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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MAYER STEEL PIPE CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3088

HON. RAMON FAROLAN, in his capacity as Acting Commissioner of Customs,
Respondent.

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3/31/93

D E C I S I O N

This is an appeal to the decision of respondent Acting Commissioner of Customs, dated February 20, 1980, affirming the forfeiture decreed by the Collector of Customs of the Port of Manila against One (1) complete set Rotary Flying Cut Off Machine 4 to 16" with Roll and Tools and One (1) Set Forming Rolls (Ductile Rolls) for alleged violation of the following laws, to wit: Section 2503 of the Tariff and Customs Code in relation to Section 2530(m)-3, 4 and 5 of the same Code; Presidential Decree No. 272; Republic Act No. 5186 in relation to Central Bank Memorandum to Authorized Agent Banks, dated September 4, 1973.

The pertinent facts as gathered from the records and the evidence adduced by the parties are as follows:

Sometime in May 1975, a shipment from Kaohsiung, Taiwan of "One (1) Complete Set Rotary Flying Cut-Off Machine 4" to 16" with Roll and Tools and One (1) Complete Set Forming Tools (Ductile Rolls)" arrived at the Port of Manila on board the vessel "Ming Ren Establishment", Reg. No. 885, covered by Bill of Lading No. KM-29 for the account of petitioner, Mayer Steel Pipe Corporation. The same was declared under Import Entry No. 39590, series of 1975, and the corresponding duties and taxes due thereon totalling P13,289.00 were paid under Order of Payment No. 435099, dated May 8, 1975, and Central Bank of the Philippines (CB) Official Receipt No. 424727, dated May 12, 1975. CB Release Certificate No. 2093 was issued on the same date and the merchandise was delivered to its plant.

It appears that based on a letter request, dated July 22, 1975, of the Chairman of the Anti-Smuggling Action Center (ASAC) (page 2, Customs Records), a Warrant of Seizure and Detention No. 14728, dated July 31, 1975, was issued against above-mentioned articles for alleged violation of

Section 2530(m)-3, 4 and 5, in relation to Section 2503 and 2536, of the New Tariff and Customs Code of the Philippines, as amended. Said warrant was served on August 5, 1975 and a return was made on the next day (page 132, Customs Record). A Motion to Amend Warrant of Seizure and Detention was filed by ASAC's counsel on August 11, 1975 with the violations/imputations to read as follows: Section 2530(m)-3, 4 and 5; Section 2503 and 2536 of the TCC as amended <u>in relation to P.D. 272; R.A. 5186 and R.A. 6142, including the implementing rules, regulations and circulars</u> (underscoring supplied). Petitioner filed a Motion to Quash Warrant of Seizure and Detention No. 14728 on August 12, 1975 on the following grounds, to wit: (1) That the said Warrant of Seizure and Detention was issued contrary to law, and therefore is null and void; (2) That all duties and taxes on the merchandise subject of the Warrant of Seizure and Detention were duly paid before its release from the Bureau of Customs and that claimant has the corresponding evidence to support and prove such payment; (3) That the figures declared by the claimant are true and correct as passed upon by the customs appraiser and the same is conclusive; and that there is no fraud whatsoever in the claimant's importation. Opposition to the Motion to Quash Warrant of Seizure and Detention No. 14728 (pages 35-45, Customs Records) was filed by ASAC's counsel on August 18, 1975. Opposition to the Motion to Amend Warrant of Seizure and Detention (pages 46-47, Customs Records) and Reply to Opposition to Quash Warrant of Seizure and Detention (pages 52-55, Customs Records) were both filed by herein petitioner's counsel on September 8, 1975. Again, in a letter dated November 11, 1975 (page 124, Customs Records), the Vice-Chairman of ASAC requested the Collector of Customs, Port of Manila, to amend Warrant of Seizure and Detention No. 14728 based on the following and we quote: "Inasmuch as the violations mentioned therein (W.S.D. No. 14728) are not fully descriptive of the offense committed, request that the previous Warrant be amended to include the underlined statement: xxx <u>in relation to P.D. No. 272, R.A. 5186 and R.A. 6142 including the implementing rules, regulations and circulars</u>." Consequently, Warrant of Seizure and Detention No. 14728-A, dated November 11, 1975, (page 121, Customs Records), was issued. Said Warrant was served on December 9, 1975 and a return was made on the same day. (page 120, Customs Records). Motion to Order Withdrawal of Amended Warrant of Seizure and Detention and/or to Declare the Same Null and Void and Without Force and Effect, dated January 3, 1976, (pages 80-83, Customs Records), was then filed by petitioner claimant.

