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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AGUINALDO BROTHERS, INC.,
Petitioner

versus CTA CASE NO. 1516

JOSE B. LINGAD, Acting
Commissioner of Customs,
Respondent.

x - - - - - - - - - - - - - x April 28/64

DECISION

The petitioner has appealed from the decision of respondent dated April 3, 1964 (Annex A, Petition), affirming that of the Collector of Customs of Manila decreeing the forfeiture of the cash bond of ₱11,030.03 which petitioner deposited to secure the release of nineteen (19) cases of various merchandise seized for alleged violation of Central Bank Circulars Nos. 44 and 45, in relation to Sections 1363(f) and 1250 of the Revised Administrative Code, and of Section 1363(1) and (m) 3, 4 and 5 of the same Code.

The facts of this case, as stipulated by the parties, are as follows:

> "1. That a shipment of fifty-one (51) cases of various merchandise, consigned to Aguinaldo Bros. Co., Inc., arrived at this port from New York ex the m/s 'TUNGSHA' on or about November 19, 1954; that the same shipment was declared in Entry No. 91553, series of 1954 (Exh. 'A'), and supported by a corresponding bill of lading (Exh. 'B'), consular invoice (Exh. 'C'), commercial invoice (Exh. 'D'), bank release certificate (Exh. 'E'), and an official receipt evidencing the deposit of estimated advance sales tax due thereon (Exh. 'F');

"2. That upon examination thereof by Customs Examiner Alfredo Realba, he found articles other than those covered by the proper bank release certificate and/or commercial invoice as reflected in his various reports (Exh. 'G', 'G-1', 'G-2', 'H', 'I', and '3'), thereby resulting in the additional assessment and collection of advance sales tax in the amount of ₱615.39 (Exh. 'F-1');

"3. That as a consequence of his findings, the subject merchandise contained in 19 cases were ordered seized for alleged violation of Central Bank Circular Nos. 44 and 45 in relation to Section 1363(f) and 1250 of the Revised Administrative Code, and of Section 1363 (i) and (m)-3, 4 and 5 of the same Code; and

"4. That the merchandise in question were released under cash bond in the amount of ₱11,030.03 (Exh. 'G') pending the termination of the instant seizure proceeding." (See pp. 351-352, Customs rec.)

This case was submitted for decision solely on the basis of pleadings and records of the case (p. 21, CTA rec.).

The issue raised is whether or not the cash bond of ₱11,030.03, representing the value of nineteen (19) cases of various merchandise imported by petitioner, is subject to forfeiture.

Respondent justifies the forfeiture of the nineteen (19) cases of various merchandise on the ground that these merchandise were different from those described in the invoice and covered by the proper bank release certificate and, therefore, the same have been misdeclared, undeclared and not covered by the proper bank release certificate rendering said articles subject to forfeiture for violation of Central Bank Circular No. 44. Likewise, respondent considers the discovery of other extraneous articles together with these merchandise similar to those declared in the invoice or entry as violative of Section 1363(i) of the Revised Administrative Code and those found not in accordance with the pertinent documents covering the subject shipment as subject to forfeiture under Section 1363(m), 3, 4 and 5 of the same Code (See pp. 349-352, Customs rec.).

We are in accord with respondent that the nineteen (19) cases of various merchandise were validly seized and forfeited for violation of Central Bank Circulars Nos. 44 and 45, in relation to Sections 1363(f) and 1250 of the Revised Administrative Code, and of Section 1363(m), 3, 4 and 5 of the same Code. The evidence presented during the hearing of this seizure proceedings (Seizure Identification No. 2385) in the Bureau of Customs sufficiently established the fact that petitioner, in the importation of the merchandise in question, had misdeclared and undeclared the same.

We will point hereinbelow the specific instances of violations justifying the forfeiture:

1. Toys and games -

The Central Bank Release Certificate (Exh. "E", p. 6, Customs rec.) and the Invoice (Exh. "D", p. 3, supra) for these items (Toys and Games) classified them under Commodity Code No. 890949. But upon arrival and examination of the goods, they were found to fall under Code No. 890949 UI of the Commodity Classification of the Central Bank (p. 285, supra) meaning unclassified item.

2. Lighting fixtures -

These merchandise were declared under Commodity Code No. 690956 of the Commodity Classification of the Central Bank in the Central Bank Release Certificate (Exh. "E", p. 6, Customs rec) and Invoice (Exhs. "D" and "G", pp. 3 & 141, supra) consisting of tableware steel. The shipment that arrived, however, were lamp shades and table lamps under Commodity Code No. 810213 (Exh. "G-1", p. 140, Customs rec.).

3. Ladies shoes -

These items were declared under Commodity Code No. 850105 (Ladies shoes) in petitioner's Central Bank Release Certificate (Exh. "E", p. 6, Customs rec.) and Invoice (Exh. "D", p. 3, supra). However, upon examination by respondent, it was discovered that the correct code number is 850105 UI or belonging to unclassified item (pp. 265-268, supra).

4. Cannon towels -

Petitioner declared these items under Commodity Code No. 650612 (Table cloth) in its Central Bank Release Certificate (Exh. "E", p. 6, Customs rec.) and Invoice (Exh. "D", p. 3, supra). Upon examination, respondent found that instead of table cloth as appearing in the release certificate and invoice, they were cannon towels (pp. 259-263; 145, supra).

5. Leather bags -

Petitioner declared these items under Commodity Code No. 830101 (Leather travel goods) as shown in its Central Bank Release Certificate (Exhs. "E" & "G", pp. 6 & 141, Customs rec.) and Invoice (Exh. "D", p. 3, supra). Upon examination, respondent found that these items fall under Commodity Code No. 830111 UI and 830112 UI (Exh. "G-1", pp. 139-140, supra) meaning unclassified item.

Moreover, aside from the evidence of record heretofore mentioned strongly supporting the decision appealed from, petitioner has expressly admitted the underdeclaration, misdeclaration, and overshipment of the merchandise in question (See p. 9, Petition; p. 9, Petitioner's Memorandum; pp. 26-35, CTA rec.). The Supreme Court in an analogous case ruled:

> "It is true that the commercial and consular invoices tally with the import entry and internal revenue declaration, but it is likewise true that, as stated, said invoices, the bill of lading as well as the import entry and internal revenue declaration do not tally with the contents of the boxes shipped. For while said papers stated the contents to be 'parts of cycles' the boxes in fact contained complete cycles. Since a seizure and forfeiture proceedings for misdeclaration is directed against the merchandise imported, the basis in determining misdeclaration should be the goods actually received as compared with their accompanying papers, such as the invoices, bill of lading and import entry and internal revenue declaration. The goods received in this case being different from those described in said papers, it follows that there was mis-

> declaration of the same, rendering them subject to forfeiture under Section 1363(m) 3 and 4 of the Revised Administrative Code." (Bombay Dept. Store v. Comm. of Customs, L-20489, June 22, 1965.)

Petitioner contends that the shipper and the consignee had no fraudulent intent to effect an illegal shipment. To prove this contention, petitioner presented Mr. Gilbert Mangulabnan, a clerk in Aguinaldo's Echague, Manila, who testified that during the shipment of the merchandise in question he was on training with L. R. Aguinaldo, Inc. in New York and was required to work therein as a helper, elevator boy, typist and messenger. He also testified that he assisted the warehouseman thereat in packaging, receiving and segregating the merchandise exported to the Philippines. The testimony of Mr. Mangulabnan, bare in important and essential details, merely showed that he had practically no hand in the shipment of the merchandise in question except to assist the warehouseman once in a while (See pp. 247-253, Customs rec.). But even assuming arguendo that fraudulent intent was not present to effect an illegal shipment, as petitioner claims, that circumstance standing alone is not a valid defense against forfeiture for violations of our customs laws.

Again, the Supreme Court, in disposing of a similar defense interposed by petitioner, held as follows:

"Last, but not least, the wrongful and fraudulent intent of petitioner herein in importing the undeclared and misrepresented articles in question is clearly deducible from the fact that it did not even try to prove that the consignor in the United States had inadvertently shipped more goods than those mentioned in the invoice covered by the accompanying Central Bank Release Certificate; that petitioner did not cause the undeclared merchandise to be exported back to its shipper; and that, instead, petitioner secured the release of said undeclared articles, thereby confirming the acts of the aforementioned shipper. It may not be amiss to add that, in the language of U.S. vs. Four Packages of Cut Diamonds (247 Fed. 354), 'where goods are imported on a false invoice prepared by consignor in a foreign country, fraud attaches to the goods, and they may be forfeited, therefore, despite innocence of the consignee'." (Bombay Dept. Store v. Comm. of Customs, L-20460, Sept. 30, 1965.)

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

SO ORDERED.

Quezon City, April 23, 1966.

ESTANISLAO R. ALVAREZ
Associate Judge

I CONCUR:

ROMAN M. UMALI
Acting Presiding Judge