REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANDRES E. LAZARO,
Petitioner

versus

CTA CASE NO. 740

THE COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs dated December 11, 1959, affirming the decision of the Collector of Customs dated April 26, 1955 and ordering petitioner and his surety to pay, jointly and severally, the amount of ₱7,663.00.

On August 28, 1954, various merchandise, consigned to petitioner and consisting of twenty-nine (29) packages of fruit jams, preserved fruits, preserved dates, fresh water chestnuts, dried vegetables, melon seeds, biscuits (salted and unsweetened), noodles (vermicelli), dried fish (cod), dried fish (cuttlefish), and tapioca starch, arrived in Manila on board the S.S. "Hermelin" from Hongkong. These articles declared under Import Entry No. 69147, series of 1954, were covered by a bill of lading and a commercial invoice. Petitioner paid duties and taxes in the amount of ₱1,308.65.

Upon arrival of the merchandise, the Appraisers' Division seized the same for alleged violation of Central Bank Circulars Nos. 44 and 45, in relation to

Section 1363(f) of the Revised Administrative Code. However, on September 2, 1954, during the pendency of the seizure proceeding, the Collector of Customs ordered the release of the seized merchandise upon petitioner's filing of a surety bond of the Century Insurance Co., Inc. No. 2883, dated September 2, 1954, in the amount of ₱7,663.00, representing the local appraised value of said merchandise. The amount of ₱7,663.00 was arrived at by adding the landed cost of ₱6,901.00 and 30% estimated profit of ₱2,070.00, less the taxes and duties paid in the amount of ₱1,308.65. The bond provides 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 hearing of Seizure Case No. 1874, the Collector of Customs, on April 26, 1955, held that inasmuch as the importation was not covered by a release certificate and an import license in violation of Circulars Nos. 44 and 45 of the Central Bank, it is

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subject to forfeiture under Section 1363(f) of the Revised Administrative Code. But since it was previously released to petitioner under a surety bond, the Collector of Customs ordered that the amount of ₱7,663.00 be paid in cash to the Bureau of Customs.

From the decision of the Collector of Customs, petitioner appealed to the Commissioner of Customs who, in a decision dated December 11, 1959, affirmed *in toto* the decision of the former. And from the decision of the Commissioner of Customs, petitioner appealed to this Court.

The issues raised are:

(1) Whether or not the merchandise can be legally forfeited for not being covered by a release certificate and import license, under Circulars Nos. 44 and 45 of the Central Bank, in relation to Section 1363(f) of the Revised Administrative Code; and if in the affirmative

(2) Whether or not the appraised value of the forfeited merchandise should include the 30% expected profit; and

(3) Whether or not petitioner is liable for ₱500.00 penalty, as provided in the bond.

Anent the first issue, we quote from the decision in Andres E. Lazaro vs. The Commissioner of Customs, G. R. Nos. L-21790 & L-21794, Dec. 24, 1965:

> The issue of whether or not the importations in question are subject to forfeiture for lack of a Central Bank release certificate in violation of Central

Bank Circulars 44 and 45 in relation to Section 1363(f) of the Revised Administrative Code has already been answered in the affirmative in previous cases involving similar facts.[1] We see no cogent reason to alter our previous rulings.

Central Bank Circular 133 did not repeal Circulars 44 and 45 with respect to the necessity of a release certificate. As a matter of fact, paragraph 6 of Circular 133 required imports to be released only upon presentation of a release certificate issued by the Central Bank. Not only that, Section 14 of Circular 44 which states:

> "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."

was deemed incorporated to Circular 133 by virtue of paragraph 8 thereof which we quote hereunder:[2]

> "8. All existing circulars, rules, regulations, and conditions governing transactions in foreign exchange not inconsistent with the provisions of this Circular, are deemed incorporated hereto and made integral parts hereof by reference."

With respect to the assertion that the enactment of Republic Act 1410 abated any liability incurred for violation of Central Bank Circular 45, suffice it to say that the importations in question do not come within the operation of said Act, for Section 3 thereof says:

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[1]Serree Investment Company v. Commissioner of Customs, L-21217, November 29, 1965 and cases cited therein.

[2]Bombay Department Store v. Commissioner of Customs, L-20489, June 22, 1965; Bombay Department Store v. Commissioner of Customs, L-20460, September 30, 1965.

"SEC. 3. x x x Provided, however, That goods and commodities in transit or previously imported on a no-dollar remittance basis at the time of the approval this Act shall not be affected by the operation of this Act." (Underscoring supplied.)

Said goods had already been imported and declared forfeited by the Collector of Customs of Manila when Republic Act 1410 was enacted on September 10, 1955.

With respect to the second issue, the Supreme Court, in the same decision, held:

The contention has no merit. Rule 13(a) of the Philippine Tariff Act of 1909, as amended, relates to the appraisal of importations for purposes of determining the customs duties.[3] For appraisal of importations in connection with seizure proceedings, the value of the importations in the local market should prevail, following Section 1377 of the Revised Administrative Code which provides:

"SEC. 1377. Description and appraisement of seized property. - The collector shall also cause a list and particular description of the property seized to be prepared and an appraisement of the same at its value in the local market to be made by at least the appraising officers, under the revenue laws, if there are such officers at or near the place of seizure, but if there are not, then by two competent and disinterested citizens of the Philippines, to be selected by him for that purpose, residing at or near the place of seizure, which list and appraisement shall be properly attested by such collector and the persons making the appraisal." (Underscoring supplied)

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[3]See Lim Quim v. Collector of Customs, 23 Phil. 509.

> Moreover, the inclusion of the 30% estimated profits as part of the value of the importations in question was made with the acquiescence and approval of the appellant. As a matter of fact, the amount of the bonds posted by him upon release of the goods carried the 30% estimated profits. The payment of such estimated profits as part of the value of the importations in the surety bonds therefore constitutes his contractual obligation in case of forfeiture.

As regards the third issue, which pertains to respondent's claim for the imposition of the penalty amounting to ₱500.00, this Court said in a previous case:

> Relative to the claim for damages amounting to ₱500.00, we said in a previous case where respondent was similarly situated:
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> > "x x x Upon perusal of the bonds, 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 Internal Revenue, CTA Case No. 782, Jan. 19, 1962.)

WHEREFORE, the decision appealed from is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, July 23, 1966.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge