

FERMIN SARE, PETITIONER, VS. THE COMMISSIONER OF CUSTOMS, RESPONDENT.

G.R. No. L-22988. June 30, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Petitioner Fermin Sare seeks the review of a decision of the Court of Tax Appeals affirming that of respondent Commissioner of Customs.

There is no dispute about the facts, the same having been the object of a stipulation, which, although designated "partial", has not been complemented by any evidence whatsoever.

It appears that petitioner had imported from Hongkong into the Philippines, the following:

1. Three (3) separate shipments of various merchandise, which arrived at Manila on or about October 20, 1954, aboard the S.S. "Talisman" and were declared under Entries Nos. 84027, 84028 and 84031;
2. Three (3) separate shipments of various merchandise which arrived at Manila on December 11, 18 and 23, 1954, aboard, respectively, the S.S. Nervar, S.S. Hermod and S.S. Hessenstein, and were declared under entries Nos. 99510, 101581 and 102246-f; and
3. Three (3) separate shipments of various merchandise, which arrived at Manila on December 25, 1954, and January 14 and March 3, 1955, respectively, the first two (2), aboard the S.S. Kambodia and, the last, aboard the S.S. Erria, and were declared, respectively, under entries Nos. 103972, 4191 and 78553.

All of these shipments were the object of seizure identification proceedings, instituted by respondent and/or his duly authorized representatives, for lack of the Central Bank Release Certificates required in Central Bank Circulars Nos. 44 and 45, in relation to Section 1363(f) of the Revised Administrative Code. However, by posting bonds in the aggregate sum of P78,311.57, petitioner secured the release of the merchandise above referred to. Subsequently, on February 5, 10 and 18, 1960, respondent rendered judgments in the forfeiture proceedings, directing the confiscation of the aforementioned bonds and the payment in cash, jointly and severally, by petitioner herein and the respective sureties, of the amounts of said bonds.

On appeal taken by petitioner herein, these judgments were affirmed by the Court of Tax Appeals. Hence, the present petition for review, upon the ground that the Court of Tax Appeals had erred: (1) in decreeing the forfeiture of the merchandise in question, notwithstanding the fact that no such penalty is prescribed in Central Bank Circulars Nos. 44 and 45; (2) in ordering the forfeiture under Section 1363(f) of the Revised Administrative Code, although the merchandise in question are not of "prohibited importation" and have not been imported contrary to law; and (3) in applying said Circulars Nos. 44 and 45, despite the alleged repeal thereof by Central Bank Circular No. 133.

Petitioner's appeal is manifestly devoid of merit. Indeed, in arguing that the forfeiture decreed by the respondent is

not authorized by Circulars Nos. 44 and 45, petitioner conveniently overlooks the fact, agreed upon in the aforementioned stipulation, that the seizure identification proceedings were instituted for violation of Central Bank Circulars Nos. 44 and 45 "in relation to Section 1363(f) of the Revised Administrative Code", which explicitly prescribes said forfeiture.

Then, again, each and everyone of the issues raised by petitioner herein have already been repeatedly resolved by this Court adversely to petitioner's pretense. Thus, the authority to decree the forfeiture of goods for violation of said Circulars Nos. 44 and 45 was upheld in *Pascual vs. Commissioner of Customs*,^[1] in which we ruled:

"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 required 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 objects and things shall, under the conditions hereinbelow specified, be subject to forfeiture:

xx xx xx

(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, Circulars 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 (49 Off. Gaz. 2189-2192). 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, therefore, seize them and order their forfeiture under the aforementioned provisions of the Revised Administrative Code."^[2]

This view was reiterated in *Commissioner of Customs vs. Serree Investment Co.*,^[3] from which we quote:

"x x x 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. x x x"^[4]

Thus, it is now well settled that goods imported without the release certificates required in Circulars Nos. 44 and 45 are "merchandise of prohibited importation," as this expression is used in said Section No. 1363(f). To this effect have been, among others, *Commissioner vs. Eastern Sea Trading*,^[5] *Commissioner vs. Santos*,^[6] *Commissioner vs. Nepomuceno*,^[7] *Pascual vs. Commissioner of Customs*,^[8] *Serree Investment Co. vs. Commissioner of Customs*,^[9] *Serree Investment Co. vs. Commissioner of Customs*,^[10] and *Lazaro vs. Commissioner of Customs*.^[11]

The theory to the effect that Central Bank Circular No. 133 has repealed Circulars Nos. 44 and 45, and rendered ineffectual the forfeiture imposable for violations of these two (2) circulars, prior to the issuance of said Circular No. 133, was rejected by this Court in a previous case of the very petitioner herein,^[12] upon the ground that

paragraph 6 of said Circular No. 133 "in effect x x x reiterated the requirement of a release certificate" contained in Circulars Nos. 44 and 45. In fact, this ruling had, prior thereto, been adopted in other cases[13] and was applied in a subsequent case.[14]

WHEREFORE, the decision appealed from should be, as it is hereby affirmed, with costs against petitioner herein.

IT IS SO ORDERED.

Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur.
Dizon and Capistrano, JJ., did not take part.

[1] L-10797, June 30, 1959.

[2] Underscoring ours.

[3] L-12007, May 16, 1960.

[4] Underscoring ours.

[5] L-14279, October 31, 1961.

[6] L-11911, March 30, 1962.

[7] L-11126, March 31, 1962.

[8] L-12219, April 25, 1962.

[9] L-19564, November 28, 1964.

[10] L-21217, November 29, 1965.

[11] L-22511 & 22513, May 16, 1966.

[12] Sare v. Aseron, L-22380, Aug. 15, 1967.

[13] Felipe Yupangco & Sons, Inc. v. Commissioner of Customs, L-22259, Jan. 19, 1966; Bombay Dept. Store v. Commissioner of Customs, L-20460, Sept. 30, 1965; Bombay Dept. Store vs. Commissioner of Customs, L-20489, June 22, 1965.

[14] Litton & Co., Inc. v. Commissioner of Customs, L-22516, Aug. 17, 1967.

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