REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MAYER STEEL PIPE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 2823

HON. ALFREDO PIO DE RODA, in
his capacity as Acting
Commissioner of Customs,
Respondent.
x - - - - - - - - - - - - - - - x

2/18/89

D E C I S I O N

For violation of Section 2503 and Section 2530(K)-5 of the Tariff and Customs Code, as amended, in relation to Presidential Decree No. 272; Central Bank Circulars Nos. 315 and 371 implementing Republic Acts Nos. 5186 and 6142 and the rules and regulations implementing said laws, the Collector of Customs for the Port of Manila, in a decision dated September 25, 1975, ordered and decreed the forfeiture in favor of the Government the shipment of petitioner Mayer Steel Pipe Corporation consisting of eleven (11) packages of machinery parts for steel pipe manufacturing. A resort to respondent Commissioner of Customs proved unavailing. Hence, the present recourse.

The facts are not disputed. As summarized by the Acting Collector of Customs for the Port of Manila in his decision dated September 25, 1975:

> Records show that the subject machinery was imported into the country from Liverpool, England, consigned to Mayer Steel Pipe Corporation at Barrio Canunay, Valenzuela, Bulacan. The shipment arrived in the Port of Manila on board the vessel SS "Puerto Princesa", Reg. No. 580, on March 23, 1975. It was declared under Import Entry No. 26946, current series, as "Machinery for steel pipe manufacture including decoiler forming cut off equipment" under Central Bank Commodity Code Classification CP-716-13.99 with a Home Consumption Value of £76,600.00, classified under Tariff Heading No. 84.45 at 10% ad valorem rate of duty. After processing of the covering import papers and after payment of the amount of ₱267,028.00 in government levies under Customs Official Receipt No. 415001, dated April 2, 1975, the same was released to the herein claimant, Mayer Steel Pipe Corporation, on April 3, 1975.
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> A few days thereafter, an information was received by the ASAC and furnished this Office that the said importation was released from Customs' custody, allegedly misdeclared, misclassified and very much undervalued to the prejudice of the Government, prompting the ASAC to request issuance of a warrant of seizure and detention against the machinery in question and, consequently, Warrant of Seizure and Detention No. 14665, dated May 9, 1975 was issued by this Office, hence, the instant case.

This case was then heard. On November 5, 1975, however, the Hearing Officer of the Bureau of Customs, Atty. Francisco Joaquin, Jr. issued a Memorandum to the Customs Collector thru the Chief, Law Division, which is reproduced hereunder:

> This is in connection with the motion for reconsideration and/or rehearing dated October 10, 1975 filed by counsels for the claimant under S.I. No. 14665 alleging, among others, as appearing in their memorandum of October 27, 1975, that they were not afforded their day in court, in violation of the due process requirement mandated by law and, that the decision dated September 25, 1975 of the then Acting Collector of Customs, Alfredo T. Francisco, was irregular, because the articles were forfeited for alleged violations of P.D. No. 272, R.A. No. 5186, R.A. No. 6142 and its implementing rules and regulations, which were not among the charges included in the Warrant of Seizure and Detention.
>
> For your information and reference, hereunder recited are the antecedents facts that led to the promulgation of the said decision. Pending seizure proceedings, on July 31, 1975, the then Acting Collector of Customs issued an Order allowing the provisional release of the subject machinery under bond. After securing the aforesaid Order, the claimant successively requested for several postponements starting on the hearing of August 6, 1975 when its principal counsel, Atty. Albano and their witness, Mr. Mario Alinea were

not available. Again, the hearing was reset for August 12, 1975 and, after direct examination of their witness Mr. Mario Alinea, counsels for the claimant postponed again the said hearing because their witness has another engagement to attend to, hence, the case was reset to August 15, 1975. The hearing of August 15, 1975 was again postponed by the claimants after cross-examination of their witness Mr. Mario Alinea for the reason that their other witness, Mr. Sy, was suffering from hypertension, without submitting, however, a medical certificate as required by the rules. Nevertheless, postponement was granted to afford them all the opportunity to present their side and the case was again set for hearing on September 9, 1975. On the scheduled hearing, counsel for the claimant again asked for postponement for the reason that they had a pending motion for reconsideration filed with the Office of the then Acting Collector of Customs and was likewise granted, with the promise that, if within 10 days they have not taken any move, they will submit their case for resolution on the basis of the records on hand (see t.s.n. p. 785) so the case was again reset for September 22 and 23, 1975, intransferrable in nature, per Order of the Collector of Customs dated September 11, 1975. On the hearing of September 22nd, counsels for the claimant again were asking for a postponement inspite of the agreement that it is intransferrable in nature which the undersigned denied and directed counsels to present their last witness, Mr. Manuel Sy, who was then present in the hearing room. Atty. Albano, however, refused to present his evidence and walked out of the hearing room and the ASAC prosecutor moved that the case be submitted for resolution on the basis of the documents on record. A few minutes thereafter, the Acting Chief, Law Division called for the undersigned and asked if I could still grant claimant another postponement to which I consented and provisionally set the case for hearing on October 7, 1975, informing his counsel Atty. Gajo of the resetting of the case and also the ASAC prosecutor who objected to the same. On September 23, 1975, the ASAC prosecutor filed a Motion for Rendition of Judgement which was sent to the Chief, Law Division with the notation of the Acting Collector of Customs as follows:

> 'Atty. Burgos:
>
> If hearing already terminated please prepare draft of decision.
>
> (Sgd.) Collector Francisco
> September 23, 1975'

Upon receipt of said instruction, the undersigned prepared a memorandum of even date advising the Acting Collector of Customs of the resetting of the case on October 7, 1975 as requested by the counsels for the claimant. The Acting Collector of Customs, after going over the records of the case and finding the several motions for postponement to be dilatory in character and considering further the refusal of counsels for the claimant to present their evidence when directed by the undersigned, reversed my order resetting the case and issued an order directing the Law Division to prepare the corresponding decision based on the pleadings and other documents attached on record per his Order of September 23, 1975. Correspondingly, the undersigned prepared the draft of the decision and the Acting Collector of Customs, after having reviewed the records of the case, signed the decision of forfeiture dated September 25, 1975.

Based on the foregoing facts, claimant therefore can not claim denial of due process because their refusal to present their last witness when directed by the Hearing Officer to do so during the hearing of September 22, 1975 amounted to a waiver of their right to adduce further evidence, hence, the case can be decided on the basis of the pleadings and other documents already on record. As a matter of fact, the more than 800 pages of the transcript of stenographic notes will show that while we have conducted weekly hearing, morning and afternoon session, in the instant case counsels for the claimant, after seeing the release order of July 31, 1975, resorted to those dilatory tactics, requesting postponement after postponement only to delay the disposition of the case. We could not have consumed these voluminous transcript if they were denied their day in court.

Likewise, their claim that the decision was irregular, it appearing that one of the reasons for the forfeiture of the subject machinery was for violation of P.D. No. 272, R.A. 5186, R.A. 6142 and its implementing rules and regulations, which were not included in the Warrant of Seizure and Detention is, likewise, not feasible, in line with the decision of the Supreme Court in the case of "Wood vs. U.S. 1842 when it ruled that goods seized by mistake are liable for forfeiture if a good cause for forfeiture existed at the time of forfeiture but without the knowledge of the seizing officers." It is likewise an established precedent that the Collector of Customs concomittant with his powers

> under Section 1207 of the Tariff and Customs Code have all the powers and jurisdiction to take such action as will prevent the importation or exportation of articles which are prohibited or the importation or exportation of which, is contrary to existing laws, rules and regulations.
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> Premises considered, the undersigned believes that the instant motion for reconsideration and/or re-hearing is without merit.
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> xxx xxx xxx

Issues

The issues as posed by respondent:

a. Whether subject machinery violated the provisions of Section 2503 of the Tariff and Customs Code, as amended, which prohibits undervaluation, misdeclaration and misclassification of imported articles, in relation to Presidential Decree No. 272, Central Bank Circular Nos. 315 and 371 implementing Republic Act No. 6142, Republic Act No. 5186, and the rules and regulations implementing said laws, to warrant its forfeiture in favor of the Government, pursuant to Section 2530 of the Tariff and Customs Code, as amended.

b. Whether "due process" was observed.

At the outset, it should be stated that forfeitures are imposed by the seizure and subsequent institution of seizure proceedings pursuant to Section 2532 of the

Tariff and Customs Code. In seizure cases, one important aspect of the proceedings in the consideration of the issues involved, is the duty on the part of the government of presenting evidence which indicates probable cause for instituting such proceedings. (Sanchez vs. Commissioner of Customs, B.T.A. Case No. 185, decided by the Court of Tax Appeals on November 2, 1954, citing U.S. vs. One Bag of Paradise and Choura Feathers, N.Y., 365, F.301, 167, C.C.A. 473; Associated Banking Corporation vs. Commissioner of Customs, et al., C.T.A. Case No. 2448, August 6, 1976; Metropolitan Garment Corporation vs. Ramon J. Farolan, Acting Commissioner of Customs, C.T.A. Case No. 3959, April 16, 1986.) The term "probable cause", which has been held synonymous with "reasonable cause", means less than the evidence which will justify condemnation. It imports a seizure made under circumstances which warrant suspicion. (Sanchez vs. Commissioner of Customs, supra, citing Fooke vs. United States, 7 Cranch /U.S. 339/; Associated Banking Corporation vs. Commissioner of Customs, supra; Metropolitan Garment Corporation vs. Ramon J. Farolan, as Acting Commissioner of Customs, supra.) And up to the time this case is pending before this Court, Section 2535 of the Tariff and Customs Code, as amended, provides:

> "Sec. 2535. Burden of Proof in Seizure and/or Forfeiture. - In all proceedings taken for the seizure and/or forfeiture of any vehicle, vessel, aircraft, beast or articles under the provisions of the tariff and customs laws, the burden of proof shall lie upon the claimant; Provided, That probable cause shall first be shown for the institution of such proceedings and that seizure and/or forfeiture was made under the circumstances and in the manner described in the preceding sections of this Code."

Our decision therefore turns upon whether the subject machinery violated the provisions of Section 2503 of the Tariff and Customs Code, as amended, which prohibits undervaluation, misdeclaration and misclassification of imported articles, in relation to Presidential Decree No. 272, Central Bank Circulars Nos. 315 and 371 implementing Republic Act No. 6142, Republic Act No. 5186, and the rules and regulations implementing said laws, to warrant its forfeiture in favor of the Government, pursuant to Section 2530 of the Tariff and Customs Code, as amended; and if so, whether petitioner has sustained the burden which the law places upon it to overcome the effect thereof.

Section 2503 of the Tariff and Customs Code, as amended, which prohibits undervaluation, misclassification and misdeclaration of imported articles reads:

> SEC. 2503. Undervaluation, Misclassification and Misdeclaration in Entry. - When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry, would be less by ten per cent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description on the face of the entry would be less by ten per cent (10%) than should be legally collected based on the correct tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten per cent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: Provided, That, an undervaluation, misdeclaration in weight, measurement or quantity of more than 50% between the value, weight, measurement or quantity declared in the entry, and the correct value, weight, quantity or measurement, shall constitute a prima facie evidence of fraud penalized under Section 2530 of this Code.
>
> When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional the importer shall be subject to the penal provision under Section 3602 of this Code.

Undervaluation

The application of petitioner for the issuance of a Letter of Credit with the Consolidated Bank and Trust

Co. was submitted with the Central Bank on July 3, 1974. By such Letter of Credit, petitioner sought authority to import the machinery in question and to avail foreign credit in the amount of ₱170,000.00 (approximately $430,000.00), pursuant to Republic Act No. 6142 as implemented by Central Bank Circular Nos. 315 and 371 for the following items:

ITEM 1 -	One (1) BASIC STANDARD Spiral pipe making machine unit with diameter size 16" to 80" max CIF, Manila	₱105,000.00
ITEM 2 -	Extra over item 1 above for modifying mill to manufacture pipe up to 104" diameter	₱ 5,000.00
	TOTAL	₱170,000.00

with the proposed deferred payment scheme as follows:

10% of contract price upon signing of contract,

10% of contract price against shipping documents, and

10% of contract price in 10 half yearly installments;

excluding interest. (pp. 24-25, TSN, S.I. No. 14665, Exhs. "H" to "H-10".)

Accessories or optionals are not included as they constitute separate items, and with distinct prices apart from, and not included in the price of the machine itself. (Description through the brochure, Exh. "K"; Testimony of Customs Examiner Oscar Calzado, pp. 114 to 127, TSN, S.I. No. 14665, June 25, 1975.)

The entered value as declared by petitioner in the Import Entry Revenue Declaration is only ₱76,600.00. (Exhs. "E" and "E-3".)

The records show that the subject shipment has a Home Consumption Value of ₱170,000.00. (Exhs. "H", "H-1", "H-2" & "H-8"). On the other hand, the entered value as declared by petitioner in the Import Entry Revenue Declaration is only ₱76,600.00 (Exhs. "E" & "E-3".)

Clearly, therefore, the gross undervaluation, which is prohibited by the law, is very patent.

Misdeclaration

Petitioner tried to show, however, that the machinery imported does not constitute a complete standard basic spiral pipe mill but merely parts of a spiral pipe making machine and thus the purchase price was reduced to ₱87,280.00 as shown by the sales and pro-forma invoice and consular invoice.

The fact that the machinery in question is complete by itself is apparent from the affidavit of petitioner's Vice-President, body of which is quoted:

> A F F I D A V I T
>
> I, SY KA KHIENG, of legal age, married, Naturalized Filipino citizen, Vice-President of the Mayer Steel Pipe Corporation, and residing at 406 C. M. Recto Avenue, Manila, Philippines after having been duly sworn to according to law depose and say:
>
> 1. That at present our corporation, the Mayer Steel Pipe Corporation, have an importation of Machinery for steel pipe manufacturing, consisting of 7 cases and 4 Part Wood Protected Pieces from West Rothian, Scotland;
>
> 2. That our said importation is covered by Entry No. 026946, Series of 1975;
>
> 3. That the said goods mentioned in the Packing List of our importation are knock-down parts and accessories of <u>a complete set of a machinery for steel pipe manufacturing.</u>
>
> IN WITNESS WHEREOF, I hereunto set my hand this 3rd day of April 1975, at the City of Manila, Philippines.
>
> (Sgd.) SY KA KHIENG
> Affiant

(Underscoring supplied)

As aptly stated by respondent, "In addition, we have the testimony of Customs Examiner Oscar Calzado, who testified that subject machinery, as found during his re-examination (Exhs. "G" to "G-1") and compared to the brochure for said machinery furnished him by the importer (Exh. "K"), is complete by itself. A fair comparison of the equipment found during the re-examination and the brochure (Exhs. "K-1" to "K-3"), the description in the Project Study (Exhs. "J-20" to "J-22"), and the description appearing in Exhibits "KK" to "KK-5", will show that subject machinery constitute a complete spiral pipe mill capable in itself of producing marketable pipes. In fact, in its pleading dated June 2, 1975 for the release of the subject machinery under bond, claimant/petitioner averred and pointed to the urgent necessity of having the machinery and to install the same for legitimate use and that it had already contracted for the sale and marketing of the pipes to be produced. Surely, this clearly admits the completeness of the machinery for producing the said pipes." (pp. 684-685, CTA records.)

As a matter of fact, petitioner's own witness in the person of John Keenan, a long-time businessman in steel manufacturing, acknowledged that accessories/ optional equipments of steel pipe machineries are not included in the basic purchase price as in the instant case. (See TSN, pp. 486 to 488, S.I. No. 14665.)

Misclassification

Atty. Ernesto Felix, Assistant Chief of the Valuation and Classification Division, Bureau of Customs, testifying as a Customs Supervising Appraiser, stated the correct classification of the subject machinery was under Tariff Heading No. 84.59 at 30% not 84.45 at 10%, (TSN, pp. 387 to 392, S.I. No. 14665), which is also a violation of Section 2503 of the Tariff and Customs Code, as amended. While it is true that former Tariff Commissioner Montano Tejam was presented to qualify this testimony, records of the case show that Mr. Tejam was hired as counsel for petitioner and later utilized as petitioner's witness. His testimony therefore could not be taken at its face value.

Subject Importation Was Without BOI Authority In Violation of Republic Act No. 5186

Records of the case reveal that the importation of the machinery in question was not favorably endorsed by the Board of Investments. (Exh. "M".) It appears that petitioner was not allowed by the Board of Investments to import the said machinery because the industry to which petitioner intends to engage in has been listed as one of the crowded industries or industries with excess capacity as early as January 28, 1970, and remained unchanged as of May 23, 1975. (Exhs. "N" and "DD.)

Presidential Decree No. 272 Was Also Violated

Then, in violation of Presidential Decree No. 272, petitioner failed to secure prior authority from the Iron and Steel Authority (ISA) in the importation of subject machinery. As testified to by Atty. Lilia Bautista, Assistant Secretary of the Department of Industry and concurrently Acting Secretary and Chief, Legal Staff, Iron and Steel Authority, prior authority of the ISA is mandatory. Presidential Decree No. 272 was promulgated by reason of the existing recurrent imbalances between demand and supply of iron and steel products that necessitate the orderly regulation of the market thereof and the existing capacity in several sectors of the iron and steel industry while other sectors suffer from deficiency of investment. As correctly stated by respondent, the supervision and regulation of the Iron and Steel Authority is thus essential and imperative to the end that these kinks in the iron and steel industry be controlled and straightened out.

Violation of Central Bank
Circulars 315 And 317, As Amended

And last but not least, the importation of the subject machinery was effected in violation of Central Bank Circular No. 315, as amended. The said circular provides for the withholding of the approval of application for foreign credits where the proposed project would expand the capacity of overcrowded industries. (Exhs. "EE", "EE-1" and "EE-2".)

Observance of Due Process

On the question of whether petitioner was denied due process by the Collector of Customs for the Port of Manila, a perusal of the Memorandum dated November 5, 1975 of the Hearing Officer of the Bureau of Customs Atty. Francisco Joaquin, Jr., to the Customs Collector thru the Chief, Law Division, quoted above, will readily show that due process was afforded petitioner considering that all of its seven (7) witnesses except one have testified. If the seventh witness, petitioner's own president, was not able to testify, it was due, as observed by respondent, to petitioner's own maneuvers, dilatory tactics and acts in asking continued and repeated postponements notwithstanding previous agreements that the scheduled hearings set on August 15, September 9, 10 and 22, 1975 would be intransferable. At any rate, petitioner fully availed of the trial de novo before this Court that it could never complain it was denied due process.

Regularity of Decision Forfeiting
Subject Machinery

Neither can petitioner complain that the decision forfeiting the machinery in question is irregular and not in order since one of the reasons for the forfeiture of the machinery for violation of Presidential Decree No. 272, Republic Act No. 5186, Republic Act No. 6142 and its implementing rules and regulations was not included in the Warrant of Seizure and Detention. Settled is the rule that goods seized by mistake are liable for forfeiture if a good cause for forfeiture existed at the time of the seizure but without knowledge of the seizing officer. (Wood vs. U.S. 1842, 41 U.S. /15 Pet./ 342, 10 L. Ed. 987.) And as correctly stated by respondent, it is an established precedent that the Collector of Customs, concomittant with his powers under Section 1207 of the Tariff and Customs Code, has all the powers and jurisdiction to take such action as will prevent the importation or exportation of articles which are prohibited or the importation or exportation of which is contrary to existing laws, rules and regulations.

Conclusion

When we consider the facts and circumstances of this case as discussed above which, taken together, support the conclusion that the importation of the subject machinery violated the provisions of Section 2503 of the Tariff and Customs Code, as amended, which prohibit undervaluation, misdeclaration and misclassification of imported articles, in relation to Presidential Decree No. 272, Central Bank Circulars Nos. 315 and 371 implementing Republic Act No. 6142, Republic Act No. 5186, and the rules and regulations implementing said laws, to warrant the forfeiture in favor of the Government of the subject machinery pursuant to Section 2530(K)-5 of the Tariff and Customs Code of the Philippines, as amended, which provides:

> SEC. 2530. <u>Property Subject to Forfeiture Under Tariff and Customs Law.</u> - x x x
>
> k. xxx xxx xxx
>
> 1. Any article sought to be imported or exported:
>
> xxx xxx xxx
>
> (5) Through any other practice or device contrary to law by means of which such articles was entered through a customhouse to the prejudice of the government.

And the failure of petitioner to sustain the burden which the law places upon it to overcome the effect thereof, the decision of respondent Commissioner of Customs appealed from must be sustained.

WHEREFORE, we find no merit in the petition for review and the same is hereby dismissed with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, February 18, 1987.

Amante Filler
AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

Alex Reyes
ALEX Z. REYES
Associate Judge