REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DONATA SAN MIGUEL
and BENITO CHUA,
Petitioners,

- versus -

C.T.A.
CASE NO. 1013

THE COMMISSIONER OF
CUSTOMS and THE COLLECTOR
OF CUSTOMS OF MANILA,
Respondents.

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

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Customs affirming that of the Collector of Customs of Manila decreeing the seizure and forfeiture of "310 Bales Cereal Food (Sautanghon)" for violation of Central Bank Circular No. 44, in relation to section 2530 (f) of the Tariff and Customs Code.

The parties have agreed and stipulated on the factual issues, the pertinent portions of which are quoted hereinbelow, as follows:

x x x x x

"2. That petitioner Donata San Miguel is an importer of a shipment of 310 bales of sotanghon, weighing approximately 37,200 kilos, gross weight, which she imported from Hongkong under her firm name 'DONATAS TRADING' and which shipment arrived at the port of Manila on August 25, 1960 on board the vessel S/S SHOHO MARU.

"3. That prior to the actual shipment and importation of the subject shipment of sotanghon, petitioner applied with the Central Bank of the Philippines through its authorized agent bank, the Pacific Banking Corporation, Manila,

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for the opening of commercial letter of credit in the amount of US $2,498.00 to cover a shipment of 'APPROXIMATELY 310 BALES CEREAL FOOD (SAUTANGHON)'. x x x x.

"4. That the corresponding letter of credit was opened by the Pacific Banking Corporation on July 13, 1960 in favor of the National Handlesbank, N. Yo., 15 Queen's Road Central, Hongkong, in the amount of US $2,498.00, to cover 'About 310 Bales Cereal Food (Sautanghon) (NEC-048-01.03) from Hongkong to Manila.' x x x x.

"5. That the subject shipment of 310 bales of sotanghon arrived in the Port of Manila and was declared for Customs purposes under Entry #066039. The shipment was duly examined and appraised and the amount of ₱22,529.00 was deposited by the petitioner under Official Receipt No. 60781 to cover payment of the taxes and duties on the shipment. x x x x x.

"6. That shortly prior to the arrival of the subject shipment in Manila, the petitioners applied for and were issued by the Central Bank of the Philippines, through its authorized agent Bank, the Pacific Banking Corporation, Manila, Central Bank Release Certificate No. 11450 covering the shipment in question. x x x x x.

"7. That the petitioners thereupon submitted the said Central Bank Release Certificate, Exhibit 'D', to the Central Bank representatives in the Bureau of Customs and said official approved and validated the said CB Release Certificate. x x x.

8. x x x x

"9. That the subject shipment of 310 bales of Sotanghon was seized and in his Decision, dated January 18, 1961 (Annex 'G' of the Petition), the Collector of Customs of Manila decreed the forfeiture of said shipment. On appeal, the respondent Commissioner of Customs, in his Order (Annex 'H' of the Petition)

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affirmed the Decision of respondent Collector of Customs.

"10. That release certificate of the CB, Exhibit 'D' was withdrawn by the MB on September 9, 1960. x x x.

"11. That under CB Statistical Classification of Commodities, revised as of July 1, 1957, implementing Circular No. 44, the classification of 'sautanghon' was under Commodity Code No. VI-048-03, not No. VI-048-01.03.

"12. That the subject shipment of sotanghon has been seized and ordered forfeited by the respondents, allegedly for violation of Central Bank Circular No. 44 in relation to Sec. 2350 of the Tariff and Customs Code.

"13. That the petitioners have seasonably appealed from the decisions of the Collector of Customs and the Commissioner of Customs, to the Court of Tax Appeals." (Stipulation of Facts, Oct. 10, 1964, pp. 90-94, C.T.A. rec.).

Pending final determination of the case, an order was issued for the release of the 310 bales of sotanghon to the petitioners upon their filing of a surety bond in the amount of ₱50,000.00 to guarantee payment of the balance of the redemption price of said goods in the event that forfeiture thereof is finally upheld (pp. 66-67, C.T.A. rec.).

The case was submitted for decision without memorandum of both parties.

Petitioners assail the legality of the forfeiture of said goods on the following grounds, to wit:

1. That Central Bank Circular No. 44 is beyond the power of the Central Bank to issue and promulgate under Republic Act No. 265;

2. That Central Bank Circular No. 44 was not approved by the President of the Philippines;

3. That Central Bank Statistical Classification of Commodities which implements Central Bank Circular No. 44 is arbitrary, capricious and whimsical; and

4. That the power to regulate and control importations are vested on other agencies of the government and not with the Central Bank. (See p. 6-8, "Petition for Review.").

The issue as to the legality of Central Bank Circular No. 44 is not new and decisions on cases similarly situated are more or less uniform.

It appears that a commercial letter of credit was opened to cover a shipment of "31 Bales Cereal Food (Sautanghon)" classified under Commodity Code No. NEC-048-01.03 which means "Cereal Foods, ready to eat." Thereupon, Central Bank Release Certificate No. 11450 was issued and later validated to cover said shipment. Due however to a protest lodged by Baguio Food Manufacturing Co. against said shipment, a re-examination conducted shows that Central Bank Release Certificate No. 11450 did not correctly cover the questioned shipment. Under Central Bank

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Statistical Classification of Commodities, revised as of July 1, 1957, "Sautanghon" falls under Commodity Code No. UI-048-03.00 which covers "cereal paste (macaroni, spaghetti, noodles, sautanghon, vermicelli and similar preparations)". There being a discrepancy between the commodity code classification found in Release Certificate No. 11450 and the shipment involved, the Central Bank, thru the Monetary Board, withdrew the release certificate. Respondent Collector of Customs ordered the seizure and forfeiture of said commodity for failure of the petitioners to present the proper release certificate, amendatory or otherwise, to correct the discrepancy in the commodity classification of the subject shipment. To our mind, when the Central Bank issued a release certificate for "NEC-048.01.03, Cereal Foods, ready to eat," it was not intended to cover "sautanghon" which comes under a different commodity classification as UI-048-03.00. (See Phil. Planters & Investment Co. v. Comm. of Customs, CTA Case No. 549, Dec. 29, 1959) Petitioners, therefore, are without release certificate for the said shipment of "sautanghon" and its forfeiture for violation of C. B. Circular No. 44, in relation to section 2530 (f) of the Tariff and Customs Code is in order, petitioners having attempted to effect the importation of the same contrary to law.

The validity of Central Bank Circular No. 44 promulgated under authority of section 74, Republic Act No. 265, has been passed upon and repeatedly upheld by the Highest Tribunal. (Pascual v. Comm. of Customs, L-10979, June 30, 1959; Actg. Comm. of Customs v. Leuterio, L-9142, Oct. 17, 1959; Comm. of Customs v. Serree Investment Co., L-12007, May 16, 1960; Comm. of Customs v. Nepomuceno, L-11126, March 31, 1962; Serree Investment Co. v. Comm. of Customs, L-19564, Nov. 28, 1964).

As to the claim that Central Bank Circular No. 44 is invalid for lack of presidential signature, the Supreme Court in a similar vein held: "Appellant's claim that Circulars Nos. 44 and 45 were promulgated by the Monetary Board without concurrence of at least five of its members and without the approval of the President, is not supported by evidence. They have been published in the Official Gazette and the presumption that an official duty has been regularly performed, the ordinary course of business followed, and the law complied with, is on the appellee's side." (F. Pascual v. Comm. of Customs, supra). Similarly, petitioners are now estopped from impugning the reasonableness of the classification of commodities made in pursuance of Central Bank Circular No. 44, it appearing that they had acted thereon, or invoked the benefits thereof, when they applied for release certificate under it. (See Comm. of Customs v. Santos, et. al., L-11911, March 30, 1962.)

Petitioners argue further that the Central Bank under its charter (Rep. Act 265) has no power to regulate and control imports. On the contrary, we are of the opinion that the Central Bank possesses such power and this is corollary to its main functions of maintaining our monetary stability (Sec. 2(a), Rep. Act 265) and protecting the country's international reserve. (Sec. 74, id.)

The last issue pertains to petitioners' allegation that the subject importation was made in good faith. The facts of record, however, negate petitioners' contention.

In the first place, when petitioners applied for the opening of a commercial letter of credit with the Pacific Banking Corporation, they furnished the item sought to be imported as "310 Bales Cereal Food (Sautanghon)" classifying the same under Commodity Code No. "NEC-048.01.03." The bank mistakenly approved the application and opened a letter of credit in favor of the petitioners not realizing that under Central Bank Statistical Classification of Commodities, Commodity Code No. NEC-048.01.03 applies only to "Cereal Foods, ready to eat" and not to "sautanghon" which properly falls under Commodity Code No. UI-048.03.00 covering "Cereal paste (macaroni, spaghetti, noodles, sautanghon, vermicelli and similar preparations)." Petitioners, therefore, misdeclared or misrepresented to the bank the true classification of their importation to facilitate its entry into the Philippines. Petitioners' actuation is understandable. "Sautanghon", although not totally banned, is allowed to be imported only in limited quantities due to the policy of our government to protect local manufacturers. In the second place, petitioners cannot claim that they were mistaken in their classifidation of the commodity when they applied for a letter of credit. The fact that they requested and were allowed to withdraw the shipment under bond conclusively shows that petitioners intended from the outset to import the commodity they applied for (which is sautanghon) and nothing else. In the third place, petitioners, through their counsel, in the seizure proceedings before the Collector of Customs, admit that the subject importation is banned and indicated their disavowal of an intention to further contest the move of the government to forfeit the same. This only shows that petitioners all along knew that the item is banned or its importation restricted, thus, their willingness to waive any interest they had over it. At any rate, good faith can not legalize an otherwise illegal importation.

IN VIEW OF ALL THE FOREGOING, the decision appealed from is affirmed. Inasmuch as the commodity in question was released under bond, petitioners and Industrial Insurance Co., Inc., are hereby ordered to pay, jointly and severally, to the Bureau of Customs the sum of ₱50,000.00 representing the balance of the redemption price of said commodity, with costs against petitioners.

SO ORDERED.

Quezon City, February 2, 1965.

R M Umali
ROMAN M. UMALI
Associate Judge

I CONCUR:

AUGUSTO M. LUCIANO
Acting Presiding Judge

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