Without resolving the foregoing motions but after hearing and submission of the respective memorandum of both parties, the Collector of Customs, Port of Manila, decreed the forfeiture of subject articles (pages 294-300, Customs Records). The same was affirmed by the Acting Commissioner of Customs, (pages 369-373, Customs Records), hence, this appeal.

Petitioner and respondent are in agreement that the issues brought in this case which should be resolved by this Court are the following:

> Whether or not the subject shipment violated the provisions of the following laws, to wit:
>
> (1) Section 2503 of the Tariff and Customs Code, in relation to Section 2530(m)-3, 4 and 5 of the same Code;
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> (2) P.D. No. 272 - An Act Creating the Iron and Steel Authority; and
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> (3) R.A. No. 5186 (An Act Prescribing Incentives and Guarantees To Investments in the Philippines, creating a Board of Investments, Appropriating the Necessary Funds Therefore and for Other Purposes) in relation to Central Bank Memorandum to Authorized Agent Bank dated September 4, 1973.

For reference, Section 2503 and 2530(m)-3, 4, 5 of the Tariff and Customs Code are hereunder quoted:

> "Section 2503. Undervaluation, Misclassification and Misdeclaration in Entry. - When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten per cent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten per cent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than twice the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than five times of such difference.
>
> (a) When the value declared in the entry is less than the dutiable value ascertained pursuant to Section 201 and the undervaluation is ten (10) to thirty per cent (30%) of the latter value, a surcharge equal to twice the duty on the amount of undervaluation shall be imposed: Provided, however, That when the undervaluation is over thirty per cent (30%) of the latter, a surcharge equal to five times the duty on the amount of undervaluation shall be imposed: Provided, further, That an undervaluation of over fifty per cent (50%) of the latter value, shall constitute a prima facie evidence of fraud penalized under Section 25309 of this Code.
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> (b) Misdeclaration of weight, measurement or quantity shall likewise be subject to the corresponding penalty.

> When undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional the importer shall be subject to the penal provision under Section 3602 of this Code as amended by Republic Act No. 4712.
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> Section 2530. Property Subject to Forfeiture Under Tariff and Customs Law. - Any vehicle, vessel or aircraft, cargo, article and other object shall, under the following conditions be subjected to forfeiture:
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> xxx xxx xxx
>
> (m) Any article sought to be imported or exported:
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> xxx xxx xxx
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> (3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;
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> (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; and
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> (5) Through any other practice or device contrary to law by means of which such articles were entered through a customhouse to the prejudice of the government."

At the outset, it should be stated that forfeitures are imposed by the seizure and subsequent institution of seizure proceedings pursuant to section 2532 of the Tariff and Customs Code. In seizure cases, one important aspect of the proceedings in the consideration of the issues involved, is the duty on the part of the government of presenting evidence which indicates probable cause for instituting such proceedings. (**Sanchez v. Commissioner of Customs**, B.T.A. Case No. 185, decided by the Court of Tax Appeals on November 2, 1954, citing **U.S. v. One Bag of Paradise and Choura Theaters, N.Y.**, 356, **Commissioner of Customs, et al.**, C.T.A. Case No. 2448, August 6, 1976; **Metropolitan Garment Corporation v. Ramon J. Farolan, Acting Commissioner of Customs**, C.T.A. Case No. 3959, April 6, 1986; **Mayer Steel Pipe Corporation v. Alfredo Pio De Roda, as Acting Commissioner of Customs**, C.T.A. Case No. 2823, February 18, 1987). The term "probable cause", means less than the evidence which will justify condemnation. It imports a seizure made under circumstances which warrant suspicion. (Sanchez v. Commissioner of Customs, **supra**, citing **Fooke v. United States**, 7 Cranch [U.S. 339]; Associated Banking Corporation v. Commissioner of Customs, **supra**; Metropolitan Garment Corporation v. Ramon J. Farolan, as Acting Commissioner of Customs, **supra**; Mayer Steel Pipe Corporation v. Alfredo Pio De Roda, as Acting Commissioner of Customs, **supra**.) The law places upon the petitioner the burden to overcome the effect thereof. Section 2535 of the Tariff and Customs Code, as amended provides:

> "Section 2535. Burden of Proof in Seizure and/or Forfeiture. - In all proceedings taken for the seizure and/or forfeiture of any vehicle, vessel, aircraft, beast or articles under the provisions of the tariff and customs laws, the burden of proof shall lie upon the claimant; Provided, That probable cause shall first be shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner described on the preceding sections of this Code."

We shall now turn upon the issues raised by the parties to this case.

A. As to the alleged violation of the Tariff and Customs Code in relation to Section 2530(m)-3, 4, and 5 of the same Code.

Comparing the reported current domestic value of <u>scrap iron and steel</u> at P750.00/M.T. or P0.75/kg. with the converted C & F value of the <u>forming rolls</u> (a finished product) of approximately P0.53/kg., the Collector noted that the current value of the former is therefore higher by 41.05%. This was computed as follows: Of the total net weight of the importation per Packing List of 58,100 kgs., 42,100 kgs., more or less, are forming rolls with a C & F value of $3,000.00. Using the current rate of exchange of P7.45 to $1.00, a total value of P22,350.00 for the 42,100 kgs. or approximately P0.53/kg. is arrived at.

Noting also the difference in the average C & F value of imported iron or steel products from Japan in the year 1975 of $250.00 to $300.00/MT vis-a-vis the subject importation of 58,100 kgs. at $10,000.00 C & F Manila or a unit price of $128.22/M.T., the Collector's conclusion was that the latter would still be lower by 100%.

Further, using the testimony of Mr. Hu Pai John, President of the company supplying the machinery in question and who is also a major foreign investor/owner of the importing corporation, that the import price exclude the 40% agent and on service fee, the Collector came to the conclusion that there was deliberate undervaluation to the prejudice of the government.

We failed to comprehend from the foregoing the reasoning as well as the conclusions made by the Collector and Acting Commissioner of Customs. There is no legal basis for the comparison of the value of forming rolls, a machine component and that of scrap iron and steel, which is waste and scrap metal fit only for the recovery of metal or for use in the manufacture of chemicals (Note 6, Schedule XV, Tariff and Customs Code, as amended).

Section 201 of the same Code provides that "The dutiable value of an imported article subject to an ad valorem rate of duty shall be based on the home consumption value or price (excluding internal revenue taxes) <u>of same, like or similar articles</u>, as bought and sold or offered for sale freely in the usual wholesale quantities <u>in the ordinary course of trade, in the principal market of the country from where exported</u> on the date of exportation to the Philippines, xxx" (underscoring supplied). We are at a loss as to where the figures 42,100 kgs. and the alleged value of scrap of P750.00/M.T. came from, except that the latter was taken from the Memorandum of the Prosecution.

With a different touch, the entire importation was then compared with the C & F value of imported iron and steel products from Japan when it is well-established that the subject articles came from Taiwan. This is contrary to the provisions of Section 201 of the Tariff and Customs Code above-cited. Again, where did the figures $250.00 to $300.00/M.T. come from and by what kind of formula was $128,22/M.T. arrived at?

The conclusion made from the testimony of supplier, Mr. Hu Pai John was also misplaced. A reading of the transcript of said testimony belie such claim as can be gleaned in the following:

> "x x x x x x x x x x x x x x x x x x x
> Also the estimate here includes the 40% agent's fee and out-service fee, while the price indicated in Exhibit "5" (invoice) which I supplied Mayer Steel Pipe Corporation is a price for semi-finished cost iron and no commission, no out-service, fee and for only one set-of 3". (page 7, T.S.N. of Customs Hearing on March 28, 1976, page 267 Customs Records)"

Other than the documentary evidences presented by the ASAC prosecutor in the administrative hearing, respondent did not introduce any evidence before this Court. The original work sheet of the customs Declaration and Entry accomplished by the Customs Examiner was never presented inspite of repeated requests made by petitioner and subpoena duces tecum issued (Exhibit L & Exhibit K, page 89 and page 139 respectively of Customs Records). In contrast, petitioner formally offered as evidence Central Bank Release Certificate issued for the release of the imported merchandise (Exhibit "A"), Official Receipt, dated May 15, 1975, for the payment of the corresponding duties and taxes (Exhibit "B"), Bill of Lading of the imported articles (Exhibit "C"), Consular Invoices of the importation (Exhibits "D" & "D-A"), Commercial Invoice of the shipment (Exhibit "E"), Letter of

Credit (Exhibit "F"), Marginal Deposit Release (Exhibit "G"), and copy of the Import Entry (Exhibit "J"). These were to prove that subject importation was regularly processed and released by the Bureau of Customs.

Accordingly, we find in favor of the petitioner in so far as the alleged violation of section 2503 of the Tariff and Customs Code in relation to Section 2530(m)-3, 4 and 5 of the same Code is based on the foregoing grounds. Petitioner has sustained the burden the law places upon it to overcome the effect of alleged undervaluation, misclassification and misdeclaration of the imported articles whereas, respondent miserably failed to show by convincing evidence the imputed violations.

B. As to alleged violation of Presidential Decree No. 272.

It is uncontroverted that petitioner failed to obtain the approval of the Iron and Steel Authority (ISA) before importing the shipment covered by the case at bar. A certification to this effect was issued by the acting Secretary of the ISA on September 3, 1975 (Exhibit "L"). In a similar case, (**Mayer Steel Pipe Corporation v. Hon. Alfredo** Pio De Roda, as Acting Commissioner of Customs, C.T.A. Case No. 2823, February 18, 1987), it was held that prior authority of the ISA is mandatory. Presidential Decree No. 272 was promulgated by reason of the existing recurrent imbalances between demand and supply of iron and steel products that necessitate the orderly regulation of the market thereof and the existing capacity in several sectors of the iron and steel industry while other sectors suffer from deficiency of investment. As correctly stated by respondent, the supervision and regulation of the Iron and Steel Authority is thus essential and imperative to the end that these kinks in the iron and steel industry be controlled and straightened out.

C. As to alleged violation of Republic Act No. 5186 in relation to Central Bank memorandum to Authorized Agent Bank dated September 4, 1973.

Records of the case further reveal that the importation of the articles in question were not favorably endorsed by the Board of Investments (BOI). It appears that the industry to which petitioner intends to engage in has been listed as one of the crowded industries or industries with excess capacity as early as January 28, 1970, and remain unchanged as of May 23, 1975. (Exhibits "H" and "H-1".) This Court has already ruled that importation of articles intended for crowded industries or industries with excess capacity without BOI Certification is a violation of Republic Act No. 5186. (Mayer Steel Pipe Corporation v. Hon. Alfredo Pio De Roda, as Acting Commissioner of Customs, **supra**.)

As to the amendment of the Warrant of Seizure and Detention to include violations of Presidential Decree No. 272 and Republic Act No. 5186 and its implementing rules and regulations, settled is the rule that goods seized by mistake are liable for forfeiture if a good cause for forfeiture existed at the time of the seizure but without knowledge of the seizing officer (**Wood v. U.S.**, 1842, 41 U.S. [15 Pet] 342, 10 L. Ed. 987.). It is an established precedent that the Collector of Customs, concomittant with his powers under Section 1207 of the Tariff and Customs Code, has all the powers and jurisdiction to take such action as will prevent the importation or exportation of articles which are prohibited or the importation or exportation of which is contrary to existing laws, rules and regulations (Mayer Steel Pipe Corporation v. Hon. Alfredo Pio De Roda, as Acting Commissioner of Customs, supra).

The attendant facts and circumstances of this case taken together with the applicable laws as amply discussed support the conclusion that the subject importation violate Presidential Decree No. 272 and Republic Act No. 5186 and its implementing rules and regulations, to warrant the forfeiture in favor of the Government of the subject articles pursuant to Section 2530(m)-5 of the Tariff and Customs Code, as amended.

WHEREFORE, the decision of respondent Acting Commissioner of Customs, is sustained. The petition for review is hereby dismissed with costs against petitioner.

SO ORDERED

Quezon City, Metro Manila, March 31, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals