

THE COMMISSIONER OF CUSTOMS, PETITIONER, VS. ENOC C. SANTOS, ET AL., RESPONDENTS.

G.R. No. 11911. March 30, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On May 4, 1954, seventy-one (71) cases of merchandise arrived on board the S/S TJPANAS from Hongkong consigned to Enoc C. Santos. The whole merchandise was declared under Entry No. 07299 which was covered by a release certificate issued by the Central Bank. Three of the 71 cases of merchandise were described as falling under Code No. 650601 which refers to "Bags and Sacks, Cotton" and under the sub-title "Bags and Sacks for Packing, New or Used." However, upon examination of these three cases, it was discovered that they contained 500 dozens of ladies' purses made of cloth with imitation beads imbedded into the fabric. Because the articles found in those three cases did not fall under the commodity number used in the release certificate but are classified under Commodity Code No. 830114-UI which refers to banned articles, they were seized as imports made in violation of Central Bank Circular No. 44, in relation to Section 1363 (f) of the Revised Administrative Code.

Pending the seizure proceedings, however, the articles were released to the importer upon the filing of a bond by Paramount Surety and Insurance Company, Inc. After hearing was held on the seizure proceedings, the Collector of Customs rendered on April 16, 1956 a decision ordering the forfeiture of the aforementioned articles on the ground that they were not covered by the required release certificate. And as the goods had already been released, the importer as well as the insurance company were ordered to pay the sum of P3,000.00 as indemnity pursuant to the terms of the bond. This decision having been affirmed by the Commissioner of Customs, the importer elevated the case to the Court of Tax Appeals.

At the hearing, the parties agreed to reproduce the stipulation of facts they had submitted at the trial of the seizure proceedings, and on December 22, 1956, the Court of Tax Appeals rendered decision reversing the decision of the customs authorities. That court held that in its opinion "the Central Bank of the Philippines has no power to issue Central Bank Circulars Nos. 44 and 45 in order to regulate imports which do not involve the sale of foreign exchange, and we therefore declare said circulars as without force and effect insofar as they govern imports for which no foreign exchange is required or will be required." In due time, the government has appealed.

Since this case had been submitted for determination of the Court of Tax Appeals which, as already stated, calls for an interpretation of the validity of Circulars Nos. 44 and 45 of the Central Bank, several cases involving a similar question had been decided by this Court which now constitute a precedent decisive in the present case. Thus, we held therein that the Central Bank has authority to issue Circulars Nos. 44 and 45 even if the same have the effect of regulating no-dollar importations "for the reason that the broad powers of the Central Bank, under its charter, to maintain our monetary stability and to preserve the international value of our currency, under section 2 of Republic Act No. 265, in relation to section 14 of said Act — authorizing the bank to issue such rules and regulations as it may consider necessary for the effective discharge of his responsibilities and the exercise of the

powers assigned to the Monetary Board and to the Central Bank — connote the authority to regulate no-dollar imports, owing to the influence and effect that the same may and do have upon the stability of our peso and its international value." (The Commissioner of Customs, et al. vs. Eastern Sea Trading, G. R. No. L-14279, October 31, 1961; *Italics supplied*).^[1] It follows, therefore, that the Court of Tax Appeals erred in holding that Circulars Nos. 44 and 45 are invalid insofar as they regulate imports which do not involve the sale of foreign exchange.

It is, however, contended that while Circulars Nos. 44 and 45 were published in the Official Gazette as required by law in order that they may have legal validity, the same was not done with regard to the classification made of the commodities that come within their purview, and so the articles that are now considered as coming under Commodity Code No. 830114-UI which refers to banned articles cannot be forfeited since the classification thus made was not published in accordance with law. Aside from the fact that the classification of the commodities which were allowed to be imported and those that are banned is but a mere implementation of Central Bank Circular No. 44 the publication of which can be considered as a necessary consequence of the publication of said circular, the contention of the importer cannot be entertained it appearing that he has imported the article in question, together with others which were found to be regular, taking advantage of the provisions of Circular No. 44, as implemented. Importer Santos secured Release Certificate No. 07299 to cover the importation of the 71 cases of merchandise based on the statistical commodity classification appended to Circular No. 44, and he could not have obtained said release if he were not aware of the existence of said commodity classifications. As a matter of fact, he secured the release certificate for the whole shipment of 71 cases under said circular and its implementation, with the only hitch that three of them involved commodities that come under the classification of banned articles. Having taken advantage of Circular No. 44 as implemented the importer cannot now be allowed to attack its validity on the ground that its implementation was not published in the Official Gazette.

" x x x at any rate, even granting arguendo that the claim is correct, we are of the opinion that petitioners are now estopped or prevented from setting up the invalidity or unconstitutionality of Commonwealth Act No. 728 it appearing that they had acted thereon, or invoked the benefits deriving therefrom, when they applied for the exportations of scrap metals as provided for in said Act. It has been held that "a person who obtains a license under a law, and seeks for a time to enjoy the benefits thereof, cannot afterwards, and when the license is sought to be revoked question the constitutionality of the act. (Cooley's 'Constitutional Limitations, Vol. I, pp. 369-370.)" (Philippine Scrappers, Inc., et al. v. Auditor Gen- v. Myrick, 71 Phil. 344).

" x x x A party cannot, in the course of litigation or in dealings in *nais*, be permitted to repudiate his representations or occupy inconsistent positions, or, in the letter of the Scotch law, to 'approbate and reprobate.'" (Magdalena Estate, Inc. vs. Myrick, 71 Phil., 344)

WHEREFORE, the decision appealed from is reversed, and another one is hereby entered affirming the decision of the Collector of Customs, as confirmed by the Commissioner of Customs. No costs.

Bengzon, C.J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, and De Leon, JJ., concur.

[1] Pascual vs. Commissioner of Customs, 105 Phil., 1039; 56 Off. Gaz., (47) 7169; Acting Commissioner of Customs vs. Leuterio, L-9142, October 17, 1959; Commissioner of Customs vs. Pascual, 106 Phil., 488; Commissioner of Customs vs. Serree Investment Co., 108 Phil., 1; 58 Off. Gaz., (32) 5418; Commissioner of Customs vs. Serree Investment Co., 110 Phil., 148; 59 Off. Gaz., (6) 900.

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