obligations, but the Central Bank deferred consideration of the request and demanded from the manager how he would meet the obligations of the ACCFA and the governor of the ACCFA, answering the said request of the Central Bank, declared:

"x x x Mr. Araneta informed the Governor in his letter on April 27, 1960 that ACCFA had representations with Congress for approval of a bill authorizing the barter of locally grown low-grade Virginia tobacco for high grade foreign grown tobacco. He claimed that the approval thereof would brighten the prospect of disposing of the tobacco stock and correspondingly would enable the ACCFA to liquidate its obligations with the Central Bank. Mr. Araneta stated that he could not propose any definite program as to how ACCFA could pay the notes maturing this year as its capacity to meet these obligations is dependent upon how soon the tobacco stock could be disposed of.

"Again, Mr. Araneta asked that ACCFA's request for extension be favorably considered and that it be allowed to use, whatever cash sales are realized from tobacco stock, after deducting necessary operating expenses, to pay obligations to farmers for tobacco purchases in 1959."

As stated above, the bank suspended the request of the ACCFA for an extension of the payment of its obligations, but it ordered a department of the Central Bank and a tobacco grader of the Bureau of Internal Revenue to verify the stock of ACCFA tobacco, and report was made that due to the upgrading, overweighting and other causes, there was a loss of P21,100,000 in the value of ACCFA's stock (Annex "3-Central Bank"). On June 28, 1961, the obligations of the ACCFA had amounted to P144,500,000, of which sum P99,500,000 was due, and some P35,000,000 loan obligations would also be due in August, September and November 1961 (Annex "4-Central Bank"). On June 28, 1961, the Central Bank demanded immediate remittances of its overdue obligations from the ACCFA and a definite plan of repayment of its obligations (Exh. "5", G. R. No. L-19440). On October 3, 1961, the ACCFA wrote a letter to the Agro, which is worded as follows:

"In connection with your offer to purchase ACCFA tobacco as a condition precedent to your importation of foreign Virginia leaf tobacco pursuant to the presidential authority dated July 29, 1961 which, we understand, has been previously apportioned among different cigarette manufacturers, please be informed that the ACCFA will sell to you its tobacco of the D & E grades conformably with the said presidential authority and under the following terms and conditions:

"1. That you will purchase from ACCFA four (4) kilos of ACCFA's locally grown Virginia leaf tobacco of the D & E grades for every one (1) kilo of Virginia leaf tobacco which you intend to import.

"2. That the price of ACCFA tobacco shall be its acquisition cost by grades and crop year plus expenses and other charges as evidenced by ACCFA records of sale to cigarette manufacturers. Rate of interest as part of the acquisition cost shall be the rate ACCFA actually pays the Central Bank on its tobacco notes.

"3. That the local Virginia leaf tobacco which ACCFA promises to sell and which your corporation agrees to buy on the basis of your choice as usable within the meaning of the aforesaid presidential authority shall be 'as is where is' and any expenses for transportation and any or all charges for the opening of tobacco hogsheads

shall be for your account.

"4. That in consideration of the sale, you shall establish a letter of credit in favor of the ACCFA for an amount equivalent to the sale value of the ACCFA tobacco you shall purchase from us to correspond to each intended importation. The said letters of credit shall authorize the ACCFA to draw drafts against you for the tobacco purchase through the acceptance of corresponding tobacco warehouse receipts. x x x."

In answer to the above letter, the Agro wrote to the governor of the ACCFA informing the latter that the U. S. Tobacco Corporation had been authorized by the Agro to purchase Virginia leaf tobacco of grades D and E under the Agro's contract at the rate of four kilos for every kilo of imported Virginia leaf tobacco and which purchase by the U. S. Tobacco Corporation shall be deducted from the amount of tobacco that the Agro shall buy from the ACCFA. Conformity to this letter was given by the ACCFA (Annex "2" of Annex "O" to the petition).

On October 5, 1961, the Central Bank entered upon its minutes the following:

"Fimco of the Philippines, Inc.—request for authority to import, in behalf of the Agro-Industrial Products, Inc. 4.5 million kilos of Virginia-type leaf tobacco through the Fimco-Nippontra Commodity Loan Agreement.

x x x x x x

"After a lengthy exchange of views on the subject request, the Board discussed the matter further with Messrs. Vicente Araneta, Emerito H. Ramos and M. Spielman, representatives of the Agricultural Credit and Cooperative Financing Administration, the Fimco of the Philippines, Inc., and the U.S. Tobacco Corporation, respectively.

"The Board took cognizance of the letter of the office of the President of the Philippines dated July 29, 1961, advising the Central Bank that "the President approved the purchase by the Agro-Industrial Products, Inc. of ACCFA's usable low grade Virginia tobacco stock, as well as the importation of 4.5 million kilos of foreign Virginia leaf tobacco, for blending purposes, subject to the following conditions: x x x

"The Board, after due deliberation and by unanimous vote, authorized Management to proceed with the implementation of the aforesaid Presidential authority, subject to the conditions therein prescribed and to the following conditions:

x x x x x x

"5) No release certificate shall be authorized by the Monetary Board and issued by the Central Bank for any importation of blending tobacco unless a certification from the ACCFA that the Agro-Industrial Products, Inc. has purchased from the ACCFA's existing stock of low-grade Virginia tobacco (Grades D and E) a minimum of four (4) kilos for every one (1) kilo of imported Virginia leaf tobacco, and from the Philippine Virginia Tobacco Administration that the Agro-Industrial Products, Inc. has purchased directly from the farmers and/or through their Facomas at least two (2) kilos of stem-dried or filler tobacco for every kilo of imported Virginia leaf tobacco;

x x x x x x

"7) The Agro-Industrial Products, Inc., shall assign the tobacco shipment to the cigarette manufacturers, and the release certificates addressed to the Bureau of Customs shall be issued to the cigarette manufacturers, which certificates shall direct the Bureau of Customs to deliver the tobacco direct to the cigarette manufacturers, as assignees, subject to the payment thereon of the corresponding taxes and duties due from the Agro-Industrial Products, Inc. or the Fimco of the Philippines, Inc. by reason of such importation."

The above minutes of the Central Bank show that the Central Bank granted the permission to import, in accordance with the presidential directive after consultation with Messrs. Araneta, Ramos, Spielman,

representatives of the ACCFA, the Fimco and the U. S. Tobacco Corporation. The above license or permit from the Central Bank is dated October 5, 1961.

The importations began to arrive in Manila on October 31, 1961 aboard the "SS Sae Kamaru" and continued arriving at the rate of five shipments in November and 13 shipments in December (7 to 30).

The above facts show that after the issuance of the presidential directive of July 29, 1961, the ACCFA, the U. S. Tobacco Corporation, the Central Bank and their representatives proceeded to the implementation of the presidential directive.

For ready reference the conditions imposed for the importation are set forth hereunder:

"On the basis of the Cabinet Committee and upon recommendation of the Cabinet at this meeting, the President approved the purchase by the Agro-Industrial Products, Inc. of ACCFA's usable low-grade Virginia tobacco stock, as well as the importation of 4.5 million kilos of foreign Virginia leaf tobacco for blending purposes, subject to the following conditions:

"1) That the minimum quantity to be purchased by the importer from the ACCFA of its existing stock of low-grade Virginia leaf tobacco in connection with the certified shortage of 4.5 million kilos should be at least 18,381,44 kilos or a minimum ratio of four to one; in addition, the importer shall purchase directly from farmers and/or through their FACOMAS at least. 9.036 million kilos of sun-dried or filler tobacco;

"2) That all purchases from ACCFA must be low-grade (Grades D and E) leaf tobacco, at cost plus expenses, until all the low-grade stock is exhausted at the prescribed ratio;

"3) That the Agro-Industrial Products, Inc. shall, without allocation of Central Bank dollar reserves, import one (1) kilo of Virginia leaf tobacco for every four (4) kilos of low-grade Virginia leaf tobacco purchases from ACCFA;

"4) That for balance of payments purposes the entire purchase of imported blending tobacco shall be paid under the Commodity Loan Agreement as approved by the Central Bank preferably by exports of ACCFA low-grade tobacco, and of filler and scrap tobacco;

"5) That the financial ability of the importer should be supported with cash bond of P1 million upon approval of the contract;

"6) That no releases will be made of the imported blending tobacco without corresponding purchase of ACCFA low-grade tobacco at the prescribed ratio of four to one;

"7) That five to ten per cent of the net profit from the imported tobacco should be channelled to research work towards the improvement of the tobacco industry;

"8) That the existing cigarette manufacturers who will be beneficiaries of this importation should be requested to waive at least five per cent of their allocations of the imported tobacco to any Filipino owned or controlled cigarette manufacturer; and

"9) That, to further safeguard the local Virginia tobacco industry, no further importation other than that authorized herein shall be approved until all the indigenous low-grade Virginia leaf tobacco purchased under this authority shall have been exported."

Civil Case No. 47659, entitled "Columbres, et al. vs. Agro-Industrial Products, Inc.," was filed on July 31, 1961 in the Court of First Instance of Manila. The claim of the petitioners in the case is that the approval of the presidential directive was unexpected because theretofore the special Cabinet Committee created by the President to study the matter of importation was vacillating and its members held inconsistent positions; that the reports of

the tobacco-producing towns required by section 1 of Republic Act No. 1194, upon which the ACCFA should base its report to the President as to whether or not the indigenous production of Virginia type leaf tobacco is sufficient to maintain the manufacture of tobacco products not less in quantity than what was produced during the preceding year, were not yet made, and therefore, there was no shortage which may serve as a basis for the presidential directive authorizing importation of Virginia type tobacco under the law; that the only persons authorized to import leaf tobacco under the provisions of Republic Act No. 698, as amended by Republic Act No. 1194, are legitimate manufacturers of Virginia type cigarettes, hence the Agro, which is not engaged in the manufacture of cigarettes and other tobacco products, may not be issued any import license under said law; that under Republic Act No. 698, as amended, authority to import may only be made through licenses therefor issued by the Central Bank and with the use of foreign exchange authorized by the Monetary Board, and petitioners, who are tobacco growers and owners of lands dedicated to the growing of Virginia leaf tobacco, will be adversely affected and will suffer irreparable damage once the importation is made, etc. (Original complaint, Court of First Instance of Manila.)

Before proceeding to consider the alleged invalidity of the presidential directive, because of its alleged failure to conform with the requirements of Republic Act No. 1194, we deem it necessary to set forth herein what we consider to be the aims and objectives of Republic Act No. 698, as amended by Republic Act No. 1194, that we may be able to determine if the presidential directive has violated such purposes or objectives or purported to carry them out. As we see it, the above laws were enacted for three principal reasons, namely, (1) to prevent a drain on the dollar resources of the country or its money, occasioned by the importation of big quantities of Virginia type cigarettes; (2) to provide means of livelihood to farmers in the Ilocos provinces, as Virginia leaf tobacco is planted on higher land from which rice has already been harvested; and (3) to provide a continuous source of revenue, taxes on high grade cigarettes being much higher than others. There are also two concomittant objectives resulting from the adoption of the law, namely, to develop the cigarette industry and provide work for women labor and to minimize smuggling of cigarettes.

The circumstances found to be existing at the time of or before the adoption of the presidential directive are as follows: The ACCFA stock of tobacco had increased but a great amount of the surplus tobacco were of a lower grade or quality, which was purchased and accumulated because they could not be manufactured into cigarettes without the use of imported Virginia tobacco for blending purposes. The reasons for the existence of surplus stock of low grade tobacco are: first, over-production by farmers who paid more attention to the bulk of their products than to their quality; second, the acceptance of low grade tobacco from farmers notwithstanding the prohibition of the law; third, dishonest officials upgraded the tobacco passing them to the ACCFA as of high quality and collecting the corresponding prices therefor as of high grade or high quality, but paying prices thereof to the farmers at their actual (low) grade. In addition to these (according to the Central Bank's reports), farmers' credit had not been paid or were paid only after considerable delay. The reason is the Central Bank had become reluctant to furnish the needed funds with which to make the purchases because of the ACCFA's default in the payment of its outstanding obligations. Hence, the offer of the Agro to import under the Commodity Loan Agreement of the Fimco, high grade leaf tobacco without the need of dollars from the Central Bank, and to buy low grade leaf tobacco from the ACCFA's stock so as to diminish the surplus low grade stock that it had in its warehouses, appeared very appropriate to the situation and beneficial both to farmers and to the Government and its agencies, like the Central Bank, the Philippine Virginia Tobacco Administration and the ACCFA. It can be readily seen that it was not difficult for the committee created by the President to arrive at the conclusion that it made and for the President to make the decision to authorize the Agro to make the importation in accordance with its offer. The objectives of the law, such as the saving of the wealth of the country resulting from not paying for importation of cigarettes, the furnishing of employment to tobacco farmers or planters because funds would then become

available to the ACCFA for the purchase of their products, and the maintenance of the level of revenue to be obtained from the specific taxes on imports of manufactured cigarettes, would be obtained. With these circumstances we are forced to the conclusion that the presidential directive apparently, if not evidently, satisfies the aims, purposes and objectives of the authors of Republic Act No. 698, as amended; that the presidential directive was approved in pursuance of their intents and purposes and in accordance with the law's objectives.

These can readily be shown by the considerations that led to the approval of the presidential directive. Said considerations are as follows:

"The cabinet at its meeting today discussed anew the immediate problems of finding ways and means for the disposal of the 47 million kilos of ACCFA stock of low-grade Virginia leaf tobacco to enable the government to settle its P155 M outstanding obligations to the Central Bank and the farmers, as well as the importation of foreign leaf tobacco for blending purposes in sufficient quantity to maintain the preceding year's level of production of tobacco products. The Cabinet considered both the report of the Special Cabinet Committee designated to study the matter as well as the opinions of the Secretary of Justice and other members thereon. During the Cabinet deliberations, the President went on record to say that it was his view that the proposition reached by the Cabinet Committee was the best means of attaining three objectives, namely, (1) to dispose of approximately 47 million kilos of ACCFA's low grade Virginia tobacco stocks; (2) to liquidate the ACCFA indebtedness of F155 M to the Central Bank and the farmers and (3) to maintain the high quality of local tobacco products."

Having arrived at this conclusion, we now come to consider the objection that the requirements of Republic Act No. 1194 have not been complied with, as to the certifications of towns producing Virginia leaf tobacco for sale. The provision of the law on the matter is as follows:

"After the harvest of tobacco every year, and after the reports of every town recorded in the Bureau of Plant Industry as growing Virginia leaf tobacco, through their respective councils, have been received by the ACCFA, and after all Virginia leaf tobacco for sale in their respective areas shall have been bought by the ACCFA or any Government agency or any buyer not later than August one, the ACCFA shall report to the President whether or not the indigenous production of Virginia-type leaf tobacco in the Philippines is sufficient to maintain the manufacturers in the country of tobacco products in any year at a level sufficient to produce not less than the quantity of tobacco products manufactured in the preceding fiscal year as certified by the Bureau of Internal Revenue. x x x." (Sec. 1, Rep. Act No. 1194)

It is to be remembered that the records of the case do not seem to show the amount of Virginia leaf tobacco that had been produced in the year 1961, prior to the presidential directive; neither was there any statement that all the leaf tobacco production had been already purchased by the ACCFA or any buyer. But assuming that there was a great amount of production in the harvest of 1961, the fact is that by the end of 1960, the ACCFA had already a surplus stock of low grade tobacco which could not be used in the manufacture of cigarettes and could not be disposed of, as a great portion of the production had been of low grade leaf tobacco which could not be manufactured into cigarettes without the use of imported Virginia leaf tobacco for blending. Neither could the requirement that all the harvest of tobacco leaf be purchased be complied with because the ACCFA no longer had money with which to make further payments to the farmers or further purchases from them, the Central Bank having refused to advance further loans to the ACCFA due to the latter's failure to make payments of its obligations in time and its outstanding overdue account then amounted to P134,000,000. Under these circumstances, it was impossible to wait for compliance with the, requirement of Republic Act No. 1194, not only as regards the certifications from the municipal councils because the certificates were not made at all, but also as to the fact that all tobacco leaf harvests had been purchased by the ACCFA or by any buyer. The government agencies were found in an embarrassing situation as they had a surplus stock of low grade tobacco which could

not be manufactured immediately into cigarettes; the ACCFA had no more funds with which to make further payments for the tobacco leaf newly harvested and the Central Bank had refused to extend further advances to it in view of its big outstanding overdue account of P134,000,000. Evidently, it was to get out of this tight and embarrassing situation that the committee of the Cabinet recommended to the President the approval of the proposition of the Agro, and the President, in accordance therewith, issued the presidential directive in question. Under these circumstances, we hold that if the strict letter of the law was not complied with, the spirit of the law was followed and the attainment of its objectives, then impossible of realization, rendered possible.

The other objection to the directive is the claim that only manufacturers of tobacco products have the right to import high grade Virginia leaf tobacco for blending purposes. We have found no such provision in the law. What we have found is that imported tobacco shall be allocated among the manufacturers of tobacco products, thus:

"Sec. 1-a. Virginia-type leaf tobacco authorized to be imported under this Act shall be allocated and distributed by the Monetary Board of the Central Bank among legitimate manufacturers of Virginia-type cigarettes on the basis of the production of each factory as reflected in its payment of specific taxes for Virginia-type leaf cigarettes for the twelve-month period immediately preceding the month for which allocation is to be granted, taking also into consideration the stock inventory of each factory at the close of the calendar month preceding the allocation: Provided, That no manufacturer of Virginia-type cigarettes shall be entitled to the allocation provided for herein unless he presents a certificate showing that he has purchased locally produced Virginia-type leaf tobacco as provided in section 1-c hereof." (Sec. 2, Hep. Act No. 1194).

It must be added that discretion is vested by law in the President. It should also be noted that the test, upon which an importation may legally be allowed, is the possibility of maintaining the level of production of manufactured tobacco (cigarettes), not the level of the yearly harvest of tobacco. That in the immediate and important requirement that the law demands before the President may authorize importation of high grade Virginia leaf tobacco. Said requirement was complied with when the Commissioner of Internal Revenue issued the certificate stating that there was only a stock of Virginia leaf tobacco for the purpose of cigarette manufacture enough to last four months, and that because of the lack of imported Virginia leaf tobacco for blending purposes the smoking public would shift to the use of cigarettes of the lower tax bracket resulting in a reduction of specific tax collections. We might add that, in view of human nature—our need to satisfy our vices at any cost—the public, which is accustomed to using aromatic cigarettes in which Virginia leaf tobacco has been used for blending would be forced to smuggle or buy such kind of cigarettes from smugglers, thus increasing smuggling and lowering tax collections, and defeating the purposes of the law. So that, in our opinion, the exercise by the President of his discretion appears to have been in conformity with the language, if not the strict terms, of the law; but it was surely in accord with its ultimate purposes and objectives. This is evident because by the importation allowed in the directive ACCFA's surplus would be disposed of, farmers paid their harvests, cigarette consumers provided with high grade cigarettes, and internal revenue bolstered, with all the concomitant benefits to the economy. Having arrived at the above conclusion, and following the well-established principle of separation of powers and the rule that courts may not interfere with the executive, especially the President, in the exercise of the discretion expressly vested in him by the law—

"Sec. 190. Judicial Interference with Executive Department.—Closely akin to the problem of judicial encroachment upon executive power is the situation in which an attempt is made to obtain judicial interference in executive functions. It is a general rule that the courts are without the power to interfere in the performance of executive duties, particularly where the executive must exercise discretion in the performance of constitutional or statutory powers. x x x." (11 Am. Jur. 889.)

we are forced to declare that there certainly are no justifiable reasons or grounds for declaring the presidential directive invalid as claimed by the petitioners.

We note from the order sought to be reviewed that the lower court had only assumed, but not actually decided, the validity of the presidential directive. This is of course contrary to the provision of the rules to the effect that a writ of preliminary injunction should only be granted if the party asking for it is entitled thereto. The lower court should, therefore, have first made a determination as to whether or not the Agro was entitled to the issuance of the writ of preliminary injunction by passing upon the validity of the presidential directive. But we have overlooked this discrepancy in the procedure adopted by the lower court and have decided to pass upon the question of the validity of the presidential directive ourselves, believing that by doing so we would be putting an end to a dispute, a delay in the disposition of which has caused considerable damage and injury to the Government and to the tobacco planters themselves.

Still another point requires consideration. This is the order of the President of January 10, 1962 revoking the presidential directive issued by President Garcia on July 31, 1961. We also refer to the various administrative orders issued by the Commissioner of Customs demanding the seizure and confiscation of the tobacco imported by the Agro, the subject of the dispute in this litigation. We believe that the order of President Macapagal revoking President Garcia's directive was adopted as a precautionary measure to prepare the Government for the seizure and confiscation of the tobacco in case the courts would declare the directive invalid and the imported tobacco subject to seizure and confiscation. There is, therefore, no need, in view of our conclusion that the presidential directive is valid, to pass upon the effect of this subsequent presidential revocation.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the petitions in both cases, G. R. Nos. L-19440 and L-19447, are hereby denied, and the order issued by respondent judge directing the preliminary mandatory injunction affirmed, without costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

RESOLUTION

July 31, 1962

LABRADOR, J.:

In a motion dated May 22, 1961 petitioners Commissioner of Customs and Collector of Customs pray this Court that the following questions be clarified.

Whether the respondent Agro-Industrial Products, Inc. may be entitled to the release and delivery of the imported Virginia leaf tobacco subject of the proceedings upon payment of the tariff duties that were in effect until December 31, 1961, or such as were collectible starting on January 1, 1962.

Whether the sun-dried or filler tobacco purchased by the Agro from the farmers or the Facomas should be exported by said respondent Agro-Industrial Products, Inc.

Petitioners claim that the reference made in the lower court's order of duties payable on the shipment amounting to P19,617,853.00 was merely by way of comment; that the assessment of tariff duties is not within the jurisdiction of courts of first instance since the enactment of Republic Act No. 1125; that no tender of payment of such amount of P19,617,853.00 was ever made; that said amount represents 1961 duties on 1,718,240 kilos of imported leaf tobacco, but the balance of the shipment should be at the rates of tariff duties in 1962.

The respondent denies all the ab»ve claims, contending that both the order of the court and Agro's own motions expressly stated that Agro tendered payment of taxes and charges due in the amount of approximately

P19,617,853.00 but payment was rejected by the Collector of Customs; that the tender of the said amount was admitted by the customs officials; that in Agro's counterclaim it was prayed that the court declare that by the tender of the duties duly made, the importation may be discharged upon payment of the amount of approximately P19,617,853.00; that in their pleadings movants have admitted that the Agro had offered to file customs entries, etc.

An examination of the record confirm the above claim of tender of import entries and of customs duties, taxes, etc. in the amount of P19,477,298.00 on the leaf tobacco importations arriving in Manila on different dates, from October 31, 1961, to December 30, 1961, thus:

"i) Under date of December 29, 1961 and prior to the expiration of the year 1961 and the coming into effectivity this year of an increase by 50% in the customs duties on all imported merchandise from the United States under the Laurel-Langley Agreement (from 50% to 75%) which increase is estimated in the amount of P9,808,926.50, herein defendant, through its importing entity under the Commodity Loan Agreement, the Fimco of the Philippines, Inc., filed with the Collector of Customs, Manila, as the public official having immediate supervision over said port, the corresponding entry forms duly accomplished, together with other documents for consumption covering its said importation of said tobacco which had all arrived in the year 1961 and tender of payment of the duties, taxes and other charges due thereon in the total amount of P19,477,298.00, itemized as follows:

x x x x x x

"(Copies of said tender of payment contained in two letters both dated December 29, 1961 are hereto attached and made integral parts hereof as Annexes '9' and '9-A'.)

"j) The Acting Collector of Customs declined to accept the said entries and tender of payment, per his letter dated December 31, 1961 (copy of which is hereto attached and made an integral part hereof as Annex '10')."
(Amended and Supplemental Answer Of Agro-Industrial Products, Inc., Annex "Q" to petition.)

"e) Ordering the Commissioner of Customs and the Collector of Customs and all their subordinates and all persons acting under them to effect the immediate release of the said imported tobacco, upon payment of the duties, etc., payable thereon in the said amount of F19,617,853.00." (Prayer, supra)

The filing of entry forms is evidenced by Annex 9 of the amended answer of Agro. The refusal thereof is evidenced by Annex 10 to said amended answer.

In the answer of the petitioners herein to the crossclaim of the Agro, they expressly admitted the offer to the file entry papers and payment of the duties and the refusal of the Collector to accept them, thus:

"8. That they admit the allegations in paragraph 20 (i) of the Amended and Supplemental Answer with cross-claim that the AgroIndustrial Products, Inc., offered to file certain customs entries for certain importations of Virginia leaf tobacco and likewise offered the tender of payment of the estimated duties, taxes and ether charges due thereon; with the qualification that said offer was justifiably rejected by the Acting Collector of Customs of Manila for the reason that they were not accompanied by the necessary release certificates from the Central Bank and the list of authorized local manufacturers of cigarettes which are the beneficiaries of said importations;" (Answer, Annex "T" to Petition.)

The order of the judge below granting the injunction confirms the offer to present unpaid entries and the tender of the duties, thus;

"3) To compel the Commissioner of Customs and his Deputy, the Collector of Customs for the Port of Manila and all their subordinates, employees and all persons acting under them, upon presentation of such release certificate of the Central Bank to immediately effect the release and delivery of the said imported tobacco

shipments to the herein defendants or its nominees, upon payment of the duties, etc. payable thereon as above stated." (Order, Annex "U" to Petition.)

One very important thing to note is the fact that when the Agro presented its cross-claim, alleging the tender of payment of the 1961 customs duties, the petitioners did not allege or claim in reply that the customs duties so tendered were not the customs duties chargeable on the importation, but the customs duties imposable beginning January 1, 1962. When the Judge of the lower court entered its order granting the writ of preliminary injunction, neither was its attention called to the petitioners' claim that the Agro should pay the 1962 customs duties. Finally, when the case came to this Court for a review of the order granting the writ of preliminary injunction no mention was ever made of petitioners' present claim that the customs duties due are those chargeable or collectible in the year 1962, and not those in force in 1961. As a consequence, we were constrained to affirm the order of the lower court without modification, which means that we find that the duties collectible were the duties in force in 1961 and not those in 1962. For all these reasons the answer to the first question should be thus: those collectible in 1961.

On the second point sought to be clarified, the pleadings do not contain any allegations about the supposed obligation of the Agro to export the sun-dried or filler tobacco purchased; neither does the presidential directive, under whose authority the importation was made, impose such exportation as a condition for the importation of Virginia leaf tobacco. The query is, therefore, answered in the negative. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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