

ANDSES E. LAZARO, PETITIONER, VS. THE COMMISSIONER OF CUSTOMS, RESPONDENT.*G. R. Nos. L-21790 & 21794. December 24, 1965*

Ponente: BENGZON, J.P., J.

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On August 31, September 27, October 1 and 3, 1954, shipments consisting of two (2) bundles of fish fins, seventy-seven (77) packages of various kinds of foodstuffs, seven (7) packages of candies and five (5) packages of shrimps, invoiced at US\$5,775.60 and consigned to Andres E. Lazaro arrived in Manila from Hongkong. For lack of a Central Bank release certificate required by Central Bank Circulars 44 and 45, the Collector of Customs of Manila instituted seizure proceedings against said importations under Seizure Identification Nos. 1877, 2003, 2015 and 2016, pursuant to Section 1250 and 1363 (f) of the Revised Administrative Code. Pending the seizure proceedings said goods were released to the consignee under Surety Bond No. 54/4460 for P576.40 of Paramount Surety and Insurance Co., Inc., Surety Bonds Nos. 2950 and 2956 for P10,530.00 of Century Insurance Co., Inc. and Surety Bond No. 097 for P6,910.00 of Pioneer Insurance and Surety Corporation. In appraising the importations for purposes of the seizure proceedings, the Collector of Customs used their invoice value and added arrastre, hauling, brokerage, stamps, and bank charges, as well as estimated 30% profits, in accordance with Section 1377 of the Revised Administrative Code. On this appraisal, Andres E. Lazaro and his sureties based the amount of their bonds aforementioned. Customs duties and taxes due on the goods were paid by the consignee.

On February 14 and April 26, 1955, in two separate decisions, the Collector of Customs of Manila declared the goods forfeited and ordered the consignee to pay the total sum of P18,047.40. Upon appeal, the Commissioner of Customs affirmed said decisions. Whereupon, Andres E. Lazaro appealed to the Court of Tax Appeals which in turn affirmed the decisions of the Commissioner of Customs. Not satisfied with the decision of the Court of Tax Appeals, Lazaro brought the instant appeal presenting the following issues: (1) May the importations in question be seized and declared forfeited for lack of a Central Bank release certificate? (2) Did Republic Act 1410 and Central Bank Circular 133 repeal Central Bank Circulars 44 and 45 and thereby abate liability incurred thereunder? (3) Should the 30% estimated profits be considered part of the appraised value of the importations?

The issue of whether or not the importations in question are subject to forfeiture for lack of a Central Bank release certificate in violation of Central Bank Circulars 44 and 45 in relation to Section 1363 (f) of the Revised Administrative Code has already been answered in the affirmative in previous cases involving similar facts.[1] We see no cogent reason to alter our previous rulings.

Central Bank Circular 133 did not repeal Circulars 44 and 45 with respect to the necessity of a release certificate. As a matter of fact, paragraph 6 of Circular 133 required imports to be released only upon presentation of a release certificate issued by the Central Bank. Not only that, Section 14 of Circular 44 which states:

"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."

was deemed incorporated to Circular 133 by virtue of paragraph 8 thereof which we quote hereunder:[2]

"8. All existing circulars, rules, regulations, and conditions governing transactions in foreign exchange not inconsistent with the provisions of this Circular, are deemed incorporated hereto and made integral parts hereof by reference."

With 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, for Section 3 thereof says:

Sec. 3. * * * Provided, however, That goods and commodities in transit or previously imported on a no-dollar remittance basis at the time of the approval of this Act shall not be affected by the operation of this Act." (Underscoring supplied)

Said goods had already been imported and declared forfeited by the Collector of Customs of Manila when Republic Act 1410 was enacted on September 10, 1955.

Petitioner maintains that in appraising the importations, Rule 13 (a) of Section 2 of the Philippine Tariff Act of 1909, as amended, in relation to Section 1280 of the Revised Administrative Code, quoted below,

"RULE 13. (a) Whenever imported merchandise is subject to an ad valorem rate of duty, the duty shall be assessed upon the actual market value of wholesale quantities, at the time of exportation to the Philippine Islands, in the principal markets of the country from whence imported, and in the condition in which such merchandise is there bought and sold for exportation to the Philippine Islands, or consigned to the Philippine Islands for sale, including the value of all cartons, cases, crates, boxes, sacks, and covering of any kind, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the Philippine Islands."

"Sec. 1280. Duties of appraisers.—Under the orders of collectors of customs, appraisers shall appraise the merchandise in the unit of quantity in which the merchandise is usually bought and sold, and supervise the appraisal and classification of all merchandise goods, wares, and effects, of whatever description, whether dutiable or free, which may be presented to them in proper form or for the appraisal or classification of which the proper order may have been received.

"Appraisers shall be responsible to the collectors of customs for the correct appraisal of all such goods; that the amounts, classes, and values returned by them are in all respects accurate and correct, and that the paragraphs, subparagraphs, rules and dispositions of the tariff, and of this title, and the rules and instructions of the Commissioner in respect thereto have been correctly applied and followed."

should be applied, in which case the appraised value of the importations should be equivalent to their market value in the country of origin, thereby precluding the inclusion of the 30% estimated profits as part of the local appraised value.

The contention has no merit. Rule 13 (a) of the Philippine Tariff Act of 1909, as amended, relates to the appraisal of importations for purposes of determining the customs duties[3] For appraisal of importations in connection with seizure proceedings, the value of the importations in the local market should prevail, following Section 1377 of the Revised Administrative Code which provides:

"Sec. 1377. Description and appraisal of seized property.—The collector shall also cause a list and particular description of the property seized to be prepared and an appraisal of the same at its value in the local market to be made by at least two appraising officers under the revenue laws, if there are such officers at or near the place of seizure, but if there are not, then by two competent and disinterested citizens of the Philippines, to be selected by him for that purpose, residing at or near the place of seizure, which list and

appraisement shall be properly attested by such collector and the persons malting the appraisal." (Italics supplied)

Moreover, the inclusion of the 30% estimated profits as part of the value of the importations in question was made with the acquiescence and approval of the appellant. As a matter of fact, the amount of the bonds posted by him upon release of the goods carried the 30% estimated profits. The payment of such estimated profits as part of the value of the importations in the surety bonds therefore constitutes his contractual obligation in case of forfeiture.

Wherefore, the decision appealed from is hereby affirmed, with costs against appellant. So ordered.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Dizon, Regala, Makalintal and Zaldivar, JJ., concur.

Decision affirmed.

[1] *Seree Investment Company vs. Commissioner of Customs*, L-21217, November 29, 1965 and cases cited therein.

[2] *Bombay Department Store vs. Commissioner of Customs*, L-20489, June 22, 1965; *Bombay Department Store vs. Commissioner of Customs*, L-20460, September 30, 1965.

[3] See *Lim Quim vs. Collector of Customs*, 23 Phil. 509.

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