REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

JEA COMMERCIAL,
Petitioner,

- versus -

C.T.A. CASE NO. 144
April 5/56

THE COMMISSIONER OF CUSTOMS, AND THE COLLECTOR OF CUSTOMS FOR MANILA,
Respondents.

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D E C I S I O N

This is a petition to review the decision of the respondent Commissioner of Customs in Seizure Identification Nos. 2008, 2009 and 2027, which affirmed the decision of the respondent Collector of Customs for the Port of Manila, decreeing the forfeiture of the merchandise in question. The forfeiture is based on the alleged violation of paragraph (f) and subparagraphs 3, 4 and 5 of paragraph (m) all of section 1363 of the Revised Administrative Code.

From the stipulation of facts, it appears, with respect to Seizure Identification No. 2008, that on October 3, 1954 thirteen (13) cases of ham in bulk, consigned to the petitioner Jea Commercial arrived in the Port of Manila, ex S/S "Talabot" from Hongkong and covered by customs entry No. 78563, series 1954, commercial invoice No. 437, bill of lading No. 8, and a delivery permit.

Relative to Seizure Identification No. 2009, it appears that on October 3, 1954 one (1) package of dried clams, two (2) packages of dried bamboo shoots, one (1) package of dried abalone, and one (1) package of dried bamboo shoots, also consigned to the petitioner herein, arrived in the Port of Manila, ex S/S "Talabot", from Hongkong and covered by customs entry No. 78564, series of 1954, bill of lading No. 9, commercial invoice No. 435, and a delivery permit.

Relative to Seizure Identification No. 2027, it appears that on October 4, 1954 a total of sixty eight (68) packages consisting of eleven (11) packages of vermicelli, five (5) packages of salted fish (herrings), thirty (30) packages of sea blubbers, ten (10) packages of tapioca sago, two (2) packages of dried bamboo shoots, one (1) package of dried abalone, one (1) package of curry powder, three (3) packages of flour threads, four (4) packages of dried shrimps, and one (1) package of dried fish, likewise consigned to petitioner, arrived in the Port of Manila, ex S/S "Doña Bebang", from Hongkong and covered by entry No. 79232-E, series of 1954, a bill of lading, a commercial invoice, and a delivery permit.

All these three (3) shipments were not accompanied by consular invoices and Central Bank release certificates. Pending the seizure proceedings and upon application therefor, the goods were released to petitioner Joe Commercial by the respondent Collector of Customs upon filing of the corresponding bond consisting of PISC Bonds Nos. 094, 095 and 107, all of the Pioneer Insurance and Surety Corporation, in the total amount of ₱21,639.73.

The only issue raised in this appeal is whether or not the shipments in question are subject to forfeiture for alleged violations of Central Bank Circulars Nos. 44 and 45 in relation to section 1363 (f) of the Revised Administrative Code as applied to all shipments and as regards the importation of the merchandise involved in Seizure Identification No. 2027, the additional violation of section 1363 (m), 3, 4 and 5 of the same Code.

The pertinent portions of section 1363 of the Revised Administrative Code—paragraph (f) and a part of paragraph (m) thereof— provides as follows:

> "Sec. 1363. Property subject to forfeiture under customs laws.- Vessels, cargo, merchandise, and other objects and things shall, under the conditions hereinbelow specified, be subject to forfeiture:
>
> "(f) Any merchandise of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law, and all other merchandise which, in the opinion of the Collector, have been used, are or were used as instrument in the importation or exportation of the former."
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> x x x x
>
> "(m) Any merchandise the importation or exportation of which is effected or attempted in any of the ways or under any of the conditions hereinbelow described-
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> x x x x
>
> "3. Upon the wrongful making by the owner, importer, exportation or consignee or any merchandise, or by the agent of either, of any false declaration or affidavit, touching such merchandise and in connection

> with the importation or exportation of the same.
>
> "4. Upon the wrongful making or delivery by the same person or persons, of any false invoice, letter or paper touching such merchandise and in connection with the importation or exportation of the same.
>
> "5. Upon the causing or procurance, by the same person or persons, of any merchandise to be entered or passed at any customhouse by any other fraudulent practice, device, or omission by means whereof the Government is or might be deprived of its lawful duties on such merchandise."

The petitioner maintains that the three (3) shipments in question cannot be forfeited for alleged violation of Central Bank Circulars Nos. 44 and 45. It is contended firstly, that the Central Bank of the Philippines has no power or authority to control imports which do not involve the sale of foreign exchange; secondly, that Republic Act No. 265 does not authorize the Central Bank to control imports that do not involve the sale of foreign exchange; and, thirdly, that the merchandise herein cannot be legally forfeited under Circulars Nos. 44 and 45, assuming that they were legally promulgated, for the reason that no penalty has been so provided. We shall proceed to consider these contentions in their order.

We agree with the petitioner that the Central Bank of the Philippines has no power or authority to control imports which do not involve the sale of foreign exchange. In the case of Estanislao Leuterio vs. The Commissioner of Customs, C.T.A. Case No. 29, promulgated April 18, 1955, we held:

> " x x x the Central Bank of the Philippines has no power to issue Central Bank Circulars Nos. 44 and 45 in order to regulate imports which do not involve the sale of foreign exchange, and we, therefore, declare the said circulars as without force and effect insofar as they govern imports for which no foreign exchange is required or will be required."

However, in the case at bar, the allegation of the petitioner that the shipments in question did not involve dollar remittance or the sale of foreign exchange is not sustained by evidence, documentary or testimonial. We have carefully perused the stipulation of facts upon the basis of which this case was submitted for determination and disposition by this Court. It is silent on this particular point. While it is true that the entry declarations (B.C. Form 11-A Revised, see Bur. of Customs records pp. 32, 44 and 55), indicate the words "NO DOLLAR REMITTANCE", this indication is merely self-serving and is not sufficient to permit a finding that these shipments or importations did not involve dollar remittance or the sale of foreign exchange. In two cases both entitled, Francisco Pascual v. The Commissioner of Customs (C.T.A. Cases Nos. 146 and 148, promulgated February 29, 1956), which are analogous to the case at bar, we held:

> "Moreover, it is a recognized general mercantile practice that the importations involve the sale of foreign

> exchange. Different countries have their own legal tender currencies and because of this variety of currencies, it is recognized and conceded that practically all imports represent a demand, potential or otherwise, for foreign exchange by the country concerned. Importations of merchandise payable in services or in kind are negligibly few and isolated. They are an exception to the general mercantile practice. This being so, importations that do not involve the sale of foreign exchange must be shown or proved. In default of such showing or proof as in fact the petitioner failed to prove in the instant case, it would be safe to assume that the importations in question involve the sale of foreign exchange for which the petitioner did not obtain the corresponding dollar allocation or foreign exchange license from the Central Bank as req quired by Circular No. 44 of said bank."

In view of the failure of the petitioner to satisfactorily show to this Court that the importations in question did not involve the sale of foreign exchange, we assume and so hold, that the shipments in question involve dollar remittance or the sale of foreign exchange. The first contention of the petitioner, therefore, is pointless and inapplicable to this case.

There being no evidence that these importations did not involve dollar remittance or the sale of foreign exchange, it also follows that the second contention is without any basis.

We now come to the third contention of the petitioner that the merchandise herein cannot be legally forfeited under Circulars Nos. 44 and 45, assuming that they were legally promulgated, for the reason that no such penalty has been so provided therein or in the basic law, Republic Act No. 265. We have previously resolved this question in the case of Catalina R. Reyes v. Commissioner of Customs (C.T.A. Case No. 132, promulgated January 9, 1956), a case analogous to the case at bar, wherein this Court stated, thus-

> "While Central Bank Circular No. 44 contains no provision in regard to forfeiture of merchandise imported in violation of said circular, Section 1363 (f) of the Revised Administrative Code, quoted above, confers upon the Collector of Customs concerned the power to order the seizure and forfeiture of merchandise the importation of which is effected or attempted contrary to law. The said circular, having been issued and promulgated in accordance with law, at least in respect of its provisions applicable to the importation here in issue, has the force and effect of law. Hence, the importation of merchandise effected or attempted contrary to its provisions is contrary to law within the meaning of Section 1363 (f) of the Revised Administrative Code and, therefore, subject to seizure."

In the analogous case of Po Ing Trading v. Commissioner of Customs, C.T.A. Case No. 131, promulgated December 10, 1955, wherein the question was also raised and passed upon by this Court, we stated:

> "Circular No. 44 of the Central Bank was adopted and promulgated in order to help achieve two cardinal objectives under Republic Act No. 265, to wit: (1) to maintain the monetary stability in the Philippines; and (2) to promote a rising levelof production, employment and real income in the Philippines. It is designed to stop the indiscriminate importations of goods, particularly the non-essential, that threaten to drain our dollar reserve. The drainage of our dollar reserve inevitably causes the value of our peso to hang precariously on the balance. It is likewise designed to provide protection to our infant industries. The Philippines has too long been geared to a feudal agricultural economy. It has been its sad lot and plight merely to provide raw materials to manufacturer-nations. These raw materials as everyone knows are embellished

into another form and exported back to the Philippines. Our economy depended, and still depends, upon the mercies, nay whims, of the manufacturer-nations. This situation has to end. We have to graduate from the anachronistic agricultural stage to the industrial one. Industries must have to be established. And infant industries must have to be protected. It is precisely to this end, among others, that Central Bank Circular No. 44 was conceived and adopted. By this Circular, the Central Bank is invested with the power to control foreign exchange for the payment of imports.

"The power to control foreign exchange necessarily carries with it the power to allocate the foreign exchange to finance the importation of goods. It implies the power to determine what goods should be imported, and what goods should not be imported.

x x x x

"To condone the importation in the case at bar, and order their release to the petitioner herein merely because Circular No. 44 of the Central Bank does not expressly provide for the penalty of forfeiture, would be rendering nugatory section 14 of said Circular which enjoins: '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 by any authorized Agent Bank in a form prescribed by the Monetary Board'. We would in effect by sustaining the contention of petitioner be abetting the circumvention of the power of the Central Bank to control foreign exchange for the payment of imports. The ultimate result would be a wholesale and indiscriminate importation of foreign goods in flagrant defiance of Central Bank Circular No. 44."

As to whether the merchandise covered by Seizure Identification No. 2027 is also subject to forfeiture under paragraph (m) subparagraph 3, 4 and 5 of section 1363 of the Revised Administrative Code, we find no evidence to sustain a finding to this effect and hold that the decision appealed should be reversed on this point. However, this finding does not affect the result of this case as the seizure is sustained by the ground first discussed above.

IN VIEW OF THE FOREGOING, the decision on appeal of the respondent Commissioner of Customs is hereby affirmed. We decree the forfeiture of PISC Bonds Nos. 094, 095 and 107 of the Pioneer Insurance and Surety Corporation in the total amount of ₱21,639.73 in favor of the Government, with costs against the petitioner Joe Commercial.

SO ORDERED.

Manila, Philippines, April 2, 1956.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Associate Judge Augusto M.
Luciano did not take part.
(On leave)