Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

3

OLYMPIA BUSINESS MACHINES
CO. (PHILIPPINES), INC.,
Petitioner,

- versus - CTA. CASE NO. 2756

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

8/25/80

D E C I S I O N

Petitioner Olympia Business Machines Co. (Philippines), Inc. seeks for the review of the decision of respondent Commissioner of Customs dated September 9, 1975, affirming that of the Collector of Customs dated October 14, 1974, denying its protest in Customs Case No. 74-159 (Manila Protest No. 8727), and imposing upon it the amount of ₱6,693.00 additional customs duty and ₱586.00 additional advance sales tax, or a total amount of ₱7,279.00 which petitioner paid under Official Receipt No. 0816785 dated March 12, 1973. Petitioner, in its petition for review, asks this Court for the judicial refund of said amount of ₱7,279.00, plus interests and the costs of suit.

Petitioner is a corporation organized and existing under the laws of the Philippines. It is engaged in the sale of Olympia office machines and spare parts.

On or about January 17, 1973, petitioner imported six (6) crates of various spare parts of typewriters, adding machines and calculating machines which were discharged in the Port of Manila. In the import entry, the spare parts were all declared and classified by petitioner under Tariff Heading No. 84.55 of the Tariff and Customs Code, as amended, with 10% ad valorem duty. Based on this classification, petitioner paid on the said shipment the amounts of ₱17,146.88 and ₱15,504.00 as customs duty and advance sales tax, respectively. However, before the final liquidation of the importation, the Bureau of Customs picked out representative items of the imported spare parts and revised the classification of the aforesaid spare parts by placing the subject representative items under different tariff headings and subjected the same to higher rates of duty as follows:

Items/Parts	Tariff Heading No.	Rate of Duty
Rubber Foot	40.14B	50%
Electric Motor	85.01C	50%
Springs	73.35	30%
Bolts, Nuts, Washers, Rivets, Screws and Studs	73.32	50%
Spool	73.40B	70%
Connecting Wire, Taut Wire, Tension Wire and Pull Wire	85.23B	50%
Pins	73.34	100%
Condenser	85.18	10%
Switches	85.19	50%
Rubber Rings	40.14B	50%

As a result of the above reclassification, petitioner was assessed by the Collector of Customs for the Port of Manila and made liable for the payment of the amounts of ₱6,693.00 and ₱586.00, as additional customs duty and advance sales tax, respectively, which petitioner subsequently paid on March 12, 1973 as aforesaid under Official Receipt No. 0816785.

Petitioner subsequently and formally protested on March 20, 1973, docketed as Manila Customs Protest Case No. 8727, the additional assessment made and claimed for the refunds of the said additional customs duty and advance sales taxes it had paid from the Collector of Customs. This protest was denied in a decision by the Collector of Customs, which was subsequently affirmed by the Commissioner of Customs, on appeal in the latter's decision dated September 9, 1975. From this decision of the Commissioner of Customs, aforesaid petitioner appealed to this Court.

The issue in the instant case is whether or not the reclassification of the various spare parts made by the Collector of Customs and affirmed by respondent Commissioner of Customs is in accordance with law.

Petitioner contends that the imported spare parts were properly classified by it under Tariff Heading No. 84.55, Chapter 84, Schedule XVI of the Tariff and Customs Code of the Philippines, as amended. It asserts that the parts in question were imported and sold for use solely or principally for typewriters classified under Tariff Heading No. 84.51, and calculating or or adding machines classified under Tariff Heading No. 84.52. Petitioner claims that Tariff Heading No. 84.55, taken in relation to Tariff Heading Nos. 84.51 and 84.52, squarely applies in this case. Said Tariff Heading No. 84.55 provides as follows:

> 84.55 Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of a kind falling within heading No. 84.51, 84.52, 84.53 or 84.54 . . . . ad val. 10%

The relative Tariff Heading Nos. 84.51 and 84.52 referred to in Tariff Heading No. 84.55, provide also as follows:

