REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CENTRAL COOPERATIVE EXCHANGE
INC. AND CENTRAL PACIFIC
TRADERS AND DEVELOPMENT
CORP.,
Petitioners,

- versus - C.T.A. CASE NO. 2431

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

1/30/74

D E C I S I O N

This is an appeal by petitioners from the decision of respondent Commissioner of Customs dated July 6, 1972, modifying the action taken by the Collector of Customs of Manila recommending the abatement or refund of ₱433,916.00 as customs duties paid on the importation of jute sacks by Central Cooperative Exchange, Inc. on various dates in 1965, pursuant to the provision of Section 1704(b) of the Tariff and Customs Code.

The facts of the case, as found by the Court in C.T.A. Case No. 2044 which was dismissed without prejudice and led to the filing of the instant petition are as follows:

> Petitioner Central Cooperative Exchange, Inc., Cooperative Exchange for short, on various dates in 1965, imported 2,500,000 pieces of jute sacks covered by Import Entries Nos. 24551,24552,24997, 16056 and 16057, all series of 1965. The Collector of Customs of Manila, despite the Cooperative Exchange's claim that its importations were exempt from taxes and duties under Section 42 of Act No. 3425, otherwise known as the Cooperative Marketing Law, ordered the storage of the imported jute sacks in Customs Bonded

Warehouse No. 76 for its failure to pay the taxes, duties and fees allegedly due thereon. Cooperative Exchange appealed to the Secretary of Finance who likewise denied its claim for exemption. Thereafter, it elevated the matter to the President of the Philippines for review where it is still pending up to the present (par. 3, Pet. for Rev.).

On January 19, 1968, Cooperative Exchange, in order to prevent the projected auction sale of the questioned importations, wrote a letter to the Collector of Customs tendering the sum of ₱500,000.00 as partial payment of the duties, taxes and fees on said importations "under protest and without prejudice to (its) right to ask for a re-assessment of the duties, taxes and other charges due the Bureau of Customs for said shipment considering the condition of the jute sacks . . . ." (p. 30, CTA rec.; p. 161, Customs rec.) On the same date, The Collector of Customs accepted the offer of payment subject to the condition, among others, that the balance of the total duties and taxes be paid not later than January 26, 1968 (p. 161, Customs rec.). In compliance therewith, Cooperative Exchange, on January 26, 1968, paid the balance in the total sum of ₱1,454,120.00 also under protest "and without prejudice to (its) asking for an abatement due to depreciation of the stock on account of long storage, condition as affected by water damage, and other circumstances, pilferage and actual count upon withdrawal" (p. 153, Customs rec.).

Meanwhile, on January 26, 1968, Cooperative Exchange, together with the Philippine National Cooperative Bank, which financed the importations, sold all their rights and interests in the jute sacks in question to petitioner Central Pacific Traders and Development Corp., Pacific Traders for short, subject to the condition that any abatement or refund of duties and taxes up to the amount of ₱350,000.00 shall belong to Cooperative Exchange and Philippine National Cooperative Bank, and any sum in excess thereof shall inure to the benefit of Pacific Traders (pp.33-34,

v

CTA rec.; pp. 20-21, Customs rec.).

On March 20, 1968, after a reexamination of the jute sacks, the customs examiners and appraiser designated to make an appraisal of the articles submitted a report, the relevant portion of which states:

2. Breakdown of water-damaged sacks:

Category		No. of Pieces	Ratio to G. Total	Degree of Damage or Deterioration
A. Damaged but serviceable -	1)	20,000	.80%	25%
	2)	33,000	1.32%	38%
B. Severely Damaged -		254,000	10.16%	57%
C. Very Severely Damaged -		304,000	12.16%	85%
D. Unusable -		88,000	3.52%	100%
Total -		699,000	27.96%	
E. Good Bales and Pieces -		1,801,000	72.04%	8%
Grand Total -		2,500,000	100.00%	

It is herein noted that the degree of damage by water varied in graduated percentages. This was ascertained on the actual condition of the jute sacks. Water-damaged bales and/or pieces ranged from the edge of the bales or sacks up to two-thirds (2/3 or about 16 inches) high due to the uneven floor level or elevation of the warehouse. The eight percent (8%) deterioration on the good bales was assessed on the weakening of strength of jute fibers due to long time of storage and other elements.

It was observed that most of the water-damaged sacks were the base or bottom layer bales or pieces (646) and loosed bundles or pieces (53 bales).

It was also further observed that the damaged but serviceable pieces (Category A) pertained mostly to the loose bundles or pieces which were dried up after the flood.

Category B and C (Severly and very severly damaged) with a total of 558 bales may be considered as totally damaged. It is to be noted that while these sacks physically appeared to be 57% and 85% damaged respectively, the deterioration or decay of the jute fibers will render the same unusable for the purpose for which they were intended. (P. 37, CTA rec.; pp. 145-146, Customs rec.; underlining supplied.)

On the basis of the above-re-examination report, the Chief of the Liquidation Division, on April 18, 1968, submitted a "Statement of Refund" or liquidation wherein he computed the amount of ₱433,916.00 as the adjusted amount of customs duties refundable to Cooperative Exchange but withheld action on the advance sales tax pending authorization from the Commissioner of Internal Revenue (p.167, Customs rec.). On June 11, 1968, the Collector of Customs certified the liquidation as correct and recommended the refund to the Commissioner of Customs, which was also favorably endorsed by the Chief of the Legal Department on August 17, 1968 (pp. 169-174, Customs rec.).

On July 14, 1969, respondent issued a memorandum directing the re-liquidation of the subject entries "so as to include only Items A, B, C and D of the Memorandum of the Chief, Liquidation Division, dated November 18, 1968, thereby excluding Item or Category E, i.e., the 8% allowance for the 1,801,000 pieces of "good" sacks. (P.177, Customs rec.) In compliance with the directive of the Commissioner of Customs, a re-liquidation of the import entries was made and the reduced amount of ₱338,146.00 was arrived at as customs duties subject to abatement or refund after disallowing Category E (pp. 16 & 39, CTA rec.; p. 175, Customs rec.).

On August 11, 1969, Pacific Traders, after learning of the action taken by respondent, moved for the reconsideration of his directive and asked that it be entitled to a full abatement not only of Item D but also of Items or Categories A, B and C and that it be entitled to the 8% allowance on Item E of the re-examination report dated March 20, 1968 (p. 53, CTA rec.; p. 187, Customs rec.).

On September 15, 1969, Pacific Traders, upon learning that the Commissioner of Customs had signed a Treasury warrant for the payment of the reduced amount of P334,441.00 as abatement or refund to Cooperative Exchange, considered its request for reconsideration as having been impliedly denied, and wrote respondent a notice of its intention to appeal to this Court (p. 188, Customs rec.). On October 2, 1969, petitioners instituted the present appeal. In a "Manifestation" filed on January 11, 1971, the parties agreed to submit the case on the "basis of the pleadings and all annexes attached thereto, together with whatever evidences, oral and documentary" (pp. 94-95, CTA rec.). Petitioners filed their respective memorandum. No memorandum has been submitted by respondent.

The controversy in this case refers to the sacks under Category A, B and C described as "Damaged but Serviceable," "Severely Damaged," and "Very Severely Damaged," respectively, in the report of the committee that examined the sacks in question. Petitioners urge that they are entitled to a full abatement while respondent contends that the abatement should be in the proportion of the degree of damage suffered by the sacks as reported by the committee. Let it be said first that respondent in his computation of the duties to be abated appears to have misinterpreted the report of the committee in the appraisal of the abatement. Hereunder is the computation of respondent:

Computation of Duty & Taxes
for abatement

Category	No. of Pieces	Degree of Damage or Deterioration	No. of Pieces to be abated	Unit Cost	C & F Value
A. Damage but Serviceable-1	20000	25%	5000	$0.17	$ 850.00
-2	33000	38%	12540	0.17	2131.80
B. Severely Damage	254000	57%	144780	0.17	24612.60
C. Very Severely Damage	304000	85%	258400	0.17	43928.00
D. Unusable	88000	100%	88000	0.17	14960.00
E. Good Pieces	1801000	8%	144080	0.17	24493.60
			652800		$110976.00

Customs Duty

C & F . .	$110976.00
Rate of Exc.	₱3.90
	₱432806.40
Prorated Ins.	1110.00
C.I.F. -	₱433916.40
Rate of Duty	100%
Total Duty to be Abated	₱433916.40 or ₱433916.00

Advance Sales Tax

C.I.F.	₱433916.40
Duty	433916.40
	₱867832.80
Mark Up 25%	216958.20
	₱1084791.00
	7%
Advance Sales Tax to be Abated . . .	₱ 75935.37 or ₱ 75935.00

(p. 175, BIR rec.)

It should be noted that in Category B and C respondent took 144,780 as damaged out of a total of 254,000 of all the sacks in this category; he considered as undamaged 109,220. In Category C he considered 258,400 sacks as damaged out of a total of 304,000 sacks; he considered as undamaged 45,600. The same procedure was followed in Category A where he considered 5,000 as damaged out of a total of 20,000 and 12,540 out of a total of 33,000. He obviously considered the percentages of damages in the report as representing the proportion which the damaged sacks bear to the total sacks in each category, the rest being undamaged; while it is clear from the report that the percentages stated therein represent the degree of damage of each of the imported sacks. Hereunder we reproduce the tabulation of the report:

1.	Total good pieces (in bales) . .	1,801,000	72.04%
	Total water-damaged pieces (in bales, bundles & pieces). . .	699,000	27.96%
	Grand Total	2,500,000	100.00%

2. Breakdown of water-damaged sacks:

Category	No. of Pieces	Ratio to G. Total	Degree of Damage or Deteriorati
A. Damaged but Serviceable..1)	20,000	.80%	25%
2)	33,000	1.32%	38%
B. Severely Damaged	254,000	10.16%	57%
C. Very Severely Damaged . . .	304,000	12.16%	85%
D. Unusable . . .	88,000	3.52%	100%
Total . . .	699,000	27.96%	
3. E. Good Bales and Pieces . .	1,801,000	72.04%	8%
Grand Total	2,500,000	100.00%	

With respect to Category A which is described as "damaged but Serviceable" we find no recommendation of the committee for a full abatement nor a comment that the sacks are no longer usable for the purpose for which they were imported and the samples presented as evidence show that they could have been mended. The percentage of reduction given for Category A may well be sustained.

With respect to Category B and C, the committee aforesaid reports that -

> Category B and C (Severely and very severely damaged) with a total of 558 bales may be considered as totally damaged. It is to be noted that while these sacks physically appeared to be 57% and 85% damaged respectively, the deterioration or decay of the jute fibers will render the same unusable for the purpose for which they were intended.

On the bases of this report which is not contested by respondent, it would seem that petitioners are entitled to a full abatement.

Respondent urges that "the beneficent provisions of the Tariff and Customs Code, particularly Section 1704 thereof and related sections, are available only when an imported article is lost or destroyed, or suffers any damage or injury and to the extent of the actual damage suffered." Thus, the abatement should be limited to only the degree of damage suffered by the Article, following the line of thought of respondent.

To be liable for duties to the full for articles lost or damaged while in the care of the Bureau of Customs, without any fault of the importer, is for sure unreasonable, to put it mildly. For that reason the law allows an abatement of the duties to the extent of the loss or damage suffered by the importer and simple justice requires that the measure should be realistic. Percentages and degrees can reflect the value of damages but only when the articles could be restored to serviceable state for which they were imported. However, to use the degree of damage as a measure when no amount of mending can make the articles serviceable is to use an unrealistic measure. We do not think that the law on abatement was meant to be so interpreted.

In the light of the foregoing, full abatement of duties paid on the sacks classified under Category B and C is computed as follows:

	B. Pieces severely damaged		C. Pieces very severely damaged	
		254,000		304,000
Degree of damage to be abated 100%			100%	
Previously abated	57%		85%	
Balance to be abated	43%		15%	
No. of pieces		109,220		45,600
Unit Cost		$ 0.17		$0.17
C & F		$18,567.40		$7752. -
Rate of exchange		P 3.90		P 3.90
		P72,412.36		P30,232.80
Pro Rata for Insurance		x .0025646		x .0025646

Insurance	₱ 185.71	₱ 77.53
Add to C & F	72,412.86	30,232.80
Total C.I.F. . .	₱ 72,598.57	₱ 30,310.33
Rate of Duty	100%	100%
Total duty to be refunded	₱ 72,598.57	₱ 30,310.33

WHEREFORE, respondent is hereby ordered to refund to petitioners by way of abatement the sum of ₱102,908.90. Without pronouncement as to costs.

SO ORDERED.

Quezon City, January 30, 1974.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge