REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

PO ENG TRADING,
Petitioner,

- versus - C.T.A. CASE NO. 131

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is a petition to review the decision on appeal of the respondent Commissioner of Customs in Seizure Identification Case No. 1747, affirming the decision of the Acting Collector of Customs for the Port of Manila which decrees the forfeiture of thirteen (13) cases of rubber boots. The forfeiture is based on the alleged violation of Central Bank Circular No. 44 in relation to section 1363 (f) of the Revised Administrative Code.

On the basis of the evidence presented during the hearing before the Bureau of Customs and the additional documentary evidence presented before this Court, the case was submitted by the parties for decision.

The undisputed facts are as follows: that the petitioner Po Eng Trading opened a letter of credit No. 20497, dated May 25, 1954, to purchase forty-two (42) packages (cases) of rubber boots from Hongkong; that on July 14, 1954, a shipment of forty-two (42) cases of rubber boots arrived in the Port of Manila, ex S/S "Schwabenstein", Reg. No. 910, shipped by Yick Yau, of Hongkong, and consigned to the herein petitioner; that the shipment was declared as Entry No. 58929 (Exhibit "E" and "5"), and covered by a bill of lading (Exhibit "B" and "2"), a commercial invoice (Exhibit "D-3" and "4-C"), a joint certificate of origin (Exhibit "D-1" and "4-A"), a consular invoice (Exhibit "D" and "4"), and a Central Bank release certificate, Ref. No. RC-8367 (Exhibit "C" and "3"), which describes the shipment as: "42 cases of Rubber Boots for Miners", classifies it as "NEP", and assigns to it the code number "850112"; that upon examination by customs examiner Magno Joves, thirteen (13) of the forty-two (42) cases contained boots "ladies and children" and were seized; that the petitioner paid the estimated duties and taxes (see O.R. No. 44855, Exhibit "1" and O.R. No. 05794, Exhibit "1-A"); that the petitioner also filed a surety bond (PSIC Bond No. 54/4417), dated August 20, 1954, to secure the release to it of the thirteen (13) cases of rubber boots; that after the seizure proceedings, the Acting Collector of Customs rendered a decision, decreeing the forfeiture of the thirteen (13) cases of rubber boots in question on the ground that they do not fall under the Code No. 850112 mentioned in the Central Bank release certificate, Ref. No. RC-8367 (Exhibit "C" and "3"), and for violation of section 1363 (f) of the Revised Administrative Code; and that upon denial by the respondent of the petitioner's motion for reconsideration, the petitioner filed this petition for review.

As correctly summarized by the parties, the appeal narrows down to the following issues:

> 1. Whether or not the thirteen (13) cases of rubber boots in question fall under Code No. 850112 of the Appendices to Regulation No. 1, Implementing Circular No. 44 of the Central Bank.
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> 2. Whether or not the thirteen (13) cases of rubber boots in question may be forfeited under Circular No. 44 of the Central Bank in relation to section 1363 (f) of the Revised Administrative Code.

As regards the first issue, the petitioner contends that the rubber boots in question can be used by miners and by the members of their families; that if the twenty-nine (29) of the entire forty-two (42) cases of rubber boots in question were released, it would in effect amount to a discrimination with respect to the thirteen (13) cases of rubber boots which differ from the former only in size; and that even assuming that the shipment of said goods (13 cases of rubber boots) is an error, the petitioner cannot be held responsible for the same. On the other hand, the respondent argues that when the commodity code number mentions "rubber boots for miners only", it could not have included boots for ladies and children.

This importation, the letter of credit of which was opened on May 25, 1954, is governed by the Appendices to Regulation No. 1 Implementing Circular No. 44 of the Central Bank (Revised as of March 10, 1954 and effective up to June 30, 1954). Code No. 850112 of the said Appendices calls for "Boots, Rubber, For Miners only".

There is no dispute between the parties that the rubber boots contained in the thirteen (13) cases differ in size from those contained in the twenty-nine (29) cases. The former are small and are for children (p. 7, t.s.n., Exhibits "G" and "7"). Obviously, they cannot be intended for miners. What Code No. 850112 calls for are rubber boots for miners only. The adverbial word "only" is circumscribing and is indicative of an idea of inclusion and exclusion. It includes rubber boots designed for the exclusive use of miners, and excludes all others, like those for ladies and children.

Respondent's basis for the seizure of the thirteen (13) cases of rubber boots in question on this score being well-founded, the charge of undue discrimination with respect to the same is therefore untenable.

As to the petitioner's contention that it could not be held responsible for the error, if there is at all, in the shipment of the thirteen (13) cases of rubber boots, we believe that the letter of the general manager of the Gold Star Trading, a customer of the petitioner, eloquently, if not indisputably, belies its contention. This letter is an insistent reiteration of the "order of ladies and small size rubber boots for sales in the stores of different mining companies . . . . . " (p. 10 t.s.n.; Exhibits "G" and "7").

As to the first issue therefore we find that the thirteen (13) cases of rubber boots in question do not fall under the Code No. 850112 of the Appendices to Regulation No. 1 Implementing Circular No. 44 of the Central Bank (Revised March 10, 1954 and effective up to June 30,1954).

Relative to the second issue, the petitioner contends that the thirteen (13) cases of rubber boots cannot be forfeited because "said circular (No. 44) does not in any way provide for the imposition of the penalty of forfeiture upon merchandise imported in violation of its provisions". The respondent on the other hand asserts in justification of his order of forfeiture that the importation in question constitutes a violation of bank regulations which are enforceable as customs laws, and therefore the articles are subject to forfeiture under the provisions of section 1363 (f) of the Revised Administrative Code.

Section 1363 (f) of the Revised Administrative Code reads 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 intended to be used as instrument in the importation or exportation of the former."

We agree with the petitioner that Circular No. 44 of the Central Bank does not expressly provide for the imposition of the penalty of forfeiture upon merchandise imported in violation thereof. Neither does said circular denominate such importations as "prohibited". To resolve this second issue, we feel it necessary to go beyond the letter of the Central Bank Circular No. 44 and into the philosophy that motivated its adoption and promulgation. "Qui haeret in litera haeret in cortice" (He who considers merely the letter of an instrument goes but skin-deep into its meaning).

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 plight 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.

In the case at bar, we note that the thirteen (13) cases of rubber boots for ladies and children not only do not fall within the category of Code No. 850112 of the Appendices, but there is no code number for them whatsoever. It is amply evident that the Central Bank in effect completely banned their importation into the country. Their importation, therefore, is violative of the provisions and the spirit of Central Bank Circular No. 44. For this, they become subject to forfeiture under the provisions of section 1363 (f) of the Revised Administrative Code.

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 ofCustoms 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.

WHEREFORE, in view of the foregoing considerations, we believe and so hold that the thirteen (13) cases of rubber boots in question are subject to forfeiture for violation of Central Bank Circular No. 44 in relation to section 1363 (f) of the Revised Administrative Code.

The decision of the respondent Commissioner of Customs appealed from being in accordance with the evidence and the law, the same is hereby affirmed. The surety bond filed by the petitioner in favor of the Government in the amount of ₱8,795.39 is hereby ordered forfeited in favor of the latter with costs against the petitioner.

SO ORDERED.

Manila, Philippines, December 10, 1955.

AUGUSTO M. LUCIANO
Associate Judge

WE

CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge