REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

AUYONG HIAN (HONG WHUA HANG)
Petitioner,

- versus - C.T.A. CASE NO. 219

MANUEL P. MANAHAN (COMMISSIONER OF CUSTOMS),
Respondent.

x- - - - - - - - - - - - -x Oct. 31, 1956

DECISION

This is a petition to review the decision on appeal of respondent Commissioner of Customs, affirming the decision of the Collector of Customs which decreed the forfeiture of 4,000 bales of old newspapers on the ground of alleged violation of Central Bank Circular No. 45 in relation to Section 1363 (f) of the Revised Administrative Code.

The parties have entered into the following stipulation of facts upon which the case was submitted for determination and disposition:

"1. That petitioner is of legal age, residing at No. 1322 M. H. del Pilar, Manila, and the respondent Commissioner of Customs is holding office at the Bureau of Customs Building, Manila;

"2. That on June 12, 1953, petitioner was issued by the Import Control Commission the ICC License No. 16679 for $300,000.00 under no dollar remittance basis and on the same day petitioner paid the corresponding license fee of ₱12,000.00 under Official Receipt No. 04057275;

"3. That pursuant to said license No. 16679 petitioner effected four importations to wit: first, in July, 1953; second in September, 1953; third, in May, 1954; and fourth, on November 7, 1954;

"4. That the 4th shipment which arrived on November 7, 1954 was seized by the customs authorities on the ground that said importation was made without the proper license as provided for under Central Bank Circular No. 45;

"5. That the said seizure was labeled Manila Seizure Identification No. 2203 and in the hearing hereof, both parties submitting the case on the following stipulation of facts:

'(1) That the merchandise in question is covered by a commercial invoice and a bill of lading describing the same as 4,000 bales of old newspaper;

'(2) That the subject shipment was imported under Authority to Import Goods (ICC License No. 16679), dated June 12, 1953, issued by the defunct Import Control Commission for $300,000.00 under a no-dollar- remittance importation;

'(3) That the advance sales tax due the merchandise in question in the amount of ₱1,248.56 was paid under Official Receipt No. 20337, dated November 23, 1954;

'(4) That ICC License No. 16679 covering the importation in question has also covered three previous shipments of old newspapers by the same importer, two of which were effected in July and September, 1953, and one on or about May, 1954;

'(5) That the doubt existing on the genuineness of the said license was subsequently cleared by the National Bureau of Investigation in its report submitted to the Department of Foreign Affairs on November 12, 1954, copy of which was furnished this Office; and

'(6) That the three previous importations including the one under consideration amount to $25,000.00, more or less.'

"6. That pending decision by the Collector of Customs of Manila on the aforesaid seizure proceeding No. 2203, the Cabinet in its meeting of January 26, 1955 cancelled aforesaid license No. 16679 to the effect that said license 'is irregular in that no fixed date of expiration is specified therein'. Copy of 3rd indorsement, dated January 26, 1955 signed by the then Executive Secretary Mr. Fred Ruiz Castro is hereto attached as Annex A to form an integral part hereof;

"7. That the Collector of Customs of Manila found that the subject goods were not covered by a license required under Central Bank Circular No. 45 and declared their forfeiture in his decision dated May 7, 1955, copy of which is found on pages 4-8 of the Customs record;

"8. That petitioner appealed from the said decision to the Commissioner of Customs who rendered a 'decision on appeal' dated October 24, 1955 affirming in toto the decision of the Collector of Customs of Manila. Copy of said decision by the Commissioner of Customs is found on pages 95-97 CTA record; and

"9. That on November 15, 1955 petitioner was served a copy of the aforesaid 'decision on appeal' and on December 14, 1955, filed a petition for review with this Honorable Court."

The proper determination and disposition of this case hinges upon the issue of whether or not the 4,000 bales of old newspapers in question are subject to forfeiture for lack of a Central Bank release certificate in alleged violation of Central Bank Circular No. 45 in relation to Section 1363 (f) of the Revised Administrative Code. Incident hereto, the validity of the cancellation of petitioner's import license by the Cabinet has been raised in issue. This import license, which authorized petitioner to import goods under a "no-dollar remittance" basis was issued by the defunct Import Control Commission on June 12, 1953 under Republic Act No. 650 but bears no expiry date. However, while the present seizure case was pending before the Collector of Customs, the said license was cancelled by the Cabinet on January 26, 1955 and the pertinent communication to this effect reads -

"3rd Indorsement
Manila, January 26, 1955

"Respectfully returned to the Governor of the Central Bank of the Philippines, thru the Secretary of Foreign Affairs, Manila, advising that the Cabinet at its meeting this morning decided to cancel ICC No-dollar remittance license No. 16679 issued by the defunct Import Control Commission on June 12, 1953, to Auyong Hian (Hong Hhua Hang) in the amount of $300,000.00 to cover the importation of overissue paper from the United States and other countries. The action of the Cabinet is based on the observations of the Acting Governor of the Central Bank to the effect that this license is 'irregular in that no fixed expiry date is specified therein,' and on the provisions of the Import Control Law, Republic Act No. 650, under which the President has the authority to question the validity or legality of a license issued by the defunct Import Control Commission. As suggested by the Central Bank, Auyong Hian should, if he so desires, apply with the Central Bank in accordance with Circular No. 45, of the latter, copy attached now that the Import Control Law has already expired.

By authority of the President:

(Sgd.) FRED RUIZ CASTRO
Executive Secretary"

Petitioner contends that his license cannot be revoked because nowhere under the provisions of Republic Act No. 650 nor under the rules and regulations promulgated by the President implementing said Act, is it provided that an import license may be revoked on the ground that it has no expiry date. He further argues that it would be grossly inequitable for the government to revoke his license, as such revocation would have the result of practically confiscating the ₱12,000.00 he paid as license fee therefore, in addition to making him liable in the amount of ₱21,820.00 the face value of the surety bond presented for the provisional release of the merchandise in question, which he had imported under the license.

On the other hand, respondent singles out Section 2 of Republic Act No. 650 as expressly providing that the President has the exclusive authority to nullify or question the validity of any license so issued, and maintains that when the Cabinet nullified petitioner's license, it was the President in fact who, in the exercise of his powers under said statutory rule, was nullifying or questioning the validity of the license. To petitioner's argument of inequity, respondent points to the suggestion contained in the advisory Indorsement, dated January 26, 1955, of the Executive Secretary (Annex "C", of the Petition for Review) that "Auyong Hian (petitioner herein), if he so desires, apply with the Central Bank in accordance with Circular No. 45, of of the latter, x x x ".

We find it unnecessary to consider the issue raised on the validity of the cancellation of petitioner's import license as our findings in relation thereto will not materially alter the result of the case. On the negative assumption that the cancellation was not valid, it would follow that the importation would be legitimate and the merchandise not subject to forfeiture. On the affirmative assumption that the cancellation thereof was valid and as the communication of the Executive Secretary states no date of effectivity of the order of cancellation we must further assume that the same took effect on the date thereof. Under such circumstances the importation in question cannot legally be forfeited for the reason that petitioner effected the said importation prior to the revocation of the import license and at a time the same was valid. We believe that we have no sufficient and reasonable basis to assume that the cancellation shall retroact to the date of the issuance of the license. But even if we were to assume that the cancellation of the license shall retroact to the date of its issuance, in the light of our ruling in previous cases concerning importations made under "no-dollar remittance" basis, we hold that the merchandise herein may not be subject to forfeiture under Central Bank Circular No. 45, in relation to Section 1363 (f) of the Revised Administrative Code. The importation in question consisting of 4,000 bales of old newspapers did not involve the sale of foreign exchange. As the same was effected after Republic Act No. 650 ceased to be effective but prior to the effectivity of Republic Act No. 1410, there was at the time of the importation no law under which an import license was required. While the Central Bank issued Circulars Nos. 44 and 45, we have previously held that these circulars are void, insofar as they sought to regulate imports requiring no sale of foreign exchange.

> "x x x 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 the said circulars as without force and effect insofar as they govern imports for which no foreign exchange is required or will be required." (Leuterio v. The Commissioner of Customs C.T.A. Case No. 29, April 18, 1955; see also Nepomuceno v. The Commissioner of Customs, et al., C.T.A. Case No. 122, July 26, 1956.)

In fine, whatever the ruling on the validity of the cancellation of petitioner's license may be, the 4,000 bales of old newspapers in question cannot legally be forfeited.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision on appeal of the respondent Commissioner of Customs is hereby reversed. We decree the cancellation of Surety Bond No. 54/4697 of the Paramount Surety & Insurance Co., Inc., dated November 24, 1954, for the amount of ₱21,820.00 filed for the release of the 4,000 bales of old newspapers in question, without special pronouncement as to costs.

SO ORDERED.

Manila, October 31, 1956.

MARIANO NABLE
Presiding Judge

I CON-

CUR:

ROMAN M. UMALI
Associate Judge

Associate Judge AUGUSTO M. LUCIANO
did not take part.