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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RFM CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 2746

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - x

10/5/83

D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs dated September 4, 1975 affirming that of the Collector of Customs imposing an additional customs duty and advance sales tax, in the amount of ₱59,021.00 and ₱3,689.00, respectively, on the 300 bags of Ethoxyquin Powder, declared by petitioner under Entry No. 108751-74 and classified under Tariff Heading No. 29.35 at 10%, but upon examination and appraisal was finally reclassified by respondent under Tariff Heading No. 38.19-B at 50% *ad valorem*.

The facts are not in dispute. It appears that petitioner RFM Corporation imported into the Philippines Ethoxyquin Powder on November 25, 1974 contained in 300 bags on board the vessel "Yushin Maru" from Yokohama, Japan, under Import Entry and Internal Revenue Declaration No. 108751 and with Registry No. 2023. As computed in the Import Entry and Internal Revenue Declaration at 10% *ad valorem* under Tariff Heading No. 29.35

of the Tariff and Customs Code, and under an Order of Payment, the customs duty, sales tax and Import Wharfage tax in the total amount of ₱24,293.00 was paid by petitioner as shown by Central Bank Official Receipt No. 279549. After payment of the aforesaid taxes and Delivery Permit No. 376089 had been issued, however, the Customs appraiser re-classified the shipment of Ethoxyquin Powder and made it fall under Tariff Heading No. 38.19 at 50% <u>ad valorem</u>. On the basis of the re-classification of the shipment in question, additional import duty of ₱59,021.00 and advance sales tax of ₱3,689.00 were assessed and imposed thereon. Petitioner paid under protest said amount on March 12, 1975 under Official Receipt No. 60286. (Exhs. "A" and "B", pp. 7 & 8 respectively, CTA rec.)

On March 24, 1975, petitioner wrote the Collector of Customs of the Port of Manila a letter protesting the imposition of additional import duty in the sum of ₱59,021.00 and advance sales tax of ₱3,689.00 on said shipment (Exh. "C", pp. 9-11, CTA rec.) which letter was allegedly received by the Collector of Customs on March 25, 1975.

The Collector of Customs rendered a decision on May 20, 1975 dismissing the protest of petitioner, a copy of which was allegedly served on petitioner on

June 2, 1975 (Exh. "D", pp. 12-14, CTA rec.).

On appeal made by petitioner, the Commissioner of Customs rendered a decision on September 4, 1975 (Exh. "D-2", pp. 16-17, CTA rec.) affirming that of the Collector of Customs and was received by petitioner on September 8, 1975. Hence, this appeal to this Court.

The sole issue to be resolved is whether or not subject ethoxyquin powder is a compound falling under Tariff Heading No. 29.30, subject to duty at 10% *ad valorem*, or a mixture falling under Tariff Heading No. 38.19B, at 50% *ad valorem*.

Petitioner claims that subject importation is a compound since there was no chemical blending in the mixture of vermiculite and ethoxyquin liquid. It is asserted that while there is here a physical change, the compound however remained unchanged. Respondent, on the other hand, maintains the opposite view. He insists that ethoxyquin powder is a mixture and should be classified under Tariff Heading No. 38.19B at 50% *ad valorem* as "chemical products xxx not elsewhere specified or included."

We find the view of respondent well taken. The noun mixture is defined as that which is mixed or mingled or a mass or compound consisting of different ingredients blended together (27 Words and Phrases

409). Ethoxyquin powder, the shipment in question, is composed of a mixture of ethoxyquin and mineral powder or vermiculite as diluent, and, hence, should be classified under Tariff Heading No. 38.19B at 50% ad valorem "as chemical products xxx not elsewhere specified or included". Ethoxyquin in its pure state is a viscous liquid and is a pure chemical compound, while ethoxyquin powder is not a pure chemical compound. That ethoxyquin powder is a mixture was admitted by petitioner's own witness, Oscar Enriquez, who testified (t.s.n., May 10, 1977, pp.27-29) on cross examination thus -

Q. Just one or two recross-examination questions. Now, you admit, Mr. Witness, that there was a physical change when this plain ethoxyquin and vermiculite powder were mixed together, is it not?

A. There was a physical change of the ethoxyquin liquid.

Q. And this is due to the mixture of the plain ethoxyquin and vermiculite powder, is it not?

A. Yes.

Q. And, in fact, as pointed out by your counsel, there was extracted certain substance which you termed as plain ethoxyquin, and this clearly shows that there was a previous mixture so that you were able to extract this ethoxyquin from the ethoxyquin powder, is it not?

A. Yes.

Q. This plain ethoxyquin includes, claimed to be imported separately, is a chemically separate organic compound, is it not?

A. Vermiculite powder.

Q. It is compound?

A. It is an inert material.

Q. It is a compound?

A. That is a compound.

Q. As compound, inert compound. And when these two compounds were mixed together you formed a mixture, is it not? You created, or the result thereof is a mixture?

A. Mixture.

The addition of the diluent is not for convenience and ease in handling, nor acts as a preservative or stabilizer, but rather for ease in the manufacturing process in the preservation of animal feed. (Exh. I, Resp. p.30, Customs rec.)

We cannot adhere to petitioner's gratuitous statement that there was no chemical blending in the mixture of vermiculite and ethoxyquin liquid. Precisely, the purpose in mixing ethoxyquin liquid and mineral powder or vermiculite as diluent is for the easy mixing and even distribution of the powder with the animal feed. Even petitioner himself admits that the reason why it imports ethoxyquin in powder form is that it is easier to mix and to <u>evenly</u> distribute the powder with the animal feed (Memo of Pet., p. 153, CTA rec.), thereby bolstering the stand of respondent that it is not a pure chemical compound.

Furthermore, petitioner's witness Oscar Enriquez, not only admitted once, but on several instances (t.s.n., ibid, pp. 17 & 20, respectively.) on cross examination, that ethoxyquin powder is a mixture.

> Q. No. You mentioned a while ago, Mr. Witness that there are three types, or three classification of substances, that is, element, compound, and mixture. This ethoxyquin powder which you import how would you classify that? Is it an element, compound, or a mixture?
>
> A. That is a misture?
>
> xxx xxx xxx
>
> Q. Is it not true that there are three classifications of matter, and the substances mainly are: element, compound, and mixture?
>
> A. Yes.
>
> Q. And yet you contend that the mixture can be compound and vice versa?
>
> A. Well, I was saying - to the best of knowledge, yes.
>
> Q. But you admit that this ethoxyquin powder that was imported by your company into the Philippines in the state that it was brought in is a mixture, is it not?
>
> A. Yes.
>
> Q. Because it is a combination of ethoxyquin in its plain form and vermiculite which is another substance intimately jumbled together, is it not?

A. Yes.

Moreover, in a laboratory analysis of ethoxyquin imported by Sarmiento Agricultural and Development Corporation, it has been shown that said chemical has been classified and subject to duty under Tariff Heading No. 38.19-B at the rate of 50% ad valorem. (Exh. 2, Resp., p. 30, Customs rec.)

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

SO ORDERED.

Quezon City, October 5, 1983.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge