REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

METROPOLITAN GARMENT
CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 3959

RAMON J. FAROLAN, Acting
Commissioner of Customs,
Respondent.
x ------------------------ x

D E C I S I O N

We are asked in this appeal to review a decision of respondent Commissioner of Customs which affirms a decree of forfeiture of a shipment of petitioner Metropolitan Garment Corporation in Seizure Identification No. 23-82 in favor of the Government for alleged violation of Section 2503 in relation to Section 2530(l) - 3, 4 & 5 of the Tariff and Customs Code of the Philippines, and Section 1 of Act No. 3740.

The material facts, as stated in the petition for review and admitted in the answer, may be briefly summarized as follows:

The records show that the subject shipment arrived December 25, 1981, on board the vessel S/S Hongkong Ace, covered by Bill of Lading No. NMA-0011 and consigned to herein petitioner, operator of CBW No. 640 under Sections

2001-2004 of the Tariff and Customs Code of the Philippines. The corresponding Manufacturing Entry No. 00388 was filed January 31, 1982, declaring subject shipment as one (1) container, said to contain Woven Fabrics 60% Terrylene 40% Acrylic Width: 58/60", 70 kgs. with particular description as "30,000 yards woven fabrics 60% Terrylene 40% Acrylic Width, 58/60", and with a unit value of U.S. $2.50 per yard. Said cargo was duly examined by the Formal Entry Division, and subsequently re-examined jointly by representatives of the Formal Entry Division, the National Customs Police (NCP), a Customs Examiner and the Principal Examiner of Section 19, who after their examination found said shipment to consist a total of 558 rolls, 380 rolls of "worsted wool suiting materials, 58/60" width, which is equivalent to 20, 157 yards and 178 rolls of woven fabrics, 60% Terrylene and 40% Acrylic 58/60" width, which is equivalent to 9,869 yards. Finding said shipment to be 67% "worsted wool suiting materials", contrary to the declaration in the Entry, the NCP recommended the seizure of the whole shipment for violation of Section 2503 in relation to Section 2530(l) 3, 4 & 5 of the Revised Tariff and Customs Code and the pertinent Central Bank regulations, but which was subsequently amended to include violation of Legislative Act No. 3740 in relation to Section 2530(f) of the Tariff and Customs Code of the Philippines;

On January 18, 1982, the Acting Collector of Customs in Seizure Identification No. 23-82, ordered the subject articles forefeited in favor of the Government for alleged violation of Section 2503 in relation to Section 2530(1)-3, 4 & 5 of the Tariff & Customs Code of the Philippines;

Said decision was seasonably appealed to respondent Commissioner of Customs, who in a decision dated July 9, 1985 affirmed the decision of the Collector of Customs. Petitioner received the decision of respondent on July 12, 1985.

Hence, the present recourse.

The basic question for determination is whether the shipment under consideration is subject to forfeiture in favor of the Government for violation of Section 2503 in relation to Section 2530(1)-3, 4 and 5 of the Tariff and Customs Code of the Philippines, as amended, which prohibits undervaluation, misclassification and misdeclaration of imported articles, and Section 1, Act 3740, which prohibits importation of articles falsely labelled.

Section 2503 of the Tariff and Customs Code reads:

> 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 collected based on the correct tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed 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 the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: Provided, That, an undervaluation, misdeclaration in weight, measurement or quantity of more than 50% between the value, weight, measurement or quantity declared in the entry, and the correct value, weight, quantity or measurement, shall constitute a prima facie evidence of fraud penalized under Section 2530 of this Code.

When the 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.

Section 2530(1)-3, 4 & 5 of the Tariff and Customs Code provides:

SEC. 2530. Property Subject to Forfeiture Under Tariff and Customs Law. - x x x

1. Any article sought to be imported or exported:

x x x x x x x x x

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation of such article;

(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

(5) Through any other practice or device contrary to law by means of which such articles was entered through a customhouse to the prejudice of the government.

And Section 1, Act 3740 states:

> SEC. 1. It shall be unlawful for a person, firm or corporation x x x to possess with intent to sell or cause to be set x x x from any foreign country into the Philippines x x x any article which is falsely packed, labelled, marked or branded x x x in such a way as to misrepresent the character, amount, value, contents, properties or condition of the article, x x x. (Underscoring supplied)

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 vs. Commissioner of Customs, B.T.A. Case No. 185, decided by the Court of Tax Appeals on November 2, 1954, citing U.S. vs. One Bag of Paradise and Choura Feathers, N.Y., 356, F. 301, 167, C.C.A. 473; Associated Banking Corporation vs. Commissioner of Customs, et al., C.T.A. Case No. 2448, August 6, 1976.)

The term "probable cause", which has been held synonymous with "reasonable cause", means less than the evidence which will justify condemnation. It imports a seizure made under circumstances which warrant suspicion. (Sanchez vs. Commissioner of Customs, supra, citing Locke vs. United States, 7 Cranch /U.S. 339/; Associated Banking Corporation vs. Commissioner of Customs, supra.) When, therefore, the Bureau of Customs ordered and decreed that the subject shipment covered by Seizure Identification No. 23-82 declared as 30,000 yards, 60% Terrylene 40% Acrylic Fabrics, forfeited in favor of the Government and disposed of in the manner provided for by law, what are the circumstances which warranted, or created the suspicion, that such shipment was imported in violation of the law?

As clearly shown in the records of the case and succintly stated by respondent in his answer as special and affirmative defenses:

> Subject shipment was imported in violation of the provisions of Section 2503, Tariff and Customs Code of the Philippines, which prohibits undervaluation, misclassification and misdeclaration of imported articles, and of Section 1, Act 3740, which prohibits importation of articles falsely labeled.
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> Petitioner misdeclared the shipment when it was declared as "one (1) container containing woven fabrics, 60% Terrylene, 40% Acrylic, width: 58/60" 70 Kgs with particular description as 30,000 yards woven fabrics, 60% Terrylene, 40% Acrylic width: 58/60", with a unit value of US$2.50 per yard. On the other hand, investigation showed that the shipment consisted of 380 rolls woven

> fabrics "worsted wool suting materials" (along its side, the label "worsted wool suiting materials" appears), 20,151 yards and 178 rolls woven fabrics, 60% Terrylene and 40% Acrylic 58/60" width equivalent to 9,869 yards. Laboratory tests made on the samples of "worsted wool suiting materials" showed that there were no wool fibers in the fabrics.
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> Moreover, petitioner underdeclared the unit price per yard of the imported woven fabrics. Per petitioner's declaration, the imported fabrics have a homê consumption value of $2.50 per yard. According to the Valuation and Classification Division of the Bureau of Customs, however, the fabric has actually a home consumption value of $3.50 per yard.
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> Seizure of the shipment is therefore in order pursuant to Section 1, Act 3740, Section 2503, in relation to Section 2530(1)-3, 4 & 5, all of the Tariff and Customs Code of the Philippines.

The merit of respondent's stand as averred in the above-stated special and affirmative defenses is clear on the face of the statement of facts of petitioner, stated above and admitted by respondent in his answer. And as testified to by the prosecution witnesses national customs police Dinualdo Felipe, customs examiner Rodolfo Ureta and principal customs examiner Norberto Sablay during the hearing of the seizure case in the Bureau of Customs, who all participated in the examination of the textiles in question, they found the shipment declared as "30,000 yards woven fabric, 60% Terrylene and 40% Acrylic" to contain 178 rolls (9,869 yards) of 60% Terrylene 40% Acrylic woven fabrics and 380 rolls (20,157 yards) of worsted wool suiting materials, or a misdeclaration by 67% of the entire shipment with worsted wool. (See also report of examination submitted by Norberto Sablay to the Collector of Customs, Port of Manila, Exh. "F", p. 192, Customs records; and re-examination report submitted by Dinualdo Felipe to the Deputy Director, NCP, Exhs. "C", "C-1", "C-2", "C-3", pp. 159-161, Customs records.)

Apparently, the misdeclaration of 67% was computed on the basis that of the declared "30,000 yards woven fabrics 60% Terrylene 40% Acrylic," 20, 157 yards were found to be "worsted wool suiting materials".

To disprove of any violation of the law, Mr. Luciano Tan, president of petitioner Metropolitan Garment Corporation testified during the hearing of the case at the Bureau of Customs that samples of the swatches of the textiles in question were sent to petitioner by the supplier/buyer Luen Thai Shipping & Trading Co., Ltd., Taiwan, and that before the actual importation of the textiles and also prior to the opening of the Letter of Credit No. 101635 with the Pacific Banking Corporation, the approval of the Garment and Textile Embroidery Board (GTEB) was first sought to import the textiles of the kind as that of the sample swatches; and that, what was intended to be imported by petitioner is 30,000 yards of woven fabrics. Upon being informed of the misdeclaration, petitioner sought clarification of the shipment from its supplier of the discrepancies between the actual fabric shipped and that described under covering letter of credit. The supplier stated that the goods shipped is the same material approved by the buyer as wooven fabric synthetic worsted wove, and explained that a synthetic wool is just a descriptive name and does not contain natural wool but man-made fiber just like 60% Terrylene and 40% Acrylic.

Be that as it may, the testimony of petitioner's witness is however negated by the stand taken by petitioner in a letter dated 21 January 1982 to the Garment and Textile Embroidery Board (GTEB) requesting for amendment of the original endorsement granting authority to import woven worsted wool fabric instead of woven fabric 60% Terrylene 40% Acrylic. Why the amendment if worsted wool suiting materials are not different from woven fabrics, 60% Terrylene 40% Acrylic? Again, if the goods shipped are the same, why does the subject shipment consist of two parts: (a) 380 rolls woven fabrics worsted wool suiting materials and (b) 178 rolls woven fabrics, 60% Terrylene and 40% Acrylic? And in this connection, it maybe noted that when the shipment in question was referred to the National Institute of Science and Technology for laboratory analysis of its contents, said office found out that the goods did not contain wool.

In effect, therefore, petitioner not only misdeclared but also mislabelled the shipment under consideration in violation of Section 1, Act 3740, supra, which prohibits importation of goods or articles falsely labelled.

Then, on the basis of the customs records and the pleadings on which petitioner submitted this case for decision, it clearly appears that petitioner underdeclared the unit price per yard of the imported woven fabrics. Per petitioner's declaration, the imported fabrics have a home consumption value of US$2.50 per yard. According to the valuation and classification division of the Bureau of Customs, however, the shipment has actually a home consumption value of $3.50 per yard.

Settled is the rule that the party who prays for judgment on the pleadings without offering proof as to the truth of his own allegations and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party. (Bauermann vs. Casas, et al., 10 Phil. 386; Evangelista vs. De la Rosa, 70 Phil. 115.) Since petitioner failed to controvert the fact appearing in the customs records, and alleged by the respondent in his answer, that the shipment has a home consumption value of US$3.50 per yard, petitioner has underdeclared the unit price per yard of the imported woven fabrics in violation of Section 2503 of the Tariff and Customs Code.

And lastly, this Court cannot ignore the averment of respondent, which appears from the records of this case, and not controverted by petitioner, that CBW No. 640, under Sections 2001-2004 of the Tariff and Customs Code, operated by herein petitioner where the shipment in question would allegedly be manufactured, had already ceased to operate in view of the cancellation of its authority to operate in February, 1982. Indeed, this finding of the Bureau of Customs would belie petitioner's claim that subject shipment would be used as raw materials in its manufacturing venture.

Taking all these facts and circumstances, the conclusion is inevitable that the seizure of subject shipment is in order, pursuant to Section 1, Act 3740, Section 2503 in relation to Section 2530(1)-3, 4 & 5, of the Tariff and Customs Code of the Philippines.

WHEREFORE, the decision of respondent Commissioner of Customs forfeiting the subject shipment of petitioner Metropolitan Garment Corporation in favor of the Government is hereby affirmed. Costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, April 16, 1986.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge