REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

CATALINA R. REYES,
Petitioner,

- versus - C.T.A. CASE NO. 132

January 9, 1956

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is a petition to review the decision of the respondent Commissioner of Customs affirming the decision of the Acting Collector of Customs of Manila ordering the forfeiture of one (1) bale of nylon remnants, bale No. 83. The forfeiture is based on an alleged violation of Central Bank Circular No. 44 in relation to section 1363 (f) of the Revised Administrative Code.

On the basis of the evidence adduced during the hearing before the Bureau of Customs and the additional documentary evidence presented before this Court, this case was submitted for decision.

The undisputed facts are as follows: on March 31, 1954 the petitioner opened through the Philippine Bank of Commerce a letter of credit to cover payment of the purchase price of three (3) bales of rayon remnants, Code No. 650316; that on August 25, 1954, there arrived in the Port of Manila, ex S/S "Steel Chemist", a shipment, consisting of three (3) bales of remnants, shipped by Awad & Co., Inc., of New York, on July 12, 1954, and consigned to petitioner Catalina

R. Reyes; that the importation was declared as Entry No. 67393 (Exhibit "A"), and covered by a bill of lading (Exhibit "F"), a commercial invoice (Exhibit "C"), a consular invoice (Exhibit "D"), and a Central Bank Release Certificate, Ref. No. RC-4763 (Exhibit "B") which describes the shipment as "3 Bales, Rayon Remnants", classifying it as "NEP", Code "No. 650316"; that upon examination by Customs Examiner S. Cabagsot, one (1) of the bales, bale No. 83, was found to contain nylon remnants; that after the seizure proceedings, the Acting Collector of Customs for the Port of Manila rendered a decision, dated January 25, 1955, decreeing the forfeiture of bale No. 83; that on February 9, 1955, the petitioner appealed the decision of the Acting Collector of Customs to the respondent who affirmed the same on March 3, 1955; and that upon the denial by the respondent of petitioner's motion for reconsideration, the petitioner brought this petition for review before this Court.

The questions involved in this case boil down to two salient issues, which are:

> 1. Whether or not the bale of nylon remnants (bale No. 83) in question, falls under Code No. 650316 of the Appendices to Regulation No. 1 Implementing Central Bank Circular No. 44 (Revised as of March 10, 1954 and effective up to June 30, 1954); and
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> 2. Whether or not said bale of nylon remnants (bale No. 83) is subject to forfeiture under Circular No. 44 of the Central Bank in relation to section 1363 (f) of the Revised Administrative Code.

Relative to the first issue, the petitioner contends that when the letter of credit was opened for the purchase of the three (3) bales of rayon remnants, there was no distinct and separate code number for nylon remnants; that it was only since July 1, 1954, after the letter of credit was opened, that code No. 650317 under which the respondent herein sought to classify bale No. 83 appeared in the commodity list; and that during the intervening period, it was the practice and policy of the Bureau of Customs to classify nylon remnants under code No. 650316.

We do not agree with the petitioner on this score. This particular importation should be, as conceded by the petitioner, governed by the regulatory list obtaining at the time the letter of credit was opened, more specifically on March 31, 1954. This commodity list is found in the Appendices to Regulation No. 1 Implementing Circular No. 44 of the Central Bank (Revised March 10, 1954 and effective up to June 30, 1954). In said Appendices "rayon remnants" are classified under Code No. 650316. For "fabrics of other synthetic fibers and spun glass", they assign 650317 as the code number (see p. 16 of the Appendices). The same commodity classifications and code numbers were contained in the revised Appendices as of July 1, 1954. It cannot, therefore, be successful contended that when the letter of credit was opened on March 31, 1954 there was no distinct and separate code number for nylon remnants. In like manner, the contention of the petitioner that it was only since July 1, 1954, about six months after the letter of credit was made, that code number 650317 was provided for nylon remnants is without merit.

As correctly opined by the respondent Commissioner of Customs this bale of nylon remnants, bale No. 83, should be classified under Code No. 650317 -- under the category of "fabrics of other synthetic fibers and spun glass". Not by any stretched and strained interpretation may a nylon remnant be identified and classified as a rayon remnant. The textures of these two fabrics differ materially.

Even granting that it was the practice and policy of the Bureau of Customs to classify nylon remnants as rayon remnants, nevertheless, administrative practice and policy, if found to be erroneous or illegal, are not binding upon the courts. The classification of the bale of nylon remnants under Code No. 650317 and not under Code No. 650316 finds authority from a clear, plain and precise provision of the Appendices to Regulation No. 1 Implementing Central Bank Circular No. 44 (Revised as of March 10, 1954 and effective up to June 30, 1954). Practice and policy should not control what is not a doubtful case (U. S. v. P. E. Anderson & Co. (NY 1909) 175 F. 961, 99 C.C.A. 451).

It having been established that the importation of the nylon remnants in question was made or attempted contrary to Central Bank Circular No. 44, we now come to the second issue whether the said merchandise is subject to seizure and forfeiture. It is the contention of the petitioner that there is absolutely nothing in the entire context of Central Bank Circular No. 44 which authorizes the imposition of the penalty of forfeiture upon merchandise imported in violation of the same. The respondent does not point to a specific provision of Central Bank Circular No. 44 which allegedly was violated by petitioner in the importation of the bale of nylon remnants, bale No. 83. He merely contends that this particular importation, not being covered by the Central Bank Release Certificate, Ref. No. 4763, which calls for rayon remnants, is a violation of Central Bank Circular No. 44, and, therefore, should be forfeited under section 1363 (f) of the Revised Administrative Code.

Section 1363 (f) of the Revised Administrative Code provides:

> "Sec. 1363. Property subject to forfeiture under customs laws. - Vessels, cargo merchandise and other objects and things shall, under the conditions herein below specified, be subject to forfeiture:
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> x x x x
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> "(f) Any merchandise of prohibited importation or exportation, the importation or exportation of whichis 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."

While Central Bank Circular No. 44 contains no provision in regard to forfeiture of merchandise imported in violation of said circular, Section 1363 (f) of the Revised Administrative Cod, quoted above, confers upon the Collector of Customs concerned the power to order the seizure and forfeiture of merchandise the importation of which is effected or attempted contrary to law. The said circular, having been issued and promulgated in accordance with law, at least in respect of its provisions applicable to the importation here in issue, has the force and effect of law. Hence, the importation of merchandise effected or attempted contrary to its provisions is contrary to law within the meaning of Section 1363 (f) of the Revised Administrative Code and, therefore, subject to seizure and forfeiture. In this respect, we are fully in accord with the view expressed by respondent in his decision of March 3, 1955, and we quote:

> "As to the question raised in the second assignment of error, it has been found that Central Bank Circular No. 44 is enforceable under this jurisdiction, for the term 'Customs Law,' as defined in Section 1419 of the Revised Administrative Code, 'includes not only the provisions of the Customs Law and regulation pursuant thereto but all <u>other</u> laws and <u>regulations</u> which are subject to enforcement by the Bureau of Customs or otherwise within its jurisdiction.' (<u>Underscoring provided</u>) Hence, 'Customs Law' embraces not only the provisions of the Customs Law and regulations proper but also all <u>other</u> laws and <u>regulations</u> which are subject to the enforcement by this Bureau. As the regulations of the Central Bank under consideration has reference to the importation of rayon or nylon remnants, it evidently comes within the jurisdiction of this Office, and as the importation of nylon remnants is not specifically authorized by said regulations but on the other hand not allowed, as may be implied from the lack of authority given in the said regulation, it is evident that only rayon remnants could have been imported. Hence, said regulation is naturally enforceable by this Bureau in connection with Section 1363 (f) of the Revised Administrative Code.
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> "It therefore follows that the importation of the goods in question, as things now stand, is not authorized by standing regulations; hence, a prohibited importation from the viewpoint of the Central Bank regulations, now held to be a part of the Customs Law as

> defined in Section 1419 of the Revised Administrative Code in connection with Section 1363 (f) of the same Code, so that the second assignment of error does not hold water."

We might also mention in this connection that in the case of Po Eng Trading v. Commissioner of Customs, C.T.A. Case No. 131, which was decided by this Court on December 10, 1955, involving the same question, it was held that an importation of merchandise in violation of Central Bank Circular No. 44 is subject to seizure and forfeiture under Section 1363 (f) of the Revised Administrative Code. We find no legal basis to warrant reversal or modification of the decision in that case.

WHEREFORE, the decision of the respondent Commissioner of Customs is hereby affirmed, with costs against the petitioner.

SO ORDERED.

Manila, Philippines, January 9, 1956.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge