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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GOODYEAR TIRE & RUBBER CO. OF THE PHILIPPINES, in its capacity as agent of the SS "CLARA MAERSK",
Petitioner,

- versus -

C.T.A. CASE NO. 2970

COMMISSIONER OF CUSTOMS,
Respondent.

7/15/80

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D E C I S I O N

This is an appeal by petitioner Goodyear Tire & Rubber Co. of the Philippines from the decision of respondent Commissioner of Customs dated February 28, 1978, affirming that of the Collector of Customs dated October 18, 1976, imposing and collecting from petitioner the amount of ₱11,828.00, representing surcharge for alleged violation of Section 2503 of the Tariff and Customs Code of the Philippines, as amended by P.D. 34. In this appeal, petitioner sought the refund of said amount of ₱11,828.00 paid by it as surcharge.

On or about November 29, 1972, the SS "Clara Maersk" arrived at the port of Manila and discharge thereat a cargo, consisting of four (4) boxes containing miscellaneous machinery spare parts, tools, supplies and tire fabric consigned to petitioner. The importation included, among others, two hundred fifty (250) dozen pairs of "hot mill canvass gloves", which petitioner's broker Consolidated Terminals Inc. classified in the import entry as falling under Tariff Heading No. 60.02 as "gloves, mittens and mitts, knitted or crocheted, not elastic or rubberized" and which carried an import duty of 70%.

After examination, however, the Collector of Customs reclassified the said gloves as falling under Tariff Heading No. 61.10, ex "Gloves and mittens of cotton and wool" which carries an import duty of 130%. On the basis of reclassification made by the appraiser, petitioner was assessed by the Collector of Customs and paid the additional total amount of ₱18,156.00 (p. 76, Customs Record) on the two hundred fifty (250) dozen pairs of gloves, broken down as follows:

₱ 5,914.00 - - - -	additional duty
₱ 414.00 - - - -	compensating tax
₱11,828.00 - - - -	fine for violation of Section 2503

Petitioner did not protest its payment of the additional duty of ₱5,914.00 and additional compensating tax of ₱414.00. However, it disputed the validity of the imposition of the amount of ₱11,828.00, representing the surcharge or fine imposed under the provisions of Section 2503 of the Tariff and Customs Code, as amended, upon the ground that the classification of the gloves under Tariff Heading No. 60.02 was done in good faith. The protest of petitioner was dismissed by the Collector of Customs in his decision dated October 18, 1976 upon the ground that good faith of an importer is not a valid defense to the imposition of a surcharge imposed upon the misclassification of imported articles under Section 2503 of the Tariff and Customs Code, as amended. Upon appeal, the decision of the Collector of Customs was upheld by the Commissioner of Customs in the decision dated February 28, 1978. From this decision petitioner appealed to this Court.

The only issue raised in this appeal is whether or not the imposition of the surcharge or fine imposed under Section 2503 of the Tariff and Customs Code in the amount of ₱11,828.00 is legal.

Pertinent portions of Section 2503 of the Tariff and Customs Code of the Philippines, as amended, provides as follows:

> SEC. 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%) than should be legally colllected based on the correct tariff classification, x x x x x x x x x x 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. (Underlining supplied.)
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> b. x x x x x x x x x x x.
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Petitioner claims that the provision of Section 2503, before its amendment by P.D. No. 34 should be applicable and in that provision, misclassification of the imported articles is not a ground for the imposition of surcharge. As additional defense, it stated that the subject cargo consisted of gloves and that an ordinary importer may, in good faith, classify them under any of the following classification and it still thinks that the classification is correct:

Par. 60.02	Gloves, mittens and mitts, knitted or crocheted, not elastic or rubberized . . . . ad val. 70%	
Par. 61.10	Gloves, mittens, mitts, stockings, socks and sockettes, not being knitted or crocheted articles	100%
Par. 61.10	ex Gloves and mittens of cotton and wool	130%

It is argued that it classified the gloves under Tariff Heading No. 60.02 because it is the correct classification. Petitioner cited by way of buttressing its defense, Customs Memorandum Order No. 45-73 dated May 11, 1973 wherein the then Acting Commissioner of Customs authorized Collectors of Customs not to impose a surcharge on imported articles erroneously classified but correctly described in the entry such as the case at bar.

