3/18/97

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PAPER INDUSTRIES CORPORATION
OF THE PHILIPPINES (PICOP),
Petitioner,

- versus - C.T.A. CASE NO. 3424

RAMON J. FAROLAN,
Respondent.
x - - - - - - - - - - - - x

3/15/97

D E C I S I O N

The parties come before this court, praying for the determination of the proper classification of the goods under the provisions of the Tariff and Customs Code, under which petitioner's imported shipment of interlake steel strappings falls.

A perusal of the records of the case show the following to be the pertinent facts involved:

1. Petitioner is a duly organized corporation existing under Philippine laws;

2. In September, 1980, petitioner imported from Katsumaya Co., Ltd. of Kobe, Japan, 72 skids of interlake steel strappings with a net weight of 80,000 kilograms. This steel strappings shipment which is covered by Entry No. B696(80), arrived in the port of Bislig, Surigao del Sur on October 6,

1980, on board the vessel KIII SANUI/BISLIG TRANSPORT V-160;

3. Petitioner filed an Abstract Import Entry and Internal Revenue Declaration covering the subject (steel strappings) shipment, therein declaring the same for purposes of paying customs duties and other taxes, under the Tariff Heading 73.15 (alloy steel and high carbon steel in the forms mentioned in Headings No. 73.06 and 73.14). Under this Tariff classification, petitioner's cargo is subject to a 10% ad valorem duty rate, and the customs duty, tax and other charges due on it total ₱84,540.00;

4. The Collector of Customs of the Port of Bislig, Surigao del Sur disagreed with petitioner' classification of the steel strapping cargo, and instead classified it under Tariff Heading 73.12B (cold-rolled hoop and strip of iron or steel), to which a 30% ad valorem rate of duty applies. Consequently, petitioner was required to pay a total of ₱174,[illegible]50.00 as duty, tax and other charges. Petitioner paid this amount, under protest, on November 17, 1980;

5. On December 1, 1980, petitioner filed a formal protest with the Collector of Customs of the Port of Bislig, Surigao del Sur, protesting the

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alleged "erroneous and unreasonable valuation and consequent imposition of excessive and unreasonable customs duty based on 30% Ad Valorem rate on imported carbon steel strapping covered by Entry No. B-696(80)"; and praying that the said Entry "be reliquidated and recomputed" and the amount of P89,505.00 representing alleged excess payment by it of tax and other charges and fees, be refunded;

6. On February 27, 1981, the Collector of Customs of the Port of Bislig, Surigao del Sur dismissed the December 1, 1980 protest for lack of merit, declaring the "classification of the subject steel strapping under heading 73.12B at 30% ad valorem" to be in order;

7. Petitioner filed an appeal with respondent from the Collector of the Port of Bislig February 27, 1981 decision. On December 4, 1981, respondent dismissed petitioner's appeal and affirmed the February 27, 1981 decision; and

8. On February 15, 1981, petitioner filed its "Petition for Review" with this court, praying for the setting aside of respondent's December 4,1981 decision, the reliquidation of Entry No. B-696(80), and the refund to it of P89,505.00, representing an alleged excess payment of duties and taxes.

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The lone issue presented to the court for determination is: Under what tariff heading does petitioner's shipment of interlake steel strappings covered by Entry No. B-696(80) fall? In particular, should it be classified under Tariff Heading No. 73.12B as petitioner insists, or under Tariff Heading No. 73.15 as respondent contends?

The court finds merit in the position of the respondent.

Section 104, Schedule XV, Chapter 73 of the Revised Tariff and Customs Code deals with "Base Metals and Articles of Base Metals", particularly "Iron and Steel and articles Thereof". Heading No. 73.12B covers and imposes a 30% ad valorem rate on:

> "Cold-rolled hoop and strip of iron or steel."

On the other hand, Heading No. 73.15 covers and imposes a 10% ad valorem tax on:

> "Alloy steel and high carbon steel in the forms mentioned in heading Nos. 73.06 to 73.14."

Crucial in the court's determination of the issue now before it is not the undisputed assertion of respondent that subject steel strappings are cold-rolled hoop or strip steel. Instead, by reason of the above-quoted Heading No. 73.15, what is pivotal is the question of whether or not such strappings are alloy or high carbon steel in the form of cold-rolled hoop or strip, for as petitioner correctly argues in its "Memorandum":

> "It is very clear that under (Tariff Heading No. 73.15), the articles covered thereunder may be in the forms mentioned in headings nos. 73.06 to 73.14, i.e., they could be hoops and strips of iron or steel, coated or uncoated, they could be used for hooping of boxes, casks and containers, and they (could) have the thickness and width conforming to the definition of hoops and strips, but as long as they are of alloy steel (or) high carbon steel, they must be classified under Tariff Heading No. 73.15 at 10% ad valorem rate of duty." (Memorandum, page 4, C.T.A. Records, page 161).

Pertinently, according to the Explanatory Notes to Heading No. 73.12, the said heading does not cover, among other things, "hoops and strip alloy or high carbon steel".

That the subject strappings are not hoop and strip alloy steel is clear and undisputed by both parties to this case. Therefore, the court will focus on petitioner's contention that the strappings are made of high carbon steel.

Petitioner anchors its contention on two arguments: first, that the use to which the strappings are put (as determined by respondent), which is to tie together finished plywood products into bundles of several sheets, shows that the strappings are highly tensile and resistant to

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breakages, and are, consequently, of high carbon; and second, that the National Institute of Science and Technology or the NIST, has allegedly found the subject strappings to have a "predominant weight of high carbon steel".

Petitioner's tensility argument augurs well for its cause, for the Explanatory Notes to Heading No. 73.15 states, in part, that:

> "xxx High carbon steels have great tensile strength and hardness and are therefore used for springs, cutlery, tools, etc. xxx".

However, it does not follow that since the strappings are tensile, then they are necessarily high carbon steel hoops and strips. Such conclusion may only be drawn if it is shown that the subject strappings conform to the technical definition of high carbon steel given under Section 104, Chapter 73(e) of the Revised Tariff and Customs code, thus:

> "High carbon steel (heading No. 3.15):
> Steel containing, by weight, not less than 0.6% of carbon and having a content, by weight, less than 0.04% of phosphorous and sulfur taken separately and less than 0.07% of these elements taken together."

Petitioner fails to make such showing.

Petitioner makes much of the alleged findings of the National Institute of Science and Technology or NIST, that the subject steel strapping has a "predominant weight of high carbon steel". Petitioner presented in evidence as Exhibit "F", an uncertified photocopy of what it claims to be the "Certificate/Report on the Result of the laboratory test conducted by the National Institute of Science and Technology on the imported ans local steel strappings", for the purpose of showing "that the subject imported carbon steel strappings have a higher tensile strength because it is a high carbon steel classified under Tariff Heading 73.15".

The exhibit cannot be given any weight by the court.

According to Rule 130, Section 3 of the Revised Rules of Court:

> "Sec. 3: Original document must be produced; exceptions. - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
>
> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
>
> (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
>
> (c) When the original consists of numerous accounts of other documents which cannot be examined in court

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> without great loss of time and the fact sought to be established from them is only the general result of the whole; and
>
> (d) When the original is a public record in the custody of a public officer or is recorded in a public office." (Underscoring supplied)

Petitioner obviously cannot anchor its failure to produce the original of the alleged NIST report on paragraphs (b) and (c) above quoted. If such failure falls under exception (a), then it should have complied with the provisions of Rule 130, Section 5 of the Revised Rules of Court, thus:

> "Sec. 5. When original document is unavailable. - When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authenticated document, or by the testimony of witnesses in the order stated.": (Underscoring supplied)

Clearly, although it is permitted (under Section 5) to prove the contents of the alleged NIST report by a copy thereof, petitioner must first present proof of the original's execution/existence and of the cause of its unavailability. Petitioner did not conform with such prerequisite duty, and therefore, cannot submit a photostactic copy of the alleged NIST report to prove the carbon content of the subject shipment.

On the other hand, if petitioner's inability to produce the original of the alleged NIST report is made to fall under Rule 130, Section 3(d), quoted above, then Rule 130, Section 7 of the Revised Rules of Court applies.

> "Sec. 7. Evidence admissible when original document is a public record. - When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof." (Underscoring supplied)

Therefore, petitioner's uncertified photocopy of the alleged NIST report (Exhibit "F") cannot be admitted as evidence of the alleged original's content.

Clearly, petitioner failed to follow the proper procedure in having the alleged NIST report admitted.

As an aside, the court notes that even if Exhibit "F" were properly admissible in evidence, it still would not be given evidentiary weight for the following reasons:

1. Although it was offered in evidence to show that the subject strappings "have a higher tensile strength because it is a high carbon steel classified under Tariff Heading 73.15", the exhibit does nothing of the sort. The imported sample

tested was found to have a higher tensile strength than the local sample, it is true; but, both local and imported strapping samples tested were found to have identical 0.1% carbon content. Therefore, it fails to show any connection between carbon content and tensility;

2. Although the 0.1% carbon content falls within the measurements required by Chapter 73(1)(c) of the Revised Tariff and Customs Code for high carbon steel, the other requirements therein contained - regarding phosphorous and sulphur content - are not shown to have been met;

3. There is no showing that the imported strappings sampled by the NIST were taken from the subject shipment. In this regard, it must be noted that the samples tested were submitted by petitioner to NIST on September 23, 1985, nearly five years after the subject strappings arrived in the Philippines; and

4. The remarks in the report specifically state that the same is "of no value xxx as basis for Tariff or Customs classification of imported commodities".

The court also notes that petitioner, in its "Memorandum" states, in arguing its position, that:

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"So also, the subject shipment is of the same type of steel strapping which petitioner had imported from Japan sometime in June, 1985 which the Bureau of Customs assessed under Tariff Heading 73.15 at 10% ad valorem rate of duty" (Memorandum, page 5; C.T.A. Records, page 162).

The court refuses to give credence to this bare allegation of act by petitioner, as there is no showing at all that the subject strappings and those imported in June, 1985, are of the same kind and quality.

From the foregoing discussion, it can be seen that petitioner has failed to show that the subject strappings are of high carbon steel, as the term is defined under Chapter 73(e) of the Revised Tariff and Customs Code. Consequently, the subject strappings are not alloy or high carbon steel in the form of cold-rolled hoop and strip, which fall under Heading No. 73.15. Instead, they are cold-rolled hoop and strip, and are subject to 30% ad valorem tax under Heading No. 73.128, as respondent asserts.

WHEREFORE, in view of the foregoing considerations, the court hereby **DENIES** the

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petitioner's Petition for Review, and **AFFIRMS** the respondent Commissioner dated December 4, 1981.

SO ORDERED.

Quezon City, Metro Manila, March 15, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals

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