

THE COMMISSIONER OF CUSTOMS AND THE COLLECTOR OF CUSTOMS FOR MANILA, PETITIONERS, VS. JEA COMMERCIAL AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-11538. May 28, 1958

Ponente: FELIX, J.

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FELIX, J.:

This is a petition filed by the Solicitor General to review the amended decision of the Court of Tax Appeals in CTA Case No. 144, setting aside and reversing the decision rendered by the Commissioner of Customs in Seizure Identification Cases. Nos. 2008, 2009 and 2027. The facts of the case are follows:

Jea Commercial, a business concern operating under such name, appeared to be the consignee of various merchandise aboard the vessel S.S. Talabot which dropped anchor at the port of Manila from Hongkong on October 3, 1954, consisting of 13 cases of ham in bulk, declared under Entry No. 78563, valued at P4,050.00, accompanied by commercial invoice No. 437, bill of lading No. 8 dated October 1, 1954, a delivery permit, Official Receipt No. 13939 in the amount of P1,110.28 representing estimated duties and advance sales tax, Official Receipt No. 13970 dated October 5, 1954, in the sum of P4.67, representing additional estimated duties and sales tax; and of 5 packages of dried clams, bamboo shoots and dried abalone, declared under Entry No. 78564, valued at \$209.85, covered by commercial invoice No. 435, bill of lading No. 9 dated October 1, 1954, a delivery permit, Official Receipt No. 13930 in the sum of P96.81 for estimated duties and advance sales tax.

A shipment of various merchandise from Hongkong contained in 68 packages was similarly brought into the port of Manila on board the vessel S.S. Dona Bebang on October 4, 1954, consigned to the same Jea Commercial. The goods, valued at \$3,505.00, were covered by commercial invoice dated September 27, 1954, bill of lading dated September 27, 1954, for 68 packages, a delivery permit, Official Receipt No. 14362 in the amount of P1,829.27 for estimated duties and advance sales tax, and another Official Receipt No. 14653 in the sum of P44.29 representing additional duties and sales tax.

As said shipments were not accompanied by any consular invoice or ban release certificate, the Collector of Customs, contending¹ that such omission constituted a violation of Central Bank Circular Nos. 44 and 45, ordered seizure of the same pursuant to Sections 1250, 1363 (f), (m) 3, 4, and 5, of the Revised Administrative Code. In the meantime and on application of the consignee, the detailed goods were released pending the seizure proceedings upon the filing of PISC Bonds Nos. 094, 095 and 107 guaranteed by the Pioneer Insurance & Surety Co. in the total amount of P21,639.73.

On April 2, 1955, the Collector of Customs, taking into account the indisputable fact that the importations in question were not covered by release certificates nor by licenses issued by the Central Bank as required by Central Bank Circulars Nos. 44 and 45, held that said importations being so unauthorized were violative of the law and therefore subject to forfeiture under Section 1363 (f) of the Revised Administrative Code. And as it appeared that the merchandise were already released upon the filing of bonds in the sum of P21,639.73, the Collector nf

Customs ordered the payment of the same in cash. Claimant Jea Commercial thus brought the matter to the attention of the Commissioner of Customs who, on May 19, 1955 affirmed in toto the conclusion arrived at by the Collector of Customs. From this later ruling claimant brought the case to the Court of Tax Appeals by filing a petition seeking the reversal of the ruling rendered by the aforementioned officials. It was contended, among others, that the Central Bank was without authority to issue Circular No. 45 relied upon by respondent officials, there being no provision in Republic Act No. 265 creating and defining the powers of the Central Bank to warrant the imposition of any control on imports that do not involve the sale of foreign exchange. It is likewise argued that Circular No. 44 could not also be invoked because it deals with importations involving dollar exchange, which was not the situation in the case.

Respondents Commissioner of Customs and the Collector of Customs of the port of Manila filed their answer thereto asserting that the entries of the merchandise were effected without the corresponding-consular invoices as required by Section 17 of the Philippine Tariff Act of 1909 nor by affidavits and proforma invoices as provided for by paragraph 3 of Customs Administrative Order No. 50. That as the aforesaid merchandise were unloaded in the Philippines in violation of the Philippine Tariff Act of 1909 and in view of the provisions of Sections 1250 and 1363 (f) of the Revised Administrative Code, they could be made the subject of forfeiture under the Customs Law. The issues having been joined and after the parties had agreed on a stipulation of facts, the Court of Tax Appeals rendered judgment dated April 2, 1956, holding that while it was of the opinion that the Central Bank of the Philippines was devoid of any power or authority to place under control importations which do not require the sale of foreign exchange, yet in view of claimant's failure to show that the shipments in question did not involve foreign exchange, it was assumed that they involve dollar remittance. Hence, considering that under Section 1363 (f) of the Revised Administrative Code, the Collector of Customs is empowered to order the seizure and forfeiture of merchandise the importation of which is effected contrary to law, and as Circulars Nos. 44 and 45 had been issued pursuant to law and therefore had the force and effect of a law, the importation of merchandise contrary to said provisions was contrary to law within the meaning of the aforementioned section 1363 (f) of the Administrative Code, and therefore subject to forfeiture. The tax Court thus decreed the forfeiture of PISC Bonds Nos. 094, 095 and 107 in the total amount of P21,639.73 in favor of the Government. Jea Commercial was notified of this decision on April 12, 1956.

In a motion dated May 8, 1956, petitioner Jea Commercial prayed for the reopening of the case on the ground that its failure to present evidence during the hearing to prove that the importations subject of the controversy were actually no-dollar remittance importations, was due to excusable negligence for counsel for petitioner believed that the cause of the seizure and the implied admissions of respondents in the decision appealed from were already sufficient to establish such fact. It was further alleged that petitioner had in its possession positive and sufficient evidence to the allegation that said importations did not involve the sale of foreign exchange. This urgent motion to reopen the case was accompanied by an affidavit of merit executed by one of the lawyers for petitioner stating the aforementioned grounds upon which said motion was based.

Ruling upon said motion, the Tax Court pronouncing that counsel's failure to present positive proof of their allegations was attributable to said lawyer's mistake to which petitioner was bound, and it appearing that petitioner had failed to establish prima facie that it was not guilty of inexcusable negligence, denied the same in its resolution of June 20, 1956.

Petitioner, invoking equity and justice, in a motion dated June 25, 1956, prayed for the reconsideration of the resolution of the lower Court of June 20, 1956, and that its previous motion to reopen the case, on the ground that it had sufficiently alleged and established that it was not guilty of inexcusable negligence, be given due course. This motion was actually filed on June 29, 1956. Petitioner likewise filed a supplemental motion dated July 11,

1956, which was actually received by the Court on July 12, 1956, this time contending that from the stipulation of facts submitted by the parties, it appeared that Exhs. A, A-1 and A-2 admitted as evidence during the hearing contained the phrase no-dollar remittance, to which respondents and the representatives of the Central Bank offered no objection; that as seizure proceedings partake of the nature of criminal action, the onus probandi to establish the offense charged was incumbent upon the prosecution and as there was a dearth of evidence indicating that there was dollar remittance or sale of foreign exchange involved, the mark no-dollar remittance appearing on the documents produced in evidence must be given more weight. It was therefore prayed the Court that its decision of April 2, 1956 be reconsidered or a new trial be granted for the introduction of additional evidence to support its claim that the importations in question did not involve dollar remittance.

Passing upon this motion for reconsideration filed on June 29, 1956, supplemented by another motion filed on July 12, 1956, and finding that the stipulation of facts submitted by the parties during the hearing of the case allegedly substantiated petitioners' allegation that the importations in question did not involve sale of foreign exchange, the Court a quo set the case for hearing. And the Court of Tax Appeals after due hearing issued an amended decision finding that there was sufficient and satisfactory evidence to show that the said shipments were on no-dollar remittance basis pointing out to the entry declarations which were duly covered and supported by corresponding invoices. Holding that the Central Bank had no power or authority to control imports which do not involve the sale of foreign exchange and as the importations in question involved "no-dollar remittance", the Court ruled that the merchandise could not be subjected to forfeiture, thereby reversing the decision of the respondent Commissioner of Customs and ordering for the cancellation of PISC Bonds Nos. 094, 095 and 107. The motion filed by the Solicitor General for a reconsideration of its order granting a new hearing was correspondingly denied. Hence, the Solicitor General in representation of the Commissioner of Customs and the Collector of Customs for the port of Manila filed the instant petition for certiorari to review the said amended decision alleging that the Court of Tax Appeals erred:

- In rendering an amended decision after the original decision had already become final and executory;
- In holding that the Central Bank of the Philippines under Republic Act No. 265 has no power to issue Circulars Nos. 44 and 45 in so far as they regulate imports for which no foreign exchange is required or will be required; and
- In holding that the merchandise in question is not subject to forfeiture under paragraphs (f) and (m) 3, 4 and 5 of Section 1363 of the Revised Administrative Code.

In connection with the first assigned error, the Solicitor General alleges that herein respondent Jea Commercial received copy of the decision of the Court of Tax Appeals upholding the ruling of the Commissioner of Customs and ordering for the confiscation of the bond on April 12, 1956, which allegation remained uncontroverted. And the said respondent took exception to this decision by filing an urgent motion to reopen the case on the ground of excusable negligence dated May 8, 1956, which pleading was received by the Court on May 9, 1956. This motion was, however, denied by resolution of the Court of June 20, 1956, received by counsel for respondent on June 23, 1956. On June 25, 1956, respondent Jea Commercial again filed a motion entitled "motion for reconsideration" based on the same ground as the first one which was already denied, and before the Court could make a ruling on the same, another motion supplementing the aforesaid motion for reconsideration was filed on July 11, 1956. In its resolution of August 17, 1956, the Court a quo ordered for the rehearing of the case. It could be seen from the foregoing that from April 12, 1956, when counsel for respondent received copy of the decision to May 9, when the first motion was filed, a period of 27 days had already elapsed. While it is true that the prescribed period was suspended by the filing of said motion, it continued to run again upon receipt of respondent's counsel on June 23, 1956, of the order of the Court denying the aforesaid motion. On June 25, 1956, when the so-called motion for

reconsideration was presented in court, a period of 29 days had already lapsed. Had this latter pleading, filed within the 30-day period within which to perfect an appeal, interrupted or caused the suspension of the running of the period within which the decision would become final, the ruling of the court a quo reopening the case and setting the same for hearing, would be proper. But we find it to be otherwise.

Respondent argues that the first motion filed on May 9, 1956, was made pursuant to Sections 2 and 3 of Rule 38 and cannot be considered as a motion for new trial. There can be no question that under the aforesaid rule, a party adversely affected by a decision, order or ruling may seek relief from the same by filing with the Court a petition accompanied by an affidavit of merit specifying the grounds relied upon and the facts constituting petitioner's good and substantial cause of action or defense (Sees, 1, 2 and 3, Rule 38). Even a cursory reading of the provisions of said rule, however, would reveal that the remedy thus allowed could only be availed of under special circumstances and that they are intended to cope with the situation where on account of some conditions or contingency, equity and justice may prompt the court to give the party so unfavorably affected, a last chance to defend his right or protect his interest. Thus said rule is applicable in cases where the judgment or order from which relief is being sought has already become final and executory; otherwise, the proper recourse would be for the party to apply for the remedy afforded by Rule 37. In the case at bar, despite respondent's protestations that its motion styled "Urgent Motion to Re-open the Case"—filed 27 days after respondent was notified of the decision and, therefore, within the prescribed period—was made pursuant to Rule 38 and was not one for new trial under Rule 37, we must have in mind that the motion states that respondent's failure to present evidence during the hearing was allegedly due to excusable negligence, which is also one of the grounds for relief under Rule 37,

Apparently, respondent's purpose in advancing the aforesaid argument is to impugn petitioners' assertion that the order of the lower court allowing the re-opening of the case was issued after the decision had already become final, but in its desire to attain this end, respondent Jea Commercial is caught in the maelstrom of its conflicting theories and confusion. For even if the often repeated urgent motion of May 9, 1956, could be treated as one for relief under Rule 38, it would be of no significance to its case, nor serve respondent's purpose, it being clear that Rule 38 could only be availed of as a last and ultimate remedy under special circumstances and is not supposed to suspend the running of the period within which to appeal from a judgment or order because the latter had already attained its status of finality. It, therefore, goes without saying that said urgent motion allegedly filed pursuant to Rule 38 could by no means suspend the running of the prescribed period of appeal and the same thing can be said of the motion for reconsideration, dated June 25, 1956, as well as of the supplemental motion dated July 11 of the same year, for they were filed after the lapse of 30 days from April 12, 1956, the date when respondent was notified of the decision of April 2, 1956. It is to be noted in this connection that respondent's motion for reconsideration filed on June 25, 1956, was based on the same ground as the first one, which was already denied and, the filing of said motion did not operate to suspend the running of the period for the filing of an appeal from a decision which attained its finality on June 26, 1956. This is so because in order that a second motion for new trial or reconsideration may suspend the running of the period to appeal, that motion must be based on a ground not existing when the first one was made (Sec. 4, Rule 37) ; or must not be a reiteration of the first (Rili vs. Chunaco, [*]48 Off. Gaz., 614), unless the ground relied upon in the second motion was not available at the time the first one was filed. Consequently, the supplemental motion of July 11, 1956, submitted out of time and when the lower court had already lost jurisdiction over the case, could not empower the respondent Court to set aside its previous decision and much less to reverse it by finding that the claimant Jea Commercial was not able to prove through excusable negligence that the importations in question did not involve the sale of foreign exchange. As the decision became final on June 26, 1956, without an appeal having been perfected, the lower court already lost control over the same (Arnedo vs. Llorente, 18 Phil., 257; Anuran vs. Aquino, 38 Phil., 29; Veluz vs. Justice of the Peace of Sariaya, 42 Phil., 557; Contreras vs. Felix, 78 Phil., 570), and any order by said court subsequent

thereto would only be ultravires and a nullity.

In view of the conclusion thus arrived at and as the two other questions raised in this appeal necessarily depend on the validity of the order setting the case for rehearing, any dissertation on said issues would serve no purpose.

Wherefore, the resolution of the Court of August 17, 1956, and the amended decision of October 18, 1956, are hereby set aside and the said Court's decision of April 2, 1956, revived and considered with full force and effect, it having become final and executory. Without pronouncement as to costs. It is so ordered.

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

[*]87 Phil., 545.

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