REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANICO ENTERPRISES,
Petitioner,

- versus -

C.T.A. CASE NO. 2557

COMMISSIONER OF CUSTOMS,
Respondent,

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

6/1/72

D E C I S I O N

Appeal by petitioner Anico Enterprises from the decision of respondent Commissioner of Customs dated July 18, 1973 affirming that of the Acting Collector of Customs of Manila in Customs Case No. 73-35 (S.I. No. 12563), declaring the forfeiture of an importation consisting of 580 bags of dried pigskin[1] for alleged violation of Section 2530 (f) and (m)-3, 4 and 5 of the Tariff and Customs Code and Central Bank Circular No. 289.

The facts, and the evidence presented by both parties at the seizure proceedings, are stated in the decision appealed from, to wit:

> The record shows that subject shipment passed the customs examination and appraisement as "Animal Hide Glue", per the importer's declaration; that the shipment, with a declared value of US $5,880.00; was classified and assessed

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[1] That the imported shipment is dried pigskin is admitted in petitioner's petition for review.

under Tariff Heading No. 35.03-A (for glue) at 30% rate of duty; that the resulting customs assessment of ₱15,796.00 was paid by the importer under CB Official Receipt No. 127979-70 dated March 6, 1972; that Central Bank Release Certificate No. RO-4946, dated March 6, 1972, was obtained for the shipment, classified under CB Commodity Code No. NMP 599-04.09.

The release of subject shipment was stopped, however, upon the adverse report of the Customs Metropolitan Police Service (CMPS) which disagreed with the tariff and commodity classification of the shipment. According to the CMPS, the shipment should properly be classified as 'edible meat' under tariff paragraph 02.06-B at 60% ad valorem rate of duty and under CB commodity category and code No. UC 012-09.00, so that there consequently was a violation of Central Bank Circular No. 289, as well as of Section 2530 (f) and (m)-3, 4 and 5 of the Tariff and Customs Code with respect to such violation. Hence, this seizure proceeding based on such ground.

The government side, represented by the CMPS, presented in evidence the testimonies of Special Investigator Guillermo Ortillo and Horacio Tan Torres, Chief, of the Customs Laboratory.

Guillermo Ortillo, CMPS special investigator assigned on the case, testified mainly on his memorandum report, dated April 24, 1972, submitted to the Chief, Customs Metropolitan Police Service (Exh. "1").

According to the said investigator, he inspected and examined the subject shipment, that the pieces of dried pigskin were contained or packed in jute sacks; that the hides looked oily and dirty, were exposed to bacteria and many were still covered with hairs; that he got samples and conducted a cooking test by deep-frying them in oil; that the hides puffed out, shedding off the hairs and dirt, into clean 'Chicharon', a native preparation, that he and a number of officemates tested the preparation, which they found edible.

Ortillo further testified that samples of dried pigskin were submitted to the Chief of the Customs Laboratory, with a written request (Exh. "I") for a finding on whether or not the samples contained 'creosote', a chemical substance that would make them inedible; that the return report of the Customs Laboratory, contained in Lab. No. 72-95, is that the samples were negative for creosote. He submitted samples of dried pigskin (Exh. "M"), as well as cooked hides or 'chicharon' (Exh. "M-1").

Horacio Tan Torres, Chief, Customs Laboratory, testified and confirmed Lab. No. 72-95 (Exh. "J"); that pursuant to the request, he examined the samples only for the presence of creosote, and for no other substance; that all he did was a physical test, by simply smelling the samples; that the presence of creosote, a toxic substance usually used by dentists for killing pain, same can readily be known or detected by the sense of smell, as the substance gives only a strong, unmistakable odor that sticks long on another substance; that he did not know nor try to find out if samples contained any other chemicals or preservatives that may have rendered them unfit for food preparation; that dried pigskin is a raw material for glue.

Other evidence submitted by the prosecution consisted of the import entry and allied documents thereto which are record of the case.

On the other hand, claimant through counsel presented the following witnesses: Pablo Inocente, Assistant Manager of claimant firm, Anico Enterprises; Elena Cibli, owner of Natural Chemical Company, maker of glue from animals hides and contracting party for the purchase of 30 metric tons hides from claimant; Zosimo de Veyra, principal customs appraiser, Emma Bosqueta, Customs Appraiser; Teodorico Ross, supervising customs examiner; and Custodio Calicia, Customs Examiner.

Pablo Inocente testified that he was the assistant manager of claimant Anico Enterprises, which imports and sells industrial goods, such as tools, metal sheets and glue; that on behalf of his firm, he negotiated to supply the Natural Chemical Company with animal hides for glue making; that Natural Chemical Company is engaged in the manufacture of glue, mucilage and fan belt dressing; that his firm received from the Goodness Enterprise Co. of Hongkong an offer and quotation, dated February 2, 1972 (Exh. "5"), for animal hides, to wit:

- animal hide glue (inedible)
  packed in jute sacks . . . . $195.00/m ton
  (Exh. "5-B")

- dried pigskin (edible)
  packed in barrels . . . . $295.00/m ton

that this firm placed an order for 30 metric tons of animal hide glue, confirmed by the Goodness Enterprise Co. per its letter dated February 16, 1972 (Exh. "6"); that claimant opened a letter of credit with the Rizal Commercial Banking Corp. for US $5,880.00 to cover the price and consular fee of 30 metric tons of animal hide glue at $195.00 per ton; that on February 21, 1972, he executed a contract, on behalf of his firm, with Elena Sibli, owner of Natural Chemical Company, to supply the latter with 30 metric tons of animal hide glue at ₱2.40 per kilo for which Elena Sibli gave an advance of ₱5,000 (Exh. "4"); that because of the delay in the release of the subject shipment, he had to ask Elena Sibli for an extension of time to deliver the same; that neither his firm nor the Natural Chemical Company is engaged in the making of 'chicharon'.

Other documents presented with the testimony of Pablo Inocente are the bill of lading (Exh. "8"); packing list (Exh. "9"); commercial invoice (Exh. "10"); importer's sworn statement (Exh. "11"); affidavit and pro forma invoice (Exh. "12"); order of payment (Exh. "13"); Central Bank Release Certificate (Exh. "14").

Elena Sibli confirmed her written contract (Exh. "4") to buy from claimant, Anico Enterprises, 30 metric tons of 30,000 kilos of animal hide glue, which her factory, the Natural Chemical Company located at Batangas St., Tondo, Manila, will utilize in making glue and mucilage.

She testified that her factory makes fan belt dressing, glue and mucilage; that she supplies the mucilage in bulk to the 4th Avenue Lumber at Grace Park, Caloocan City, which repacks the same in plastic dispensers (Exh. "16") for sale and distribution; that in making glue and mucilage, her factory uses animal hides as raw materials, which she procures usually from Meycauayan, Bulacan; that to meet the increased orders for mucilage, she arranged to buy imported hides from Anico Enterprises; that in connection with her contract with claimant, she had given an advance of ₱5,000.00; that her production suffered a slowdown because of the claimant's failure to perform its contract; that she has granted an extension of time for taking delivery of the hides, however, because she fully understood that the claimant's shipment has not been released from Customs; that her factory is not nor has it ever been engaged in the making of 'chicharon'.

Four customs personnel, who had a hand in processing and clearing the subject shipment and the covering import entry No. 17577 (72) Exh. "1") stood firm on the witness stand by their previous finding, accordingly reflected on the said import entry, that the shipment consisted of animal hide glue.

Customs Examiner Custodio Galicia declared that he was assigned to examine the shipment in question; that the pieces of dried pigskin, many of which were hairy, were packed in jute sacks; that from the nature and condition of the shipment, he agreed with the importer's declaration that it was animal hide glue, which he accordingly returned on the import entry; that he got samples of the shipment for use in the classification and appraisal of the same. This was corroborated by Supervising Customs Examiner Teodorica Ross, who testified that

Examiner Galicia did his duties properly in connection with the shipment in question.

Customs Appraiser Emma Bosqueta testified that from the samples (Exh. "2") submitted with the import entry (Exh. "1"), she agreed with the returns of the examiner and classified the shipment as animal hide glue, under tariff paragraph 35.03-A at 30% ad valorem upon proper consultation with her Chief, Principal Appraiser Zosimo de Veyra, who was of the opinion that the shipment was animal hide glue.

Principal Customs Appraiser Zosimo de Veyra declared that from the actual condition of the merchandise, which is the basis for classification and appraisement, he was of the opinion that the shipment in question was raw material for glue, and thus correctly declared and classified; that the samples even corresponded to trimmings and parings of pigskin which may be appraised at 25% ad valorem, and that the shipment's appraisal as glue at 30% ad valorem favored the government that he was sure that the merchandise contained some chemical preservatives, otherwise it would have spoiled.

After appraisal and evaluation of the foregoing facts and evidence, the Collector of Customs, in his decision of April 2, 1973, which was affirmed by the Commissioner of Customs, declared the forfeiture of the subject merchandise, stating forth the reasons therefor, as follows:

> From the evidence submitted in the instant case, the subject shipment is admittedly a pigskin which has been clearly established as not chemically treated with 'creosote' to make it inedible. In this connection, samples of the shipment in question were submitted to the Customs Laboratory for an analysis which resulted to the following findings: "Samples submitted under Entry No. 17577 was found to be dried pigskin negative for creosote" (Lab. No. 72-75). It is evident therefore that the correct classification of subject shipment (Dried

Pigskin) is Tariff Heading No. 02.06-B at 60% ad valorem rate of duty and not Tariff Heading No. 35.03-A at 30% ad valorem as declared by the claimant. Moreover, the former classification is supported by Customs Tariff Decision No. 1-71 dated January 14, 1971 making Dried Pigskin classifiable under Tariff Heading No. 02-06-B at 60% ad valorem. Thus, claimant's classification of subject shipment NEP 599.04.09 of the Central Bank Commodity Code classification is wrong. "Dried Pigskin" under the abovementioned Tariff Decision Circular 1-71 is classifiable under Tariff Heading "MEAT" and other smoked, dried, salted or cooked meat" under the Central Bank Commodity Code classification are classified under UC category (UC 012-09.00). Such being the case, the subject shipment therefore is a banned item or commodity.

The defense of good faith on the part of claimant is of no moment, for the same is not a bar or defense in a proceeding *in rem* and the articles in question in such a case is primarily considered as the offender, or rather that the offense is attached to said articles. If we allow the release of subject shipment based on the facts and evidence presented, it would be a dangerous precedent and would open wide the avenue for more frauds.

The issue is whether the shipment of dried pigskin, which has been declared by petitioner as animal hide glue and classifiable as such under Tariff Heading No. 35.03-A and CB Commodity Code No. NEP 599-04.09, should properly be classified as edible meat under Tariff Heading No. 02.06-B and CB Commodity Code or Category No. UC 012-09.00, and consequently, is subject to forfeiture for violation of Central Bank Circular No. 289 and Section 2530 (f) and (m)-3, 4 and 5 of the Tariff and Customs Code.

Petitioner maintains that its importation of dried pigskin has been correctly declared and classified under Tariff Heading No. 35.03-A which reads:

> Gelatin (including gelatin in rectangles, whether or not colored or surfaced-worked) and gelatin derivatures; glues, glues derived from bones, hides, nerves, tendons or similar products, and fish glues; isinglass.
>
> A. Animal glue . . . . . ad val. 30%
>
> B. Other . . . . ad val. 15%

It contends that its shipment of pigskin is not meat and is intended for glue manufacture and, as such, it cannot be classified under Tariff Heading No. 02.06-B. Furthermore, it argues that the findings of the customs laboratory that the subject shipment is negative for creosote[2] does not rule out the possibility that it is treated with other preservatives not creosote because no chemical test was conducted in the customs laboratory but only a physical test and that, considering the length of time in the importation thereof from Hongkong to Manila, the same would have already spoiled or decomposed if it did not contain other preservatives.

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[2] Creosote is a poisonous chemical substance or preservative.

To begin with, petitioner submitted this case for decision on the basis of the pleadings and of the records. No trial on the merits was conducted by this Court. One 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, and to rest his motion for judgment on these allegations taken together with such of his own as are admitted in the pleadings. (Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et al., 76 Phil. 115) Petitioner must be understood to have admitted therefore the truth of the following material and relevant allegations of respondent found in his answer, to wit:

<u>Par</u>. 3. That the subject shipment, declared in the entry as "animal hide glue" was actually found to be "pigskin" not chemically treated with "creosote" to make it inedible. Samples of the same were submitted to Customs Laboratory for analysis and under Customs Lab. No. 72-75, it was found out that the same were "dried pigskin negative for creosote". From the foregoing findings, therefore, it is evident that the subject shipment falls under Tariff Heading No. 02.06-B of the Tariff and Customs Code

at 60% ad valorem rate of duty as declared by the herein importer in the entry.

Par. 4. That this classification (under Tariff Heading No. 02.06-B) is in consonance with the decision of this Office (Bureau of Customs) in Customs Tariff Decision No. 1-71 dated January 14, 1971 relative to the shipment of dried pigskin of Jacob Enterprises declared under Entry No. 0059-71 wherein it was ruled:

> "Heretofore, Dried Pigskins, following the classification made at the Port of Manila, has been held in Customs Tariff Circular No. 3-69 dated January 27, 1969 to be classifiable under Heading 41.01 of the Tariff and Customs Code at 10% ad valorem as skins, dried, on the assumption that the same is not edible and is used as leathers;
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> "Henceforth, based on the findings that such Dried Pigskin is to be used in the preparation of 'CHICHARON', a local food delicacy, and therefore edible, the same shall be reclassified under Heading 02.06-B at 60% ad valorem, as other edible dried meat;
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> "In this connection, it may be stated that the Tariff Commission, in its TCC No. 1457, has also ruled that 'Raw Sun-Dried Pigskin' falls within Heading 02.06-B at 60% ad valorem."

Par. 5. That since the Pigskin covered by this case falls properly under Tariff Heading No. 02.06-B at 60% ad valorem rate of duty, the correct Central Bank Commodity Code classification of said Pigskin is UC 012-09.00 (UC category). Since Central Bank Release

Certificate No. RC-4946 dated March 6, 1972 obtained by the herein importer refers to CB Commodity Code No. NEP 599-04.69 and not GU 012-09.00 which is the correct commodity classification, said shipment is therefore imported in violation of Central Bank Circular No. 289 (imported without the required Central Bank release certificate), hence, subject to forfeiture for violation of the provisions of Section 2530(f) and (m)-3, 4 and 5 of the Tariff and Customs Code.

Par. 6 That defense of good faith in this case will not prosper in view of the ruling of the Court of Tax Appeals in C.T.A. Case No. 31 entitled San Carlos Trading vs. Commissioner of Customs wherein it was ruled that "forfeiture is prescribed not only for fraudulent acts that result in loss of revenue, but for other acts which, innocent in themselves, tend to such loss or administrative difficulty. The alleged good faith on the part of the petitioner will not help in any way."

At any rate, the uncontroverted evidence presented during the hearing of this case at the Bureau of Customs, as shown by the records, proves that the dried pigskin in question was not treated with creosote to make it inedible; and as actually found by the Customs Metropolitan Police Service special investigator, samples of said importation, after deep-frying them in oil, could be turned into clean, edible native delicacy known as "chicharon". In the face of these findings, no evidence was presented by petitioner to prove that the shipment in question contained other preservatives or was chemically treated so as to make it inedible or unfit for human consumption.

Admittedly, the importation in question consists of dried pigskin and, by common knowledge and experience, such pigskin could be made safe from spoilage and decomposition for a length of time. Drying is a well-known process of preserving food and food products, specially animal skin or hide, and is usually resorted to even without the aid or use of preservatives or chemical substances. In alleging that creosote is not the only chemical preservative that would render hides inedible, petitioner should not therefore simply rely on possibilities or surmises to overcome the findings and conclusion of the Bureau of Customs that this dried pigskin is edible. And since the proceeding before the Court of Tax Appeals is a trial _de novo_ (C.F. Sharp & Co. Inc. vs. Commissioner of Customs, No. L-23803, February 26, 1968, 22 SCRA 760), petitioner could have easily presented evidence before this Court to prove that the subject shipment can not be used in the preparation of "chicharon", and therefore inedible so that the same should not be classified under Tariff Heading No. 02.06-B at 60% ad valorem, as other edible dried meat.

Anent this, petitioner alleged under paragraph 2 of its petition for review that its shipment under consideration consists of "dried animal hide (Pigskin)", which was admitted by respondent under paragraph 1 of his answer. Since samples of said shipment, as stated earlier, could be used in the preparation of "chicharon", the same should be classified under Tariff Heading No. 02.06-B at 60% ad valorem, as other edible dried meat, in accordance with Customs Tariff Decision No. 1-71 dated January 14, 1971 and TCC No. 1457 of the Tariff Commission. Under Section 505 (d) and (i) of the Tariff and Customs Code, the Tariff Commission is directed to investigate "all questions relative to the arrangement of schedules and classification of articles in the several schedules of the tariff law;" and also "the nature and composition of and the classification of articles according to tariff commodity classification and heading number for customs revenue and other related purposes which shall be furnished to NEDA, Board of Investments, Central Bank of the Philippines and Secretary of Finance". The ruling of the Tariff Commission therefore commands much respect and weight since it proceeds from an agency of the Government called upon to lay down a sound rule on the matter.

Furthermore, Tariff Heading No. 35.03, as earlier quoted, refers to gelatin, including its derivatives, and glues. As explained and elucidated by its Explanatory Notes:

"Gelatin and the glues of the present heading are watersoluble protein substances obtained by treating skins, cartilage, bones, tendons or similar animal materials, usually with warm water with or without addition of acids.

"(A) Gelatin is less glutinous and more refined than glues, forming a clear jelly with water. It is used in the preparation of foodstuffs, pharmaceutical products and photographic emulsions, for bacteriological culture and for clarifying beers and wines. It is also used for sizing paper and textiles, in the printing industry, for preparing hardened gelatin and for manufacturing into articles.

Gelatin is usually in the form of thin, transparent, almost colourless and odourless sheets still bearing the impressions of the nets on which it was dried, but it is also marketed in slabs, plates, sheets, flakes, powders, etc.

Sheets of gelatin are classified in the present heading provided that they are in the form of rectangles, and whether or not they are coloured or surface-worked (e.g., embossed, metallised, printed - other than gelatin postcards and other products printed as described in Chapter 49). If cut otherwise than in rectangles (e.g., disc) they are classified in heading 95.08. Moulded or carved unhardened gelatin is also classified in heading 95.08.

"(B) The glues of animal origin covered by this heading are the impure forms of gelatin used as glues.

The principal glues are:

(1) Bone glues, hide glues, nerve glues, sinew glues. These glues are yellow to brown in colour with a strong odour and are generally in thicker, harder, more brittle sheets than raw gelatin. They may also be in the form of beads, flakes, etc.

(2) Fish glues. These glues are prepared from fish waste (skin cartilage, bones, fins, etc.), and are usually in a gelatinous liquid state.

"(C) Isinglass is prepared by mechanical treatment from the air bladders of certain fish, particularly the sturgeon. It is a semi-transparent product generally in the form of thin sheets. It is used principally as a clarifying agent for beer, wine or other alcoholic beverages, and in pharmacy.

"The heading does not cover:

(a) Glues put up for sale by retail in packages not exceeding a net weight of 1 kg (heading 35.06).

(b) Hardened gelatin (heading 39.04).

(c) Copying pastes (duplicating jellies) with a basis of gelatin (heading 98.09). (Tejam, Montano, Commentaries on the Revised Tariff and Customs Code of the Philippines, Vol I, 1973 ed., pp. 641-643.)

The stress is on the words - "water-soluble protein substances obtained by treating skins, cartilage, bones, tendons or similar animal materials." Accordingly, it seems clear that the articles of the present heading covers finished or partially finished products or those which have undergone some manufacturing process, and not just the transformation of skins, cartilage, bones, tendons or similar animal materials by the application of simple process of preservation by drying. Animal hide or pigskin might be a raw material in the manufacture of glue, but to say that such dried animal hide or skin is glue, classifiable under Tariff Heading No. 35.03-B, is to ignore the unmistakable meaning of plain words. Dried animal skin, as such, cannot by any stretch of the imagination be considered gelatin or glue.

In the case at bar, the shipment in question consists admittedly of dried pigskin which was not chemically treated with creosote. While petitioner alleges that it is to be used as raw materials in the manufacture of glue, it is not gelatin or gelatin derivative; much less glue or glue derived from bones, hides, nerves, tendons or from similar animal products. It cannot therefore be classified for tariff purposes under Tariff Heading 35.03.

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. (La Compañia General de Tabacos de Filipinas vs. The United States, 8 Phil. 438) Since dried pigskin is generally adapted and predominantly used in the preparation of "chicharon", a local food delicacy, and the dried pigskin in question, which was not shown to have been chemically treated so as to render it unfit for human consumption, and as found by the Bureau of Customs, it could be cooked into 'chicharon', it should therefore be classified under Tariff Heading 02.06-B at 60% ad valorem, as other edible dried meat.

Neither can we subscribe to the insinuation of petitioner that the subject article can even be classified under Tariff Heading No. 05.06 which states:

> Sinews, tendons, parings and similar waste of raw hides or skins . . . ad val. 25%.

The said Tariff Heading, when speaking of skin or hide parings, refers to raw hide or skin parings. And as stated in the Customs Tariff Decision Circular No. 25-71 dated July 18, 1971 of the Bureau of Customs, and sustained by us in Chester Industries, Inc. vs. Commissioner of Customs, C.T.A. Case No. 2560, May 9, 1974, the pigskin parings classifiable under the said Tariff Heading are chemically treated with creosote. In this case, it has been established that the pigskin, although in the form of pieces, is dried, not raw, and was not treated with creosote.

Having found that the Pigskin covered by this case falls properly under Tariff Heading No. 02.06-B at 60% ad valorem rate of duty, the correct Central Bank Commodity Code classification of said Pigskin is UC 012-09.00 (UC category). Since Central Bank Release Certificate No. RG-4946 dated March 6, 1972 obtained by herein petitioner refers to CB Commodity Code No. NEP 599-0b.09 and not UC 012-09.00, which is the correct commodity classification, said shipment is therefore imported in violation of Central Bank Circular No. 289, for having been misdeclared and not covered by the required Central Bank release certificate. Consequently, the subject shipment of petitioner Anico Enterprises is subject to forfeiture for violation of the provisions of Section 2530(f) and (m)-3, 4 and 5 of the Tariff and Customs Code.

It is hardly necessary to add:

> "The evidence of record strongly supports the findings that the articles described in the release certificate as Machine Embroidery Thread, under Commodity Classification No. RC-651-04.04, are actually of Cotton Threads which are bleached, dyed or mercerized, and they fall under Commodity Classification No. UI-651-04.61. This fact was not even rebutted by petitioner. Accordingly, we find that the articles in question were not validly covered by the release certificate. We, therefore, hold that the said articles are subject to forfeiture because they were imported contrary to law." (See Farm Implement Machinery Co. v. Commissioner of Customs, G.R. No. L-12613, May 30, 1962, 5 SCRA 118; Serree Investment Co. v. Commissioner of Customs, G.R. No. L-19564, Nov. 28, 1964, 12 SCRA 494; Felipe Yupangco & Sons, Inc. v. Commissioner of Customs, G.R. No. L-22259, Jan. 19, 1966, 16 SCRA 1; Limcsoco vs. Commissioner of Customs, CTA Case No. 1444, May 12, 1966.)

IN VIEW OF THE FOREGOING, the decision appealed from is hereby affirmed with costs against petitioner.

SO ORDERED.

Quezon City, June 1, 1977.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

Constante C. Roaquin

CONSTANTE C. ROAQUIN
Associate Judge