REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANDRES E. LAZARO,
Petitioner

versus

C. T. A. CASE NO. 861

THE COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from the decision of the Acting Commissioner of Customs dated May 31, 1960, affirming that of the Collector of Customs for the Port of Manila decreeing the forfeiture of the merchandise covered by Seizure Identification No. 1878, and ordering petitioner and his surety to pay in cash, jointly and severally, the amount of ₱4,680.00, representing the appraised value of the seized merchandise, for violation of Central Bank Circulars Nos. 44 and 45, in relation to Section 1363(f) of the Revided Administrative Code.

It appears that in 1954, petitioner imported various merchandise from Hongkong consisting of the following:

> Eighty-one (81) packages of various merchandise, namely: 1 package bean stick, 2 packages rice stick, 22 packages preserved vegetable, 11 packages preserved beans, 9 packages canned mushroom, 1 package canned fruit, 1 package canned water chestnut, 4 packages bean curd, 4 packages preserved fruit, 1 package preserved fruit, 1 package preserved fruit, 6 packages sea blubber, 1 package squid,

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> 1 package canned fish, 5 packages salted fish, 5 packages water chestnuts, 6 packages lily and taro roots, and 1 package joss stick.

Upon arrival in Manila on August 31, 1954, the above-stated merchandise were seized for alleged violation of Circular Nos. 44 and 45 of the Central Bank of the Philippines, in relation to Section 1363(f) of the Revised Administrative Code.

During the pendency of the seizure proceedings, the merchandise involved were released to petitioner upon the filing of a surety bond of the Century Insurance Company No. 2884 in the amount of ₱4,680.00 to cover the appraised value of the said merchandise. The amount of ₱4,680.00 was arrived at by adding the landed cost of ₱4,391.92 to the 30% estimated profit minus the taxes and duties paid. The bond provided that in the event of the forfeiture of the merchandise covered by said bond, the entire amount thereof shall be paid in cash to the Bureau of Customs; and that a penalty of ₱500.00 was stipulated in the bond which reads as follows:

> "NOW THEREFORE, the conditions of this obligation are such that in the event that it should be finally decided that the merchandise herein mentioned should be forfeited to the Government, and/or that a fine or surcharge should be imposed, the entire amount of this bond, in case of forfeiture, or the corresponding amount of the fine or surcharge as the case may be, shall be paid IN CASH to the Bureau of Customs; PROVIDED, HOWEVER, that if within thirty (30) days from demand for payment of the liability herein mentioned the said liability is not paid, and it should be found neces-

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> sary to file an action in court to effect the collection thereof, a penalty of FIVE HUNDRED (₱500.00) in addition shall be imposed, otherwise, this obligation shall be void and of no effect."

After hearing the seizure proceedings, the Acting Collector of Customs for the Port of Manila held on April 20, 1955, that as the merchandise in question had been imported without import license and were not covered by the corresponding release certificate, in violation of Central Bank Circular Nos. 44 and 45, the same were subject to forfeiture under Section 1363(f) of the Revised Administrative Code. However, inasmuch as the merchandise involved were previously released to petitioner under bond, he ordered the latter and his surety to pay in cash, jointly and severally, the sum of ₱4,680.00 to the Bureau of Customs.

From the decision of the Acting Collector of Customs, petitioner appealed to the Acting Commissioner of Customs, who affirmed the decision of the former on May 31, 1960. Hence, the appeal to this Court.

On October 13, 1962, petitioner filed with this Court a motion to set aside the decision of respondent and to dismiss the forfeiture proceedings contending that Central Bank Circular No. 133 has repealed Central Bank Circular Nos. 44 and 45 and consequently the liability of the aforesaid merchandise has been abated. In a resolution dated December 3, 1962, the Court held in abeyance the resolution of the motion, the same to be considered in the decision of the case on the merits.

Later, petitioner moved to postpone the hearing of this case until the Supreme Court shall have decided the case of Lazaro vs. Commissioner of Customs, G. R. Nos. L-21790 and L-21794, which involve the same issues as those raised in the case at bar. On December 24, 1964, the Supreme Court rendered its decision in the above-mentioned Lazaro cases. Thereafter, the parties submitted the case on the basis of the record thereof without submission of further evidence.

Let it be said at this point that respondent's counterclaim prays for legal interest on the total amount of the bond and ₱500.00 as additional damages stipulated therein.

The issues to be resolved in this case are as follows:

> (1) Whether the merchandise involved in this case are subject to forfeiture for not being covered by a release certificate and import license under Circular Nos. 44 and 45 of the Central Bank, in relation to Section 1363(f) of the Revised Administrative Code;
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> (2) Whether the appraised value of the forfeited merchandise should include the 30% expected profit;
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> (3) Whether petitioner is liable for interest on the total amount of the surety bond and for ₱500.00 as additional damages.

The main issue involving the legality of the seizure and forfeiture of the aforesaid merchandise is no longer of first impression. In the case of Andres E. Lazaro vs. The Commissioner of Customs, G. R. No.

L-21790 & L-21794, Dec. 24, 1965, supra, the Supreme Court, resolving a similar issue, held:

> The issue of whether or not the importations in question are subject to forfeiture for lack of a Central Bank release certificate in violation of Central Bank Circulars 44 and 45 in relation to Section 1363(f) of the Revised Administrative Code has already been answered in the affirmative in previous cases involving similar facts.[1] We see no cogent reason to alter our previous rulings.
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> Central Bank Circular 133 did not repeal Circulars 44 and 45 with respect to the necessity of a release certificate. As a matter of fact, paragraph 6 of Circular 133 required imports to be released only upon presentation of a release certificate issued by the Central Bank. Not only that, Section 14 of Circular 44 which states:
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> > "14. 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 any authorized Agent Bank in a form prescribed by the Monetary Board."
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> was deemed incorporated to Circular 133 by virtue of paragraph 8 thereof which we quote hereunder:[2]
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> > "8. All existing circulars, rules, regulations, and conditions governing transactions in foreign exchange not inconsistent with the provisions of this Circular, are deemed incorporated hereto and made integral parts hereof by reference."

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[1] Serree Investment Company v. Commissioner of Customs, L-21217, November 29, 1965 and cases cited therein.

[2] Bombay Department Store v. Commissioner of Customs, L-20489, June 22, 1965; Bombay Department Store v. Commissioner of Customs, L-20460, September 30, 1965.

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With respect to the assertion that the enactment of Republic Act 1410 abated any liability incurred for violation of Central Bank Circular 45, suffice it to say that the importations in question do not come within the operation of said Act, for Section 3 thereof says:

> "SEC. 3. x x x Provided, however, That goods and commodities in transit or previously imported on a no-dollar remittance basis at the time of the approval this Act shall not be affected by the operation of this Act." (Underscoring supplied.)

Said goods had already been imported and declared forfeited by the Collector of Customs of Manila when Republic Act 1410 was enacted on September 10, 1955. (See also the case of Capulong v. Aseron, G. R. No. L-22989, May 14, 1966; and Andres E. Lazaro v. Comm. of Customs, G. R. Nos. L-22511 & 22513, May 16, 1966.)

Anent the second issue, the Supreme Court, also in the aforesaid decision, held:

> The contention has no merit. Rule 13(a) of the Philippine Tariff Act of 1909, as amended, relates to the appraisal of importations for purposes of determining the customs duties.[3] For appraisal of importations in connection with seizure proceedings, the value of the importations in the local market should prevail, following Section 1377 of the Revised Administrative Code which provides:
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> > "SEC. 1377. Description and appraisement of seized property. - The collector shall also cause a list and particular description of the property seized to be prepared and an appraisement of

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[3] See Lim Quim v. Collector of Customs, 23 Phil. 509.

the same at its <u>value in the local market</u> to be made by at least the appraising officers, under the revenue laws, if there are such officers at or near the place of seizure, but if there are not, then by two competent and disinterested citizens of the Philippines, to be selected by him for that purpose, residing at or near the place of seizure, which list and appraisement shall be properly attested by such collector and the persons making the appraisal." (Underscoring supplied)

Moreover, the inclusion of the 30% estimated profits as part of the value of the importations in question was made with the acquiescence and approval of the appellant. As a matter of fact, the amount of the bonds posted by him upon release of the goods carried the 30% estimated profits. The payment of such estimated profits as part of the value of the importations in the surety bonds therefore constitutes his contractual obligation in case of forfeiture.

Anent the third issue, which partly pertains to respondent's claim for the imposition of the penalty of ₱500.00, this Court said in a previous case:

Relative to the claim for damages amounting to ₱500.00, we said in a previous case where respondent was similarly situated:

"x x x Upon perusal of the bonds, we observe that liability for the said amount is subject to the condition that the appraised value of the merchandise involved be not paid within 30 days from demand for its payment and it should be found necessary to file a judicial action for the collection thereof. Obviously, a demand for payment of the amount covered by the bond cannot legally be made until there

> is a final judgment ordering forfeiture. In the case at bar, there is as yet no final judgment of forfeiture. Consequently, there is as yet no liability on the part of petitioner for said damages. (Que Hua Shirt Factory v. Commissioner of Customs, C.T.A. Cases Nos. 739 & 753, January 11, 1962.)" (Angela S. Lazatin vs. Commissioner of Internal Revenue, CTA Case No. 782, Jan. 19, 1962.)

As for the interest on the total amount of the surety bond claimed by respondent, same cannot be sustained. There is no basis, legal or contractual, to justify the imposition. The surety bond does not so provide for payment of interest.

WHEREFORE, finding no error in the decision appealed from, the same is hereby affirmed <u>in toto</u> with costs against petitioner.

SO ORDERED.

Quezon City, November 14, 1966.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge