

THE COMMISSIONER OF CUSTOMS, PETITIONER, VS. FRUCTUOSO NEPOMUCENO, RESPONDENT.

G.R. No. L-11126. March 31, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

Fructuoso Nepomuceno was the consignee of 83 and 100 packages of Garlic which were shipped by Sun Kwong Hong of Hongkong, and which arrived in Manila on August 27 and 31, 1954, per S.S. Hervar and S.S. Templar as shown by Custom's Entry Declarations Nos. 68225 and 69502, both series of 1954, covered by invoices issued by the shipper and the corresponding bills of lading. The goods were declared subject for Seizure and Forfeiture by the Collector of Customs Seizure Identification Nos. 1843 and 1885).

After the Seizure Proceedings, the acting Collector of Customs rendered the following judgment:—

"WHEREFORE, by authority of Section 1379 of the Revised Administrative Code, it is ordered and decreed that the merchandise covered by Seizure Identification Nos. 1848 and 1885 be, as they are hereby declared forfeited in favor of the Government of the Republic of the Philippines. As the subject shipments had been released under Surety Bonds Nos. A-SP-54/574 and A-SP-54/575 of the Visayan Surety and Insurance Corporation, dated September 1 and September 6, 1954, respectively, filed for the release of the same, it is hereby ordered that the claimant be required to pay in cash the amount of SIXTY THOUSAND FOUR HUNDRED TWENTY-SIX PESOS and SEVENTY SIX CENTAVOS (P60,426.76) Philippine currency, covered by the bonds, and if said amount is not paid within thirty (30) days from the date of demand for payment, action should be filed in court to effect collection thereof."

The above decision was affirmed by the Commissioner of Customs on March 31, 1955. Nepomuceno filed a Petition for Review with the Court of Tax Appeals, wherein he questioned the legality of the Seizure, contending that the Central Bank Circulars Nos. 44 and 45, upon which the seizure was based did not contemplate importations where no foreign exchange is involved, and that the Merchandise do not come within the scope of Section 1363 (f) of the Revised Administrative Code. In Answer, the Commissioner and Collector of Customs, interposed the Special Defenses that said Circulars have the force of law; that the respondents Customs' officials conducted the seizure in accordance with the law then enforce (Sec. 1363 [f] and Sec. 1250); that the merchandise which involves no-dollar remittance must have been paid for, thru the blackmarket, which is an evasion of the payment of the special excise tax on foreign exchange and against the objectives of Republic Act No. 265, the Central Bank Charter.

The case was submitted to the Court of Tax Appeals on an Agreement of Facts, the pertinent stipulations of which are —

"x x x x x x x x

"4. That the two shipments of garlic are no-dollar remittance importations;

- That both shipments of garlic were not covered by any consular-invoice or Central Bank Release Certificates

issued by the Central Bank or any of its agent banks;

- That the above stated garlic shipments were seized by the respondents on the basis of Section 1363 (f) of the Revised Administrative Code in relation with Central Bank Circulars No. 44 and 45, as shown by the Seizure Reports Nos. 1848 and 1885;

- That the 83 and 100 packages of garlic were released to the petitioner-importer by virtue of two separate orders of the Court of First Instance of Manila, issued in Civil Cases Nos. 23868 and 23920, both entitled *Fructuoso Nepomuceno versus Edilberto David, et al.*, under Surety Bonds Nos. A-SP-54/573 and A-SP-54/575;

"x x x x x x x x x x"

- That only questions of law are left in controversy, to wit: (a); Whether or not circulars No. 44 and No. 45 of the Central Bank may legally be the basis of seizure; and (b) whether the seizure and forfeiture were legal and valid or not." The Court of Tax Appeals, on July 26, 1956, rendered judgment, pertinent portions of which follow ."

The Court of Tax Appeals, on July 26, 1956, rendered judgment, pertinent portions of which follow: —

"x x x x x x x x x x"

"Central Bank Circulars Nos. 44 and 45 were promulgated by authority of Republic Act No. 265. These circulars perforce operate within the limits circumscribed by the basic law and therefore cannot legally be wider and more comprehensive in scope than the latter. Powers sought to be exercised by virtue of these circulars must have justification in statutory law: 'Derivative, potestas non potest esse major primitiva.'"

"x x x x x x x x x x"

"In conclusion, we reiterate 'our considered opinion that the Central Bank of the Philippines has no power to issue Central Bank Circulars Nos. 44 and 45 in order to regulate imports which do not involve the sale of foreign exchange, and we, therefore, declare said circulars as without force and effect insofar as they govern imports for which no foreign exchange is required or will be required'. (See *Leuterio vs. The Commissioner of Customs*, C.T.A. Case No. 25, April 18, 1955).

"WHEREFORE, the decision on appeal of the respondent Commissioner of Customs is hereby reversed. We decree the cancellation of Surety Bonds No. A-SP-54/573 for the sum of P22,934.16 No. A-SP-54/574 for the sum of P27,882.58, and No. A-SP-54/575 for the sum of P4,805.01, all of the Visayan Surety and Insurance Corporation, which were filed for the release of the two importations of garlic in question. Without pronouncement as to costs."

The above decision is now before Us on Petition for Review interposed by the Commissioner of Customs, and the dominant issue raised is "whether Circulars 44 and 45 of the Central Bank cover importations designated as 'no-dollar imports'".

The basis of the seizure proceedings at bar are section 74 of Act No. 265, Central Bank Charter and Central Bank Circulars Nos. 44 and 45, implementing said section. The pertinent portion of section 74 provides:—

"x x x in order to protect the international reserve of the Central Bank x x x the Monetary Board x x x may temporarily suspend or restrict sales of exchange by the Central Bank and may subject all transactions in gold and foreign exchange to license by the Central Bank."

Circular No. 44 of the Central Bank, dated June 12, 1953, entitled "Guiding principles governing the licensing of foreign exchange for the payment of imports" (49 Off. Gaz., No. 6, June 1953, pp. 2189-2191), states in paragraph 14, the following —

"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."

Circular No. 45, contains the following provisions—

"x x x x x x x x

"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. x x x".

During the pendency of the appeal, We have had occasions to decide the issue involved herein. Thus, in the case of Pascual vs. Comm. of Customs, 105 Phil., 1039, and Comm. of Customs vs. F. Pascual, 106 Phil., 188. We declared:—

"Section 74, Republic Act No. 265, authorizes the Monetary Board, with the approval of the President, to temporarily suspend or restrict sales of exchange and to subject all transactions in gold and foreign exchange to license during an exchange crisis in order to protect the international reserve and to give the Monetary Board and the Government time in which to take constructive measures to combat such a crisis. Circular No. 44, prohibiting the release by the Commissioner of Customs of any item of import 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, and Circular No. 45, requiring 'any person or entity who intends to import or receive goods from any foreign country from 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,' are measures taken to check the unregulated flow of foreign exchange from the country and are '"" within the powers of the Monetary Board.

"Appellant's contention is that Congress has not authorized the Central Bank to issue regulations governing imports that do not require the sale of foreign exchange, because according to him, it would not have enacted into law Republic Act No. 1410. The contention assumes that the importations do not require the sale of foreign exchange, a fact which he failed to establish.

"Appellant contends that assuming that the importations in question require the sale of foreign exchange in violation of Circular No. 44, yet they may not be forfeited under the said Circular because it does not expressly provide for the penalty of forfeiture. Circular No. 45 in part 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. Circular No. 44 requires the presentation of release certificate issued by the Central Bank or any authorized agent bank in a form prescribed by the Monetary Board for the release of import by the Bureau of Customs. Section 1363 (f) of the Revised Administrative Code provides :-

'Vessels, cargo, merchandise and other subjects and things shall, under the conditions hereinbelow specified, be subject to forfeiture:

"x x x x x x x x

(f) Any merchandise of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law and all other merchandise which, in the opinion of the collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former.

"As already stated, Circular Nos. 44 and 45 were issued by the Monetary Board within the scope of its powers. They were published in the Official Gazette in June 1953. Appellant failed to present to the Commissioner of Customs. release certificates issued by the Central Bank or its duly authorized agent banks for the importations in question. The Commissioner of Customs may, there fore, seize, them and order their forfeiture under the

aforequoted provisions of the Revised Administrative Code. It is true that neither of the Circulars provide for the penalty of forfeiture. But since the importations in question were made without the necessary import license issued by the Monetary Board pursuant to Circular No. 45 and the release certificates issued by the Central Bank or its authorized agent bank in the prescribed form pursuant to Circular No. 44, they fall within the class of 'merchandise of prohibited importation' or merchandise, 'the importation x x x of which is effected x x x contrary to law' that the Commissioner of Customs may seize and order forfeited. To sustain the appellant's theory of the case would render nugatory the aim and purpose of the law when it authorizes the Central Bank to temporarily suspend or restrict the sale of foreign exchange to licensing during an exchange crisis in order to protect the international reserve and to give the Monetary Board and the Government time in which to take constructive measures to combat such crisis," (*Italics supplied.*)

Again, in the case of *The Commissioner of Customs and the Collector of Customs vs. Eastern Sea Trading*, 113 Phil., 333, the facts of which are identical to the ones obtaining in the case at bar, We said—

"The latter (decision of the Court of Tax Appeals), is based upon the following premises, namely: that the Central Bank has no authority to regulate transactions not involving foreign exchange; that the shipments in question are in the nature of 'no-dollar* imports; that, as such, the aforementioned shipments do not involve foreign exchange; that insofar as a Central Bank license and a certificate authorizing the importation or release of the goods under consideration are required by Central Bank Circulars No. 44 and 45, the latter are null and void. x x x.

The authority of the Central Bank to regulate no-dollar imports and the validity of the aforementioned Circulars Nos. 44 and 45 have already been passed upon and repeatedly upheld by this Court (*Pascual vs. Commissioner of Customs*, 105 Phil., 1039; 56 Off. Gaz., [47] 7169; *Acting Commissioner 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* 59 Off. Gaz., [6] 900, 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 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 imports, owing to the influence and effect that the same may and have upon the stability of our pesos and its international value" (See also the *Comm. of Customs vs. F. C. Santos*, G.R. No. L-11911, March 1962).

The fact that the Commissioner failed to prove that there was actual payment for the goods and that the proceeds thereof would allegedly be part of the investment of the shipper in the company of *Nepomuceno*, did not detract from the fact that payment, and/or remittances will have to be made somehow and someday, which will eventually involve the sale of foreign exchange.

"The fact that, as claimed by the respondent, the merchandise that *Tai Fong Hong*, a business concern doing business in Hongkong, would ship to it for sale in Manila and that the proceeds thereof would be invested in any business that it might decide to engage in (Exhibit J), does not alter the conclusion that the importation would involve a future demand for the sale of foreign exchange. The proceeds of the sale of the imported merchandise or the earnings of such proceeds, if invested locally, would be or would have to be remitted, if not immediately, sometime in the future, to the shipper of the merchandise, an alien-owned business concern doing business in Hongkong" (*The Coll. of Customs vs. Serree Investment Company*, *supra*).

"x x x Even granting that the importations in question do not require an immediate sale of foreign exchange, their importation into the Philippines from another country will ultimately require the sale of such exchange. The currency of one country is not legal tender in another. To pay for imports, traders have to avail themselves of foreign exchange, which is the conversion of an amount of money or currency of one country into an equivalent amount of money or currency of another. Every import of goods, or merchandise requires an

immediate or future demand for foreign exchange." (Pascual vs. Comm. of Customs, *supra*).

IN VIEW OF ALL THE FOREGOING, the decision appealed from is hereby reversed, and another entered affirming that of the Commissioner of Customs. Costs against the respondent-appellee Fructuoso Nepomuceno.

Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Dizon, and De Leon, JJ., concur.

Bengzon, C.J., took no part.

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