

BOMBAY DEPARTMENT STORE, PETITIONER, VS. COMMISSIONER OF CUSTOMS, RESPONDENT.*G.R. No. L-20460. September 30, 1965*

Ponente: CONCEPCION, J.

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Bombay Department Store, hereinafter referred to as the petitioner, seeks the review of a decision of the Court of Tax Appeals affirming that of the Commissioner of Customs, confirmatory of a decision of the Collector of Customs for the Port of Manila, ordering petitioner and the First National Surety & Assurance Co., Ltd., hereinafter referred to as the surety, to pay, jointly and severally, to the Government of the Republic of the Philippines, the sum of P3,627.80, representing the appraised value of certain goods imported by petitioner and subsequently released thereto upon the filing of a bond of said surety in the aforementioned sum.

The record shows that sometime in 1954 petitioner imported a case of merchandise which, upon examination by the customs authorities, turned out to contain 239 dozens of nylon socks, 25 dozens of nylon stockings and 29,715 rayon labels (Exhibit G), which were appraised at P3,627.80. The accompanying documents, however, stated that said case contained only 124 dozens of nylon socks and 112 and 1/2 dozens of nylon stockings (Exhibits 1, 2 Bank-D) for which Central Bank Release Certificate No. 840112 (Exhibit E) had been issued. Inasmuch as the importation exceeded the merchandise covered by this certificate by 115 dozens of nylon socks and 29,715 rayon labels, which were undeclared - although there was a shortage of 87 and 1/2 dozens of nylon stockings - the entire shipment was held for seizure proceedings, for alleged violation of Central Bank Circulars Nos. 44 and 45, in relation to Sections 1250 and 1363 (f) and (m) 3 and 4 of the Revised Administrative Code. Subsequently, said case of merchandise and its actual contents were, upon request of the petitioner, released thereto, upon the filing by the same of bond No. 1873 of the aforementioned surety, in the sum of P3,627.80, the pertinent part of which bond reads:

"NOW, THEREFORE, the conditions of this obligation are such that in the event that it should be finally decided that the merchandise herein mentioned should be forfeited to the Government, and/or that a fine or surcharge should be imposed, the entire amount of this bond, in case of forfeiture, or the corresponding amount of the fine or surcharge, as the case may be, shall be paid in CASH to the Bureau of Customs: PROVIDED, HOWEVER, that if within thirty (30) days from demand for payment of the liability herein mentioned the said liability is not paid, and it should be found necessary to file an action in court to effect the collection, thereof, a penalty of FIVE HUNDRED PESOS (P500.00) in addition shall be imposed. Other wise, this obligation shall be void and of no effect".

In due course, thereafter, the Collector of Customs for the Port of Manila rendered, in the seizure proceedings, a decision decreasing the forfeiture of said bond and the payment by petitioner and the surety, jointly and severally, of said sum of P3,627.80, within thirty (30) days from notice of said decision, which, on appeal, was affirmed by the Commissioner of Customs. Petitioner appealed from the latter's decision to the Court of Tax Appeals, with the same result. Hence, this petition for review upon the ground:

1. That Central Bank Circulars Nos. 44 and 45, requiring the issuance of a release certificate for the importation of goods, are null and void;
2. That these circulars were impliedly repealed by Central Bank Circular No. 133, issued on January 21, 1962;
3. That the Central Bank Act does not provide for the forfeiture of articles imported or sought to be imported, without the requisite certificate;
4. That the Commissioner of Customs has no authority to seize and decree the forfeiture of the merchandise abovereferred to; and
5. That there has been no misdeclaration or wrongful declaration of the shipment in question.

With respect to Central Bank Circulars Nos. 44 and 45, we have repeatedly upheld the authority of the Central Bank to issue the same and the legality thereof (Commissioner of Customs vs. Santos, et al., L-11911, March 30, 1962; Commissioner of Customs, et al., vs. Eastern Sea trading, L-14279, October 31, 1961; Acting Commissioner of Customs vs. Leuterio, L-9142, October 17, 1959; Tong Tek vs. Commissioner of Customs, L-11979, June 30, 1959; Pascual vs. Commissioner of Customs, L-10979, June 30, 1959; People vs. Lim Ho. L-12091 & L-12092, January 28, 1960; People vs. Jolliffe, L-9553, May 13, 1959, People vs. Henderson, L-10829 & L-10830, May 29, 1959; People vs. Koh, L-12407, May 29, 1959).

As regards the alleged repeal by implication of said circulars by Central Bank Circular No. 133, suffice it to say that the latter, like Circular No. 44, authorizes the release of imported goods upon "presentation of a release certificate issued by the Central Bank" and, accordingly, reiterates the policy set forth in said Circular No. 44 in connection therewith. Indeed, Circulars Nos. 44 and 45 have been incorporated and made integral parts of Circular No. 133, for Section 8 thereof provides that "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".

Again, we have already held (Roxas vs. Sayoc, L-8502, November 29, 1956, and Golay-Buchell & Cia. vs. Commissioner of Customs, L-10994 & L-11012, December 29, 1959) that the expiration of Republic Act No. 650 did not have the effect of depriving the Commissioner of Customs of the jurisdiction, acquired by him prior thereto, to act on cases of forfeiture pending before him, which are in the nature, of proceedings in rem (U.S. vs. Two Bales of Rugs, 167 Fed. 689; 17 C.J., p. 687; Origent vs. United States, 125 U. S. 240, 31 L. ed. 743; 37 C. J. S. Forfeiture, Sec. 5, pp. 15-16; Almeda, Sr., et al. vs. Hon. Jesus Y. Perez, etc., et al., L-18428, August 30, 1962).

Moreover, the merchandise in question acquired, in view of its importation in violation of Central Bank Circulars Nos. 44 and 45, the status of "merchandise of prohibited importations" as this expression is used in Section 1363 (f) and (m) 3 and 4 of the Revised Administrative Code, and, consequently, became subject to the forfeiture proceedings prescribed in said section (Tong Tek vs. Commissioner of Customs, L-10979, June 30, 1959; People vs. Que Po Lay, 50 Off. Gaz. 4850).

Last, but not least, the wrongful and fraudulent intent of petitioner herein in importing the undeclared and misrepresented articles in question is clearly deducible from the fact that it did not even try to prove that the consignor in the United States had inadvertently shipped more goods than those mentioned in the invoice covered by the accompanying Central Bank Release Certificate; that petitioner did not cause the undeclared merchandise to be exported back to its shipper, and that, instead, petitioner secured the release of said undeclared articles, thereby confirming the acts of the aforementioned shipper. It may not be amiss to add that, in the language of U.S. vs. Pour Packages of Cut Diamonds (247 Fed. 354), "where goods are imported on a false invoice prepared by consignor in a foreign country, fraud attaches to the goods, and they may be forfeited, therefore, despite

innocence of the consignee".

Wherefore, the decision appealed from is hereby affirmed, with costs against the petitioner. It is ordered.

Reyes, J. B. L., Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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