EASTERN SEA TRADING,
Petitioner,

- versus - C.T.A. CASE NO. 343

THE COMMISSIONER OF CUSTOMS
and THE COLLECTOR OF CUSTOMS
FOR MANILA,
Respondent.

x - - - - - - - - - - - - - - x July 16, 1958

D E C I S I O N

This is an appeal from a decision of the respondent Commissioner of Customs dated December 27, 1956, in Seizure Identification Cases Nos. 1856, 1861, 1862, 1863, 1890 and 1902 sustaining in toto the decision of the Collector of Customs of Manila, wherein the latter ordered and decreed the seizure and forfeiture of the subject importations consisting of fresh garlic and onions from Hongkong and Japan for lack of the necessary release certificate from the Central Bank and license from the Monetary Board as required, allegedly, under Central Bank Circulars Nos. 44 and 45 in relation to Section 1363 (f) of the Revised Administrative Code and in Seizure Identification Cases Nos. 1856 and 1902 involving onions from Japan on the additional ground that said importations were made in violation of Sections 1 and 14 of Executive Order No. 328 dated June 22, 1950 of the President of the Philippines.

Here are the pertinent facts, as agreed upon by the parties:

1. That the herein petitioner-importer Eastern Sea Trading, was the consignee of the following shipments of goods: 250 crates of fresh onions shipped by the Aoyama Medical and Surgical Co. Ltd., Kobe, Japan, per SS "TRANQUEBAR", which arrived at the Port of Manila on August 25, 1954; two (2) 30 packages of garlic shipped by Hock Woo Hong, Hongkong, per SS "FRANKFURT", which arrived at the Port of Manila on August 27, 1954; 40 packages of garlic shipped by Wing Hong Chong, Hongkong, per SS "FRANKFURT", which arrived at the Port of Manila on August 27, 1954; 167 packages of fresh garlic shipped by Tek Sang Hong, Hongkong, per SS "KINA", which arrived at the Port of Manila on September 4, 1954; and, 1053 crates of fresh onions shipped by the Aoyama Medical and Surgical Co. Ltd., Kobe, Japan, per SS "NOREVERRTT", which arrived at the Port of Manila on September 7, 1954, as shown by Customs Entry Declarations Nos. 1096, 1106, 1150 and 1169 series of 1954 (pp. 114, 131, 168, 149, 195, and 220, Customs Record);

2. That the 250 crates of fresh onions were covered by the Commercial Invoice issued by the shipper Aoyama Medical and Surgical Co. Ltd., dated August 18, 1954, and by the Bill of Lading No. 26, dated August 26, 1954 (pp. 109 and 108, Customs Record);

3. That the two (2) 30 packages of garlic and the 40 packages of garlic were covered by the Commercial Invoices issued by the respective shippers, Hock Woo Hong, and Wing Hong Chong, all of which were dated August 25, 1954, and by the Bills of Lading, all of which were dated August 24, 1954 (pp. 128, 164, 127, 163 and 145, Customs Record);

4. That the 167 packages of fresh garlic were covered by the Commercial Invoice issued by the shipper Tek Sang Hong, dated September 1, 1954, and by the Bill of Lading No. 26, dated September 4, 1954 (pp. 190 and 188, Customs Record);

5. That the 1053 crates of fresh onions were covered by the Commercial Invoice issued by the shipper Aoyama Medical and Surgical Co. Ltd., dated August 27, 1954, and by the Bill of Lading dated August 29, 1954 (pp. 216 and 215, Customs Record);

6. That the garlic shipments mentioned in paragraphs 3 and 4 were likewise covered by the Consular Invoices issued in Hongkong on August 25, 1954 and September 1, 1954, respectively (pp. 129, 166, 147, and 192, Customs Record);

7. That the onion shipments mentioned in paragraphs 2 and 5 were not covered by any consular invoices;

8. That all the above-mentioned shipments were not covered by any Central Bank Release Certificate issued by the Central Bank of the Philippines or any of its agent banks;

9. That the above-mentioned garlic shipments were seized by the Appraisers' Division of the Bureau of Customs on the basis of Section 1363 (f) of the Revised Administrative Code in relation to Central Bank Circulars Nos. 44 and 45, as shown by the Seizure Identifications Nos. 1861, 1862, 1863, and 1890 (pp. 118, 134, 153, and 175, Customs Record);

10. That the above-mentioned onion shipments were likewise seized by the Appraisers' Division of the Bureau of Customs on the basis of Section 1363 (f) of the Revised Administrative Code in relation to Central Bank Circulars Nos. 44 and 45, and Executive Order No. 328, as shown by Seizure Identifications Nos. 1856 and 1902 (pp. 92 and 200, Customs Record);

11. That the said shipments were released to the petitioner-consignee Eastern Sea Trading, under Surety Bonds Nos. G-9586, G-9588, G-9589, G-9590, G-9591, G-9593, and G-9595 filed by the Eastern Sea Trading as principal, and Alto Surety and Insurance Co., Inc., as surety (pp. 133, 197, 170, 174, 116, 89, and 151, Customs Record), by virtue of two separate orders of the Court of First Instance of Manila issued in Civil Cases Nos. 23942 and 23852, both entitled, Lim Hu, et al., vs. Edilberto David, et al., (pp. 176 and 35-36, Customs Record);

12. That on September 4, 1956, the Collector of Customs rendered a decision forfeiting the above-mentioned merchandise, a copy of which was received by petitioner on September 6, 1956 (pp. 8-13, Customs Record);

13. That on September 6, 1956, the petitioner herein appealed said decision of the Collector of Customs to the respondent Commissioner of Customs who, on December 27, 1956, affirmed the decision of the Collector of Customs. A copy of the said decision was received by petitioner's counsel on January 8, 1957 (pp. 2-6, Customs Record);

14. That from the said decision of the Commissioner of Customs, the petitioner herein appealed to this Honorable Court on January 19, 1957; (Stipulation of Facts, pp. 42-45, CTA rec.)

In addition, the petitioner presented Exhibits A, B, C, D, E, F, and G (pp. 60-94, CTA rec.) which are respectively the Trade and Financial Agreements between the Government of the Republic of the Philippines and the Supreme Commander for the Allied Powers in Japan both dated May 18, 1950; a certified copy of Executive Order No. 328; a certification of the Secretary of the Philippine Senate dated March 3, 1958, stating among other things that there are no papers or documents showing that the Barter Trade Agreement between the Philippines and Japan through SCAP nor its extensions were ever ratified by our Senate; a letter of the Acting Secretary of Foreign Affairs to Atty. Valentin C. Gutierrez dated April 24, 1957, stating among other things that the Trade and Financial Agreements in question were extended *mutatis mutandis* eighteen times and that while the original agreements were concurred in by the Philippine Senate under ResolutionsNos. 61 and 62, both adopted on May 15, 1951, the extension of the same since April 28, 1952 were made without Senate concurrence; a mimeograph copy of the Treaty of Peace between the Allied Powers and Japan and a letter of the Executive Officer of the defunct Import Control Commission to the Commissioner of Customs dated April 15, 1953, authorizing the latter to "release all shipments of goods coming under No Dollar Remittance Import License No. 12390, issued on November 14, 1952 in the amount of $400,000.00, to the petitioner, Eastern Sea Trading, provided all the items fall within the license."

The respondent on his part presented as additional evidence, Exhibit 1 (p. 95, C.T.A. rec.) consisting of a certified copy of Circular Letter No. 143, of the Acting Commissioner of Customs enjoining his subordinates to be guided by Circular No. 52 of May 24, 1954, of the Acting Deputy Governor of the Central Bank of the Philippines regarding the extension of the Trade and Financial Agreements now in question.

This case narrows down to two questions of law:

1. Whether or not the subject importations which admittedly were imported on a no-dollar remittance basis could be seized and forfeited under Circular Nos. 44 and 45 of the Central Bank in relation to Section 1363 (f) of the Revised Administrative Code?; and

2. Whether or not, with respect to the shipment of onions from Japan covered by Seizure Identification Cases Nos. 1856 and 1902, the same could as additional ground be seized and forfeited under authority of Sections 1 and 14 of Executive Order No. 328, implementing the Trade and Financial Agreements between the Philippines and Japan, also in relation to Section 1363 (f) of the Revised Administrative Code?

In its memorandum, the petitioner contends that the seizures and forfeitures made by the respondents of the importations in question allegedly under authority of Central Bank Circulars Nos. 44 and 45 in relation to Section 1363 (f) of the Revised Administrative Code, were done so without any legal basis and therefore should be set aside the said circulars have been issued beyond the scope of the authority granted to the Central Bank under its charter. It is argued that the Central Bank under its charter has no authority whatsoever to regulate importations involving no-dollar remittances as the present ones, as in fact it has sought to do by promulgating Circulars Nos. 44 and 45. And with respect to the onions from Japan covered by Seizure Identification Cases Nos. 1856 and 1902 which were also seized by the respondents under authority of Central Bank Circular Nos. 44 and 45 and Executive Order No. 328 of the President of the Philippines, in relation to Section 1363 (f) of the Revised Administrative Code, the petitioner argues that said Executive Order has no legal force and effect it having been promulgated to implement the series of extensions to our Barter Trade Agreement with Japan which extensions were admittedly never ratified by the Philippine Senate as required by the Constitution.

The respondents contend on the other hand (1) that Central Bank Circulars Nos. 44 and 45 were promulgated pursuant to Republic Act No. 265, and therefore have the force and effect of law; (2) that since the herein shipments were imported without obtaining the necessary licenses and release certificates therefor as required under said circulars, the same could be seized and forfeited under Section 1363 (f) of the Revised Administrative Code; and (3) that with respect to the importations of onions from Japan, the same were imported without the required import licenses which was in contravention of the provisions of Sections 1 and 14 of Executive Order No. 328. The respondents contend that since said Executive Order was still in full force and effect when the subject importations arrived into the Port of Manila on August 25, 1954 and September 7, 1954, the validity of the seizure could be sustained under authority of said order.

This Court has had occasion in previous cases involving analogous facts and circumstances to decide squarely and exhaustively the two questions of law raised by the parties in the present appeal.

In Leuterio vs. Commissioner of Customs, C.T.A. Case No. 29, April 18, 1955, we held the following:

> "The contention of the respondent that CentralBank Circular Nos. 44 and 45 were issued pursuant to Republic Act No. 265 in order to govern importations which do not involve the sale of foreign exchange is likewise untenable. We have carefully scrutinized each and every provision of the Central Bank Act, with particular emphasis on the sections cited by the respondent, and we are fully convinced that under its Charter, the Central Bank of the Philippines has no

power or authority to issue regulations governing imports which do not involve the sale of foreign exchange.

"We have also examined the explanatory note of House Bill No. 1704 (now Republic Act No. 265) and the Congressional Record of the House of Representatives (Vol. III, Nos. 45 to 55) on the discussion of the Charter of the Central Bank of the Philippines, and we have found that there was not the slightest intention on the part of the Congress of the Philippines to authorize the Central Bank of the Philippines to issue regulations governing imports which do not require foreign exchange. In fact, 'in normal times, the Bank (Central Bank of the Philippines) will merely keep itself informed of exchange operations of banks, maintain an orderly exchange market, and ensure that the banks do not speculate in foreign exchange.'" (Explanatory Note of House Bill No. 1704, now Republic Act No. 265.)

"Furthermore, we take judicial notice of the fact that on February 4, 1955, Congressmen Celestino C. Juan, Joaquin R. Roces, Emilio P. Cortez, Floro S. Crisologo, Erasmo R. Cruz, Samuel F. Reyes and Isidro C. Kintanar, conscious of the lack of authority on the part of the Central Bank of the Philippines to issue regulations governing imports which do not involve the sale of foreign exchange, filed House Bill No. 2889, entitled 'An Act authorizing the Central Bank of the Philippines to Issue Regulations Governing Imports which do not Involve the Sale of Foreign Exchange, and Providing penalties for Violations of such Regulations by Amending Section 74 of Republic Act No. 265.' On February 21, 1955, the Committee on Commerce and Industry of the House of Representatives, reported House Bill No. 2889 to the House with the recommendations that the said bill be approved without any amendment. (House Committee Report No. 1050.)

"As stated in its explanatory note, the bill proposes to authorize the CentralBank of the Philippines to regulate imports which do not involve the sale of foreign exchange because imports for which no foreign exchange is required or will be required are in practice frequently paid for through the blackmarket, and the import of goods paid through the blackmarket, is an evasion of the payment of the special excise tax on foreign exchange provided for in Republic Act No. 601, as amended.

"The respondent Commissioner of Customs, in his long and exhaustive memorandum which was submitted to support his stand that the Central Bank of the Philippines has the power to regulate the importation in question, relied solely and entirely on section 74 of Republic Act No. 265, which provides:

'Sec. 74. Emergency restrictions on exchange operations.- Notwithstanding the provisions of the third paragraph of the preceding section, in order to protect the international reserve of the Central Bank during an exchange crisis and to give the Monetary Board and the Government time in which to take constructive measures to combat such a crisis, the Monetary Board, with the concurrence of at least five of its members, and with the approval of the President of the Philippines, may temporarily suspend or restrict sales of exchange by the CentralBank and may subject all transactions in gold and foreign exchange to license by the Central Bank. The adoption of the emergency measures authorized in this section shall be subject to any executive and international agreements to which the Republic of the Philippines is a party'.

"This is the same section which is sought to be amended by House Bill No. 2889, in order to give the Central Bank of the Philippines, the power or authority which the respondent Commissioner of Customs argues the said Central Bank is already in possession. To our mind, the filing of House Bill No. 2889 by responsible and distinguished members of the Congress of the Philippines, and its subsequent consideration and submission by the Committee on Commerce and Industry to the House of Representatives with the recommendation that the said bill be approved without any amendment is a good index that the contention of the respondent has no support in law.

"It is our considered opinion that 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 it govern imports for which no foreign exchange is required or will be required." (See also Nepomuceno vs.

Commissioner of Customs, C.T.A. Case No. 122, July 26, 1956; Auyong Hian vs. Commissioner of Customs, C.T.A. Case No. 219, October 31, 1956; Brillo vs. Commissioner of Customs, C.T.A. Case No. 176, November 14, 1956; Santos vs. Commissioner of Customs, C.T.A. Case No. 235, December 22, 1956 and Serree Investment Co. vs. Commissioner of Customs, C.T.A. Case No. 338, July 16, 1958.)

We see no reason to depart from the foregoing view which is hereby reiterated.

Moreover, even Acting Deputy Governor Andres V. Castillo of the Central Bank, who is one of those called upon to interpret and execute the provisions of the charter of said institution as embodied in Republic Act No. 265, is of the same opinion that "the Central Bank does not have any power to control imports except insofar as foreign exchange is involved," as could be gleaned from his letter (p. 70, Customs rec.) to the Commissioner of Customs dated October 29, 1953. Courts will and should respect the contemporaneous construction placed upon a statute by the executive officers, whose duty it is to enforce it, and unless such interpretation is clearly erroneous will ordinarily be controlled thereby (Molina vs. Rafferty, 37 Phil. 545).

On Page 8 of respondents' memorandum, reference is made to the arguments of Government counsel in the analogous case of Serree Investment Co. vs. Commissioner of Customs, C.T.A. Case No. 338 wherein the case of U.S. vs. Von Clemm, 136 F (2nd) 968 was cited in support of the proposition that importations of goods on a no-dollar remittance basis are covered by Section 74 of the Central

Bank Act. However, a cursory reading of the Von Clemm case will show that it is not in point, the facts of the present case being entirely different from said case. In the Von Clemm case, there was actually an importation with the use of foreign exchange and payment for the imported goods was made in dollars by the importer to a trust company for credit of the exporter. In the case now before us, however, no amount in pesos or in dollars was made in payment of the goods consigned to the herein petitioner. As a matter of fact, the evidence will disclose (see pp. 52, 53 and 67 Customs rec.) that the proceeds of the sale of the importations now in question were intended to be utilized by Mr. Lim Hu, Proprietor and Manager of the petitioner firm for some other business purposes such as deep sea fishing and the construction and operation of factories. Although there may be a claim of a non-resident against a Filipino citizen in this instance, yet we believe that claims against such citizens are not and could not be covered by the phrase "transactions in gold and foreign exchange" because the phrase contemplates direct business transactions in gold or in foreign exchange. The transactions in the present appeal definitely do not involve gold or foreign exchange and, therefore, Section 74 of Republic Act No. 265 is not applicable.

As regards the second issue, the petitioner contends that Executive Order No. 328 of the President of the Philippines which is an implementing regulation of the Trade and Financial Agreements between the Philippines and the Supreme Commander for the Allied Powers acting in respect of occupied Japan and the Financial Agreement for Trade between the same contracting parties, both executed on May 18, 1950 (Exhibits A and B, pp. 60-70; 71-79, C.T.A. rec.), is applicable only during the lifetime of the Supreme Commander for the Allied Powers (SCAP). Petitioner argues that the extensions of the effectivity of these agreements not having been ratified by the Philippine Senate as required by our Constitution, such extensions are therefore illegal and of no binding effect. Consequently, petitioner argues that Executive Order No. 328, could not be taken as a basis for the seizure of its importations from Japan covered by Seizure Identifications Cases Nos. 1856 and 1902, the order being null and void for failure of the Philippine Senate to ratify the extensions upon which the said order was based. The petitioner likewise urges upon us that since the Trade and Financial Agreements in question ceased to be law between the Philippines and Japan on or after the proclamation of the Treaty of Peace between the Allied Powers which went into effect on September 8, 1951, it follows that Executive Order No. 328 ceased to be a valid law as of that date.

The respondent claims on the other hand that the adoption by Japan and the Philippines of the treaties previously entered into between the latter and the SCAP constitute no longer treaties under International Law but only "Executive Agreements" of a temporary or provisional character without the need for confirmation by the Philippine Senate.

It is not disputed that the original trade and financial agreements in question had been ratified by the Philippine Senate on May 15, 1951 (Exhibit E, p. 81, CTA rec.). It is not also questioned that on March 19, 1952, as evidenced by Exhibit E, the rights, obligations and interest of SCAP under said agreements were formally transferred to Japan. And with respect to the extensions of these agreements from April 28, 1952 to April, 1957, such extensions were admittedly made without Senate concurrence as evidenced by Exhibits D and E (pp. 80-81, CTA rec.).

The issue raised, which is the constitutionality of the extensions (not the original) of the Trade and Financial Agreements between our Government and Japan, is a question of magnitude proportion and of far-reaching consequences. It must be noted that these Trade and Financial Agreements seeks to regulate the inflow of goods and services from the Philippines to Japan and vice-versa in the exercise of the police power of the state. Although the original of these Trade and Financial Agreements were considered and treated as treaties by the Philippine Senate and by our Supreme Court (Commissioner of Customs vs. Romeo Valencia, G.R. No. L-7470, Oct. 31, 1956) which is one score in favor of petitioner, we would prefer to refrain from passing upon the constitutionality of the succeeding extensions to these agreements admittedly made without the concurrence of the Philippine Senate and incidentally the validity of Executive Order No. 328 implementing said agreements and its extensions, finding as we do another ground for not sustaining the order of seizure of respondent with respect to the importations of onions from Japan covered by Seizure Identifications Cases Nos. 1856 and 1902. It is a fundamental rule that if the Court possesses the power to declare a treaty void, as we believe we do, it will refrain from exercising it except in a very clear case <u>especially so if the case could be disposed of on other grounds</u>. (Ware vs. Hylton I L. Ed. 568; Siler vs. Louisville and N.R. Co. 53 L. ed. 753, 758.)

In Coloma vs. Commissioner of Customs and Collector of Customs, C.T.A. Case No. 178, March 10, 1958, which is analogous to the present case insofar as the subject importations of onions from Japan are concerned, we held the following:

> "The third issue involves the question whether or not the said importation is subject to forfeiture under Executive Order No. 328, series of 1950, Section 1 of which provides that no importation of merchandise from Japan may be effected or attempted without proper license, and Section 14 which provides that merchandise so imported shall be subject to forfeiture. The agency entrusted with authority to issue licenses for the importation of merchandise from Japan was the former Import Control Commission. However, at the time the articles here in question were imported, the Import Control Commission had already ceased to exist with the expiration of the Import Control Law (Republic Act No. 650) on July 1, 1953. Consequently, the said importation may not be forfeited for violation of said Executive Order.

"'From the provisions (Sec. 1) of Executive Order No. 328 . . . it will be seen that the function of issuing licenses for imports was given to the former Import Control Administration (later the Import Control Commission), while the licensing of exports was vested in the Central Bank, or any other governmental entity or agency, after the dissolution of the Import Control Commission, to issue licenses for the importation of merchandise. Neither has the attention of this Court been drawn to nor is it aware of the existence of any other law, executive order or regulation which empowers the Central Bank to issue licenses on imports. It follows that the forfeiture of the shipment of onions consigned to the petitioner finds no sanction under Executive Order No. 328.' (See also Leuterio vs. Commissioner of Customs, C.T.A. Case No. 96, Sept. 5, 1955, affirmed on another ground in G. R.No. L-9810, April 27, 1957.)"

It will be observed that the importations of onions from Japan in this case were made between August 25, and September 7, 1954. At that time the Import Control Commission, which was then the government agency authorized to issue import licenses involving no-dollar importations from Japan, was no longer existing the same having been dissolved on July 1, 1953. We believe that it would be much too unreasonable for us to require petitioner to produce import licenses for his importations at a time when it was impossible to do so considering that there was no governmental agency authorized to issue licenses of such nature. It should be observed that the herein importations were made over one year after the dissolution of the Import Control Commission and one year before the approval of Republic Act No. 1410 on September 10, 1955, which now empowers the

Department of Commerce and Industry to issue import licenses for no-dollar importations.

We therefore find and so hold that the seizures and forfeitures made by the respondents on the subject importations allegedly for violation of Central Bank Circulars Nos. 44 and 45 and Executive Order No. 328, both in relation to Section 1363 (f) of the Revised Administrative Code are without any legal basis and therefore should be set aside.

WHEREFORE, the decision of the respondent Commissioner of Customs appealed from should be, as it is hereby, reversed and Surety Bonds Nos. G-9593, G-9595, G-9589, G-9590, G-9591, G-9586 and G-9588 filed by the petitioner, Eastern Sea Trading, as Principal, and the Alto Surety & Insurance Co., Inc., as Surety, in the total amount of ₱90,921.00 for the release of the commodities in question, are hereby ordered cancelled and withdrawn. Without pronouncement as to costs.

SO ORDERED.

Manila, July 16, 1958.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge

Reversed in G R No L-14279, Oct. 31, 1961.

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