REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

FELIX M. ICAMEN,
Petitioner,

- versus - C.T.A. CASE NO. 184

THE COMMISSIONER OF
CUSTOMS,
Respondent.

x - - - - - - - - - - - - - - x

April 2, 1957

D E C I S I O N

Petitioner is the consignee of one (1) electric range with four (4) burners and one (1) frigidaire, which were brought by the RPS "MISAMIS ORIENTAL", a unit of the Philippine Navy, from Japan on September 2, 1954. They were ordered forfeited by the Collector of Customs of Manila in a decision rendered on March 18, 1955, firstly, for being unmanifested merchandise under section 1363 (g) of the Revised Administrative Code, and, secondly, 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 to the Commissioner of Customs, respondent herein, the decision of the Collector of Customs was affirmed.

Relative to the first ground upon which the decree of forfeiture by respondent is based, petitioner insists on the existence of a shipping manifest covering the importation in question. This issue has been settled in the companion case of Lt. Col. Leopoldo R. Relunia v. Commissioner of Customs, C.T.A. Case No. 181, November 14, 1956, wherein it was stated and we quote:

> "x x x 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:
>
> x x x
>
> "Commodore 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. x x x The manifests were obviously prepared in compliance with Standing Operating Procedure No. 12, dated February 12, 1953, of the Philippine Navy."

Petitioner argues that even assuming that there was really no manifest for the cargo, still the RPS "Misamis Oriental", being a navy vessel, is not required to produce any cargo manifest because

Philippine Navy boats are not engaged in foreign trade. On this issue, this Court has ruled in the Relunia Case, <u>supra</u>, as follows:

> "Sections 1225 and 1228 of the Administrative Code relied upon by respondent are found under Article Vl 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 <u>a vessel engaged in foreign trade</u>, the matter shall present the documents enumerated therein.
>
> x x x
>
> "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.
>>
>> The word 'engage' connotes more than a single act or a single transaction; it involves some continuity of action. Day v. Equitable Life Asso. Soc. of United States, C.C.A. Colo., 83 F 2d 147, 148.
>>
>> 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.' Dragich v. Los Angeles County, 86 P. 2d 669, 30 Cal. App. 2d 397.
>
> That pleasure yacht was carrying for crew stolen lobsters taken out of season on single occassion 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."

We now come to the other ground relied upon by respondent in his decree of forfeiture. It is contended that the merchandise consigned to petitioner is subject to forfeiture for the reason that petitioner-consignee failed to secure a license in violation of Central Bank Circular No. 45.

From the testimonial evidence, it appears that the electric range and frigidaire in question were purchased by petitioner with dollars received by him in the form of salary and allowances as an officer of the Armed Forces of the Philippines while he was on detail with the Philippine Liason Group (UN) attached to the Philippine Mission in Tokyo. This evidence has not been denied, much less contradicted by respondent. We take it, therefore, that the importation in question did not involve the sale of foreign exchange.

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 vs. Commissioner of Customs, C.T.A. No. 122, July 26, 1956; Auyong Hian v. Commissioner of Customs, C.T.A. No. 219, October 31, 1956; Brillo v. Commissioner of Customs, C.T.A. No. 176, Nov. 14, 1956.) Consequently, the importation in question cannot be validly forfeited under Section 1363 (f) of the Revised Administrative Code as it does not involve the purchase of foreign exchange.

WHEREFORE, the decision on appeal of the respondent Commissioner of Customs with respect to the electric range and frigidaire in question is hereby reversed. We decree the release of said articles to petitioner upon payment of the corresponding customs duties, taxes and tother charges. Without pronouncement as to costs.

SO ORDERED.

Manila, April 2, 1957.

(Sgd.) ROMAN M. UMALI
Associate Judge

I CONCUR:

(Sgd.) MARIANO NABLE
Presiding Judge

Associate Judge Augusto M. Luciano did not take part.