

THE COMMISSIONER OF CUSTOMS, PETITIONER, VS. SERREE INVESTMENT COMPANY, RESPONDENT.

G.R. No. 12007. May 16, 1960

Ponente: PADILLA, J.

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PADILLA, J.:

The Commissioner of Customs appeals from a judgment of the Court of Tax Appeals dated 5 January 1957 (case No. 227) reversing his decision dated 17 February 1956 in Seizure Identification No. 2044 (Exhibit I) which affirmed that of the Collector of Customs dated 6 July 1955 (Exhibit F).

The parties submitted a stipulation of facts, the pertinent parts of which are: On 8 October 1954 the SS Pasadena arrived in the port of Manila from Hongkong. Among others there were five cases of ham unloaded in the port of Manila imported by and consigned to the Serree Investment Company as evidenced by bill of lading No. M-9 issued in Hongkong on 5 October 1954. The five leases of ham were declared under import entry and internal revenue declaration No. 79816, series of 1954, BC form No. 11-A, Revised (Exhibit 2) and the importer by its licensed customs broker paid the total sum of P237.76 as advance sales tax and P119.88 as customs duties, or a total of P357.64 (Off. Rec. Nos. 56599, 56683, 56818). As the merchandise were not covered by a consular invoice and did not have a release certificate issued by the Central Bank or any of its authorized agent bank, the Collector of Customs ordered their seizure for violation of Central Bank Circulars Nos. 44 and 45 in relation to sections 1363 (f) and 1250 of the Revised Administrative Code (Exhibit 4), and the commencement of appropriate proceedings for their seizure (Seizure Identification No. 2044). On 11 October 1954 the respondent filed a surety bond in the sum of P3,478 to secure the release of the merchandise seized. After approval of the bond, on 12 October 1954 the acting Collector of Customs ordered the release of the merchandise seized. On 1 April 1955 a representative of the Collector of Customs heard the case. At the hearing the importer appeared by counsel (Exhibit 1). On 6 July 1955 the Collector of Customs rendered a decision ordering and decreeing the forfeiture in favor of the Government of the merchandise seized, or as they were released under bond, the confiscation and forfeiture of the bond (Exhibit F). The importer appealed to the Commissioner of Customs. On 17 February 1956 the Commissioner of Customs rendered a decision affirming that of the Collector of Customs and stating, as additional grounds for the seizure and forfeiture of the imported merchandise or the bond, that they were not covered by a consular invoice, as required by sections 17 and 18 of the Philippine Tariff Act of 1909, and that the importer did not comply with the provisions of par. III of Customs Administrative Order No. 50, dated 8 November 1947 (Exhibit I). From this adverse decision the importer appealed to the Court of Tax Appeals. On 5 January 1957 the Court of Tax Appeals rendered judgment holding that as the importation of the merchandise seized did not involve the sale of foreign exchange, the merchandise could not be legally seized and forfeited under section 1363 (f) of the Revised Administrative Code for violation of Central Bank Circulars Nos. 44 and 45; reversing the decision of the Commissioner of Customs; and ordering the cancellation of the surety bond of P3,478 filed by the importer. As stated at the beginning of this opinion, the Commissioner of Customs has appealed.

After quoting parts of the decisions of the Collector and Commissioner of Customs:

Considering the fact that there is nothing in the records of the case at bar tending to show that the subject shipment is duly covered by a bank release certificate and license from the Central Bank or any authorized agent bank as required by Central Bank Circulars Nos. 44 and 45, respectively, for all importations involving no-dollar remittance similar to the one under consideration herein, this Office finds that the importation of the subject shipment was a clear violation of the two aforesaid Circulars and considering further that Circulars Nos. 44 and 45 are considered as part of "Customs Law" pursuant to second paragraph of Section 1419 of the Revised Administrative Code, this Office is of the opinion and so holds that the importation in question assumes the category of an importation effected contrary to law and, therefore, subject to forfeiture under Section 1363 (f) of the Revised Administrative Code. (Exhibit F.)

This Office has consistently held in a long line of decisions that, before the enactment of Republic Act No. 1410, Central Bank Circulars Nos. 44 and 45 were applicable to all importations not falling under the exceptions therein enumerated, whether such importations were with dollar remittance or not. (Exhibit I.)

the Court of Tax Appeals found that the Collector of Customs admitted that the importation of the merchandise seized did not involve dollar remittance or a sale of foreign exchange and that the Commissioner of Customs has not disputed the admission of his subordinate, and for that reason it held that the seizure of the imported merchandise was contrary to law.

There is nothing in the above quoted parts of the two decisions to support the conclusion of the Court of Tax Appeals. In *Pascual vs. Commissioner of Customs*, 105 Phil., 1039, this Court held that a statement of the Commissioner of Customs similar to the one quoted above "cannot be construed as an admission that the importations in question do not require the sale of foreign exchange," and held further that:

* * * 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 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. 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. Circular 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 power. They were published in the Official Gazette in June 1953. Appellant failed to present to the Commissioner of Customs release certificate 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 aforequoted 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.

The fact that, as claimed by the respondent, the merchandise seized were part of the \$200,000 worth of merchandise that Tai Fong Hong, a business concern doing business in Hongkong, would ship to it for sale in Manila and that the proceeds thereof would be invested in any business that it might decide to engage in (Exhibit J), does not alter the conclusion that the importation would involve a future demand for the sale of foreign exchange. The proceeds of the sale of the imported merchandise or the earnings of such proceeds, if invested locally, would be or would have to be remitted, if not immediately, sometime in the future, to the shipper of the merchandise, an alien-owned business concern doing business in Hongkong.

The judgment appealed from is reversed, and the decision of the petitioner, the Commissioner of Customs (Exhibit I), which affirmed that of the Collector of Customs (Exhibit F), revived, with costs against the respondent.

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

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