REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FRANKLIN BAKER COMPANY
OF THE PHILIPPINES,
Petitioner,

- versus - C.T.A. CASE NO. 3716

ACTING COMMISSIONER OF
CUSTOMS,
Respondent.

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D E C I S I O N

This is a petition for review of the decision of respondent Commissioner of Customs dated October 16, 1982 in Customs Case No. 79-34 which affirmed the decision of the Collector of Customs, Port of Manila, in Manila Protest No. 10744-78 holding that petitioner Franklin Baker Company of the Philippines is not entitled to drawback of duties paid on saranex liners, notwithstanding the re-exportation of the said shipment within one (1) year from its importation.

The facts as narrated by respondent are as follows:

> It appears that Franklin Baker Company of the Philippines imported from its mother company, the General Foods Corporation, Delaware, U.S.A., 384 cases containing 96,000

pieces of saranex liners bags for use in packing dessicated coconut products for export to said mother company. This shipment arrived in July, 1976. For failure to present a BOI certification that saranex liners are not locally manufactured, release of subject shipment was withheld. On Sept. 4, 1976 the BOI certified to the Current Imports and Commodity Classification Office of the Central Bank that saranex liner, "a co-extruded multi-layered thermoplastic firm has not been known to be locally manufactured."

A memorandum to the Commissioner of Customs dated Oct. 12, 1976 from the Legal Division, this Bureau, maintained that "saranex liners bags which are vital components in containing the dessicated coconuts for export fall within the sphere of Section 105(m) of the Tariff and Customs Code, and, therefore, be entered conditionally free upon the posting of the required bond and compliance with other regulations or requirements of the Bureau. On Nov. 9, 1976, the Acting Commissioner issued a memorandum to the Collector of Customs, Manila International Airport, stating that saranex liners bags are in the same category as kraft paper bags used for exporting cement, allowed under CAO No. 11-74 and therefore could be released to the importer duty-free.

On August 23, 1977 however, or nine months after the issuance of the aforesaid memorandum of the Commissioner, the Collector of Customs issued a counter-memorandum stating, among other things, that "it is the position of this Office that there is no legal basis for allowing

> the duty-free release thereof notwithstanding the memorandum dated Nov. 9, 1976 of the Acting Commissioner since it is not similarly situated."
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> On August 3, 1977, protestant filed an ordinary re-export bond (FED BOND NO. C(9) 00746) which took quite some time to be approved by the Collector. So, on September 22, 1977, protestant, already anxious to have subject shipment released due to its urgent need thereof, paid under protest the amount of ₱281,220.00 under O.R. No. 1264774 in the context of duties, taxes and other charges due thereon. Subject importation was however, finally resolved and released as one falling under Section 105(m) of the Code as conditionally free importation.
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> It also appears that exportation of subject shipment was made on February 3, 1978 or five days after the expiration of the bond the life of which was computed from the time of its filing on Aug. 3, 1977. Its six-month duration therefore expired on February 3, 1978. Hence, the exportation of the articles covered by Import Entry No. 75985-77 under Ordinary Re-export Bond No. 00746 consisting of 96,000 pieces of saranex liners bags was actually five days late per Notice of Cancellation of Bond dated July 26, 1978 issued by the Chief, Bonds Division based on the certification of the Export Coordination Division.

From respondent's view of the case, the decisive question, as presented in the decision appealed from, is whether petitioner is entitled to the refund of the sum of ₱281,220.00 that it paid notwithstanding the fact that re-exportation was done after the six-month period had expired. However, as posed by petitioner in its memorandum dated August 26, 1985 (pp. 38-42, CTA records), the issue for resolution is whether or not petitioner is entitled to drawback of duties paid on saranex liners which were re-exported within one (1) year from their importation.

We sustain respondent Commissioner of Customs that petitioner is not entitled to a refund of the sum of ₱281,220.00 in duties and taxes on the importation of 96,000 pieces of saranex liners.

As aptly stated by respondent in his answer to the petition for review as special and affirmative defenses: (pp. 16-17, CTA records.)

Section 105(m) of the Tariff and Customs Code, as amended, makes no mention about any extension of the six-month period within which to export any article admitted conditionally free, as distinguished from other subsections thereof where extensions are expressly provided;

Respondent, therefore, maintains that petitioner is not entitled to a refund of ₱281,220.00

in duties and taxes paid on the importation of 96,000 pieces of saranex liners, since petitioner failed to re-export the said liners within the six-month period;

One of the conditions required in order that an article may be admitted conditionally free is the filing of "a bond in an amount equal to one and one-half times the ascertained duties, taxes and other charges thereof, conditioned for the exportation thereof or payment of the corresponding duties, taxes and other charges within six (6) months from the date of acceptance of the import entry." /See 105(m), Tariff and Customs Code; underscoring supplied/

In the case at bar, the import entry was deemed accepted at the time of the filing of the re-export bond on August 3, 1977, and the mandatory period of six months from August 3, 1977 ran up to February 3, 1978. Since exportation was accomplished beyond that date, or on February 8, 1978, to be exact, the subject bond became inoperative and without force and effect on expiry date of the six-month period, that is, February 3, 1978. On this very date, since there was still no exportation, the alternative condition to pay the corresponding duties, taxes and other charges arose and began to operate against petitioner. Thus, to allow refund despite such failure and/or delay would amount to extending the six-month period which is not legally permissible.

Petitioner submitted the case on the basis of the records and the pleadings, and it is hardly necessary to state the rule that the party who prays for judgment on the pleadings without proof as to the truth of his own allegations and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party. (Bauermann vs. Casas, et. al., 10 Phil. 386; Evangelista vs. De la Rosa, 70 Phil. 115.)

Even more, the Supreme Court has already ruled in Asturias Sugar Central, Inc. vs. Commissioner of Customs, L-19337, September 20, 1969, 29 SCRA 617:

> It will be noted that section 23 of the Philippine Tariff Act of 1909 and the superseding sec. 105(x) of the Tariff and Customs Code (now sec. 105/m/) while fixing at one year (now 6 months) the period within which the containers therein mentioned must be exported, are silent as to

> whether the said period may be extended. It was surely by reason of this silence that the Bureau of Customs issued Administrative Orders 389 and 66, * * * to eliminate confusion and provide a guide as to how it shall apply the law, and, more specifically, to make officially known its policy to consider the one-year (six-month period) period mentioned in the law as non-extendible.
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> Considering that the statutory provisions in question have not been the subject of previous judicial interpretation, then the application of the doctrine of 'judicial respect for administrative construction,' would, initially, be in order. (Asturias Sugar Central, Inc. v. Commissioner of Customs, 29 SCRA 617, 621-622 /1969/
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> * * *   * * *   * * *
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> If it is further considered that exemptions from taxation are not favored, and that tax statutes are to be construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority, then we are hard put to sustain the petitioner's stand that it was entitled to an extension of time within which to export the jute bags and, consequently, to a refund of the amount it had paid as customs duties.
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> In the light of the foregoing, it is our considered view that the one-year period (six-month period) prescribed in section 23 of the Philippine Tariff Act of 1909 (section 105/m/ of the Tariff and Customs Code) is non-extendible and compliance therewith is mandatory. /supra, at pp. 623-624/

However, as posed by petitioner: Is petitioner Franklin Baker Company of the Philippines entitled to drawback of duties paid on the saranex liners which were re-exported within one (1) year from their importation, under Section 106 of the Tariff and Customs Code?

Again, the question is not one of first impression. In Asturias Sugar Central, Inc. vs. Commissioner of Customs, L-19337, September 30, 1969, 29 SCRA 617, where the factual setting is similar to that in the case at bar, the Supreme Court likewise ruled unequivocably that when exemption is claimed under Section 105, importer cannot resort to drawback under Section 106 without complying with the conditions imposed thereby. We quote:

> The petitioner argues that not having availed itself of the full exemption granted by sec. 105(x) of the Tariff and Customs Code (sec. 105/m/) due to its failure to export the jute bags within one year (within six months), it is nevertheless, by authority of the above-quoted provision, entitled to a 99% drawback of the duties it had paid, averring further that sec. 106(b) does not presuppose immediate payment of duties and taxes at the time of importation.
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> The contention is palpably devoid of merit.

The provisions invoked by the petitioner (to sustain his claim for refund) offer two options to an importer. The first, under sec. 105(x), gimes him the privilege of importing, free from import duties, the containers mentioned therein as long as he exports them within one year from the date of acceptance of the import entry, which period, as shown above, is not extendible. The second, presented by sec. 106(b), contemplates a case where <u>import duties are first paid</u>, subject to refund to the extent of 99% of the amount paid, provided the articles mentioned therein are exported within three years from importation.

It would seem then that the Government would forego collecting duties on the articles mentioned in section 105(x) of Tariff and Customs Code as long as it is assured, by the filing of a bond, that the same shall be exported within the relatively short period of one year from the date of acceptance of the import entry. Where an importer cannot provide such assurance, then the Government, under sec. 106(b) of said Code, would require payment of the corresponding duties first. The basic purpose of the two provisions is the same, which is, to enable a local manufacturer to compete in foreign markets, by relieving him of the disadvantages resulting from having to pay duties on imported merchandise, thereby building up export trade and encouraging manufacture in the country. But there is a difference, and it is this: under section 105(x) full exemption is granted to an importer who justifies the grant of exemption by exporting within one year. The petitioner, having opted to take advantage of the provisions of section 105(x),

> may not, after having failed to comply with the conditions imposed thereby, avoid the consequences of such failure by being allowed a drawback under section 106(b) of the same Act without having complied with the conditions of the latter section. (supra, at pp. 626-627)

ACCORDINGLY, the decision dated October 16, 1982 of respondent Commissioner of Customs is affirmed, at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, September 16, 1987.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge