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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

April 28/67

GUIBBS WEAR FACTORY,
Petitioner,

versus CTA CASE NO. 1566

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from the decision of respondent dated October 23, 1964, in Customs Case No. 470 (Seizure Identification No. 1490), affirming that of the Acting Collector of Customs for the Port of Manila decreeing the forfeiture in favor of the Government of twenty (20) cases of "rayon tulle in the piece" and ordering petitioner and its surety to pay, jointly and severally, in cash the amount of ₱26,672.19, representing the appraised value of the seized merchandise, for violation of Central Bank Circulars Nos. 44 and 45, in relation to Section 1363(f) of the Revised Administrative Code. This case was submitted for decision on the basis of the record after the testimony of one witness for the petitioner.

The undisputed facts show that the merchandise in question arrived in the Port of Manila from New York on March 31, 1954 on board S/S "Gleenville", under Registry No. 411, accompanied by the corresponding shipping documents (Exhibit "B", Bill of Lading; Exhibit "E", Commercial Invoice; and Exhibit "E", Consular Invoice, pp. 81, 70, 71, Customs Record). Upon examination, the importation was found to consist of "rayon tulle", for which reason it was seized and subsequently declared forfeited for violation of Central Bank Circulars Nos. 44 and 45, in relation to Sec. 1363(f) of the Revised Administrative Code. However, it was released to petitioner upon the filing of a surety bond in the sum of ₱26,672.19 in favor of the Republic of the Philippines (see p. 82, Customs record). The release certificate issued by the Central Bank (Exh. "C", p. 69, Customs record) calls for "20 cases Special Textiles Fabrics, Code No. 650326, Commodity Classification App. C-NEP".

The only issue to be resolved is whether or not the importation in question is subject to forfeiture for violation of Central Bank Circulars Nos. 44 and 45, in relation to Section 1363(f) of the Revised Administrative Code.

Respondent contends that the merchandise in question is a "rayon tulle in the piece" falling under Commodity Code No. 650407-NEC, and not "Special Textile Fabrics" with Commodity Code No.

650326-NEP, which is the kind of article authorized in the Release Certificate issued by the Central Bank (Exh. "G"). Accordingly, it is argued that the importation violated Central Bank Circulars Nos. 44 and 45.

Petitioner maintains the contrary view. It is contended that when it applied for the corresponding letter of credit for the importation of the merchandise in question, a sample of which was presented (Exhibit "H"), the proposed importation was classified as "Special Textile Fabrics" under Commodity Code No. 650326-NEP, implying that even assuming that it was imported under a wrong classification, the error is not due to it but to the Central Bank which authorized the importation. Moreover, it is argued further, that both "Special Textile Fabrics Synthetic, n.e.s.", under Commodity Code No. 650326-NEP, and rayon tulle, under Commodity Code No. 650407-NEC, are listed in the Central Bank's Commodity Code Book, and are allowed to be imported. And having paid all the taxes and customs charges on the importation, the Government did not suffer any loss in revenue.

Respondent's contention is well taken. It appears in the record that the importation in question is <u>rayon tulle</u>. It properly falls under the category and code number NES, 650407. The term "NES" following the commodity description

"Special textile fabrics" means not elsewhere specified in the Statistical Classification of Commodities. If the merchandise clearly falls under a different classification, its importation cannot be justified under the classification "Special textile fabrics, NES, 650326-NEP." And since the imported rayon tulle in question falls under the different classification "Tulle, rayon, 650407-NEC", it is not embraced within the classification of "Special textile fabrics, NES, 650326-NEP", specified in the Release Certificate issued by the Central Bank.

This conclusion finds support in the letter of the Deputy Governor of the Central Bank dated June 9, 1955, the existence of which is admitted by petitioner, which reads in part as follows:

> "The commodity submitted to this Office is rayon tulle, and this item is specifically listed in the Statistical Classification of Commodities under Code No. NEC-650407 - Tulle, rayon."

Moreover, it cannot be correctly implied by petitioner that the Central Bank officials misled it in making the importation under the wrong statistical classification for it is expressly admitted that it applied to the Central Bank, thru its agent bank, for the importation of the goods in question under Commodity Code No. 650326-NEP, Special Textile Fabrics Synthetic, n.e.s. (par. 2,

p. 1, Petitioner's Memorandum, p. 43, C. T. A. record).

Petitioner's allegation that it brought a sample of the merchandise to the Central Bank when it applied for the importation in question is not substantiated by the evidence.

The importation not having been covered by a release certificate issued by the Central Bank, it is subject to forfeiture for violation of Central Bank Circulars Nos. 44 and 45, in relation to Section 1363(f) of the Revised Administrative Code.

Finding no error in the decision appealed from, the same is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, April 28, 1967.

R M Umali
ROMAN M. UMALI
Presiding Judge

I CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Associate Judge RAMON L. AVANCEÑA did not take part.