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Dec. 7, 1963

PHILIPPINES INTERNATIONAL
SURETY CO., INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 1183

THE COMMISSIONER OF CUSTOMS,
Respondent.

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

AMENDED DECISION

Petitioner Philippines International Surety Co., Inc. seeks a reconsideration of our decision of October 7, 1963 dismissing the petition for review on the ground of lack of jurisdiction.

In our decision, we held that the last day for filing the petition for review should have been on February 23, 1962 and since the petition was received by the Court on March 2, 1962 or seven days beyond the statutory period of thirty days, the same was filed out of time. However, it was subsequently shown to our satisfaction that the petition for review was actually sent through the mails and registered in the Manila Post Office on February 23, 1962. Consequently, we now hold that the instant petition for review was seasonably filed.

Having disposed of the issue of jurisdiction, we will now dispose of the remaining issues raised by the parties, to wit:

1. Whether or not petitioner Philippines International Surety Co., Inc. has personality or capacity to appeal; and

2. Whether or not Central Bank Circulars Nos. 44 and 45 are null and void.

With regard to the first issue, it is contended on behalf of petitioner Philippines International Surety Co., Inc. that the decision appealed from affects its rights and interests and entitles it to the right to appeal, as an aggrieved party, under Section 11 of Republic Act No. 1125. On the other hand, respondent asserts the contrary, arguing that petitioner is not a party to the seizure proceedings, and, therefore, is not a person adversely affected within the contemplation of the said statute.

In this connection, it may be stated that the participation of petitioner Philippines International Surety Co., Inc. in this case is limited to its being a mere surety of petitioner Rosario Commercial in effecting the release of the seized shipments. In several occasions, we ruled that, as petitioner Philippines International Surety Co., Inc. was merely a surety to his principal, it had no legal capacity to appeal to this Court. (Phil. Int'l. Surety Co., Inc. vs. Commissioner of Customs, CTA Case No. 770, Decision, June 26, 1963 and cases cited therein.) That petitioner joined its co-petitioner Rosario Commercial in this appeal will not alter the result. It is not one of those "persons, associations or corporations whose proprietary or pecuniary interests are adversely affected by the decisions" of the officials enumerated in Section 11 of Republic Act No. 1125. (Phil. Int'l. Surety Co., Inc. vs. Commissioner of Customs, CTA 745, citing Acting Collector of Customs vs. Commissioner of Customs, CTA Case No. 17, January 22, 1955, affirmed in G.R. No. L-8811, Oct. 31, 1957; In

Hough vs. North Adams [1907] 196 Mass 290, 82 N.E. 46, cited in 74 ALR 1221.) Petitioner Philippines International Surety Co., Inc. will not suffer pecuniarily because it still retains the right to be reimbursed by its principal (Art. 2117, New Civil Code; see Phil. Int'l. Surety Co. Inc. vs. Commissioner of Customs, C.T.A. Case No. 745, supra.) Therefore, only Rosario Commercial, one of the petitioners, has the right to appeal.

Granting, arguendo, that petitioner Philippines International Surety can appeal, the contention that Central Bank Circulars Nos. 44 and 45 are null and void is without merit. The Supreme Court has, in several cases, sustained the validity of said Circulars Nos. 44 and 45. (Commissioner of Customs vs. Nepomuceno, G.R. No. L-11126, March 3, 1962 and cases cited therein.)

The inclusion of the 30% estimated profit to the landed cost of said merchandise in determining the redemption value thereof is assailed as illegal. It is to be observed that petitioner Rosario Commercial and its surety voluntarily filed the bonds for the amounts stated therein. They should not have filed the bonds if they were not agreeable to the said amounts. Having voluntarily filed the bonds, they are now estopped from disputing the legality thereof.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the appeal is dismissed insofar as petitioner Philippines International Surety Co., Inc. is concerned and the decision appealed from is hereby affirmed with respect to petitioner Rosario Commercial, with costs against petitioners.

SO ORDERED.

Manila, December 7, 1963.

(Sgd.) ROMAN M. UMALI
Associate Judge

(Sgd.) MARIANO NABLE
Presiding Judge