BAGONG BUHAY TRADING,
Petitioner,

- versus - C.T.A. CASE NO. 2490

HON. ROLANDO GEOTINA, in
his capacity as Acting
Commissioner of Customs,
Respondent.

12/27/74

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

D E C I S I O N

Petitioner has appealed from the decision of respondent which sustained that of the Collector of Customs of Manila declaring the forfeiture of 16,000 rolls of "synthetic (polyethylene) woven fabric" which arrived in Manila on January 30, 1972, from Taiwan, consigned to petitioner, pursuant to Section 2530, paragraphs (f), (i) and (m) of the Tariff and Customs Code.

The facts, as admitted by petitioner, are stated in the decision appealed from, reading as follows:

> The facts of the case is not in dispute. Briefly, the subject shipment arrived from Keelung, Taiwan, on January 30, 1972, aboard the S/S "Pacific Hawk", Reg. No. 170. The importer, Bagong Buhay Trading, who is the claimant-appellant in this case, declared the importation thru a customs broker under Entry No. 8651-72 as 80 bales of screen net (500 rolls) with a value of $3,750.00 and classified under Tariff Heading 39.06-B at 35% ad valorem. It was

found and reported by the customs examiner to be as declared and the customs appraiser made a return of the duty and tax due amounting to ₱11,350.00 which was paid under Bank of Asia O.R. No. 042787 dated February 1, 1972.

Acting on the strength of an information received to the effect that the shipment consisted of "mosquito nets" made of nylon and dutiable under Tariff Heading 62.02 of the Tariff and Customs Code, the Office of the Collector of Customs ordered the re-examination of the shipment. A report on the examination shows that the shipment consisted of 80 bales consisting of 1,600 rolls (not 500 as declared). A re-appraisal was likewise made placing the value of the shipment at $37,560.00 or $0.15 per yard instead of $0.075 per yard as declared. Furthermore, the subject shipment was found to be synthetic (polyethylene) woven fabric and is properly classified under Tariff Heading 51.04-B at 100% ad valorem, so that the importer stood to pay, all in all, the sum of ₱272,600.00 as duty and tax due on the shipment in question. Based on the finding that the shipment was misdeclared as to quantity and value, the Collector of Customs ordered the forfeiture of said shipment. Hence, this appeal.

The said article was declared forfeited mainly on the ground that it was misdeclared in the import entry both as to quantity and value. The shipment was declared as consisting of 500 rolls, instead of 1,600, with an import invoice value of $3,750.00, instead of $37,560.00 as found by customs examiners. Petitioner contends that the description of said article as declared in the import entry by its broker was based solely on the shipping documents and, therefore, it can not be held liable for fraud in filing said import entry.

In holding that fraud was committed in the filing of the import entry covering said importation, respondent stated:

> In trying to explain that there was no fraud in the declaration of the quantity and value of the shipment, the claimant alleged that the entry was prepared thru its broker on the basis of the shipping documents describing the nature of the shipment, its quantity, its value and its weight and that the same are in conformity with the certificate of origin (Exh. "4"), the Certification of the Manager of the Shipper (Exh. "5"), the Packing List (Exh. "6") and the Central Bank Release Certificate. It cannot be denied, however, that the shipment in question is over and above in quantity and value of what is described in all the shipping documents and declared in the documents of importation. Consequently, said documents contain false declaration insofar as the shipment in question is concerned. In the absence of any satisfactory explanation regarding the discrepancy, we can not accept the allegation of the importer that it acted in good faith because it relied on the shipping documents. Time and experience have demonstrated that this defense has always been resorted to as a legal subterfuge to circumvent the law on forfeiture.

Respondent brushed aside the claim of petitioner to the effect that the import entry that was filed covering the article in question was based solely on the shipping documents and that it had no knowledge at the time the entry was filed that there was a flaw in the said shipping documents. According to respondent, since the shipping documents contained false declarations, petitioner's claim that it acted in good faith in relying on said documents can not be given weight in the absence of any satisfactory explanation regarding the discrepancy. In other words, according to respondent, petitioner is presumed to have committed fraud, and it has the burden of proof to show the contrary. This is contrary to the time-honored principle that fraud is not to be presumed.

> Fraud cannot be presumed: It must be alleged and proved, at least satisfactorily, if not conclusively by one who alleges its existence. (De Roda v. Lelk, 48 Phil. 104; De Santos v. Bank of the Phil. Islands, 66 Phil. 38; La Cia. Gral. de Tabacos v. Obed, 13 Phil. 391; Mensi & Co. v. Bastida, 63 Phil. 16; Arroyo v. Granada and Centero, 18 Phil. 484.) The rule is founded on public policy to guard against the speculative tendencies of the human mind and its readiness to accept as fact theories that appeal to the imagination. (Bilado vs. Assad, 97 Phil. 451, 458-459.)

The foregoing opinion of the Supreme Court is doubly significant as applied to the instant case because respondent has presumed that petitioner committed fraud solely on the ground that "(t)ime and experience have demonstrated that this defense has always been resorted to as a legal subterfuge to circumvent the law on forfeiture." No evidence of fraud has been adduced in this case; respondent's finding of fraud is made to rest solely on "time and experience." We can not accept this view as correct.

A case in point is Farm Implement & Machinery Co. v. Commissioner of Customs, G. R. No. L-22212, August 30, 1968, 24 SCRA 905, wherein it was held:

> "And then fraud is never presumed. It must be proved.[1] Failure of proof of fraud is a bar to forfeiture. The reason is that 'forfeitures are not favored in law and equity.'"[2]

Petitioner questions the classification of the article in question made by the Collector of Customs. It is alleged that said article is "polyethylene plastic" and is dutiable under Tariff Heading No. 39.06B at 35% ad valorem, pursuant to the result of a laboratory test conducted by the Chief, Customs Laboratory. On the

[1] Republic v. Ker & Co., L-21609, Sept. 29, 1966, 18 SCRA 207.

[2] Yu Phi Kim v. Amparo, 86 Phil. 441, 446.

other hand, the Collector of Customs of Manila classified the article as "synthetic (polyethylene) woven fabric" and is dutiable under Tariff Heading No. 51.04-B at 100% _ad valorem_. Respondent sustained the finding and conclusion of the Collector of Customs as against the laboratory finding in the following language:

> Claimant-appellant contends that the shipment in question should be classified under Tariff Heading 39.06B at 35% _ad valorem_, in view of the laboratory finding that the same is "polyethylene-plastic". In this connection, it may be stated that the laboratory technician merely furnishes data to the Collector of Customs and it is the latter who finally makes the proper classification. In this case, the Collector of Customs classified the shipment as 'synthetic (poly-ehtylene) woven fabric' under Tariff Heading No. 51.04-B at 100% _ad valorem_ and there being no evidence showing that the Collector of Customs committed an error in the classification, this Office is inclined to sustain his finding in this regard.

While it is true that the finding and conclusion of the Collector of Customs with respect to classification of imported articles are presumptively correct, yet on matters that require laboratory test or analysis to arrive at the proper classification, the opinion of the Collector must yield to the finding of an expert whose opinion is based on such laboratory test or analysis, unless such laboratory analysis is shown to be erroneous. And this is specially so in this case where the test and analysis were made in the laboratory of the Bureau of Customs itself. It has not been shown why such laboratory finding was disregarded. There is no claim or pretense that an error was committed by the laboratory technician. Significantly, the said finding of the Chief, Customs Laboratory finds support in the "REPORT OF ANALYSIS" submitted by the Adamson University Testing Laboratories, dated September 21, 1966. (See page 223, Customs Rec.)

IN VIEW OF THE FOREGOING, we are of the opinion that (1) the decision declaring the forfeiture of the article in question is not in accordance with law, and (2) the said article was improperly classified as "synthetic (polyethylene) woven fabric", instead of "polyethylene plastic", which is dutiable at the rate of 35% ad valorem. Accordingly, respondent is hereby ordered to release the said article upon payment of the corresponding duties and taxes. No pronouncement as to costs.

SO ORDERED.

Quezon City, December 27, 1974.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge

/dma