REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

FRANCISCO PASCUAL,
Petitioner,

- versus - C.T.A. CASE NO. 146

THE COMMISSIONER OF CUSTOMS,
Respondent.

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

FRANCISCO PASCUAL,
Petitioner,

- versus - C.T.A. CASE NO. 148

THE COMMISSIONER OF CUSTOMS,
Respondent.

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

D E C I S I O N

The above-entitled cases were heard and submitted jointly for decision before this Court by agreement of the parties, the petitioner being the same party and the subject matter of the action being two importations of similar merchandise.

More particularly, these are two cases (Seizure Identification Nos. 1899 and 1990) brought on appeal from the decisions of the respondent Commissioner of Customs, affirming the decisions of the Acting Collector of Customs for the Port of Manila decreeing the forfeiture of two shipments respectively, covering forty-two (42) and twenty-seven (27) packages of foreign made candies for alleged violations of Central Bank Circulars Nos. 44 and 45 in relation to section 1363 (f) of the Revised Administrative Code.

Since the issues raised in these appeals involve purely questions of law, the parties agreed to submit the two cases for decision by this Court on an agreed stipulation of facts.

With respect to C.T.A. Case No. 146, (Seizure Identification No. 1899), it appears that forty-two (42) packages of foreign made candies consigned to the herein petitioner Francisco Pascual, arrived in the Port of Manila from Hongkong on September 3, 1954, on board the S.S. "Kina", under Bill of Lading No. M-13 and a commercial invoice dated September 1, 1954.

Relative to C.T.A. Case No. 148, (Seizure Identification No. 1990) it appears that another shipment of twenty-seven (27) packages of similar merchandise consigned to the same petitioner arrived in the Port of Manila from Hongkong on September 23,1954, on board S.S. "Hermod", under Bill of Lading No. 78.

It is admitted by the parties that these two shipments are not covered by consular invoices from the Philippine Consulate at Hongkong much less by release certificates from the Central Bank or its duly authorized agent banks as a result of which the Acting Collector of Customs for the Port of Manila ordered the forfeiture of the subject importations allegedly for violations of Central Bank Circulars Nos. 44 and 45 in relation to section 1363 (f) of the Revised Administrative Code.

On September 8 and 29, 1954, the merchandise covered by the two shipments were released to the petitioner under Reliance Surety and Insurance Co. Bond No. C-022/54 for ₱2,200.00 and Philippines International Surety Co. Bond No. 128 for ₱2,810.00.

After due hearing of the two cases pursuant to the provisions of the Revised Administrative Code, the Acting Collector of Customs for the Port of Manila rendered the corresponding decisions dated January 22, 1955 and January 21, 1955, respectively, decreeing the forfeiture of the two shipments of candies in question totalling fifty-nine (59) packages for alleged violations of Central Bank Circulars Nos. 44 and 45 in relation to section 1363 (f) of the Revised Administrative Code. The Acting Collector of Customs for the Port of Manila also ordered the petitioner to pay in cash within thirty (30) days from the date of demand for payment the amounts of ₱2,200.00 and ₱2,810.00, respectively, under penalty of forfeiture of the two surety bonds filed in favor of the Government for the release of the two shipments.

The petitioner appealed the decisions of the Acting Collector of Customs for the Port of Manila to the respondent herein, the Commissioner of Customs, who affirmed the same <u>in toto</u> on May 13 and 14, 1955, respectively. From these two last decisions, the petitioner perfected his appeal to this Court within the reglementary period.

As heretofore stated, the only issue raised in this appeal is whether or not the sixty-nine (69) packages of candies in question are subject to forfeiture for violation of Central Bank Circulars Nos. 44 and 45 in relation to section 1363 (f) of the Revised Administrative Code.

Section 1363 (f) of the Revised Administrative Code provides as follows:

> "Sec. 1363. Property subject to forfeiture under customs laws. - Vessels, cargo, merchandise and other objects and things shall, under the conditions hereinbelow specified, be subject to forfeiture:
>
> x x x x

"(f) Any merchandise of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law, and all other merchandise which, in the opinion of the Collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former."

The petitioner contends that the Central Bank of the Philippines, by virtue of Circulars Nos. 44 and 45, has no power to regulate no dollar remitâances or importations which do not involve the sale of foreign exchange, and, therefore, the merchandise in question cannot be legally seized and/or forfeited under the provisions of said circulars.

In this regard, we concur with the petitioner in his contentiona that the Central Bank of the Philippines has no power nor authority to issue regulations governing imports which do not involve the sale of foreign exchange. In C.T.A. Case No. 29, entitled Estanislao Leuterio vs. The Commissioner of Customs, we held that Central Bank Circulars Nos. 44 and 45 were without force and effect in so far as they govern imports for which no foreign exchange is required or will be required.

However, in the present cases, there is absolutely no evidence to show, as the petitioner should have shown, that the two importations do not involve dollar remittances or the sale of foreign exchange. Even the stipulation of facts submitted by the parties is silent on this particular point. We note, further, that the entry declarations accompanying these two shipments do not indicate that the merchandise in question do not involve dollar remittances or the sale of foreign exchange. If, as alleged by the petitioner, these importations do not involve dollar remittances or sale of foreign exchange, which fact does not appear in the invoices or shipping document submitted by him, the least that he could have done was to indicate on the entry declarations (B.C. Form No. 11-A) the words "NO-DOLLAR REMITTANCE" as is naturally to be expected of him. The failure of the petitioner to state such material fact in his entry declarations militates against his pretension that his importations do not involve dollar remittances or sale of foreign exchange.

Moreover, it is a recognized general mercantile practice that importations involve the sale of foreign exchange. Different countries have their own legal tender currencies and because of this variety of currencies, it is recognized and conceded that practically all imports represent a demand, potential or otherwise, for foreign exchange by the country concerned. Importations of merchandise payable in services or in kind are negligibly few and isolated. They are an exception to the general mercantile practice. This being so, importations that do not involve the sale of foreign exchange must be shown or proved. In default of such showing or proof as in fact the petitioner failed to prove in the instant case, it would be safe to assume that the importations in question involve the sale of foreign exchange for which the petitioner did not obtain the corresponding dollar allocation or foreign exchange license from the Central Bank as required by Circular No. 44 of said bank.

Relative to the first argument of petitioner that Republic Act No. 650 does not authorize the Central Bank to control importations into the country, we believe it unnecessary to rule on this question because the respondent has never maintained that a violation of this Act at this time justifies or is the basis for the forfeiture of the subject importations. The fact that Republic Act No. 650 had expired by virtue of its own statutory limitation on July 1, 1953, long before the date when the importations in question were made is obviously well-known to respondent because in his decision he precisely refrained from basing his affirmation of the decree of forfeiture on the alleged violation of this Act.

And as to the second contention of petitioner that Republic Act No. 265 does not authorize the Central Bank to control imports which do <u>not</u> involve the sale of foreign exchange, there would have been no argument on this score had the petitioner proved to our satisfaction that his importations do not involve the sale of foreign exchange. This Court has made its stand clear in C.T.A. Case No. 29 entitled "Estanislao Leuterio vs. The Commissioner of Customs" where it ruled that Central Bank Circulars Nos. 44 and 45 were without force and effect in so far as they govern imports for which no foreign exchange is required.

The third argument of the petitioner impresses us as deserving of a more considered deliberation. The petitioner maintains that the power conferred upon Congress to make laws governing importations and to provide penalty for breach thereof, has not been delegated to the Central Bank.

On this score, we believe that what Congress delegated to the Central Bank was not the power to make laws governing importations. In Republic Act No. 265, Congress laid down the national policies or objectives of maintaining the monetary stability in the Philippines, and of promoting a rising level of production, employment and real income in the Philippines. Section 2 of said Act imposes upon the Central Bank the duty of using the powers granted to it under this Act to achieve, in addition, these two national policies or objectives. It is provided in said Act that the powers of the Central Bank shall be exercised by the Monetary Board. (see Section 5, Republic Act No. 265). Section 14 of the same Act provides:

> "Sec. 14. Exercise of authority.- In order to exercise the authority granted to it under this Act, the Monetary Board shall:
>
> "(a) Prepare and issue such rules and regulations as it considers necessary for the effective discharge of the responsibilities and exercise of the powers assigned to the Monetary Board and to the Central Bank under this Act;"

Now, to achieve the afore-adverted national policies or objectives laid down by Congress in Section 2, and by authority of Section 14 of Republic Act No. 265, the Central Bank, through the Monetary Board promulgated Central Bank Circular No. 44 which is an investiture of the power to control foreign exchange for the payment of imports. In other words, Central Bank Circular No. 44 is a set of rules and regulations-- a legal implementation of the declared national policies enunciated by Congress in Republic Act No. 265. The said Circular does nothing more than to carry into effect these national policies or objectives. In other words, it is but an expression of the delegated administrative power in the Central Bank to carry out the purposes of Republic Act No. 265. By its promulgation, no power to make laws governing importations has been delegated. Our Supreme Court, in Juan B. Alegre vs. The Insular Collector of Customs 53 Phil. 404, quoting approvingly from Cooley on Constitutional Limitations, held the following:

> "The maxim that the power conferred upon the Legislature to make laws cannot be delegated to any other authority does not preclude the Legislature from delegating any power not legislative which it may itself rightfully exercise. It may confer an authority in relation to the execution of a law which may involve discretion, but such authority must be exercised under and in pursuance of the law. The Legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative officer or body may be invested with the power to ascertain the facts and conditions to which the policy and principles apply. If this could not be done there would be infinite confusion in the laws, and in an effort to detail and to particularize, they would miss sufficiency both in provision and execution.
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> "Boards and commissions now play an important part in the administration of our laws. The great social and industrial evolution of the past century, and the many demands made upon our legislatures by the increasing complexity of human activities, have made essential the creation of these administrative bodies and the delegation to them of certain powers. Though legislative power cannot be delegated to boards and commissions, the Legislature may delegate to them administrative functions in carrying out the purposes of a statute and various governmental powers for the more efficient administration of the laws."

With respect to petitioner's argument that Congress delegated mere administrative details to the Central Bank, and that it was not the intention of Congress to delegate to the Central Bank the power to control imports <u>without</u>

any dollar remittance, enough be said that our finding is to the effect that the shipments in question involve dollar remittance or the sale of foreign exchange in the absence of showing or proof to the contrary.

Even assuming _arguendo_ that the Central Bank cannot create or prescribe penalties for violation of the rules that it has promulgated by authority of a congressional act (Republic Act No. 265), in these particular cases, Central Bank Circulars 44 and 45 find their penal sanction in a codal provision that the Legislature itself has enacted. As we have heretofore ruled and also in previous cases akin to the ones at bar, importations violative of Central Bank Circulars Nos. 44 and 45 are penalized under Section 1363 (f) of the Revised ~~Penal~~ adm. Code. It cannot therefore, be correctly argued that the Central Bank has created or prescribed the penalties attaching to violations of its rules or regulations.

We now come to the sixth argument of the petitioner wherein he contends that the merchandise herein involved cannot be forfeited under Circulars Nos. 44 and 45 because the same do not authorize in express terms the penalty of forfeiture on merchandise imported in violation of their provisions. We have previously resolved this issue in a similar case, Catalina R. Reyes vs. Commissioner of Customs, C.T.A. Case No. 132, dated January 9, 1956, where we held the following:

> "While CentralBank Circular No. 44 contains no provision in regard to forfeiture of merchandise imported in violation of said circular, Section 1363 (f) of the Revised Administrative Code, quoted above, confers upon the Collector of Customs concerned the power to order the seizure and forfeiture of merchandise _the importation of which is effected or attempted contrary to law_. The said circular, having been

issued and promulgated in accordance with law, at least in respect of its provisions applicable to the importation here in issue, has the force and effect of law. Hence, the importation of merchandise effected or attempted contrary to its provisions is contrary to law within the meaning of Section 1363 (f) of the Revised Administrative Code and, therefore, subject to seizure and forfeiture."

In the analogous case of Po Eng Trading vs. Commissioner of Customs, C.T.A. Case No. 131 promulgated December 10, 1955, we said:

"Circular No. 44 of the Central Bank was adopted and promulgated in order to help achieve two cardinal objectives under Republic Act No. 265, to wit: (1) to maintain the monetary stability in the Philippines; and (2) to promote a rising level of production, employment and real income in the Philippines. It is designed to stop the indiscriminate importation of goods, particularly the non-essential, that threaten to drain our dollar reserve. The drainage of our dollar reserve inevitably causes the value of our peso to hang precariously on the balance. It is likewise designed to provide protection to our infant industries. The Philippines has too long been geared to a feudal agricultural economy. It has been its sad lot and flight merely to provide raw materials to manufacturer-nations. These raw materials as everyone knows are embellished into another form and exported back to the Philippines. Our economy depended, and still depends, upon the mercies, nay whims, of the manufacturer-nations. This situation has to end. We have to graduate from the anachronistic agricultural stage to the industrial one. Industries must have to be established. And infant industries must have to be protected. It is precisely to this end, among others, that Central Bank Circular No. 44 was conceived and adopted. By this Circular, the Central Bank is invested with the power to control foreign exchange for the payment of imports.

"The power to control foreign exchange necessarily carries with it the power to allocate the foreign exchange to finance the importation of goods. It implies the power to determine what goods should be imported, and what goods should not be imported.

x x x x

"To condone the importation in the case at bar, and order their release to the petitioner herein merely because the Circular No.

> 44 of the Central Bank does not expressly provide for the penalty of forfeiture, would be rendering nugatory section 14 of said Circular which enjoins: '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 by any Authorized Agent Bank in a form prescribed by the Monetary Bank'. We would in effect by sustaining the contention of petitioner, be abetting the circumvention of the power of the Central Bank to control foreign exchange for the payment of imports. The ultimate result would be a wholesale and indiscriminate importation of foreign goods in flagrant defiance of Central Bank Circular No. 44."

The last argument of petitioner in his memorandum is but a corollary of his previous arguments. Having thus found that the decisions of the respondent ordering the forfeiture of the subject importations to be well justified in fact and in law, his claim to the effect that he was deprived by the respondent of his property without due process of law by such forfeiture must necessarily fail.

IN VIEW OF THE FOREGOING, the decisions on appeal of the respondent Commissioner of Customs in Seizure Identification Cases Nos. 1899 and 1990 are hereby affirmed in all respects. Consequently, Surety Bond No. C-022/54 of the Reliance Surety & Insurance Co., Inc. in the amount of ₱2,200.00 and Customs Bond No. 128 of the Philippines International Surety Co., Inc. in the amount of ₱2,810.00 filed by the petitioner in favor of the Government are hereby ordered forfeited with costs against the petitioner.

SO ORDERED.

Manila, Philippines, February 29, 1956.

AUGUSTO M. LUCIANO
Associate Judge

WE CON-

CUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge