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**[G.R. No. L-33500. August 30, 1971]**

**ROLANDO E. GEOTINA, in his capacity as COMMISSIONER OF CUSTOMS, *petitioner, vs.* THE COURT OF TAX APPEALS and UNITRADE, INC., *respondents.***

**SYLLABUS**

1. **TAXATION; TAX COURT; HAS JURISDICTION OVER CASES INVOLVING SEIZURE, DETENTION OR RELEASE OF PROPERTY.**— The tax court correctly overruled petitioner commissioner's contention that his ruling denying release under bond of the fresh apples partook of the nature of an interlocutory order "pending seizure proceedings against said importation" which was not appealable to and could not be taken cognizance of by the tax court. The tax court properly maintained its jurisdiction over the case which, as it pointed out, "precisely involves seizure, detention or release of property belonging to [respondent company] consisting of fresh apples imported from abroad, which property is under *detention* by [the commissioner] who refuses to release the same to [respondent]."

2. **ID.; TARIFF AND CUSTOMS CODE; CENTRAL BANK CIRCULAR PROHIBITING IMPORTATION OF FRESH APPLES; TAX COURT WITHOUT AUTHORITY TO ORDER RELEASE OF PROHIBITED ARTICLES.**— The issue reduces itself quite simply and essentially to whether or not the fresh apples in question are "articles of prohibited importation." If so, as the Court holds, then the tax court acted in excess of its jurisdiction in overturning the customs authorities' proper exercise of their jurisdiction under Sec. 1207 of the Customs Code, in *preventing importation and refusing to allow the discharge of the shipment of apples, which admittedly is not covered by the required Central Bank permit or release certificate.* By the same token, since the importation of said apples is banned under the cited Central Bank circulars which have the force and effect of law, the tax court acted without authority of law in ordering the commissioner to release the apples to the importer under bond, for under the very Sec. 2301 of the Customs Code invoked by it, *"articles the importation of which is prohibited by law shall not be released under bond."*

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3. **ID.; ID.; ID.; CUSTOMS AUTHORITIES HAVE AUTHORITY TO DISALLOW DISCHARGE OF APPLES FROM CARRYING VESSELS.**— The customs authorities clearly acted then within their authority and mandate under Sec. 1207 of the Customs Code, in *"preventing importation"* and entry of the shipment of apples by not allowing its discharge from the carrying vessel. As noted by the Court in the recent case of *Señeres*, "When the goods are challenged as being of prohibited importation and the collector questions the legality of the importation . . . the law expressly imposes upon the collector the obligation 'to exercise such jurisdiction in respect thereto as will prevent importation.'" The second alternative granted by the cited section to the port collector of "securing compliance with all legal requirements" with respect to "articles subject to importation only upon conditions prescribed by law" was patently not available, for under the categorical terms of Circular No. 295 above quoted, no release certificate could be issued for the apples in question and the questioned import could only be "referred to the Central Bank for official transmittal to the Bureau of Customs for appropriate seizure proceedings."

4. **ID.; ID.; ID.; QUESTIONED IMPORTATION OF ARTICLES MAY NOT BE ABSOLUTELY PROHIBITED TO PREVENT THEIR ENTRY.** - The tax court thus failed to take note that articles of prohibited importation under Sec. 102 of the Code are of two categories, *viz*, those which are *absolutely prohibited or more commonly known as contraband*, such as explosives or prohibited drugs, and other articles which are considered *qualified prohibited* referring to those which may be imported subject to certain restrictions or limitations. But as has been observed, the legal effects of an unauthorized importation of *qualifiedly prohibited* articles are the same as those of an importation of *contraband*: "an article imported or attempted to be imported in violation of regulations of the Central Bank is considered an article of prohibited importation and is subject to forfeiture in like manner as an article the importation of which is absolutely prohibited under Sec. 102 of the Tariff and Customs Code."

5. **ID.; ID.; ID.; NO PERMIT OR RELEASE CERTIFICATE MAY BE ISSUED FOR APPLES BY EXPRESS BAN AGAINST THEM.**— The tax court, however, incurred itself in contradiction in that under our settled doctrine and jurisprudence, *supra*, goods imported without the corresponding release certificates required

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by Central Bank circulars are "articles of prohibited importation" as the term is used in Sec. 2530-f of the Customs Code (formerly Sec. 1363-f of the Revised Administrative Code), which subjects them to *forfeiture*. No Central Bank permit or release certificate could be issued for the apples by virtue of the express ban against them in Circular 295. Hence, they fell under the *explicit prohibition* in the proviso of the very section cited by the tax court, viz, Sec. 2301, *"that articles the importation of which is prohibited by law shall not be released under bond."*

6. **ID.; ID.; FUNCTIONS OF CUSTOMS BUREAU; ARTICLES QUALIFIEDLY PROHIBITED ALSO SUBJECT TO SEIZURE AND FORFEITURE.**— The first two functions of the customs bureau are "a. *the assessment and collection of the lawful revenues from imported articles* and all other dues, fees, charges, fines and penalties accruing under the tariff and customs laws" *and* "b. *the prevention and suppression of smuggling and other frauds upon the customs.*" The lawful revenues are to be assessed and collected upon articles properly and lawfully imported into the Philippines. "Where articles are to be prohibited importation," Sec. 1207 of the Code imposes the primary duty upon the collector "to exercise such jurisdiction in respect thereto as will *prevent importation.*" *Articles of prohibited importation,* which cover not only *contraband or absolutely prohibited articles* but also *qualifiedly prohibited* articles which are sought to be imported, more precisely smuggled, in violation of Central Bank circulars, *supra,* are expressly made *subject to seizure and forfeiture* under Sec. 2530-f and Sec. 2301 expressly enjoins that *"articles the importation of which is prohibited by law shall not be released under bond."*

7. **ID.; ID.; CUSTOMS ADMINISTRATIVE ORDER NO. 19-70, AN ADMINISTRATIVE REITERATION OF THE EXPRESS PROHIBITION OF THE CUSTOMS CODE.**— Respondent importer's petition before the tax court was filed to seek judgment "sustaining [the importer's] right to the discharge of its importation from the carrying vessel and its release under bond to it and declaring Customs Administrative Order No. 19-70 null and void" as an alleged unauthorized and arbitrary modification or amendment of the provisions of Sec. 2301 of the tariff and customs code. As already shown above, the said administrative order is merely an administrative reiteration of the express prohibition of the cited section against the release under bond of prohibited articles seized

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and held for forfeiture by the customs authorities. The tax court of course made no pronouncement of allegedly nullity of the said administrative order, the validity of which cannot be gainsaid, under the ruling of *Romualdez vs. Arca*, 27 SCRA 828, wherein in upholding the memorandum therein issued by the finance secretary to guide customs appraisers in appraising the value of imported remnants, the Court held that: "since the memorandum is neither a law (statute), nor an implementation of a law authorizing its issuance, and does not prescribe any penalty for its violation, publication thereof is not necessary."

**APPEARANCES OF COUNSEL**

*Solicitor General Felix Q. Antonio, First Assistant Solicitor General Antonio A. Torres, Solicitors Bernardo P. Pardo* and *Guillermo C. Nakar, Jr.*, for petitioners.

*De Santos, Balgos & Perez* for respondent.

**D E C I S I O N**

**TEEHANKEE, *J.*:**

Petitioner commissioner of customs has filed the instant petition either as an original action for certiorari or as an appeal via certiorari by way of challenging the validity of the decision of the Court of Tax Appeals dated April 23, 1971 and of its resolution of May 3, 1971 granting the private respondent's petition in the case below[1] and ordering petitioner commissioner to release on P550,000.00 bond an alleged no-dollar shipment of 37,042 cartons of fresh apples without the corresponding Central Bank release certificate.

The Court accepted the petition as an original action, requiring an answer thereto which was filed in due course, and issued, as prayed for, the order restraining until further orders the enforcement and execution of the tax court's question decision and resolution.

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[1] CTA Case No. 2207 entitled "Unitrade, Inc. *vs.* Commissioner of Customs."

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The material facts are undisputed, having been stipulated and documented in the proceedings below The tax court thus restated the facts in its decision (referring to herein respondent importer as petitioner before it and to herein petitioner commissioner as respondent before it): "(P)etitioner 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*

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*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.' (Italics 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.

"'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.

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"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.)

Upon respondent's filing on February 2, 1971 of its appeal with the lower court from the customs commissioner's decision affirming that of the Manila customs collector denying said respondent's request for the discharge of the shipment of 37,042 cartons of fresh apples with a stated value of U.S. $66,675 60 from the vessel M/V "Mindanao Sea" and their release to respondent under bond, it renewed its move, through motion for a preliminary injunction, for immediate discharge from the carrying vessel and release under bond of the said shipment. The tax court, per its resolution of February 16, 1971, correctly denied respondent's motion, "for to do so would be to prejudge the main issue raised in this appeal."

Respondent's motion for reconsideration of the denial order was denied anew by the tax court per its resolution of February 26, 1971, wherein expounding on its first resolution abjuring a prejudgment of the main issue, it ruled that "(S)ince articles of prohibited importation are not subject to the right of redemption by the claimant or owner,[2] it is obvious that the motion of [respondent company] 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."

[2] In its footnote, the tax court thus cited the pertinent customs code provision: "Sec. 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 law.'"

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On another urgent motion of respondent alleging malfunctioning of the reefer machinery of the carrying vessel, however, the tax court per its order of March 4, 1971, allowed the immediate discharge of the fruits and their deposit in a customs bonded warehouse "under conditions as to prevent or arrest spoilage or deterioration pending final determination of the case on the merits." The fruits were thus deposited since March 19, 1971[3] at the refrigerated storage compartments of the Ice & Cold Storage Corporation at Plaza Lawton, Manila.

After the parties' submittal of their stipulation of facts and respective memoranda, the tax court rendered its decision, wherein after upholding its challenged jurisdiction over the case, it ruled that:

"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, 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."

and rendered judgment as follows:

"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."

The tax court thereafter issued its resolution of May 3, 1971 for the immediate release of the apples, on the basis of respondent's

[3] Record, p. 199.

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surety bond for P550,000.00 "to guarantee payment of the appraised value of said goods in case the same are finally declared forfeited in favor of the Government." As already stated, such release was enjoined by the Court's restraining order. Pursuant to the hearing held on May 21, 1971, the parties filed on May 27, 1971 their joint manifestation to the effect that some of the apples had been found totally rotten and the rest in various stages of deterioration. In respondent's last urgent motion of July 20, 1971, it prayed for resolution of the case at bar "for the reason that the fresh fruits . . . are already in grave danger of totally deteriorating."

I. The preliminary issue of jurisdiction raised by petitioner may readily be disposed of. The tax court correctly overruled petitioner commissioner's contention that his ruling denying release under bond of the fresh apples partook of the nature of an interlocutory order "pending seizure proceedings against said importation" which was not appealable to and could not be taken cognizance of by the tax court, in this wise: "(T)his 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."

The tax court properly maintained its jurisdiction over the case which, as it pointed out, "precisely involves seizure, detention or release of property belonging to [respondent company] consisting of fresh apples imported from abroad, which property is under *detention* [by the commissioner] who refuses to release the same to [respondent]." As reaffirmed by the Court in the latest case of *Señeres vs. Frias, L-32921-40, June 10, 1971,* in customs cases, "(T)he collector's decision may be appealed to the commissioner of customs, whose decision, *inter alia*, in cases involving *seizure, detention or release of property affected,* may in turn be reviewed only by the Court of Tax Appeals under

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the *exclusive appellate jurisdiction* conferred on said Court under Section 7 of Republic Act 1125."

II. We thus come to grips with the linchpin issue: did the tax court act within its authority and in accordance with the applicable law and jurisprudence in ordering the release under bond of the questioned shipment of fresh apples - admittedly imported on a "no dollar" basis — notwithstanding the lack of the required Central Bank release certificate?

Petitioner commissioner submits that since the importation of fresh apples and other goods similarly classified by the Central Bank as non-essential consumer (NEC) products is prohibited under Central Bank Circulars Nos. 289, 294 and 295, the questioned importation is considered a prohibited importation under Section 102 (k) of the Tariff and Customs Code,[4] and he was but complying with his mandate under Section 1207 of the same Code, quoted *supra*, page 3, "to exercise such jurisdiction in respect thereto *as will prevent importation*" by refusing to allow the discharge of the said shipment.

Respondent importer in turn contends quite naturally that the tax court "committed no error when it found that the imported fresh apples are not absolutely prohibited importation and therefore may be released to the (importer) under bond."

The issue reduces itself quite simply and essentially to whether or not the fresh apples in question are "articles of prohibited importation." If so, as the Court holds, then the tax court acted in excess of its jurisdiction in overturning the customs authorities' proper exercise of their jurisdiction under Section 1207 of the Customs Code, in *preventing importation and refusing to allow the discharge of the shipment of apples, which admittedly is not covered by the required Central Bank permit or release certificate.*

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[4] "Sec. 102. *Prohibited Importations.* — The importation into the Philippines of the following articles is prohibited:

"x x x x x x x x x

"(k) All other articles the importation of which is prohibited by law. (Rep. Act No. 1937).

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By the same token, since the importation of said apples is banned under the cited Central Bank circulars which have the force and effect of law, the tax court acted without authority of law in ordering the commissioner to release the apples to the importer under bond, for under the very Section 2301 of the customs code invoked by it, *"articles the importation of which is prohibited by law shall not be released under bond."*

1. The huge shipment of 37,042 cartons of fresh apples, with a stated value of $66,675.60 and a total weight of about 671,942 kilos,[5] is concededly one of fruits classified as NEC goods, the importation of which is barred under Central Bank Circular No. 289 dated February 21, 1970.[6] As for "no-dollar" imports, Central Bank Circular No. 247 dated July 21, 1967, after referring to previous circulars which required release certificates from the Central Bank for certain "no-dollar" importations, expressly enumerates the items which are exempt from the requirement of such release certificates, e.g. personal effects in reasonable quantities, gifts sent from abroad not exceeding $100.00 unless there is evidence of abuse in the use of the privilege, etc. Central Bank Circular No. 295, amending Circular No. 294, promulgated on March 20 and 10, 1970, respectively,[7] reiterates the exemption of the "no-dollar" imports covered by Circular No. 247 from the release certificate requirements, but imposes an express ban on all other "no-dollar" imports, as follows:

"No-dollar imports not covered by Circular No. 247 shall not be issued any release certificates and shall be referred to the Central Bank for official transmittal to the Bureau of Customs for appropriate seizure proceedings.

x x x x x x x x x

[5] At 18.14 kilos per carton, per Annexes B to B-3, respondent importer's petition, which state a weight of 45,350 kilos per 2,500 cartons of the shipment.

[6] Sec. 5 thereof provides that "Authorized agent banks may sell foreign exchange for imports *except those falling under the UC, SUC and NEC categories*, without prior specific approval of the Central Bank. x x x" (66 O.G. No. 9, p. 2122).

[7] Published in 66 O.G., Nos. 12 and 11, pp. 2867 and 2609, respectively.

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Section 2 of said Circular No. 295, however, provides certain conditions for the issuance of release certificates for *"no-dollar imports which arrived on or before February 21, 1970,"* the date that the floating rate system and foreign exchange restrictions were instituted under Circular No. 289 of the same date.

The customs authorities clearly acted then within their authority and mandate under Section 1207 of the customs code, quoted *supra,*[8] in *"preventing importation"* and entry of the shipment of apples by not allowing its discharge from the carrying vessel. As noted by the Court in the recent case of *Señeres, supra,* "When the goods are challenged as being of prohibited importation and the collector questions the legality of the importation ... the law expressly imposes upon the collector the obligation 'to exercise such jurisdiction in respect thereto as will prevent importation.'" The second alternative granted by the cited Section to the port collector of "securing compliance with all legal requirements" with respect to "articles subject to importation only upon conditions prescribed by law" was patently not available, for under the categorical terms of Circular No. 295 above quoted, no release certificate could be issued for the apples in question and the questioned import could only be "referred to the Central Bank for official transmittal to the Bureau of Customs for appropriate seizure proceedings."

2. The pertinent and applicable provisions of the tariff and customs code quite indubitably prohibit the importation of the apples in question as *"prohibited importations"* since their importation is *"prohibited by law"* under Section 102, while Section 1207, quoted, *supra,*[9] expressly enjoins the port collector *"to exercise such jurisdiction in respect thereto as will prevent importation."* Sections 2301 et seq. make the apples liable to seizure and detention; they may *not be released under bond* since they are *"articles the importation of which is prohibited by law,"* but they may be subjected to forfeiture in the specific appropriate cases provided in Section 2530.

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[8] at page 3.

[9] *Idem.*

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"Sec. 102. *Prohibited Importations.*— The importation into the Philippines of the following articles is prohibited:

x x x x x x x x x x x x

*"All other articles the importation of which is prohibited by law."*

x x x x x x x x x x x x

"Sec. 2301. *Warrant for Detention of Property x x x Bond.*— Upon making any seizure, the Collector shall issue a warrant for the detention of the property; and if the owner or importer desires to secure the release of the property for legitimate use, the Collector may surrender it upon the filing of a sufficient bond, in an amount to be fixed by him, conditioned for the payment of the appraised value of the article and/or any fine, expenses and costs which may be adjudged in the case: *Provided, That articles the importation of which is prohibited by law shall not be released under bond."*

"Sec. 2307 *Settlement of Case by Payment of Fine or Redemption of Forfeited Property.- x x x*

x x x x x x x x x x x x

*"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 law."*

x x x x x x x x x x x x

"Sec. 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.* Any vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:

"x x x x x x x x x x x x

"f. *Any article of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law,* and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former.

"x x x x x x x x x x x x

"m. Any article sought to be imported or exported:

"(1) *Without going through a customhouse,* whether the act was consummated, frustrated or attempted;

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"(2) By failure to mention to a customs official, articles found in the baggage of a person arriving from abroad.

"(3) *On the strength of a false declaration or affidavit* executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.

"(4) *On the strength of a false invoice or other document* executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.

"(5) *Through any other fraudulent practice or device* by means of which such article was entered through a customhouse to the prejudice of the government."

Section 3514, defining the words and phrases used in the code, further expressly declares that "*'tariff and customs law' includes not only the provisions of this Code and regulations pursuant thereto but all other laws and regulations which are subject to enforcement by the Bureau of Customs or otherwise within its jurisdiction.*"

Accordingly, for the administrative information and guidance of all customs personnel, Customs Administrative Order No. 19-70 dated October 20, 1970 was issued by the then acting commissioner of customs and duly approved by the Secretary of Finance, as follows:

"Pursuant to Section 608 of the Tariff and Customs Code in relation to Section 2307 of the same Code and in order to give force and effect to Central Bank Circular No. 289, *all importations seized and forfeited for violation of Central Bank Circulars shall not be allowed to be released under bond, either surety or cash, nor allowed to be redeemed.*

"All previous orders inconsistent with or contrary to the foregoing are hereby superseded and/or revoked.

"This Order shall take effect upon approval by the Secretary of Finance.

"(SGD.) ALFREDO PIO DE RODA, JR.
"Acting Commissioner of Customs

"APPROVED:

"(SGD.) CESAR VIRATA
"Secretary of Finance"

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3. The tax court, however, erroneously justified its decision overruling the commissioner's denial of importation of the apples and instead ordering their release under bond in this wise:

"x x x 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 1207, 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. 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.

"x x x x x x x x x

"Executive Order No. 282 is proof enough 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."

(a) The tax court's first stated ground that the importation of fresh apples was "not absolutely prohibited" under the Central Bank circulars and that therefore the apples could not be deemed "articles of prohibited importation" as envisaged by Section 102 of the tariff and customs code has been long rejected by the settled doctrine and jurisprudence of the Court. The contention that to be deemed articles of prohibited importation, the questioned articles must partake of the same nature as those specifically declared prohibited in said Section 102 (formerly Section 3 of the Philippine Tariff Act of 1909) such as explosives, etc. was

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discarded by the Court in the *1959 case of Tong Tèk vs. Commissioner of Customs:*[10]

"Petitioners alleged that the term 'merchandise of prohibited exportation' used in Section1363-(f) of the Revised Administrative Code (now Section 2530-f of the tariff and customs code) has its own fixed and definite meaning; that it refers exclusively to those articles specifically declared prohibited by Section 3 of the Philippine Tariff Act of 1909, such as firearms and explosives, obscene and subversive articles, gambling outfits, falsely marked gold and silver articles, adulterated foods, lottery tickets, opium and opium pipes, and as gold bars do not fall under any of the enumeration, they conclude that the aforementioned codal provision can not be invoked in ordering the forfeiture of the articles in question. We entertain a different view.

"It must be remembered that the Revised Administrative Code is a general legislation. As such, it must have been intended to meet not only the peculiar conditions obtaining at the time of its enactment but also designed to comprehend those that may normally arise after its approval. *To our mind, the term 'merchandise of prohibited exportation' used in the code is broad enough to embrace not only those already declared prohibited at the time of its adoption but also goods, commodities or articles that may be the subject of activities undertaken in violation of subsequent laws. Considering that the Central Bank circulars, issued for the implementation of the law authorizing their issuance although by themselves are not statutes, have the force and effect of law.* (People *vs.* Que Po Lay, 94 Phil., 640; 50 Off. Gaz., No. 10, p. 4850), *the carrying out of transactions or undertakings without complying with the requirements of Circular Nos. 20, 21 and 42 makes these undertakings illegal. And as a natural consequence thereof, the articles involved in such unauthorized ventures become prohibited and, therefore, subject to forefeiture under Section 1363-(f) of the Revised Administrative Code."*

(b) In another 1959 case of *Pascual vs. Commissioner of Customs,*[11] the Court, in upholding the penalty of forfeiture for such importations made without the required Central Bank release certificates, stressed that "since the importations in question were made without the necessary import license issued by the

[10] 105 Phil. 1071, 1076-77 (June 30,1959); note in parentheses and italics furnished.

[11] 105 Phil. 1039, 1947.

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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 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 and subject all transactions in gold and 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 a crisis." The Court emphasized therein that "every import of goods or merchandise requires an immediate or future demand for foreign exchange" and that the Central Bank circulars in question requiring its permit and release certificates for so-called "no-dollar" imports were "measures taken to check the unregulated flow of foreign exchange from the country and are within the powers of the Monetary Board."

(c) Numerous cases thereafter have elevated the Court's initial 1959 rulings to settled doctrine. Thus, ten years later, in the 1969 case of *Sare vs. Commissioner of Customs*,[12] the Court, through the Chief Justice, declared that "it is now well settled that goods imported without the release certificates required in Circulars Nos. 44 and 45 are 'merchandise of prohibited importation' as this expression is used in said Section No. 1363

[12] 28 SCRA 715, (June 30, 1969), citing Commissioner *vs.* Eastern Sea Trading (L-14279, Oct. 31, 1961); Com. *vs.* Santos (L-11911, March 30, 1962); Com. *vs.* Nepomuceno, (L-11126, March 31, 1962); Pascual *vs.* Com. of Customs, (L-12219, April 25, 1961); Serree Investment Co. *vs.* Com. of Customs (L-19564, Nov. 28, 1964); Serree Investment Co. *vs.* Com. of Customs (L-21217, Nov. 29, 1965); Lazaro *vs.* Com. of Customs (L22511 & 22513, May 16, 1966); Sare *vs.* Aseron, L-22380, Aug. 15, 1967; Felipe Yupangco & Sons, Inc. *vs.* Commissioner of Customs, L-22259, Jan. 19, 1966; Bombay Dept. Store *vs.* Com. of Customs, L-20460, Sept. 30, 1965; Bombay Dept. Store *vs.* Com. of Customs,L-20489, June 22, 1965; and Litton & Co., Inc. *vs.* Com. of Customs, L-22516, August 17, 1967.

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(f)"[13] Similarly, in another 1969 case of *Sare Enterprises vs. Commissioner of Customs*,[14] the Court, per Mr. Justice Castro, in reiterating the same doctrine, noted that "the ruling in *Capulong*[15] has been reiterated and reaffirmed in numerous decisions of this Court[16] and it is now too late in the day to suggest that it should be reexamined which of course the petitioner does not do."

4. The tax court thus failed to take note that articles of prohibited importation under Section 102 of the code are of two categories, *viz*, those which are *absolutely prohibited or more commonly known as contraband*, such as explosives or prohibited drugs, and other articles which are considered *qualifiedly prohibited* referring to those which may be imported subject to certain restrictions or limitations. But as has been observed, the legal effects of an unauthorized importation of *qualifiedly prohibited* articles are the same as those of an importation of *contraband:* "an article imported or attempted to be imported in violation of regulations of the Central Bank is considered an article of prohibited importation and is subject to forfeiture in like manner as an article the importation of which is absolutely prohibited under Section102 of the Tariff & Customs Code."[17]

None of the above-cited pertinent provisions of the tariff and customs code requires that the questioned importation be of articles of *absolutely prohibited* importation for the customs authorities to prevent their entry or importation or enforce their seizure and forfeiture.

[13] Referring to the Revised Administrative Code, now superseded by the identical provisions of Section 2530 of the tariff and customs code.

[14] 29 SCRA 112 (August 28, 1969).

[15] Capulong *vs.* Aseron, 17 SCRA 11 (May 14, 1966).

[16] Citing De la Cruz *vs.* Court of Tax Appeals, L-23335 & L-23452, Feb. 29, 1968, 22 SCRA 886; De la Cruz *v.* Court of Tax Appeals, L-23334 & L-23451, Feb. 29, 1968, 22 SCRA 891; Capulong *v.* Acting Comm'r, L-22991, Jan. 16, 1968; 22 SCRA 32, citing other cases; Leuterio *v.* Com. of Customs, L-21800, June 22, 1968; 23 SCRA 1055; Lazaro *v.* Commissioner of Customs, L-22511 & 22343, May 16, 1966, 17 SCRA 36; see also Papa *v.* Mago, L-27360, Feb. 28, 1968, 22 SCRA 857.

[17] Umali's 1971 Ed. Reviewer on Taxation, p. 441.

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Indeed, it will be noted that even as to articles of *absolutely prohibited* importation under Section 102 of the code, e.g. explosives or prohibited drugs, their limited importation is nevertheless permitted "when authorized by law" in the case of dynamite and other explosives, and by duly authorized persons "for medicinal purposes only" in the case of prohibited drugs. The granting of limited importation of such absolutely prohibited articles in the "exceptional circumstances" authorized by law (to use the tax court's own phrase) no more nullifies the standing prohibition against their importation than the release on December 1, 1970, cited by the tax court, of a small shipment of 100 cartons of fresh apples with a dollar value of $897.50 and a total weight of 2,087 kilos)[18] to the Savoy Philippines Hotel would serve to annul the Central Bank's subsisting ban against such so-called "no-dollar" imports; neither may it be used as a lever to allow the release under bond of the present enormous shipment of 37,042 cartons of apples.

5. The President's Executive Order No. 282, dated January 4, 1971, increasing the tariff duty on apples, as cited in the tax court's decision, does not serve in law to bring down the barrier against the importation of fresh apples as "no-dollar" imports under Circular No. 295. It is obvious that the increased tariff duty thereby imposed on fresh apples would be applicable and collectible only on lawful and valid importations thereof duly made in accordance with law, more specifically, after full compliance with Central Bank requirements. In this regard, the Court has taken note that it is stated in the pertinent Central Bank circulars that "no-dollar imports not covered by Circular No. 247, shall not be issued any release certificates" (per Circular No. 295, quoted supra.)[19] Yet, respondent takes the Central Bank to task for having in some instances disregarded its own circulars by granting "prior specific approvals" for banned "no dollar imports" or by issuing release certificates therefor as exceptions for "favored parties," as in the Savoy Hotel importation of fresh apples. The clearance granted Savoy Hotel for the small shipment

[18] CTA Record, pp. 75-79.

[19] At page 8.

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of fresh apples may be readily justifiable as one having been given to a tourist hotel as a dollar earner catering to the country's tourist industry. But it might perhaps be desirable that the Central Bank spell out such exceptions and the cases where it will grant "prior specific approvals" as against the standing prohibition for the guidance of all concerned, so that it may not be charged with acting arbitrarily and without any definite set of rules and guidelines that assures equal treatment and equal application of its circulars to all.

6. Respondent importer in its answer at bar contends that since its contract with the Hongkong supplier for the importation of fresh apples was entered into since *March 26, 1969,* when Central Bank Circulars 289, 294 and 295 had not yet been issued (the earliest thereof instituting the floating rate system having been issued and taken effect on February 21, 1970), that the alleged shipment thereof which arrived at Manila *one year and seven months later on December 22, 1970* should not be deemed covered by the Central Bank ban. The tax court gave no credit to this contention, since the contract presented covering assorted goods and foodstuffs with a total value of US $2,288,977.00 called by its own terms for payment "by letters of credit from the Philippines of from other countries" and provided a "life or term of contract" of "*six months period after signing of this agreement" on May 22, 1969, within which* the importer had to order the commodities and the supplier had to have the goods ordered available.[20] Clearly, the term of the alleged contract of *May 26, 1969* had expired seven months thereafter by the end of the year 1969.

7. The tax court in fact rejected the importer's contention and ruled that while the apples "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," ordering in the meantime the release of the fruits to the importer under bond in view of their "perishable nature."

[20] Exhibit A, Record, pp. 64-68.

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The tax court, however, incurred itself in contradiction in that under our settled doctrine and jurisprudence, *supra*, goods imported without the corresponding release certificates required by Central Bank circulars are "articles of prohibited importation" as the term is used in Section 2530-f of the Customs Code (formerly Section1363-f of the Revised Administrative Code), which subjects them to *forfeiture*. No Central Bank permit or release certificate could be issued for the apples by virtue of the express ban against them in Circular 295.[21] Hence, they fell under the *explicit prohibition* in the proviso of the very Section cited by the tax court, *viz*, Section 2301, *"that articles the importation of which is prohibited by law shall not be released under bond."*[22]

8. The tax court had noted at the beginning of its decision that the customs authorities had opted to act under the authority of Section1207 and *prevent the entry or importation of the shipment of apples by refusing to allow its discharge from the carrying vessel*, thus abandoning in effect the seizure proceedings started previously by the issuance of warrants of seizure and detention.[23] Respondent importer however did not take advantage thereof and instead insisted on effecting entry and importation and on the unloading, storage and release under bond of the fruits pending these proceedings. If the apples have deteriorated in storage, the importer has only itself to fault for its wrongful insistence on the entry and release of the shipment, notwithstanding its being prohibited and contrary to law.

9. The case at bar presents a timely occasion for the Court to clear certain past misconceptions and fallacies in regard to the release under bond of seized or detained properties, "conditioned for the payment of the appraised value of the article and/or any

[21] *Supra*, page 8.

[22] *Supra*, at page 9.

[23] *Supra*, at page 3. *See* General Travel Service, Ltd. *vs.* David, 18 SCRA 59 (Sept. 23, 1966), per Makalintal, *J.* recognizing the customs collector's broad authority and discretion in the exercise of the powers and functions vested by law in the Customs Bureau to prevent smuggling.

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fine, expenses and costs which may be adjudged in the case," as provided in Section 2301 of the code.[24]

The first two functions of the customs bureau are "a. *the assessment and collection of the lawful revenues from imported articles* and all other dues, fees, charges, fines and penalties accruing under the tariff and customs laws" *and* "b. *the prevention and suppression of smuggling and other frauds upon the customs.*"[25]

The lawful revenues are to be assessed and collected upon articles properly and lawfully imported into the Philippines. "Where articles are of prohibited importation," Section 1207 of the code imposes the primary duty upon the collector "to exercise such jurisdiction in respect thereto as will *prevent importation.*" *Articles of prohibited importation,* which cover not only *contraband or absolutely prohibited articles* but also *qualifiedly prohibited* articles which are sought to be imported, more precisely smuggled, in violation of Central Bank circulars, *supra,* are expressly made *subject to seizure and forfeiture* under Section 2530-f and Section 2301 expressly enjoins that *"articles the importation of which is prohibited by law shall not be released under bond."*

It is utterly fallacious, therefore, when such banned goods are nevertheless sought to be imported in violation of law, to assume that it is to the interest of the Government, where the goods are perishable, to release them to the importer under bond to secure payment of the appraised value thereof in case they are finally declared forfeited in favor of the Government.

For the code expressly prohibits the release under bond of such articles of prohibited importation. The Government expects no revenue from such banned articles, since they are not allowed to be imported. Otherwise, the law's prohibition would be rendered totally nugatory, since such banned articles, which are mostly luxury items, are in great demand and command sky-high prices

[24] Quoted *supra* at page 9.

[25] Section 602, Rep. Act 1937; *see* General Travel Service, Ltd. *vs.* David, *supra*, fn. 23.

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assuring great profit to the smuggler. The smuggler would have the greatest profit motive to wreak havoc upon our currency by purchasing dollars at the highest black market rates to purchase and bring in these high-profit luxury items. Should he succeed in smuggling them in, his venture is a complete success. If he is caught, then all he has to do is put up a bond for the release of the goods "to secure payment of the appraised value thereof" to the Government, and he can still realize a substantial profit from the sale of the banned goods thus released to him. All the measures designed by the Central Bank to strengthen and stabilize our peso and to check the unregulated flow of foreign exchange from the country with the ultimate end of setting aright the country's economy and financial position would thereby be set at naught.

10. The Government's finance secretary and customs authorities appear to have realized the deleterious consequences of the hitherto ambivalent attitude of customs officials in permitting release under bond of banned articles contrary to the express prohibition of Section 2301, when they issued Customs Administrative Order No. 19-70 dated October 20, 1970, *supra*, declaring that *"all importations seized and forfeited for violation of Central Bank circulars shall not be allowed to be released under bond, either surety or cash, nor allowed to be redeemed."* Such an outright ban on release of seized goods in accordance with the law's mandate further removes occasion and opportunity for corruption of customs officials in seeking the exercise of their "discretion" in granting exceptions and authorizing release of banned articles to favored parties.

Respondent importer's petition before the tax court was filed to seek judgment "sustaining [the importer's] right to the discharge of its importation from the carrying vessel and its release under bond to it and declaring Customs Administrative Order No. 19-70 null and void" as an alleged unauthorized and arbitrary modification or amendment of the provisions of Section 2301 of the tariff and customs code. As already shown above, the said administrative order is merely an administrative reiteration of the express prohibition of the cited Section against the release under

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bond of prohibited articles seized and held for forfeiture by the customs authorities. The tax court of course made no pronouncement of alleged nullity of the said administrative order, the validity of which cannot be gainsaid, under the ruling of *Romualdez vs. Arca*,[26] wherein in upholding the memorandum therein issued by the finance secretary to guide customs appraisers in appraising the value of imported remnants, the Court held that: "since the memorandum is neither a law (statute), nor an implementation of a law authorizing its issuance, and does not prescribe any penalty for its violation, publication thereof is not necessary."

ACCORDINGLY, judgment is hereby rendered annulling and setting aside the decision dated April 23, 1971 and the resolution dated May 3, 1971 of the Court of Tax Appeals. The decision of petitioner commissioner of customs appealed from by private respondent is instead affirmed and the petition of said respondent in the lower court is dismissed, with costs in both instances against said respondent.

*Concepcion, C.J., Reyes, J.B.L., Zaldivar, Ruiz Castro, Fernando, Barredo, Villamor,* and *Makasiar, JJ.*, concur.

*Dizon* and *Makalintal, JJ.*, reserve their votes.

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**[Adm. Case No. 115. August 31, 1971]**

**EDUARDO R. SANTOS, *complainant, vs.* HON. UNION KAYANAN and MELITON ANGELES, *respondents.***

**SYLLABUS**

**JUDICIAL AND LEGAL ETHICS; ADMINISTRATIVE COMPLAINT AGAINST A JUDGE AND A FISCAL; RESPONDENTS ADMONISHED TO BE MORE CAREFUL**

[26] 27 SCRA 828 (April. 18, 1969).