

BIENVENIDO CAPULONG, PETITIONER, VS. THE ACTING COMMISSIONER OF CUSTOMS, RESPONDENT.

G.R. No. L-22781. July 25, 1975

Ponente: MAKALINTAL, C.J.

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MAKALINTAL, C.J.:

This is a petition for review of the decision of the Court of Tax Appeals which affirmed in toto the decision of respondent Commissioner declaring the forfeiture of the articles involved in this case in favor of the government, and ordering petitioner as well as the surety, Pioneer insurance & Surety Corporation, to jointly and severally pay in cash to the Bureau of Customs within thirty days from notice of judgment the sum of P12,530.00, the full amount of the bond posted therein.

On October 2, 1954, petitioner imported from Hongkong into the Philippines 63 packages of assorted merchandise declared under Entry No. 78008, series of 1954, and covered by a bill of lading, commercial invoice and official receipt evidencing payment of customs duties and sales taxes. Because the importation was not covered by any import license and release certificate from the Central Bank, it was seized by the Collector of Customs for the Port of Manila under Seizure Identification No. 2025 for alleged violation of Central Bank Circulars Nos. 44 and 45 in relation to Section 1363 (f) of the Revised Administrative Code. During the pendency of the seizure proceeding the aforesaid shipment was released and delivered to petitioner under Surety Bond No. 093 in the sum of P12,543.00, posted by the Pioneer Insurance & Surety Corporation. The value of aforesaid shipment was \$4,433.00, and the importation was effected through the no-dollar remittance system. On March 10, 1960, respondent Commissioner rendered the above-mentioned decision in the aforesaid seizure identification case.

Petitioner appealed the Commissioner's decision to the Court of Tax Appeals. Pending the appeal the Monetary Board of the Central Bank, on January 21, 1962, issued Circular No. 133. On February 24, 1964 the Court of Tax Appeals, as aforesaid, rendered its judgment of affirmance. A motion for reconsideration was filed but did not prosper; hence the present petition.

The issues are:

- Whether the forfeiture of aforesaid goods for alleged violation of CB Circulars Nos. 44 and 45, in relation to Section 1363 (f) of the Revised Administrative Code, was proper; and
- Whether CB Circulars Nos. 44 and 45 were repealed by CB Circular No. 133.

On issue number 1 petitioner contends that CB Circulars Nos. 44 and 45 do not provide for the penalty of forfeiture in case of violation thereof, the same being merely injunctions against the release of items of imports by the Bureau of Customs without the corresponding release certificate; that forfeiture under Section 1363 (f) of the Revised Administrative Code is in order only when the importation is classified by law as "prohibited" or "contrary to law;" and that the importation in question is neither "prohibited" or "contrary to law" because there is

nothing in the law or in said circulars themselves which would render such importation "prohibited" or "contrary to law."

On issue number 2, petitioner postulates the repeal of CB Circulars Nos. 44 and 45 by CB Circular No. 133, thus:

CB Circular No. 44 prohibits 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. CB Circular No. 45 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. These measures were taken to check the unregulated flow of foreign exchange from the Philippines. CB Circular No. 133, on the other hand, provides that no prior specific licensing is necessary before any person can purchase dollars or other convertible currencies to pay for either commodity imports or invisibles such as payment of capital and interest charges, travel and tourism. CB No. 133, which was issued after the issuance of CB Circulars Nos. 44 and 45, was intended to restore freedom in foreign exchange transactions. It further provides that all existing circulars, rules, regulations and conditions governing transactions in foreign exchange not consistent with the provisions of this circular are deemed incorporated thereto and made an integral part thereof by reference. Since the provisions of CB Circulars Nos. 44 and 45 governing transactions of foreign exchange are repugnant to the provisions of CB Circular No. 133, the former are by necessary implication repealed by the latter. Since this latter circular is favorable to petitioner, the same should be given retroactive effect. Consequently, the forfeiture and confiscation of the surety bonds and the payment of the value thereof to the Bureau of Customs have no more basis and cannot therefore be enforced against petitioner.

This Court, in the recent case of *Eugenia Manabat Vda. de Lopez, et al. vs. The Hon. Court of Tax Appeals, et al.* (L-24870), promulgated on January 21, 1975 and citing previous decisions in other cases, resolved the same issues as those raised in the case at bar.

On issue number 1 the Court held that while Circulars Nos. 44 and 45 do not expressly so provide, the forfeiture of goods imported in violation thereof may nevertheless be justified on the basis of Section 1363(f) of the Administrative Code (Sec. 2530 [f] of Tariff and Customs Code), which authorizes the forfeiture of "any merchandise of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law". Circulars 44 and 45 should be correlated to Section 1363 of the Administrative Code, and while goods imported in violation of these circulars may not be considered "merchandise of prohibited importation," they nevertheless fall within the category of merchandise imported "contrary to law," because regulations issued pursuant to customs laws form part thereof, so that "violation of the said regulations can be regarded as coming within the purview of Section 1363 (f)."

On issue number 2, the Court resolved the same in the negative, citing in particular a case involving the same petitioner herein (*Bienvenido Capulong vs. Timoteo Y. Aseron*, L-22989, May 1966, 17 SCRA 11), where it was held:

"... This contention (alleged repeal of CB Circulars Nos. 44 and 45 by CB Circular No. 133) is without merit. Central Bank Circular 133 has not exactly repealed Central Bank Circulars Nos. 44 and 45 but rather it re-enacted them when it provided therein that all existing regulations not inconsistent with the circular are deemed incorporated and made integral parts' thereof by reference. And it cannot be disputed that both Central Bank Circulars Nos. 44 and 45 and Central Bank Circular No. 133 have a common purpose which is to require the presentation of a release certificate from the Central Bank before any importation may be made to the Philippines. Evidently, the purpose of these circulars is to keep a tab of the volume of imports that come into the Philippines in order to enable the Central Bank to make a survey and study of the appropriate measures that may be adopted to remedy the long-drawn financial crisis in the country."

WHEREFORE, the petition is denied and the decision of the Court of Tax Appeals is affirmed. No costs.

Castro, Makasiar, Esguerra, Muñoz Palma, and Martin, JJ., concur.

Teehankee, J., on official leave.

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