REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Library

EDUARDO SALES,
Petitioner,

versus

THE COMMISSIONER OF CUSTOMS,
Respondent.

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

Feb. 28/67

CTA CASE NO. 1607

D E C I S I O N

This is an appeal from a decision of respondent dated November 14, 1962, affirming the decision of the Collector of Customs in Seizure Identification No. 4055, decreeing the forfeiture of 20 cases of plain cotton textiles in favor of the Government for violation of Central Bank Circular No. 44 in relation to Sections 1250 and 1363(f) of the Revised Administrative Code.

On January 17, 1956, petitioner imported from Japan per the S/S "Fernbank" 20 cases of merchandise alleged to consist of plain cotton textiles, which shipment was accompanied by shipping documents. In the import entry declaration, the shipment was declared as "20 cases of cotton cloth woven with dyed yarn", subject to a duty of ₱0.14 per kilo plus 30% incremental duty, under paragraph 99-A of the Philippine Tariff Act of 1909.

However, upon examination of the shipment by the customs examiner, it was found that it consisted of 20 cases of "plain cotton textile, dyed in the piece", subject to duty of ₱0.26 per kilo, plus 30% incremental duty, under paragraph 97-D of the former Tariff Act. In other words, the shipment that actually arrived was different from what was declared in the import entry and the Central Bank Release Certificate. Although petitioner was given time to present an amended Bank Release Certificate covering the importation, he failed to do so.

After due hearing, the Acting Collector of Customs decreed the forfeiture of said shipment for violation of Central Bank Circular No. 44, in relation to Sections 1363(f) and 1250 of the Revised Administrative Code. As the shipment was released under a surety bond (Manila Surety and Fidelity Co. Bond No. 20485, dated January 25, 1956) in the amount of ₱13,382.50, petitioner and surety were ordered to pay in cash, jointly and severally, to the Bureau of Customs the said amount within 30 days after receipt of the decision.

Petitioner having interposed an appeal to the Commissioner of Customs, the latter, in his decision dated November 14, 1962, affirmed the decision of the Collector of Customs. The decision of the Commissioner was received by petitioner's counsel on

November 27, 1962. Petitioner, jointly with other shippers, filed a motion for reconsideration of said decision dated December 13, 1962, on the ground that Central Bank Circular No. 44 has been repealed by Central Bank Circular No. 133 and the forfeiture of the merchandise in question has abated. In an order dated March 10, 1965, the joint motion was denied, which denial was received by petitioner's counsel on March 20, 1965. On March 31, 1965, petitioner filed the instant petition for review. This case was subsequently submitted by the parties for decision on the basis of the records.

The issues presented by the parties are as follows:

> 1. Whether or not the instant petition for review was filed beyond the statutory period of 30 days from receipt of the decision of respondent as provided in Section 11 of Republic Act No. 1125; and
>
> 2. Whether or not Central Bank Circular No. 44 has been repealed by Central Bank Circular No. 133 and the liability of forfeiture for violation has abated.

On the question whether or not the petition for review was filed within the 30-day period provided in Section 11 of Republic Act No. 1125, respondent argues that from the receipt of the decision of respondent on November 27, 1962 to the alleged date of filing of the joint motion for reconsideration on December 26, 1962, 29 days had passed; and the prescriptive period was thereafter suspended and began to run anew on

March 20, 1965, the date when petitioner's counsel received the Order denying the joint motion for reconsideration dated March 10, 1955. So that from March 20, 1965 to March 31, 1965, when the petition for review was filed, another 11 days was consumed. Consequently, respondent concludes that petitioner had consumed 40 days before filing his appeal.

We find respondent's contention well taken. One of the special and affirmative defenses alleged in the answer of respondent states as follows:

> "(c) The instant petition for review was filed beyond the reglementary period of 30 days from receipt of decision as provided for by Sec. 7 of Republic Act 1125 (Sampaguita Shoe and Slipper Factory vs. Commissioner of Customs, G.R. No. 10285, Jan. 14, 1958). The records will indicate that the disputed decision of respondent Commissioner dated November 14, 1962 was received by herein petitioner's counsel on November 27, 1962; <u>that the joint motion for reconsideration, though dated December 13, 1962, was actually filed and received by respondent on December 26, 1962</u>. The Order of March 10, 1965 denying the joint motion for reconsideration was received by petitioner's counsel on March 20, 1965, while the instant petition for review was filed with this Honorable Court on March 11, 1965. The instant petition may be considered to have been filed 40 days from receipt, hence the intended appeal is ten (10) days late." (Underscoring supplied.)

The above quoted allegations have not been denied by petitioner; hence, they are deemed admitted. The appeal was, therefore, filed out of time and this Court has no jurisdiction to entertain the same.

At any rate, even assuming that the herein appeal was timely filed, we find no legal basis to disturb the decision appealed from. The legality of the seizure and forfeiture of merchandise for violation of Circular No. 44 of the Central Bank, notwithstanding Circular No. 133 of said Bank, has been definitely settled (See Bienvenido Capulong v. The Acting Commissioner of Customs, G.R. No. L-22990, May 19, 1966, and cases cited therein). We think the issue deserves no further comment.

WHEREFORE, the herein appeal is hereby dismissed, with costs against petitioner.

SO ORDERED.

Quezon City, February 28, 1967.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L Avanceña
RAMON L. AVANCEÑA
Associate Judge