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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

January 11, 1962

QUE HUA SHIRT FACTORY,
Petitioner,

- versus -

C.T.A. CASE NO. 739

COMMISSIONER OF CUSTOMS,
Respondent.

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

QUE HUA SHIRT FACTORY,
Petitioner,

x - - - - versus -

C.T.A. CASE NO. 753

COMMISSIONER OF CUSTOMS,
Respondent.

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

D E C I S I O N

These are appeals from two separate decisions of the Commissioner of Customs in Seizure Identification Nos. 2136 and 2090, decreeing the confiscation of the bonds filed for the release of several cases of knitted cotton undershirts and ordering petitioner Que Hua Shirt Factory and the Pioneer Insurance and Surety Co., Inc. to pay in cash to the Bureau of Customs the respective sums of ₱34,664.46 and ₱22,198.26.

The facts are not controverted and are as gathered from the stipulations of facts upon which the cases were submitted to this Court for decision.

The petitioner, a business concern organized in accordance with law, made two separate importations from Hongkong. The first, consisting of 37 cases of knitted cotton undershirts, arrived in the

City of Manila on November 3, 1954, per SS "Strust Seonia". The second, consisting of 30 cases of knitted cotton undershirts, arrived in the City of Manila on October 21, 1954, per SS "Hervar". Both shipments were duly covered by the corresponding bills of lading and commercial invoices, and all taxes and duties due thereon were paid. However, they were not accompanied by any consular invoice nor Central Bank Release Certificate, for which reason they were seized by the Collector of Customs for the Port of Manila as having been imported in violation of Central Bank Circulars Nos. 44 and 45 in relation to Section 1363 (f) of the Revised Administrative Code.

During the pendency of the seizure proceedings, the shipments were released under Pioneer Insurance & Surety Co. Bonds Nos. 160 and 138 in the respective amounts of ₱34,664.46 and ₱22,198.26, the conditions of which bonds read 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 maybe, 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 necessary to file

> an action in court to effect the collection thereof, a penalty of FIVE HUNDRED (₱500.00) PESOS in addition shall be imposed, otherwise, this obligation shall be void and of no effect. (pars. 4 and 5 Stipulation of Facts, CTA Cases Nos. 739 & 753.)

After due hearing, the Collector of Customs of Manila decreed the bonds filed for the release of the shipments in question forfeited and ordered petitioner Que Hua Shirt Factory and the Pioneer Insurance & Surety Co. to pay to the Bureau of Customs the respective sums of ₱34,664.46 and ₱22,198.26 on the ground that the importations were effected in violation of Central Bank Circulars Nos. 44 and 45 in relation to Sec. 1363 (f) of the Revised Administrative Code. On appeal to the Commissioner of Customs, said decisions were affirmed. Hence the filing of the instant petitions for review to which respondent answered, seeking their dismissal and the payment by petitioner of the respective sums of ₱34,664.46 and ₱22,198.26, as counterclaims, and the respective amounts of ₱500.00 and ₱500.00 or a total of ₱1,000.00, as additional damages.

The resolution of these two cases turns upon the question of whether or not the importations at bar are subject to forfeiture for having been effected in violation of Central Bank Circulars Nos. 44 and 45 in relation to Sec. 1363 (f) of the Revised Administrative Code.

This legal question is not of first impression. In previous cases (Pascual vs. The Commissioner of Customs, G.R. No. L-10979, June 30, 1959; Commissioner of Customs vs. Pascual, G.R. No. L-9836, November 18, 1959; and The Acting Commissioner of Customs vs. Leuterio, G.R. No. L-9142, October 17, 1959), which are similar to the cases at bar, the Supreme Court has consistently held the validity of Central Bank Circulars Nos. 44 and 45 on the basis of the violation of which imported merchandise were forfeited. The Supreme Court said:

> "As already stated, Circulars Nos. 44 and 45 were issued by the Monetary Board within the scope of its powers. They were published in the Official Gazette in June 1953. Appellant failed to present to the Commissioner of Customs release certificate issued by the Central Bank or its duly authorized agent banks for the importation in question. The Commissioner of Customs, may therefore, seize them and order their forfeiture under the aforequoted provisions of the Revised Administrative Code. It is true that neither of the Circulars provided for the penalty of forfeiture. But since the importation in question were made without the necessary import license issued by the Monetary Board pursuant to Circular No. 45 and the release certificate issued by the Central Bank or its authorized agent banks in the prescribed form 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 effected x x x contrary to law that the Commissioner of Customs may seize and order forfeited. To sustain the appellant's theory of the case would render nugatory the aim and purpose of the law when it authorized the Central Bank to temporarily suspend or restrict the sale of foreign exchange to licensing during an exchange crisis in order to protect the in-

ternational reserve and to give the Monetary Board and the Government time in which to take constructive measures to combat such crises." (Pascual vs. Commissioner of Customs, supra; The Commissioner of Customs vs. Pascual, supra; Acting Commissioner of Customs vs. Leuterio, supra.)

As afore-stated, respondent, in his answers, likewise seeks the payment by petitioner in each case of the additional sum of ₱500.00 by way of damages. 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.

WHEREFORE, petitioner Que Hua Shirt Factory is hereby ordered to pay to respondent Commissioner of Customs or his authorized representative the respective sums of ₱34,664.46 and ₱22,198.26, representing the appraised value of the shipments in question. With costs against petitioner.

SO ORDERED.

Manila, January 11, 1962.

MARIANO NABLE
Presiding Judge

We concur:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

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