REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

FRANCISCO PASCUAL,
Petitioner,

- versus - C.T.A. CASE NO. 95

EDILBERTO Y. DAVID,
Respondent.

12/24/58

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D E C I S I O N

This is an appeal from the decision of the respondent Edilberto David, then Acting Commissioner of Customs, affirming the forfeiture of an importation of twenty-eight (28) packages of chocolate consigned to the petitioner Francisco Pascual for alleged violation of Central Bank Circulars Nos. 44 and 45, in relation to section 1250 and 1363 (f) of the Revised Administrative Code.

The records show that the original petition filed on March 8, 1955 was dismissed by this Court in its resolution dated April 21,1956 on the ground that "the decision of the Acting Collector of Customs in Seizure Proceedings No. 1783, dated January 21, 1955, has become final and executory and therefore unappealable." However, upon a petition to reopen the case, this Court in an order dated May 23, 1956 granted the same and directed that the parties submit an amended stipulation of facts so as to rectify the error as to the date of the appeal from

the decision of the Collector of Customs. On June 8, 1956 the following "amended stipulation of facts" was filed by the parties upon which the case was submitted for decision.

1. That the merchandise in question consisting of 5 packages toffee and 23 packages chocolate consigned to the herein petitioner arrived at the Port of Manila on August 9, 1954, on S/S "KIMA", under Bill of Lading No. M-9, dated August 7, 1954, and a Commercial Invoice dated at Hongkong August 6, 1954, in the amount of $550.00 (pp. 35, 36, 37, Customs Record);

2. That the subject articles were neither covered by consular invoice nor a release certificate issued by the Central Bank or its duly authorized agent banks;

3. That in view of the absence of a bank release certificate covering the said shipment, the acting Collector of Customs seized the same pursuant to the provisions of Section 1363 (f) of the Revised Administrative Code, in relation to Central Bank Circulars Nos. 44 and 45, as shown by the Report of Seizure Identification No. 1783 and the Order of the Collector of Customs dated August 13, 1954 (pp. 27, 28, Customs Record);

4. That the subject shipment was released under a surety bond C-017/54 in the amount of P1,790.00 (p. 25, Customs Record);

5. That the Acting Collector of Customs on January 21, 1955, rendered a decision forfeiting the above-mentioned merchandise and ordering the importer to pay within 30 days the amount of P1,790.00, otherwise, the bond which was filed for the release of the merchandise in question will be forfeited (p. 12, Customs Record). A copy of the said decision was received by petitioner's counsel on January 25, 1955;

6. That on February 1, 1955, the petitioner herein appealed said decision of the Collector of Customs to the respondent, who, on February 12, 1955, affirmed the decision of the Collector of Customs. A copy of the said decision was received by petitioner's counsel on February 22, 1955;

7. That from the said decision of the Commissioner, the petitioner herein appealed to this Honorable Court on March 8, 1955; and

8. That with the foregoing stipulation of facts the only question remaining is one of law, which is: whether the decree of forfeiture is valid or legal."

From the foregoing facts it is manifest that petitioner has filed a reasonable appeal, and that therefore this Court may proceed to consider the case on the merits in which the only issue is whether or not the decree of forfeiture is valid or legal.

As a preliminary question, it is necessary to determine whether or not the present importation involves the sale of foreign exchange. The petitioner claims that his importation is under a "no-dollar remittance" basis, and argues that the merchandise could not be legally seized in that the Central Bank has no power to regulate such kind of importations.

The shipment in question is not covered by any consular invoice nor a release certificate issued by the Central Bank or any of its duly authorized agents. From these facts the petitioner claims that his importation does not involve foreign exchange. No other evidence was presented to substantiate this claim. Neither did petitioner present evidence as to the manner by which he could effect payment thereon if such be the case, or that the same was acquired by a gratuitous title. For purposes of securing clearance of the goods at the Bureau of Customs, petitioner presented the import entry declaration, the bill of

lading, the commercial invoice corresponding thereto (pp. 33-37, Customs Record) but these documents do not indicate whatsoever that the goods in question involve no-dollar remittance. Upon the other hand, on the import entry (p. 37, Customs Record), petitioner declared that among the charges incident to the cost of the merchandise is the 17% exchange tax in the amount of ₱149.77. This indicates that the merchandise has been or will be paid with foreign exchange secured or to be secured from the Central Bank and belies the claims of petitioner that no-dollar remittance is or will be involved in this importation.

The petitioner presented Mr. Capulong of D. Trinidad, Inc., the customs brokerage company which handled the former's shipment. He testified to the effect that the shipment was declared by him as a "no-dollar Remittance". However, we cannot give credence to this testimony, for as we have stated earlier no such fact appears in any of the documents presented to the Bureau of Customs by petitioner.

In a case decided by this Court, which is on all fours with the present one under consideration, we ruled:

> "x x x, it is recognized mercantile practice that importations involve the sale of foreign exchange. Different countries have their own legal tender currencies and because of this variety of currencies, it is recognized and conceded that practically all imports represent a demand, potential or otherwise, for foreign exchange

> by the country concerned. Importations of merchandise payable in services or in kind are negligibly few and isolated. They are an exception to the general mercantile practice. This being so, importations that do not involve the sale of foreign exchange must be shown or proved. In default of such showing or proof as in fact the petitioner fails to prove in the instant case, it would be safe to assume that the importations in question involve the sale of foreign exchange for which the petitioner did not obtain the corresponding dollar allocation or foreign exchange license from the Central Bank as required by Circular No. 44 of said bank." (Pascual vs. Comm. of Customs, C.T.A. Case No. 146, 148, Feb. 29, 1956; underscoring supplied).

By presumption and by petitioner's admission the conclusion becomes obvious. We therefore find that the importation in question involves the sale of foreign exchange and so hold accordingly.

We now proceed to consider the main question. The importation herein, involving as it does foreign exchange, is not duly covered by the requisite Central Bank release Certificate, and was seized pursuant to the provisions of Section 1363 (f) of the Revised Administrative Code. Petitioner contends that the seizure is illegal in that (a) the Central Bank cannot regulate imports involving no-dollar remittance, and (b) the Central Bank cannot be and has not been authorized to provide penalties of forfeiture of merchandise for the violation of its rules and regulations.

The first argument is of no import now, considering that the instant case involves an importation financed by the sale of foreign exchange.

The second argument is not new and we have occasion to pass upon the same in the case of Francisco Pascual vs. Commissioner of Customs (C.T.A. Cases Nos. 146 and 148, February 29, 1956) and we quote:

"Now, to achieve the afore-adverted national policies or objectives laid down by Congress in Section 2, and by authority of Section 14 of Republic Act No. 265, the Central Bank through the Monetary Board promulgated Central Bank Circular No. 44 which is an investiture of the power to control foreign exchange for the payment of imports. In other words, Central Bank Circular No. 44 is a set of rules and regulations --- a legal implementation of the declared national policies enunciated by Congress in Republic Act No. 265. The said Circular does nothing more than to carry into effect these national policies or objectives. In other words, it is but an expression of the delegated administrative power in the Central Bank to carry out the purposes of Republic Act No. 265. By its promulgation, no power to make laws governing importations has been delegated. Our Supreme Court, in Juan B. Alegre vs. The Insular Collector of Customs, 53 Phil. 404, quoting approvingly from Cooley on Constitutional Limitations, held the following:

'The maxim that the power conferred upon the Legislature to make laws cannot be delegated to any other authority does not preclude the Legislature from delegating any power not legislative which it may itself rightfully exercise. It may confer an authority in relation to the execution of a law which may involve discretion, but such authority must be exercised under and in pursuance of the law. The Legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative officer or body may be invested with the power to ascertain the facts and conditions to which the policy and principles apply. If this could not be

done there would be infinite confusion in the laws, and in an effort to detail and to particularize, they would miss sufficiency both in provision and execution.

'Boards and commissions now play an important part in the administration of our laws. The great social and industrial evolution of the past century, and the many demands made upon our legislatures by the increasing complexity of human activities, have made essential the creation of these administrative bodies and the delegation to them of certain powers. Though legislative power cannot be delegated to boards and commissions, the Legislature may delegate to them administrative functions in carrying out the purposes of a statute and various governmental powers for the more efficient administration of the laws.'

"Even assuming arguendo that the Central Bank cannot create or prescribe penalties for violation of the rules that it has promulgated by authority of a congressional act (Republic Act No. 265), in these particular cases, Central Bank Circulars 44 and 45 find their penal sanction in a codal provision that the Legislature itself has enacted. As we have heretofore ruled and also in previous cases akin to the ones at bar, importations violative of Central Bank Circulars Nos. 44 and 45 are penalized under Section 1363 (f) of the Revised Adm. Code. It cannot therefore, be correctly argued that the Central Bank has created or prescribed the penalties attaching to violations of its rules or regulations."

On the contention that Central Bank Circulars 44 and 45 do not impose the penalty of forfeiture, we find the same without merit and we quote from our decision in the case of Reyes vs. Commissioner of Customs (C.T.A. Case No. 132, January 9, 1956).

"While Central Bank Circular No. 44 contains no provision in regard to forfeiture of merchandise imported in violation of said circular, Section 1363 (f) of the Revised Administrative Code, quoted above, confers upon the Collector of Customs concerned the power to order the seizure and

forfeiture of merchandise the importation of which is effected or attempted contrary to law. The said circular, having been issued and promulgated in accordance with law, at least in respect of its provisions applicable to the importation here in issue, has the force and effect of law. Hence, the importation of merchandise effected or attempted contrary to its provisions is contrary to law within the meaning of Section 1363 (f) of the Revised Administrative Code and, therefore, subject to seizure and forfeiture."

IN VIEW OF THE FOREGOING, the decision of the Commissioner of Customs in Seizure Identification Case No. 1763 is hereby affirmed. Consequently, Surety Bond No. C-017/54 of the Reliance Surety & Insurance Co., Inc. in the amount of P1,790.00 dated August 12, 1954 filed by the petitioner in favor of the Government is hereby ordered forfeited, with costs against petitioner.

SO ORDERED.

Manila, December 24, 1956.

MARIANO NABLE
Presiding Judge

WE CONCUR:

[illegible]
Associate Judge

ROMAN M. UMALI
Associate Judge