

**THE HON. CORNELIO BALMACEDA, IN HIS CAPACITY AS
SECRETARY OF COMMERCE & #038; INDUSTRY AND CHAIRMAN,
PRODUCERS INCENTIVE BOARD, PETITIONER-APPELLANT, VS.
COROMINAS & #038; COMPANY, INC., RE...**

G.R. No. L-21971. September 05, 1975

Ponente: MARTIN, J.

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MARTIN, J.:

This is a petition to review on certiorari a judgment of the Court of Appeals in a case concerning an importation made pursuant to the previous "No Dollar Imports" law and implementing Consolidated Rules and Regulations of the former Department of Commerce and Industry.

On appeal, the Appellate Court affirmed the decision of the Court of First Instance of Manila holding that "... the importation questioned by respondent [petitioner herein] is authorized; respondent [petitioner herein] is ordered to permit it and to issue the corresponding release certificates and to cancel the bond if any filed by plaintiff [respondent herein]; no pronouncement as to cost."

In 1959, September 10, Republic Act No. 1410 was passed "to prohibit the so-called 'no-dollar' imports except under conditions." Section 1 of the Act directs:

"No importation into the Philippines under the so-called 'no-dollar remittance' shall be allowed except:

xxx xxx xxx

(d) Commodities in exchange for goods exported by persons or firms making the importation on a straight barter basis when authorized by the Secretary of Commerce and Industry."

The implementation of the Act was "entrusted to the Department of Commerce and Industry which is hereby empowered to draft, promulgate and publish such rules and regulations as it may deem necessary for such implementation." (Section 5, RA 1410).

Thereupon, the then Secretary of Commerce and Industry, Pedro C. Hernaez, promulgated the Consolidated Rules and Regulations implementing Republic Act No. 1410, which were approved by the Cabinet on August 20, 1958.[1] Among other things, the Consolidated Rules and Regulations allowed imports under the straight barter scheme,[2] thus:

"Consolidated imports may be brought in from any country by the same producer-exporter and shall be composed of at least 70% machineries, equipments and/or essential commodities, and the rest may be semi-essentials and non-essentials, provided, that in no case shall non-essentials be more than 10% of the total imports." (Italics supplied; subsequent similar underscoring with like intention)

Respondent-appellee Corominas Company, Inc. (Corominas for brevity) is a corporation duly organized and existing under the laws of the Philippines engaged, along with other purposes, in the export and import

business.[3] On January 29, 1959, it was issued by the then Secretary of Commerce and Industry, Pedro C. Hernaez, Barter Permit No. 1604-Spl. permitting it to export to Japan, in accordance with Sec. 1 (d) of Republic Act No. 1410 ("straight barter system"), 20,000 metric tons of Rhodesian corn totally valued at \$1,575,100.00 and to import into the Philippines commodities with like value.[4] The permit for importation was encumbered by the limitation set forth in Section 5, para. B (1) of the Consolidated Rules and Regulations, more relevantly, "that in no case shall non-essentials be more than 10% of the total imports"

Forthwith, Corominas exported the 20,000 metric tons of Rhodesian corn to Japan. The Japanese buyer commenced payment of the exported goods in U.S. dollars, which were remitted thru the Central Bank of the Philippines. However, before the Japanese buyer could have completed the payment of the goods, the Japanese Government refused him further remittance of the dollars.[5] Instead, the Japanese buyer was allowed to pay, thru its Hongkong agent Kim Guan Lee Hong, the balance account of US\$485,030.33 in commodities.

Corominas then requested the new Secretary of Commerce and Industry, Manuel Lim, who was concurrently Chairman of the Producers Incentives Board, which had assumed the functions and duties of the defunct No-Dollar Import Office[6] to allow the importation of goods up to the value of US \$485,030.33 in payment of the balance collectible from the Japanese buyer. The request was granted on May 13, 1960 thru the then Acting Undersecretary of Commerce and Industry, Mariano G. Pineda, under these conditions:[7]

- The commodities to be imported shall be subject to the percentages provided for under the permit, but the classification of commodities shall be subject to the result of an inquiry made with the Central Bank as per our letter dated May 11, 1960;
- The permit value of \$1,575,100.00 must not be exceeded; and
- Permit holder must post a bond equivalent to \$485,030.33 to guarantee the importation of commodities into the Philippines."

On May 19, 1960 thence to July 22, 1960, Corominas submitted to the Producers Incentives Board the firm offers sent by the Japanese buyer's agent at Hongkong, Kim Guan Lee Hong, specifying the description, quantity, unit price and total value in dollars of the commodities. In response, the Producers Incentive Board, either thru Mr. Mario P. Marcos, a member of the Board, or Mr. Mariano G. Pineda, Acting Undersecretary of Commerce and Industry, wrote Corominas in eleven differently dated letters uniformly stating:

"... please be informed that we hereby confirms the classification and price quotations of the commodities you propose to import as stated in the firm offers, you have submitted, under Barter.(enumeration of goods omitted)

"This confirmation is an authority for you to import the abovementioned items from your supplier but for the account of the buyer . . ."

Subsequently, or on August 8, 1960, Mr. Ernesto Y. Golez, Coordinator of the Producers Incentives Board, wrote Corominas that the "NEC items you desire to import have already exceeded the 10% allocated you under the Consolidated. Rules and Regulations of the defunct No-Dollar Import Office. "[8] On August 29, 1960 and September 16, 1960, Corominas sought reconsideration of the ruling, but the Coordinator, Mr. Ernesto Y. Golez, formally denied the same in his letter of October 4, 1960.

This led Corominas to institute on October 4, 1960 a "Complaint with Preliminary Mandatory Injunction" in the Court of First Instance of Manila against Secretary Manuel Lim[9] to obtain the issuance of the corresponding release certificates of its imported goods. After trial, the lower court rendered the judgment earlier quoted.

It was the Appellate Court's affirmance of this lower court's ruling on appeal that prompted petitioner-appellant to

come to Us and stresses en masse that the Appellate Court erred in ordering it to issue release certificates in favor of respondent-appellee for its imported goods.

From this capital issue, it is posited that, first, the letters, Exhibits D, D-1 to D-10, are mere confirmations of the classifications and price quotations of the goods listed and not authorities for respondent-appellee to import the same; and second, the respondent-appellee has exceeded the 10% ceiling on the importation of non-essential commodities.

Respondent-appellee submits that the resolution of this case has been foreclosed by Central Bank Circular No. 133, dated January 21, 1962, because said Circular "allows any person to purchase unlimited quantities of foreign exchange and importations of non-essential goods," hence, "any person may now freely purchase dollars from local banks and import 100% non-essential commodities.[10] in other words, respondent-appellee would bring forth the impression that there is now total decontrol.

The wellspring of CB Circular No. 133 is Republic Act No. 2609, which was passed by the Congress of the Philippines on July 16, 1959, "to authorize the Central Bank of the Philippines to establish a margin over bank's selling rates of foreign exchange." In its Section 1, it obliges the Central Bank monetary authorities to "take steps for the adoption of a four-year program of gradual decontrol." Nowhere did it provide for nor envision a total decontrol, not even after the lapse of four years from its passage in 1960.[11] A fortiori, CB Circular No. 133 could not — in absurdity — wield an authority higher than its very source, Republic Act No. 2609. The Central Bank could not have devised such full decontrol without relegating its main objectives and responsibilities to maintain monetary stability, preserve the international value and convertibility of the peso, and promote a rising level of production, employment and real income in the Philippines.¹² In fact, there is even a licensing regulation in said Circular that "all exports shall be previously authorized by the Central Bank"[13] and that "imports shall be released from the port of entry only upon presentation of a release certificate issued by the Central Bank." [14]

At any rate, since its promulgation on January 21, 1962, CB Circular No. 133 has sailed through notable changes⁵ until it was written in CB Circular No. 289, February 21, 1970 that "Authorized agent bank may sell foreign exchange for imports except those falling under the UC, SUC and NEC categories without prior specific approval of the Central Bank (Sec. 5, *ibid.*). The entry of NEC ("non-essential commodities") is thus, halted at bay.

