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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CAMPOS RUEDA CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2829

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

7/28/80

D E C I S I O N

Petition to review the decision of respondent Commissioner of Customs in Customs Case No. 76-35-A dated July 30, 1976 affirming that of the Collector of Customs of Manila in Manila Protest No. 9273 dismissing the protest filed by petitioner Campos Rueda Corporation against the assessment and collection of additional customs duty and advance sales tax on its shipment of 46 cartons of Tungsol Products (ordinary flasher) under Entry No. 26876.

The facts are not disputed. As alleged by petitioner in its petition for review and admitted by respondent in his answer:

1. Petitioner, a corporation duly formed and existing under the laws of the Republic of the Philippines with principal place of business and office at No. 22 N. Domingo Street, Quezon City, ordered on July 6, 1973 from E.B. Schwinger & Co. of Los Angeles, California, U.S.A., through E.B. Schwinger Philippines, electrical lighting and signalling parts (Tungsol Products) amounting

to $18,949.00 as evidenced by the firm offer (Purchase Order) No. F-73893 dated July 6, 1973. (par. III-1, Petition; par. 1, Answer.)

2. E.B. Schwinger & Co. finally sold to petitioner the aforedescribed electrical lighting and signalling parts (flashers Tungsol Products) for $18,200.10 as evidenced by E.B. Schwinger & Co. Invoice No. 42287 and Consular Invoice of Merchandise No. NY 65675 E. (par. III-2, Petition; par. 1, Answer.)

3. That on February 8, 1974, petitioner filed with the Collector of Customs of Manila a request for value information (No. 9750) for the declaration of the above-imported goods under Tariff Heading No. 85.09 of the Tariff and Customs Code at 30% ad valorem duty for classification purposes. The above imported goods, however, were re-classified under Tariff Heading No. 85.19 of the Tariff and Customs Code at 50% ad valorem. (par. III-3, Petition; par. 1, Answer.)

4. The aforementioned imported goods arrived at the port of Manila via S/S "Luna Maersk" on February 12, 1974 under Bill of Lading No. CFS-9, for which petitioner immediately filed Customs Import Entry and Internal Revenue Declaration No. 0103185 under Entry No. 26867 under Tariff Heading No. 85.19 of the Tariff and Customs Code at 50% ad valorem, under protest. (par. III-4, Petition; par. 1, Answer.)

5. That on March 26, 1974, petitioner paid the duties and taxes on the above imported goods in the sum of ₱134,377.00 under protest as evidenced by Customs Order of Payment No. 296146 and Central Bank Official Receipt No. 287246 dated March 26, 1974. (par. III-5, Petition; par. 1, Answer.)

6. That on April 4, 1974, petitioner filed a timely protest against the aforementioned re-classification under Tariff Heading No. 85.19 at 50% ad valorem instead of Tariff Heading No. 85.09 at 30% ad valorem resulting in the payment of additional customs duty of ₱26,258.00 and advance sales tax of ₱2,297.00 or a total difference of ₱28,555.00 and prayed for the refund of the said difference. (par. III-6, Petition; par. 1, Answer.)

7. The Collector of Customs of Manila in a decision dated October 18, 1974 rendered a decision dismissing petitioner's protest. (par. III-7, Petition; pars. 1 & 2, Answer.)

8. Petitioner appealed the above decision to the Commissioner of Customs, who, on July 30, 1976 rendered a decision affirming that of the Collector of Customs of Manila, and which decision is now the subject of this present petition. (par. III-8, Petition; par. 1, Answer.)

The parties are not in dispute on the computations of customs duties and taxes payable by, or amount refundable to, petitioner as the case maybe.

The only issue for resolution is the correct tariff classification of the imported Tungsol Products (27,000 pieces of flashers); that is, whether they should fall under Tariff Heading No. 85.09 at 30% ad valorem or under Tariff Heading No. 85.19 at 50% ad valorem, both of the Tariff and Customs Code.

Under Chapter 85 - ELECTRICAL MACHINERY AND EQUIPMENT; PARTS THEREOF - of the Tariff and Customs Code, Tariff Heading No. 85.09 states:

> 85.09 Electrical lighting and signalling equipment and electrical windscreen wipers, defrosters and demisters, for cycles or motor vehicles--- ad val. 30%

while Tariff Heading No. 85.19 provides:

> 85.19 Electrical apparatus for making and breaking electrical circuits, for the protection of electrical circuits, or for making connections to or in electric circuits (for example, switches, relays, fuses, lighting arresters, surge suppressors, plugs, lampholders, and junction boxes); resistors, fixed or variable (including potentiometers), other than heating resistors; printed circuits; switchboards (other than telephone switchboards) and control panels:
>
> A. Component parts of magnetic starters and circuit breakers imported with prior authorization of the Board of Investments under a progressive manufacturing program .... ad val. 10%
>
> B. Other .... ad val. 50%

Quoting Section 203, Rule 3(a) of the Tariff and Customs Code, which reads:

> SEC. 203. General Rules of Classification.- The interpretation and application of the provisions of this Code relating to the classification of articles imported into the Philippines shall be governed by the following principles:
>
> xxx xxx xxx xxx xxx
>
> Rule 3. When articles are prima facie, classifiable under two or more headings or subheadings, or imported in sets consisting of several articles, classification shall be effected as follows:
>
> (a) The heading or subheading which provides the most specific description shall be preferred to any other heading or subheading providing a more general description.
>
> xxx xxx xxx xxx xxx

petitioner submits that Tariff Heading No. 85.09, which states "Electrical lighting and signalling equipment x x x x x <u>for motor vehicles</u>", provides a more specific description than Tariff Heading No. 85.19. Furthermore, the Explanatory Notes to the Brussels Nomenclature states:

> "This heading (85.09) covers electrical apparatus and appliances specialized for use on cycles or <u>motor vehicles</u> for lighting or signalling purposes."

and the items which petitioner imported (Tungsol Flashers) are electrical apparatus used on motor vehicles for signalling purposes, that is, to signal a right or left hand turn by means of electrical flashes in front and at the rear of motor vehicles.

Likewise, according to petitioner, the Explanatory Notes to the Brussels Nomenclature under Tariff Heading No. 85.09 states that it includes, among others, direction indication lights and parts thereof. Since the Tungsol Flashers it imported are parts of the direction indication light set or system and signalling equipment, petitioner asserts that the items should fall under Tariff Heading No. 85.09.

Respondent, on the other hand, alleges as affirmative defense in his answer that:

> 5. That flashers, when imported by themselves, fall squarely within the context of Customs Tariff Circular No. 26-74 which specifically classify "flashers" under Tariff Paragraph 85.19, the pertinent portion of which is hereby quoted as follows:
>
> > "For being imported alone subject article (Flashers) can not be properly deemed as electrical signal equipment for motor vehicle but should be treated more as a device for closing or opening on electrical circuit."
> >
> > Tariff Par. No. 85-19 - "Electrical apparatus for making and breaking electrical circuits x x x - ad valorem - 50%
>
> 6. That from the clear language of the above provision of law, the item "flashers", if imported alone, can not be classified under Tariff Heading 85.09 at 30% ad valorem but must fall under Tariff Heading 85.19 at 50% ad valorem;

The general purpose for which an article is used must govern the assessment of duty; any other rule would lead to confusion and injustice. It is the general use to which articles are chiefly adapted and for which they are chiefly used that determine their character within the meaning of the tariff laws. It is the predominating use to which articles are generally applied or used that determines their character for the purpose of fixing the duty, and not the specific or special use which any particular importer may make of the articles imported. (La Compaña General de Tabacos de Filipinas vs. United States, 8 Phil. 438; citing Hartranft vs. Langfeld, 125 U.S. 128; See also, Chester Industries, Inc. vs. Commissioner of Customs, CTA Case No. 2560, May 9, 1974; Domingo S. Jose, Inc. vs. Commissioner of Customs, CTA Case No. 2568, May 6, 1977; National Dental Supply, Inc. vs. Commissioner of Customs, CTA Case No. 2757, May 16, 1979.)

Here in the case at bar, the evidence adduced by petitioner, both oral and documentary, and the records of the Bureau of Customs pertaining to this case on the basis of which respondent submitted this case for decision, definitely establish the fact that the general purpose or predominating use to which the Tungsol Products (flashers) are applied or employed, and for which petitioner imported them, is precisely as electrical equipment for signalling purposes for motor vehicles; that is, to signal or indicate a right or left hand turn by means of electrical flashes in front and at the rear of motor vehicles. The import entry and internal revenue declaration of the shipment (p. 10, Customs records; Exh. "F", pp. 16-17, CTA records); consular invoice of merchandise NY 65075 E (pp. 12-13, Customs records; Exh. "D", p. 14, CTA records); bill of lading (p. 16, Customs records); commercial invoice of merchandise issued by E.B. Schwinger & Company (p. 18, Customs records; Exh. "C", p. 13, CTA records); Prudential Bank & Trust Company's advice of letter of credit (p. 19, Customs records); E.B. Schwinger Philippines firm order (p. 20, Customs records; Exh. "B", p. 11, CTA records); order of payment dated March 2, 1974 issued by the Bureau of Customs (p. 22, Customs records; Exh. "G", p. 18, CTA records); and Central Bank Official Receipt No. 287240 dated March 26, 1974 (p. 23, Customs records; Exh. "H", p. 18, CTA records), all show that the Tungsol Products (flashers) are electrical lighting and signalling parts; and petitioner imported them as electrical apparatus to be used on motor vehicles for signalling purposes, to signal a right or left turn by means of electrical flashes in front and at the rear of motor vehicles. (pp. 24-26, Customs records.) This is confirmed and corroborated by the testimony of petitioner's purchasing manager and the brochure (or literature) of the Tungsol Product issued by the manufacturer, Wagner Electric Corporation, 1 Summer Avenue, Newark, New Jersey, U.S.A., describing the uses - FOR AUTOMOTIVE DIRECTION SIGNALS-HAZARD WARNING CONDITION ALERT AND ACCESSORY APPLICATIONS - and operating principles, performance characteristics, manufacturing standards, mechanical specifications, application specifications and effect of circuit conditions, which are all indicative of its use and adaptability as electrical lighting and signalling apparatus for motor vehicles. Absolutely no proof whatsoever was presented by respondent to controvert or dispute the evidence adduced by petitioner that the Tungsol flashers in question are electrical apparatus for use on motor vehicles for lighting or signalling purposes.

Since it is the general purpose or predominating use for which or to which imported articles are adapted or applied that governs the assessment of duty (La Compaña General de Tabacos de Filipinas vs. United States, supra), there seems to be no doubt that the Tungsol flashers should fall under Tariff Heading No. 85.09 at 30% ad valorem, which explicitly includes electrical lighting and signalling equipment for motor vehicles. The Explanatory Notes to the Brussels Nomenclature, upon which our Tariff Law is based, states under Tariff Heading No. 85.09 that: "This heading covers electrical apparatus and appliances specialised for use on cycles or motor vehicles for lighting or signalling purposes." The heading also includes, inter alia, "braking lights, direction indication lights, reversing lamps and the like." (pp. 1672-1673, Tejam, Montano, Commentaries of the Revised Tariff and Customs Code of the Philippines, Vol. III, 1973 Edition.).

Worthwhile noting is the fact that the importations made by petitioner of the same Tungsol flashers in 1972 and 1973 were classified and assessed of customs duties by the Bureau of Customs under Tariff Heading No. 85.09 at 10% and 30% ad valorem, respectively. (Exhs. L, L-1 to L-8; M, M-1 to M-8; N, N-1 to N-8; and O, O-1 to O-6.). A portion of the testimony of petitioner's witness, Mr. Daniel P. Inciong, in his capacity as manager, purchasing department of the Campos Rueda Corporation, on cross examination by Solicitor Kilayco, counsel for respondent, together with the shipping documents of the previous importations marked as Exhibits L, L-1 to L-8; M, M-1 to M-8; N, N-1 to N-8; and O, O-1 to O-6, sufficiently established this fact. To quote: (t.s.n., pp. 34-36, hearing on November 27, 1978.).

Q Mr. Inciong, you said that previous importations of the petitioner of Flashers were classified by the Bureau of Customs under Tariff Heading 85.09?

A Yes.

Q Do you have any document to show that the Bureau of Customs classified your previous importations of Flashers under Tariff Heading 85.09?

A Right now, I don't have the documents but if required, I can submit.

SOLICITOR KILAYCO

No further questions, Your Honor.

JUDGE FILLER

Re-direct?

ATTY. SANTOS

If Your Honor please - I have no re-direct examination but may I reserve for the presentation of the documents showing that the previous importations of the corporation were assessed under Tariff Heading 85.09?

JUDGE FILLER

When have you been importing this Tung-sol Flasher from the United States?

A I don't have the exact date, Your Honor, but I suppose even before I started as Purchasing Manager in 1970.

JUDGE FILLER

And at that time these articles were classified at 30% ad valorem?

A Correct, Your Honor.

JUDGE FILLER

Since when did the Bureau of Customs begin imposing at 50% these Flashers?

A I think, since 1973.

JUDGE FILLER

So that, previous to that, your importations of these Flashers had always been classified under Tariff Heading 85.09 at 30% ad valorem?

A Yes, Your Honor.

While, as stated earlier, respondent admitted in his answer (paragraph 1) that the imported Tungsol

Products are electrical lighting and signalling parts, he however avers as affirmative defense (in his answer) that "for being imported alone subject article (flashers) can not be properly deemed as electrical signal equipment for motor vehicles but should be treated more as a device for closing or opening on electrical circuit" classified as "electrical apparatus for making and breaking electrical circuits" under Tariff Heading No. 85.19 at 50% ad valorem. Flashers, if imported alone, can not therefore be classified under Tariff Heading No. 85.09 at 30% ad valorem, according to respondent, but must fall under Tariff Heading No. 85.19 at 50% ad valorem.

Undoubtedly, respondent admits that the Tungsol flashers in question are "electrical lighting and signalling equipment for motor vehicles" falling under Tariff Heading No. 85.09 at 30% ad valorem. However, if imported alone, following respondent's theory to its logical conclusion, that would change the nature and use of the Tungsol flashers from "electrical lighting and signalling equipment for motor vehicles" into "electrical apparatus for making and breaking electrical circuits" under Tariff Heading No. 85.19.

The Tariff Law employs the words "electrical lighting and signalling equipment x x x x x x x for motor vehicles" - without more, and respondent admits that the Tungsol flashers in question are electrical lighting and signalling equipment for motor vehicles. Nothing there speaks of "for being imported alone", an article falling under Tariff Heading No. 85.09 as electrical apparatus for use on motor vehicles for lighting and signalling purposes shall be treated as a device for making and breaking electrical circuits under Tariff Heading No. 85.19. Where the law does not provide that an article imported for electrical lighting and signalling equipment for motor vehicles falling under Tariff Heading No. 85.09, if imported alone, shall be classified under Tariff Heading No. 85.19 as "electrical apparatus for making and breaking electrical circuits," that provision should not be read into the law. The law is clear and our plain duty is to apply the law as it is written. We are not to include within, or qualify, the classification of subjects to be taxed anything which is not clearly intended by the law to be so included or qualified. Revenue laws should never be extended by implication beyond the clear import of the language used. (Kuttner vs. Collector, 18 Phil. 461; Stevedoring vs. Trinidad, 439 Phil. 803.)

But we look in retrospect at the criterion laid down by the Supreme Court in determining the tariff classification of imported articles for purposes of the assessment of duties. As stated earlier, in Compañia General de Tabacos de Filipinas, it is the general purpose or predominating use to which articles are generally applied or used that determines their character for the purpose of fixing the duty. And we have already explained above that the uncontroverted evidence presented by petitioner sufficiently established the fact that the Tungsol flashers in question are to be applied or used on motor vehicles for signalling purposes; that is, to indicate a right turn or left turn by means of electrical flashes in front and at the rear of motor vehicles. It thus results that such Tungsol flashers were not imported for making and breaking electrical circuits but for electrical signal purposes for motor vehicles. And it can not be said that the determinative test is lacking simply because the subject article forms part of a signalling equipment of motor vehicles because the pertinent Explanatory Notes to the Brussels Nomenclature upon which our Tariff Law was based explicitly states under Tariff Heading No. 85.09 that "parts of the goods of the present heading are also classified here." (p. 1674, Tejam, M., Commentaries on the Revised Tariff and Customs Code of the Philippines, Vol. III, 1973 Edition.)

In line with the foregoing, we are therefore of the opinion and so hold that the protest of petitioner against the assessment and collection of additional customs duty and advance sales tax on its shipment of

46 cartons of Tungsol Products (flashers) under Entry No. 26876 in the amounts of ₱26,258.00 and ₱2,297.00, respectively, together with its related claim for refund thereof, is meritorious. However, with regard to the advance sales tax of ₱2,297.00, the same can not be refunded in view of the fact that nothing in the records shows that petitioner had filed its written claim for refund thereof with the Commissioner of Internal Revenue and that the latter was made a party to this case. Without satisfying these jurisdictional requirements, which in the instant case are lacking, the same is fatal to the claim of petitioner for the refund of the advance sales tax. (Wise & Company vs. Commissioner of Customs, CTA Case No. 2717, December 29, 1977, see also resolution dated January 15, 1979, certiorari denied in G.R. No. L-51242, March 7, 1980; National Dental Supply Incorporated vs. Commissioner of Customs, CTA Case No. 2826, June 30, 1980.) Accordingly, only the additional customs duty in the amount of ₱26,258.00 is refundable to petitioner Campos Rueda Corporation.

WHEREFORE, the decision appealed from is modified. Respondent Commissioner of Customs is hereby ordered to refund to petitioner the sum of ₱26,258.00. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, July 28, 1980.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge