

EXTENSIVE ENTERPRISES CORPORATION, PETITIONER, VS. THE COMMISSIONER OF CUSTOMS, RESPONDENT.

G.R. No. L-22515. April 27, 1967

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

From the decision of the Court of Tax Appeals (in CTA Case No. 860), dated 28 October 1963, affirming that of the Commissioner of Customs, ordering the forfeiture of nine (9) cases of rubber balloons valued at P1,945.80, which arrived in the port of Manila without the necessary release certificate from the Central Bank, the claimant Extensive Enterprises Corporation filed the present petition for review.

The facts of the case, as stipulated by the parties in the court below, are as follows:

"1. That the merchandise claimed by petitioner under Customs Entry No. 95068-19 Series of 1954 consisting of nine (9) cases rubber balloons and twelve (12) cases rubber nipples, subject of forfeiture in Seizure Identification No. 2397 were imported into the Port of Manila on November 27, 1954;

"2. That the said entry covering the said merchandise was accompanied by a Central Bank release certificate which specifies the shipment as 'rubber nipples' only un-der Code No. 620915 EC;

"3. That because the said release certificate specifies the merchandise as rubber nipples, the release of the twelve (12) cases rubber nipples was ordered by the Bureau of Customs while the nine (9) cases rubber balloons falling under Code No. 890949 NEC were seized on the ground that the same were imported in violation of Circular Nos. 44 and 45, in relation of Section 1363 (f) of the Revised Administrative Code the same not being covered by the said release certificate;

"4. That after the seizure and detention of the said merchandise, the claimant thereof sought their release under bond, which was authorized by the Collector of Customs for the Port of Manila, upon the filing of a cash bond in the amount of Two Thousand Seven Hundred Sixty-Nine Pesos (P2,769.00), Philippine currency;[1]

"5. That the claimant of the seized commodities in this case contests the validity of the forfeiture thereof, on the argument that Circulars Nos. 44 and 45 are null and void;

"6. That Seizure Identification No. 2397 was decided adversely against the importer with respect to the nine (9) cases rubber balloons which were ordered forfeited in a decision of May 31, 1960 copy of which he and his surety received on June 6, 1960; x x x."

Petitioner does not here dispute that when the merchandise in question arrived in the port of Manila on November 27, 1954, and were seized and made subject of seizure proceedings, Circular Nos. 44 and 45 were in force. It is contended that with the enactment on 10 September 1955 of Republic Act 1410, conferring authority on the No-Dollar Import Office to license no-dollar importations, Circular No. 45 (giving like authority to the Central Bank) was impliedly repealed; that Circular No. 44, on the other hand, was deemed repealed on 21 January 1962, when Circular 133 lifted the controls on or the licensing of transactions in foreign exchange. In other words, it is petitioner's theory that the Court of Tax Appeals cannot validly order, in its decision of 28 October 1963, the

forfeiture of the merchandise for violation of Circulars Nos. 44 and 45 which allegedly were no longer enforceable.

As raised by petitioner, the issues to be resolved in this case are -

1. Whether or not Central Bank Circular Nos. 44 and 45 have been repealed by Republic Act 1410 and/or by Circular No. 133;
2. Whether or not the repeal of said Circular Nos. 44 and 45 has abated the liabilities incurred thereunder;
3. Whether or not an estimated profit of thirty percent (30%) of the landed cost of the subject importation shall be included in fixing the appraised value thereof; and
4. Whether or not Section 34 of Republic Act 265 is applicable in this case and not the penal provision of Section 1363 (f) of the Revised Administrative Code.

These issues are not novel ones. In connection with the first 2 questions, this Court, in a number of cases,[2] definitively ruled that Circular Nos. 44 and 45, insofar as they require release certificates from the Central Bank before importations may be withdrawn from customs authorities, were not repealed by Circular No. 133, but incorporated in or made parts of the latter circular.

Republic Act 1410 cannot also be invoked by herein petitioner in abatement of any liability incurred for violation of Circular No. 45. As therein provided, goods and commodities in transit or those previously imported under a no-dollar remittance basis at the time of the approval of Republic Act 1410 shall not be affected by the operation of that Act (Sec. 3.) The violation in this case, having taken place in 1954 or prior to the effectivity of Republic Act 1410, this Act has no application here.

Petitioner also questions the inclusion of the 30% estimated profit in the computation of the appraised value of the forfeited goods, thus increasing the amount the owner of the merchandise has to pay for its redemption. It asserts that the appraised value, instead, should be determined in the manner provided in Section 13(a) of the Philippine Tariff Act of 1909, as amended, in relation to Section 1280 of the Revised Administrative Code, or based, among others, upon the actual market value of the goods in the place of importation at the time when such merchandise was bought and sold for exportation to the Philippines.

The contention cannot be sustained. The provisions cited by petitioner govern the appraisal of importations for the purpose of determining the collectible duties upon their entry into the ports. On the other hand, the appraisal of importations in connection with seizure proceedings is governed by Section 1377 of the Revised Administrative Code which provides that the assessment shall be based on the value of the goods "in the local market". The inclusion of the estimated profit that the seized merchandise will bring to the importer, in the fixing of their appraised value is, therefore, justified.[3]

Finally, petitioner advances the argument that under Section 34 of Republic Act 265 (The Central Bank Act), any violation thereof or of any instruction, rule or regulation by the Monetary Board is punishable by a fine of not more than P20,000.00 and by imprisonment of not more than 5 years, and of no other. In short, it is being alleged that forfeiture of merchandise as a penalty for violation of a Central Bank circular is not warranted under the Central Bank Act, which should govern the importation involved in this case.

It is true that neither Republic Act 265 nor Circulars 44 and 45 provide for the penalty of forfeiture. However, it cannot be disputed that said circulars, having been validly issued, have the force and effect of law. As the subject-importation was made in violation of those circulars, the goods clearly fall within the category of "merchandise of prohibited importation" or importation effected "contrary to law", and, consequently, were

proper subject of forfeiture proceedings.[4] The application of Section 1363(f) in the case at bar was proper.

WHEREFORE, the decision of the Court of Tax Appeals under review is affirmed, with costs against the petitioner.

SO ORDERED.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Castro, JJ., concur.

[1] The sum of P2,769.00 includes the appraised value of 12 cases of rubber nipples.

[2] *Bombay Department Store vs. Commissioner of Customs*, G. R. Nos. L-20439, June 22, 1965; *Bombay Department Store vs. Commissioner of Customs*, G. R. No. L-20460, Sept. 30, 1965; *Lazaro vs. Commissioner of Customs*, G. R. Nos. L-21790 & L-21794, Dec. 24, 1965.

[3] *Lazaro vs. Commissioner of Customs*, *supra*.

[4] *Tan Tong Tek vs. Commissioner of Customs*, G. R. No. L-11947, June 30, 1959; *Pascual vs. Commissioner of Customs*, G. R. No. L-10979, June 30, 1959; *Commissioner of Customs vs. Pascual*, G. R. No. L-9836, Nov. 18, 1959; *Commissioner of Customs vs. Nepomuceno*, G. R. No. L-11126, March 31, 1962; *Bombay Department Store vs. Commissioner of Customs*, G. R. No. L-20460, Sept. 30, 1965; *Serree Investment Co. vs. Commissioner of Customs*, G. R. No. L-21217, Nov. 29, 1965.

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