LT. ALEX V. BRILLO, PN
doing business under the
name and style "PNOB Commissary",
Petitioner

versus

C. T. A. CASE NO. 176
Nov/14/56

COMMISSIONER OF CUSTOMS,
Respondent.

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DECISION

The Philippine Navy Operating Base Commissary, or the "PNOB Commissary", is the claimant of twenty three (23) cases containing various merchandise, with an appraised value of $1,590.04, brought from Japan to Manila on September 2, 1954 by the RPS "MISAMIS ORIENTAL", a unit of the Philippine Navy. The said merchandise were ordered forfeited by the Collector of Customs of Manila for being unmanifested merchandise under Section 1363(g) of the Administrative Code and for failure to secure a license to import the same from the Central Bank pursuant to Circular No. 45 of the Central Bank. Upon appeal, respondent Commissioner of Customs affirmed the decision of the Collector of Customs.

On August 24, 1955, the "PNOB Commissary" filed a petition for review appealing from the decision of respondent. In his answer, through counsel, respondent alleged, as one of the affirmative defenses, that petitioner "has no legal capacity to sue, and its incapacity is even apparent on the face of the Petition for Review." On October 8, 1955, an amended petition for review was filed with Lt. Alex V. Brillo, PN, doing business under the name and style "PNOB Commissary", as petitioner. Respondent does not dispute the legal capacity of petitioner to institute the present action. We shall, therefore, limit ourselves to the consideration of the validity of the forfeiture of the merchandise in question.

This case was heard jointly with the cases of Leonardo Q. Naval v. Commissioner of Customs, C.T.A. Case No. 185 and Lt. (JG) F. S. Intengan, doing business under the name and style "Philippine Navy Officers' Club", C. T. A. Case No. 186. Petitioner did not submit a memorandum after the hearing and relies solely on the arguments contained in the original petition for review.

Respondent seeks to justify the forfeiture of the merchandise consigned to the "PNOB Commissary" under Section 1363(g) as unmanifested merchandise, a manifest therefor being required. It is alleged that the RPS "MISAMIS ORIENTAL", although a war vessel of the Philippine Navy, is required to submit a manifest of its cargo, pursuant to Sections 1221, 1225, 1228 and 1234 of the Administrative Code. For failure to submit a manifest covering the goods consigned to the "PNOB Commissary", the said goods, according to respondent, are subject to forfeiture. The same question has been extensively discussed in

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Lt. Col. Leopoldo R. Relunia v. Commissioner of Customs, C. T. A. No. 181, November 14, 1956, which involved merchandise brought by the RPS "MISAMIS ORIENTAL" during the same voyage. For convenience, we quote the pertinent portions of our decision in that case:

> "Sections 1221, 1225 and 1228 of the Administrative Code relied upon by respondent are found under Article VI of the Customs Law the title of which reads: 'Entrance of vessels in foreign trade'. Obviously, the said Article lays down rules governing the entry of vessels engaged in foreign trade. In fact, the heading of Section 1221 states: 'Ports open to vessels <u>engaged in foreign trade</u> - Duty of vessel to make entry', and the second paragraph thereof exempts from its operation the master of any war vessel or vessel employed by any foreign government, unless it is <u>engaged in the transportation of merchandise in the way of trade</u>. Section 1225 also provides that for the purpose of making entry of a <u>vessel engaged in foreign trade</u>, the master shall present the documents enumerated therein.
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> "In support of the allegation that the RPS 'MISAMIS ORIENTAL' is required to submit a manifest, it is claimed that the said vessel is a war vessel 'engaged in the transportation of merchandise in the way of trade'. Counsel for respondent alleges:
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> > 'Far from sustaining the view that war vessels are exempt from certain requirements like the presentation of a cargo manifest as prescribed in Section 1225, <u>supra</u>, paragraph 2 of Section 1221 expressly provides that war vessels "engaged in the transportation of merchandise in the way of trade", like the ship in the case at bar, are not excluded from the requirements of entry upon arrival.' (Pp. 8-9, Memorandum for Respondent.)

"Was the RPS 'MISAMIS ORIENTAL' engaged in the transportation of merchandise in the way of trade when it arrived from Korea and Japan on September 2, 1954? The word 'engaged' has been defined in Words and Phrases as follows:

> 'Engaged' means occupied or employed. Household Finance Corp. v. Shaffner, 203 S. W. 2d 734, 739, 356 Mo. 808.
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> The word 'engage' connotes more than a single act or a single transaction; it involves some continuity of action. Day v. Equitable Life Ass. Soc. of United States, C.C.A. Colo. 83 F. 2d 147, 148.
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> The phrase, 'engaged in the transportation of freight or passengers,' in constitutional provision exempting certain vessels so engaged from taxation, except for state purposes, means 'engaged in the transportation of property or persons for hire.' Dreyich v. Los Angeles County, 86 P. 2d 669, 30 Cal. App. 2d 397.
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> That pleasure yacht was carrying for crew stolen lobsters taken out of season on single occasion without hire did not constitute 'engaging in trade' within forfeiture statute. The Chiquita, C.C.A. Cal., 44 F. 2d 302, 303.

"It does not appear that the RPS 'MISAMIS ORIENTAL', when it arrived from Korea and Japan on September 2, 1954, or prior thereto, was occupied or employed in the transportation of merchandise in the way of trade; or that it was continuously or habitually transporting goods in foreign trade for hire. We take it that respondent's conclusion has been inferred solely from the fact that said vessel carried on that one occasion dutiable merchandise. We do not believe that, under the circumstances, the said vessel may be considered as having engaged in foreign trade within the meaning of Sections 1221 and 1225 of the Administrative Code so as to require it to 'report and enter' on arrival in the Philippines.

"But, according to respondent -

> 'x x x Public policy makes imperative the interpretation of the phrases "a vessel engaged in foreign trade" as used in Section 1225 of the Revised Administrative Code, and "Every vessel from a foreign port" as used in Section 1228 of the same Code, in such a manner as to include vessels owned by the Government when they undertake the transportation of cargoes similar to the goods involved herein.' (Page 8, Decision on Appeal of Respondent.)

"Public policy is shaped by Congress alone and not by any administrative official. Public policy is what the law says; not what any executive officer thinks it should be. The policy in regard to the submission of manifests of imported ~~mer-~~ merchandise has been laid down by law in Article VI of the Customs Law. There may be a gap or deficiency in that law. In such a situation, the remedy is an amendment of the law. The deficiency can not be supplied by mere executive or judicial pronouncement for that would be usurpation of the legislative power.

"Attention has been drawn to Section 1234 of the Administrative Code which requires the master of a transport or supply ship of the United States Army or Navy to present a manifest and other documents to the boarding officer or collector of customs to show the necessity of a similar requirement in regard to transport or supply ships of the Armed Forces of the Philippines. Respondent states:

> 'x x x. Even before our country attained its independence, and while the United States sovereignty was supreme over the Philippines, the master or other officers in charge of a transport

Army or Navy was required by law (Sec. 1234 of the Revised Administrative Code) to present to the boarding officer or the Collector of Customs, a duly certified manifest in duplicate, containing, among others, a list of all properties of officers and enlisted men, or of civilians carried as passengers; and a list of all other goods, wares, merchandise, or effects on board. To sustain the proposition that vessels owned by the government are not within the pale of the customs laws and regulations is not only absurd but also fraught with serious implications, for the irony thereof is that such vessels may bring, unhampered, into this country dutiable and/or prohibited merchandise and goods, or, to state it bluntly, they may engage in the very activity which they are called upon to prevent and suppress.' (Pp. 8-9, Decision on Appeal.)

"There is nothing in Section 1234 of of the Administrative Code from which an inference may be drawn that the requirements in regard to transport or supply ships of the U. S. Army or Navy are applicable to Philippine Navy vessels not engaged in foreign trade. If Congress intended to make Section 1234 applicable to Philippine Navy vessels, it should have so expressly provided. That Congress has not so far amended the law is an indication of an intention to place Philippine Navy vessels beyond the scope of said section.

"The fear has been entertained that if Philippine Navy vessels are not made subject to the same requirements as in the case of transport or supply ships of the U. S. Army or Navy, 'such vessels may bring, unhampered, into this country dutiable and/or prohibited merchandise and goods, or, to state it bluntly, they may engage in the very activity which they are called upon to prevent and suppress.' The apprehension of respondent that Philippine Navy vessels might engage in bringing into the country prohibited merchandise is not altogether justified. There might be instances of abuse of the privilege, but we do not think that an unhampered activity in prohibited merchandise by those in command of our Navy vessels would be possible. The Chief Executive, who is the Commander-in-Chief of the Armed Forces, at the first sign of such an abuse or illegal activity, would, we are certain, take appropriate measures to curtail it. At any rate, if respondent feels that there is grave danger that Navy vessels would engage in unhampered importation of prohibited goods, he should recommend to Congress the enactment of remedial legislation. We have no doubt his proposal to this effect would find sympathetic response."

Even assuming that a cargo manifest was required of the RPS "MISAMIS ORIENTAL", the evidence of record shows that the merchandise brought by said vessel were duly manifested. To quote again from the decision in the Relunia case:

"Assuming that Philippine Navy vessels are required to submit manifests, the existence of a manifest in this case has been sufficiently established. On September 17, 1954, the then Acting Commissioner of Customs wrote to the Chief of Staff of the Armed Forces of the Philippines stating that, according to his information 'a copy of the ship's manifest covering said cargo has been secured by that Office from the Commanding Officer of the vessel', and requested that 2 copies of said manifest be furnished the Bureau of Customs. This letter was referred to the Philippine Navy. Commodore J. Francisco, Flag Officer in Command, wrote to the Commissioner of Customs transmitting two copies each of the manifests. The letter of Commodore Francisco, dated October 9, 1954, reads:

'In connection with your letter dated 17 September 1954 referred to me for appropriate action by the Chief of Staff, AFP, & am enclosing two (2) copies of each of the cargo manifest of RPS Misamis Oriental (T-40) dated 26 August 1954 and the supplementary manifest covering the same voyage dated 8 September 1954.

'Please be informed that according to the testimony of the Commanding Officer of RPS Misamis Oriental and that of the Assistant Port Director, Pier 5 PN, the cargo manifest of 26 August 1954 was submitted to your office and received by your Mr. Isles. Because of an erroneous information received by the Petty Officer who was directed to submit the supplementary manifest of 8 September 1954, the same was not actually submitted to your office although it was so intended.

'In this connection, this Command feels that the pertinent provisions of the Revised Administrative Code relative to vessels coming from foreign ports are not applicable to vessels of the Philippine Navy as the same are war vessels, excepted under Section 1221 of said code. If your officeholds a contrary opinion, a clarification of this matter is requested.'

"Commodire Francisco certified to the fact that the cargo on board the RPS 'MISAMIS ORIENTAL' when it arrived from Japan on September 2, 1954, were manifested, and he furnished the Commissioner of Customs with two copies of said manifests. The cargo officer of said vessel testified in Court that he prepared said manifests. No evidence has been presented to contradict his testimony. That Philippine Navy authorities expressed doubt in regard to the application of certain provisions of the Administrative Code to Navy vessels is no proof of the absence of such manifests. The manifests were obviously prepared in compliance with Standing Operating Procedure No. 12, dated February 18, 1953, of the Philippine Navy.

"But it is contended that the manifests were not in the form prescribed by the Bureau of Customs as required by Section 1228 of the Administrative Code. That section does not require that cargo manifests should be in the 'prescribed form'. It merely requires that every vessel from a foreign port must have on board a complete written or typewritten manifests of all her cargo; that all the cargo intended to be landed at each port must be described in separate manifests for each port of call; and that each manifest shall include the port of departure and the port of delivery with the marks, numbers, quantity, and description of the packages and the names of the consignees thereof. The cargo manifests presented in evidence in this case complied with all these requirements. The manifests which are required to be prepared in the prescribed form, under Section 1228, are the passenger manifests and not the cargo manifests, as shown by the following provision:

> 'Every vessel from a foreign port or place must have on board complete manifests of passengers, immigrants, and their baggage, <u>in the prescribed form</u>, setting forth their destination and all particulars required by the immigration laws. x x x.' (Underscoring supplied.)

No similar provision is made with respect to cargo manifests. We are, therefore, of the opinion that the manifests of the RPS 'MISAMIS ORIENTAL' satisfy the requirements of the law."

The other ground relied upon for the forfeiture of the merchandise consigned to the "PNOB Commissary" is that the consignee failed to secure a license

Circular No. 45. Petitioner claims that said circular does not apply to importations involving no dollar remittance.

The fact that the importation of said goods by the "PNOB Commissary" does not involve the purchase of foreign exchange is apparently admitted. The following appears in the decision of the Collector of Customs of Manila:

> "As regards the goods aggregating $1,590.04 in value pertaining to the Philippine Navy Officers Base Commissary, Captain Jose R. Catibog, Chairman of the PNOB Exchange Council, testified that he helped in the purchase thereof in Japan, for which reason the shipper placed his name on the cases. Apparently, the purchases made by the latter and Lieut. Brillo for the PNOB Commissary were paid for with funds which the Finance Officer of the Philippine Navy obtained from the Central Bank for the salaries and subsistence of the officers and men who were to go overseas. <u>As the same were purchased personally by Philippine Navy Officers while they were in Japan, they can be considered as goods brought from abroad by returning residents</u>. They are, however, for sale to the Navy personnel and they exceed ₱1,000.00 in value. They are therefore subject to license from the Monetary Board pursuant to the provisions of Circular No. 45 of the Central Bank of the Philippines. x x x." (Page 6, Decision of Collector of Customs of Manila; underscoring supplied.)

Respondent Commissioner of Customs does not dispute the claim of petitioner that said importation does not involve the purchase of foreign exchange, but he argues that such importation is nevertheless subject to the provisions of said circular of the Central Bank. We quote from the decision appealed from:

> "With respect to the contention that Central Bank Circulars Nos. 44 and 45 do not apply to importations not involving the purchase of foreign exchange as asserted in the 4th error, this Office has consistently held in a long line of decisions that said circulars apply to all importations not falling under the exemptions, whether such importations involved the purchase of foreign exchange or not." (Page 11, Decision on Appeal of respondent.)

We have held that Central Bank Circulars Nos. 44 and 45, insofar as they seek to regulate importations of merchandise which do not involve the purchase of foreign exchange, are void. (Leuterio v. Commissioner of Customs, C. T. A. No. 29, April 18, 1955; Nepomuceno v. Commissioner of Customs, C.T.A. No. 122, July 26, 1956; Auyong Hian v. Commissioner of Customs, C. T. A. No. 219, Oct. 31, 1956.) The importation involved in this case can not, therefore, be validly forfeited under Section 1363(f) of the Administrative Code for failure to secure a license under Central Bank Circular No. 45 as it does not involve the purchase of foreign exchange.

We are, therefore, of the opinion that the 23 cases containing various merchandise consigned to the "PNOB Commissary" may not be legally forfeited under paragraph (g) of Section 1363 of the Administrative Code as unmanifested merchandise. Neither may such merchandise be forfeited under paragraph (f) of the same section of the Administrative Code for failure to secure a license from the Central Bank under Circular No. 45 of said Bank. Accordingly, respondent is hereby ordered to release to herein petitioner the said 23 cases of merchandise upon payment of the corresponding customs duties, taxes or other charges. Without pronouncement as to costs.

SO ORDERED.

Manila, November 14, 1956.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge