ARTURO MENDOZA,
Petitioner,

- versus -

C. T. A.
CASE NO. 852

TIMOTEO Y. ASERON in his capacity as Acting Commissioner of Customs,
Respondent.

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DECISION

This is an appeal from a decision of the respondent in Customs Case No. 99, Seizure Identification No. 1407, dated June 7, 1960 (Annex B) ordering the petitioner and his surety, Malayan Insurance Co., Inc., to pay, jointly and severally, the amount of ₱16,000.00.

This case was submitted for decision on the pleadings and the partial stipulation of facts submitted by the parties.

The petitioner is the importer of the merchandise in question, consisting of 100 cartons of "Chesterfield" cigarettes, which arrived at the port of Manila on January 23, 1954. The shipment was declared free of duty under Section 311 of the Philippine Trade Act of 1946. It was not, however, covered by a release certificate of the Central Bank, or any of its agent banks, for which reason the Collector of Customs of Manila ordered it forfeited for violation of Central Bank Circular No. 45 in relation to Section 1363(f) of the Administrative Code.

During the pendency of the seizure proceedings, the Malayan Insurance Co., Inc. put up its

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Bond No.6649, dated March 16, 1954, in the amount of ₱16,000.00 for which reason, the merchandise was released.

From the decision of the Collector of Customs of Manila dated May 31, 1955 (Seizure Identification No. 1407), the petitioner appealed to the respondent Commissioner who affirmed the same. Hence, this petition for review to which the respondent filed an answer seeking the payment by the petitioner of the respective sums of ₱16,000.00, representing the amount of the surety bond, with interest and ₱500.00 as additional damages.

The only issue raised in the present appeal is whether or not the forfeiture of the merchandise in question for lack of a release certificate as required by Central Bank Circular No. 45 is legal.

The authority of the Central Bank to issue through the Monetary Board, Central Bank Circulars Nos. 44 and 45 has long been upheld by the Supreme Court. The Supreme Court in previous cases (Francisco Pascual vs. The Commissioner of Customs, G.R. No. L-10979, June 30, 1959; The Commissioner of Customs vs. Estanislao Leuterio, G.R. No. L-9142, October 17, 1959) consistently held:

> "As already stated, <u>Circulars Nos. 44 and 45 were issued by the Monetary Board within the scope of its powers</u>. They were published in the Official Gazette in June 1953. Appellant failed to present to the Commissioner of Customs release certificates issued by the Central Bank or its duly

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authorized agent banks for the importations in question. The Commissioner of Customs may, therefore, seize them and order their forfeiture under the afore-quoted provisions of the Revised Administrative Code. It is true that neither of the Circulars provide for the penalty of forfeiture. But since the importations in question were made without the necessary import license issued by the Monetary Board pursuant to Circular No. 45 and the release certificates issued by the Central Bank or its authorized agent banks in the prescribed form pursuant to Circular No. 44, they fall within the class of 'merchandise of prohibited importation' or merchandise 'the importation x x x of which is effected x x x contrary to law' that the Commissioner of Customs may seize and order forfeited. To sustain the appellant's theory of the case would render nugatory the aim and purpose of the law when it authorized the Central Bank to temporarily suspend or restrict the sale of foreign exchange to licensing during an exchange crisis in order to protect the international reserve and to give the Monetary Board and the Government time in which to take constructive measures to combat such crisis." (Underscoring supplied.)

Consequently, violation of the same subjects the merchandise to forfeiture although said circulars do not provide for such penal provision (Catalina Reyes vs. Commissioner of Customs, C.T.A. Case No. 132, January 9, 1956; Venancio Tong Tek vs. Commissioner of Customs, G.R. No. L-11947, June 30, 1959).

Relative to the respondent's counter-claim for additional damages amounting to ₱500.00, we observe that the same is based upon a provision of the bond filed by the petitioner and his surety to the effect "that if within thirty (30) days from demand for payment of the liability x x x the said liability is not paid, and it should be found necessary to file

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an action in court to effect the collection thereof, a penalty of FIVE HUNDRED PESOS (₱500.00) in addition shall be imposed x x x." Obviously, a demand for payment of the amount covered by the bond cannot legally be made until there is a final judgment ordering forfeiture and there being as yet no such final judgment, no liability for damages attaches yet on the part of the petitioner (See Que Hua Shirt Factory vs. Commissioner of Customs, C.T.A. Cases Nos. 739 & 753, January 11, 1962).

WHEREFORE, the decision appealed from is hereby affirmed with costs against petitioner.

SO ORDERED.

Manila, Philippines, June 17, 1963.

ROMAN M. UMALI
Associate Judge

I concur:

AUGUSTO M. LUCIANO
Associate Judge