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Republic of the Philippines
COURT OF TAX APPEALS
Manila

PHILIPPINE PORTLAND
CEMENT CO., INC.,
Petitioner,

August 30, 1963

- versus - C.T.A. CASE NO. 137

The ACTING COMMISSIONER
OF CUSTOMS,
Respondent.

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

DECISION

This is an appeal from the decision of the Acting Commissioner of Customs, reversing the decision of the Collector of Customs for the port of Iloilo and holding petitioner's importation of crushed gypsum rock dutiable under paragraph 6(b), Sec. 8 of the Philippine Tariff Act of 1909, as amended.

Petitioner imported from San Marcos Is., Lower California, Mexico, 637,000 kilos of "Crushed Gypsum Rock", which arrived at the port of Iloilo on October 11, 1954. It declared the shipment for duty as unmanufactured gypsum, in consequence of which the amount of ₱5,096.00 was levied and paid as customs duty under paragraph 6(b), Sec. 8 of the Tariff Act of 1909, as amended.

Thereafter, alleging that there was a mistake in the classification of the importation as the same allegedly falls under paragraph 2(a), Sec. 8 of the Tariff Act of 1909, petitioner filed a protest and requested refund of the amount allegedly paid in excess.

After hearing petitioner's protest, the Collector of Customs for the port of Iloilo, relying upon a previous ruling of a former Commissioner of Customs that gypsum rock was dutiable under paragraph 2(a), Sec. 8 of the Philippine Tariff Act of 1909, as amended, ordered the reliquidation of the entry (Exh. N, pp. 6-7, Customs rec.).

However, former Acting Commissioner of Customs Jose P. Trinidad, in an Indorsement dated April 15, 1955, reversed the decision of the Collector of Customs of Iloilo on the ground that the "shipment being unwrought gypsum it is believed that it is properly classifiable under Paragraph 6(b) of the Tariff Act x x x". (Exhs. O & 11, p. 8, Customs Rec.)

On May 27, 1955, petitioner filed its petition for review. Subsequently, it amended the petition for review, wherein it is alleged, among others, that there being no appeal from the decision of the Collector of Customs for Iloilo, the same had become final and no longer reviewable by the Commissioner of Customs.

Petitioner having failed to press in its memorandum the issue of whether or not the decision of the Collector of Customs for Iloilo had become final and not subject to review by respondent, we take it that it has abandoned said issue. However, so that there may not be any doubt as to the opinion of this Court on the matter, we wish to draw attention to Section 1393 of the Revised Administrative Code (now Section 2315, Tariff and Customs Code), which provides that "If in any case involving the assessment of duties the importer shall fail to protest the decision of the collector of customs and the Commissioner shall be of the opinion that the decision was erroneous and unfavorable to the Government, the latter may order a reliquidation x x x". It is clear from the above quoted provision of law that the Commissioner of Customs may review a decision of a Collector of Customs in any protest case involving liability for customs duties, even if the importer has not appealed to the Commissioner.

The main issue presented for our determination is whether the importation of "Crushed Gypsum Rock" is dutiable under paragraph 2(a) as "other" stones in block, rough or squared at the rate of $0.10 per 100 kilos, or under paragraph 6(b) as unmanufactured gypsum, at the rate of $0.40 per 100 kilos.

Paragraphs 2(a) and 6(b), Sec. 8 of the Tariff Act of 1909, as amended, provide as follows:

> "SEC. 8. That the rates of duties to be collected on articles, goods, wares, or merchandise imported into the Philippine Islands, or going into said islands from the United States or any of its possessions except as otherwise provided in this Act, shall be as follows: x x x".
>
> x x x
>
> "2. Stones, other, natural or artificial, gross weight:
> (a) In block, rough or squared only -- 100 kilos $0.10"
>
> x x x

"6. Earths, gross weight:
(b) Gypsum, pumice, emery, chalk, kaolin (China clay), unmanufactured, and other crude earths and clays not otherwise provided for, 100 kilos ------- $0.40"

Petitioner contends that the importation in question falls under the category of "other stones " provided in paragraph 2(a) of the Tariff Act. This contention is without merit. Paragraph 6(b), Sec. 8 of the Act specifically imposes a duty on gypsum, eo nomine. In this circumstance, the article in question is dutiable under that specific classification which can be applied to nothing else, and not under the general term which may embrace it (Santos & Jahrling vs. Collector, 26 Phil. 619, citing Arthur vs. Stephani, 96 U.S. 125, 24 L. ed. 771).

We are, therefore, of the opinion and so hold that the unmanufactured gypsum rock should be classified under paragraph 6(b), Sec. 8 of the Tariff Act of 1909, as amended, and is subject to the rate of duty at $0.40 per 100 kilos.

Anent petitioner's contention that the ruling of a former Commissioner of Customs to the effect that gypsum falls under the category of other stones if imported in block, rough or squared only, and is subject to duty at $0.10 per kilo, which ruling has allegedly received long acquiescence, should be followed, it may be stated that the construction of a statute by a former Commissioner of Customs is not binding on his successors in office if they are satisfied that a different construction of the law should be given. (Hilado v. Collector of Internal Revenue, G. R. No. L-9408, Oct. 31, 1956.)

Petitioner's other contention to the effect that if the classification by respondent of gypsum under paragraph 2(b), Sec. 8 of the Tariff Act of 1909 is upheld by the Court, the new ruling should be given prospective application in justice to those who had relied in good faith upon the correctness of the previous ruling. This is equally untenable. An erroneous construction of the law does not preclude the government from assessing and collecting the correct duty legally due. (Hilado vs. Collector of Internal Revenue, ibid.) No vested or acquired right can arise from acts or omissions which are against the law. (Art. 2254, Civil Code.)

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

SO ORDERED.

Manila, August 20, 1963.

ROMAN M. UMALI
Associate Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge