REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

SORIA TRADING, thru its
representative, BENECIO C. GO,
Petitioner,

- versus -

C.T.A. CASE NO. 7

COMMISSIONER OF CUSTOMS,
Respondent.

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

# D E C I S I O N

This is an appeal taken by the petitioner Soria Trading from the decision of the respondent Commissioner of Customs, affirming the decision of the Collector of Customs for the Port of Manila, dated March 6, 1954, decreeing and ordering the forfeiture of the merchandise covered by Seizure Identification No. 1284 for alleged violation of the provisions of Section 1363 (m), 3, 4 and 5 of the Revised Administrative Code.

In ordering the forfeiture of the merchandise in question, the Collector of Customs of Manila also gave as additional ground therefor the provisions of Executive Order No. 328, as implemented by Circular Letter No. 564, in relation to Section 1363 (f) of the Revised Administrative Code. On appeal, however, the Commissioner of Customs, following the ruling of the defunct Board of Tax Appeals in the case of Valencia vs. Commissioner of Customs, B.T.A. Case No. 169, December 29, 1953, overruled the view of the Collector of Customs with respect to the last ground. Since the decision of the respondent Commissioner of Customs appealed from gives as sole ground for the order of seizure and forfeiture the provisions of Section 1363 (m-3), (m-4) and (m-5) of the Revised Administrative Code, we shall decide this case principally on this issue — whether or not petitioner did in fact violate the provisions in question as found by the respondent.

Before proceeding any further, mention should be made of the fact that this case was one of those affected by the interregnum brought about by the abolition of the Board of Tax Appeals and the subsequent creation of this Court under Republic Act No. 1125. It appears that on May 26, 1954, the petitioner Soria Trading, pursuant to the provisions of Sections 1383, 1384 and 1385 of the Revised Administrative Code, filed with the Bureau of Customs a notice of appeal accompanied by the corresponding filing fee from the decision of the Commissioner of Customs affirming the decision of the Collector of Customs of the Port of Manila in Seizure Identification No. 1284. After the petitioner had taken all the necessary steps to perfect its appeal within the reglementary period, the Bureau of Customs sent all the records of the case to the Court of First Instance of Manila. The Clerk of the Court of First Instance of Manila, in anticipation of the enactment during the last regular session of Congress of Republic Act No. 1125, creating this Court and depriving the Courts of First Instance of jurisdiction to try on appeal cases of such nature, refused to accept the papers and to docket the case. After the approval of Republic Act No. 1125, the Commissioner of Customs forwarded to this Court the records of the case pursuant to the provisions of Section 7 of the aforesaid Act. On July 27, 1954, the petitioner Soria Trading filed a motion praying that this Court give due course to the appeal of this case upon a petition for review in accordance with the provisions of Republic Act No. 1125. By a resolution dated August 5, 1954, this Court granted the said motion and the petitioner was allowed to file its petition for review in proper form.

In the meantime, and while this case was pending before this Court, the petitioner filed an urgent petition to file a bond to secure the release of its seized and forfeited merchandise, in pursuance with the provisions of Section 11, Republic Act No. 1125. It appearing, however, that the issue involved in the appeal was not the tax liability of the petitioner, and following further the precedent established by the Supreme Court in its resolution of July 13, 1954, in the case of Valencia vs. Commissioner of Customs, G.R. No. L-7470, the same was denied by this Court on September 3, 1954. Again on September 8, 1954, the petitioner filed another urgent petition to redeem the merchandise in question pending the final outcome of its appeal based on the provisions of Section 1388 of the Revised Administrative Code. Although this Court, in a resolution dated September 28, 1954, granted the last petition provided the petitioner pays to the Bureau of Customs the actual market value of the said merchandise in the amount of ₱8,226.00, we assume that no redemption was made as we fail to find in the records of the case of any manifestation regarding this matter.

Going into the merits of the appeal, we notice that after the issues were joined with the filing of the respondent's answer and the case was called for trial _de novo_, the petitioner, instead of presenting evidence to prove the allegations contained in its petition for review, which were mostly denied by the respondent, simply manifested to the Court that it will just adopt the evidence presented during the hearing held in the Bureau of Customs. The respondent's counsel did not object to the procedure suggested by petitioner and likewise submitted the case for decision based on the oral and documentary evidence presented during the seizure proceedings held before the Collector of Customs of Manila. Considering that no new matters were taken up by the parties before this Court, and considering further that the petitioner did not dispute the findings of facts made by the respondent, we shall therefore adopt the facts as contained in the decision appealed from, which are as follows:

> The record of this case shows that the Soria Trading imported from Hongkong 33 cases of decoration light bulbs which arrived ex "FERNLAND", Reg. 1479, on December 4, 1953. Upon examination by the customs examiner, they were found to contain Japanese manufactured sets of decoration light bulbs and loose pieces of bulbs. The former bear the mark "Japan." The latter bear no mark at all. Representative samples of the importation were taken by the examiner and submitted for appraisal, the result of which is as follows:
>
> AS DECLARED:
>
> 33 cases = 2,400 sets of 12,540 bulbs weighing 1,361 kilos net, valued at US$655.73 and declared under tariff paragraph 293 at US$0.15 a kilo or 25% ad valorem. Total duty paid --- 1,361 kls. x $0.15 kl. = US$204.15.
>
> AS FOUND:

| | | |
|---|---|---|
| 2,247 sets, appraised at US$0.80 per set -- | US$ | 1.797.60 |
| Dutiable under tariff paragraph 190(b) at 25% ad valorem. Total duty collectible --- $1,797.60 x 25% = -------------- | US$ | 449.40 |
| 9,900 pieces, bulbs appraised at US$3.25 per 100 pieces = --------------- | US$ | 321.75 |
| Dutiable under Tariff Par. 190(b) at 15% ad valorem. Total duty collectible --- $321.75 x 15% = ---------------- | US$ | 48.26 |
| - - - - - - - - - - - | | |
| Actual duty found upon appraisal ---------- | US$ | 497.66 |
| Actual duty paid ------------------------- | US$ | 204.15 |
| DISCREPANCY IN DUTY -------- | US$ | 293.51 or |
| | ₱ | 587.02 |
| Advance sales tax at 7% ------------------ | | 51.36 |
| ADDITIONAL DUTY AND TAX STILL DUE ---- | ₱ | 638.38 |

98

In its petition for review, the petitioner avers that the respondent erred in finding the petitioner guilty of having fraudulently undervalued its goods without sufficient basis in evidence adduced during the investigation of the case before the Collector of Customs. But as shown above, and as correctly stated by the respondent, the declared value of the 33 cases is $655.73 or ₱1,311.46 while the total appraised value of the same is ₱2,124.35 or an undervaluation of more than 44%. Furthermore, the said articles were declared under tariff paragraph 293 at $0.15/kilo and customs duty in the amount of ₱408.30 was paid. However, upon examination, the same were found to be dutiable under tariff paragraph 190(a) and 190(b) and the claimant-appellant should have paid customs duty in the total amount of ₱995.32.

While the petitioner contends that the said finding is arbitrary, whimsical and devoid of reasonable basis, alleging that there was good faith in entering and declaring the value thereof, a perusal of the records of the case will readily show that no evidence was presented to prove this allegation. An examination of the merchandise having shown that there was an undervaluation, it was incumbent upon the petitioner to prove the innocence of the articles. Moreover, this averment was specifically denied by the respondent, thus placing it at issue, and the petitioner, when this case was called for hearing by this Court, should have proved its contention, specially so when the records of the case clearly disclose that there was an undervaluation of the merchandise in question. The only implication which could be deduced from these circumstances is that the petitioner acted fraudulently when it undervalued its goods, thus depriving the Government of its lawful duties and revenues on such merchandise.

We agree with the respondent that there is a wrongful making of a false declaration of affidavit in that, while the articles are declared to be wholly of the products or manufactures of Hongkong (Exhibits "1" and "2"), the same were in fact and in truth products or manufactures of Japan as indicated by the mark "Japan" on the articles. The fact that the articles were declared on Entry No. 80938 at a value much lower than what they should have been declared is so clear as to leave the impression that the claimant-appellant wrongfully made a false declaration and delivered a false affidavit attached to the invoice in open violation of Section 1363 (m) 3 and 4 of the Revised Administrative Code.

While there appears as a part of the record a piece of paper which is marked as Exhibit "4", purporting to show that the word "Japan" appearing in some of the articles is the trade mark of an alleged manufacturer's product made in Hongkong, its due execution and authenticity have not been duly proven. A witness by the name of Caridad Bunyi, who claims to be the treasurer of a certain Metro Enterprises Corporation, purporting to be the indentor of a supposedly Great Eastern Trading Company, Inc., of Hongkong, was presented during the formal investigation of the case before the Collector of Customs of Manila to identify the signature appearing thereon, but her competency to identify such signature has not been in the slightest way shown. Furthermore, a cursory reading of the said letter will readily disclose that the Great Eastern Trading Co., Inc., is not the manufacturer of the importation in question but only the consignor. The same is true with respect to Exhibit "1" which is nothing but sworn declaration of a person who is not competent to testify on the contents thereof. Consequently, the genuineness of Exhibit "2" has not been satisfactorily shown. Thus, the conclusion is inevitable that the respondent did not err in finding the petitioner of not making in its entry, a full and candid disclosure of all the material facts in its possession bearing on the value and classification of the imported merchandise.

WHEREFORE, finding no legal justification to disturb the findings and conclusion of the respondent Commissioner of Customs, the decision appealed from is hereby affirmed with cost against the petitioner Soria Trading.

SO ORDERED.

Manila, Philippines, February 7, 1955.

MARIANO NABLE
Presiding Judge

Associate Judge AUGUSTO M. LUCIANO
concurs in a separate opinion.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

SORIA TRADING, thru its
representative, BENECIO C. GO,
Petitioner,

- versus - C.T.A. CASE NO. 7

COMMISSIONER OF CUSTOMS,
Respondent.

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

CONCURRING OPINION

I concur in the finding that there has been a violation of section 1363 (m-3), (m-4) and (m-5) of the Revised Administrative Code on the part of petitioner and, therefore, ~~his~~ its importation of Japanese made decoration light bulbs from the port of Hongkong is subject to seizure and forfeiture, as decided by the Collector of Customs of Manila and the respondent Commissioner of Customs in Manila Seizure Identification No. 1284.

I take it that like other civil cases appealed to the Court of Appeals from the Courts of First Instance (section 2, rule 53 Rules of Court in the Philippines), when a case is brought on appeal to this newly created Court from a decision of the Commissioner of Customs or the Collector of Internal Revenue, the case is thrown wide open for review and this Court, in the exercise of its appellate jurisdiction, may affirm, reverse, or modify the decision appealed from.

I believe that the respondent Commissioner of Customs should have sustained the decision of the Collector of Customs of Manila not only on the ground that there has been a violation on the part of petitioner of section 1363 (m-3), (m-4) and (m-5) of the Revised Administrative Code, but also for violation of the terms of the Philippine-SCAP Trade and Financial Agreements and the provisions of Executive Order No. 328, series of 1950, as implemented by Customs Circular Letter No. 564 and in relation to section 1363 (f) of the Revised Administrative Code.

I agree with the dissenting opinion of the Honorable, Judge Jose R. Querubin, in B.T.A. Case No. 169 entitled "Romeo M. Valencia, Petitioner vs. The Commissioner of Customs, Respondent," wherein he said the following:

> "The controlling policy, on the part of our government, in limiting the kind of goods or commodities to be imported to the Philippines as agreed upon in the Trade Agreement or treaty between Japan and the Philippines, is to protect our infant industries from ruinous competition with cheap goods manufactured in Japan. In order to implement said policy, Circular Letter No. 564 of the Commissioner of Customs was issued in order to stop the inflow of unlicensed Japanese goods to the Philippines thru the back door. To accept the argument of the petitioner is tantamount to tolerating the circumvention of the treaty by the simple expedient of importing Japanese goods freely thru other countries, thus defeating the prime purpose and policy of our government in protecting our industries from ruinous competition."

I, therefore, vote for the affirmance of the decision appealed from on the basis of the two grounds hereinabove given.

Manila, February 7, 1955.

AUGUSTO M. LUCIANO
Associate Judge