REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ESTANISLAO LEUTERIO,
Petitioner,

- versus - C.T.A. CASE NO. 29

THE COMMISSIONER OF CUSTOMS,
Respondent.

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DECISION

On August 7, 1954, 792 crates of onions arrived at the port of Manila, from Kobe, Japan, on board the S.S. "Yamaharu Maru" under Import Entry No. 63655 and consigned to Estanislao Leuterio, the petitioner in this case. There is no dispute between the parties that this importation from Japan involves no dollar remittance. (Par. 3 of Petition for Review, and par. 1 of Answer). The cargo has a manifest value of $950.40 and the Bureau of Customs appraised the said importation at $2,944.96 or ₱5,889.92 for which the petitioner paid the sum of ₱1,159.51 as customs duties and sales tax.

The shipment of 792 crates of onions was found not covered by a bank release certificate as required by paragraph 14 of Central Bank Circular No. 44, and was therefore seized by the customs officials as property subject to forfeiture under customs laws. Subsequently, the Acting Collector of Customs for the Port of Manila instituted seizure and forfeiture proceedings against the 792 crates of onions for violation of Central Bank Circular Nos. 44 and 45 in relation to section 1363 (f) of the Revised Administrative Code, and also for violation of Executive Order No. 328.

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On August 12, 1954, the petitioner requested for the release of the said 792 crates of onions upon the presentation of a surety bond under the provisions of sections 1374 and 1377 of the Revised Administrative Code, but the Acting Collector of Customs denied the said request in view of the instructions of the Office of the President to the effect that onions illegally imported shall only be released through redemption under section 1388 of the Revised Administrative Code after the importation has been declared forfeited in favor of the government through seizure proceedings.

In view of the denial of the request of the petitioner to release the shipment under bond, and due to the perishable nature of the onions, the petitioner, on August 27, 1954, the date set for the hearing of the forfeiture proceedings, tendered payment under protest of the redemption price of the said goods under section 1388 of the Revised Administrative Code.

On August 28, 1954, the Acting Collector of Customs, after due hearing, declared forfeited in favor of the Republic of the Philippines, the 792 crates of onions. On the same date, the petitioner paid under protest the amount of ₱32,579.49 under Official Receipt No. 49752 as redemption price and the 792 crates of onions were forthwith surrendered to the petitioner.

On September 6, 1954, the petitioner appealed the decision of the Acting Collector of Customs to the Commissioner of Customs who held that since the 792 crates of onions were not duly provided with the requisite bank release certificate, their importation was effected in violation of paragraph 14 of Central Bank Circular No. 44 which provides:

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> "14. 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 Bank in a form prescribed by the Monetary Board."

The respondent Commissioner of Customs therefore affirmed the decree of forfeiture on the above-mentioned ground, and his decision is now the subject of the present petition for review.

As stated by counsel for the respondent, the issues in this case could be narrowed into two. They are: (1) Has the Central Bank of the Philippines, by virtue of Circular Nos. 44 and 45, the power to regulate imports which do not involve the sale of foreign exchange?; and (2) What is the proper and legal redemption price of the 792 crates of onions?

Now, what are these Central Bank Circular Nos. 44 and 45?

Central Bank Circular No. 44 (49 O.G., No. 6, p. 2189) is entitled the "Guiding Principles Governing the Licensing of Foreign Exchange for the Payment of Imports." It was promulgated on June 18, 1953 by the Monetary Board of the Central Bank of the Philippines pursuant to section 1 of Central Bank Circular No. 20, (47 O.G., No. 11, p. 5567) dated December 9, 1949. Central Bank Circular No. 20 is known as the "Restrictions on Gold and Foreign Exchange Transactions" which was issued by the Monetary Board of the Central Bank of the Philippines pursuant to the provisions of Republic Act No. 265 (Central Bank Act).

Central Bank Circular No. 45 (49 O.G., No. 6, p. 2191) dated June 25, 1953, 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 license from the Monetary Board to authorize such imports. This circular was also issued by the Monetary Board of the Central Bank of the Philippines pursuant to Central Bank Circular No. 20 and other circulars and notifications issued in pursuance thereto.

The petitioner maintains that Republic Act No. 650 expired on July 1, 1953 by its own limitations and therefore cannot be the legal basis for the Central Bank of the Philippines to control imports, and that even the most liberal interpretation and construction of Republic Act No. 265 will not show that the said law authorizes the Central Bank of the Philippines to control imports involving no dollar remittance and to order the forfeiture of merchandise imported without a bank release certificate as in the case at bar.

On the other hand, the respondent, in his answer to the petition for review, contends that Republic Act No. 650 authorizes the Central Bank of the Philippines to control the importation of commodities into the Philippines, and that Central Bank Circular Nos. 44 and 45 were issued pursuant to law, particularly sections 2 (c), 14, 64 and 66 of Republic Act No. 265, the Charter of the Central Bank of the Philippines. Later, in his memorandum submitted in support of his case, the respondent cited section 74 of Republic Act No. 265, as the fundamental source of the authority of the Central Bank of the Philippines to regulate and control importations for which no foreign exchange is required as in the instant case.

We agree with the petitioner. The claim of the respondent that Republic Act No. 650, otherwise known as "An Act to Regulate

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Imports and for Other Purposes," authorizes the Central Bank of the Philippines to control imports deserves no merit. Section 21 of the said Republic Act No. 650 provides:

> "Sec. 21. This Act shall take effect until June 30, 1953, unless sooner repealed or amended by Congress."

It is very clear therefore that Republic Act No. 650 ceased to be effective <u>ex propio vigore</u> on July 1, 1953, and cannot be the ultimate source of legal authority of the Central Bank of the Philippines to regulate the importation of commodities into the Philippines.

The contention of the respondent that Central Bank Circular Nos. 44 and 45 were issued pursuant to Republic Act No. 265 in order to govern importations which do not involve the sale of foreign exchange is likewise untenable. We have carefully scrutinized each and every provision of the Central Bank Act, with particular emphasis on the sections cited by the respondent, and we are fully convinced that under its Charter, the Central Bank of the Philippines has no power or authority to issue regulations governing imports which do not involve the sale of foreign exchange.

We have also examined the explanatory note of House Bill No. 1704 (now Republic Act No. 265) and the Congressional Record of the House of Representatives (Vol. III, Nos. 45 to 55) on the discussion of the Charter of the Central Bank of the Philippines, and we have found that there was not the slightest intention on the part of the Congress of the Philippines to authorize the Central Bank of the Philippines to issue regulations governing imports which do not require foreign exchange.

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In fact, "in normal times, the Bank (Central Bank of the Philippines) will merely keep itself informed of exchange operations of banks, maintain an orderly exchange market, and ensure that the banks do not speculate in foreign exchange." (Explanatory Note of House Bill No. 1704, now Republic Act No. 265.)

Furthermore, we take judicial notice of the fact that on February 4, 1955, Congressmen Celestino C. Juan, Joaquin R. Roces, Emilio P. Cortez, Floro S. Crisologo, Erasmo R. Cruz, Samuel F. Reyes and Isidro C. Kintanar, conscious of the lack of authority on the part of the Central Bank of the Philippines to issue regulations governing imports which do not involve the sale of foreign exchange, filed House Bill No. 2889, entitled "An Act Authorizing The Central Bank of the Philippines to Issue Regulations Governing Imports Which Do Not Involve The Sale of Foreign Exchange, and Providing Penalties For Violations of Such Regulations, by Amending Section 74 of Republic Act No. 265." On February 21, 1955, the Committee on Commerce and Industry of the House of Representatives, reported House Bill No. 2889 to the House with the recommendations that the said bill be approved without any amendment. (House Committee Report No. 1050.)

As stated in its explanatory note, the bill proposes to authorize the Central Bank of the Philippines to regulate imports which do not involve the sale of foreign exchange because imports for which no foreign exchange is required or will be required are in practice frequently paid for through the blackmarket, and the import of goods paid through the blackmarket is an evasion of the payment of the special excise tax on foreign exchange provided for in Republic Act No. 601, as amended.

The respondent Commissioner of Customs, in his long and exhaustive memorandum which was submitted to support his stand that the Central Bank of the Philippines has the power to regulate the importation in question, relied solely and entirely on section 74 of Republic Act No. 265, which provides:

> "Sec. 74. Emergency restrictions on exchange operations.--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 a 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 mergency measures authorized in this section shall be subject to any executive and international agreements to which the Republic of the Philippines is a party."

This is the same section which is sought to be amended by House Bill No. 2889, in order to give the Central Bank of the Philippines, the power or authority which the respondent Commissioner of Customs argues the said Central Bank is already in possession. To our mind, the filing of House Bill No. 2889 by responsible and distinguished members of the Congress of the Philippines, and its subsequent consideration and submission by the Committee on Commerce and Industry to the House of Representatives with the recommendation that the said bill be approved without any amendment is a good index that the contention of the respondent has no support in law.

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It is our considered opinion that the Central Bank of the Philippines, has no power to issue Central Bank Circular Nos. 44 and 45 in order to regulate imports which do not involve the sale of foreign exchange, and we, therefore, declare the said circulars as without force and effect insofar as it govern imports for which no foreign exchange is required or will be required.

Considering the view we have taken on the first issue of the controversy, it becomes unnecessary for us to decide the second issue. However, in order to settle once and for all this legal question as to what is the proper and legal redemption price in case of redemption of forfeited property under section 1388 of the Revised Administrative Code, as amended, we quote hereunder a pertinent portion of our Resolution of September 28, 1954 in C.T.A. Case No. 7, entitled "Soria Trading vs. Commissioner of Customs":

> "The only question at issue in the present motion, therefore, is whether the phrase "appraised value" as used in section 1388 of the Revised Administrative Code, is intended to mean the <u>invoice value</u> of the seized articles or the <u>actual local market value</u>, for the purpose of fixing the redemption price which the petitioner should pay if it desires to obtain the release of its goods pending the final outcome of its appeal.
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> "We hold that the redemption price that should be paid by petitioner is the present local market value of the seized articles which is ₱8,226.00 and not its invoice value of ₱4,238.70. The latter amount was assessed by the Collector of Customs of Manila only for tax purposes and not as a basis for redemption."
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> "Moreover, if we are to adopt the theory of petitioner's counsel to the effect that the redemption price should be the invoice value of the seized articles and not its actual market value, the danger of

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> imported articles being subjected to seizure and forfeiture for violation of section 1363 of the Revised Administrative Code would no longer serve as an effective deterrent to unscrupulous importers. Attempts to defraud the Government of lawful duties and taxes through misdeclaration, undervaluation, false declarations and other fraudulent devices to evade payment of customs duties and taxes would certainly increase a hundred fold. Unscrupulous importers would take greater risks knowing fully well that if their fraudulent device is discovered by the Bureau of Customs, all they have to do to obtain the release of their importations is to pay its invoice value and then sell the goods in the open market most probably still with a margin of profit although not as much had the fraud not been detected. As a matter of fact, even if the importer were to sell the seized goods at a little less than double its invoice value, he would still redeem the articles at its invoice value to reduce his losses."

Therefore, in the case at bar, if the importation in question was validly and legally forfeited in favor of the Government, the proper redemption price would be ₱32,579.49, <u>its actual local market value</u> and not its invoice value or appraised value for tax purposes in the amount of ₱5,889.92 as contended by counsel for the petitioner.

IN VIEW OF THE FOREGOING, the respondent Commissioner of Customs is hereby ordered to refund to the petitioner the sum of ₱32,579.49 representing the redemption price of the 792 crates of onions, and is hereby further ordered to refrain from enforcing Central Bank Circular Nos. 44 and 45 insofar as it regulates imports which do not involve the sale of foreign exchange.

Let a copy of this decision be sent to the Central Bank of the Philippines for its information and guidance. Without pronouncement as to costs.

SO ORDERED.

Manila, April 18, 1955.

MARIANO NABLE
Presiding Judge

I concur:

AUGUSTO M. LUCIANO
Associate Judge

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