Lit.

IMM BRAKE CLUTCH MFG., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2800

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

1/22/79

D E C I S I O N

This is a petition to review the decision of respondent Commissioner of Customs affirming that of the Collector of Customs of the Port of Manila, decreeing the forfeiture of an importation described in the commercial and shipping documents as "one (1) lot friction materials, tractor parts and various EP-732-06.05", for alleged violation of Section 2530 (i) and (m)-3 of the Revised Tariff and Customs Code.

Respondent, aside from maintaining that the forfeiture is legal and proper, raised the defense that petitioner's amended petition for review was filed beyond the thirty-day period for appeal prescribed by law, the filing of the original petition for review not having interrupted the running of the period because the said petition was defective.

These are the essential and material facts:

Sometime in December, 1972, petitioner, a corporation engaged in the business of manufacturing, buying, selling and servicing of brake clutches, linings and other friction materials, imported from Japan various friction materials and tractor parts. The accompanying commercial and shipping documents, including the bill of lading and import entry, generally described the importation as "two cases: one (1) lot friction materials, tractor parts and various EP-732-06.05." In the commercial invoice issued by the supplier, Jppan Trading Corporation, the quantity of the friction materials or brake linings was enumerated and itemized, numbering 4,184 pieces, with the corresponding price per piece or unit. The same particulars appeared in the import entry and revenue declaration filed by the importer, and in the consular invoice of the merchandise.

Upon examination of the importation, it was discovered by the customs examiner that the pieces of friction materials (or brake linings), totaling 9,375 in all, were 5,191 units more than the 4,184 pieces specified in the invoices. Consequently, seizure and forfeiture proceeding was recommended by the customs examiner against the whole shipment of two (2) cases of friction materials for violation of Section 2530 (i) and (m)-3 of the Tariff and Customs Code.

During the hearing of the case in the Bureau of Customs, the Government, in support of its position that the shipment of friction materials is forfeitable, introduced evidence of the existence of an excess of 5,191 friction materials over those declared in the commercial and shipping documents. Petitioner, on the other hand, in support of its defense that the articles are not forfeitable, adduced evidence tending to show that the sale entered into between it and the seller/supplier, Japan Trading Corporation, was by lot (of about 5 tons) for a total price of $2,017.50, and that the enumeration of the pieces of brake linings or friction materials in the invoices with their corresponding unit price was done only to comply with the customs law of Japan.

Convinced, however, that the enumeration of the pieces with the corresponding price per piece or unit in the commercial and consular invoices and the import entry negates the intention of the buyer and supplier that the sale was by lot, and because of the fact that the actual number of pieces as counted exceeded by more than 100% the number of pieces reflected in the covering documents, the Collector of Customs, after proper hearing, rendered a decision on April 5, 1974 ordering the forfeiture of the entire shipment of friction materials declared and described as "2 cases: one (1) lot of friction materials, tractor parts and various".

On May 3, 1974, petitioner filed a motion for reconsideration of the decision of the Collector, but the same was denied by the latter on May 31, 1974. On August 12, 1974, petitioner filed a second motion for reconsideration which was given due course by the Collector of Customs in his order dated September 3, 1974, setting aside his decision of April 5, 1974 and allowing further proceedings on the case. However, on August 8, 1975, the Collector of Customs rendered another decision again ordering the forfeiture of the entire shipment of friction materials, which last decision was appealed by petitioner to the Commissioner of Customs.

On March 2, 1976, the Commissioner of Customs affirmed the decision of the Collector, and petitioner, on April 23, 1976, sought recourse to this Court by filing its petition for review. On May 18, 1976, respondent filed a motion to dismiss on the ground that petitioner's petition for review did not state a cause of action and that a copy of the decision appealed from was not attached thereto. However, during the hearing on July 21, 1976, petitioner was ordered by the Court to file an amended petition for review, attaching thereto a copy of the decision of the Commissioner of Customs, which order was complied with by petitioner on August 14, 1976.

In his answer to the amended petition for review, respondent, apart from maintaining the legality and propriety of the forfeiture of the subject importation, raised the defense that the amended petition for review was filed out of time since the original petition for review was allegedly defective and did not therefore interrupt the running of the period for appeal. The same defenses were raised in his memorandum filed after trial and the filing of petitioner's memorandum.

The principal issues for resolution, therefore, are as follows:

> (1) Whether or not petitioner's appeal was filed beyond the thirty-day period for appeal under Section 11 of Republic Act No. 1125;
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> (2) Whether or not the forfeiture of the subject importation is justified and in accordance with law.

As regards the first issue, the Court notes that while the original petition for review of petitioner has some deficiencies, the same pertain mainly to its form which can be cured by amendment. This is why petitioner was allowed and ordered by the Court to file an amended petition for review to conform with the requirements of the rules of this Court.

The defects in the original petition consist merely in the form and manner of the statement of the ultimate facts constituting petitioner's cause of action, and in the omission of certain formal averments showing jurisdiction of the Court. Substantially, the original petition contained a statement of the facts of the case which constitutes petitioner's cause of action; and lack of jurisdiction of this Court over the subject matter is not indubitable. What was omitted from the jurisdictional facts refers only to the date when the decision of respondent Commissioner was received by petitioner. Such matter is not actually new as it was merely stated in the amended petition for review, which was filed with leave of court, that the decision of the Commissioner dated March 2, 1976 was received by petitioner on March 25, 1976. This is not specifically and categorically denied by respondent in his answer to the amended petition for review.

Indeed, it is generally settled that amendments to pleadings are favored. (Torres vs. Tomacruz, 49 Phil. 913; see also La Suerte Cigar & Cigarette Factory, et al., vs. Vera, CTA Case No. 2048, May 17, 1971; Gutierrez & Sons, Inc. vs. Vera, CTA Case No. 1952, November 25, 1971.) Amendments may relate to the following matters: the correction of mistakes in pleadings, x x x; <u>the insertion of juris-</u>

dictional averments where these are necessary; the correction or addition of verifications; the addition of counts or the amplification of statements in the cause of action or defense, x x x. (61 AM JUR, 2d., Sec. 318, pp. 724-725.)

Consequently, since it appears that the Commissioner's decision herein appealed from was received on March 25, 1976 and the original petition for review (or appeal) of petitioner was interposed on April 23, 1976, which was obviously within the thirty-day period prescribed by law (Sec. 11, Rep. Act. No. 1125), it follows that the amended petition for review, which was allowed by the Court, was filed on time. For the rule is settled that the amendment relates back to the commencement or date of the original pleading (61 AM JUR, 2d., Sec. 336, p. 741.) or that, in effect, the amended pleading supersedes and takes the place of the original pleading. (61 AM JUR, 2d., Sec. 334, p. 739.)

With respect to the next issue, we find the stand of respondent Commissioner of Customs justified and well-taken. The commercial invoice (Exh. B, pp. 10-13 Customs rec.) and consular invoice (pp. 4-7, Customs rec.), as well as the import entry (Exh. A, pp. 11 & 72, Customs rec.), filed by the importer's broker, specifically described in detail the articles contained in the two (2) cases, enumerating and itemizing them piece by piece with the corresponding price or value per piece or unit, and specifying that the total number thereof is 4,184. However, the actual number or quantity of the articles, as found by the customs examiner upon examination, was 9,375 pieces, which, indeed, exceed by more than 100% the declared quantity of 4,184. Necessarily, this omission to state the exact and correct number of the imported articles in the invoices and the import entry affects and alters the correctness of the total price or valuation of said articles as stated in the shipping documents.

Misdeclaration of an imported article constitutes violation of the provisions of the Tariff and Customs Code and subjects the imported article to forfeiture. Thus:

> SEC. 2530. Property Subject To Forfeiture Under Tariff and Customs Law. -Any x x x article and other objects shall, under the following conditions, be subject to forfeiture:
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> x x x x x x x x x
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> i. Any package of imported article which is found by the examining official to contain any article not specified in the invoice or entry, including all other packages purportedly containing imported articles similar to those declared in the invoice or entry to be the contents of the misdeclared package; Provided, That the Collector is of the opinion that the misdeclaration was contrary to law.

m. Any article sought to be imported or exported:

x x x x x x x x x

(3) On the strength of a false declaration or affidavit executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article;

(4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article.

Hence, in one case involving violation of Section 1363 (m)-3 and 4 of the Revised Administrative Code (now Section 2530 (m)-3 and 4 of the Tariff and Customs Code), the Supreme Court, in sustaining the forfeiture of the imported merchandise, inter alia, ruled:

> It is true that the commercial and consular invoices tally with the import entry and internal revenue declaration, but it is also true that, as stated, said invoices, the bill of lading as well as the import entry and internal revenue declaration do not tally with the contents of the boxes shipped. x x x. Since a seizure and forfeiture proceedings for misdeclaration is directed against the merchandise imported, the basis in determining misdeclaration should be the goods actually received as compared with their accompanying papers, such as the invoice , bill of lading and import entry and internal revenue declaration. xxx. (See Bombay Department Store vs. Commissioner of Customs, L-20489, June 22, 1965, 14 SCRA 331; underlining supplied.)

We cannot accept with full faith and credence the defense of petitioner that the subject articles were purchased from the foreign supplier not by piece but by lot, and that the enumeration or itemization of the pieces and the pricing thereof per piece or unit in the commercial and consular invoices was done by the supplier only to comply with the customs law of Japan.

Firstly, while petitioner endeavored to substantiate such defense by presenting evidence, pertinently consisting of oral testimonies of the supplier's manager and the president of petitioner corporation, the contract of sale itself between them, which is more credible and convincing as to the exact nature of the transaction was never adduced. Neither has petitioner presented in evidence the pertinent law of Japan on the matter.

Secondly, the supplier Japan Trading Corporation already made and signed a written declaration in the consular invoice (see pp. 4, 5-7 Customs rec.), which conforms to the requirements of the Tariff and Customs Code (see Sec. 1309, Id.), stating, among others, that the invoice is in all respects true and correct; while the importer (petitioner), as regards the invoice and import entry, likewise submitted a written and signed declaration, conformably to the requirements of Section 1304 of the Code, stating under oath, among others, that;

> THAT the herein attached Customs Import Entry contains a full and true statement of all the articles which are the subject thereof;

x x x x x x x x x

> THAT to the best of our information and belief, the import entry, consular and commercial invoice, bill of lading, export declaration certificate or its equivalent and all other supporting documents and the declaration thereof are in all respects genuine and true, and were made by the person by whom the same purport to have been made, respectively. (See p. 15, Customs Rec.)

Certainly, to accept the defense and evidence of petitioner would be to allow it (petitioner) to repudiate and contradict the very particulars and entries in said documents, which were submitted to support the importation, and which the foreign supplier (i.e., as regards the invoices) and petitioner itself have already declared and admitted under oath or affirmation to be true and correct.

Thirdly, regardless of the alleged requirements of the customs laws of Japan, it appears that the itemization of the articles and the individual pricing thereof in the invoices and the import entry conform to the provisions of our Tariff and Customs Code, requiring that the invoice shall set forth -

> c. A detailed description of the articles according to the terms of the heading or subheadings, if specifically mentioned in this Code, otherwise the description must be in sufficient detail to enable the articles to be identified both for tariff classification and statistical purposes, indicating their correct commodity description, in customary terms or commercial designation, including the grade or quality, numbers, marks

> or symbols under which they are sold by the seller or manufacturer, together with the marks and numbers of the packages in which the articles are packed;
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> x x x   x x x   x x x
>
> e. The purchase price of each articles in the currency of the purchase and in the unit of the quantity in which the articles were bought and sold in the place or country of exportation, if the articles are shipped in pursuance of a purchase or an agreement to purchase;
>
> x x x   x x x   x x x
>
> (See Sec. 1308, Id.)

and that -

> "The description of the articles in the import entry must be in sufficient detail to enable the articles to be identified both for tariff classification and statistical purposes, and if specifically classified in this Code, in the tariff description or terms of the headings or subheadings of this Code and in the currency of the invoice; and the quantity and values of each of the several classes of articles shall be separately declared according to their respective headings or subheadings and the totals of each heading or subheading shall be duly shown." (Sec. 1307, Id.)

Fourthly, the import entry in this case wherein the itemization of the subject articles and the pricing thereof per peice or unit had been set forth and declared (Exh. A), and which is supported by a written declaration of petitioner, under oath, that it is true and correct (p. 15, Customs rec.), should be conclusive and binding on petitioner.

> When an import entry has been made, it is conclusive on the importer as to the contents and declared value of the

> goods, for all consequences which the law may impose on the examination and appraisement of them, and for any deficiency or noncompliance with laws regulating the entries of imported merchandise. (21 AM JUR, 2d. Sec. 75, p.814.)

In the ultimate analysis, this Court is of the persuasion, and hereby rules, that the detailed description, i.e., the itemization and listing piece by piece of the various friction materials and tractor parts involved in the importation under consideration, with their corresponding price per piece or unit, as set forth and shown in the commercial invoice, consular invoice and the import entry presented by petitioner to support its importation, is conclusive evidence against petitioner itself, there being no affirmative showing of fraud or illegality, that the purchase of these articles is by piece and not by lot, and cannot be affected by proof of facts presented by petitioner outside of these shipping documents. To hold otherwise would be to allow the importer to trifle with the serious and specific purpose of the law in requiring the proper documentation of the importation and thereby place the importer in a propitious position to defraud the Government of lawful revenues from imported articles. As aptly stated by respondent in his memorandum: "to accept petitioner's theory would be to open an avenue for the perpetuation of technical smuggling under the guise of importation by lot." (p. 138, CTA records.)

Finding no error in the decision of respondent Commissioner of Customs appealed from, the same should therefore be sustained.

WHEREFORE, the judgment under review is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, January 22, 1979.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge