

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOUTHERN ENTERPRISES,
Petitioner,

-Versus-

C.T.A. CASE NO. 1652

THE COMMISSIONER OF CUSTOMS
and the COLLECTOR OF CUS-
TOMS OF MANILA,
Respondents.

X- - - - -

Oct. 2/65

D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs dated April 8, 1965, affirming that of the Collector of Customs for the Port of Manila in Seizure Identification Nos. 3860, 3861, 3863, 3877, 3883, 3886, 3887, 3888, 3922, 5287 and 5288, decreeing the forfeiture in favor of the Government of eleven (11) shipments of various merchandise consigned to petitioner for violation of Central Bank Circulars Nos. 44 and 45, in relation to Sections 1250 and 1363(f) of the Revised Administrative Code.

The facts as stipulated by the parties are as follows:

1. That petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at 1089 Aguilar St., Bionondo, Manila; respondents Commissioner of Customs and Collector of Customs of Manila, are both of legal age and hold office in the Bureau of Customs, Manila, where they may be served with summons;

2. That petitioner imported the following various merchandise:

a) A shipment of 2,000 bales of old newspapers from Long Beach, California via the s/s "KOREAN"

BEAR" which arrived on September 8, 1955, and which were declared in Entry No. 76830, series of 1955 (Exh. "A-3860"). The total duties, taxes and other charges thereon were deposited under Official Receipts Nos. 34971 and 35113 dated September 9, 1955 and September 9, 1955, respectively;

b) A shipment of 3,000 bales old newspapers consigned to the same claimant arrived on September 4, 1955 via the s/s "LEON-VILLE", and were declared in Entry No. 76163, series of 1955 (Exh. "A-3861"). The total duties, taxes and other charges thereon were deposited under Official Receipts Nos. 34969 and 35114 dated September 9, 1955 and September 9, 1955, respectively.

c) A shipment of 550 crates white square tiles, from Kobe, Japan which arrived on August 31, 1955 via the s/s "KYOSI MARU", and were declared in Entry No. 74179, series of 1955 (Exh. "A-3863"). The total duties, taxes and other charges thereon were deposited under Official Receipt No. 34970 dated September 9, 1955.

d) A shipment of 3,000 bales of old newspapers consigned to the herein claimant arrived on September 13, 1955 from Los Angeles, California on board the s/s "FRANCISVILLE", and were declared in Entry No. 97940, series of 1955 (Exh. "A-3877"). The total duties, taxes and other charges thereon were deposited under Official Receipt No. 35618 dated September 15, 1955.

e) A shipment of 1,200 cartons kikkoman soy sauce consigned to the same claimant arrived on September, 1955 from Yokohama, Japan via the s/s "FERNQULE", and were declared

in Entry No. 77671-C, series of 1955 (Exh. "A-3883"). The total duties, taxes and other charges thereon were deposited under Official Receipt No. 35848 dated September 17, 1955.

f) A shipment of 1,200 bales of old newspapers from San Francisco which arrived on September 14, 1955 via the s/s/ "PRES. WILSON" and which were declared in Entry No. 77847, series of 1955 (Exh. "A-38886"). The total duties, taxes and other charges thereon were deposited under Official Receipt No. 36067 dated September 21, 1955.

g) A shipment of 800 bales old newspapers consigned to the same claimant arrived from San Francisco on September 14, 1955 ex s/s "PRES. WILSON", and were declared in Entry No. 77848, series of 1955 (Exh. A-3887). The total duties, taxes and other charges thereon were deposited under Official Receipt No. 36065 dated Sept. 21, 1955.

h) A shipment of 1,500 bales old newspapers consigned to the herein claimant arrived from San Francisco on September 14, 1955 via the s/s "PRES. WILSON", and were declared in Entry No. 77859, series of 1955 (Exh. "A-3888"). The total duties, taxes and other charges thereon were deposited under Official Receipt No. 36068 dated September 21, 1955.

i) A shipment of 2,000 bales old newspapers consigned to the same claimant arrived from San Francisco on October 5, 1955 on board the s/s. "MANDEVILLE", and were declared in Entry No. 83571, series of 1955 (Exh.

"A-3922"). The total duties, taxes and other charges thereon were deposited under Official Receipt Nos. 38265 and 38394 dated October 7, 1955 and October 7, 1955, respectively.

j) A shipment of 1,000 cases Del Monte sweet mixed pickles consigned to the same claimant arrived from San Francisco on August 31, 1955 via the s/s. "ANNA BAKKE", and were declared in Entry No. 74275-A, series of 1955 (Exh. A-5287"). The total duties, taxes and other charges thereon were deposited under Official Receipts Nos. 51515 and 38203 dated December 29, 1955 and October 7, 1955, respectively.

k) A shipment of 500 cases Del Monte sweet mixed pickles consigned to the same claimant arrived from San Francisco on September 14, 1955 via the s/s "FRANK WILSON", and were declared in Entry No. 77783, series of 1955 (Exh. "A-5288"). The total duties, taxes and other charges thereon were deposited under Official Receipts Nos. 51514 and 38206 dated December 29, 1955 and October 7, 1955, respectively.

3. That said shipments were declared for customs purposes under the corresponding entry numbers set forth above, and the taxes and duties thereon were deposited. They were not, however, covered by corresponding release certificates for which reason seizure proceedings were instituted against them;

4. That on May 5, 1961, the respondent Collector of Customs rendered a decision in Seizure Identifications Nos. 3860, 3861, 3863, 3877, 3883, 3886, 3887, 3888, 3922, 5287 and 5288, ordering and decreeing the forfeiture of all said merchandise which were imported by herein petitioner,

but as the same were released to petitioner under surety bonds in the total amount of \$171,736.51, the defendant Collector of Customs ordered herein petitioner and its sureties jointly and severally to pay the said sum in cash; this decision was affirmed by respondent Commissioner of Customs in his decision April 8, 1965. Both decisions (Exhibits "A" and "B", respectively) are attached to the Petition;

5. That as head of the customs service at the Port of Manila, the Collector of Customs is charged with the duty, among others, of enforcing the tariff and customs law, ordering the seizure of articles imported in violation of law, deciding seizure cases, and enforcing his decision therein (Sections 602, 2301 and 2312 of the Tariff and Customs Code);

6. That in the Decision of the respondent Collector of Customs of May 5, 1961, (Exhibit "A") and of the Commissioner of Customs dated April 8, 1965 (Exhibit "B") the forfeiture of petitioner's goods was ordered and decreed on the ground that in the importation thereof, petitioner was unable to present the proper Central Bank release certificates and therefore violated the provisions of Circulars 44 and 45 of the Central Bank;

7. That Central Bank Circular 44 was approved and promulgated on June 18, 1953, and Central Bank Circular 45 was approved and issued on June 25, 1953. That both Central Bank Circulars Nos. 44 and 45 do not bear the signature of the President of the Philippines;

8. That respondents demand payment of the sum of \$171,736.51 from the petitioner and its sureties. (See Stipulation of Facts, pp. 33-36, CTA rec.)

The only issue to be resolved is whether or not the importations in question are subject to forfeiture

for violation of Central Bank Circulars Nos. 44 and 45, in relation to Section 1363(f) of the Revised Administrative Code.

The same issue has been passed upon and decided by the Highest Court in cases too numerous to mention. In the case of *Bienvenido Capulong vs. The Acting Commissioner of Customs*, G.R. L-22990, May 19, 1966, it was held:

"Petitioner claims that the Court of Tax Appeals erred in declaring the forfeiture of the articles in question merely because it violates Central Bank Circulars Nos. 44 and 45 considering that said circulars do not provide for the penalty of forfeiture in case of violation of their provisions. But this question is now a settled matter in view of the several decisions rendered by this Court sanctioning the forfeiture of merchandise imported in violation of said Circulars Nos. 44 and 45. This Court said that these circulars should be correlated with Section 1363 of the Revised Administrative Code which authorizes the forfeiture of any merchandise of prohibited importation or of any the importation of which is effected contrary to law, as may be gleaned from the following portion of our decision:

'As already stated, Circulars Nos. 44 and 45 were issued by the Monetary Board within the scope of its powers. 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 authorized agent banks for the importation in question. The Commissioner

of Customs may, therefore, seize them and order their forfeiture under the aforementioned 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 licence issued by the Monetary Board pursuant to Circular No. 45 and the release certificates issued by the Central Bank or its authorized agent bank 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 authorizes 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.' (Pascual v. The Commissioner of Customs, L-10979, June 30, 1959; See also Venancio Tonk Tek v. Commissioner of Customs, L-11947, June 30, 1959; People v. Que Po Lay, 50 O.G., No. 10, p. 4800)

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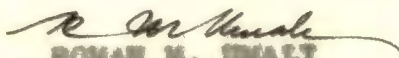
"Petitioner also contends that the merchandise in question cannot be legally forfeited under Central Bank Circulars Nos. 44 and 45 because these circulars have already been repealed by Central Bank Circular 133. This contention is

without merit. Central Bank Circular 133 has not exactly repealed Central Bank Circulars Nos. 44 and 45 but rather it re-enacted them when it provided therein that all existing regulations not inconsistent with the circular are deemed incorporated and made integral parts thereof by reference. And it cannot be disputed that both Central Bank Circulars Nos. 44 and 45 and Central Bank Circular No. 133 have a common purpose, - which is to require the presentation of a release certificate from the Central Bank before any importation may be made to the Philippines. Evidently, the purpose of these circulars is to keep a tab of the volume of imports that come into the Philippines in order to enable the Central Bank to make a survey and study of the appropriate measures that may be adopted to remedy the long-drawn financial crisis in the country."

WHEREFORE, finding no error in the decision appealed from, the same is hereby affirmed, with costs against petitioner.

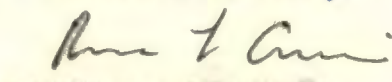
SO ORDERED.

Quezon City, October 2, 1967.


ROMAN M. UMALI
Presiding Judge

WE CONCUR:


ESTANISLAO R. ALVAREZ
Associate Judge


RAMON L. AVANCENA
Associate Judge