rechinal staff

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ESTANISLAO LEUTERIO,
Petitioner,

- versus - Sept. 5, 1955 C.T.A. CASE NO. 96

THE COMMISSIONER OF CUSTOMS,
Respondent.

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

D E C I S I O N

On September 19, 1954, an importation consisting of 100 crates of onions arrived at Manila per the S. S. "Meirinsan" from Kobe, Japan, consigned to the petitioner, for which Import Entry No. 75081, series of 1954, was filed and the corresponding customs duties and internal revenue taxes due thereon were paid. This importation, according to the petitioner, involved "no-dollar remittance", that is to say, the consignee, petitioner herein, was under no obligation to make any remittance to the shipper in Kobe, Japan, in payment for the goods. No certificate authorizing the release of the shipment was secured from the Central Bank, in accordance with Central Bank Circulars Nos. 44 and 45.

In the documents submitted by petitioner to the Bureau of Customs, for the purpose of securing delivery of the shipment in question, it was indicated that the value of the onions was $1.20 per crate of 45 kilos, or a total value of $120.00 for the 100 crates (F.O.B. point of shipment). It having been shown that the market value of onions in Kobe, Japan on the date of shipment was $3.20 per crate of 45 kilos, according to the Japan Trade Journal published in Osaka, Japan on September 6, 1954 (which is also the same date when the commercial invoice covering the onions involved in this case was issued), appropriate proceedings were instituted under the Anti-Dumping Act (Republic Act No. 32). One of the grounds for holding an importation as violative of the Anti-Dumping Act is whenever the purchase price or exporter's selling price of the goods imported is less than the value of the same goods in the country of origin. Consequently, in a decision rendered by the Secretary of Finance dated December 15, 1954, it was decreed that the said importation was violative of the Anti-Dumping Act, and the petitioner was ordered to pay, in addition to the regular customs duties, a special customs duty in an amount equal to the difference between $1.20 per crate (the invoice value) and $3.20 per crate (the market value at the point of shipment). The said decision of the Secretary of Finance also states that the payment by the importer of the special customs duty, a penalty imposed under the Anti-Dumping Act, "shall not in any way affect whatever action may be taken against the importations for violation of any customs laws and regulations and other existing laws and regulations being enforced by the Bureau of Customs."

Acting upon the suggestion contained in the decision of the Secretary of Finance dated December 14, 1954, proceedings were instituted for the seizure and forfeiture of the said shipment "for violation of Central Bank Circulars Nos. 44 and 45 in relation to Sections 1363 (f), 1250 and 1363 (m) 3, 4 and 5 of the Revised Administrative Code and Executive Order No. 328." On December 20, 1954, the petitioner waived his right to a hearing, and in lieu thereof he requested that he be allowed to redeem the merchandise under Sections 1388 and 1389 of the Revised Administrative Code.

On the same date, the Acting Collector of Customs of Manila rendered his decision ordering the forfeiture of said goods in favor of the Government, the same to be disposed of in accordance with law.

Pursuant to the request of petitioner, he was allowed to redeem the goods for ₱1,175.28, the appraised value thereof as determined in accordance with Section 1377 of the Revised Administrative Code, which amount was paid by petitioner on December 22, 1954 for which Official Receipt No. 69190 was issued on the same date.

On January 5, 1955, counsel for the petitioner filed an appeal with the Commissioner of Customs against the decision of the Acting Collector of Customs of Manila ordering the forfeiture of the goods and at the same time sought to have the redemption price of ₱1,175.28 refunded to him. On January 27, 1955, the Acting Commissioner of Customs rendered his decision affirming the order of the Acting Collector of Customs of Manila, which decision was received by petitioner on February 8, 1955. On March 9, 1955 a petition for review was filed by petitioner with this Court appealing from the decision of the Acting Commissioner of Customs.

The seizure and forfeiture of the merchandise involved in this appeal as ordered by the Acting Collector of Customs of Manila and sustained by the respondent are based on three grounds, namely:

(1) That the said merchandise was of prohibited importation or subject to importation only upon conditions prescribed by law (Section 1250, Revised Administrative Code) and petitioner attempted to import the same contrary to law (Section 1363 (f), id.);

(2) That the said merchandise was imported without any license issued pursuant to Executive Order No. 328, series of 1950; and

(3) That the importation of the said merchandise was attempted in one of the ways described in subparagraphs 3, 4 and 5 of paragraph (m) of Section 1363 of the Revised Administrative Code.

Respondent seeks to justify the forfeiture of the said merchandise by alleging that the same was of prohibited importation, and the importation thereof was attempted contrary to law in that petitioner failed to secure a release certificate from the Central Bank as required by its Circulars Nos. 44 and 45. If the said circulars were validly issued and promulgated, we would have no hesitancy in sustaining the decision of respondent under Section 1363 (f) of the Revised Administrative Code, which authorizes the forfeiture of merchandise of prohibited importation, or which may be imported only upon conditions prescribed by law and the conditions have not been complied with. (see Sec. 1250, Rev. Adm. Code). However, this Court has had occasion to consider and discuss the matter extensively in a case involving the said circulars, and it was there held that -

> "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 it govern imports for which no foreign exchange is required or will be required." (Leuterio v. Commissioner of Customs, C.T.A. Case No. 29, April 18, 1955.)

Since the promulgation of the decision of this Court in C.T.A. Case No. 29, cited above, to the present, nothing has occurred or developed to justify modification or reversal of the said ruling. On the contrary, a bill (S. No. 384) to regulate importations under the so-called "no-dollar remittance" was passed by Congress during the last special session and is now pending approval by the President.

The purpose of the bill is precisely to fill the void in the existing law. If approved, the law will become effective only upon approval and will not, therefore, affect the instant case. It is also to be noted that under the bill, the power to regulate imports under the so-called "no-dollar remittance" shall be vested in the Department of Commerce and Industry and not in the Central Bank. We are, therefore, constrained to hold, as we hereby hold, that the decision of this Court in C.T.A. Case No. 29 applies with equal force to the instant case insofar as the legality of the said circulars is concerned.

The validity of the forfeiture is likewise sought to be justified under Executive Order No. 328, series of 1950, which provides, among other things, that no importation of merchandise from Japan may be effected or attempted without proper license (Section 1) and that any such merchandise so imported shall be subject to forfeiture (Section 14). Counsel for the petitioner on the other hand contends that the effectivity of the said Executive Order has already expired, and it may not, therefore, be availed of to sustain the forfeiture of merchandise imported without license as required by said Executive Order. Without considering the question whether or not the effectivity of said Executive Order has already expired, we are of the opinion that the forfeiture of merchandise for failure of the importer to secure a license under that Executive Order is null and void.

Section 1 of Executive Order No. 328 provides:

> "Sec. 1. From and after the effective date of this Order, no commodity may be exported to or imported from Occupied Japan without an export or import license, as the case may be from the Central Bank of the Philippines or the Import Control Administration which are hereby designated respectively as the export and import licensing agencies of the government. These agencies shall each set up a se-

parate Section or Division within their respective organizations to handle the licensing of all barter trade transactions exclusively. x x x" (underscoring supplied.)

From the provisions of Executive Order No. 328 quoted above, 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. Nothing appears in the said Executive Order which authorizes 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.

We are, however, impressed with the third ground relied upon by respondent in sustaining the order of forfeiture under paragraph (m), sub-paragraphs 3, 4 and 5, of Section 1363 of the Revised Administrative Code, which provides -

> "Sec. 1363. Property subject to forfeiture under customs laws. - Vessels, cargo, merchandise, and other objects and things shall, under the conditions hereinbelow specified, be subject to forfeiture:
>
> x x x x
>
> "(m) Any merchandise the importation or exportation of which is effected or attempted in any of the ways or under any of the conditions hereinbelow described -
>
> x x x x
>
> "3. Upon the wrongful making by the owner, importer, exporter, or consignee of any merchandise, or by the agent of either, of any declaration or affidavit, touching such merchandise and in connection with

the importation or exportation of the same.

> "4. Upon the wrongful making or delivery by the same person or persons, of any false invoice, letter or paper touching such merchandise and in connection with the importation or exportation of the same.
>
> "5. Upon the causing or procurance, by the same person or persons, of any merchandise to be entered or passed at any customhouse by any other fraudulent practice, device, or omission or by means whereof the government is or might be deprived of its lawful duties on such merchandise."

Subparagraphs 3, 4 and 5, paragraph (m), of Section 1363 of the Revised Administrative Code, in relation to Section 1364 of the same Code, authorizes the seizure and forfeiture of imported merchandise, while still in the custody of the customs authorities, where the owner, importer, or consignee thereof makes wrongful declaration or affidavit touching such merchandise; or makes or delivers any false invoice, letter or paper touching such merchandise; or causes or procures to be entered or passed such merchandise at any customhouse by any other fraudulent practice, device, or omission by means of which the government is or might be deprived of its lawful duties on such merchandise.

It appears from the records of this case, and this is not denied by the petitioner, that the 100 crates of onions in question were grossly undervalued, the petitioner having submitted an import entry and other documents to the Bureau of Customs in connection with said importation purporting to show that the value of said merchandise was $1.20 per crate when in fact the actual market value thereof at the port of shipment was $3.20 per crate. Petitioner not only did not make any protest against the decision of the Secretary of Finance holding said importation as violative of the Anti-Dumping Act for misrepresenting the correct value of the merchandise but also paid immediately and voluntarily the special customs duty imposed under the said Act. If, as claimed, the merchandise was shipped by a Japanese firm to the herein petitioner under a "no-dollar remittance" arrangement whereby the consignee is under no obligation to remit any amount to the shipper in payment for the merchandise, we see no reason nor justification for misrepresenting the value thereof. The only implication deducible from the acts of the herein importer in submitting documents or papers which did not reflect the correct value of the merchandise is that he wanted to pay less customs duties or taxes than would be assessable if the proper value were declared.

It may be argued that there was no attempt on the part of petitioner to deprive the Government of lawful customs duties as the correct weight was declared and since the customs duty applicable to onions is not ad valorem but specific. In answer to this it is enough to state that Section 1363 of the Revised Administrative Code enumerates the property "subject to forfeiture under customs laws" as the title clearly indicates. The term "customs laws" is defined in Section 1419 of the same Code as including "not only the provisions of the Customs Law and regulations pursuant thereto but all other laws and regulations which are subject to enforcement by the Bureau of Customs or otherwise within its jurisdiction."

The import entry filed by petitioner in this case was not submitted for purposes of customs duties alone. It is entitled "Import Entry and Internal Revenue Declaration." In other words, the petitioner made representations that the statements or declarations contained in the import entry filed by him were true and correct for purposes not only of the customs duties but also of the internal revenue taxes due on said importation.

The advance sales tax due on onions imported from abroad is imposed by Section 183 (B) of the National Internal Revenue Code and is collectible by the Bureau of Customs prior to the release of the articles from customs. This tax is collectible by customs officers as deputies of the Collector of Internal Revenue. (Section 6, National Internal Revenue Code.) It follows that the provisions of the National Internal Revenue Code relating to the collection of internal revenue taxes on imported goods, which are collected by customs officers prior to release thereof from customs, are part of the customs laws. Consequently, merchandise underdeclared by an importer for the purpose of defrauding the Government of the advance sales tax lawfully due is subject to forfeiture under either of subparagraphs 3, 4 and 5 of Section 1363 (m) of the Revised Administrative Code.

In C.T.A. Case No. 29 (Estanislao Leuterio vs. Commissioner of Customs), decided by this Court on April 18, 1955, involving similar importation of onions also from Kobe, Japan, the seizure and forfeiture of said merchandise were based on Section 1363 (f) of the Revised Administrative Code, in relation to Central Bank Circulars Nos. 44 and 45, and Executive Order No. 328, series of 1950. The decision ordering the seizure and forfeiture of said merchandise was, therefore, declared null and void and the respondent was ordered to refund the redemption price of ₱32,579.49, in view of the opinion of this Court that the said Circulars of the Central Bank are invalid and that the Central Bank has no authority to issue licenses on importations under Executive Order No. 328. In the instant case, however, in addition to the two grounds already mentioned, the order of seizure and forfeiture was sustained by the respondent under Section 1363 (m), subparagraphs 3, 4 and 5, which we have already discussed and found to be in order.

WHEREFORE, we are of the opinion and so hold that the seizure and forfeiture of the 100 crates of onion in question were in accordance with the Customs Law, and the claim for refund of P1,175.28, which was paid by petitioner to redeem the said merchandise under Section 1388 of the Revised Administrative Code, has to be, as it is hereby denied, with costs against petitioner.

SO ORDERED.

Manila, Philippines, September 5, 1955.

ROMAN M. UMALI
Associate Judge

We concur:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge