

ANGELA LAZATIN, PETITIONER, VS. THE COMMISSIONER OF CUSTOMS AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-19753. July 30, 1969

Ponente: CASTRO, J.

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CASTRO, J.:

On December 18, 1955 a shipment, consigned to the petitioner Angela Lazatin, arrived at the port of Manila from the United States on board the S/S Sunnyville. Declared under registry notice 1519 and entry 108305 and described in the pertinent documents[1] as seven boxes of "automatic musical instruments," the shipment was, upon examination by customs authorities, found to contain jukeboxes. The Central Bank release certificate covering the goods described them as "musical instruments" classified under Commodity Code 890110 of Circular 44 of the Central Bank, but the customs examiner found that they actually fell under Code 890101 (phonographs and gramophones), the importation of which was expressly prohibited.

The goods were ordered seized as having been imported in violation of Circular 44, in relation to sections 1363(f) and 1250 of the Administrative Code[2], but, upon the posting by the petitioner of a bond in the amount of P 8,578, were ordered released. On April 15, 1959 the Collector of Customs ordered the goods forfeited in favor of the Republic of the Philippines; however, as they had earlier been released under bond, he instead ordered the petitioner and her surety to pay to the Bureau of Customs the amount of the bond. His decision was affirmed by the Customs Commissioner and later by the Court of Tax Appeals.

Hence, the present recourse.

In its decision, the Court of Tax Appeals said:

"Petitioner does not question the validity of Central Bank Circulars Nos. 44 and 45. However, she contends that the Statistical Classification of Commodities, as revised on July 1, 1955, particularly that portion referring to unclassified (UI) or banned items, is invalid for lack of publication in the Official Gazette.

"The importations at bar which, as afore-stated, consist of jukeboxes were made under the Code No. 890110 - NEC and description 'Musical Instruments'. Their forfeiture and payment of the amount of the release bond are now being justified on the ground that they fall under the commodity classification of phonograph and gramophone (Code No. 89010-UI), which are banned items in the Statistical Classification of Commodities as revised on July 1, 1955. However, this particular statistical classification has not been published in the Official Gazette. It is the principle and the law that before a regulation can have a legal force and binding effect upon any person, that regulation must first be published in the Official Gazette (People vs. Que Po Lay, G.R. No. L-6791, March 29, 1954). Therefore, the classification of commodities (revised on July 1, 1955), particularly with regards to the banned items listed therein, cannot be applied adversely to the petitioner as it was not published before the importation of the jukeboxes was completed in 1955. However, the Central Bank Statistical Classification of Commodities, which was published in the June, 1953 issue of the Official Gazette, can legally bind the petitioner. And as nowhere in this latter commodity classification are the jukeboxes in question listed, it follows that the same are banned items and cannot be released without the presentation of a

release certificate issued by the Central Bank or any Authorized Agent Bank. That articles not listed in the commodity classification published in 1953 are banned items and only goods mentioned therein are allowed to be imported can be gleaned from the provisions of Section 3, Article II of Regulation No. 1, implementing Circular No. 44 which reads:

"Sec. 3. No application for foreign exchange covering any commodity item not included in the commodity classification mentioned in the preceding section, shall be granted by any Authorized Agent Bank or the Bankers' Committee, without prior approval of the Monetary Board' (49 Off. Gaz. No. 6, pp. 2192 & 2194),

and paragraph 14 of Central Bank Circular No. 44, which provides as follows:

"'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.' (49 Off. Gaz. No. 6, pp. 2189 & 2191)"

The petitioner contends that it was error for the Tax Court to justify the forfeiture of the goods in question on the basis of the 1953 Statistical Classification of Commodities when this was never invoked before by the Government.

This contention is without merit. It is of no moment that the goods are classified under the 1953 Statistical Classification of Commodities or under its 1955 revised version, for what the 1955 revision expressly prohibits the 1953 original version prohibits by implication. Thus, while under the 1955 commodity classification jukeboxes fall under Commodity Code 890101-UI, the importation of which is expressly prohibited, under the 1953 original version the prohibition against their importation arises by implication from the fact that they are not included in any of the categories of goods for which foreign exchange can be allocated. Hence, the notation made by the customs examiner on the Import Entry and Revenue Regulation - "Found to be jukeboxes falling under Code No. 890101-UI" - was meant to convey no more than that the importation fell under Code 890101-UI of the 1955 commodity classification, which importation is expressly banned. It was not intended to imply that before the revision of the commodity list in 1955 the importation of jukeboxes was not prohibited. For the 1953 commodity classification contained only the following categories of goods for the importation of which foreign exchange could be allocated:

"Division 89 - MISCELLANEOUS MANUFACTURED ARTICLES, N. E. S.

Musical instruments, phonographs and phonograph records

890102 Accessories and parts of phonographs and

gramophones No.

890103 Phonograph (gramophone) records..... No.

890106 Pianos and piano-playing mechanisms, parts

890107 Brass and orchestra instruments..... No.

890108 Organs and harmoniums..... No.

890109 Stringed instruments

890110 Musical instruments, n.e.s."[3]

Nowhere in the foregoing categories are phonographs classified, with the result that their importation is, by implication, prohibited. If in the 1955 revision of the Statistical Classification of Commodities a new category,

identified as Code 890101-UI (phonographs and gramophones), was added, it was only to specify (in detail) the items the importation of which was prohibited.

The petitioner can hardly claim to be unfairly surprised by a change in the Government's theory, as both the notice of hearing in Seizure Identification 108305 of the Bureau of Customs and the report of seizure in fact stated that the goods in question were seized for "violation of Central Bank Circulars Nos. 44 & 45 in relation to Secs. 1363(f) and 1250 of the Revised Administrative Code." Indeed, the Statistical Classification of Commodities is merely an appendix to Circular 44, violation of which constitutes the gravamen of the charge against the petitioner.

It is next contended that the jukeboxes in question were pro-perly classified as "musical instruments" under Code 890110, n. e. s. (not elsewhere specified), because the other categories (Code 890102-890109) in the commodity classification fairly exhaust the class of musical instruments, leaving only jukeboxes to be classified. But, as the petitioner herself notes, when the commodity list was revised in 1955, Code 890110 was retained, even as a new category (Code 890101-UI) was added. If jukeboxes and phonographs were intended to be classified under Code 890110, as they were not specified elsewhere as among those allowed to be imported, it is difficult to see how they could at the same time be classified under Code 890101, the importation of which is expressly banned. The truth is that jukeboxes, like phonographs, cannot properly be classified under Code 890110, n. e. s., whether under the 1953 or the 1955 commodity classification, for as the Tax Court correctly observed:

"The alternative claim of the petitioner that the jukeboxes were correctly classified under Code No. 890110 (NEC) as musical instruments is without merit. The meaning given by lexicographers to the term 'musical instrument,' is as follows:

""(musical) 'instrument' - is a contrivance by which musical sounds are produced. (Webster's New Int'l. Dictionary, p. 1288). Musical instruments may be classified, according to the nature of the vibrating body that initiates the sound, as stringed, wind, and percussion. In stringed instruments it is a group of tense strings, either bowed as in the violin and its class; plucked, as in the harp, guitar, and mandolin; struck as in the piano; or blown upon, as in the Aeolian harp. In wind instruments it is a column of air set vibrating either by a single or double reed, as in the clarinet or oboe; by the lips acting as reeds,' xx x"

"From the definition, it is plain that jukeboxes cannot be classified as musical instruments because jukeboxes are devices designed to reproduce music. Musical instruments are those which produce music. It would be a strained interpretation to classify jukeboxes as musical instruments. ..."

Circular 44 was issued by the Central Bank in the exercise of its power to restrict the sale of foreign exchange as a means of protecting the international reserve of the country. [4] It provides, inter alia, that "No items of import shall be released by the Bureau of Customs without the presentation of a Release Certification issued by the Central Bank or by any Authorized Agent Bank concerned (C.B. Form No. 5)."[5] As the release certificate in this case is for "musical instruments" under Code 890110, the importation of the goods in question, consisting of jukeboxes, must be deemed to be illegal and their forfeiture justified. As this Court said in a similar case:[6]

"Anent the first, question it is not denied that Commodity Code No. 850112 specifically mentions and authorizes the importation of 'Boots, Rubber (for miners only)'. The boots for women and children in question - which appellant's brief itself calls 'ordinary boots for ladies and children' (p. 3) - are undoubtedly beyond the scope of this Commodity Code, not being boots for miners at all. If the Central Bank had in mind authorizing the importation of all kinds of rubber boots, its Circular No. 44 would not have limited importation exclusively to rubber boots 'for miners'. Appellant contends that the boots in question are not included in any of the Code Numbers enumerated in the Statistical Classification of Commodities issued by the Central Bank to implement its Circular No. 44. It is believed, however, that they fall under UI, meaning 'Unclassified List Category'

(Appellant's brief, p. 7) the importation of which is completely banned - as admitted by appellant. But even assuming that appellant's contention in this regard is Correct, it does not justify the conclusion it draws, namely, that the importation of the boots for women and children in question 'is not limited, restricted, regulated, or controlled, much less banned or prohibited by the Central Bank.' As admitted by appellant, the Central Bank has the power to control foreign ex-change and allocate the same to finance importation of goods. It is obvious that it was in the exercise of such power that the Central Bank issued its Circular No. 44 and the implementing Statistical Classification of Commodities mentioned heretofore classifying and listing various articles for importation purposes. Equally obvious therefore is that goods not included in such classification are not subject to importation upon the principle of *inclusio unius est exclusio alterius*."

It is finally contended that with the lifting of foreign exchange controls and the return to free economy, the importation must now be deemed to have been lawfully made and therefore the proceedings for the forfeiture of the goods must now be abated, on the theory that the repeal or abrogation of a law wipes out criminal liability incurred before such repeal or abrogation. Suffice it to say in this regard that proceedings for the forfeiture of goods illegally im-ported are not criminal in nature since they do not result in the conviction of the wrongdoer nor in the imposition upon him of a penalty.[7]

ACCORDINGLY, the decision appealed from is affirmed, at petitioner's cost.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Fernando, Capistrano, Teehankee and Barredo, JJ., concur.

Zaldivar, J., is on official leave.

[1] Bill of lading, commercial invoice, pro forma invoice and marine policy.

[2] Now sections 2530(f) and 1207, respectively, of the Tariff and Customs Code (Rep. Act 1937).

[3] 49 O.G. 2189, 2219 (1953).

[4] E.g., *Commissioner of Customs v. Pascual*, 106 Phil. 488 (1959); *Acting Comm'r of Customs v. Leuterio*, L-9142, Oct. 17, 1959; *Pascual v. Commissioner of Customs*, 105 Phil. 1039 (1959).

[5] Art IV, sec. 1.

[6] *Po Eng Trading v. Commissioner of Customs*, L-10508, Nov. 29, 1960.

[7]Cf. *Almeda v. Perez*, L-18428, Aug. 30, 1962, 5 SCRA 970.
Cf. *Roxas vs. Sayoc*, 100 Phil. 448 (1956).

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