REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INDUSTRIA MARBLE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4234

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:
FEB 23 1995

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DECISION

This is a petition for review seeking the reversal of the Decision of respondent Commissioner of Customs dated February 4, 1988 which, in turn, affirmed the decision of the District Collector of Customs, Port of Manila dated November 24, 1987 in SI No. 434-81.

The facts are as follows:

Petitioner is a domestic corporation engaged in the business of manufacturing various marble products. Sometime in August 1981 petitioner made a shipment of rough unfinished marble from Taiwan on board the vessel "AKIFUJI". This shipment was covered by Bill of Lading No. CM-1 issued by the Toko Kaion Kaisha, Ltd. (Exhibit D), Packing Weight List No. PNS-108 dated

October 17, 1981 issued by Pan National Supply to petitioner (Exhibit C) and an invoice issued by Pan National Supply to petitioner (Exhibit B).

Upon the shipment's arrival in the Port of Manila, petitioner through its broker M & M Brokerage filed formal import Entry No. 84992, wherein the shipment was declared as 13 crates containing 500 square meters Taiwan Marble Unfinished Rough Board with a gross weight of 23,066 kg. Attached thereto were copies of the Bill of Lading, commercial invoice and the importer's sworn statement. On the basis of these documents, petitioner paid the taxes and duties corresponding to said 500 square meters of imported marble, and obtained the necessary release papers from the Central Bank. Meanwhile, on November 30, 1981, the entry papers were forwarded to the Examiners' Group of the Bureau of Customs for examination, and the case was assigned to Examiner Edna Garcia. Upon conducting the requisite examination, Garcia noted that there was a big discrepancy in the quantity stated in the import documents and the quantity actually shipped. Whereas the import documents stated that the shipment contained only 500 square meters of rough unfinished marble, Garcia discovered that the shipment actually contained 1,130.775 square meters, a difference of 630 square meters or 126%. Garcia noted this discrepancy in her return which was written at the back of the original import entry declaration.

Thereafter, seizure proceedings were instituted by the District Collector of Customs of the Port of Manila against petitioner's shipment. However, pending the resolution of said proceedings, petitioner was authorized to secure the release of its shipment upon the payment of the corresponding taxes on the 500 square meters declared by it, and a surety as well as a cash bond to answer for any deficiency taxes and duties. The surety bond was subsequently substituted with a new one during the pendency of this case before the Court. After proper proceedings, the District Collector of Customs, in a decision dated November 24, 1987, found that petitioner failed to satisfactorily explain the discrepancy between the declared quantity of goods and those actually shipped. Accordingly, he ordered the forfeiture of the surety and cash bonds posted by petitioner.

Not satisfied with said decision, petitioner appealed to respondent Commissioner of Customs. On February 4, 1988 respondent Commissioner of Customs rendered his questioned decision affirming the decision of the District Collector of Customs.

Hence, this petition.

Petitioner contends, firstly, that respondent Commissioner erred in affirming the finding of an overquantity in petitioner's subject shipment; secondly, that the finding of overquantity is erroneous since there was no proper inspection of the subject shipment; thirdly, that petitioner is not guilty of fraud in making the subject importation because it acted in utmost good faith and merely relied on the documents forwarded by the supplier.

Petitioner's contention are devoid of merit. Hence, the petition must be dismissed.

Anent the first and second contentions of petitioner, We find no cogent reason to disturb the findings of fact of the District Collector of Customs which were affirmed by respondent Commissioner. In her testimony customs examiner Edna Garcia categorically stated that she examined all thirteen crates comprising petitioner's shipment during her first examination (TSN, August 16, 1984 p. 12). It was during said examination that the discrepancy was first noted. Petitioner has not shown any motive on Garcia's part to falsify the results of her examination; hence, said results have in their favor the presumption of regularity.

On the other hand, having requested the re-examination, petitioner had the burden of proving that Garcia's findings were not accurate, by ensuring that all thirteen crates in the shipment would be thoroughly and properly re-examined. Yet, it conspicuously failed to raise any protest to the fact that only two of the thirteen crates were allegedly opened during the second examination, despite the fact that it had at least two (2) representatives present during said examination. This silence is specially revealing in light of the admitted fact that, during the first examination, all the thirteen crates were opened and found to contain an excess quantity of goods. Thus, petitioner has only itself to blame for not taking the appropriate precautionary measures to ensure that the second examination would be properly conducted.

Petitioner's third and fourth contentions are likewise devoid of merit. As contended by respondent Commissioner, Section 2503 of the Tariff and Customs Code raises a prima facie presumption of fraud where the discrepancy in the quantity of goods actually shipped exceeds 50% of the quantity stated in the import documents. In our mind, petitioner commits a patent violation of Sec. 2503 of the Tariff and Customs Code which is herein reproduced to wit:

> 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 percent (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 percent (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,** <u>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.</u>
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> 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. (*Underscoring supplied*)

Petitioner has not satisfactorily rebutted this presumption. Again, its conspicuous failure to insist on a thorough and complete re-examination of all the thirteen crates in the shipment in question poses a heavy cloud on its claim of innocence. Besides, it is a little too far-fetched to imagine that the supplier of the goods would, of its own volition, knowingly ship an excessively larger quantity of goods than was ordered and paid for by petitioner. No seller in his right mind would have shipped 1,130 square meters of marble knowing that the buyer ordered and paid for less than one-half of the delivered quantity. Therefore, the only logical conclusion under the circumstances is that any negligence (or worse, deliberate design) that resulted in the overshipment can be attributed to petitioner.

Well settled is the rule that the burden of proof in seizure and forfeiture cases shall lie upon the claimant. (Sec. 2535, Tariff and Customs Code)

And this burden, petitioner has failed to satisfactorily discharge (Acting Commissioner of Customs vs. CTA and Andrulis, No. L-62636, April 27, 1984, 129 SCRA 76).

WHEREFORE, in view of the foregoing, the petition is hereby **DISMISSED.** No pronouncement as to costs.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

This is to certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals