

FRANCISCO PASCUAL, PETITIONER, VS. THE COMMISSIONER OF CUSTOMS, RESPONDENT.

G.R. No. 10979. June 30, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from a judgment of the Court of Tax Appeals upholding the decision of the Commissioner of Customs in Seizure Identification Cases Nos. 1899 and 1990, that ordered the forfeiture of the bonds filed by the appellant in favor of the Government in the sums of P2,200 and P2,810 and payment of costs by the appellant (C. T. A. Cases Nos. 146 and 148).

The facts are not disputed, the parties having entered into a stipulation of facts, upon which the Court made the following findings:

* * * these are two cases (Seizure Identification Nos. 1899 and 1990) brought on appeal from the decisions of the respondent Commissioner of Customs, affirming the decisions of the Acting Collector of Customs for the Port of Manila decreeing the forfeiture of two shipments respectively, covering forty-two (42) and twenty-seven (27) packages of foreign made candies for illegal violations of Central Banks Circulars Nos. 44 and 45 in relation to section 1363 (f) of the Revised Administrative Code.

Since the issue raised in these appeals involve purely questions of law, the parties agreed to submit the two cases for decision by this Court on an agreed stipulation of facts.

With respect to C. T. A. Case No. 146, (Seizure Identification No. 1899), it appears that forty-two (42) packages of foreign made candies consigned to the herein petitioner Francisco Pascual, arrived in Port of Manila from Hongkong on September 3, 1954, on board the S. S. "Kina", under Bill of Lading No. M-13 and a commercial invoice dated September 1, 1954.

Relative to C. T. A. Case No. 148, (Seizure Identification No. 1990) it appears that another shipment of twenty-seven (27) packages of similar merchandise consigned to the same petitioner arrived in the Port of Manila from Hongkong on September 23, 1954, on board S.-S. "Hermod", under Bill of Lading No. 75.

It is admitted by the parties that these two shipments are not covered by consular invoices from the Philippine Consulate at Hongkong much less by release certificates from the Central Bank or its duly authorized agent banks as a result of which the Acting Collector of Customs for the Port of Manila ordered the forfeiture of the subject importations allegedly for violations of Central Bank Circulars Nos. 44 and 45 in relation to section 1363 (f) of the Revised Administrative Code.

On September 8 and 29, 1954, the merchandise covered by the two shipment were released to the petitioner under Reliance Surety and Insurance Co. Bond No. C-022/54 for P2,200.00 and Philippine International Surety Co. Bond No. 128 for P2,810.00.

After due hearing of the two cases pursuant to the provisions of the Revised Administrative Code, the Acting Collector of Customs for the port of Manila rendered the corresponding decisions dated January 22, 1955 and

January 21, 1955, respectively, decreeing the forfeiture of the two shipments of candies in question totalling sixty-nine (69) packages for alleged violations of Central Bank Circulars Nos. 44 and 45 in relation to section 1363 (f) of the Revised Administrative Code. The Acting Collector of Customs for the Port of Manila also ordered the petitioner to pay in cash within thirty (30) days from the date of demand for payment the amounts of P2,200.00 and P2,810.00, respectively, under penalty of forfeiture of the two surety bonds filed in favor of the Government for the release of the two shipments.

The petitioner appealed the decisions of the Acting Collector of Customs for the Port of Manila to the respondent herein, the Commissioner of Customs, who affirmed the same in toto on May 13 and 14, 1955, respectively. From these two last decisions, the petitioner perfected his appeal to this Court within the reglementary period.

As heretofore stated, the only issue raised in this appeal is whether or not the sixty-nine (69) packages of candies in question are subject to forfeiture for violation of Central Bank Circulars Nos. 44 and 45 in relation to section 1363 (f) of the Revised Administrative Code.

Section 74 of Republic Act No. 265 provides:

Notwithstanding the provisions of the third paragraph of the preceding section, in order to protect the international reserve of the Central Bank during an exchange crisis and to give the Monetary Board and the Government time in which to take constructive measures to combat such crisis, the Monetary Board, with the concurrence of at least five of its members, and with the approval of the President of the Philippines, may temporarily suspend or restrict sales of exchange by the Central Bank and may subject all transactions in gold and foreign exchange to license by the Central Bank. The adoption of the emergency measures authorized in this section shall be subject to any executive and international agreements to which the Republic of the Philippines is a party.

Pursuant to the foregoing authority granted to the Central Bank, on 9 December 1949 the Monetary Board, by unanimous vote and with the approval of the President, issued Circular No. 20,[1] restricting "sales of exchange" and subjecting "all transactions in gold and foreign exchange to licensing by the Central Bank." On 18 June 1953 the Monetary Board approved and issued Circular No. 44,[1] laying down the "guiding principles governing the licensing of foreign exchange for the payment of imports, to take effect beginning July 1, 1953." Paragraph 14 of the last mentioned Circular provides:

No item of import shall be released by the Bureau of Customs 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.

On 25 June 1953 the Monetary Board approved and issued Circular No. 45 to take effect on 1 July 1953,[2] requiring "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."

It is stipulated by the parties that the two shipments in question were not covered by consular invoices issued by the Philippine Consulate in Hongkong, from which they were shipped, and by release certificates issued by the Central Bank or its duly authorized agent banks. As held by the Court of Tax Appeals—

* * * there is absolutely no evidence to show, as the petitioner should have shown, that the two importations do not involve dollar remittances or the sale of foreign exchange. Even the stipulation of facts submitted by the parties is silent on this particular point. We note, further that the entry declarations accompanying the two shipments do not indicate that the merchandise in question do not involve dollar remittances or the sale of foreign exchange. If, as alleged by the petitioner, these importations do not involve dollar remittances or the sale of foreign exchange, which fact does not appear in the invoices or shipping document submitted by him,

the least that he could have done was to indicate on the entry declarations' (B. C. Form No. 11-A) the words "No Dollar Remittance" as is naturally to be expected of him. The failure of the petitioner to state such material fact in his entry declarations militates against his pretension that his importations do not involve dollar remittances or sale of foreign exchange.

Moreover, it is a recognized general mercantile practice that importations involve the sale of foreign exchange. Different countries have their own legal tender currencies and because of this variety of currencies, it is recognized and conceded that practically all Imports represent a demand, potential or otherwise, for foreign exchange by the country concerned. Importations of merchandise payable in services or in kind are negligibly few and isolated. They are an exception to the general mercantile practice. This being so, importations that do not involve the sale of foreign exchange must be shown or proved. In default of such showing or proof as in fact the petitioner failed to prove in the instant case, it would be safe to assume that the importations in question involve the sale of foreign exchange for which the petitioner did not obtain the corresponding dollar allocation or foreign exchange license from the Central Bank as required by Circular No. 44 of said bank. "

On 11 April 1956 the petitioner filed a motion to re-open. the cases to introduce evidence that the importations in question do not require the sale of foreign exchange; on 21 April the respondent objected to the motion on the ground that it is not accompanied by an affidavit of merit; on 11 May the petitioner filed an answer dated 6 May to the opposition, attaching thereto an affidavit subscribed and sworn to by Juan T. David, one of the petitioner's counsel; and on 14 May the respondent replied to the answer. On 11 June the Court of Tax Appeals denied the motion to reopen the cases on the ground that the petitioner's motion was in effect for new trial under Rule 37, but as it was not accompanied by an affidavit of merit, it did not interrupt the period for appeal and that granting that the defect was cured by the subsequent presentation of the required affidavit, yet the same was not the one contemplated by the Rules because it merely contained conclusions or opinions of counsel and not allegations of facts constituting the valid cause of action or defense. The Court did not err in denying the petitioner's motion to reopen the cases.

Appellant claims that the negative finding of the Court of Tax Appeals that "there is absolutely no evidence to show, as the petitioner should have shown, that the two importations do not involve dollar remittances or the sale of foreign exchange," is destroyed by the admission made by the respondent Commissioner in his decisions of 13 and 14 May 1955 holding that his "office has held In a line of decisions that Central Bank Circulars Nos. 44 and 45 are applicable to all importations not falling under the exceptions herein enumerated, whether such importations are with dollar remittance or without dollar remittance." Such statements cannot be construed as an admission that the importations in questions do not require the sale of foreign exchange. Even granting that the importations in question 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 of currency of one country into an equivalent amount of money or currency of another.[{1}]Every import of goods or merchandise requires an immediate or future demand for foreign exchange.

Section 74, Republic Act No. 265, 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 a 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

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," are measures taken to check the unregulated flow of foreign exchange from the country and are within the powers 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 do 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. Circulars 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 requires 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 subjects and things shall, under the conditions hereinbelow specified, be subject to forfeiture;

* * * * *

(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.[1] 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. 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 * * * of which is effected * * * contrary to law" that the Commissioner of Customs may seize and order forfeited. To sustain the appellant's theory of the case would render nugatory the aim and purpose of the law when it authorizes the Central Bank to temporarily suspend or restrict the sale of foreign exchange and subject all transactions in gold and foreign exchange to licensing 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.

Appellant's claim that Circulars Nos. 44 and 45 were promulgated by the Monetary Board without the concurrence of at least five of its members and without the approval of the President, is not supported by evidence.

They have been published in the Official Gazette and the presumption that an official duty has been regularly performed, the ordinary course of business followed, and the law complied with, is on the appellee's side. Moreover, the appellant cannot complain that he has been deprived of his property without due process of law.

The seizure proceeding conducted by the Acting Collector of Customs is regular on its face and cannot be assailed. In fact the appellant was afforded the opportunity to prove his claim. He did try but failed to prove it.

The judgment under review is affirmed, with costs against the appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

[1] 47 Off. Gaz. 5567-6568.

[(1)] 49 Off. Gaz. 2189-2191.

[2] 49 Off. Gaz. 2189-2192.

[{1}] Janda vs. Lepanto Consolidated Mining Company, 52 Off. Gaz., 4250, 4255; Belnan Compañia Incorporada vs. Central Bank of the Philippines, 104 Phil., 877.

[1] 49 Off. Gaz. 2189-2192.

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