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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE LONG DISTANCE
TELEPHONE COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 2139

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

10/23/78

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Customs dated May 6, 1970 (Manila Protest No. 2187) affirming that of the Collector of Customs, Port of Manila, denying the protest filed by petitioner Philippine Long Distance Telephone Company, against the assessment and collection of additional customs duty and taxes arising from an alleged erroneous classification of a shipment of 2 boxes of telephone equipment.

The undisputed facts of this case are stated in the decision appealed from as follows:

1. That on August 20, 1965, a shipment of 2 boxes of telephone equipment consisting of:

   a. safety tool belts
   b. harness snaps
   c. leather pouches
   d. canvass buckets
   e. rubber gloves

   arrived at the Port of Manila from Vancouver, B.C. on board the S/S "ASTRID BAKKE/RANA BAKKE", Reg. No. 1200;

2. That said shipment was declared under Import Entry No. 64232, s. of 1963 and with supporting documents (Consular Inv. No. 103, Bill of Lading V/M-13, Commercial Invoice);

3. That upon examination, the shipment was required to pay additional customs duty in the amount of ₱18,847.00 and Compensating Tax in the amount of ₱1,319.00 evidenced by Official Receipt No. 21918 dated October 21, 1965;

4. That a timely protest has been filed against the imposition of the said additional customs duty and compensating tax;

5. That the subject Protest docketed as Manila Protest No. 2187 was duly heard at the Law Division, Port of Manila whereupon a decision dated June 10, 1966 of the Collector of Customs ensued which is the subject of the present appeal. (Decision, p. 92, Customs rec.)

The decisive issue in this case is whether the articles in question, for purposes of tariff classification, falls under Tariff Heading No. 42.04 at 20% ad valorem as claimed by petitioner or under Tariff Headings Nos. 42.05 and 62.05 at 70% and 60% ad valorem, respectively, as determined by respondent.

Inasmuch as the parties are not in dispute as to the computation of customs duty and taxes paid by or the amount claimed by petitioner as the case may be, we take it that the sum of ₱18,847.00, is the refundable amount in the event this Court decides the case in favor of petitioner.

Tariff Heading No. 42.04 reads as follows:

> 42.04 Articles of leather or of composition Leather of a kind used in machinery or mechanical appliances or for industrial purpose . . . . . . . . ad. val. 20% (See Tejam, Monteno, Commentaries on the Tariff Code of the Philippines, Vol. I, p. 501)

As stated in the above heading, the articles must be of a kind used in machinery or mechanical appliances or for industrial purposes.

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 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; and Domingo S. Jose, Inc. vs. The Commissioner of Customs, CTA Case No. 2566, May 6, 1977).

In classifying the articles in question under Tariff Headings Nos. 42.05 and 62.05, respondent took into account their description or characteristic. It was pointed out that upon examination, the imported articles are as follows:

1. Safety belts, which according to the catalog, are made of "four ply closely woven nylon bonded together and vulcanized in neoprene, and stitched with heavy nylon thread". The breaking strength is 1,000 lbs. and the belt is impervious to elements. The only part made of leather is the five-inch lining on saddle, rolled at the edges. All rivets and burrs are solid copper while dees and buckets are galvanized, drop forged mild steel. It comes complete with tape thong, knife snap and ring for glove pouch. Leather tool pockets can be furnished on order;

2. Harness snap is made of steel;

3. Canvas bucket is made of canvas with 1/4 inch steel ring on top and a bottom of 1/8 inch thick hardened and waterproofed leather. It is equipped with spliced 3/8 inch rope handle with swivel snap inserted for hoisting, suspending, etc.; and

4. Leather pouch has individual pockets for assorted small tools and is designed to hang from the safety waist belt.

It was also underscored that the nylon leather belts and leather pouches invariably used by telephone installer, lineman and cableman while working atop a telephone pole are believed not be articles for the use of the industry but rather they are for use of technical personnel of the telephone company. Hence, the articles in question do not fall within the meaning of "articles of leather x x x for industrial purposes".

The question now is: If the articles in question cannot be classified under Tariff Heading No. 42.04, do they fall under Tariff Heading Nos. 42.05 and 62.05 as determined by respondent.

Tariff Heading No. 42.05 reads as follows:

> 42.05 Other articles of skin, hide, leather or of composition leather . . . . . ad val. 70%

The explanatory note of this heading states:

> "This heading covers all articles of leather or of composition leather, other than those falling within the preceding headings of this Chapter or referred to at the end of this Note as falling elsewhere.
>
> x x x x x
>
> (Tejam, Montano, Commentaries on the Tariff Code of the Philippines, Vol. I, p. 501)

Tariff Heading No. 62.05 reads as follows:

> 62.05 Other made-up textile articles (including dress patterns and footwear without applied soles):
>
> B. Other . . . . . . . . . . . ad val. 60%

The explanatory note of this heading states:

"This heading covers made up articles of any textile material (other than felt, bonded fiber fabrics and knitted, netted or crocheted fabric) which are not included more specifically in other headings of Schedule XI or elsewhere in the Nomenclature.
x x x x x
(Tejam, Montano, Ibid.)

The records show that petitioner is engaged in the telecommunications industry and franchised to provide telephone and other telecommunication facilities to the public. And, as admitted by respondent, the imported articles are invariably used by petitioner's linemen and repairmen in climbing telephone poles to install and repair telephone lines. This being so, there is no question that they are used in the industry.

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 articles in question, for purposes of tariff classification, fall under Tariff Heading No. 42.04 at 20% *ad valorem* and not under Tariff Heading Nos. 42.05 and 62.05 at 70% and 60% *ad valorem*, respectively. It may be that the imported articles are not entirely made of leather and maybe adapted for special purpose which any particular importer may do with the articles imported, but description and special use are 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. (See La Compañia General de Tabacos de Filipinas vs. United States, _supra_.)

In view of the foregoing, we are of the opinion and so hold that the shipment of 2 boxes of telephone equipment imported by petitioner herein, should be classified, for the purpose of fixing the custom duty, under Tariff Heading No. 42.04. It follows that petitioner Philippine Long Distance Telephone Company is entitled to the refund of the amount of ₱18,847.00.

WHEREFORE, the decision appealed from is reversed. Respondent Commissioner of Customs is hereby ordered to refund to petitioner the amount of ₱18,847.00.

SO ORDERED.

Quezon City, October 23, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge