REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

FARM IMPLEMENT AND MACHINERY CO.,
Petitioner,

- versus -

C.T.A.
CASE NO. 136

THE COMMISSIONER OF CUSTOMS,
Respondent.

2/26/56

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DECISION

This is a petition to review the decision on appeal of the respondent Commissioner of Customs, affirming the Acting Collector of Custom's decree of forfeiture of two hundred eighty-four (284) packages of bean sticks (sotanghon). The forfeiture is based on the ground of alleged violation of Central Bank Circular No. 44 in relation to section 1363 (f) of the Revised Administrative Code.

On the basis of the evidence adduced during the hearing before the Bureau of Customs and of the exhibits presented before this Court, this case was submitted for decision.

From the records of the case, it appears that on July 24, 1954 two hundred eighty-four (284) packages of "sotanghon" in two equal shipments of 142 packages each arrived at the Port of Manila, ex SS "HAI MENG", Reg. No. 947, from Hongkong, and consigned to the herein petitioner; that the shipments were declared under Entries Nos. 59906 and 59907, respectively, and covered by bills of lading (Exhibits "C" and "I"), commercial invoices (Exhibits "A" and "H"), consular invoices (Exhibits "B" and "F"), and Central Bank Release Certificates, Ref. Nos.

6495 and 6496, each respectively describing the shipment as "Bean Sticks", classifying it as "NEC-04", and assigning to it the Code No. 040806; that upon examination by customs examiner G. Cagulada, the two shipments were found to be "sotanghon"; that the petitioner has paid the estimated duties and taxes (see O.R. Nos. 05823 and 05824); that the shipments were released to the petitioner under Surety Bonds Nos. C-014/54 and C-015/54 of the Reliance Surety & Insurance Co; that after the seizure proceedings, the Acting Collector of Customs rendered a decision, decreeing the forfeiture of the two hundred eighty-four (284) packages in question on the ground of alleged violation of Central Bank Circular No. 44 in relation to section 1363 (f) of the Revised Administrative Code; that the petitioner appealed the decision of the Acting Collector of Customs to the respondent who affirmed the same.

For the proper disposition of this case, we find it necessary to rule on two salient issues, which are:

> 1. Whether or not the two hundred eighty-four (284) packages of "sotanghon" in question fall under the Code No. 040806 of the Appendices to Regulation No. 1 Implementing Central Bank Circular No. 44; and
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> 2. Whether or not said two hundred eighty-four (284) packages of "sotanghon" are subject to forfeiture under Central Bank Circular No. 44 in relation to section 1363 (f) of the Revised Administrative Code.

Relative to the first issue, the petitioner argues that the merchandise in question, being a cereal preparation not elsewhere specified (n. e. s.) falls under Code No. 040806, which calls for "Preparation of cereals, flour and fecula for food, n. e. s. (including flour and malt extracts)" and cannot fall under Code No. 040804 UI, which calls for "Cereal paste (Macaroni, Spaghetti, Noodles, Vermicelli and similar preparations)." He relies mainly upon the testimony of witness Florencio A. Soliven, Head of the Food Technology Division, Institute of Science and Technology, who testified that "sotanghon" can never be classified as vermicelli when we refer to the real substance. (see Exhibit "K", p. 41). On the contrary, the respondent contends that "sotanghon", having been prepared and processed more elaborately than starch, is neither in the state of flour and fecula for food nor malt flour nor malt extract, and that "sotanghon", having the characteristics of vermicelli, falls under the classification of vermicelli mentioned in Code No. 040804 UI.

From the contentions and arguments of the parties-litigants, it can be gathered that the "sotanghon" in question is admittedly a cereal preparation. We note that the commodities descriptions of category Code No. 040804 UI under which the respondent Commissioner of Customs seeks to classify "sotanghon" and of category Code No. 040806 under which the petitioner claims the same to fall refer to cereal preparations. However, "sotanghon" is similar to vermicelli and other kindred pastes only in form - they are worm-like in form. But in the composition, they are different. The former is processed from rice (Exhibit "K", p. 38); whereas vermicelli is made from semolina, and semolina is the purified middlings of the durom wheat. (Exhibit "K", pp. 32 and 33). Formally, "sotanghon" is akin to vermicelli and other related cereal pastes described in Code No. 040804 UI, and, substantially, it bears kinship with the commodities recited in Code No. 040806 NEC.

We believe that "sotanghon" is susceptible of two classifications under the system of classification contained in Central Bank Circular No. 44. It can be classified under either Code No. 040804 UI or Code No. 040806 NEC depending upon one's yardstick. From the formal point of view, it can be classified under Code No. 040806 NEC. From the point of substance, it can be classed under Code No. 040804 UI. We note that even the Central Bank is not positive as to the correct classification of "sotanghon". It opines that "sotanghon" "__may__ be classified with the group of macaroni, spaghetti, noodles, vermicelli, and similar preparations, under the Division of Cereals and Cereal Products". (see Opinion No. 88, Series 1954 of the Central Bank legal counsel; underscoring supplied.) To our mind, the use of the word "may" betrays an engendered doubt of the Central Bank as to which of the two contended classifications "sotanghon" properly falls. This is so because the commodities descriptions under Codes Nos. 040804 UI and 040806 NEC are not clear-cut and scientific. Where the descriptions of commodities under one code number are not sufficiently precise and properly canalized, confusion and instability in the classification of goods will result. As in the case at bar, if the Central Bank, which has the enviable access and command to technical know-how of the government, feels doubtful of the proper classification of an imported merchandise, how can an importer, a layman at that, be in a better position to correctly classify the same?

Finding that the "sotanghon" in question can be classified under Code No. 040806 NEC, which calls for

"Preparations of cereals, flour and fecula for food, n.e.s. (including malt flour and malt extracts)" as well, we hold and so rule that the same cannot be forfeited under the provisions of Central Bank Circular No. 44 in relation to section 1363 (f) of the Revised Administrative Code.

WHEREFORE, the decision on appeal of the respondent Commissioner of Customs is hereby reversed. We decree the cancellation of Surety Bonds Nos. C-014/54 and C-015/54 of the Reliance Surety & Insurance Co., which were filed for the release of the merchandise in question.

SO ORDERED.

Manila, Philippines, February 26, 1956

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge