REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHESTER INDUSTRIES, INC.,
Petitioner,

-versus- C. T. A. CASE NO. 2560

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

5/9/74

D E C I S I O N

Appeal from the decision of respondent Commissioner of Customs sustaining a decision of the Collector of Customs of Manila dismissing the protest filed by petitioner Chester Industries, Inc., against the assessment and collection of additional customs duty and internal revenue tax arising from an alleged erroneous classification of a shipment of pigskin parings.

The facts are not in dispute, the same having been stipulated and agreed upon by the parties, as follows:

I

That in April, 1972, Chester Industries, Inc., petitioner herein, imported from Hongkong thru the Port of Manila -

"500 bags; mixed classes pigskin parings
50 Pgs/Bag for Industrial Use"

describing the same as such in E-34264-72 (Pp. 20-21, Customs Record) and using for Tariff classification paragraph 05.06 of the Tariff and Customs Code, which pigskin parings were intended as material in making animal glue for use in manufacturing insulating pipe covers, blacks, coating and adhesives (TSN Pp. 10-11, hearing of Oct. 10, 1972, Law Division, Port of Manila);

II

That the shipment was covered by requisite Commercial Invoice, Consular Invoice and Bill of Lading, as well as by Release Certificate No. 8915, of the Central Bank authorizing the release of "500 BAGS MIXED CLASSES PIGSKIN PARINGS 50 KGS/BAG FOR INDUSTRIAL USE";

III

That the importation was covered by a certificate of origin numbered 0811 dated April 11, 1972, Consular Invoice No. 13709 dated April 11, 1972, a commercial invoice issued on April 10, 1972, a statement of payment of the goods dated April 11, 1972, Bill of Lading No. m-19 issued on April 22, 1972, and Central Bank Release Certificate No. AR-4106 dated May 3, 1972.

IV

That upon appraisal, the Appraisers Division found that there was a discrepancy in classification of said goods, in view of which, it submitted Report No. 2867-72 dated May 3, 1972, wherein the following observations appear, to wit:

As Declared	T. N.	Rate of Duty	Duty
$2,500.00	05.06	25%	₱4,027.00
As Found			
$2,500.00	02.06	ex-90%	₱14,497.00

V

That the pigskin parings shipment was chemically treated was confirmed by the findings of the National Institute of Science and Technology which tested the shipment's sample submitted to it, to the effect that :

> "x x x the sample of the pigskin parings submitted contained creosote as preservative."

per its Report of Analysis dated May 24, 1972 (Page 43, Customs Record);

VI

That the classification of the pigskin parings in question under Heading 05.06 was concurred in by the Collector for South Harbor (P. 40, Customs Record) and the Customs and C.B. Consultant (P. 137, Customs Record);

VII

That the respondent, per Customs Tariff Decision Circular No. 25-71 dated July 28, 1971, established the tariff classification of "Pigskin in the form of trimmings and parings" chemically treated with creosote under Heading 05.06 @ 25% ad valorem; (P. 37, Customs Record);

VIII

That the respondent disapproved the Tariff Heading (05.06) used by the petitioner, by sustaining the classification of the subject pigskin parings under Tariff Heading 02.06 @ 90% ad valorem, as a result of which the petitioner, aside from paying the duty and taxes based on the entered classification (P. 44, Customs Record) made an additional payment in the amount of ₱10,470.00 for customs duty and ₱918.00 for Internal Revenue Tax, or a total amount of ₱11,386.00, as evidenced by O.R. No. 747564, dated August 29, 1971 (P. 39, Customs Record);

IX

That the respondent filed a timely protest against the payment of the additional payment of customs duty and taxes mentioned in the immediately preceding paragraph (P. 1, Customs Record), the same having been denied in the decision of the Manila Port Collector (Pp. 121-125, Customs Record) whose decision was appealed to the respondent (P. 130, Customs Record); who sustained the said Collector (Pp. 131-134, Customs Record); hence, the petition for review;

X

That the basis of the classification of the goods under Heading 02.06 is the finding of the Chief CMPS that the pigskin parings declared in E-34264-72 were found edible as a result of the test his office conducted by having a sample -

"x x x thoroughly washed and cooked in boiling oil. x x x"

which was sustained by respondent in his aforesaid decision;

XI

That the processing conducted by the Customs Metropolitan Police Service consisting of removing the creosote by thoroughly washing the sample and cooking it in boiling oil was for the purpose of testing if the pigskin parings could be made into edible "chicharon", but did not determine whether such sample became absolutely free of creosote or from the effects thereof on the stuff preserved with it; and

XII

That the word "parings" as defined in Webster's New International Dictionary, p. 117, means-

"That which is pared off; wastes".

The only issue tendered for resolution is whether the shipment of pigskin parings, for purposes of tariff classification, falls under Tariff Heading No. 05.06 calling for a rate of duty of 25% ad valorem as declared by petitioner or under Tariff Heading No. 02.06 with a rate of duty of 90% ad valorem as decided by respondent. The parties are in agreement on the provisions of law, regulations, legal principles and computations of the customs duty and internal revenue tax paid by, or amount refundable to, petitioner as the case may be.

Tariff Heading No. 02.06 reads as follows:

> Meat and edible meat offals (except poultry liver), salted, dried, smoked, cooked or similarly treated . . . . . ad val. 90% (Chapter 2, Schedule I, Tariff and Customs Code.)

While Tariff Heading No. 05.06 states:

> Sinews, tendons, parings and similar waste of raw hides or skins . . . . ad val. 25% (Chapter 5, Schedule I, Tariff and Customs Code.)

It is the general rule that it is the condition of the merchandise at the time of importation that controls its classification, not what it is made into after importation. (Brier Manufacturing Co. vs. U.S., 25 United States Customs Court Reports 197.) In the absence of deception, disguise or artifice to commit fraud, merchandise must be classified according to its condition at entry. (U.S. v. Hannevig, 10 United States Court of Customs Appeals 124.) There is nothing in Chapters 2 and 5, Schedule I, of the Tariff and Customs Code, which makes the classification of merchandise provided for therein contingent upon its ultimate use or destination after importation. (See Associated Merchandising Corp. v. U.S., 4 United States Customs Court Reports 263.)

Of course, it may be that the use or purpose for which imported articles are generally adapted and for which they are generally used determines their character or condition 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 or special use which any particular importer may make of the articles imported. Thus, if the law provides that "the duty upon essential oils, extracts, and products used in the preparation of perfumery" is an amount different from (and much higher than) the duty upon flavoring extracts, imported aniseed oil used in the manufacture of liquors is assessed in accordance with the general purpose for which such imported article is used. Since aniseed oil is generally used in the preparation of perfumery, it should be subject to duty as such and not as flavoring extract in accordance with the specific or special use which the importer makes of such article. (See La Compañia General de Tabacos de Filipinas v. The United States, 8 Phil. 438.) But there is no proviso in Tariff Heading No. 02.06 and Tariff Heading No. 05.06, supra, which makes the classification of merchandise provided for therein dependent upon their use or purpose.

Since it is a cardinal principle of customs law that the condition of merchandise at the time of its importation controls its tariff classification (Textile Design Co., Inc., v. U.S., 9 United States

Customs Court Reports 396, Aff'd 30 United States Court of Customs and Patent Appeals 191, Customs Appeals Decisions 232), brought to the fore, therefore, is the determination of the condition of the shipment under consideration at the time of its importation.

The question posed being factual in nature, let us go back to the stipulated facts. The parties state:

1. That x x x x x petitioner herein, imported from Hongkong thru the Port of Manila -
   "500 bags; mixed classes pigskin parings
   50 pgs/Bag for industrial Use"
   x x x x which pigskin parings were intended as material in making animal glue for use in manufacturing insulating pipe covers, blocks, coating and adhesives x x x . (Par. I, Partial Stipulation of Facts.)

2. That the shipment was covered by requisite Commercial Invoice, Consular Invoice and Bill of Lading, as well as by Release Certificate No. 8915, of the Central Bank authorizing the release of "500 BAGS MIXED CLASSES PIGSKIN PARINGS 50 KGS/BAG FOR INDUSTRIAL USE"; (Par. II, Partial Stipulation of Facts.)

3. That the pigskin parings shipment was chemically treated was confirmed by the findings of the National Institute of Science and Technology which tested the shipment's sample submitted to it, to the effect that:
   "x x x the sample of the pigskin parings submitted contained creosote as preservative."
   per its Report of Analysis dated May 24, 1972 (page 43, Customs Record); (Par. V, Partial Stipulation of Facts.)

4. That the classification of the pigskin parings in question under Heading 05.06 was concurred in by the Collector for South Harbor (P. 40 Customs Record) and the Customs and C.B. Consultant (P. 137, Customs Record); (Par. VI, Partial Stipulation of Facts.)

From these facts, there seems to be no doubt that the shipment in question consisted of pigskin parings which were chemically treated with creosote; and this was its condition or character at the time of its importation. For purposes of tariff classification, therefore, it is abundantly clear that it falls under Tariff Heading No. 05.06 as "parings" with a rate of duty of 25% ad valorem.

Respondent, however, brushed aside this classification under Tariff Heading No. 05.06 and classified the shipment in question under Tariff Heading No. 02.06 as "meat, salted, dried, smoked, cooked or similarly treated" with a rate of duty of 90% ad valorem on the basis of the finding of the Chief of the Customs Metropolitan Police Service (CMPS, for short) that the pigskin parings were found edible. It appears that in a test conducted by the chief of the CMPS in which a sample of the pigskin parings was thoroughly washed and cooked in boiling oil, it could be made into edible "chicheron."

Undoubtedly, respondent classified the shipment in question under Tariff Heading No. 02.06 as meat, salted, dried, smoked, cooked or similarly treated because of the probability or possibility that by some unscientific and unreliable test, it could be made edible without any assurance or guarantee that it has no bad or toxic effects on the human body. And for purposes of tariff classification he based it not according to its condition as imported but according to what could be done to it after importation.

If the classification of imported merchandise is determined by its condition at the time of importation and not dependent upon anything that may be made out of it after importation (Associated Merchandising Corp. v. U.S. supra.), it is manifestly clear that the shipment in question consisting of pigskin parings which was admittedly preserved in creosote and intended for industrial use cannot be considered as edible meat under Tariff Heading No. 02.06, dutiable at 90% ad valorem. It should be noted that meat in order to fall under this tariff classification must be salted, dried, smoked, cooked or come under the general clause pertaining to that which is "similarly treated". And in order that meat may come under the general clause "similarly treated", it is necessary that it should belong to the same kind, nature or class as those that have preceded it applying the rule of construction known as ejusdem generis. Pigskin parings containing creosote as preservative cannot by any stretch of the imagination be of the same kind, nature or class as salted, dried, smoked, or cooked meat, even on the assumption that "parings" means or is similar to meat.

This brings us to the definition of the word "parings". The parties, quoting the ordinary dictionary meaning of parings, state "that which is pared off; wastes." (Par. XII, Partial Stipulation of Facts.) As aforestated, Tariff Heading No. 02.06 covers meat and edible meat offals (except poultry liver), salted, dried, smoked, cooked, or similarly treated. The very title of Chapter 2, Schedule I, under which Tariff Heading No. 02.06 comes is "Meat and Edible Meat Offals." The accent is on "meat". And meat in every day parlance simply means the flesh of animals used as food. To say, therefore, that parings for industrial use and containing creosote are the same as meat used as food is to ignore the unmistakable meaning of plain words.

If the shipment in question does not fall under Tariff Heading No. 02.06, under what tariff heading should it be classified for purposes of tariff classification? Respondent himself gave the ready answer. Under paragraph VII of the Partial Stipulation of Facts, the parties aver: "That the respondent, per Customs Tariff Decision Circular No. 25-71 dated July 28, 1971, established the tariff classification of 'Pigskin in the form of trimmings and parings' chemically treated with creosote under Heading No. 05.06 @ 25% ad valorem; (P. 37, Customs Record)."

Now back to the case at bar. Here, petitioner imported pigskin parings for industrial use. They were chemically treated with creosote. This was the state or condition of the shipment at the time of importation.

The statute says that parings and similar waste of raw hides or skins, for purposes of tariff classification, fall under Tariff Heading No. 05.06 with a rate of duty of 25% ad valorem. There is nothing in Tariff Heading No. 05.06 which makes the classification of merchandise mentioned therein contingent upon what may be made out of it after importation. The law is clear and respondent applied it as worded. Accordingly, in line with respondent's Custom Tariff Decision Circular No. 25-71 dated July 28, 1971, petitioner's shipment of pigskin parings which was chemically treated with creosote should be classified for tariff purposes under Tariff Heading No. 05.06 at 25% ad valorem.

At any rate, even assuming that the subject pigskin parings should be classified as edible meat under Tariff Heading No. 02.06 and not the parings alluded to as wastes under Tariff Heading No. 05.06, since respondent in his Custom Tariff Decision Circular No. 25-71 dated July 28, 1971 had already established their tariff classification under Tariff Heading No. 05.06 at 25% ad valorem, the same cannot be changed, altered or amended except in the manner and form prescribed under Section 3502 of the Tariff and Customs Code of the Philippines. Section 3502 reads as follows:

> Sec. 3502 - Application of Established Ruling or Decision. - A ruling or decision of the Commissioner of Customs which determines the construction of application of any provision of law decreeing forfeiture of imported articles or imposing customs duties, fines, fees and surcharges and which changes any existing established appraisal, interpretation or practice shall not take effect until after thirty day public notice shall have been given in the form of a published customs decision. When such ruling or decision favors the taxpayers it shall become effective immediately. (As amended by Presidential Decree No. 34.)

The law is clear and mandatory. It calls for application as thus worded. A ruling or decision of the Commissioner of Customs which determines the construction or application of any provision of law imposing customs duties and which changes any existing established appraisal shall not take effect until after thirty days notice shall have been given in the form of a published customs decision. There is no room for interpretation. Public policy requires that an importer who intends to order goods from abroad should be able to compute under existing law and regulations the amount of duties and other charges that he should pay upon arrival of the imported articles. We have carefully examined the records of this case, oral and documentary, but found nothing which would indicate directly or indirectly that the requirements of the law have been duly complied with by respondent. On the premise that respondent's new decision changing the

DECISION -
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established tariff classification of pigskin in the form of parings chemically treated with creosote is in accordance with law, it shall not take effect until after thirty days public notice shall have been given in the form of a published tariff decision circular.

WHEREFORE, the decision appealed from is reversed. Respondent Commissioner of Customs is hereby ordered to refund to petitioner Chester Industries, Inc., the amount of ₱11,386.00 representing overpaid customs duty and internal revenue tax. No costs.

SO ORDERED.

Quezon City, May 9, 1974.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge