1st

March 25, 1957

FILOMENA L. LORENZANA,
Petitioner,

- versus -

C.T.A.
CASE NO. 281

THE COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is a petition to review the decision on appeal of respondent Commissioner of Customs in Seizure Identification No. 1367, affirming the decision of the Acting Collector of Customs for the Port of Manila, which decreed the forfeiture of forty-seven (47) pieces of baggage containing miscellaneous articles allegedly for violation of Central Bank Circular No. 45 in relation to Section 1363 (f) of the Revised Administrative Code.

It appears that petitioner Filomena L. Lorenzana, upon advice of her physician, went to Hongkong sometime in January, 1954 for a short vacation. Upon her return to Manila on February 8, 1954, on board the S.S. "Straat Soenda", she brought with her, as "accompanied baggage", the following articles:

1517 dozen bandanas
22 lbs. knitting yarn wool
5472 cotton rayon
6 pcs. sweater
8 pcs. ladies rayon pajamas
6 pcs. men's pajamas
16 yards rayon textile
6 pcs. wool carpet
3 camphor chest 17 x 34
5 dozen plastic cig. case

111

2 plastic mahjong
300 dozen gold plated identification bracelet
1 table radio, 5 tubes
8 pcs. straw baskets
143 dozen lotion 5 fleurs small
12 dozen lotion 5 fleurs big
8 silk slippers
1 tea set, 22 pcs.

The goods were appraised by Customs Examiner A. Day in the total amount of $8,707.82 (Exh. "3", p. 41, Customs rec.). All these articles were purchased by the petitioner in Hongkong, allegedly intended as gifts to her relatives, friends and employees in the F. L. Eorenzana & Sons, Inc.

Upon petitioner's failure to present to the Customs authorities at Manila, a license from the Central Bank of the Philippines covering the said articles, the same were detained for alleged violation of Central Bank Circular No. 45 in relation to Section 1363 (f) of the Revised Administrative Code. However, pending the seizure proceedings, the same were released and delivered to the petitioner herein upon filing a cash bond in the sum of ₱5,382.86.

In his decision dated April 23, 1955, the Acting Collector of Customs of Manila ordered the forfeiture of the merchandise in question, on the ground that the same were of a considerable quantity as to reasonably deduce that they were intended for commercial purposes and, therefore, their importation without the corresponding license from the Central Bank of the Philippines was in violation of Central Bank Circular No. 45, in relation to Section 1363 (f) of the Revised Administrative Code. Consequently, the same decision ordered the confiscation of petitioner's cash bond in favor of the government. Petitioner appealed the said decision to the Commissioner of Customs, who affirmed the same in his "Decision on Appeal" dated April 23, 1956. Hence, the present appeal before this Court.

The determination of this case boils down to the following issues: (1) Whether or not the importation in question involves the sale of foreign exchange; and (2) Whether or not said importation is subject to forfeiture under Central Bank Circular No. 45 in relation to Section 1363 (f) of the Revised Administrative Code.

In connection with the first issue, respondent maintains that the goods were paid for or would be paid for with all probability with dollars bought in the blackmarket. However, petitioner contends that there was no sale of foreign exchange involved in her transactions. In support of her contention, petitioner testified to the sources of the funds she used. She stated that the amount of $500.00 was entrusted for safekeeping sometime in 1948 to Mr. and Mrs. Severino Valencia of Chicago, U. S.A., when they were together in the United States and which she withdrew from the latter when her need arose; another sum of $300.00 was borrowed from Mr. and Mrs.

Fred Ruala of New York City, U.S.A. and, lastly, she received from the agency of her brother in Honolulu, Hawaii, the sum of $500.00. All in all therefore, petitioner testified that she had available $1,400.00 including the sum she received from the Central Bank of the Philippines.

With regard to the $500.00 that came from Mr. and Mrs. Severino Valencia which petitioner testified to as belonging to her and of the sum of $500.00 obtained from her brother, inasmuch as there is no evidence to the contrary, we are constrained to accept the testimony as true considering that the acquisition of goods out of the same did not involve the sale of foreign exchange. With respect to the amount of $300.00 which petitioner borrowed from Mr. and Mrs. Fred Ruala, it necessarily follows that the former is bound to pay the latter as creditor an equal amount of the same kind (Art. 1953, Civil Code of the Philippines), i.e., in U.S. dollars. It follows that there is present an obligation which transactions would necessarily involve the sale of foreign exchange. As regards the amount of $100.00 given by the Central Bank to petitioner for her personal expenses while in Hongkong and there being no evidence that she spent less than that amount for such purpose, we consider that the same was entirely spent and could not have been used to buy any portion of the merchandise in question. This would therefore mean that petitioner had only the total sum of $1,000.00 which did not involve the sale of foreign exchange out of which she could purchase merchandise.

At this juncture, it is important to note that except for a general statement that the goods in question cost only ₱4,000.00 petitioner failed to point out with particularity the manner by which the valuation thereof made by customs authorities in the amount of ₱5,415.64 ($2,707.82) is not correct. We are therefore constrained to accept the correctness thereof, considering further that the value of each article has been made out in detail by the customs examiner (see p. 42, Customs rec.). It appearing that petitioner, upon her return on February 8, 1954, imported merchandise with the total of ₱5,415.64 ($2,707.82) and her available funds which did not involve foreign exchange transaction amounted only to ₱2,000.00 ($1,000.00), there is evidently a difference of ₱3,415.64 ($1,707.82) which necessarily involves the sale of foreign exchange to finance the purchase of the merchandise in question. Consequently, we are constrained to hold that the importation herein, at least to the extent of the said difference of ₱3,415.64 involve the sale of foreign exchange for which the petitioner did not obtain the corresponding foreign exchange license as required by Central Bank Circular No. 45.

We now proceed to the second issue, i.e., whether or not the importation herein is subject to forfeiture under Central Bank Circular No. 45 in relation to Section 1363 (f) of the Revised Administrative Code.

This Court has consistently held in several cases that the Central Bank of the Philippines, under Republic Act No. 265, has no power to regulate imports that do not involve the sale of foreign exchange, and Central Bank Circular No. 45 is null and void in so far as it governs imports for which no foreign exchange is required or will be required (Leuterio v. Commissioner, C.T.A. Case No. 29, April 18, 1955; Pascual v. David, C.T.A. Case No. 94, September 16, 1955; Nepomuceno v. Commissioner, C.T.A. Case No. 122, July 26, 1956; Auyong Hian v. Commissioner, C.T.A. Case No. 219, October 31, 1956; Jea Commercial v. Commissioner, C.T.A. Case No. 144, October 18, 1956; Santos v. Commissioner, C.T.A. Case No. 235, December 22, 1956).

However, where the importation involves the sale of foreign exchange, we believe that the same is subject to regulation by the Central Bank of the Philippines because Central Bank Circular No. 45, like Central Bank Circular No. 44, were promulgated and adopted to attain the certain objectives:

> "Circular No. 44 of the Central Bank was adopted and promulgated in order to help achieve two cardinal objectives under Republic Act No. 265, to wit: (1) to maintain the monetary stability in the Philippines; and (2) to promote a rising level of production, employment and real income in the Philippines. It is designed to stop the indiscriminate importation of goods, particularly the non-essential, that threaten

> to drain our dollar reserve. The drainage of our dollar reserve inevitably causes the value of our peso to hand precariously on the balance. It is likewise designed to provide protection to our infant industries. The Philippines has too long been geared to a feudal agricultural economy. It has been its sad lot and plight merely to provide raw materials to manufacturer-nations. These raw materials as everyone knows are embellished into another form and exported back to the Philippines. Our economy depended and still depends, upon the mercies, nay whims, of the manufacturer-nations. This situation has to end. We have to graduate from the anachronistic agricultural stage to the industrial one. Industries must have to be established. And infant industries must have to be protected. It is precisely to this end, among others, that Central Bank Circular No. 44 was conceived and adopted. By this Circular, the Central Bank is invested with the power to control foreign exchange for the payment of imports.
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> The power to control foreign exchange necessarily carries with it the power to allocate the foreign exchange to finance the importation of goods. It implies the power to determine what goods should be imported, and what goods should not be imported." (Po Eng Trading v. Commissioner, C.T.A. Case No. 131, December 10, 1955.) (Underscoring ours.)

Applying the doctrine we have stated above as regards the applicability of Central Bank Circular No. 45 to importations involving foreign exchange, under said circular persons who "import or receive goods from any foreign for which . . . . foreign exchange is required or will be required . . ." are required to apply for a license . . . . to authorize such import." By exception the said circular excludes from said requirement -

"Commodities brought from abroad by a person who is returning to the Philippines, provided they are not being brought for commercial purposes, and do not exceed One Thousand Pesos (₱1,000.00) in value, unless there is evidence of abuse in the use of this privilege."

We find that the importation of petitioner is beyond the benefit of the aforementioned exception: first, the importation exceeds one thousand pesos (₱1,000.00); and second, considering the quantities thereof it is reasonably fair to conclude that they were not intended solely for personal use. Rather, we agree with respondent that they were being brought for commercial purposes, considering that petitioner testified merely in vague terms that the goods were intended as gifts for her relatives, friends and employees in the F. L. Lorenzana & Sons, Inc. It follows therefore that petitioner's importation to the extent that it involves foreign exchange is subject to licensing under said Central Bank Circular No. 45.

It appearing that in this case, petitioner purchased merchandise in Hongkong with the total value of ₱5,415.64 ($2,707.82) and that ₱2,000.00 ($1,000.00) of the purchased price thereof did not involve the sale of foreign exchange, therefore, the portion thereof which was imported into the Philippines amounting to ₱3,415.64 ($1,707.82) was imported without proper license from the Central Bank of the Philippines and is therefore, subject to forfeiture in favor of the Republic of the Philippines, for violation of Central Bank Circular No. 45, in relation to Section 1363 (f) of the Revised Administrative Code. Petitioner having filed a bond in the sum of ₱5,382.86 for the release of said merchandise pending the result of the seizure proceedings, the portion of said bond subject to forfeiture would be ₱3,415.64/5,415.64 of ₱5,382.86 or ₱3,391.18.

IN VIEW OF THE FOREGOING, the decision on appeal of respondent Commissioner of Customs in Seizure Identification No. 1367 is hereby modified in the sense out of the cash bond of ₱5,382.86 filed by petitioner to effect temporary release of the merchandise, the sum of ₱3,391.18 thereof is hereby declared forfeited to the Republic of the Philippines and the balance thereof in the sum of ₱1,991.68 is hereby ordered to be refunded to petitioner. With costs to petitioner.

SO ORDERED.

Manila, Philippines, March 25, 1957.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge