JUANA T. DE LA CRUZ,
Petitioner,

- versus -

C.T.A. CASES NOS.
980 & 1150

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

These are appeals from the decisions of the Commissioner of Customs ordering petitioner and her surety, Alto Surety and Insurance Co., Inc., to pay, jointly and severally, the amounts of ₱158,219.00 (CTA Case No. 980) and ₱49,411.00 (CTA Case No. 1150) representing the value of articles allegedly imported by petitioner in violation of Central Bank Circulars Nos. 44 and 45. In view of the identity of the parties and the issues raised, the above-entitled cases were tried jointly.

The facts are not disputed. The contending parties adopted the stipulation of facts appearing in the decisions of respondent which read as follows:

CTA CASE NO. 980

"1. That the merchandise covered by Seizure Identification Nos. 2589 and 2590 arrived in Manila from Hongkong, on February 15, 1955, on board the s/s 'HAIMENG', and were declared in Entries Nos. 13614 (Exh. "A") and 13615 (Exh. "B"), both series of 1955;

2. That the shipment covered by Seizure Identification No. 2616 arrived in Manila from Hongkong on February 18, 1955, aboard the s/s 'Tsimengteng', and was declared in Entry No. 14653 (Exh."C"), series of 1955;

3. That the importation covered by Seizure Identification No. 2691 arrived in Manila from Hongkong on March 4, 1955, on board the s/s 'STRAAT MOZAMBIQUE', and was declared in Entry No. 18688 (Exh. "D"), series of 1955;

4. That the goods covered by Seizure Identification No. 2736 arrived in Manila from Hongkong on March 17, 1955, via the s/s 'PRETORIA' and were declared in Entries Nos. 23285 and 23286 (Exh. "E"), both series of 1955;

5. That the shipment covered by Seizure Identification No. 2842 arrived in Manila from Hongkong on April 5, 1955, via the s/s 'SILVERASH' and was declared in Entry No. 30048 (Exh. "F"), series of 1955;

6. That the importation covered by Seizure Identification No. 2868 arrived in Manila from Hongkong on April 13, 1955, ex s/s 'TEGELBERG', and was declared in Entry No. 31754 (Exh. "G"), series of 1955;

7. That the shipment covered by Seizure Identification No. 2882 arrived in Manila from Hongkong on April 16, 1955, on board the s/s 'LEVERKUSEN', and was declared in Entry No. 34122 (Exhibit. "H"), series of 1955;

8. That the subject shipments are duly supported by proper shipping documents except consular invoices and bank release certificates, for which reason they were ordered seized for alleged violations of Central Bank Circular Nos. 44 and 45 in relation to Sections 1363(f) and 1250 of the Revised Administrative Code.

9. That the subject importations involved no dollar remittances or the sale of foreign exchange; and

10. That the shipments in question were released to claimant under surety bonds pending the outcome of the seiaure proceedings."

(Customs rec. pp. 6-8)

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CTA CASE NO. 1150

"1. That 381 packages of various foodstuff were consigned to Juana T. de la Cruz, which arrived in the port of Manila on June 23, 1955 from Hongkong on board the S/S "'Bencleuch'" Reg. No. 731, and which were declared under Entry No. 56410, series of 1955, (Exh. "A"), together with the bill of lading, (Exh. "B"), the commercial invoice (Exh. "C"), the official receipt evidencing payment of duties and taxes (Exh. "D") and an official receipt evidencing the deposit of additional sales tax;

2. That no Central Bank Release Certificate was submitted;

3. That the merchandise was found to tally with the declaration in the entry and all duties and taxes thereon were paid. However, the Appraisers' Division reported the merchandise for seizure for alleged violation of Central Bank Circulars Nos. 44 and 45 in relation to Sections 1363(f) and 1250 of the Revised Administrative Code, because one of the requirements for release is the presentation of Central Bank release certificate; and

4. That the merchandise was released under surety bond pending seizure proceedings."

After the seizure proceedings, the Collector of Customs, in two separate decisions, ordered petitioner and her surety, Alto Surety and Insurance Co., Inc., to pay, jointly and severally, the full amounts of the bonds filed by them for the release of the importations in question, for the reason that the said importations were effected in violation of Central Bank Circulars Nos. 44 and 45, in relation to Section 1363(f) of the Revised

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Administrative Code. From these decisions, petitioner appealed to respondent Commissioner of Customs, who affirmed the same. Hence these appeals.

In her supplemental petition, petitioner alleges that on January 21, 1962 the Monetary Board of the Central Bank of the Philippines promulgated Circular No. 133, repealing Circular No. 20 and all its implementing Circulars particularly Circulars Nos. 44 and 45. Consequently, it is contended that the penalty of forfeiture incurred under the two latter circulars was abated.

The issues involved in these two cases are as follows:

1. Whether or not the seizure and forfeiture of the goods in question for failure to present a release certificate in violation of Central Bank Circulars Nos. 44 and 45, in relation to Section 1363(f) of the Revised Administrative Code, is valid; and

2. Whether or not the promulgation of Central Bank Circular No. 133 abated the penalty of forfeiture incurred under Central Bank Circulars Nos. 44 and 45.

On the first issue, petitioner maintains that inasmuch as the importations in question were made prior to the effectivity of the No-Dollar Import Law (Republic Act No. 1410) and did not involve any dollar remittance or sale of foreign exchange, the same are beyond the pale of Central Bank Circulars Nos. 44 and 45. Accordingly, the release certificate required by paragraph 14 of Circular No. 44 is not necessary. This contention is without merit. The importations in question arrived in the Philippines on different dates between February 14 and June 23, 1955 and prior to the effectivity of Republic Act No. 1410, but after Circulars No. 44 and 45 took effect. Being importations not involving dollar remittance, the same come within the purview of Circular No. 45 which requires a license from the Monetary Board for such importation. There is no showing that the importations in question are covered by the necessary license.

Furthermore, the fact that the said importations do not involve dollar remittances does not necessarily place them beyond the operation and purview of Circular No. 44, for although there was no immediate sale of foreign exchange, they ultimately require the sale of such exchange. The currency of one country is not legal tender in another. To pay for imports, traders have to avail themselves of foreign exchange, which is the conversion of an amount of money or currency of one country into an equivalent amount of money or currency of another. Every importation of goods and merchandise requires an immediate or future demand for foreign exchange

(Pascual vs. Commissioner of Customs G.R. L-10979, June 30, 1959).

The importations in question having been made without the necessary import license required by Circular No. 45 and a release certificate from the Central Bank or any of its authorized agent banks pursuant to Circular No. 44, they fall within the class of "merchandise of prohibited importation" or merchandise "the importation x x x of which is affected x x x contrary to law" that the Commissioner of Customs may seize and order forfeited (Pascual vs. Commissioner of Customs, supra.) pursuant to the provision of Section 1363(f) of the Revised Administrative Code.

We come now to the second issue. Petitioner avers that the repeal of Central Bank Circulars Nos. 44 and 45 by Central Bank Circular No. 133 extinguished the penalty of forfeiture incurred under the former two circulars. Again, petitioner's contention is erroneous. Insofar as the requirement of a release certificate issued by the Central Bank or its agent bank is concerned, Circular No. 133 (Section 6) adopted the provision of Section 14 of Circular No. 44 by requiring the presentation of a release certificate. Moreover, section 8 of Circular No. 133 made as integral parts thereof existing circulars, rules, regulations and conditions governing transactions in foreign exchange not inconsistent with the provisions thereof, such as the requirement of a release certificate in section 14 of Circular No. 44 (Andres E. Lazaro vs. Commissioner of Customs, CTA Cases Nos. 833 & 834, June 14, 1963).

Assuming, for purposes of argument, that Central Bank Circular No. 44 was repealed by Circular No. 133, the validity of the forfeiture under the old circular would not be affected by the repeal, the merchandise in question having been imported illegally while Circular No. 44 was still in force. The expiration of said circular did not have the effect of legalizing an importation of goods which was illegal at the time of importation (Golay Buchel and Cie. vs. Commissioner of Customs, G.R. Nos. L-10994, 11012, December 29, 1959; Leonora Roxas vs. Sayod, G.R. No. L-6502, November 29, 1956).

Relative to the respondent's counterclaim for additional damages amounting to ₱500.00, we observe that the same is based upon a provision of the bonds filed by petitioner and her surety to the effect "that if within thirty (30) days from demand for payment of the liability x x x 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 x x x x." Obviously, a demand for payment of the amount covered by the bonds cannot legally be made until there is a final judgment ordering forfeiture and there being as yet no such final judgment, no liability for damages attaches as yet on the part of the petitioner (See Que Hua Shirt Factory vs. Commissioner of Customs, C.T.A. Cases Nos. 739 and 753, January 11, 1962; Arturo Mendoza vs. Timoteo Y. Aseron, CTA Case No. 852, June 17, 1963).

WHEREFORE, in view of all the foregoing considerations, the decisions appealed from are hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, August 27, 1963.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

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