COURT OF TAX APPEALS
MANILA

November 25, 1964

MANUEL BASTIDA,
Petitioner

versus CTA CASE NO. 1332

THE ACTING COMMISSIONER
OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs holding various U. S. checks, U. S. money orders, U. S. dollar bills and two (2) units of minifon (wire recorders) liable for forfeiture for violation of paragraphs (m) 3 and 4 of Section 1363 of the Revised Administrative Code and Central Bank Circular No. 20, as implemented by Central Bank Circular No. 42, in relation to Section 1363(f) of the Revised Administrative Code.

The facts, as accurately and minutely narrated in the decision of the Collector of Customs, Port of Manila, are not disputed, to wit:

> ". . .on November 2, 1956 at about 2:20 A.M. Benigno Layug, Customs Examiner detailed at the Airport Division, Manila International Airport, conducted the examination of the cargoes to be shipped on the KLM plane, Royal Dutch Airlines, and among others he examined was a package supposedly containing 2 pieces of Mini-fons (wire recorders) addressed to Rev. Fr. Anton Collet of Colegio de S. Peitro Apostolico, Viale Delle Mura Aurelie 4, Rome, Italy, sent by

Manuel Bastida of 2023 A. Mabini St., Malate, and covered by Air Waybill (KLM) No. 8900650 (Exh. 'C'); that in the course of his examination of the said package he found 2 cardboard boxes each containing a Minifon (wire recorder); and that upon opening one of the boxes, he found concealed at the bottom thereof, covered by a piece of cardboard, various checks, money orders, and traveler's checks payable in U. S. dollars amounting to $13,780.00, while in the other box he also found concealed in the same manner 2 U.S. Postal Money Orders in the amount of $100.00, one dollar check in the amount of $3,149.50 and several 20, 10, 5 and 1 dollar bills in the total amount of $630.00.

"The record shows that the package was declared as containing 2 pieces of Minifons (wire recorders) which were being sent only for repair, their exportation being covered by Export Control Committee Permit and Central Bank Export license. The dollar bills, checks, and money orders found concealed therein are not covered by any Central Bank license."

While this case was pending decision in the office of the Commissioner of Customs, Central Bank Circular No. 133, which repeals all previous circulars inconsistent with its provisions, was issued.

It appears that petitioner received a copy of the decision of the Commissioner of Customs affirming the decision of the Collector of Customs for the Port of Manila on May 15, 1962 (Exhibit A-1, Customs rec. p. 39). On June 4, 1962, he moved for the reconsideration of said decision. On February 4, 1963, he received a copy of the order denying his motion (Exhibit C-1, Customs rec. p. 2). The petition for review in this case was filed on February 11, 1963.

We are called upon to resolve the following questions:

(1) Whether or not the petition for review in this case was filed within the 30-day period prescribed in Section 11 of Republic Act No. 1125;

(2) Whether or not the United States dollar bills, checks and postal money orders in question are merchandise within the purview of Section 1363 of the Revised Administrative Code;

(3) Whether or not there was a violation of Central Bank Circular No. 20, as implemented by Central Bank Circular No. 42; and

(4) Assuming the dollar bills, checks and postal money orders to be merchandise, whether or not they may still be subject to forfeiture in view of the repeal of Central Bank Circulars Nos. 20 and 42.

Respondent contends that this Court has no jurisdiction to entertain the instant appeal inasmuch as the petition for review in this case was filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125. Said provision of law requires a petitioner to institute his appeal to this Court within thirty (30) days after his receipt of the decision of the Commissioner of Customs.

Upon examination of the evidence, we find respondent's contention without merit. From May 15, 1962 (date of receipt of respondent's decision) to June 4, 1962 (date petitioner filed his motion for reconsideration) twenty (20) days elapsed. From the time petitioner received the denial of his motion on February 4, 1963 to the filing of the petition for review in this case on February 11, 1963, seven (7) days passed. All in all, petitioner used up only twenty-seven (27) out of the thirty (30) days granted him by law to appeal to this Court. This appeal, no doubt, was seasonably instituted.

We come now to the issue whether or not the United States currency, checks and money orders in question are merchandise for purposes of applying Section 1363 of the Revised Administrative Code. Paragraph (f) of said section, under which the currency bills, checks and money orders are sought to be forfeited, specifically mentions "merchandise." The word "merchandise" is defined in Section 1419 of the same Code, as follows:

> "'Merchandise,' when used with reference to importations or exportations, includes goods, wares, and in general anything that may be made the subject of importation or exportation."

It is settled in our jurisprudence that United States dollar bills are merchandise within the contemplation of Section 1363 of the Revised Administrative Code. Hence, they are subject to forfeiture pursuant to the provisions of said codal section (see Henry Anderson vs. Commissioner of Customs, G. R. No. L-6011, September 19, 1952; Commissioner of Customs vs. Caridad Capistrano, G. R. No. L-11075, June 30, 1960).

With respect to the U. S. money orders and U. S. checks, petitioner argues that they cannot be classified as merchandise inasmuch as (1) they are not legal tender or currency and (2) they are merely orders to pay, that is, in his own words, "as if a foreigner had sent a letter to another foreigner asking the latter to make a payment of foreign exchange abroad." We find petitioner's arguments without merit. The fact that money orders and checks are not legal tender or currency adds more reason for their classification as merchandise. Checks may be bought and sold like a commodity. As a matter of fact, in the United States the deposit of a check with a bank is considered a sale (Helvering vs. Stein [CA 47 115 F 2d 468; Burton vs. United States, 196 US 283, 49 L ed 482). Money orders being similar to checks, they may also be bought and sold in the same way that checks are. If money orders and checks can be made the subject of purchase and sale, then certainly they can be classified as merchandise.

Moreover, money orders and checks easily come within the meaning of the last phrase of the definition of merchandise, quoted above, i. e. "in general anything that may be made the subject of importation or exportation." Undoubtedly, in 1956, U. S. money orders and U. S. checks could be made the subject of importation or exportation. This had been most concretely demonstrated by petitioner's attempt to surreptitiously export the money orders and checks in question.

The next issue poses the question whether or not the attempted exportation of money orders and checks violated Central Bank Circular No. 20, as implemented by Central Bank Circular No. 42. It is the contention of petitioner that since the checks in question were "merely orders to pay bills of exchange drawn on foreign banks where the currency has always been and where it is payable" (sic), their attempted exportation was not in violation of and could not be subject to Central Bank regulations. Petitioner's pretention is fallacious. The U. S. money orders and U. S. checks in question directly involved foreign exchange whose flow the Central Bank, by fiat of law (Republic Act No. 265), was empowered to regulate (see Pascual vs. Commissioner of Customs, G. R. No. L-10979, June 30, 1959) in order to protect the international reserve of the country. The simple fact that the money orders and checks were not legal tender or currency is of no moment, for they represented and were substitute for the currency bearing on their face.

Not having been covered by a Central Bank license, their attempted exportation was a violation of Central Bank circular No. 20, as implemented by Central Bank Circular No. 42.

Lastly, petitioner raises the issue whether or not the repeal of Central Bank Circulars Nos. 20 and 42 by Central Bank Circular No. 133 extinguished liabilities incurred under the former two circulars. He subscribes to the affirmative view, citing the decisions of the Court of Appeals in the cases of People vs. Sandico, et al., CA-G. R. No. 00964-CR, July 20, 1962 and People vs. Vernon King and Natividad Dandoy, CA-G. R. No. 01532-CR, August 28, 1962. The above-cited decisions notwithstanding, we hold the negative view. The repeal of Central Bank Circulars Nos. 20 and 42 is analogous to the lapsing of Republic Act No. 650, otherwise known as the Import Control Law. On the question whether or not liabilities incurred under said law abated by its expiration, the Supreme Court, on two occasions, ruled that the forfeiture of goods imported contrary to said law during its efficacy did not abate upon its lapse (see Roxas vs. Sayoc, G. R. No. L-8502, November 29, 1956; Golay-Buchell & Cia. vs. Commissioner of Customs, G. R. Nos. L-10994, L-11012, December 29, 1959). Said the Supreme Court in the latter case:

> "This Court in the case of Roxas vs. Sayoc (G. R. No. L-8502, November 29, 1956) has already held that the expiration of the Import Control Law did not produce the effect of declaring legal the importation of goods which were illegally imported and the seizure and forfeiture thereof as ordered by the Collector of Customs illegal or null and void. x x x"

In the case at bar, the repeal of Central Bank Circulars Nos. 20 and 42 did not infuse the attribute of legality into the attempted exportation of the dollar bills, postal money orders and checks in question in violation of the provisions of Section 1363(f), (m)3 and 4 of the Revised Administrative Code and Central Bank Circular No. 20, as implemented by Central Bank Circular No. 42, in relation to Section 1363(f) of the Revised Administrative Code.

The two (2) units of minifons (wire recorders), having been used as a means in the attempt to illegally export the U. S. dollar bills, U. S. money orders and U. S. checks in question, are nevertheless subject to forfeiture pursuant to Section 1363(f) of the Revised Administrative Code, although they were covered by a Central Bank export license.

We note the total silence of petitioner on respondent's charge of false declaration under Section 1363(m) 3 and 4 of the Revised Administrative Code. The uncontroverted facts show that while the two (2) units of minifon (wire recorders) were properly declared, no such declaration was made of the dollar bills, U. S. money orders and U. S. checks. Such failure subjects the articles to forfeiture under Section 1363(m) 3 and 4.

IN VIEW OF THE FOREGOING, and finding no reversible error in the decision appealed from, the same is hereby affirmed. With costs against petitioner.

SO ORDERED.

Quezon City, November 25, 1964.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge