Library

Aug. 15, 1966

ANDRES E. LAZARO,
Petitioner

versus

CTA CASE NO. 1155

THE COMMISSIONER OF
CUSTOMS,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of the Acting Commissioner of Customs dated November 10, 1961, affirming that of the Acting Collector of Customs dated March 11, 1960, requiring petitioner and the Century Insurance Co., Inc. to pay, jointly and severally, the sums of ₱3,072.00, ₱3,325.00, ₱2,276.00 and ₱6,172.00, or a total amount of ₱14,845.00, representing the local appraised value of the imported articles seized for violation of Central Bank Circulars Nos. 44 and 45, in relation to Section 1363(f) of the Revised Administrative Code.

The facts of the case are not disputed, the parties having entered into a stipulation of facts during the administrative hearing of the case in the Bureau of Customs.

From June 14, 1954 to June 16, 1954, the following merchandise consigned to petitioner arrived at the Port of Manila from Hongkong, on board the SS "KAMBODIA" and SS "SUMATRA":

13 Pkgs. Preserved vegetables
13 " Cinamon (spices)
5 " Noodles (vermicelli)
5 " Tapioca starch
1 Pkg. Dried chestnuts
5 Pkgs. Vegetable oil
1 Pkg. Preserved vegetables
3 Pkgs. Fresh vegetables
46 " Preserved vegetables, etc.

The importations were declared in Entry Nos. 49872, 49871, 49873 and 57562, all series of 1954 (See Stipulation of Facts, pp. 34-39, Customs rec.). Since the merchandise in question did not have consular invoices nor release certificates from the Central Bank, the Acting Collector of Customs seized them for violation of Central Bank Circulars Nos. 44 and 45, in relation to Section 1363(f) of the Revised Administrative Code. The merchandise were, however, released under Surety Bond No. 2732, dated June 23, 1954, in the amount of ₱3,072.00; Surety Bond No. 2731, dated June 23, 1954, in the amount of ₱3,325.00; Surety Bond No. 2733, dated June 23, 1954, in the amount of ₱2,276.00; and Surety Bond No. 2796, dated July 17, 1954, in the amount of ₱6,172.00, all issued by the Century Insurance Co., Inc. in the total sum of ₱14,845.00 to answer for the redemption value of the goods in case of forfeiture to the Government (see pp. 88-94, Customs rec.). In appraising the importations for purposes of the seizure proceedings, respondent added the 20% estimated profits to their landed cost (pp. 99-102, Customs rec.) which served as the basis for computing the amounts covered by the aforementioned bonds.

The Acting Collector of Customs for Manila rendered a decision dated March 11, 1960 (pp. 30-32, Customs rec.), ordering petitioner and the Century Insurance Co., Inc. to pay, jointly and severally, the total sum of ₱14,845.00 to the Bureau of Customs. On appeal, the Acting Commissioner of Customs affirmed the said decision on November 10, 1961 (pp. 2-4, Customs rec.). Hence, the instant appeal.

After the filing of respondent's answer, petitioner filed a motion to set aside the decision of respondent and to dismiss the forfeiture proceedings on the ground that with the repeal by C.B. Circular No. 133 of C.B. Circular No. 20 which was implemented by C.B. Circulars Nos. 44 & 45, the liability of said articles for forfeiture has abated (pp. 12-17, CTA rec.). In a resolution dated April 1, 1963, this Court held in abeyance the resolution of the motion, the same to be considered in the decision of the case on the merits.

Later, petitioner moved to postpone the hearing of this case until the Supreme Court shall have decided the case of Lazaro vs. Commissioner of Customs, G.R. Nos. L-21790 and L-21794, wherein the same issues as those involved in the present case were raised (p. 29, CTA rec.). Accordingly, the hearing was postponed. On December 24, 1965, the Supreme Court rendered its decision in the Lazaro case.

This case was submitted for decision solely on the basis of the pleadings and the customs records (p. 37, CTA rec.).

The issues raised are:

1. May the importations in question be validly seized and forfeited for lack of Central Bank release certificate?

2. Did Republic Act No. 1410 and Central Bank Circular No. 133 repeal Central Bank Circulars Nos. 44 & 45 and thereby abate liability incurred thereunder? and

3. Should the 20% estimated profits be considered in computing the appraised value of the importations?

The first two issues have been squarely decided by the Supreme Court in the Lazaro case (*supra*) when it ruled:

> The issue of whether or not the importations in question are subject to forfeiture for lack of a Central Bank release certificate in violation of Central Bank Circulars 44 and 45 in relation to Section 1363(f) of the Revised Administrative Code has already been answered in the affirmative in previous cases involving similar facts.[1] We see no cogent reason to alter our previous rulings.
>
> Central Bank Circular 133 did not repeal Circulars 44 and 45 with respect to the necessity of a release certificate.

[1] Serree Investment Company v. Commissioner of Customs, L-21217, November 29, 1965 and cases cited therein.

As a matter of fact, paragraph 6 of Circular 133 required imports to be released only upon presentation of a release certificate issued by the Central Bank. Not only that, Section 14 of Circular 44 which states:

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

was deemed incorporated to Circular 133 by virtue of paragraph 8 thereof which we quote hereunder:[2]

> "8. All existing circulars, rules, regulations, and conditions governing transactions in foreign exchange not inconsistent with the provisions of this Circular, are deemed incorporated hereto and made integral parts hereof by reference."

With respect to the assertion that the enactment of Republic Act 1410 abated any liability incurred for violation of Central Bank Circular 45, suffice it to say that the importations in question do not come within the operation of said Act, for Section 3 thereof says:

> "SEC. 3. x x x Provided, however, That goods and commodities in transit or previously imported on a no-dollar remittance basis at the time of the approval of this Act shall not be affected by the operation of this Act." (Underscoring supplied)

Said goods had already been imported and declared forfeited by the Collector of

---

[2] Bombay Department Store v. Commissioner of Customs, L-20489, June 22, 1965; Bombay Department Store v. Commissioner of Customs, L-20460, September 30, 1965.

> Customs of Manila when Republic Act 1410 was enacted on September 10, 1955. (See also Capulong v. The Acting Commissioner of Customs, L-22990, May 19, 1966.)

On the question of whether the 20% estimated profits should be considered in computing appraised value of the importations, the Supreme Court, in the Lazaro case, held:

> The contention has no merit. Rule 13(a) of the Philippine Tariff Act of 1909, as amended, relates to the appraisal of importations for purposes of determining the customs duties.[3] For appraisal of importations in connection with seizure proceedings, the value of the importations in the local market should prevail, following Section 1377 of the Revised Administrative Code which provides:
>
> > "SEC. 1377. Description and appraisement of seized property - The collector shall also cause a list and particular description of the property seized to be prepared and an appraisement of the same at its value in the local market to be made by at least the appraising officers under the revenue laws, if there are such officers at or near the place of seizure, but if there are not, then by two competent and disinterested citizens of the Philippines, to be selected by him for that purpose, residing at or near the place of seizure, which list and appraisement shall be properly attested by such collector and the persons making the appraisal." (Underscoring supplied)

---

[3] See Lim Quim v. Collector of Customs, 23 Phil. 509

> Moreover, the inclusion of the 30% estimated profits as part of the value of the importations in question was made with the acquiescence and approval of the appellant. As a matter of fact, the amount of the bonds posted by him upon release of the goods carried the 30% estimated profits. The payment of such estimated profits as part of the value of the importations in the surety bonds therefore constitutes his contractual obligation in case of forfeiture.

WHEREFORE, petitioner's motion to set aside the decision of respondent Commissioner of Customs and to dismiss the forfeiture proceedings, filed on February 14, 1963, is hereby denied and the decision appealed from is affirmed _in toto_, with costs against petitioner.

SO ORDERED.

Quezon City, August 15, 1966.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge