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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

PHILIPPINE PLANTERS &
INVESTMENT CO.,
Petitioner,

- versus -   C.T.A. CASE NO. 549

COMMISSIONER OF CUSTOMS,
Respondent.

December 29

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D E C I S I O N

Sometime in 1956, the petitioner ordered from Japan metal working machines and parts. They were shipped to petitioner in thirteen (13) cases which arrived in Manila on June 28, 1956. Petitioner having been previously authorized by the Central Bank to import from Japan "metal working machine tools" and "parts for metal working machine tools", said Bank issued, upon application, a release certificate authorizing the release of said articles in favor of petitioner.

Upon examination of the contents of the thirteen cases, it was found that four cases contained metal working machines and nine cases contained "bicycle and other cycle parts". The four cases containing metal working machines were released and delivered to petitioner, while the nine cases containing "bicycle and other cycle parts" were declared forfeited by the Collector of Customs of Manila under Section 1363 (f) of the Administrative Code, in relation to Circular No. 44 of the Central Bank. The decision of the Collector of Customs was affirmed by the Commissioner of Customs, hence this appeal.

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Petitioner has raised the following issues:

> "First: Whether or not the nine (9) cases of merchandise imported by the petitioner were metal working machine tools and parts thereof; Second: Whether or not the said nine (9) cases of merchandise were rightly classified in the amended release certificate as EP 710501, metal working machine tools and EP 710502, parts for metal working tools; Third: Whether or not there was mis-declaration or mis-classification of the goods contained in the nine (9) cases, to constitute a violation of Central Bank Circular No. 44, in relation to Section 1363(f) and (m) par. 3, 4 and 5 of the Revised Administrative Code to warrant its seizure or forfeiture; and Fourth: Whether or not the nine (9) cases of merchandise, declared as metal working machine tools and parts were rightly entered to pay the corresponding duty under Par. 191 (a) at 15% ad valorem of the Philippine Tariff Act, and whether jurisprudence applying to tariff classification of commodities may also apply to the commodity code classification of the Central Bank." (Pp. 3-4, Memorandum for Petitioner.)

There is no issue as regards the legality of the importation of metal working machine tools which were contained in 4 cases. These 4 cases were released and delivered to petitioner in due course. The issue involving commodity classification is confined to the 9 cases which, according to petitioner, contained parts for metal working machine tools, but which, according to respondent, contained bicycle parts.

We have gone over the evidence adduced by both parties and are convinced that the 9 cases in question contained bicycle parts. In fact, counsel for petitioner admitted that "the subject merchandise were parts of bicycle pedals." We quote from the motion for reconsideration filed by said counsel in Seizure Identification No. 5183 of the Bureau of Customs:

> "During the hearing of this case, it was admitted or rather it was so established that the subject merchandise were parts of bicycle pedals. Be that as it may, there is no denying the fact they were intended for use in metal working machines." (Page 2, Motion for Reconsideration, March 27, 1957, filed by Atty. Manuel C. Gonzales in Seizure Identification No. 5183; page 10, Customs records.)

The belated attempt of petitioner to show in the course of the present proceeding that the said articles were parts of metal working machine tools and not bicycle parts is not worthy of serious consideration.

It is, however, argued that the classification of merchandise is determined by the use to which the merchandise is applied by the importer and not the use to which it is generally adapted. This question has already been resolved by the Supreme Court in Cia. General de Tabacos de Filipinas v. U. S., 8 Phil. 438, wherein it was held:

> "It is the general use to which articles are generally adapted and for which they are generally used which 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 a specific of special use which any particular importer may make of the articles imported."

The rule that the general use to which an article is adapted when manufactured determines its classification for tariff purposes has been reaffirmed in Pacific Commercial Co. v. Insular Collector of Customs, 64 Phil. 152. We find no justification to deviate from this rule.

It having been established that the articles contained in the nine cases in question were bicycle parts, and that they are classifiable as such notwithstanding the fact that they might have been intended by petitioner for use as parts for its metal working machine tools, the next question to be decided is whether or not the said articles were correctly classified in the amended release certificate issued by the Central Bank as "EP 710502, parts for metal working tools".

The records show that petitioner was authorized by the Central Bank to import, among others, from Japan parts for metal working machine tools, which were classified in the Classification of Commodities issued by said Bank, as follows: "EP 710502, Parts for metal working machine tools." The release certificate issued by the Central Bank specified the articles to be released by the Bureau of Customs as "EP 710502, Parts for metal working machine tools." The Classification of Commodities issued by the Central Bank to implement its Circulars Nos. 44 and 45 makes a separate classification for bicycle parts as follows: "NEC 730302, Parts for bicycles and of other cycles, not motorized (not including tires and electric parts)." Therefore, when the Central Bank issued a release certificate for "EP 710502, Parts for metal working machine tools", it was not intended to cover bicycle parts which come under a different commodity classification as "EP 730302".

Petitioner having secured a release certificate from the Central Bank for "parts for metal working machine tools" and not for "parts for bicycles and of other cycles", its attempt to secure the release of the bicycle parts contained in the nine cases in question constitutes a violation of Central Bank Circular No. 44. Accordingly, the said articles are subject to forfeiture under Section 1363(f) of the Administrative Code.

It is argued that Central Bank Circular No. 44 has no legal force and effect because it has not been submitted to and approved by the President, and that, assuming that said circular has been validly promulgated, it does not prescribe the penalty of forfeiture. These questions have already been resolved adversely against petitioner. Said the Supreme Court:

> "As already stated, Circulars Nos. 44 and 45 were issued by the Monetary Board within the scope of its powers. They were published in the Official Gazette in June, 1953. (49 O.G. 2189-2192.) Appellant failed to present to the Commissioner of Customs release certificates issued by the Central Bank or its duly authorized agent banks for the importations in question. The Commissioner of Customs may, therefore, seize them and order their forfeiture under the aforequoted provisons of the Revised Administrative Code. It is true that neither of the Circulars provide for the penalty of forfeiture. But since the importations in question were made without the necessary import license issued by the 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 clase 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's 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 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.

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> "Appellant's claim that Circulars Nos. 44

> and 45 were promulgated by the Monetary Board without the concurrence of at least five of its members and without the approval of the President, is not supported by evidence. They have been published in the Official Gazette and the presumption that an official duty has been regularly performed, the ordinary course of business followed, and the law complied with, is on the appellee's side." (Pascual v. Commissioner of Customs, G. R. No. L-10979, June 30, 1959; see also Venancio Carreon Tong Tek v. Commissioner of Customs, G. R. No. L-11947, June 30, 1959.)

But it is contended that in this case petitioner was authorized to import the articles in question and that it secured the necessary release certificate from the Central Bank, hence, the forfeiture of said articles for violation of Circular No. 44, in relation to Section 1363(f) of the Administrative Code, is not in order. As stated above, petitioner was authorized by the Central Bank to import "parts for metal working machine tools" and the release certificate issued by said Bank specifically referred to said articles. The articles contained in the nine cases in question were "bicycle parts" which are classified separately from "parts for metal working machine tools". Therefore, petitioner had no authority to import and had no release certificate for "bicycle parts". The forfeiture of said articles under Section 1363(f) of the Administrative Code is in order, petitioner having attempted to effect the importation of the same contrary to law.

Finally, it is argued that the said articles are subject to customs duty at the rate of 15% *ad valorem* under Paragraph 191(a) of the Philippine Tariff Act of 1909, and not under Paragraph 196 at the rate of 20%. It having been established that the articles in ques-

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tion were bicycle parts and not parts for metal working machine tools, the same are subject to customs duty at the rate of 20% ad valorem under Paragraph 196.

Finding no error in the decision appealed from, the same is hereby affirmed. With costs against petitioner.

SO ORDERED.

Manila, December 29, 1959.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge