REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

FRUCTUOSO NEPOMUCENO,
Petitioner,

- versus - July 26, 1956 C.T.A. CASE NO. 122

THE COMMISSIONER OF CUSTOMS,
AND THE COLLECTOR OF CUSTOMS
FOR MANILA,
Respondents.

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D E C I S I O N

This is a petition to review the "Decision on Appeal" of the respondent Commissioner of Customs decreeing the forfeiture of the merchandise in question for alleged violation of Central Bank Circulars Nos. 44 and 45 in relation to Section 1363 (f) of the Revised Administrative Code.

From the stipulation of facts submitted by the parties, it appears that two shipments of garlic, respectively consisting of eighty-three (83) and one hundred (100) packages, arrived in the Port of Manila, consigned to petitioner Fructuoso Nepomuceno and covered by corresponding customs entry declarations, commercial invoices and bills of lading. However, the entries were not accompanied by any consular invoice nor release certificate issued by the Central Bank or any of its authorized agent banks. Both shipments were ordered detained upon corresponding seizure reports, but pending the action of the respondent Collector of Customs for Manila, these shipments were released to the petitioner in compliance with two separate orders of the Court of First Instance of Manila in Civil Cases Nos. 23868 and 23920, both entitled Fructuoso Nepomuceno v. Edilberto David, et al., upon filing of the corresponding surety bonds to wit:- No. A-SP-54/573 for the sum of ₱22,934.16, No. A-SP-54/574 for the sum of ₱27,882.58, and No. A-SP-54/575 for the sum of ₱4,805.01, which bonds were provided by the Visayan Surety and Insurance Corporation in favor of the Republic of the Philippines.

Being dissatisfied with the decision of the respondent Collector of Customs decreeing the forfeiture of the merchandise involved herein, the petitioner appealed to the respondent Commissioner of Customs who affirmed the former. Hence, this appeal before this Court.

Respondents having withdrawn their objection to and conceded the jurisdiction of this Court over this case as in fact it has, the only remaining issue is whether or not the two shipments in question are subject to forfeiture for alleged violation of Central Bank Circulars Nos. 44 and 45 in relation to Section 1363 (f) of the Revised Administrative Code.

In this respect, respondents pose the proposition that as there is no showing as to the consideration of these importations the same must have been paid or will be paid through the black market as contemplated in the Central Bank Circular No. 45. We note that respondents have agreed to or admitted that the "two shipments of garlic were no-dollar remittance importations" (Par. 4, Stipulation of Facts) or that these importations did not involve dollar remittances, hence, we believe that respondent cannot now be permitted to renege and negate this agreement or admission in the absence of proof of palpable mistake, fraud or the like "for the parties are not allowed to gainsay their own acts or deny rights which they have previously recognized (See Irlanda v. Pitargue, et al., 22 Phil. 392). By the stipulation of facts, respondents are now estopped from disputing the character of these shipments as no-dollar remittance importations. We accordingly make a finding of fact that the garlic in the instant appeal are under no-dollar importations and now proceed to determine if under such circumstance they are subject to forfeiture as claimed by the respondents.

Central Bank Circulars Nos. 44 and 45 were promulgated by authority of Republic Act No. 265. These circulars perforce operate within the limits circumscribed by the basic law and therefore cannot legally be wider and more comprehensive in scope than the latter. Powers sought to be exercised by virtue of these circulars must have justification in statutory law: "Derivative potestas non potest esse major primitiva."

We have patiently perused and carefully scrutinized the provisions of Republic Act No. 265 and find no authority and justification for the proposition that the Central Bank of the Philippines is invested with the power to control importations that do not involve dollar remittances. On the contrary, the legislative enactment clearly confines and circumscribes the power of the Central Bank to the suspension or restriction of sales of foreign exchange. (See Section 74, Republic Act No. 265.)

Even from the explanatory note of and the congressional discussion on House Bill No. 1704, now Republic Act No. 265, there is no indication of an intention to empower the Central Bank to restrict importations on the so-called "no-dollar" basis. These observation receives confirmation from the fact that on February 4, 1955, House Bill No. 2889 entitled "An Act Authorizing The Central Bank 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" was filed so as to empower the Central Bank to deal with no-dollar importations. This bill was favorably reported out by the House Committee on Commerce and Industry, but failed to gain Congressional approval. It was only with the enactment of Senate Bill No. 384 into Republic Act No. 1410 on September 10, 1955 that the so-called "no-dollar" importations became subject to regulation, this time however, under the authority of the Department of Commerce and Industry, not the Central Bank of the Philippines. Until this latter enactment, we believe, there appeared no reasonable basis to consider that the Central Bank possessed such powers to regulate no-dollar importations.

In conclusion, we reiterate "our considered opinion that 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". (See Leuterio v. The Commissioner of Customs, C.T.A. Case No. 25, April 18, 1955.)

WHEREFORE, the decision on appeal of the respondent Commissioner of Customs is hereby reversed. We decree the cancellation of Surety Bonds No. A-SP-54/573 for the sum of ₱22,934.16, No. A-SP-54/574 for the sum of ₱27,882.58, and No. A-SP-54/575 for the sum of ₱4,805.01, all of the Visayan Surety and Insurance Corporation, which were filed for the release of the two importations of garlic in question. Without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, July 26, 1956.

MARIANO NABLE
Presiding Judge

WE-

DECISION -
C.T.A. CASE NO. 122

CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge