April 23, 1971

UNITRADE, INC.,
Petitioner,

versus

C.T.A. CASE NO. 2207

THE COMMISSIONER
OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Customs which affirmed that of the Collector of Customs for the Port of Manila denying petitioner's request for the discharge of 37,042 cartons of fresh apples from the vessel M/V "Mindanao Sea" and their release to petitioner under bond.

The material facts of the case are briefly summarized in our resolution of February 16, 1971, which, for convenience, are reproduced below:

> Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. On December 22, 1970, the vessel M/V "Mindanao Sea" arrived at the Port of Manila carrying 37,042 cartons of fresh apples consigned to herein petitioner. After payment of the taxes and duties on the portion of the shipment consisting of 10,000 cartons of fresh apples, covered by Bills of Lading Nos. PM-1, PM-2, PM-3 and PM-4, the necessary transfer permits were issued by the Collector of Customs of Manila.

While this portion of the importation was being unloaded from the carrying vessel and transported to the designated cold storage house, the Collector of Customs, on December 22, 1970, issued warrants of seizure and detention (S.I. Nos. 11993 to 11996) ordering the seizure of a portion of the goods already unloaded and their detention for allegedly having been imported in violation of Central Bank Circulars Nos. 289, 294 and 295, in relation to Section 2530(f) of the Tariff and Customs Code "pending termination of the seizure proceedings thereof and/or until further orders." Before the entire shipment could be unloaded, the Collector of Customs apparently changed his mind and ordered that the goods already unloaded be returned to the vessel.

On December 23, 1970, petitioner, through its broker, requested the discharge of said articles from the carrying vessel and their delivery to it under bond. This was denied by the Collector of Customs on the same day on the ground that "the matter is under advisement by the proper government authorities, and, therefore, this Office regrets that, for the moment, it can not grant (its) request." On appeal from this decision of the Collector, the Commissioner, in his letter dated January 20, 1971, refused to render a decision until the Collector shall have rendered a "definite ruling on the matter."

On January 22, 1971, petitioner again requested the Collector of Customs to have the goods discharged from the vessel and their delivery to it under bond. In his letter of January 26, 1971, the Collector denied the request on the ground that the importation of said goods is prohibited under Circulars Nos. 289, 294 and 295 of the Central Bank and are, therefore, articles of prohibited importation under Section 102(k) of the Tariff and

Customs Code. For convenience, the pertinent portions of the said decision of the Collector are reproduced below.

"The subject shipment, undoubtedly, belongs to a commodity classification of merchandise the importation of which is prohibited under Central Bank Circular Nos. 289, 294, and 295. Since CB circulars form part of the Tariff and Customs Law (Sec. 3514, R. A. 1937, as amended), the aforementioned importation may be considered prohibited under Section 102(k) of the Tariff and Customs Code.

"In this connection, the pertinent provision of the Tariff and Customs Code on the matter is quoted hereunder:

'Sec. 1207. Jurisdiction of Collector Over Articles of Prohibited Importation. - Where articles are of prohibited importation or subject to importation only upon conditions prescribed by law, it shall be the duty of the Collector to exercise such jurisdiction in respect thereto as will prevent importation or otherwise secure compliance with all legal requirements.' (Underscoring supplied.)

Under this particular section, it is obvious, that where the importation is prohibited, or subject to the conditions prescribed by law, the Collector is duty-bound to exercise two options - either to prevent the importation of the cargo or require compliance with all the requirements. It appearing that the latter alternative is not

> feasible under the circumstances now prevailing, this Office is constrained to enforce the former by not allowing the discharge of the shipment in question.
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> "In view of the foregoing, and in pursuance of the strict policy of the Central Bank of the Philippines relative to the importation of commodities of this nature, the request of your client regarding the discharge of the cargo from the vessel 'Mindanao Sea' is hereby denied, thus, rendering the request for an authority to release the same under bond premature."

Respondent Commissioner of Customs, on appeal from said decision of the Collector of Customs, sustained the decision of the latter in an order dated January 29, 1971. Hence, this appeal.

It will be noted that the principal issue raised in this appeal is the decision of the Collector, sustained by respondent, to the effect that the goods in question are articles of prohibited importation under Section 102(k) of the Tariff and Customs Code. Since importation of such articles is prohibited, delivery thereof to the importer can not be authorized. For this reason, the Collector took the necessary steps to prevent their entry or importation by authority of Section 1207 of the Tariff and Customs Code by ordering the portion of the goods previously unloaded returned to the carrying vessel. The effect of this order is the abandonment of the seizure proceedings which were started previously by the issuance of warrants of seizure and detention. (pp. 46-50, CTA record.)

On the motion of petitioner for immediate release of said shipment of fresh apples under bond, we held that the release prayed for can not be authorized without first deciding the issue whether or not the articles in question come under the category of "articles of prohibited importation." (See Resolution dated February 16, 1971.) Petitioner's motion for reconsideration was denied in our resolution of February 26, 1971, wherein we stated:

> The main thrust of petitioner's motion is that "the Collector of Customs has already decreed that fresh fruits imported are not prohibited importation under Section 102 of the Tariff and Customs Code" and that "it has always been the holding of the Bureau of Customs that fresh fruits are not prohibited importations and may be discharged from carrying vessels and released to the importer upon payment of the requisite customs duties and taxes." There is no denying the fact that the Collector of Customs at first expressed the view (in his order dated September 11, 1970) that the fresh fruits in question "are not prohibited importations in contemplation of Section 102 of the Tariff and Customs Code," but this opinion was reversed in the Collector's decision of January 26, 1971, the decision which was appealed to respondent Commissioner of Customs and now to this Court. As to which of the two opinions is correct can be decided only after trial on the merits. We can not, at this stage of the proceeding, declare that the former or the latter opinion is correct until the question shall have been threshed out in a formal hearing.

> Since articles of prohibited importation are not subject to the right of redemption by the claimant or owner,[1] it is obvious that the motion of petitioner to have said goods delivered to it pending final determination of its appeal is without merit, for to do so would in effect be a declaration that the goods are not articles of prohibited importation. (pp. 80-81, rec.)

Another motion for reconsideration was filed by petitioner, but during the hearing on March 4, 1971, counsel for petitioner manifested that his client was no longer pressing for the release and delivery to him of the shipment but only the immediate discharge thereof from the carrying vessel to prevent or arrest further deterioration of the fresh fruits in question. Finding the motion meritorious, we ordered respondent to have the said fresh fruits immediately discharged from the carrying vessel to be deposited in a customs bonded warehouse "under conditions as to prevent or arrest spoilage or deterioration pending final determination of the case on the merits." (See Order dated March 4, 1971.)

On March 6, 1971, petitioner filed a motion to declare respondent in contempt of court for

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[1]Section 2307 provides: "Redemption of forfeited property shall not be allowed in any case where the importation is absolutely prohibited or where the surrender of the property to the person offering to redeem the same would be contrary to

failure to comply with the order of this Court of March 4, 1971. This motion was,however, withdrawn through a manifestation of counsel for petitioner during the hearing on March 20, 1971, after respondent had complied with said order.

After the filing of the answer to the petition for review, a stipulation of facts was submitted by the parties. The case was submitted for decision on the basis of said stipulation of facts and the records of the case. However, after counsel for petitioner had filed their memorandum on April 1, 1971, counsel for respondent filed a "MOTION TO AMEND ANSWER AND TO ADMIT AMENDED ANSWER" so as to raise the issue of jurisdiction.

Two principal issues are, therefore, raised in this appeal: (1) whether or not this Court has jurisdiction over the case, and (2) whether or not the articles in question come under the category of "articles of prohibited importation" which may be denied entry under Section 1207 of the Tariff and Customs Code, or forfeited under Section 2530(f) of the same Code.

In view of the immediate necessity of resolving the case, the fresh fruits in question having started to deteriorate as evidenced by samples presented in open court, we have decided to resolve the the two issues raised in this appeal in a brief opinion, without prejudice to rendering a more extended opinion as the circumstances may warrant.

On the question of jurisdiction, respondent contends that this Court has no jurisdiction over the case because what is being appealed is the denial by respondent of petitioner's request to have the goods released under bond pending final determination of the case in the seizure proceeding. This is not correct. What is being appealed is the decision declaring the articles in question as "articles of prohibited importation" and the order prohibiting entry thereof. This is a final decision and is in no sense an interlocutory order because it was not issued in connection with a pending case. As stated heretofore, and as shown by the records of the case, the seizure proceeding which was at first started by the Collector of Customs of Manila was discontinued, the Collector having elected to prevent importation of said articles under Section 1207 of the Tariff and Customs Code. As aptly stated by counsel for the Government:

> It has been held that the Court of Tax Appeals is a court of special jurisdiction. As such it can take cognizance only of such matters as are clearly within its jurisdiction. (Commissioner of Int. Rev. vs. Villa, G.R. No. L-23988, Jan. 2, 1968.)

> This jurisdiction of this Honorable Court is defined in Section 7 which pertinently provides for its exercise of "exclusive appellate jurisdiction to review by appeal. . .decisions of the Commissioner of Customs in cases involving. . .seizure, detention or release of property affected . . ." (Page 3, Amended Answer; emphasis supplied.)

This case precisely involves seizure, detention or release of property belonging to petitioner consisting of fresh apples imported from abroad, which property is under detention by respondent who refuses to release the same to petitioner. Accordingly, we have jurisdiction over the present appeal.

As to the second issue, respondent seeks to prevent importation of the goods in question and the delivery thereof to petitioner on the ground that said goods, having been imported in violation of Central Bank Circulars Nos. 289, 294 and 295, are considered "articles of prohibited importation" which may be banned under Section 1107, in relation to Section 102, of the Tariff and Customs Code. We have examined said Circulars, and we find nothing therein which declares that fresh apples are articles which are prohibited to be imported into the Philippines. It is true that the Circulars provide that no release certificate may be issued for such goods coming from abroad, yet the Central Bank may issue such release certificate under exceptional circumstances, the prohibition not being absolute. In fact, the Collector of Customs authorized the release and delivery to the importer of a shipment of fresh apples on December 1, 1970, after the effectivity of said Circulars.[1] It may be added that by Executive Order of the President (Executive Order No. 282, dated January 4, 1971) the tariff duty on apples was increased. Section 2 of said Executive Order provides:

> Section 2. After the expiration of thirty (30) days from the issuance of this Order, all the above-mentioned articles entered or withdrawn from warehouses in the Philippines for consumption shall be subject to the rates of import duty herein prescribed.

Executive Order No. 282 is ~~enough~~ proof that it has never been the intention to classify fresh apples as articles of prohibited importation.

We are, therefore, of the opinion that the fresh apples in question are not absolutely prohibited to be imported into the Philippines under the aforesaid Circulars of the Central Bank, in relation to Section 102 of the Tariff and Customs Code. However,

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[1] See Annex B of Addendum to Motion for Reconsideration filed by counsel for petitioner dated Feb. 25, 1971, pp. 75-76, C.T.A. Rec.

while said goods are not articles of prohibited importation, they may be held liable for forfeiture for failure of petitioner to secure a release certificate from the Central Bank, which liability may be determined in an appropriate seizure proceeding to be conducted by the Collector of Customs, pursuant to Sections 2301, et seq. of the Tariff and Customs Code. In the meantime, considering the perishable nature of said goods, and in the interest both of petitioner and the Government, the goods should be released to petitioner under bond to secure payment of the appraised value thereof in case they are finally declared forfeited in favor of the Government.

WHEREFORE, respondent is hereby ordered to release to petitioner the 37,042 cartons of fresh apples in question, now deposited with the Ice & Cold Storage Corporation at Plaza Lawton, Manila, after petitioner shall have filed a sufficient bond to guarantee payment of the appraised value thereof.

SO ORDERED.

Quezon City, April 23, 1971.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge