FARM IMPLEMENT AND MACHINERY CO.,
Petitioner,

- versus -

C.T.A.
CASE NO. 260
2/14/57

THE COMMISSIONER OF CUSTOMS,
Respondent.

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

D E C I S I O N

This is a petition to review the decision on appeal of the respondent Commissioner of Customs in Seizure Identification No. 1829, affirming the decision of the Collector of Customs for the Port of Manila, which decreed the forfeiture of one hundred (100) packages of "sotanghon" allegedly for violation of Central Bank Circular No. 44 in relation to Section 1363 (f) of the Revised Administrative Code.

From the testimonial evidence adduced during the hearing before the Bureau of Customs and the documentary evidence presented before this Court upon which this case was submitted for decision, it appears that on August 3, 1954, a shipment, consisting of one hundred (100) packages of "sotanghon" described as "semolina", arrived at the Port of Manila on board the S.S. Henrik from Hongkong; that the shipment was declared under Entry No. 63019, Exhibits "B" and "5", and covered by commercial in-

57

voice No. 185, dated July 31, 1954, of Yong's Commercial Co., Hongkong, Exhibit "E", consular invoice No. 1482 of the same date, Exhibit "C", and Central Bank release certificate Ref. No. 6777, L/C No. 10843, dated August 5, 1954, Exhibits "A" and "6", which described the shipment as "semolina", classified it as "NEC-04" and assigned to it Commodity Code No. 040802; that upon examination by the customs authorities, the importation was found to be "sotanghon", which they classified as "vermicelli", under Commodity Code No. 040804-UI, as a consequence of which it was seized; that the petitioner paid the assessed duties and taxes thereon; that pending the seizure proceedings, the importation was released to petitioner upon the filing of PISC Surety Bond No. 014 of the Pioneer Surety & Insurance Corp. in the amount of ₱28,351.34; and that after the proceedings, the Collector of Customs for the Port of Manila rendered a decision decreeing the forfeiture of the shipment in question for violation of Central Bank Circular No. 44 in relation to Section 1363 (f) of the Revised Administrative Code, which decision was affirmed in toto by the respondent Commissioner of Customs in a decision rendered on February 25, 1956. From the last mentioned decision, the petitioner interposed the present appeal.

The issues in this case may be narrowed down to the following:

> 1. Whether or not the shipment in question falls under Commodity Code No. 040802 (NEC) of the Statistical Classification of Commodities Implementing Central Bank Circulars Nos. 44 and 45; and
>
> 2. Whether or not said shipment is subject to forfeiture under Central Bank Circular No. 44 in relation to Section 1363 (f) of the Revised Administrative Code.

There is no dispute between the parties that the shipment in question consists of one hundred (100) packages of "sotanghon". This is what Florencio Soliven, Technologist of the Institute of Science and Technology and an expert on food preparations, found it to be in his analysis report, Exhibit "N" and "3", and testified to by him in the seizure proceedings before the Collector of Customs for the Port of Manila.

The question that is now left for us to determine is whether or not "sotanghon" falls under Commodity Code No. 040802 (NEC) of the Statistical Classification which embraces:

> "Groats, semolina and cereals; flaked, pearled or prepared in a manner not elsewhere specified (including prepared breakfast foods)".

The "sotanghon" in question "is prepared from glutinous rice or from some form of glutinous cereal" (Exhibit "C-6"). It is neither "groats because groats comes from soft wheat" (Exhibit C-10) nor semolina which can be obtained only from durum wheat (see Exhibit C-7). It is a cereal preparation (Exhibit C-10) and although not flaked or pearled, it may be said to be prepared in a manner not elsewhere specified (including prepared breakfast foods) in the statistical classification of commodities implementing Circular No. 44 of the Central Bank. A cursory perusal of the cereal preparations recited in division-04 of the said statistical classification yields a clear conclusion that "sotangjon" is not prepared in the same manner as the cereal preparations grouped as "oatmeal, rolled oats, oat grits" under Commodity Code No. 040801, nor "malt" under Commodity Code No. 040803; neither is it a preparation of cereal as "macaroni, spaghetti, noodles, vermicelli" under Commodity Code No. 040804, nor "bakery products (bread, biscuits, cakes, pastries, puddings, pretzels, crackers, wafers, rolls, etc.)" under Commodity Code No. 040805. Consequently, from the point of view of preparation, "sotangjon" falls within the generalized and comprehensive classification of cereal, prepared in a manner "not elsewhere specified" in the statistical classification.

It is the stand of the respondent Commissioner of Customs that "sotangjon", being a form of noodle or vermicelli aptly falls under the phrase "and similar preparations" of Commodity Code No. 040804. In this connection, we note that the conduct of the Central Bank in respect to the proper classification of "sotangjon" does not bear well this stand. Sometime in

1954, the Central Bank opined that "sotangjon" may be classified with the group of macaroni, spaghetti, noodles, vermicelli and similar preparations, under the Division of Cereals and Cereal Products (see Opinion No. 88, Series 1954 of the Central Bank Legal Counsel presented as Exhibit "4" in C.T.A. Case No. 138, infra). As we have said, the use of the word "may" betrays an engendered doubt of the Central Bank as to the classification under which "sotangjon" properly falls. (See Farm Implement & Machinery Co. v. Commissioner, C.T.A. Case No. 136, February 26, 1956). On August 2, 1956, almost two years after the importation in the case at bar was effected, the Central Bank amended Code No. 040804 to read: "UI-040804 - Cereal paste (macaroni, spaghetti, noodles, vermicelli, swatanghun, and similar preparations)", thus adding "swatanghun". In this regard we quote the pertinent portion of the letter of the Central Bank to the Commissioner of Customs:

> "We wish to inform you that the Import-Export Committee, at its meeting held on August 1, 1956, decided to authorize the release of duly authorized no-dollar importations of swatanghun presently being withheld by the Bureau of Customs and those which shall arrive in the near future by virtue of orders already placed or committed. At the same time representations are being made by this Office with the No-Dollar Import Office to withdraw, if possible, authority granted for the importation of swatanghun where orders for said item have not yet been placed.
>
> "Henceforth, Swatanghun shall be classified specifically under UI-040804

which has been amended to read:

> 'UI 040804 - Cereal paste (macaroni, spaghetti, noodles, vermicelli, swatanghun, and similar preparations)'R

It took the Central Bank years to make up its mind and we believe that the obvious reason for such act was because serious doubts were entertained as to the proper classification of said commodity. If the Central Bank, which has the enviable access to and command of technical know-how of the government, feels doubtful as to the proper classification of an imported commodity, how can an importer, a layman at that, be in a better position to correctly classify the same?

In the previous case of Farm Implement and Machinery Co. vs. Commissioner (C.T.A. Case No. 136, supra) we ruled that "sotangjon" is susceptible of two classifications — either under Commodity Code No. 040804 (UI) or under Commodity Code No. 040806 (NEC) — depending upon one's manner of viewing the matter. From the broad point of view, it can be classified under "similar preparations" of the former code number. And from the point of substance, it can be classed as "preparation of cereals, n.e.s." of the latter code number. But we did not rule that it was susceptible only of those two classifications. For as we view the matter in this case, we are constrained to make the observation that the classifications relative to cereal preparations are generally

52

not clear-cut, canalized and scientific. As we see it, some classifications are so broad as to allow inroads into each other's domain. They are so generalized as to give rise to instances where two or three of them may embrace one and the same commodity. The case of "sotangjon" furnishes a glaring example. It is illustrative of how vague, general and unscientific these classifications are. In the light of our observations above, we are of the opinion, and so held that "sotanghon" can be classed either under Commodity Code No. 040802, 040804 or 040806, depending upon one's point of view. Unless these classifications are revised to conform to precise and sound scientific standard, confusion and instability in the classification of commodities would eventually result to the harrassment, confusion and unfair prejudice of importers. The Government itself should take the necessary steps to avoid such eventuality. The importer is entitled to an assurance that, having effected an importation relying upon an authorized commodity code number, the respondent will not lay claim on the importation as subject to forfeiture on the dubious ground that it falls aptly under some other vague classification.

Finding that the "sotangjon" subject of the present seizure proceedings can equally be classified under Commodity Code No. 040802 (NEC), and considering that the law of forfeiture should be strictly construed against the Government, we hold that the subject importation is not subject to forfeiture under Central Bank Circular No. 44 in relation to Section 1363 (f) of the Revised Administrative Code.

WHEREFORE, the decision of the respondent Commissioner of Customs is hereby reversed. We decree the cancellation of PISC Surety Bond No. 014 of the Pioneer Surety & Insurance Corporation in the amount of ₱28,351.34, which was filed for the release of the importation in question. Without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, February 14, 1957.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge