REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

FARM IMPLEMENT & MACHINERY CO.,
Petitioner,

- versus - C.T.A. CASE NO. 842

COMMISSIONER OF CUSTOMS,
Respondent.

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

D E C I S I O N

This is an appeal by petitioner disputing the decision of respondent Commissioner of Customs ordering it to pay, jointly and severally, with Plaridel Surety Insurance Co., Inc. the amount of ₱3,815.00 under the terms of P.S.I.C. Bond No. 81736 in Seizure Identification No. 1325.

It appears from the records that petitioner ordered from P. J. Rhodes & Co., of San Francisco, California, U.S.A., 118 bags of zinc oxide dry pigment which arrived in Manila on December 27, 1953 on board the S.S. "Pioneer Mail." The shipment was manufactured by New Jersey Zinc Sales Co. in its factory in Palmerton, Penn. It was declared under Customs Entry No. 88388 (Exhibit "A" p. 90 Customs rec.) and entered free of duty under Section 311 of the Philippine Trade Act of 1946. A bank release certificate and a consular invoice with a sworn certificate of origin issued at San Francisco, California were filed with the entry (See pp. 42 & 45, Customs rec.). The certificate of origin, signed by a certain R. R. Mynderse of P. J. Rhodes & Co., and

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sworn to before a Philippine Consular Officer, states:

> "x x x I hereby declare under oath (acting in the capacity indicated below) that the articles covered by this certificate of United States origin are wholly of the growth, product or manufacture of the United States. No foreign materials other than those of the Philippines were used at any stage in the manufacture or production of such articles."

On each bag thereof was posted a red U.S. Customs label or sticker with this inscription:

> "Transportation Entry No. 01987 FROM PALMERTON TO NEW YORK.
>
> "This package is Under Bond and must be Delivered Intact to the Chief Officer of the Customs AT NEW YORK.
>
> - WARNING -
>
> "TWO YEARS IMPRISONMENT OR $5000.00 FINE OR BOTH, IS THE PENALTY FOR UNLAWFUL REMOVAL OF THIS PACKAGE OR ANY OF ITS CONTENTS."

After examination, the Bureau of Customs concluded that the shipment was one which came from a foreign country other than the United States and returned the same as dutiable under Paragraph 59-C at 20% <u>ad valorem</u> of the Philippine Tariff Act of 1909. Inasmuch as the goods were entered free of duty, the Collector of Customs ordered their seizure for violation of Section 1363(m)-3, (m)-4, (m)-5 of the Revised Administrative Code (See Exhibit "E," p. 89, Customs rec.).

Pending the final outcome of the seizure proceedings, the articles were released under PSIC Bond No. 81736 (Plaridel Surety and Insurance Co., Inc.) in the amount of ₱3,815.00 (See p. 35, Customs rec.).

During the hearing in the seizure proceedings, petitioner presented a sworn statement of the Vice-President of the New Jersey Zinc Sales Co. who certified that the zinc oxide in question was produced in the United States (See Exhibit "1," p. 29, Customs rec.). Also presented is a letter from the Assistant Collector of Philadelphia which reads:

"April 2, 1954

The New Jersey Zinc Company
160 Front Street
New York 38, New York

Attention: Mr. S. Jacobsen

S i r s:

Reference is made to your letter of March 31, 1954 (SJacobsen:LVM), in respect to 118 bags zinc oxide produced in your class 7 Smelting and Refining Warehouse established under the Customs Regulations and Section 312 of the Tariff Act of 1930. This shipment was covered by Warehouse Withdrawal for Transportation and Exportation No. 01987, dated November 10, 1953, consigned to the Collector of Customs, New York, the port of exit for final destination, Manila, P.I.

You request an explanation from this office why red stickers were attached to the bags of zinc oxide.

In reply you are informed that the customs regulations provide that red stickers or labels should be used as a precautionary measure to insure that the merchandise is delivered to the Collector of Customs at a port of exit for exportation to a foreign country.

These labels or stickers only appear on packages laden in vehicles or cars less than the capacity of the conveyance, as it was in this case. Labels or stickers would not be used if the same merchandise was forwarded in a full car or truck, in which case the car or truck would be sealed with Tyden seals.

Very truly yours,

(SGD.) G. S. PEFFALL
Assistant Collector"

(Exhibit "2" p. 30, Customs rec.).

Meanwhile the Philippine Consulate at San Francisco, California, upon request of the then Acting Commissioner of Customs, inquired from the shipper the correct percentage of the value of the foreign materials used in the manufacture of the articles in relation to the value of the finished product (See p. 27 Customs rec.). In reply to the inquiry, the shipper informed the consulate that all the documents supporting the claim that the merchandise in question were of United States origin were forwarded to their agents in Manila, and that they had received advice from Manila that the case had been brought to a settlement (See p. 28, Customs rec.).

In the light of the above facts and evidence, the Collector of Customs of Manila declared the merchandise in question forfeited in favor of the Government. Since they have been released under bond, the claimant and the Plaridel Insurance and Surety Co., Inc. were ordered to pay in cash the sum of

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₱3,815.00 (See pp. 22-24, Customs rec.).

From this decision, petitioner appealed to the Commissioner of Customs, who affirmed the same *in toto* on March 21, 1960 (See pp. 10-15, Customs rec.).

On June 3, 1960, the instant petition for review was filed with this Court.

ISSUES

The issues raised are:

1. Whether or not the 118 bags of zinc oxide are wholly of the growth, product or manufacture of the United States.

2. Whether or not the said articles are subject to forfeiture for violation of Section 1363(m)-3, (m)-4, (m)-5 of the Revised Administrative Code.

Petitioner claims that the 118 bags of zinc oxide are wholly of the growth, product or manufacture of the United States. Respondent holds the contrary view, contending that the 118 bags of zinc oxide, or the entire raw materials thereof were of foreign (to the U.S.) origin for the reason that they had to be deposited and later transported to New York under bond for ultimate exportation to the Philippines in order to avoid payment of duties in the United States.

The shipment at bar was entered in the Philippines under the provisions of Section 311 of the Philippine Trade Act of 1946 which reads:

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> "Sec. 311. Free Entry of U.S. Articles. During the period from the day after the date of the enactment of this Act to July 3, 1954, both dates inclusive, United States articles entered or withdrawn from warehouse in the Philippines for consumption shall be admitted into the Philippines free of ordinary customs duty."

A United States article, as used in the said Trade Act, is defined thus:

> "The term 'United States article' means an article which is the product of the United States unless, in the case of an article produced with the use of material imported into the United States from any foreign country (except the Philippines) the aggregate value of such imported materials at the time of importation into the United States was more than twenty per centum of the value of the article imported into the Philippines, the value of such article to be determined in accordance with, and as of the time provided by, the customs laws of the Philippines in effect at the time of importation of such article x x x."

It is unquestioned that the article in question, consisting of 118 bags of zinc oxide, was smelted, refined or manufactured in a bonded smelting warehouse of New Jersey Zinc Sales Co. Since the zinc oxide is "Under Bond and must be Delivered Intact to the Chief Officer of the Customs at New York," its raw material must have been imported into the United States from any foreign country (except the Philippines) and smelted or refined without the payment of duties thereon in pursuance of Section 312 of the U.S. Tariff Act of 1930 which provides:

"Sec. 312 Bonded Smelting Warehouses. The works of manufacturers engaged in smelting or refining or both, of ores and crude metals, may upon the giving of satisfactory bonds, be designated as bonded smelting warehouses. <u>Ores or crude metals may be removed from the vessel or other vehicle in which imported, or from a bonded warehouse, into a bonded smelting warehouse without the payment of duties thereon, and there smelted or refined, or both, together with ores or crude metals of home or foreign production</u>: PROVIDED, That the bonds shall be charged with a sum equal in amount to the regular duties which would have been payable on such ores and crude metals if entered for consumption at the time of their importation; and the several charges against such bonds shall be cancelled upon the exportation or delivery to a bonded manufacturing warehouse established under the preceding section x x x x: And PROVIDED FURTHER, That the several charges against the bonds of any smelting warehouse established under the provisions of this Section may be cancelled upon the exportation or transfer to a bonded manufacturing warehouse x x x of a quantity of the same kind of metal, in excess of that covered by open bonds, equal to the amount of metal producible from the smelting or refining, or both, of the dutiable metal contained in the imported ores and crude metal, x x x x." (Underscoring supplied)

In this circumstance, if petitioner company seeks, as it had done, to enter the zinc oxide duty free under the provisions of Section 311 of the Philippine Trade Act of 1946, it is incumbent upon it to show by satisfactory evidence that the value of such imported raw material is not more than twenty percentum of the value of the zinc oxide imported into the Philippines. Petitioner failed to make such showing.

The certificate of origin signed by R.R. Mynderse of P.J. Rhodes & Co., the exporter of the shipment in question, is not a satisfactory showing that said article is wholly of the growth, product or manufacture of the United States, and that no foreign materials other than those of the Philippines were used at any stage in the manufacture or production of the same because, in the absence of a contrary proof, a shipper which did not manufacture or produce the article cannot be presumed to have knowledge of the source of the raw materials used in the manufacture of said article. The sworn statement of Robert G. Kenly, Vice President of the manufacturing company, to the effect "that the 118 bags of XX-4 zinc oxide exported to the Philippine Islands in November, 1953 under bond x x x were produced in the United States" does not certify as to the source of the raw materials. The fact that the zinc oxide in question was produced in the United States does not give rise to the presumption that the raw materials used therein were obtained from sources within the United States.

In the light of the foregoing, we find no justification to reverse the findings and conclusion of respondent that the 118 bags of zinc oxide imported by petitioner into the Philippines were not wholly of the growth, product or manufacture of the United States.

Considering the above finding, the goods in question are subject to forfeiture under Section 1363 (m)-3, (m)-4 and (m)-5 of the Revised Administrative

Code.

WHEREFORE, the decision of the Commissioner of Customs dated March 21, 1960 is hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, October 31, 1963.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

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