We find reason in the posture of petitioner-appellant that the reply-letters, Exhibits D, D-1 to D-10, it sent to Corominas were mere confirmations of the firm offers submitted by the latter and not authorities to import. Import authority was already granted to Corominas when it was issued its Barter Permit and later authorized by Acting Undersecretary Mariano G. Pineda^[16] to import \$485,030.33 worth of goods as payment for; the balance still due from the Japanese buyer. These firm offers, which contained the commodity classification and price quotations, were submitted by Corominas in accordance with the condition in the Barter Permit that "**** (i)n no case shall commodities banned from import or classified as U.I. (Unclassified items) by the Central Bank or in violation of the Anti-Dumping Law, be allowed to be imported under the barter ****" and in the authority issued by Acting Undersecretary Mariano G. Pineda that "**** the classification of commodities shall be subject to the result of an inquiry made with the Central Bank.***," and not for the purpose of asking authority to import the said goods. That is why, the reply letters (Exhibits D, D-1 to D-10) consistently state:

**** please be informed that we hereby confirm the classification and price quotations of the commodities you propose to import as stated in the firm offers you have submitted under Barter Permit No. BT-1604 Special***."

The concluding paragraph in said letters that:

"This confirmation is an authority for you to import the abovementioned items from your supplier but for the account of the buyer ***."

cannot be isolated and separately interpreted to mean that Corominas was thus authorized to import the items listed therein irrespective of the controlling percentages in the Barter Permit and in the authority granted by acting Undersecretary Mariano G. Pineda. Imperatively, the said paragraph must relate to the basic premise of the whole letter which, in its plain import, only confirms the classification and price quotations of the commodities. The phrase "(t)his confirmation is an authority for you to import the above-mentioned items" simply signifies that since the commodity classification of the goods as "non-essential," "semi-essential," or "essential" as well as the price quotations thereof are confirmed, Corominas may import the same, subject to the percentage proportion implanted in the Barter Permit and in the authority issued by Acting Undersecretary Mariano G. Pineda.

It is true that the Statistics Division of the Producers Incentives Board processed the firm offers submitted by Corominas before the letter (Exhibits D, D-1 to D-10) were sent to the latter, but the purpose of such processing is solely to check the classification and pricing of the goods sought to be imported. It was never meant to work out an authority for the importation of the goods regardless of the aforesaid percentages. Thus, when it appeared that the "non-essential" imports would exceed the 10% ceiling, petitioner-appellant informed Corominas:[17]

**** that [the] NEC items you desire to import have already exceeded the 10% allocated you under the Consolidated Rules and Regulations of the defunct No Dollar Import Office."

and advised:

**** that regardless of the firm offers covering NEC items you have submitted and letter of authority issued in relation the etc. you are only entitled to import \$48,503.33 worth of the NEC goods. All NEC items imported in excess of \$48,503.33 shall be disallowed and may be subject to seizure and/or confiscation by the government."

We come next to petitioner-appellant's submission that respondent-appellee has infringed the Consolidated Rules and Regulations by importing non-essential goods in excess of the 10% limitation.

It is pleaded by respondent-appellee that the Consolidated Rules and Regulations are mere departmental rule of the Secretary of Commerce and Industry which it may conveniently waive or renounce. We disagree. A "rule (or a 'regulation' — a term used interchangeably with 'rule') is the product of rule making, and rule making is the part of the administrative process that resembles a legislature's enactment of a statute.[18] In this jurisdiction, administrative authorities are vested with the power to promulgate rules and regulations to implement a given statute and to effectuate its policies[19] and when promulgated, such administrative rules or regulations become laws.[20] Controversy is not recorded that the Consolidated Rules and Regulations were promulgated by the then Secretary of Commerce and Industry, Pedro C. Hernaez, in accordance with the express authority of Section 5 of Republic Act No. 1410 "to draft, promulgate and publish such rules and regulations as it may deem necessary" for the implementation of the Act. Withal, it cannot be lightly read that the said Consolidated Rules and Regulations are mere departmental rule, but rather, do have the force and effect of a valid law[21] which cannot be waived or renounced.[22]

The more material question is the true and valid import of the proviso in the Consolidated Rules and Regulations that "in no case shall non-essentials be more than 10% of the total imports." We observed that the Barter Permit containing this proviso grants Corominas authority to import into the Philippine commodities with a total value of \$1,575,100.00 in return for its exports of Rhodesian corn of similar worth. However, instead of importing \$1,575,100— commodities, Corominas opted to accept payments of its exported Rhodesian corn in US dollars until the Japanese buyer was refused dollar remittances by the Government and when only a balance account of

\$485,030.33 remains. It was just at this instant that Corominas requested authority from the Producers Incentives Board to import \$485,030.33 worth of goods in payment of the unpaid balance of its exports. The authority, as earlier quoted, was granted under the condition that the commodities to be imported shall be subject to the "percentages provided for under the permit" (which is 70% machineries, equipments and/or essentials and 10% non-essentials of the total imports) and that "the permit value of \$1,575,100.00 must not be exceeded." The "total imports" referred to denotes nothing but the goods actually imported, upon which the 10% limit for the nonessential items" must be based and not on the extensive permit value of \$1,575,100.00, which was never imported. Much less could the percentage proportion be explicitly determined on the basis of the firm offers submitted by Corominas, since no obligation is imposed upon it to import the very goods enumerated therein. It is not tenable to claim that Corominas finds no alternative but to import these goods in order to comply with the condition of the permit which is "to prevent the stashing of dollar abroad." [23] Stashing of dollars occurs when there is over-exportation or smuggling of goods out of the country or concealment of dollar earnings abroad, but not when the dollars are not utilized. The dollars earned are known by the Central Bank which could compel Corominas to account for the same. As this \$485,030.33 worth of commodities was the only importation undertaken by Corominas pursuant to its Barter Permit and the authority issued to it by Acting Undersecretary Mariano G. Pineda, the 10% ceiling for the NEC items must mandatorily be pegged thereon.

Since both the trial court and the Court of Appeals have found that respondent-appellee has imported \$103,233.44 worth of "non-essentials," a finding which We are not prepared to disturb,²⁴ \$54,730.44 more than the 10% of the authorized total imports of \$485,030.33 (equivalent to only \$48,503.00), respondent-appellee's importation of these "NEC items" is therefore illegal and the excess thereof, \$54,730.44 worth of commodities, liable to seizure and confiscation under Section 3 of Republic Act No. 1410, which provides:

"Any violation of this law or any provision hereof shall subject the articles imported to seizure and confiscation by the Collector of Customs without any right of redemption or release under bond, existing laws to the contrary notwithstanding ***,"

Respondent-appellee maintains parity between its case and that of Customs Commissioner v. Auyong Hian [25] to attach strength to its pleas. In that case, the Import Control Commission issued Auyong Hian a license authorizing him to import, goods under "no dollar remittance basis." Pursuant thereto, Auyong Hian effected the importation of old newspapers in four shipments, but the last shipment was seized by the customs authorities on the ground that the importation was made without the license required by Central Bank Circular No. 45. While the seizure case was pending before the Collector of Customs, the President of the Philippines, acting through its Cabinet, cancelled the aforesaid license for the reason that it was illegally issued "in that no fixed date of expiration is stipulated." On review, the Court held that the cancellation of the license after the importation has been accomplished was inequitable. In the present case, however, there was no such cancellation of license or authority. The letter of the Producers Incentives Board (Exhibit E) advising respondent-appellee that all its "NEC items" imported in excess of \$48,503.03 would be disallowed and might be subject to seizure and/or confiscation by the government amounted not to a cancellation of its Barter Permit or its subsequent authority to import the \$485,030.33 worth of commodities. Precisely, the letter was sent in enforcement of and in pursuance with the stipulations in the Barter Permit and the subsequent authority. Moreover, the reply-letters (Exhibits D, D-1 to D-10) written by the Producers Incentives Board to respondent-appellee are not licenses or authorities, but mere confirmations of the commodity classification and price quotations of the firm offers submitted by respondent-appellee. Assuming gratuitously that the Producers Incentives Board erred in applying and enforcing the law involved and the implementing Rules and Regulations in issuing the letters (Exhibits D, D-1 to D-10), the same however do not block the subsequent correct application thereof and that the Government is never estopped by mistake or error on the part of its agents. [26] The defense of estoppel cannot be successfully asserted against

the Government in the exercise of governmental powers and functions[27] even by an affirmative undertaking on the part of its officer or agent to whom no administrative authority has been delegated, to waive or surrender a public right.[28]

IN VIEW OF THE FOREGOING REASONS, the judgment appealed from is hereby reversed and set aside. Respondent-appellee's excess importation of "non-essential items" worth \$54,733.44 is declared illegal and liable for confiscation by the Government pursuant to Section 3 of Republic Act No. 1410, the said amount of \$54,733.44 to be taken from the \$400,000.00- bond posted by respondent-appellee in lieu of the commodities questioned by petitioner-appellant but only insofar as the said bond may satisfy the forfeited amount.

No pronouncement as to costs.

SO ORDERED.

Castro (Chairman), Makasiar, Esguerra, and Muñoz Palma JJ., concur.

Teehankee, J., did not take part.

[1] 54 OG 56827 Sept. 1, 1950.

[2] Sec. 5 (B). 1, last sentence.

[3] Brief, petitioner-appellant, at 3.

[4] Idem, at 3; Brief, respondent-appellee, at 2.

[5] Decision. Court of Appeals, p. 2; Records, at 31.

[6] Abolished by RA No. 2262. June 16, 1959. "An Act Repealing Republic Act Numbered Fourteen Hundred Ten otherwise known as the No-Dollar Import Law. and for other purposes."

[7] Exhibit "B". Petition; Records, at 59.

[8] Exhibit "E". Petition: Records, at 78.

[9] Substituted in this petition by Sec. Cornelio Balmaceda. para 1. Petition.

[10] Brief, respondent-appellee, at 62, 63.

[11] Chamber of Agriculture and Natural Resources of Phil v. Central Bank, L-23244. June 30, 1965. 14 SCRA 638. 639.

[12] Central Bank Charter, RA No. 265. Art. 1, Sec. 2.

[13] Para, 1, CB Circular No. 133.

[14] Para. 6r CB Circular No. 133; see Capulong v. Aseron, L-22989, May 14, 1966, 17 SCRA 14; Lazaro v. Commissioner of Customs, Nos. L-22511 & L-22343, May 16, 1966; 17 SCRA 39; Capulong v. Acting Commissioner of Customs, L-22990. May 19, 1960, 17 SCRA 64.

[15] See CB Circular Nos. 171, 181, 247. 267, 294, 295, 298. 312. 400.

[16] See Exhibit B. ante.

[17] Idem.

- [18] Davis, Administrative Law Treatise, 1958 Ed., p. 275, et seq.
- [19] Del Mar v. The Philippine Veterans Bank Administration, L-27299, June 27, 1973. 51 SCRA 348.
- [20] Macailing v. Andrada, 1,-21607, January 30, 1970. 31 SCRA 139.
- [21] Victorias Milling Company v. Social Security Commission, L-16704, March 17, 1962, 4 SCRA 630.
- [22] 1 Commentaries and Jurisprudence on the Civil Code, Tolentino, 1953 ed.. p. 31; citing Munoz, p. 26.
- [23] Exhibit "B" fourth para., Petition: Records at 59.
- [24] Totentino v. De Jesus. L-32797. March 27. 1974. 56 SCRA 171, 172.
- [25] 105 Phil. 564.565.
- [26] United Christian Missionary Society v. Social Security Commission, L-26712-16. December 27. 1969. 30 SCRA 982.
- [27] Elrod Slug Casting Mack. Co. v. O'Malley, 57 F. Suppl. 915.

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