> 84.51 Typewriters, other than typewriters incorporating calculating mechanisms, cheque-writing machines . . . . . . ad val. 20%
>
> 84.52 Calculating machines; accounting machines, cash registers, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device . . ad val. 20%

Based upon its claim that the spare parts were used solely for its Olympia typewriters, calculating and adding machines, petitioner concludes that the Bureau of Customs had therefore erroneously reclassified the imported parts in controversy under the aforementioned various tariff headings, other than Tariff Heading No. 84.55 which refers to parts and accessories of office machines such as typewriters, adding machines and calculating machines. Moreover, the application of said

Tariff Heading No. 84.55 to the imported spare parts can be sustained, according to petitioner, by the Explanatory Notes of the 1950 text of the Brussels Nomenclature upon which the Tariff and Customs Code is based, and particularly under Rule 3, paragraph (a), of Section 203, which provides as follows:

> Rule 3. When articles are prima facie, classifiable under two or more headings or subheadings, or imported in sets consisting of several articles, classification shall be effected as follows:
>
> (a) <u>The heading or subheading which provides the most specific description shall be preferred to any other heading or subheading providing a more general description</u>. (Underlining ours.)

On the other hand, respondent Commissioner of Customs insists that the reclassification made of the imported articles are correct.

We do not agree with respondent. The representative imported articles or items - 10 items all in all, were all reclassified, at different Tariff Headings with the exception of condensers, and at rates higher than 10%. But all these spare parts, consisting of (1) rubber foots; (2) electric motors; (3) springs; (4) bolts, nuts, washers, rivets, screws and studs; (5) spools; (6) connecting wires, taut wires, tension wires and pull wires; (7) pins; (8) condensers; (9) switches; and (10) rubber rings, were all imported by petitioner, without any contradiction on the part of respondent, as parts only of Olympia office machines, such as calculators, adding machines and portable, standard and electric typewriters. (Exhs. A to A-28; A-29 to A-49; t.s.n., pp. 8-9; 10-12; 12-22; 22-23, October 19, 1976.) These spare parts were all manufactured in West Germany and imported to maintain and are suitably used only for Olympia business machines. (Ibid., t.s.n., pp. 22-24; ibid., p. 4.)

With respect to these representative spare parts chosen by the Collector of Customs, as basis for its reclassification, it is very important to take note of the following uncontradicted declarations of petitioner's witness Roberto Camadini, National Technical Consultant of petitioner during the hearing of the case in this Court.

With reference to the rubber roots (Exh. B-1), it was declared by Camadini that these spare parts were to be used for Olympia business machines - typewriters, calculators and adding machines - and intended to reduce the noise and protect the movement of the machines parts and cannot be used for any other machines. (t.s.n., pp. 8-9, Oct. 19. 1976; see also t.s.n., p. 14, Jan. 12, 1977.)

As to the electric motors (Exh. B-2), these spare parts were designed to drive Olympia electric typewriters, electric adding machines or calculators and these cannot be used as spare parts for other brand of machines. (Ibid., pp. 16-17; 28-29.)

Anent the imported springs (Exh. B-3), these parts were particularly designed to produce tension and used as a main drum spring of Olympia typewriters. (Ibid., p. 30; t.s.n., p. 18, Jan. 12, 1977.)

With respect to the bolts, nuts, washers, rivets, screws and studs, these spare parts were designed to hold together a machine and enable some parts to function on a specific design and were made in sizes and in thickness, and used and fitted in a particular place in the Olympia brand typewriters, adding machines and calculators. (Op.Cit., p. 31) The bumper screws (Exh. 4), were made to hold the carriage at the end motion of these machines. (t.s.n., p. 20, Jan. 12, 1977.) The nuts were intended to fasten a certain attachment to the Olympia typewriters and other Olympia brand machines. (Ibid., pp. 22-23.)