On the other hand, respondent Commissioner of Customs asserts that petitioner did not avail of the provisions of Section 1313(a) of the Tariff and Customs Code, as amended, which could have been the basis for correct classification of the merchandise under its Tariff Heading. Pertinent portion of Section 1313(a) is quoted hereunder:

> SEC. 1313. Information Furnished on Classification and Value.- a. As to Classification.- When an article imported or intended to be imported is not specifically classified in this Code, the interested party, importer or foreign exporter may submit to the Tariff Commission a sample together with a full description of its component materials and uses, and request it in writing to indicate the heading under which the article is or shall be dutiable, and the Tariff Commission shall comply with such request within thirty days from receipt thereof if it is satisfied that the application is made in good faith, in which case classification of the article in question, upon the particular importation involved shall be made according to the hearing indicated by the Tariff Commission. x x x x

Furthermore, respondent asserts that good faith is not a ground for the non-imposition of the surcharge. Respondent claims that while petitioner's broker might have acted in good faith in classifying the shipment under Tariff Heading No. 60.02 for petitioner, still the surcharge is legally imposable.

We agree with respondent. Section 2503 of the Tariff and Customs Code, as amended, is clearly a substantial adoption of Section 1290 of the Revised Administrative Code, which provides as follows:

> SEC. 1290. Undervaluation and misdescription in entry.- When imported merchandise shall be so declared and entered as to the value or classification thereof that the taxes, if estimated on the face of the entry, would be less by ten per centum than by law should be collected, or when the dutiable weight, measurement, or quantity of imported merchandise is found upon examination to exceed by ten per centum or more, the entered weight, measurement, or quantity, a surcharge may, in the discretion of the collector of customs and subject to the approval by the Secretary of Finance, be imposed upon the importer of not less than the additional amount required to pay the full tax on merchandise, and not more than five times such additional amount so required.

The Supreme Court, in its decision in the case of Li Teck San vs. The Insular Collector of Customs, 55 Phil. 482, 484, in the case involving the misdeclaration of value of imported undershirts which is more than 10% less than the value appraised by the Collector of Customs, whereupon a surcharge was imposed upon the importer Li Teck San, and applying the aforesaid provision of Section 1290 of the Revised Administrative Code, it held as follows:

> "Consequently, the declared value of the undershirts as given by the plaintiff is more than 10 per cent less than the value appraised by the defendant. Therefore, in accordance with section 1290 of the Administrative Code, the defendant imposed a certain surcharge upon the plaintiff. The latter paid it under protest and appealed to the Court of First Instance of Manila. The lower court dismissed the appeal taken in the six cases holding them to be groundless. It is from this judgment that the plaintiff has appealed to this court.

"The only question raised in this instance in connection with the six cases is whether or not the plaintiff having acted without malice or fraud, the surcharge imposed upon him by the defendant is legal.

"As the court below correctly held, the importer need not have acted fraudulently in order that a surcharge may be imposed upon him under section 1290 of the Administrative Code; a lower declaration of the value of the merchandise is sufficient. This opinion is based upon the letter and the spirit of the law, which does not require fraud on the importer's part, for the imposition of the surcharge. If the declaration is fraudulent, the merchandise will be subject to seizure in accordance with section 1363 of said Administrative Code."

Accordingly, and based strongly on the principle laid down in the aforesaid decision of the Supreme Court, we hold that the petitioner in this case is liable to, and is not, therefore, entitled to the refund of the surcharge of ₱11,828.00 imposed under Section 2503 of the Tariff and Customs Code, as amended, which it paid to the Bureau of Customs.

WHEREFORE, the decision of the Commissioner of Customs appealed from is hereby affirmed.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, July 15, 1980.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge