JEA COMMERCIAL,
Petitioner,

- versus - C.T.A. CASE NO. 144

THE COMMISSIONER OF CUSTOMS,
AND THE COLLECTOR OF CUSTOMS
FOR MANILA,
Respondents.

Oct 18/56

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AMENDED DECISION

This is in connection with a petition to review the decision of the respondent Commissioner of Customs in Seizure Identification Nos. 2008, 2009 and 2027, which affirmed the decision of the respondent Collector of Customs for the Port of Manila, decreeing the forfeiture of the merchandise in question. The forfeiture is based on the alleged violation of paragraph (f) and subparagraphs 3, 4 and 5 of paragraph (m) all of section 1363 of the Revised Administrative Code.

This Court rendered a decision on April 2, 1956, but in pursuance of our Resolution dated August 17, 1956 this case was reopened and accordingly heard on September 1, 1956 after which the same was submitted on the merits thereof. Meanwhile, respondents filed a motion for reconsideration of the aforesaid Resolution which motion has been also submitted for determination.

From the stipulation of facts entered into by the parties before the Collector of Customs it appears, with respect to Seizure Identification No. 2008, that on October 3, 1954 thirteen (13) cases of ham in bulk, consigned to the petitioner Jea Commercial arrived in the Port of Manila, ex S/S "Talabot", from Hongkong and covered by invoice No. 437, bill of Lading No. 8, and delivery permit.

Relative to Seizure Identification No. 2009, it appears that on October 3, 1954 one (1) package of dried clams, two (2) packages of dried bamboo shoots, one (1) package of dried abalone, and one (1) package of dried bamboo shoots, also consigned to the petitioner herein, arrived in the Port of Manila, ex S/S "Talabot", from Hongkong and covered by customs entry No. 78564, series of 1954, bill of lading No. 9, commercial invoice No. 435, and delivery permit.

Relative to Seizure Identification No. 2027, it appears that on October 4, 1954 a total of sixty eight (68) packages consisting of eleven (11) packages of vermicelli, five (5) packages of salted fish (herrings), thirty (30) packages of sea blubbers, ten (10) packages of tapioca sago, two (2) packages of dried bamboo shoots, one (1) package of dried abalone, one (1) package of curry powder, three (3) packages of flour threads, four (4) packages of dried shrimps, and one (1) package of dried fish, likewise consigned to petitioner, arrived in the Port of Manila, ex S/S "Doña Bebang", from Hongkong and covered by entry No. 79232-E, series of 1954, a bill of lading, a commercial invoice, and a delivery permit.

All these three (3) shipments were not accompanied by consular invoices and Central Bank release certificates. Pending the seizure proceedings and upon application therefor, the goods were released to petitioner Jea Commercial by the respondent Collector of Customs upon filing of the corresponding bonds, consisting of PISC Bonds Nos. 094, 095 and 107, all of the Pioneer Insurance and Surety Corporation, in the total amount of ₱21,639.73.

Two issues are raised to wit: (1) Whether or not the importations have been made under a "No dollar remittance" basis, and (2) whether or not the shipments in question are subject to forfeiture under Customs Law. The first issue, which is factual may be treated as incidental to the latter.

Although we stated earlier (see our decision dated April 2, 1956) that there was "no evidence that these importations did not involve dollar remittance or the sale of foreign exchange", upon a careful review of the record, particularly those pointed out by the petitioner, we find sufficient and satisfactory evidence to show that these shipment were on a "no-dollar remittance" basis. The entry declarations, enumerated below and which corresponds to the importations in question duly state that they involve "no-dollar remittance".

No. 78563-Exh. "B" - p. 32, B.C. Rec. (also Exh. "A" in Seizure Identification No. 2008)

No. 78564-Exh. "D" - pp. 54, B.C. Rec. (also Exh. "A"-1" in Seizure Identification No. 2009) and

No. 79232-Exh. "F" - pp. 55 B.C. rec. (also Exh. "A-2" in Seizure Identification No. 2027).

In turn each of these entries were duly covered and supported by corresponding invoices issued by the shipper Tack Seng Hong of Hongkong (respectively, Invoice No. 437, Exhibit "C", p. 49, B.C. rec., and an unnumbered Invoice, Exhibit "E", p. 62, B.C. rec.), each of which invoice clearly states that the merchandise were shipped to the herein petitioner on a "No-Dollar Remittance" basis. These documents were presented at the hearing of the seizure case conducted before the Collector of Customs and under the Stipulation of Facts submitted therein, the documents were admitted without reservation or objection on the part of the counsel representing the Central Bank as well as the Appraiser's Division of the Bureau of Customs. We find these evidence not self-serving and even standing by themselves are sufficient to warrant a finding that these importations did not involve dollar remittance. Our finding is strengthened by the fact that no evidence to the contrary has been presented by respondent at any stage of this case and we therefore hold that the importations in question did not involve the sale of foreign exchange or a transaction with dollar remittance.

Having disposed of the factual matter, we shall now proceed to consider the main question, i.e. whether or not the shipments in question are subject to forfeiture for alleged violations of Central Bank Circulars Nos. 44 and 45 in relation to section 1363 (f) of the Revised Administrative Code as applied to all shipments and as regards the importation of the merchandise involved in Seizure Identification No. 2427, the additional violation of section 1363 (m), 3, 4 and 5 of the same Code.

The pertinent portions of section 1363 of the Revised Administrative Code - paragraph (f) and a part of paragraph (m) thereof - 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:
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> "(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 used as instrument in the importation or exportation of the former."
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> x x x x
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> "(m) Any merchandise the importation or exportation of which is effected or attempted in any of the ways or under any of the conditions hereinbelow described -
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> x x x x
>
> "3. Upon the wrongful making by the owner, importer, expertation or consignee or any merchandise, or by the agent of either, of any false declaration or affidavit, touching such merchandise and in connection with the importation or exportation of the same.

"4. Upon the wrongful making or delivery by the same person or persons, of any false invoice, letters or paper touching such merchandise and in connection with the importation or exportation of the same.

"5. Upon the causing or procurance, by the same person or persons, of any merchandise to be entered or passed at any customhouse by any other fraudulent practice, device, or omission by means whereof the Government is or might be deprived of its lawful duties on such merchandise."

The petitioner maintains that the three (3) shipments in question cannot be forfeited for alleged violation of Central Bank Circulars Nos. 44 and 45. It is contended firstly, that the Central Bank of the Philippines has no power or authority to control imports which do not involve the sale of foreign exchange; secondly, that Republic Act No. 265 does not authorize the Central Bank to control imports that do not involve the sale of foreign exchange; and, thirdly, that the merchandise herein cannot be legally forfeited under Circulars Nos. 44 and 45, assuming that they were legally promulgated for the reason that no penalty has been so provided. We shall proceed to consider these contentions in their order.

We agree with the petitioner that the Central Bank of the Philippines has no power or authority to control imports which do not involve the sale of foreign exchange. In the case of Estanislao Leuterio vs. The Commissioner of Customs, C.T.A. Case No. 29, promulgated April 18, 1955, we held:

> "x x x The Central Bank of the Philippines has no power to issue Central Bank Circulars Nos. 44 and 45 in order to regulate imports which do not involve the sale of foreign exchange, and we, therefore, declare the said circulars as without force and effect insofar as they govern imports for which no foreign exchange is required or will be required."

In view of our finding that the above shipments in question involved "no-dollar remittance" we are constrained to hold, following our previous rulings on a similar question, that the merchandise so imported cannot be subject to forfeiture for violation of Central Bank Circulars Nos. 44 and 45 in relation to Section 1363 (f) of the Revised Administrative Code, for the reason that the Central Bank of the Philippines under Republic Act No. 265 has no power to issue these circulars in order to regulate imports for which no foreign exchange is required or will be required. (See Leuterio v. Commissioner of Customs, supra; Nepomuceno v. Commissioner of Customs, et al., C.T.A. Case No. 122, July 26, 1956.

Proceeding to the other issue of whether the merchandise covered by Seizure Identification No. 2027 is also subject to forfeiture under paragraph (m) subparagraph 3, 4 and 5 of section 1363 of the Revised Administrative Code, we find no evidence to sustain a seizure under these provisions of law. We therefore hold that the decision appealed should likewise be reversed on this point.

On the matter of respondent's motion for reconsideration, suffice it to say that the character of petitioner's motion to reopen the case could not in any sense be treated as pro forma inasmuch as this Court after considering the grounds did in fact resolve to grant the same.

IN VIEW OF THE FOREGOING, respondent's motion for reconsideration dated August 29, 1956 is hereby denied. The decision of this Court dated April 2, 1956 is hereby set aside and accordingly the decision on appeal of the respondent Commissioner of Customs should be as it is hereby reversed. We hereby decree the cancellation of PISC Bonds Nos. 094, 095 and 107 of the Pioneer Insurance & Surety Corporation in the amount of ₱21,639.73 which were filed for the release of the importations in question. Without pronouncement as to costs.

SO ORDERED.

Manila, October 18, 1956.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Associate Judge AUGUSTO M. LUCIANO did not take part.