

PHILIPPINE INTERNATIONAL SURETY CO., INC., PETITIONER, VS. COMMISSIONER OF CUSTOMS, RESPONDENT.*G.R. No. 22209. December 17, 1966*

Ponente: CONCEPCION, C.J.

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Appeal by the Philippines International Surety Co., Inc. from a decision of the Court of Tax Appeals.

From June to August, 1955, four (4) shipments of goods, consigned to Pablo Gonzales, arrived at the Port of Manila, on board S.S. Bronnyvile, without the release certificate required by Central Bank Circulars Nos. 44 and 45. Consequently, said goods were subjected, by the Acting Collector of Customs for said port, to seizure proceedings, during the pendency of which the merchandise were, later, ordered released to Gonzales, under bonds issued by appellant surety. After due hearing, said officer rendered a decision, on April 4, 1960, ordering the forfeiture of said goods—upon the ground that the importation thereof had been made in violation of the Circulars above referred to and, accordingly, of the aforementioned bonds and sentencing Gonzales and the surety to pay, jointly and severally, the amounts thereof, aggregating P53,434.06. On appeal, taken by Gonzales, this decision was affirmed by the Commissioner of Customs. The surety appealed from the latter's decision to the Court of Tax Appeals, which, in due course, dismissed said appeal upon the ground that said surety has no legal capacity to interpose the aforementioned appeal, and that the same is without merit. Hence, this appeal by the surety, who maintains that the Court of Tax Appeals has erred on both counts.

With respect to petitioner's capacity to appeal from the decision of the Commissioner of Customs, we note that the petition for review filed by the surety with the court of Tax Appeals is based upon two (2) grounds, namely: (1) that the Collector of Customs had not furnished a copy of its decision to Gonzales; and (2) that Central Bank Circulars Nos. 44 and 45 are allegedly null and void.

According to the decision rendered by the Commissioner of Customs—on appeal taken, not by the surety, who did not appeal from the decision of the Collector of Customs, but by the importer, Gonzales—the latter had limited himself to assailing the validity of the aforementioned Circulars of the Central Bank. In other words, Gonzales had not impugned the decision of the Collector of Customs upon the ground of lack of notice, alleged by the surety, thus showing, either that Gonzales had really received—as the surety, evidently, had—notice of said decision, as indicated by the fact that he had appealed therefrom, or that he had waived said notice, which it is his privilege to renounce. Hence, the surety had no right to invoke in support of its own appeal, said alleged lack of notice to the importer, not only because his acts proved that there had been such notice, but, also, that he had waived it, by appealing from the decision of the Collector of Customs, and by not interposing an appeal from the decision of the Commissioner of Customs, thereby allowing the same to become final and executory, insofar as he is concerned. It may not be amiss to add that lack of notice of a decision to a given party affects, not the validity of said decision, but its finality insofar as such party is concerned, in the sense that his period to appeal does not begin to run until said notice, and that the decision cannot be executed against him until after the expiration of the period aforementioned.

It should, also, be pointed out that, as regards the surety herein, which had not appealed from the decision of the Collector of Customs, the same had become final and executory upon expiration of the reglementary period to appeal therefrom. Although the appeal taken from said decision by the importer might have, perhaps, inured to the benefit of the surety, if the result of the appeal had been favorable to said importer, the fact is that he had failed in his appeal. Hence, there is no legal ground by which the surety may justify its alleged right to appeal from the decision of the Commissioner of Customs, based upon an alleged violation, not of its rights as a surety, but of those of the importer, as such.

It is true that a solidary debtor may "avail himself of all defenses which are derived from the nature of the obligation and of those which are personal to him or pertain to his share" (Article 1222, Civil Code of the Philippines). What, then, is the nature of the obligation of the surety in the case at bar? Pertinent parts of its bond provide:

"x x x WHEREAS, the Collector of Customs is willing to release and deliver the above mentioned _____ to the Principal upon the filing of a surety bond in the amount of _____ Philippine Currency, representing the local appraised value of the merchandise to guaranty the payment of the amount that the Bureau of Customs or the courts of the Philippines may decide to collect, depending upon the final outcome of the seizure proceedings:

"WHEREAS, the Principal and the Surety both agree to be bound, as they hereby do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, for the payment of the obligation herein mentioned; and

"WHEREAS, the parties hereto have agreed that the Collector of Customs, the Commissioner of Customs, or any of their subordinates, shall not be held liable in any manner for the delivery of said merchandise;

"NOW, THEREFORE, the conditions of this obligation are such that, in the event that it should be finally decided that the merchandise herein mentioned should be forfeited to the government, and/or that a fine or surcharge should be imposed, the entire amount of this bond, in case of forfeiture, or the corresponding amount of the fine or surcharge, as the case may be, shall be paid in CASH to the Bureau of Customs PROVIDED, HOWEVER, that if within thirty (30) days from demand for payment of the liability herein mentioned the said liability is not paid, and it should be found necessary to file an action in court to effect the collection thereof, a penalty of FIVE HUNDRED PESOS (P500.00) in addition shall be imposed, otherwise, this obligation shall be void and of no effect."

Pursuant thereto, the surety bound itself to pay the sum of money specified in the bond, "in the event that it should be finally decided that the merchandise herein mentioned should be forfeited to the Government". Thus, the surety guaranteed, not the legality of the importation, but, merely the payment of the appraised value of the goods imported and released, in the event aforementioned. As a consequence, the surety would have a right to object and appeal if it were made to pay, either an amount exceeding its bond, or without a previous decree of forfeiture of the merchandise. The bond did not, however, give the surety a right to question the legality of the seizure or that of the aforementioned Circulars of the Central Bank. Indeed, the surety in the case at bar, stands in substantially the same position, legally, as the surety of the accused in a criminal case who is released on bail. Surely, such surety can not intervene in the proceedings, before the trial court, to establish the guilt or innocence of the accused and/or appeal from its judgment convicting him as charged.

At any rate, the authority of the Central Bank to issue Circulars Nos. 44 and 45, and the validity of these Circulars,[1] as well as the propriety of the decree of confiscation and forfeiture of the goods imported in violation thereof[2] are now well settled.

WHEREFORE, the appealed decision of the Court of Tax Appeals is hereby affirmed, with costs against the

Philippines International Surety Co., Inc.

IT IS SO ORDERED.

Reyes, J.B.L., Barrera, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[1] Commissioner of Customs vs. Serree Investment Co., L-21007, May 16, 1960; Pascual vs. Commissioner of Customs, L-10797, June 30, 1959; Commissioner vs. Eastern Sea Trading, L-14279, October 31, 1961; Pascual vs. Collector of Customs, L-12219, April 25, 1962; Commissioner vs. Nepomuceno, L-11126, March 31, 1962; Commissioner vs. Santos, L-11911, March 30, 1962; Serree Investment Co. vs. Commissioner of Customs, L-19564, November 28, 1964.

[2] Serree Investment Co. vs. Commissioner of Customs, L-19564, November 28, 1964; 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; Serree Investment Co. vs. Commissioner of Customs, L-20847-9, June 22, 1965; Venancio Tong Tek vs. Commissioner, L-11947, June 30, 1959.

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