

SERREE INVESTMENT COMPANY, PETITIONER, VS. COMMISSIONER OF CUSTOMS, RESPONDENTS.

G.R. Nos. L-20847-9. June 22, 1965

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Petitioner is the consignee of three different separate shipments which arrived in the Port of Manila from Hongkong on different dates as follows: 85 packages of melon seeds which arrived on board the steamer "Aeolus" on April 21, 1955; 100 baskets of fresh liches which arrived on board the steamer "Talabot" on May 14, 1955; and 17 cases of candles which arrived on board the steamer "Thames" on December 14, 1954, all of which did not have any Central Bank release certificates for their importation as required by Central Bank Circular Nos. 44 and 45. Because of petitioner's failure to secure the required release certificates, the three shipments were seized pursuant to Section 1363 (f) and Section 1250 of the Revised Administrative Code. To release the three shipments, petitioner filed three bonds which were respectively subscribed by the Pioneer Insurance and Surety Corporation and the Malayan Insurance Company.

As a result, three separate seizure proceedings were instituted by the Collector of Customs wherein petitioner and its bondmen were given their day in court. After due hearing, the Collector of Customs rendered separate decisions wherein he ordered the forfeiture in favor of the government of the merchandise confiscated, as well as the payment to the Bureau of Customs of the amounts obligated by the separate bonds which were filed by petitioner to secure the release of the merchandise.

Acting on the appeals separately interposed by petitioner, the Commissioner of Customs affirmed the decisions while he ordered the confiscation of the bonds filed by the surety companies. And not satisfied with this decision, petitioner filed separate appeals with the Court of Tax Appeals which in due time affirmed the decision of the Commissioner of Customs. Hence, the present petition for review.

In its petition for review, petitioner alleged, among other things, that it is the consignee of several shipments of merchandise involving no-dollar remittances which arrived in the Port of Manila on different dates; that said shipments were subjected to seizure proceedings by the Collector of Customs for alleged violations of Central Bank Circular Nos. 44 and 45, in relation to Section 1363 (f) and Section 1250 of the Revised Administrative Code; that for the release of said shipments petitioner filed separate surety bonds which were subscribed by two surety companies; that by virtue of the enactment of Republic Act No. 1410, said Central Bank circulars were issued without legal authority insofar as they relate to no-dollar importations; and that, consequently, the decisions of the Collector and the Commissioner of Customs, as well as the proceedings had thereunder, are null and void.

Respondent Commissioner of Customs, on the other hand, claims that the shipments in question which involve no-dollar remittances having been imported without the required Central Bank release certificates are subject to seizure proceeding pursuant to Central Bank Circular Nos. 44 and 45, in relation to Section 1363(f) of the Revised

Administrative Code; that the power and authority of the Monetary Board of the Central Bank to issue said circulars is now settled by the several decisions rendered by this Court; that the alleged lack of authority of the Central Bank to issue said circulars is raised by petitioner for the first time on appeal; and that Republic Act No. 1410 has not nullified said circulars. By way of counterclaim, respondent alleged that petitioner filed Pioneer Insurance Surety and Corporation Bond No. 317 in the sum of P26,000.00 in order to secure the release of 85 packages of melon seeds seized by the Collector of Customs, and said bond is furthermore liable for the payment of fine or surcharge and an additional penalty of P500.00

The main claim of petitioner in this appeal is that the Central Bank has no power to issue Circular Nos. 44 and 45 and as such the same do not have the force of law insofar as they concern the importation of the merchandise in question.

This argument is devoid of merit considering that it has already been settled by this Court in a long line of decisions that the Central Bank has authority under its charter to issue Circular Nos. 44 and 45. Thus, in the latest case decided by this Court which involves the same Parties and the same issue, this Court said:

"The objections of the petitioner, in his assignment of errors, against the validity of Circular Nos. 44 and 45 of the Central Bank and the authority of the Commissioner of Customs to forfeit the merchandise in question were disposed of in a similar case involving the same petitioner herein. In *Commissioner of Customs vs. Serree Investment Company*, 108 Phil., 1, this Court, citing the case of *Pascual vs. Commissioner of Customs*, L-10797, 30 June 1959, stated:

* * * Even granting that the importations in questions do not require an immediate sale of foreign exchange, their importation into the Philippines from another country will ultimately require the sale of such exchange. The currency of one country is not legal tender in another. To pay for imports, traders have to avail themselves of foreign exchange, which is the conversion of an amount of money or currency of one country into an equivalent amount of money or currency of another. Every import of goods or merchandise requires an immediate or future demand for foreign exchange.

'Section 74, Republic Act No. 205, authorizes the Monetary Board with the approval of the President, to temporarily suspend or restrict sales of exchange and to subject all transactions in gold and foreign exchange to license during an exchange crisis in order to protect the international reserve and to give the Monetary Board and the Government time in which to take constructive measures to combat such a crisis. Circular No. 44, prohibiting 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 the form prescribed by the Monetary Board, and Circular No. 45 requiring "any person or entity who intends to import or receive goods from any foreign country if or 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", are measures taken to check the unregulated flow of foreign exchange from the country and are within' the power of the Monetary Board.

'Appellant's contention is that Congress has not authorized the Central Bank to issue regulations governing imports that do not require the sale of foreign exchange, because according to him, it would not have enacted into law Republic Act No. 1410. The contention assumes that the importations did not require the sale of foreign exchange, a fact which he failed to establish.

'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. * * * Section 1303(f) of the Revised Administrative Code provides:

"Vessels, cargo, merchandise, and other subjects and things shall, under the conditions hereinbelow specified, be subject to forfeiture:

* * * * *

"(f) Any merchandise of prohibited importation or expiration, 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."

'* * * 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 * * * of which is effected * * * contrary to law" that the Commissioner of Customs may seize and order forfeited.' (Serree Investment Company vs. Commissioner of Customs, L-19564, November 28, 1964)[1]

There is also no merit in the claim that the merchandise in question cannot be lawfully forfeited under Section 1363(f) of the Revised Administrative Code, for the reason that, as said merchandise was imported in violation of Central Bank Circular Nos. 44 and 45, the same is considered as "merchandise of prohibited importation" within the purview of said Section. As such it can be validly forfeited in favor of the Government.[2]

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

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

Decision affirmed.

[1] See also Commissioner vs. Eastern Sea Trading, L-14279, October 31, 1961; Commissioner vs. Nepomuceno, L-11126, March 31, 1962; Commissioner vs. Santos, L-11911, March 30, 1962.

[2] Venancio Tonk Tek vs. Commissioner of Customs, 105 Phil. 1071; People vs. Que Po Lay, 50 Off. Gaz. No. 10, p.4800.

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