REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ASTURIAS SUGAR CENTRAL, INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 992

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - - - - - x

D E C I S I O N

Petitioner seeks to recover the total sum of ₱28,629.42 paid under protest as customs duty and special import tax on imported jute bags.

Petitioner, a corporation organized under Philippine laws, is engaged in the production of centrifugal sugar from sugar cane. It imported jute bags for use in its produce which arrived in two shipments: the first, consisting of 44,800 jute bags, arrived on January 3, 1957, and the second, consisting of 75,200 jute bags, arrived on February 2, 1957. These shipments were provisionally passed by the customs authorities free of customs duty and special import tax upon the filing by petitioner of Re-exportation Bonds and Special Import Tax Bonds Nos. 1 and 6 on January 8 and February 8, 1957, respectively, conditioned upon the exportation of the jute bags "within one (1) year from the date (s) of the arrival of the (carrying) vessel(s)".

Of the total number of imported bags, 33,647 bags were exported within one (1) year after their importation, thereby leaving a balance of 86,353 bags which, however, were exported within three (3) years from their importation. In this connection, it must be stated that on February 6, 1958, or one (1) day prior to the expiry date of Re-Exportation Bond and Special Import Tax Bond No. 6, petitioner requested respondent one week's extension of these particular bonds on the grounds of delay in the arrival of the loading vessel and the picketing of the railroad line from November 16 to December 21, 1957. This request was denied by respondent on April 15, 1958. In the interim, petitioner paid under protest on March 21, 1958 the respective amounts of ₱11,912.82 and ₱16,716.60, or a total of ₱28,625.42, as customs duty and special import tax on the 86,353 bags which were not exported within the one (1) year period.

Subsequently, petitioner requested for the refund of the amount of ₱28,625.42, which request was denied. Hence, the instant petition for review seeking the recovery of said sum of money.

The legal basis upon which the imported jute bags in question were provisionally passed free of customs duty and special import tax is Section 23 of the Philippine Tariff Act of 1909 (now Sec. 105(x) of the Tariff and Customs Code), which provides:

> "SEC. 23. That containers, such as casks, large metal, glass, or other receptacles which are, in the opinion of the collector of customs, of such a character as to be readily identifiable may be delivered to the importer thereof upon identification and the giving of a bond with sureties satisfactory to the collector of customs in an amount equal to double the estimated duties thereon, conditioned for the exportation thereof or pay-

131

> ment of the corresponding duties thereon within one year from the date of importation, under such rules and regulations as the Insular Collector of Customs shall provide."

Having failed to export the 86,353 jute bags within one year from the date of their importation, it is obvious that, under the afore-quoted statute, petitioner is liable for the payment of customs duty and special import tax thereon.

But, petitioner argues that its letter of February 6, 1958 requesting one week's extension of bonds No. 6 had the effect of suspending the running of the time within which to re-export the jute bags. Granting, though without ruling so, that it had a suspensive effect, petitioner cannot escape liability for the customs duty and special import tax on the 86,353 jute bags which were not exported within one year from the date of their exportation, for the requested suspension was only for one week. Furthermore, the request referred only to bonds No.. 6, and finally, the exportation of the 86,353 jute bags was effected beyond the requested one week period.

As an alternative to the refund of the whole amount of ₱28,626.42, which as afore-stated, was paid as customs duty and special import tax on the 86,353 jute bags, petitioner, in its memorandum, prays for the recovery of the said sum of ₱28,629.42 minus one one per cent in form of a drawback under the provisions of Section 106(b) of the Tariff and Customs Code.

132

Section 106(b) of the Tariff and Customs Code is a substantial reproduction of Section 22 of the Philippine Tariff Act of 1909, which at the time the importations at bar took place governs the allowance of drawbacks on articles of imported materials, including the packing or covering thereof, which were exported within three years from the date of their importations. The pertinent provision of Section 22 of the Tariff Act No. 1909 reads:

> "SEC. 22. That upon the exportation of articles manufactured or produced in the Philippine Islands, including the packing, covering, putting up, marking, or labelling thereof, either in whole or in part of imported materials, or from similar domestic materials of equal quantity and productive manufacturing quality and value, such question to be determined by the Insular Collector of Customs, there shall be allowed a drawback equal in amount to the duties paid on the imported material so used, or where similar domestic materials are used, to the duties paid on the equivalent imported similar materials, less one per centum thereof: Provided, that the exportation shall be made within three years after the importation of the foreign material used or constituting the basis for drawback: x x x."

We believe that petitioner, having duly paid the duties on the 86,353 jute bags upon its failure to comply with the condition of the bonds to export said bags within the one year period provided for in Section 22 of the Philippine Tariff Act of 1909, cannot now avoid the full effect of such failure by being allowed a drawback under Section 22 of the same Tariff Act. It is quite improbable that the Congress of the

133

United States, in enacting the Philippine Tariff Act of 1909, intended to provide Section 22 thereof as a loophole through which the full effect of failure to comply with Section 22 of the same Act may be evaded or avoided. What was doubtless meant was to make final and irrevocable the payment of customs duty upon failure to export the imported articles within the one year period.

WHEREFORE, the decision appealed from is hereby affirmed with costs against petitioner.

SO ORDERED.

Manila, November 20, 1961.

MARIANO NABLE
Presiding Judge

We concur:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

134