As to the spools, these spare parts are described as round metal parts for pulling up the ribbons. The spring mechanism of the spool has specific functions intended for the Olympia electric typewriters and cannot be used in other brands of typewriters. (t.s.n., pp. 32-33; Oct. 19, 1976.)

With respect to the tension and pull wires (Exhs. B-6; B-7), these parts constituted a linkage between the typewriter bar and the intermediate bar for Olympia typewriters. (t.s.n., p. 23, Jan. 12, 1977.) These cannot be used in any other machines of other brands, and with respect to the connecting, taut, and pull wires, these parts were made generally as a linkage between one moving part to another of Olympia business machines. (Op. Cit., pp. 33-34.)

As to the pins, these were specifically used in Olympia electric typewriters to hold the staff segment thereof, or the pins were used to hold in place the capital and small letters assembly of the said typewriters. (p. 370, Customs Rec.)

With respect to condensers (capacitors) /Exh. B-8/, these spare parts were designed for Olympia electric machines, such as typewriters and calculators and used to give the motor the right starting turn and cannot be used for machines of any other brands. (t.s.n., pp. 37-38, Oct. 19, 1976.) It provides the impulses for the drum cycle (t.s.n., p. 26, Jan. 12, 1977) and designed to fit the power of the motor of the business machines. (Ibid., p. 27.)

Coming to the switches (Exh. B-9), these are plastic switches for the red and blue ribbon mechanism of the said typewriters. (Ibid., p. 28.) These are the impression control or the off and on switches for Olympia electric typewriters, adding machines and calculators and which cannot be used for any other business machines of other brands. (Ibid., p. 39; t.s.n., p. 28, Jan. 12, 1977.)

Lastly, with respect to the rubber rings, these were designed as a bumper to reduce noise, level the moving parts and to enable the operator to affix top covers or parts of typewriters and calculators. (*Ibid*., pp. 41-42.)

Considering the aforesaid declared facts relative to the spare parts in question, and which were used by respondent to reclassify the same under other headings at higher *ad valorem* duties, we are of the opinion that the application by petitioner of Tariff Heading No. 84.55, in relation to Tariff Heading Nos. 84.51 and 84.52 should be upheld.

Tariff Heading Nos. 84.55 and 84.52 of the Tariff and Customs Code are quoted hereunder for emphasis and analysis.

84.55	Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of a kind falling within heading No. 84.51, 84.52, 84.53 or 84.54	*ad val*. 10%
84.51	Typewriters, other than typewriters incorporating calculating mechanism, cheque-writing machines	*ad val*. 20%
84.52	Calculating machines; accounting machines, cash registers, postage-franking machines, ticket-issuing machines and similar machines, incorpora ting a calculating device . .	*ad val*. 20%

We take careful note that the above quoted Tariff Headings Nos. 84.55, 84.51 and 84.52 are under Schedule XVI and under which Machinery and Mechanical Appliances; Eletrical Equipment and Parts Thereof are classified.

In the Explanatory Notes to the 1950 text of the Brussels Nomenclature, upon which our tariff and customs laws are based (Montano Tejam, Preface to the 1st and 3rd Ed, pp. VII-IX, Commentaries of the Revised Tariff and Customs Code of the Philippines, Vol. I, 1973 Ed.), it provides that Schedule XVI, " x x x covers all mechanical or electrical machineries, apparatus and appliances and parts thereof, x x x." (Ibid., Vol. II, p. 1360)

The classifications of the articles in question are determined principally according to the "terms of the tariff headings" and their relative schedule and chapter notes. (Sec. 203, Tariff and Customs Code, as amended.) And also, pursuant to the same Explanatory Notes to the Brussels Nomenclature, regarding Tariff Heading No. 84.55, it stated that "subject to the general provision regarding the classification of parts (see General Explanatory Note to Schedule XVI), this heading covers parts and accessories suitable for use solely or principally with machines of heading 84.51, 84.52, 84.53 or 84.54" (Montano Tejam, op. cit. Vol. III, pp. 1603-1604; Underlining Supplied.) The Explanatory Notes, therefore, were in substantially the same wordings as what the law now provides, that is the provision in Tariff Heading No. 84.55. A much more deeper insight into the provision of Tariff Heading No. 84.55 will show that this heading covers "parts," without any limitation as to their component materials, or limitation that these cannot be used for any purpose, except only that these are used as spare parts of the machines or articles to which they are designed or dedicated, hence, classifiable properly as parts of articles or machines. (see Norman G. Jensen, v. U.S., 24 CCR 160; CD 1225, Vol. 4, Customs Law Digest, Par. 8.6, p. 444.) As a matter of legal principle, "parts" to be dutiable, must be specifically described and clearly identified with such article or machine and that it was manufactured and dedicated solely for use on a particular article or machine; such to be useful for no other purpose and that such parts must be essential to that article. (Davies Turner & Co. v. U.S. 13 CCR 190, CD 893, 4 Customs Law Digest 445; U.S. v. Bell & Howell Co., 19 CCPA 151, TD 45263, Aff'g Abs 14388, 4 Customs Law Digest 527; U.S. v. Kriss Kross Corp., 24 CCPA 133, TD 48607, rev'g Abs 32310, 4 Customs Law Digest 528.)

The imported parts and/or accessories in question, on the strength of the overwhelming evidence of petitioner, were specifically described and were designed especially or particularly for use in replacing wornout parts for the Olympia brand machines - typewriters, adding and calculating machines. The said spare parts are components ultimately to be assembled to the completed machines of petitioner and this contributes greatly to the performance of said machines; and there is no evidence which will show that these spare parts can be used in machines of other brands; and these spare parts were being sold for use as parts of such Olympia business machines. Accordingly, aforesaid spare parts, having been previously specifically described as spare parts of the Olympia business machines-typewriters, calculating and accounting machines named therein (U.S. v. American Bead Co., 9 Cu App. 279 TD 37873, Aff'g Abs 42259) are classifiable under Tariff Heading No. 84.55 as parts of typewriters, calculating and accounting machines referred in Tariff Heading Nos. 84.51 and 84.52 rather than those tariff headings which respondent Commissioner of Customs and the Collector of Customs have classified the same.

By the clear terms or provision of Tariff Heading No. 84.55, the parts in question were manufactured and actually and practically intended as parts and accessories of the worn out Olympia business machines - typewriters, adding machines and calculating machines. That being so, there is no way by which the said parts and accessories can be classified therefore under different heading classifications (TH Nos. 40.14B; 85.01; 73.32; 73.35; 73.40B; 85.23B; 73.34; 85.18; 85.19 and 40.14B, all of the Tariff and Customs Code, as amended) and under different and/or higher tariff duties.

It was error for respondent Commissioner of Customs to classify the <u>rubber foots</u> and <u>rubber rings</u> under Tariff Heading No. 40.14B with an <u>ad valorem</u> duty of 50% because under the terms of that heading, it classifies there under only articles of <u>unhardened vulcanized rubber</u> such as rubber washers are classifiable. Here, the rubber foots and rubber rings in question were essentially of very special kind of rubber fit for, and intended specially to reduce the noise of Olympia business machines. Moreover, under legal note 3(c) of Chapter 40, which covers "Rubber, Synthetic Rubber, Factice and articles thereof, under which Tariff Heading 40.14B particularly fall, it provides, with legal authority, that "<u>mechanical or electrical appliances and parts</u> (including electrical goods of all kind), <u>of hardened rubber</u>, falling within Schedule XVI (covering machinery and mechanical appliances; electrical equipment; parts thereof)" <u>are not covered</u>. (<u>Underlining ours</u>.) Consequently, petitioner had properly classified the rubber foots and rubber rings under Tariff Heading No. 84.55.

As to the <u>electric motors</u>, which respondent had reclassified under Tariff Heading No. 85.01C at an <u>ad valorem</u> duty of 50%, which covers electrical goods such as generators, motors and transformers, and others, this reclassification is erroneous for the reasons that (1) the electric motors were imported as spare parts which were commercially and practically fit for petitioner's Olympia business machines; and (2) the Explanatory Notes to the 1950 text of the Brussels Nomenclature (Montano Tejam, <u>Commentaries on the Revised Tariff and Customs Code</u>, as amended, Vol. III, 1973 Ed., p. 1649) provides that;

> "The present Chapter (Chapter 85 - Electrical Machinery and Equipment, Parts Thereof) covers all electrical machinery and equipment other than (a) machinery and apparatus of a kind covered by Chapter 84, which remains classified there even if electric (see General Explanatory Note on that Chapter." /Italics Ours./

In other words, even if the article in question is an electric motor, inasmuch as the electric motors were intended to be part of, and suitably and actually, solely and principally used in machineries covered by Chapter 84 (Boilers, Machinery and Mechanical Appliances; Parts Thereof), under which Tariff Heading No. 84.55 falls, the electric motors are subject to 10% tariff duty, as parts and/or accessories of typewriters, adding and calculating machines.

With regard to the springs, respondent reclassified these under Tariff Heading No. 73.35, covering spring and leaves of springs, made of iron and steel, with an *ad valorem* duty of 30%. This is not correct. Under the Explanatory Note of the 1950 text of the Brussels Nomenclature (Montano Tejam, *Ibid*., Vol. II, pp. 1226-1227), it provides that Tariff Heading No. 73.35 excludes "c) Springs, assembled with other articles to form x x x, identifiable parts of machinery (Schedule XVI) x x x." This means that the springs in question, which were particularly designed to produce tension and used as spring of the main drum of Olympia typewriters, should not therefore be classified under Tariff Heading No. 73.35.

This more than ever strengthens the view that parts and accessories used solely and principally destined for typewriters, adding machines and calculating machines, and used for no other purpose, should be classified under Tariff Heading No. 84.55 at 10% ad valorem duty.

The bolts, nuts, washers, rivets, screws and studs were wrongly reclassified under Tariff Heading No. 73.32 with a tariff duty of 50% by respondent. For the same reason, as heretofore adverted to, with respect to the articles above stated, these are parts suitable for and used solely in machines, such as the Olympia typewriters, adding and calculating machines, because they were mainly designed to hold together the said Olympia business machines' parts together, and hence, should be properly classified under Tariff Heading No. 84.55. While these articles may literally fall under the articles mentioned or listed under this heading, such as the nuts, rivets and washers, yet, in the legal notes under Schedule XV covering Base Metal and Articles of Base Metals, where Tariff Heading No. 73.32 falls, and considering that the legal notes under Schedule XV is a part of the law itself, legal notes 1(f) of said Schedule XV declares that articles falling within Schedule XVI (Machinery, Mechanical Appliances, Electrical Equipments and Parts Thereof) are not covered by said Schedule XV. Accordingly, the parts and accessories used solely and principally on mechanical appliances and electrical equipments, such as the bolts, nuts, washers, rivets, screws and studs in question are not, therefore, included in said Tariff Heading 73.32, but properly classified under Tariff Heading No. 84.55.

Regarding the spools, which were special parts used in Olympia typewriters, it was mistakenly classified under Tariff Heading No. 73.40B as other articles of iron or steel with an *ad valorem* duty of 70%. We believe that since these spools were intended for use specially on Olympia business machines, and to no other, it was properly classified by petitioner under Tariff Heading No. 84.55.

Anent the tension, connecting, taut and pull wires, these wires provide the linkage between parts of the Olympia business machines such as the typewriters and intermediate bar of the Olympia typewriters. Hence, for respondent to classify these parts under Tariff Heading No. 85.23B, with tariff duty of 50% *ad valorem*, it was error since the articles classifiable under Tariff Heading No. 85.23B pertains to insulated electric wire, cable, bars strip and the like. In these particular imported wires of petitioner, these are without any insulations, unlike the electric wire properly classifiable under Tariff Heading No. 85.23B. Accordingly, reclassification of these articles under Tariff Heading No. 85.23B was incorrect and considering that these parts were used particularly for the Olympia typewriters, adding and calculating machines, they should be classified properly under Tariff Heading No. 84.55 and subject to only 10% *ad valorem* duty.

Coming now to the *pins*, which respondent reclassified under Tariff Heading No. 73.34, subject to 100%, we find such reclassification to be erroneous. Tariff Heading No. 73.34 hereunder clearly classifies ordinary articles such as ordinary pins, safety pins, hair pins, curling pins, pointed shanks for brochures, badges, hat-pins and others. (Explanatory Note to the 1950 text of the Brussels Nomenclature, cited in Montano Tejam, *ibid*, vol. II, 1973 Ed., p. 1225-1226.) Clearly the imported pins in question were not essentially of the character as those stated in the Explanatory Notes to the Brussels Nomenclature with respect to the classification of articles under Tariff Heading No. 73.34. Because of the pins' distinct characteristics of holding in place the capital and small letters assembly of the Olympia electric typewriters, it should be appropriately classified under Tariff Heading No. 84.55, rather than under 73.34 which classifies ordinary pins.

As to the *condensers* or *capacitors*, these articles were incorrectly classified by respondent as falling under Tariff Heading No. 85.18. While condensers or capacitors may literally be classifiable under Tariff Heading No. 85.18, yet, where the condensers which were imported by petitioner were commercially or particularly designed and used to give the motor of the petitioner's business machines the right starting turn and made to fit the power of the same Olympia electric machines - typewriters, adding machines and calculating machines - and the same cannot be used in other machines of different brands, ostensibly these parts or accessories should be classified properly and subject to 10% *ad valorem* duty under Tariff Heading No. 84.55.

Finally, the *switches* imported by petitioner were incorrectly classified by respondent under Tariff Heading No. 85.19 with an *ad valorem* duty of 50% since this provision substantially pertain to electrical switches and its connections. The articles which are subject to duty under Tariff Heading No. 85.19 are those designed to make or break electrical circuits. In the case at bar, the plastic switches which petitioner imported are of a type and design intended to turn the ribbon mechanism or to change to red or blue type of the Olympia business machines. These are the switches that controls the color of the ribbon as desired by the operator. Since Tariff Heading No. 85.19 does not apply because of the nature of the imported switches in question and that, furthermore, the switches having been designed only for Olympia typewriting machines, not to make or break electrical circuits, and these cannot furthermore be used for machines of any other brand, these switches should be classified properly under Tariff Heading No. 84.55.

Considering the above analysis, the imported "parts" in question cannot be classified under the headings heretofore used by respondent, as there was no showing in the evidence or the records of this case that the imported parts can be used appropriately, practically or commercially, and/or fit for use in machines of other brands, or other than as parts of petitioner's business machines. It is our opinion that petitioner is not liable for additional customs duty on its importations and the same having been paid, respondent is, therefore, legally bound to refund the said sum of ₱6,693.00 as overpaid customs duty.

It is noted, however, that no claim for refund of the sum of ₱586.00 as advance sales tax paid was filed by petitioner with the Commissioner of Internal Revenue and that the latter was not made a party to this case. Under the doctrine laid down in our decision in the case of Wise and Company, Inc. vs. Rolando G. Geotina, Commissioner of Customs, CTA Case No. 2717 dated December 29, 1977, we held therein, as we similarly hereto hold, that for failure of petitioner to file a written claim for refund of said advance sales tax with the Commissioner of Internal Revenue and for not making the latter a party to this case, this Court is without jurisdiction over the said refund of the advance sales tax.

WHEREFORE, the decision of the Commissioner of Customs appealed from is hereby modified. Respondent

Commissioner of Customs is hereby ordered to refund to petitioner Olympia Business Machines Co. (Phil.), Inc. the sum of ₱6,693.00 as overpaid customs duty.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, August 25, 1980

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge