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FARM IMPLEMENT & MACHINERY CO.,
Petitioner,

- versus - C.T.A. CASE NO. 272

March 20, 1957

THE COMMISSIONER OF CUSTOMS,
Respondent.

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DECISION

The petitioner has appealed from the decision of the Commissioner of Customs affirming the decision of the Collector of Customs of the Port of Manila, which ordered the forfeiture in favor of the Republic of the Philippines of thirty-four (34) packages containing sotanghon for alleged violation of Central Bank Circular No. 44, in relation to Section 1363(f) of the Revised Administrative Code.

The records of the case show that the shipment in question arrived at the Port of Manila on board the S. S. "Hai Meng", Reg. No. 947, from Hongkong on July 23, 1954. It was consigned to the Farm Implement & Machinery Co., declared in Customs Entry No. 59908 (Exhibit "6") duly accompanied with consular invoice No. 1407 (Exhibit "5"), commercial invoice No. 03906 of Etta Trading Co., Hongkong, and Central Bank release certificate Ref. No. 54/3837 (Exhibits "B" & "4"). The shipment is described as "34 PKGS. CONTAINING 12,000 KILOS CEREAL", and for purposes of the commodity classification of the Central Bank was classified by petitioner as falling under "Commodity Code No. 040802 - NEC."

Upon examination of the shipment by a customs officer, it was found to be "sotanghon" and was classified as "vermicelli" under Commodity Code No. 040804 (UI), for which reason it was seized. Pending the seizure proceedings, the shipment was released to petitioner upon the filing of Surety Bond No. C-54/7744 of the South Sea Surety & Insurance Co., Inc. in the amount of ₱12,483.77. After due hearing, the Collector of Customs of Manila, on April 14, 1955, determined that the merchandise in question was subject to forfeiture for alleged violation of Central Bank Circular No. 44, in relation to Section 1363(f) of the Revised Administrative Code, and therefore ordered the forfeiture of the aforesaid bond in favor of the Republic of the Philippines. On appeal, the decision of the Collector of Customs of Manila was affirmed <u>in toto</u> on March 12, 1956 by the Commissioner of Customs. From this decision, petitioner filed the instant petition for review.

The only issue here is whether or not the thirty-four (34) packages of "sotangjon" in question properly falls under Commodity Code No. 040802 (NEC) of the Statistical Classification of Commodities of the Central Bank implementing Central Bank Circulars Nos. 44 and 45, as claimed by petitioner, or under Commodity Code No. 040804 (UI), as claimed by the Government.

There is no dispute that the merchandise in question is what is locally known as "sotanghon" or "swatanghon". Florencio A. Soliven, head of the Food Technology Division of the Institute of Science, identified a sample of the shipment shown to him in the seizure proceedings before the Collector of Customs for the Port of Manila as "sotangjon". Moreover the respondent Commissioner of Customs admits it to be thus in his pleadings.

The question to be determined is whether or not "sotangjon" falls under Commodity Code No. 040802 (NEC) of the Statistical Classification which embraces:

> "Groats, semolina and cereals; flaked, pearled or prepared in a manner not elsewhere specified (including prepared breakfast foods)."

Petitioner contends that in the light of the decision of this Court in the case of Farm Implement & Machinery Co. vs. Commissioner of Customs, C.T.A. Case No. 136, February 26, 1956 and of the Circular Letter No. 1964 of the Bureau of Customs, the subject importation could not have violated the provisions of Central Bank Circular No. 44 because the Central Bank became positive of the correct classification of "sotanghon" only on August 1, 1956.

The question here is exactly the same as that involved in the case of Farm Implement & Machinery Co., vs. Commissioner of Customs, C.T.A. Case No. 260, February 14, 1957. This Court in that case ruled that "sotanghon", from the point of view of preparation, falls within the generalized and comprehensive classification of cereal, prepared in a manner not elsewhere specified (including prepared breakfast foods) as defined in Commodity Code No. 040802 (NEC) of the statistical classification. In that case it was held:

> "x x x that 'sotanghon' can be classed either under Commodity Code No. 040802, 040804 or 040806, depending upon one's point of view. Unless these classifications are revised to conform to precise and sound scientific standard, confusion and instability in the classification of commodities would eventually result to the harrassment, confusion and unfair prejudice of importers. The Government itself should take the necessary steps to avoid such eventuality. The importer is entitled to an assurance that, having effected an importation relying upon an authorized commodity code number, the respondent will not lay claim on the importation as subject to forfeiture on the dubious ground that it falls aptly under some other vague classification." (Farm Implement and Machinery Co. vs. The Commissioner of Customs, C.T.A. Case No. 260, February 14, 1957).

That "sotanghon" or "swatanghun" did not fall under any specific classification of commodities at the time the shipment here involved arrived in the Philippines on July 23, 1954, is shown by the fact that the Central Bank decided to classify said commodity under Commodity Code No. 040804 (UI) only on August 2, 1956. The pertinent portion of the letter of the Central Bank to the Commissioner of Customs dated August 2, 1956, reads:

> "Henceforth, Swatanghun shall be classified specifically under UI-040804 which has been amended to read:

"UI-040804 - Cereal paste (Macaroni, spaghetti, noodles, vermicelli, swatanghun, and similar preparations)."

Note that the letter of the Central Bank, embodied in Circular Letter No. 1964 of the Bureau of Customs dated August 3, 1956 (Exhibit "C"), states that "Henceforth, Swatanghun shall be classified specifically under UI-040804", from which it is evident that before it was so specifically classified, "swatanghun" did not come under said commodity classification.

WHEREFORE, the decision of the Commissioner of Customs is hereby reversed. We decree the cancellation of Surety Bond No. C-54/7744 of the South Sea Surety & Insurance Co., Inc. in the amount of ₱12,483.77 which was filed for the release of the shipment in question. Without pronouncement as to costs.

SO ORDERED.

Manila, March 20, 1957.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge