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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

July 1, 1964

BOMBAY DEPARTMENT STORE,
Petitioner

versus

C. T. A. CASE NO. 946

THE COMMISSIONER OF CUSTOMS,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs, dated March 24, 1960, affirming the decision of the Collector of Customs of the Port of Manila in decreeing the forfeiture of articles, consisting of nylon socks, nylon stockings and rayon labels imported by petitioner, and as the said articles were previously released under bond, in ordering the petitioner and the First National Surety & Assurance Co., Ltd. to pay, jointly and severally, the amount of ₱3,627.80, representing the total appraised value of the released articles.

Sometime in 1954, petitioner imported merchandise which, upon examination by customs authorities, turned out to be 239 dozens of nylon socks, 25 dozens of nylon stockings and 29,715 rayon labels. The accompanying documents describe the merchandise as 1 case containing 124 dozens nylon socks and 112½ dozens nylon stockings for the release of which a Central Bank Certificate was issued, thereby disclosing that there was in the importation an excess of 115 dozens of nylon socks, a shortage of 87½ dozens of nylon stockings, and undeclared 29,715 rayon labels. In view of this excess and undeclared articles, the whole merchandise was held for seizure proceedings.

In the meantime, the merchandise was released to petitioner upon the filing of the First National Surety & Assurance Co., Ltd. bond No. 1873 for the amount of ₱3,627.80, the conditions of which read as follows:

> "NOW, THEREFORE, the conditions of this obligation are such that in the event that it should be finally decided that the merchandise herein mentioned should be forfeited to the Government, and/or that a fine or surcharge should be imposed, the entire amount of this bond, in case of forfeiture, or the corresponding amount of the fine or surcharge, as the case may be, shall be paid in CASH to the Bureau of Customs; PROVIDED, HOWEVER, that if within thirty (30) days from demand for payment of the liability herein mentioned the said liability is not paid, and it should be found necessary to file an action in court to effect the collection thereof, a penalty of FIVE HUNDRED PESOS (₱500.00) in addition shall be imposed otherwise, this obligation shall be void and of no effect."

After the seizure proceedings, the Collector of Customs for the Port of Manila rendered a decision, decreeing the forfeiture of the bond filed for the release of the merchandise in question and the payment by petitioner and the First National Surety & Assurance Co., Ltd., jointly and severally, of the sum of ₱3,627.80 within thirty (30) days from receipt of notice of the decision.

From the decision of the Collector of Customs, petitioner appealed to the respondent Commissioner of Customs who affirmed the same. Not satisfied with the decision of respondent, petitioner filed the instant petition for review to which respondent answered, seeking the payment by petitioner of the amount of ₱3,627.80, which represents the total appraised value of the released articles, plus interest at the legal rate, and ₱500.00 as additional damages.

The resolution of the controversy turns upon whether or not the merchandise in question are subject to forfeiture under Central Bank Circulars Nos. 44 & 45, in relation to Section 1363(f), (l), (m)-3 and 4 of the Revised Administrative Code.

The records show that petitioner had secured an authority from the Central Bank for the release of 1 case containing 124 dozens nylon socks and 112½ dozens nylon stockings from customs custody. When the Central Bank issued the release certificate for these specified articles, it was not intended to cover articles other than those specified therein, or to cover the excess of 115 dozen nylon socks and 29,715 undeclared rayon labels. Inasmuch as petitioner has not submitted to respondent an additional release certificate to cover the release of the excess and undeclared articles, their importation contravened paragraph 14 of the Central Bank Circular No. 44 which provides as follows:

> "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." (49 Off. Gaz. No. 6, pp. 2189 & 2191.)

for which reason they fell within the class of merchandise the importation of which was effected contrary to law and, therefore, became subject to forfeiture pursuant to Section 1363(f) of the Revised Administrative Code.

Moreover, the articles which are not specified in the invoice or entry also incur forfeiture under the provisions of Section 1363(1) of the same Code, for the reason, as hereinafter discussed, that the omission of said articles from the invoice was caused with fraudulent intent. If such omission was inadvertent, not fraudulent, why is there no showing that the exporter of the same affirmed such inadvertence, and, therefore, was recalling the shipment? The absence of this showing demonstrates a fraudulent intent to omit the unspecified articles from the invoice.

Finally, the whole merchandise in question is liable to suffer the penalty of forfeiture provided for in Section 1363(m)-3 and 4 of the Revised Administrative Code, as its importation was effected upon the wrongful making of a false invoice by the exporter of the same, and of a false entry by petitioner.)

Petitioner asserts that there was no intentional or fraudulent misdeclaration of merchandise. If it is true that there was a mistake in the shipment, petitioner should have taken steps to correct the error by requesting authority to re-export the articles back to the shipper, or securing a release certificate for the excess importation and correcting the entry therefor. But instead of taking any of these steps, petitioner sought and actually secured the release to it of the entire shipment.

(Petitioner's claim that the action on the forfeiture abated with the implied repeal of Central Bank Circular No. 44 by Central Bank Circular No. 133 dated January 21, 1962 is devoid of justification. There is no inconsistency between Circulars No. 44 and 133 in so far as the presentation of a release certificate of the Central Bank by an importer before imported articles can be released from custom's custody. Both circulars require that imports shall be released from custom's custody only upon presentation of a release certificate issued by the Central Bank. (<u>See</u> Par. 14, C. B. Circular

No. 44, supra; Par. 6, C. B. Circular No. 133, 58 Off. Gaz. No. 5, p. 882.) Circular No. 44 not having been repealed by Circular No. 133 with respect to the requirement of a release certificate of the Central Bank, the instant action for forfeiture has not abated.

Even assuming that Central Bank Circular No. 44 has been repealed by Circular No. 133, still the present action for forfeiture has not abated for the reason that the appeal to the respondent Commissioner was acted upon by him after he had already acquired jurisdiction to act thereon (Golay-Buchel & Cie. vs. Commissioner, G. R. No. L-10994, and No. L-11012, Dec. 29, 1959; Roxas vs. Sayoc, G. R. No. L-8502, Nov. 29, 1956).

And as regards the claim for additional damages, we reiterate our ruling in Lazatin vs. Commissioner of Customs, C. T. A. Case No. 782, January 19, 1962, where the penalty provisions involved are similar to those in the instant case. We held:

> "' x x x Upon perusal of the bond, we observe that liability for the said amount is subject to the condition that the appraised value of the merchandise involved be not paid within 30 days from demand for its payment and it should be found necessary to file a judicial action for the collection thereof. Obviously, a demand for payment of the amount covered by the bond cannot legally be made until there is a final judgment ordering forfeiture. In the case at

> bar, there is as yet no final judgment of forfeiture. Consequently, there is as yet no liability on the part of petitioner for said damages. (Que Hua Shirt Factory v. Commissioner of Customs, C. T. A. Cases Nos. 739 & 753, January 11, 1962.)'" (Angela S. Lazatin vs. Commissioner of Customs, supra.)

WHEREFORE, finding no error in the decision of the respondent Commissioner of Customs appealed from, the same is hereby affirmed. The petitioner is ordered to pay to the respondent Commissioner of Customs or his duly authorized representative the amount of ₱3,627.80, representing the appraised value of the articles in question. With costs against petitioner.

SO ORDERED.

Manila, Philippines, July 1, 1962.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge