REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

SAN CARLOS TRADING,
Petitioner,

- versus -

C.T.A. CASE NO. 31

COMMISSIONER OF CUSTOMS,
Respondent.

x- - - - - - - - - - - - - - -x

D E C I S I O N

This is an appeal from a decision of the respondent Commissioner of Customs sustaining the decision of the Collector of Customs of Manila in Manila Seizure Identification No. 1295, declaring the cash bond of the petitioner San Carlos Trading, in the amount of ₱6,611.62 forfeited in favor of the Government.

The following are the pertinent facts stipulated and submitted by the parties:

1. That this case refers to four (4) cases of nylon socks, one (1) case of table cloth and one (1) case of feather duster covered by Seizure Identification No. 1295.

2. That the shipment in question arrived in Manila on December 23, 1953, ex S/S "HIRAM", Reg. 1561, under Bill of Lading No. 4 (Exhibit "J") and consigned to the appellant.

3. That according to the "Invoice of Merchandise" (Exhibit "C") the shipment consisted of 1,100 dozens cotton socks, 8 dozens table cloth and 1,000 pieces of feather duster.

4. That the said merchandise were declared under Declaration Entry No. 87173 (Exhibit "A"), to which entry to the following papers were attached: Central Bank Release Certificate (Exhibit "I"), Bill of Lading (Exhibit "J"), Delivery Permit (Exhibit "K"), Statement of Advance Sales Tax (Exhibit "L") and Official Receipt No. 0535012 (Exhibit "M").

5. That on January 6, 1954, customs examiner Hermogenes Dimalanta examined the shipment in question (t.s.n., pp. 14-15) and found discrepancies in the quality and quantity of the merchandise in question, said discrepancies consisting in the following that instead of 1,100 dozens of cotton socks as declared in the consular and commercial invoices, it was found that there was 1,429 dozens of cotton socks and 283 dozens of rayon socks,

or a total of 1,712 dozens; and that instead of 1,000 pieces of feather duster there were 1,250 pieces. No discrepancy was found in the one case of table cloth (p. 2, decision, Collector of Customs).

6. That because of the discrepancy discovered, the shipment in question was seized for violation of Section 1363 (m-3), (m-4) and (m-5) of the Revised Administrative Code and Seizure Proceeding No. 1295 was instituted.

7. That to obtain the release of the merchandise in question, the petitioner posted a cash bond in the amount of ₱6,611.62, under Official Receipt No. 27668, dated May 8, 1954. The goods were ordered released.

8. That during the hearing of the Seizure Identification No. 1295, petitioner submitted Exhibits "I" and "2" to show that the shipper of the merchandise in question, Yuen Tai Co., Hongkong, committed a mistake in the shipment by shipping the wrong merchandise to the petitioner.

9. That after trial, the Collector of Customs rendered a decision declaring the cash bond of petitioner forfeited in its entire amount, and, on appeal the Commissioner of Customs affirmed the decision appealed from.

The petitioner cites three errors allegedly committed by the respondent in the decision appealed from:

1. That the respondent was too drastic in ordering the forfeiture of the cash bond posted by the petitioner and in applying strictly the provisions of section 1363 (m-3), (m-4) and (m-5) of the Revised Administrative Code without taking into consideration the good faith and lack of intention on the part of petitioner to defraud the government;

2. That the respondent erred in not giving due weight to a letter and a telegram, Exhibits 1 and 2, of the consignor and shipper of the merchandise, Yuen Tai Company of Hongkong wherein the latter admits having committed a mistake in packing and shipping the wrong merchandise to petitioner; and

3. That the respondent erred in holding that the shipment in question is not covered by any import license with respect to the cotton and rayon socks and therefore are illegal importations under Central Bank Circular No. 44.

The petitioner admits that there is in fact a big discrepancy in the quantity, quality as well as classification of the merchandise shipped by the consignor, Yuen Tai Company, as compared to the merchandise listed in the bill of lading, consular and commercial invoices and other pertinent papers supporting the importation. More particularly, instead of 1,100 dozens of cotton socks as declared in the consular and commercial invoices, it was found that the shipment in question consisting of six cases contained 1,429 dozens of cotton socks and 283 dozens of rayon socks, or an excess of 612 dozens. And that instead of 1,000 pieces of feather dusters as manifested, there were 1,250 pieces found in the shipment or an excess 250 pieces. According to the computation of Customs Examiner Hermogenes Dimalanta, who examined the contents of the six cases on January 6, 1954, the Government would have lost ₱1,860.10 in duty and ₱381.94 in short tax or a total of ₱2,242.04 had the anomaly not be detected (pp. 36, 37, 86 Customs Record).

In sustaining the order of forfeiture, the respondent applied section 1363 (m-3), (m-4) and (m-5) of the Revised Administrative Code, which empowers the Bureau of Customs to seize and forfeit in favor of the Government importations upon the wrongful making by the owner, importer, exporter or consignee of any merchandise, or by the agent of either, of any false declaration, invoice, letter, paper or affidavit touching such merchandise or upon the causing or procurance, by the same person or persons, of any merchandise to be entered or passed at any customhouse by any other fraudulent practice, device or omission by means whereof the Government is or might be deprived of its lawful duties on such merchandise. The respondent gave as additional ground for his decision the fact that petitioner failed to obtain an import license for cotton and rayon socks in violation of Central Bank Circular No. 44.

The petitioner claims that the discrepancy in the shipment is due to the mistake of the shipper, Yuen Tai Company, as evidence by its letter and telegram, Exhibits 1 and 2, (p. 81 Customs Record) and therefore it (petitioner) should not be made to suffer for the mistake of others there being no intention whatsoever on its (petitioner's) part to deprive the Government of its lawful duties.

It is of common knowledge that Chinese merchants are among the most proficient in the world and in matters of figures there are few like them. We find it impossible to believe the pretention of the shipper, Yuen Tai Company, that it committed as honest mistake in the shipment in question by sending merchandise far in excess and of better quality than that purchased by the petitioner herein. The difference in quantity and quality between the amount of articles declared in the invoices and the amount actually shipped is so great that the most liberal human judgment cannot attribute such difference to a mere innocent error but to a deliberate intent to defraud the Government. One will note on the consular invoices (pp. 100-102 Customs Record) that the merchandise ordered by the petitioner from the shipper, Yuen Tai Company, were bought by the latter from different Hongkong firms and factories. Under the circumstances, it is to be presumed that the shipper, Yuen Tai Company, would buy from other firms and factories only those articles which were ordered by the petitioner and would ship the exact quantity and quality requisitioned.

Furthermore, it appears that the shipment in question arrived in Manila on December 23, 1953 and the letter and telegram, Exhibits 1 and 2, of the consignor to the petitioner informing the latter of the alleged mistake came two and three weeks later. We fail to understand why it took the consignor this long to discover the mistake and why such an information as contained in said letter and telegram had to come precisely after the discovery of the anomaly by our customs authorities. We agree with the findings of the respondent that the possibility of mistake on the part of the shipper of the goods in question is remote and that the more plausible conclusion is that there was a secret understanding between the shipper and the petitioner herein to send more merchandise than that manifested in the invoices in the hope that they would be able to sneak it through our customhouse without being detected. The numerous restrictions imposed by the Government on imported goods coupled with the fact that with these restrictions, imported articles command an exorbitant price in the local market, has emboldened unscrupulous importers into taking greater risks and employing all kinds of devices and chicanery in order to smuggle into our country foreign articles without the necessary license and to cheat the Government of lawful duties as well. The ruse employed by the exporter and importer in this case is one of them. The other common "mistake story" is done this way. After the discovery of the excess shipment by the customs authorities, the foreign consignor of the goods usually writes a letter to the local consignee stating that the unmanifested articles are intended to serve as samples and not for sale or that the excess is a misshipment intended for another port. The shipper usually follows this up with another letter to the local importer requesting the latter to ship back the goods which have been sent by "mistake."

Indeed, there might be instances when exporters, through oversight, might send the wrong merchandise to their customers. However, such mistakes are usually in small proportions and in most instances to the favor of the consignor.

It might be asked: Why would our local importers connive in such a manner with foreign exporters knowing fully well that the unmanifested or partly manifested shipments would have to undergo a thorough checking by our local customs authorities before its release? The answer is simple. Unscrupulous importers take all these chances notwithstanding the risk of losing their entire importation if discovered, in the hope that upon arrival of the goods, the Customs Examiner or Appraiser who may be assigned to inspect the same will be one of their confidants who would be willing to close his eyes out of friendship or for a valuable consideration.

At any rate, the alleged good faith on the part of petitioner will not help it any. "Forfeiture is prescribed not only for fraudulent acts that result in the loss of revenue <u>but also for other acts which innocent in themselves, tend to such loss of revenue or administrative difficulty in the enforcement of customs laws</u>". (U.S. vs. The Theophile, D.C. Tex. 11 F. 696.)

In its third assignment of error, petitioner claims that the respondent likewise erred in sustaining the order of forfeiture of the Collector of Customs of Manila on the additional ground that with respect to the cotton and rayon socks the importation was illegal under Central Bank Circular No. 44. Petitioner avers that this matter was never raised as an issue during the investigation of this case before the Collector of Customs of Manila and therefore it was deprived of the opportunity to defend itself with respect to this charge. That there was in fact a violation of Central Bank Circulars Nos. 44 and 45 on the part of petitioner is evident on the face of Central Bank Release Certificate, Exhibit I, issued in favor of petitioner. Central Bank Circular No. 45 of June 25, 1953, requires applicants for import license to describe the goods to be imported. The petitioner was granted, judging by the release certificate issued in its favor by the Central Bank, an import license for nylon socks valued at $770.00. However, the shipment consigned to it for which it presented the release certificate, Exhibit I, consisted of 1712 dozens socks made of cotton and rayon but not nylon. This is clearly a violation of Central Bank Circulars Nos. 44 and 45 and therefore the respondent did not err in sustaining the order of forfeiture of the Collector of Customs of Manila based on this additional ground.

Petitioner cannot now claim that it was not given an opportunity to defend itself with respect to this charge during the seizure proceedings conducted before the Collector of Customs of Manila. It appears that the petitioner was ably defended by Atty. Sabino J. Aguila during the said investigation. On appeal to the respondent Commissioner of Customs, the petitioner was represented by the law firm Llamado, Araullo, Felizardo and Tanyag. Petitioner's counsel did not request the respondent to order the re-opening of the seizure proceedings before the Collector of Customs of Manila, as they should have done under section 1380 of the Revised Administrative Code, in order to give them a chance to disprove the findings of the Collector of Customs that the petitioner also violated Central Bank Circular No. 44. Instead, counsel for the petitioner submitted a lengthy memorandum to the respondent refuting the findings of the Collector of Customs of Manila in this regard and then submitted the case to him for decision. The failure on the part of petitioner and its counsel to request for the re-opening of the seizure proceedings before the Collector of Customs of Manila for the purpose of introducing its evidence in rebuttal of the finding that petitioner also violated Central Bank Circular No. 44, in the questioned shipment, constitutes a waiver of this right on their part. Petitioner cannot now complain at this stage of the proceedings that it was deprived of such right which its own lawyers failed to invoke at the opportune time.

WHEREFORE, finding no error in the decision appealed from, the same is hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, Philippines, February 2, 1955.

AUGUSTO M. LUCIANO
Associate Judge

I concur:

MARIANO NABLE
Presiding Judge