Library

Republic of the Philippines
COURT OF TAX APPEALS
Manila

FELIPE YUPANGCO & SONS,
INC.,
Petitioner,

- versus - Nov. 19/63 C.T.A. CASE NO. 1116

THE COMMISSIONER OF
CUSTOMS,
Respondent.

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

D E C I S I O N

The petitioner has appealed from the decision of the respondent affirming that of the Collector of Customs of Manila ordering the forfeiture of twenty three (23) boxes allegedly containing parts and materials for coin-operated phonographs. The facts of the case, as stated in the memorandum of counsel for the Government, are as follows:

> "Petitioner is the importer-claimant of 23 boxes of alleged parts and materials declared under Customs Entry No. 103005 series of 1954. This importation is covered by a Bill of Lading No. 382, Consular Invoice No. 77297, Commercial Invoice from the shipper, Rudolph Wulitzer Co., New York, and Central Bank Release Certificate No. PTC-3375. The Central Bank Release Certificate covered goods under Code No. 890102-NEC which calls for Accessories and Parts of Phonographs and Gramaphones. However, when the shipment arrived at the Port of Manila on December 25, 1954, upon actual examination, the goods were found to be six (6) sets phono parts complete (coin operated machine parts complete) which correctly falls under CB Code No. 710660 Ui, a banned item.
>
> "On account of the disparity between the classification of the goods covered by the Central Bank Release Certificate and the results of the actual examination conducted, the goods were seized for violation of Cen-

> tral bank Circulars Nos. 44 and 45 in relation to Section 1250 and 1363(f) of the Revised Administrative Code. After due hearing, the goods were ordered confiscated in favor of the Government. This decision was affirmed by the Commissioner of Customs on appeal. Inasmuch as the goods were released under bond the claimant and the surety were ordered to pay the Bureau of Customs, jointly and severally, the amount of the bond of ₱15,630.00. Hence, this petition for review." (See pages 1-2, Memo of counsel for Government, Sept. 30, 1963.)

Petitioner contends that the 23 boxes of parts and materials for phonographs were correctly classified under Code No. 890102 NEC. On the other hand, respondent found that if said parts and materials were assembled they would make six (6) coin-operated Wurlitzer Phonographs, Model 1700 F, which come under Code No. 710660 UI. In other words, respondent found that petitioner imported six coin-operated Wurlitzer Phonographs, unassembled or knocked down, in violation of the permit granted it to import merely phonograph parts and accessories.

The decision of respondent is assailed on the ground that there is no sufficient evidence to show that the said parts and accessories constitute 6 complete coin-operated phonographs in unassembled or knocked down condition. However, the commercial invoice of the shipper (Exh. C) describes the merchandise as follows:

> "6 sets of Parts and Materials for Wurlitzer Phonographs Model 1700 F
>
> "Deluxe Phonographs (Unassembled) High Fidelity Unassembled as follows:

Record Changer - Completely assembled
Amplifier - Completely assembled
Speaker - " "
Coin Mechanism - Completely assembled
Cabin Trim Parts - Completely assembled
Cabinet - Knocked down, finished and rubbed
220 Volt, 60 Cycle
Adopted:
1 play - one 10 cent Philippine coin
Service Manuals
Packed for Export."

The above description of the merchandise appearing in the commercial invoice of the shipper proves beyond doubt that the merchandise described as "parts and materials" of phonographs are in fact 6 unassembled coin-operated phonographs classified under Code No. 710660 UI. Therefore, the importation of said phonographs was made in violation of Circulars Nos. 44 and 45 of the Central Bank, and the forfeiture thereof is in accordance with Section 1363(f) of the Administrative Code (now Section 2530(f), Tariff & Customs Code).

Even assuming that said parts and accessories could be assembled into complete phonographs, it is argued that when petitioner was authorized to import phonograph parts and materials no condition was imposed to the effect that the parts and materials to be imported would not form part of complete phonographs. The Central Bank Commodity Code Classification classifies phonograph parts and accessories separately from completely assembled coin-operated phonographs. To permit importation of coin-operated phonographs in knocked down condition and classify the same as parts and materials merely would be to defeat the purpose of the classification. It would in effect permit indirectly what was prohibited to be done directly. We may add that where it is intended to authorize importation of an article in knocked down or unassembled condition, and to classify the component parts of the article as parts and accessories, the law expressly so provides. (See Sec. 184, National Internal Revenue Code.) No such provision is contained in the Central Bank Commodity Code classification. Accordingly, petitioner's contention must be dismissed as untenable.

Finally, it is argued that since Central Bank Circulars Nos. 44 and 45 have been repealed by Circular No. 133, any liability arising from violation of the former circulars has been extinguished. This question has been decided adversely against importers in cases too numerous to mention. (See Litton & Co., Inc. v. Comm. of Customs, C.T.A. No. 784, Oct. 30, 1963, and cases cited therein.)

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

SO ORDERED.

Manila, November 19, 1963.

(Sgd.) ROMAN M. UMALI
Associate Judge

I CONCUR:

(Sgd.) MARIANO NABLE
Presiding Judge