REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ANGELA S. LAZATIN,
Petitioner,

- versus - C.T.A. CASE NO. 782

COMMISSIONER OF CUSTOMS,
Respondent.

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# DECISION

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 Manila in decreeing the forfeiture of the articles imported by petitioner, and as the articles were previously released under bond, in ordering the petitioner and the Empire Insurance Company to pay, jointly and severally, the amount of ₱8,578.00 representing the total appraised value of the released articles.

The petitioner imported from abroad articles that arrived in Manila on board the S/S "Sunnyville" on December 18, 1955, which articles are described in the bill of lading, the commercial invoice, pro-forma invoice and the marine insurance policy as 7 boxes automatic musical instruments and valued at $2,499.00. These articles are covered by a Central Bank Release Certificate dated December 9, 1955, classifying them in the non-essential consumer category (NEC), with code No. 890110, and describing them as 7 boxes Musical Instruments-Devices. Upon examination by Examiner Faustino Mendoza, of the Bureau of Customs, it was found that they consisted of juke boxes and were classi-

53

fied under Code No. 890101 - UI (Phonographs and gramophones) of the Central Bank Statistical Classification of Commodities (Revised July 1, 1955). For this reason, they were seized as having been imported in violation of Central Bank Circulars Nos. 44 and 45, in relation to Sections 1363(f) and 1250 of the Revised Administrative Code. In the meantime, the articles were released to the petitioner under Empire Insurance Co. Bond No. 5096 for the amount of ₱8,578.00, the conditions of which read:

> "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 due hearing, the Collector of Customs for the Port of Manila rendered a decision, decreeing the forfeiture of the seven (7) cases of juke boxes in question, and as the same have been released under bond, ordering the petitioner and the Empire Insurance Co. to pay jointly and severally the sum of ₱8,578.00 within thirty (30) days from receipt of the decision.

Being dissatisfied with the decision of the Collector of Customs, the petitioner appealed to the respondent Commissioner of Customs who affirmed the same. Hence, the present petition for review to which respondent answered, seeking the dismissal of the petition, and the payment by petitioner and Empire Insurance Co. of ₱8,578.00 representing the appraised value of the articles in question, plus interest at the legal rate, and ₱500.00 as penalty.

The main issue in this case is: Whether or not the Commissioner of Customs erred in affirming the decision of the Collector of Customs declaring the forfeiture of the juke boxes in question for alleged violation of Central Bank Circulars Nos. 44 and 45, in relation to Sections 1363(f) and 1250 of the Revised Administrative Code.

Petitioner does not question the validity of Central Bank Circulars Nos. 44 and 45. However, she contends that the Statistical Classification of Commodities, as revised on July 1, 1955, particularly that portion referring to unclassified (UI) or banned items, is invalid for lack of publication in the Official Gazette.

The importations at bar which, as aforestated, consist of juke boxes were made under the Code No. 890110 - NEC and description "Musical Instruments". Their forfeiture and payment of the amount of the release bond are now being justified on the ground that they fall under the commodity classification of phonograph and gramophone (Code No. 89010 - UI), which are banned items in the Statistical Classification of Commodities as revised on July 1, 1955. However, this particular statistical classification has not been published in the Official Gazette. It is the principle and the law that before a regulation can have a legal force and binding effect upon any person, that regulation must first be published in the Official Gazette (People vs. Que Po Lay, G.R. No. L-6791, March 29, 1954). Therefore, the classification of commodities (revised on July 1, 1955), particularly with regards to the banned items listed therein, cannot be applied adversely to the petitioner as it was not published before the importation of the juke boxes was completed in 1955. However, the Central Bank Statistical Classification of Commodities, which was published in the June, 1953 issue of the Official Gazette, can legally bind the petitioner. And as nowhere in this latter commodity classification are the juke boxes in question listed, it follows that the same are banned items and cannot be released without the presentation of a release certificate issued by the Central Bank or any Authorized Agent Bank. That articles not listed in the commodity classification published in 1953 are banned items and only goods mentioned therein are allowed to be imported can be gleaned from the provisions of Section 3, Article II of Regulation No. 1, implementing Circular No. 44 which reads:

> "Sec. 3. No application for foreign exchange covering any commodity item not included in the commodity classification mentioned in the preceding section, shall be granted by any Authorized Agent Bank or the Bankers' Committee, without prior approval of the Monetary Board." (49 Off. Gaz. No. 6, pp. 2192 & 2194.)

and paragraph 14 of Central Bank Circular No. 44, which provides as follows:

56

8 > "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.)

The alternative claim of the petitioner that the juke boxes were correctly classified under Code No. 890110 (NEC) as musical instruments is without merit. The meaning given by lexicographers to the term "musical instrument," is as follows:

> "(musical) 'instrument' - is a contrivance by which musical sounds are <u>produced</u>. (Webster's New Int'l Dictionary, p. 1288) Musical instruments may be classified, according to the nature of the vibrating body that initiates the sound, as stringed, wind, and percussion. In <u>stringed instruments</u> it is a group of tense strings, either bowed as in the violin and its class; plucked, as in the harp, guitar, and mandolin; struck as in the piano; or blown upon, as in the aeolian harp. In wind instrument it is a column of air set vibrating either by a single or double reed, as in the clarinet or oboe; by the lips acting as reeds, x x x."

From the definition, it is plain that juke boxes cannot be classified as musical instruments because juke boxes are devices designed to <u>reproduce music</u>. Musical instruments are those which produce <u>music</u>. It would be a strained interpretation to classify juke boxes as musical instruments. Not falling under the commodities described in the release certificate as musical instruments (Code No. 890110 - NEC), the juke boxes at bar are not, in effect, covered by a release certificate and therefore, are subject to forfeiture pursuant to Section 1363(f) of the Revised Administrative Code for violation of Circulars Nos. 44 and 45 (Philippine Planters & Investment Co. v. Commissioner of Customs, C.T.A. Case No. 549, December 29, 1959).

As afore-stated, the respondent seeks the payment, jointly and severally, by the petitioner and the Empire Insurance Co. of the respective sums of ₱8,578.00, appraised value of the articles in question, and ₱500.00, as additional damages. Suffice it to say that the insurance company is not a party in the instant case. Consequently, this Court has no jurisdiction over it, and we cannot order it to pay.

Relative to the claim for damages amounting to ₱500.00, we said in a previous case where respondent was similarly situated:

> "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.)

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 authorized representative the amount of ₱8,578.00, representing the appraised value of the juke boxes in question. Costs against the petitioner.

SO ORDERED.

Manila, January 19, 1962.

MARIANO NABLE
Presiding Judge

I concur:

ROMAN M. UMALI

Associate Judge AUGUSTO M. LUCIANO
inhibited himself.