DOMINGO S. JOSE, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2568

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 dated October 30, 1973 in Customs Case No. 73-132 (Manila Protest No. 8751) affirming that of the Collector of Customs, Port of Manila, denying the protest filed by petitioner Domingo S. Jose, Inc., against the assessment and collection of additional customs duty and taxes arising from an alleged erroneous classification of a shipment of six (6) reels of P.C. (Pre-Stressed Concrete) Strand Wire.

The facts are not disputed. A "Partial Stipulation of Facts" was submitted by the parties as follows:

I

That the petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 192 Vicente G. Cruz St., Sampaloc, Manila; that the respondent is the Commissioner of Customs of the Republic of the Philippines duly appointed and acting as such, with office at the Bureau of Customs, Manila;

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II

That the petitioner is engaged, among others, in the manufacture of prestressed concrete, and in the course of its operation, imported six reels of P.C. Strand Wire, Type ASTM A 416-68T, size Type 250K valued at Twenty One Thousand Nine Hundred Eighty Six Pesos (₱21,986.00) to be used in the manufacture of prestressed concrete;

III

That the wires arrived last August 11, 1973, at the Port of Manila, aboard the S/S "Eastern Saturn" under Entry No. 17828, Reg. No. 401, Series of 1973;

IV

That the Collector of Customs, Port of Manila, collected customs duties and taxes on said wires in the amount of Nine Thousand and Three Hundred Sixty Three Pesos (₱9,363.00), based on Tariff Heading No. 73.25 at 30% ad valorem as prescribed by said Manila Collector; xerox copy of the Order of Payment and Receipt is attached and made integral part hereof as Annex "A";

V

That the petitioner protested the classification of the wires, as prescribed by the Manila Collector, under Tariff Heading 73.25; copy of petitioner's protest is attached and made integral part hereof as Annex "B";

VI

That petitioner's protest, docketed as Manila Protest No. 8751, was dismissed for lack of merit by the Collector of Customs of the Port of Manila, in his Order promulgated on August 1, 1973;

VII

> That within the time prescribed by law, petitioner appealed the Order of the Manila Collector to the Respondent Commissioner of Customs;
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> VIII
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> That the respondent Commissioner of Customs affirmed the Order of the Manila Collector, in his Decision promulgated on October 30, 1973."

On December 5, 1973 petitioner filed its petition for review with this Court praying that judgment be rendered declaring the P.C. Strand Wire subject matter of this appeal be classified under Tariff Heading No. 73.15 at 10% ad valorem and ordering respondent Commissioner of Customs to refund the total amount of ₱4,846.00 to petitioner plus the legal rate of interest from the date of the protested payment until fully paid.

The decisive issue in this case is whether the subject importation of P.C. (Pre-Stressed Concrete) Strand Wire, for purposes of tariff classification, falls under Tariff Heading No. 73.15 at 10% ad valorem as claimed by petitioner or under Tariff Heading No. 73.25, paragraph B, with a rate of 30% ad valorem as decided by respondent. And as a corollary thereto, whether or not the Government is liable to pay interest in case petitioner is entitled to the refund of the amount of ₱4,846.00 it is claiming.

Petitioner did not present a breakdown of its claim for refund in the amount of ₱4,846.00. The records of the case do not also show how respondent computed the amount of ₱6,807.00 which is the 30% ad valorem tax imposed on the 6 reels of P.C. Strand Wire. (See p. 4, Customs rec.) Inasmuch as the parties are not in dispute as to the computations of the customs duty and taxes paid by, or amount refundable to, petitioner as the case may be, for the purpose of this action, we will therefore accept the sum of ₱4,846.00, as claimed by petitioner and not controverted by respondent, to be the refundable amount in the event this Court decides the case in favor of petitioner and finds the latter entitled to the refund claimed by it.

Tariff Heading No. 73.25, including paragraphs A & B, reads as follows:

> 73.25 Stranded wire, cables, cordage, ropes, plaited bands, slings and the like, of iron or steel wire, but excluding insulated electric cables:
>
> A. Locked coil, flattened strands and non-rotating wire ropes . . . . ad val. 10%
>
> B. Other . . . . .ad val. 30%

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As expounded and explained by the Explanatory Notes of the Tariff Heading:

> "The heading covers stranded wire (or wire strand) obtained by closely twisting together two or more single wires, and cable, cordage and ropes of all sizes which are in turn formed by twisting such strands together. Provided they remain essentially articles of iron or steel wire ropes, cables and cordage, may be laid on textile cores (hemp, jute, etc.) or covered with textile, artificial plastic material, etc.
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> "Ropes, cables and cordage are generally round in cross-section, but the heading also includes bands, usually of rectangular section, formed by plaiting single or stranded wires.
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> "The heading includes such ropes, cables, bands, etc., whether or not they are cut to length, or fitted with hooks, spring hooks, swivels, rings, thimbles, clips, sockets, etc. (provided that they do not thereby assume the character of articles falling within other headings), or made up into single or multiple slings, strops, etc.
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> "These goods are used: for hoisting (with cranes, winches, pulleys, lifts, etc.) in mining, quarrying, shipping, etc.; for hauling and towing; as hawsers; as transmission belting; as rigging and guying for masts, pylons, etc.; as fencing strand; as stone sawing strand (usually three-ply stranded wire of special steel), etc.
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> "The heading does not include:
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> (a) Barbed wire, and loosely twisted, non-barbed, double fencing wire ("torsades") (heading 73.26).
>
> (b) Insulated electric cable (heading 85.23(." (Tejan, Montano, Commentaries on the Revised Tariff and Customs Code of the Philippines, 1973 ed., Vol. II, pp. 1214-1215)

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The accent is on the words - "ropes, cables, cordage" - of iron or steel wires. They may be laid on textile, cores or covered with textile or plastic material. They are generally round in cross-section, but included are also bands formed by plaiting single or stranded wires. However these goods, to fall under this tariff heading, should be used: (a) for hoisting (with cranes, winches, pulleys, lifts, etc.) in mining, quarrying, shipping, etc.; (b) for hauling or towing; (c) as hawsers; (d) as transmission belting; (e) as rigging and guying for masts, pylons, etc.; (f) as fencing strand; (g) as stone sawing strand, etc. Accordingly, articles of iron or steel wire which could not be used as ropes, cables and cordage for any of the afore-stated or similar purposes can not be classified under Tariff Heading 73.25, whether under paragraph A or B.

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

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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 Compañia 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).

Now to the case at bar, Here, petitioner, as stipulated by the parties, is engaged, among others, in the manufacture of prestressed concrete, and in the course of its operation, imported six reels of P.C. (Pre-Stressed Concrete) Wire, Type ASTM A 416-68T, size Type 250K valued at Twenty One Thousand Nine Hundred Eighty Six Pesos (₱21, 986.00) to be used in the manufacture of prestressed concrete. (Paragraph II, Partial Stipulation of Facts.) In a nutshell, the imported wires are to be used as steel reinforcing materials in the manufacture of prestressed concrete, but certainly not for hoisting, hauling, belting, rigging, sawing or for any similar purposes. In the light of the ruling laid down by the Supreme Court in the La Compañia General de Tabacos de Filipinas case, *supra*, that it is the predominating use to which articles are 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, it is abundantly clear that the imported six reels of P.C. Strand Wire do not fall under Tariff Heading No. 73.25, whether paragraph A or B.

In classifying the shipment in question under Tariff Heading 73.25, paragraph B, at 30% ad valorem, respondent took into account their description or characteristic. While it is true that the P.C. wires are stranded (Exhibit "B"), they are stiff or hard to bend and do not remain essentially articles of iron or steel ropes, cables and cordage. They cannot be used for hoisting with cranes, winches, pulleys, lifts; or for hauling and towing. Neither can they be used as hawsers; as transmission belts; as rigging and guying for masts, pylons, etc.; as fencing strand; much less as stone sawing strand. To classify therefore the imported P.C. Strand Wire under Tariff Heading No. 73.25 is to force a square peg into a round hole.

The next problem is: If the subject shipment cannot be classified under Tariff Heading No. 73.25, whether under paragraph A or B, does it fall under Tariff Heading 73.15 as claimed by petitioner.

Tariff Heading No. 73.15 reads as follows:

73.15 Alloy steel and high carbon steel in the forms mentioned in heading Nos. 73.06 to 73.14 . . . . ad val. 10%

The Explanatory Notes of the tariff heading states:

"Alloy steel is defined in Chapter Note 1 (d) and high carbon steel in Chapter Note 1 (e).

"This heading covers alloy and high carbon steel in the forms of ingots, blooms, billets, slabs, sheet bars, pieces roughly shaped by forging, coils for re-rolling, universal plates, bars, rods (including wire rod), hollow mining drill steel, angles, shapes, sections, sheet piling, hoop, strip, sheets, plates or wire.

"All these products may be worked provided that they do not thereby assume the character of articles or of products falling within other headings (see Explanatory Notes to headings 73.06/73.14).

"The metals most commonly present in alloy steel are manganese, nickle, chromium, tungsten, molybdenum, vanadium and cobalt; the most common non-metal additive is silicon. These alloying materials confer special properties to the steel, e.g., resistance to shock and wear (e.g., manganese steels); resistance to corrosion (e.g., stainless chrome or nickel-chrome steels); improved electrical qualities (silicon steels); improved tempering qualities (e.g., vanadium steels); or increased cutting speed (e.g., chrome-tungsten steels).

"Alloy steels are used for many purposes requiring special qualities (e.g., durability, great strength or resistance to corrosion), for example, in armaments, tools and cutlery, and machinery.

"High carbon steels have great tensile strength and hardness and are therefore used for springs, cutlery, tools, etc.

> "Certain steels conform to the definitions of both alloy and high carbon steel. These steels may be considered as alloy steel.
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> "Steels not answering to either of the above definitions are classified in the earlier headings of this Chapter." (See Tejam, Montano, Commentaries on the Revised Tariff and Customs Code of the Philippines, 1973 ed., Vol. II, pp. 1200-1201)

The evidence shows that the imported P.C. (Pre-Stressed Concrete) Strand Wires are known for their tensile strength, elongation, straightness of wires, bondability and relaxation loss. When used for reinforcing concrete, their tensile strength and elongation value prevent the occurance of unsightly cracks in large concrete structures. With high carbon steel wires, concrete which abounds in elasticity can be obtained and thus can be subjected to unusual heavy loads, restoring to its original form as soon as the load is removed. And being of high carbon steel wires with special alloy steel containing manganese and silicon, manganese to make it more hard and carbon to make it still harder and resilient, such P.C. Strand Wires are endowed with a tensile strength of 250,000 lbs. per square inch as against the ordinary reinforcing bars which have a tensil strength of only 55,000 lbs. per square inch.

If, as ruled by the Supreme Court in the La Compañia General de Tabacos de Filipinas case, supra, the general purpose for which an article is used must govern the assessment of duty, then there seems to be no doubt that the imported P.C. (Pre-Stressed Concrete) Strand Wires, for purposes of tariff classification, fall under Tariff Heading No. 73.15 at 10% ad valorem. As stated in the Explanatory Notes to this Tariff Heading, supra, alloy steels are used for purposes requiring durability, great strength or resistance; high carbon steels for great tensile strength and hardness; manganese steels for resistance to shock and wear (elasticity); and silicon steels for improved electrical qualities. These are just the essential features of the imported P.C. Strand Wires to be used in the manufacture of prestressed concrete needed in the construction of pillars, slabs, beams of buildings, spans of bridges, telephone poles, water tanks, dams and all other forms of structures. It may be that the imported articles are of strand wires but description, as emphasized by respondent, is not the test but the predominating use to which the articles are applied or used that determines their character for the purpose of fixing the duty.

The conclusion reached is reinforced by Sub-paragraph 2, Notes of Chapter 73- IRON AND STEEL AND ARTICLES THEREOF- of the Tariff and Customs Code, which states that:

> 2. Headings Nos. 73.06 to 73.14 are to be taken not to apply to goods of alloy or high carbon steel (heading No. 73.15).

From this, it seems clear that iron or steel and articles of iron or steel not answering alloy steel and high carbon steel cannot be classified under Tariff Headings Nos. 73.06 to 73.14 because only Tariff Heading No. 73.15 specifies and classifies alloy steel and high carbon steel, the very qualities of the imported P.C. Strand Wires. As a matter of fact, a cursory reading of the articles classified and designated under Chapter 73-Iron and Steel and Articles Thereof- will readily show that nowhere, except under Tariff Heading 73.15, are alloy steel and high carbon steel grouped and specified for purposes of fixing the customs duty. While the shipment in question may appear to be stranded wires, which is the only basis of respondent in classifying it under Tariff Heading No. 73.25, it is expressly and explicitly stated in the Explanatory Notes of 73.15, supra, that this heading (73.15) covers alloy and high carbon steel in the forms, among others, of wire, and the shipment in question are wires only they are stranded. Nonetheless, to classify the imported P.C. Strand Wire, which is relatively new as a method of reinforcing concrete in the Philippines, under Tariff Heading 73.25 merely because it is stranded, in utter disregard of the predominating use to which the article is applied or used as alloy and high carbon steel, would lead to confusion and injustice which are precisely what the Supreme Court sought to avoid when it enunciated the general purpose rule of fixing the customs duty. (See La Compañia General de Tabacos de Filipinas, vs. United States, supra.)

We are, therefore, of the opinion and so hold that the shipment of six (6) reels of P.C. (Pre-Stressed Concrete) Strand Wire should be classified, for the purpose of fixing the customs duty, under Tariff Heading No. 73.15 at 10% ad valorem. It follows that petitioner Domingo S. Jose, Inc. is entitled to the refund of the amount of ₱4,846.00 representing over-paid customs duty, taxes and other fees.

With respect to the corollary issue as to whether or not interest may be awarded against the Government, it is a rule in this jurisdiction that a taxpayer is not entitled to the payment of interest

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on refunds if the collection was not attended with arbitrariness. (Collector vs. Prieto, No. L-11976, September 26, 1961, 3 SCRA 101; Celdran vs. Commissioner of Customs, et al., CTA Case No. 1209, July 15, 1964.)

ACCORDINGLY, the decision appealed from is reversed. Respondent Commissioner of Customs is hereby ordered to refund to petitioner the amount of ₱4,846.00.

SO ORDERED.

Quezon City, May 6, 1977.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

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