PACIFICO SOLIS, doing business under the name and style of ROSOL DRY GOODS,
Petitioner,

- versus - C.T.A. CASE No. 747

ELEUTERIO CAPAPAS, in his capacity as Commissioner of Customs,
Respondent.

x - - - - - - - - - - - - - - x May 27, 1968

D E C I S I O N

Petitioner appealed from the decision of respondent dated December 11, 1959, affirming that of the Acting Collector of Customs of Manila decreeing the forfeiture of the merchandise covered by Seizure Identifications Nos. 3811 and 3812, for violation of Central Bank Circulars Nos. 44 and 45 in relation to Sections 1363(f) and 1250 of the Revised Administrative Code. The case was submitted for decision on the pleadings and record of this case.

The facts of the case are not disputed. As per stipulation of the parties the pertinent facts are as follows:

> "This shipment consisting of 87 bales of cotton textiles consigned to Rosol Dry Goods, which arrive at the Port of Manila (Pier 13) on board s/s "Henrik", Reg. No. 968 on August 17, 1955, was declared under entry No. 71545, series of 1955, and covered by Seizure Identification No. 3811. Said shipment is accompanied by bill of lading, the commercial invoice from Tah Shun Company in the amount of US$33,000.00 C&F, official receipt No. 32262, dated August 18, 1955, evidencing payment of estimated duties, sales tax and surcharge in

the amount of ₱14,492.59, which for purposes of identification I ask that entry No. 71545 be marked as Exh. 'A' for the prosecution together with the pertinent papers attached thereto;

"This shipment of 100 bales plain cotton textiles consigned to Rosol Dry Goods, which arrived at the Port of Manila (Pier 13) on board s/s "Henrik", reg. No. 968 from Hongkong on August 17, 1955, was declared under entry No. 71546, series of 1955, and covered by Seizure Identification No. 3812. Said shipment is accompanied by the bill of lading, the commercial invoice from Tah Shun Company in the amount of US$45,000.00 C&F, official receipt No. 32261, dated August 18, 1955, evidencing payment of estimated customs duties, sales tax and surcharge in the amount of ₱17,061.28, which for purposes of identification I ask the Honorable Investigator that entry No. 71546, series of 1955, be marked as Exh. 'B' for the prosecution together with the pertinent papers attached to it;

"That these 2 shipments are not covered by release certificates from the Central Bank or any of its authorized agent banks;

"That they are not accompanied by consular invoices;

"That these shipments are seized by the Appraisers' Division in violation of Central Bank Circulars Nos. 44 and 45 in relation to Sections 1250 and 1363(f) of the Revised Administrative Code; and

"That these shipments were released under surety bonds Nos. 564 and 563, respectively." (See pp. 34-35, Customs rec.).

After hearing, the Acting Collector of Customs rendered a decision dated December 24, 1956, holding that since the merchandise in question were not covered by any license or permit from the Central Bank as required by Circular No. 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 bonds, he ordered the latter and his surety to pay in cash, jointly and severally, the sum of ₱247,952.15 to the Bureau of Customs (pp. 55-57, Customs rec.).

Not satisfied with the decision of the Acting Collector of Customs, petitioner appealed to respondent who affirmed the decision of the former on December 11, 1959 (pp. 66-69, Customs rec.). On January 15, 1960, petitioner filed a motion for reconsideration (pp. 70-75, Customs rec.), which was denied by respondent in an order dated February 4, 1960 (pp. 78-83, Customs rec.). Hence, this appeal (p. 1, CTA rec.).

On March 15, 1960, respondent filed his answer with counterclaim (pp. 12-20, CTA rec.), to which petitioner filed a corresponding answer on March 18, 1960 (pp. 25-26, CTA rec.).

Subsequently, petitioner filed a motion with leave of court to amend petition for review and for admission thereof (pp. 43-47, CTA rec.). In a resolution dated February 28, 1963, the Court admitted the amended petition for review (pp. 49-51, CTA rec.). On March 20, 1963, respondent filed his answer to amended petition for review with counterclaim praying for interest at the legal rate on the total amount covered by the surety bonds (₱247,952.15) and ₱500.00 as penalty for violation of the terms of each of the bonds, or a total penalty of ₱1,000.00 (pp. 53-57, CTA rec.).

Later, petitioner moved to postpone the hearing of this case until the Supreme Court shall have decided some analogous cases which involve the same issues as those raised in the case at bar. On December 24, 1965, the Supreme Court rendered its decision in the cases of Lazaro v. Commissioner of Customs, G.R. Nos. L-21790 & 21794, which are similar to this case. Thereafter, this case was submitted for decision without the parties filing their respective memorandum.

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

> 1. Whether or not the forfeiture of the merchandise in question and/or the bonds is legal; and
>
> 2. Whether petitioner is liable for interest at the legal rate on the total amount of the surety bonds and for ₱1,000.00 as additional damages.

With respect to the main issue involving the legality of the seizure and forfeiture of the aforesaid merchandise, it is enough to quote from the decision in the cases of Andres E. Lazaro v. The Commissioner of Customs, G.R. Nos. L-21790 & 21794, Dec. 24, 1965, viz.:

> "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.
>
> "Central Bank Circular 133 did not repeal Circulars 44 and 45 with respect to the neces-

sity 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:

> '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.'

was deemed incorporated to Circular 133 by virtue of paragraph 8 thereof which we quote hereunder:[2]

> '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.'

"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 com-

---

[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.

> modities in transit or previously imported on a no-dollar remittance basis at the time of the approval of 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 claim of respondent for interest at the legal rate on the total amount of surety bonds, the same cannot be sustained. There is no basis, legal or contractual, to require petitioner to pay interest. The surety bonds do not provide for payment of such obligation (see Andres E. Lazaro v. Commissioner of Customs, C.T.A. No. 861, Nov. 14, 1966).

The imposition of the penalty of ₱500.00 for violation of the terms of each of the bonds or a total amount of ₱1,000.00, is not also justified:

> "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 of forfeiture. Consequently, there is as yet no liability on the part of petitioner for said damages. (Que Hua Shirt Factory v. Comm. of Customs, C.T.A. Nos. 739 & 753, Jan. 11, 1962; Angela Lazatin v. Comm. of Customs, C.T.A. No. 782, Jan. 19, 1962.'" (Andres E. Lazaro v. Comm. of Customs, C.T.A. No. 861, Nov. 14, 1966.)

We find no cogent reason to deviate from the foregoing.

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, May 27, 1968.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge