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LUZ H. COLOMA,
Petitioner,

- versus - C.T.A. CASE NO. 178

COLLECTOR OF CUSTOMS and
COMMISSIONER OF CUSTOMS,
Respondents.

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

March 10, 1958

D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs dated July 30, 1955 affirming the decision of the Collector of Customs of Manila dated March 18, 1955, which decreed the forfeiture in favor of the Government of 137 cases of various articles shipped sometime in 1954 by Hosaka Trading, Ltd. of Yokohama, Japan, consigned to the Philippine Army Post Exchange, Camp Murphy, Quezon City.

It appears that on December 10, 1953, the RPS "MISAMIS ORIENTAL", a unit of the Philippine Navy, left the Philippines for Japan carrying contingents of the 14th BCT to Pusan, Korea and Christmas gifts for our soldiers there. While in Japan, 180 cases containing various dutiable articles were loaded in said vessel. The vessel arrived in Manila on September 2, 1954. The said articles were classified by Customs authorities into three groups, to wit: "(1) those supposed to be for the Philippine Army Post Exchange, with an appraised value of

$26,197.53, (2) those pertaining to the Philippine Navy Officers Base Commissary, Cavite, with an appraised value of $1,590.04, and (3) those belonging to individuals, consisting of nine Philippine Army and Navy officers and crew and two private persons, with an appraised value of $1,772.00." All these articles were declared forfeited by the Collector of Customs of Manila for violations of the Customs Law in a decision rendered on March 18, 1955, which was affirmed by the Commissioner of Customs on July 30, 1955.

This case relates solely to the first group of articles contained in 137 cases consigned to the Philippine Army Post Exchange. The case involving the second group of articles was also appealed to this Court in Brillo v. Commissioner of Customs, C.T.A. No. 176, November 14, 1956. Some of the cases involving the third group which were likewise appealed to this Court have already been decided. (See Relunia v. Commissioner of Customs, C.T.A. No. 181, November 14, 1956; Nuval v. Commissioner of Customs, C.T.A. No. 185, November 14, 1956; Intengan v. Commissioner of Customs, C.T.A. No. 186, November 14, 1956; Icamen v. Commissioner of Customs, C.T.A. No. 184, April 2, 1957.)

In connection with the present case, the facts as found by the Collector of Customs of Manila, and confirmed by respondent, are as follows:

> "It appears that the Philippine Navy vessel RPS 'Misamis Oriental' (LST-40) arrived at this port from Japan on September

2, 1954 with 180 packages containing various dutiable articles as cargo. One Hundred Thirty Seven (137) of the cases are marked PX, SV, CZB, AM, MD, AG, EA, TT, Camp Murphy, Quezon City; x x x .

"The presence of these dutiable goods on board the vessel was discovered by the customs authorities only after the intercepcion by Port Patrol Policeman Consorcio Javier of a truckload of cases leaving the Customs zone from a Navy boat, and through a confidential information received in the Office of the Port Patrol Division of this Bureau regarding the presence of commercial goods on board the RPS 'Misamis Oriental' (LST-40) from Japan. To verify the truth of this information, Col. Manuel Turingan, then General Supervisor of the Security Division of the Bureau of Customs, and Atty. Salvador Mascardo, Chief of the Investigation Section of the Port Patrol Division, went to Pier 5 on September 6, 1954 where the Philippine Navy boat mentioned above was then docked. Upon arrival thereat, they were met by the Commanding Officer of the above-named vessel, who, when asked, informed them that there were really commercial goods on board his ship. When the merchandise were brought to and examined at the customhouse, they were found to be not covered by the required cargo manifest, bills of lading, consular invoices, and Central Bank licenses and release certificates. Hence, the seizure.

x x x x

"As regards the first group, one Mrs. Luz H. Coloma, appeared during the hearing and claimed ownership of the goods. She alleged that these goods were shipped by the Hosaka Trading, Ltd., of Yokohama, Japan, of which she is the authorized representative in the Philippines and that the same were ordered by the Armed Forces of the Philippines Exchange System. In support of her second allegation she presented a letter dated September 17, 1952, marked Exhibit 'B-Coloma', signed by Captain Avelino Geaga, wherein it appears that the Armed Forces Exchange System authorized Mrs. Coloma to purchase goods for her account and risk in Japan to be delivered to the LST of the Armed Forces of the Philippines which was to dock at Yokohama, Japan, in or around

November, 1952. The goods were to be received by Mrs. Coloma in Manila from the LST and in turn delivered and sold to the Armed Forces Philippines Exchange System. Mrs. Coloma claims that by virtue of this letter, which has never been revoked, she had thrice ordered goods for the Armed Forces Philippines Exchange System, the first of which, valued at ₱34,000.00, arrived in December, 1952, the second, valued at ₱6,000.00, in June, 1953, and the third (the one now under seizure) on September 2, 1954. In respect to the third shipment, Mrs. Coloma presented Exhibits 'A-Coloma' to 'A-9-Coloma', which are photostatic copies of commercial invoices issued by the Hosaka Trading, Ltd. on November 8, November 29, December 4, December 7, and December 12, 1953, covering 137 cases of miscellaneous goods, which apparently are the same goods comprising the first group now under discussion. In these invoices, Hosaka Trading, Ltd. appears to be the shipper, the Post Exchange, Camp Murphy, Quezon City, the consignee, and any Philippine Navy boat sailing on or about December, 1953, the carrying vessel. Apparently, therefore, the claim of Mrs. Luz H. Coloma that said goods were ordered by the Armed Forces Philippines Exchange System is well taken.

"On September 27, 1954, the Acting Commissioner of Customs addressed a letter to the Chief of Staff, Armed Forces of the Philippines, inquiring as to whether or not the goods in question have been ordered by the Philippine Army Post Exchange. In the affirmative case, the Acting Commissioner of Customs requested the submission of a copy of the order duly approved by the proper authorities. On October 2, 1954, Adjutant General Pedro S. Hernando, Armed Forces of the Philippines, replied 'that the said goods have not been authorized for consignment to the AFP Exchange System nor ordered by the said system.' However, on October 11, 1954, counsel for Mrs. Coloma presented an affidavit executed by Colonel Carmelo Z. Barbero on October 9, 1954 (Exhibit 'F-Coloma'), which contradicts the information given in the Adjutant General's letter just mentioned. In this affidavit Colonel Barbero states: 'That on or about October, 1953, while still Chairman of the Central Post Exchange Council, AFP Exchange System, I placed an order for sundry items intended for resale by the Post Exchange to army per-

> sonnel, with the representative of the Hosaka Trading, Ltd. Mrs. Luz H. Coloma.'" (Pp. 1-4, Decision of Collector of Customs, March 18, 1955, Exh. G; pp. 168-171, CTA records.)

On the basis of the foregoing facts, the Collector of Customs of Manila ordered the forfeiture of said goods on the following grounds:

> "Evidently, it is not very material i in the instant case to determine whether or not the AFP Exchange System actually ordered the goods. Whether they were ordered or not, such goods are subject to forfeiture as unmanifested cargo (Section 1363 [g] Revised Administrative Code); as importations made without prior permit from the Central Bank or any of its Agent Bank (Central Bank Circular No. 45 in relation to Section 1363 [f] of the Revised Administrative Code); and as importations made in violation of Executive Order No. 328, the goods having come from Japan. x x x." (Page 4, Exh. G; p. 171, CTA records.)

Respondent affirmed the decision of the Collector of Customs of Manila ordering the forfeiture of said goods on the grounds specified in the decision of the latter and on the further ground that said goods were not covered by the requisite consular invoices, pursuant to Sections 17 and 18 of the Philippine Tariff Act of 1909. We quote from respondent's "Decision on Appeal":

> "And this Office also takes cognizance of the fact that aside from the articles claimed by appellants Ruben Sanidad, Vicente Laurel, Albino Collantes, Jose R. Catibog and Ester Regala, which respectively do not exceed ₱200.00 in dutiable value, all the rest, with the exception of those claimed by Felix R. Icamen are not covered by requisite consular invoices as required by Sections 17 and 18 of the Philippine Tariff Act, and, consequently, are subject to forfeiture under Section 1363 (f) of the Revised Administrative Code in conjunction with

Section 1250 of the same Code." (Page 5, Exh. U; page 291, CTA records. See also page 2, Decision of Collector of Customs, March 18, 1955, Exh. G; page 169, CTA records.)

Having failed to secure from respondent the reversal of the decision of the Collector of Customs of Manila, petitioner has appealed to this Court.

It may be stated that before the case was heard on the merits, petitioner filed a petition seeking the release of the goods in question upon the filing of a bond under Section 1374 of the Administrative Code. The petition was denied in our Resolution of March 3, 1956. (See pp. 82-85, CTA records; Exh. K.) The motion for reconsideration was denied in our Resolution of May 16, 1956. (Pp. 134-139, CTA records.)

We shall now consider the issues raised in this appeal. The first issue involves the question whether the goods in question are "unmanifested merchandise" within the meaning of paragraph (g) of Section 1363 of the Administrative Code so as to justify their forfeiture under said paragraph. This question has been extensively discussed in our decision in Relunia v. Commissioner of Customs, C.T.A. No. 181, November 14, 1956, which involved merchandise brought by the RPS "MISAMIS ORIENTAL" on September 2, 1954. For convenience, we will just quote pertinent portions of our decision in said case:

"Sections 1221, 1225 and 1228 of the Administrative Code relied upon by respondent are found under Article VI of the Customs Law the title of which reads: "Entrance of vessels in foreign trade". Obviously, the said Article lays down rules governing the entry of vessels engaged in foreign trade. In fact, the heading of Section 1221 states: 'Ports open to vessels engaged in foreign trade - Duty of vessel to make entry', and the second paragraph thereof exempts from its operation the master of any war vessel or vessel employed by any foreign government, unless it is engaged in the transportation of merchandise in the way of trade. Section 1225 also provides that for the purpose of making entry of a vessel engaged in foreign trade, the master shall present the documents enumerated therein.

x x x x x

"It does not appear that the RPS "MISAMIS ORIENTAL", when it arrived from Korea and Japan on September 2, 1954, or prior thereto, was occupied or employed in the transportation of merchandise in the way of trade; or that it was continuously or habitually transporting goods in foreign trade for hire. We take it that respondent's conclusion has been inferred solely from the fact that said vessel carried on that one occasion dutiable merchandise. We do not believe that, under the circumstances, the said vessel may be considered as having engaged in foreign trade within the meaning of Sections 1221 and 1225 of the Administrative Code so as to require it to 'report and enter' on arrival in the Philippines.

But, according to respondent -

> 'x x x Public policy makes imperative the interpretation of the phrases 'a vessel engaged in foreign trade' as used in Section 1225 of the Revised Administrative Code, and "Every vessel from a foreign port" as used in Section 1228 of the same Code, in such a manner as to include vessels owned by the Government when they undertake the transportation of cargos similar to the goods involved herein.' (Page 8, Decision on Appeal of Respondent.)

"Public policy is shaped by Congress alone and not by any administrative official. Public policy is what the law says; not what any executive officer thinks it should be. The policy in regard to the submission of manifests of imported merchandise has been laid down by law in Article VI of the Customs Law. There may be a gap or deficiency in that law. In such a situation, the remedy is an amendment of the law. The deficiency can not be supplied by mere executive or judicial pronouncement for that would be usurpation of the legislative power.

"Attention has been drawn to Section 1234 of the Administrative Code which requires the master of a transport or supply ship of the United States Army or Navy to present a manifest and other documents to the boarding officer or collector of customs to show the necessity of a similar requirement in regard to transport or supply ships of the Armed Forces of the Philippines. x x x .

"There is nothing in Section 1234 of the Administrative Code from which an inference may be drawn that the requirements in regard to transport or supply ships of the U.S. Army or Navy are applicable to Philippine Navy vessels not engaged in foreign trade. If Congress intended to make Section 1234 applicable to Philippine Navy vessels, it should have so expressly provided. That Congress has not so far amended the law is an indication of an intention to place Philippine Navy vessels beyond the scope of said section.

x x x x x

"Assuming that Philippine Navy vessels are required to submit manifests, the existence of a manifest in this case has been sufficiently established. On September 17, 1954, the then Acting Commissioner of Customs wrote to the Chief of Staff of the Armed Forces of the Philippines stating that, according to his information 'a copy of the ship's manifest covering said cargo has been secured by that Office from the Commanding Officer of the vessel', and requested that 2 copies of said manifest be furnished the Bureau of Customs. This letter was referred to the Philippine Navy. Commodore J. Francisco, Flag Officer in Command, wrote to the Commissioner of Customs transmitting two copies each of the manifests. x x x .

"Commodore Francisco certified to the fact that the cargo on board the RPS "MISAMIS ORIENTAL" when it arrived from

Japan on September 2, 1954, were manifested, and he furnished the Commissioner of Customs with two copies of said manifests. The cargo officer of said vessel testified in Court that he prepared said manifests. No evidence has been presented to contradict his testimony. That Philippine Navy authorities expressed doubt in regard to the application of certain provisions of the Administrative Code to Navy vessels is no proof of the absence of such manifests. The manifests were obviously prepared in compliance with Standing Operating Procedure No. 12, dated February 18, 1953, of the Philippine Navy.

"But it is contended that the manifests were not in the form prescribed by the Bureau of Customs as required by Section 1228 of the Administrative Code. That section does not require that cargo manifests should be in the 'prescribed form'. It merely requires that every vessel from a foreign port must have on board a complete written or typewritten manifests of all her cargo; that all the cargo intended to be landed at each port must be described in separate manifests for each port of call; and that each manifest shall include the port of departure and the port of delivery with the marks, numbers, quantity, and description of the packages and the names of the consignees thereof. The cargo manifests presented in evidence in this case complied with all these requirements. The manifests which are required to be prepared in the prescribed form, under Section 1228, are the passenger manifests and not the cargo manifests, as shown by the following provision:

> 'Every vessel from a foreign port or place must have on board complete manifests of passengers, immigrants, and their baggage, <u>in the prescribed form</u>, setting forth their destination and all particulars required by the immigration laws. x x x.' (Underscoring supplied.)

No similar provision is made with respect to cargo manifests. We are, therefore, of the opinion that the manifests of the RPS "MISAMIS ORIENTAL" satisfy the requirements of the law." (Relunia v. Com. of Customs, CTA No. 181, Nov. 14, 1956. See also Nuval v. Com. of Customs, CTA No. 185, Nov. 14, 1956; Brillo v. Com. of Customs, CTA No. 176, Nov. 14, 1956; Icamen v. Com. of Customs, CTA No. 184, April 2, 1957.)

The second issue relates to the question whether or not the merchandise in question are subject to forfeiture for violation of Central Bank Circular No. 45. On this question, the Collector of Customs of Manila justifies the forfeiture of said merchandise on the following provision of said Circular:

> "x x x the Monetary Board, x x x hereby requires any person or entity who intends to import or receive goods from any foreign country for which no foreign exchange is required or will be required of the banks, to apply for a license from the Monetary Board to authorize such import." (See pp. 4-5, Decision of Collector of Customs of Manila, March 18, 1955, Exh. G; pp. 171-172, CTA records.)

As the basis for the forfeiture of the merchandise under Circular No. 45 is the provision thereof requiring a license from the Monetary Board before a person or entity may be authorized to import or receive goods from any foreign country <u>for which no foreign exchange is required or will be required of the banks,</u> it would seem that the Collector of Customs found as a fact that the importation in question does not involve the sale of foreign exchange. No charge had ever been made during the proceedings in Seizure Identification Nos. 1956 and 1956-A in the Bureau of Customs that the importation involves the sale of foreign exchange and that the importer failed to secure the necessary license from the Central Bank. Respondent apparently concedes that the said importation does not involve the sale of foreign exchange, but he nevertheless believes that it is subject to the licensing requirements of said

Circular: We quote from his decision:

> "With respect to the contention that Central Bank Circulars Nos. 44 and 45 do not apply to importations not involving the purchase of foreign exchange as asserted in the 4th error, this Office has consistently held in a long line of decisions that said circulars apply to all importations not falling under the exemptions, whether such importations involved the purchase of foreign exchange or not." (Page 11, Decision on Appeal of Com. of Customs, Exh. U; page 297, CTA records; see also Brillo v. Com. of Customs, CTA No. 176, Nov. 14, 1956.)

It appearing that the importation in question does not involve the sale of foreign exchange, we are of the opinion that the same is not subject to forfeiture for violation of Circular No. 45 of the Central Bank in relation to Section 1363 (f) of the Administrative Code. We have held that the Central Bank has no power to regulate importation of goods from foreign countries which do not involve the sale of foreign exchange. 3 Consequently, Central Bank Circulars Nos. 44 and 45, in so far as they seek to regulate no-dollar importations, are not valid. (Leuterio v. Com. of Customs, C.T.A. No. 29, April 18, 1955; Leuterio v. Com. of Customs, C.T.A. No. 96, Sept. 5, 1955, affirmed on another ground in G.R. No. L-9810, April 27, 1957; Pascual v. David, C.T.A. No. 94, Sept. 16, 1955; Pascual v. Com. of Customs, C.T.A. Nos. 146 & 148, Feb. 29, 1956; Pascual v. David, C.T.A. No. 95, Dec. 24, 1956.) It was only after the enactment of Republic Act No. 1410 on September 10, 1955 that no-dollar importations became subject to regulation, but the authority to regulate such importations has been vested in the Department of Commerce and Industry and not in the Central Bank. There is nothing in said Act from which any inference may be drawn that the power to regulate no-dollar importations, prior to its effectivity, was vested in the Central Bank or in any governmental agency. (See Nepomuceno v. Com. of Customs, C.T.A. No. 122, July 26, 1956; Jea Commercial v. Com. of Customs, C.T.A. No. 144, Oct. 18, 1956; Auyong Hian v. Manahan, C.T.A. No. 219, Oct. 31, 1956; Brillo v. Com. of Customs, supra; Santos v. Com. of Customs, C.T.A. No. 235, Dec. 22, 1956; Serree Investment v. Com. of Customs, C.T.A. No. 227, Jan. 5, 1957; Lorenzana v. Com. of Customs, C.T.A. No. 281, March 25, 1957; Icamen v. Com. of Customs, C.T.A. No. 184, April 2, 1957.)

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 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. 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." (Leuterio v. Com. of Customs, C.T.A. No. 96, Sept. 5, 1955, affirmed on another ground in G. R. No. L-9810, April 27, 1957.)

Finally, respondent affirmed the decision of the Collector of Customs of Manila decreeing the forfeiture of the merchandise in question on the ground that no consular invoice was produced covering said merchandise, in violation of Sections 17 and 18 of the Philippine Tariff Act of 1909. (See pp. 5, 13, Decision on Appeal, Exh. U; pp. 291, 299, CTA records.) Petitioner apparently admits the absence of a consular invoice, or any document in lieu thereof, as she has not appealed from that portion of the decision affirming the decree of forfeiture on that ground. The said importation is, therefore, subject to forfeiture for violation of Sections 17 and 18 of the Philippine Tariff Act of 1909, in relation to Section 1363 (f) of the Administrative Code.) (Nuval v. Commissioner of Customs, C.T.A. No. 185, November 14, 1956.)

FOR THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby affirmed solely on the ground that no consular invoice has been presented covering said importation, in violation of Sections 17 and 18 of the Philippine Tariff Act of 1909. With costs against petitioner.

SO ORDERED.

Manila, March 10, 1958.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

CTA decision affirmed by S.C. in G.R. No. L-14217, Nov. 29, 1960.