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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

F. CABALLERO TRADING
and/or
F. CABALLERO, and
THE EQUITABLE INSURANCE
& CASUALTY CO., INC.,
Petitioners,

- versus - C.T.A. CASE NO. 1672

THE COMMISSIONER OF
CUSTOMS,
Respondent.
x- - - - - - - - - - - - -x

D E C I S I O N

F. Caballero Trading (hereinafter referred to as "petitioner") imported merchandise consisting of nineteen (19) shipments which arrived in the port of Manila on various dates from November 19, 1954 to April 5, 1955. For lack of consular invoices and Central Bank release certificates, said importations were seized by the Collector of Customs of Manila, and later were proceeded against in Seizure Identification Nos. 2599, 2601, 2606, 2629, 2647, 2340, 2205, 2209, 2222, 2529, 2533, 2547, 2578, 2597, 2763, 2770, 2821, 2824 and 2865. Pending hearing of said seizure proceedings, the merchandise involved in Seizure Identification Nos. 2205, 2209 and 2222 were released under Surety Bonds Nos. 185, 186 and 195 of the Pioneer Insurance and Surety Corporation in the total amount of ₱12,708.00, and those involved in the rest of the seizure cases were released under Surety Bonds

Nos. 54365, 54377, 54378, 54414, 54429, 54158, 54201, 54282, 54291, 54339, 54366, 54518, 54528, 54580, 54585 and 54615 of the Equitable Insurance and Casualty Co., Inc. in the total amount of ₱123,202.89.

On March 8, 1961, in a single decision, the Collector of Customs decreed the forfeiture of said importations for violation of Central Bank Circulars Nos. 44 and 45, in relation to Section 1363(f) of the Revised Administrative Code. Accordingly, the surety bonds covering said importations were declared forfeited in favor of the Government, and the principal and/or sureties, jointly and severally, were ordered to pay the sum of ₱135,910.89.

In a motion dated April 12, 1961 and filed April 17, 1961, petitioner asked for reconsideration of the decision as regards Seizure Identification Nos. 2205, 2209 and 2222 (pp. 119-122, Customs rec.) but was denied by the Collector in his order dated May 3, 1961 (pp. 124-129, Customs rec.). On May 11, 1961, petitioner filed his notice of appeal as regards said seizure cases (Cases Nos. 2205, 2209 and 2222). On April 20, 1965, respondent affirmed the decision of the Collector of Customs, copy of which was received by petitioner on May 29, 1965 (Par. 6, Petition, CTA

Case No. 1640). He also ruled that as regards Seizure Identification Nos. 2599, 2601, 2606, 2629, 2647, 2340, 2529, 2533, 2547, 2578, 2579, 2763, 2770, 2821, 2824 and 2865, where no appeal was interposed, the decision "*pro tanto* became final and executory.'

From this decision of respondent, petitioner interposed two separate appeals to this Court. The first is with respect to Seizure Identification Nos. 2205, 220[illegible], and 2222 (CTA Case No. 1640) already decided by this Court on May 26, 1967. And the second is the present appeal which relates to Seizure Identification Nos. 2599, 2601, 2606, 2629, 2647, 2340, 2529, 2533, 2547, 2578, 2579, 2763, 2770, 2821, 2824 and 2865.

Among the special affirmative defenses interposed by respondent to the petition is that since the decision of the Collector of Customs dated March 8, 1961 was not appealed to the Commissioner of Customs as required by law, it has already become final and executory; consequently, the petition states no cause of action (Par. 7, Nos. 4 and 5, Answer; p. 12, CTA rec.). However, during the hearing of this case on March 13, 1967, counsel for petitioner proposed to submit the case on the pleadings if counsel for respondent would waive the jurisdictional issue, which was accepted.

(See Minutes of hearing dated May 13, 1967, p. 16, CTA rec.)

There are two issues raised in this case, namely: (a) whether or not this Court has jurisdiction over this case; and (b) granting that this Court has jurisdiction, whether the forfeiture of the importations in question is legal.

On the first issue, the answer is in the negative. The record shows that petitioner never appealed from the decision of the Collector which was received by him on April 4, 1961 (p. 1, par. 1, Motion for Reconsideration dated April 12, 1961, pp. 118-122, BIR rec.) insofar as Seizure Identification Nos. 2599, 2601, 2606, 2629, 2647, 2340, 2529, 2533, 2547, 2578, 2597, 2763, 2770, 2821, 2824 and 2865. Under Section 2313 of the Tariff and Customs Code (formerly Section 1380, Revised Administrative Code) petitioner has fifteen (15) days from receipt of the decision of the Collector to appeal to the Commissioner of Customs. Therefore, long before the filing of the present petition for review with this Court on July 29, 1965, the decision of the Collector had already become final and executory. No appeal to the Commissioner of Customs having been taken from the decision of the Collector of Customs, neither can one be taken to this Court.]

While there is an allegation by petitioner that a notice of appeal was filed with the Collector of Customs on July 20, 1961 (Par. 15, sub-par. (a), Petition for Review), a photostatic copy of which notice of appeal was attached as Annex B (p. 8, CTA rec.), this allegation was denied by respondent in his answer. A scrutiny of the customs records failed to bear out the alleged notice of appeal filed with the Collector of Customs. Neither was the same substantiated by evidence.

But even granting, arguendo, that the decision of the Commissioner of Customs dated April 20, 1965 can be considered as an appealable decision in this case,[1] still, the appeal was filed out of time. From May 29, 1965, the date of receipt of the decision of the Commissioner of Customs, to July 29, 1965, the date of the filing of the herein petition for review, 60 days elapsed, which is beyond the 30-day period allowed under Section 11 of Republic Act No. 1125 within which to appeal to this Court.

It appears, however, that upon the manifestation of petitioners that they would submit the case for decision on the pleadings if respondent's

[1] The decision of the Commissioner states: "There is no appeal from the decision of March 8, 1961 insofar as it refers to Seizure Identification Nos. 2599, 2601, 2606, 2629, 2647, 2340, 2529, 2533, 2547, 2578, 2597, 2763, 2770, 2821, 2824 and 2865."

counsel would waive the issue of jurisdiction, the latter agreed. By this waiver, the parties have, in effect, consented to confer jurisdiction upon this Court. This can not be done by the parties. It is well-settled that the jurisdiction of a court is conferred by law; that none of the parties can dictate when jurisdiction of a court will attach; and that the parties can not consent or agree to confer jurisdiction upon a court (Pumlao v. Asuncion, 58 Phil. 994, unp.; Tabada v. Zaldueta, 47 Phil. 859, 865, cited in Moran's Comments on the Rules of Court, Vol. I, 1963 Ed., p. 35; Manila Railroad Co. v. Attorney-General, 20 Phil. 523, 531; Janda v. Araneta, CTA Case No. 87, Feb. 23, 1956).

However, for the satisfaction of the appellants, and assuming <u>for the sake of argument</u> that this Court has jurisdiction over the instant appeal, we find said appeal without merit. Petitioners assail the forfeiture of the merchandise in question on the following grounds:

> "(b) At the time the importation of subject shipments were made, the Import Control Commission had already been abolished, and there was no agency specifically designated by law to issue such import licenses;
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> "(c) The importations in question involving no-dollars, it would be unreasonable to infer that such no-dollar importations were within the

> broad powers of the Central Bank under its charter;
>
> "(d) It would be unfair to hold the bonds of the Equitable Insurance & Casualty Co., Inc. after the lapse of more than 10 years when the goods were released under bond were finally declared subject to confiscation, considering that said goods were perishable in nature, and actually the government suffered no loss, at all, as all taxes and duties due the government had been paid prior to the release." (p. 5, CTA rec.)

In a decision in the analogous case of Eugenia Manabat Vda. de Lopez, et al. v. Commissioner of Customs, CTA Case No. 1463, promulgated on July 5, 1965, where the decision appealed from therein was disputed on the same grounds, it was held:

> "Petitioners' contention ultimately boils down to the validity of Central Bank Circulars Nos. 44 and 45, in relation to Sections 1363(f) and 1250 of the Revised Administrative Code, upon which the decree of forfeiture of the subject importations was based. It is claimed that the issuance of said Central Bank Circulars Nos. 44 and 45 under the broad grant of powers by Section 74 of Republic Act No. 265, has no sanction in the law. And that, granting arguendo that the Central Bank had authority to regulate imports by implication from its charter, such powers were withdrawn, if not repealed by Section 20 of Republic Act No. 650.
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> "Petitioners' contention is untenable. The issues raised are not of first impression. In previous cases of similar or analogous issues (Pascual v. Comm. of Customs, G.R. No. L-10979, June 30, 1959; Acting Comm. of Customs v. Estanislao Leuterio, G.R. No. L-9142, October 17, 1959;

Comm. of Customs v. Serree Investment Co., G.R. No. L-12307, May 16, 1960; Comm. of Customs v. Eastern Sea Trading, G.R. No. L-14279, October 31, 1961; Comm. of Customs v. Santos, G.R. No. L-11911, March 30, 1962; Comm. of Customs v. Nepumoceno, G.R. No. L-11126, March 31, 1962; and Serree Investment Co., v. Comm. of Customs, G.R. No. L-19564, November 28, 1964), the Supreme Court upheld the validity of said Central Bank Circulars Nos. 44 and 45 under the general grant of authority provided in Section 74 of Republic Act No. 265. In the recent case of Serree Investment Co. v. Commissioner of Customs, supra, it was held and we quote:

> 'The objections of the petitioner, in his assignment of errors, against the validity of Circulars Nos. 44 and 45 of the Central Bank and the authority of the Commissioner of Customs to forfeit the merchandise in question were disposed of in a similar case involving the same petitioner herein. In Commissioner of Customs vs. Serree Investment Company, L-12007, 16 May 1960, this Court, citing the case of Pascual vs. Commissioner of Customs, L-10797, 30 June 1959, stated:
>
> > "x x x Even granting that the importations in question did not require an immediate sale of foreign exchange, their importation into the Philippines from another country will ultimately require the sale of such exchange. The currency of one country is not legal in another. To pay for imports, traders have to avail themselves of foreign exchange, which is the conversion of an amount of money or currency of one country into an equivalent amount of money or currency of another.

Every import of goods or merchandise requires an immediate or future demand for foreign exchange.

"Section 74, Republic Act 265, authorizes the Monetary Board, with the approval of the president, to temporarily suspend or restrict sales of exchange and to subject all transactions in gold and foreign exchange to license during an exchange crisis in order to protect the international reserve and to give the Monetary Board and to give the Government time in which to take constructive measures to combat such crisis. Circular No. 44, prohibiting the release by the Commissioner of Customs of any item of import without the presentation of a release certificate issued by the Central Bank or any authorized agent bank in the form prescribed by the Monetary Board, and Circular No. 45, requiring any person or entity who intends to import or receive goods from any foreign country for which no foreign exchange is required or will be required of the banks, to apply for a license from the Monetary Board to authorize such import 'are measures taken to check the unregulated flow of foreign exchange from the country and are within the power of the Monetary Board.'

"Appellant's contention is that Congress has not authorized the Central Bank to issue regulations governing imports that do

> not require the sale of foreign exchange, because according to him, it would not have enacted into law Republic Act No. 1410. The contention assumes that the importations do not require the sale of foreign exchange, a fact he failed to establish.''

"The argument that it would be unfair to hold answerable the bonds of the Equitable Insurance and Casualty Co., Inc., after the lapse of more than six years, because the goods were perishable in nature, and that actually the Government suffered no loss as all taxes and duties due were paid, has no basis in law. The terms and conditions of the undertakings (surety bonds) having been voluntarily assumed by petitioner and being perfectly legal and binding must be enforced."

WHEREFORE, the petition for review is hereby dismissed, with costs against petitioners.

SO ORDERED.

Quezon City, August 21, 1967.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge