

BOMBAY DEPARTMENT STORE, PETITIONER, VS. THE COMMISSIONER OF CUSTOMS, RESPONDENT.

G.R. No. L-20489. June 22, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On December 12, 1954 five cases of goods shipped by Milshire International Corporation, 110 W. 40th St., New York, N.Y., U.S.A., consigned to Bombay Department Store, Manila, arrived in the Port of Manila on board S.S. "Pioneer Wave".

Said goods were declared in the commercial invoice as:

"68 cartons Parts of Cycle
"12 cartons Parts of Cycle
"Packed in five wooden cases iron strapped."

Similarly, the consular invoice described them as:

"68 cartons Parts of Cycle
"12 cartons Pails of Cycle"

The bill of lading stated:

"4 cases Parts of Cycles"
"1 case Parts of Cycles General Mdse"

So, also, the import entry and internal revenue declaration set forth:

"4 Cs. Parts of Cycles
"1 Cs. Parts of Cycles
"Gen. Merchandise)"

Finally, the Central Bank release certificate, classifying the goods under 730302 EP, described them as:

"(4 cases) Parts of Cycles"
"(1 case)

When opened for inventory and examination, however, the five cases were found to contain the following:

Case No. 1—4 pcs.—Bicycle, complete, Murray brand, Mens;

Case No. 2-1 pcs.— Bicycle, complete, Murray brand, Men's and 1 pc. Tricycle, boy's;

Case No. 3-6 pcs.—Motor bike, complete,

Case. No. 4-6 pcs.—Motor bike, complete,

Case No. 5-151 pcs.— Cases for Sheaffer's pen, carton,

1 pc.—Children's sweater of estrón acetate and cotton materials
1 pr. Children's (Haby) shoes of estron acetate and cotton materials
40 cs.—Sportswear, rayon men's
42 pcs.—Handbags, tin frame and plastic or velvet siding
36 pcs. Jackets, leather, men's
20 boxes cufflinks and buttons
21/2 boxes cufflinks and buttons
6 boxes cufflinks
6 boxes buttons
3 small boxes buttons
20 boxes Handkerchiefs

For alleged violation of Sections 1363(f), 1363(i), 13(53) (m)3 and 4, Revised Administrative Code, and of Central Bank Circulars Nos. 44 and 45, the aforesaid goods were seized. After seizure proceedings the Collector of Customs, on July 11, 1955, declared the goods forfeited.

Subsequently, on August 8, 1955, the Collector of Customs authorized the release of the goods under a bond in the amount of P5,779.81.

Bombay Department Store appealed from the Collector of Customs' decision to the Commissioner of Customs but the latter, on March 29, 1960, affirmed said decision, confiscating the bond and ordering the principal and the surety, Jointly and severally, to pay the amount thereof to the Bureau of Customs.

Appeal was further taken by Bombay Department Store to the Court of Tax Appeals which in turn, on August 1 1962, affirmed the decision of the Commissioner of Customs, resulting in this petition for review of the decision of the Tax Court.

Appellants maintains, first, that there is no misdeclaration of the goods to warrant their forfeiture under loti 1363(m) 3 and 4 of the Revised Administrative Code; and, secondly, that said goods are not sub-forfeiture under Central Bank Circular Nos. 14 40 which require a release certificate for the same.

Section 1363(m) 3 and 4 of the Revised Administrative Code provides:

"SEC. 1303. Properly subject to forfeiture under customs laws.— Vessels, cargo, merchandise, and other objects and tilings shall, under the conditions hereinbelow specified, be subject to forfeiture:

"(m) Any merchandise the importation or exportation of which is effected or attempted in any of the ways or under any of the conditions hereinbelow described—

"3. Upon the wrongful making by the owner, importer, exporter, or consignee of any merchandise, or by the agent of either, of any false declaration or affidavit, touching such merchandise and in connection with the importation or exportation of the same.

"4. Upon the wrongful making or delivery by the same person or persons, of any false invoice, letter or paper touching such merchandise and in connection with the importation or exportation of the same."

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 describe»' in said papers, it follows that there was misdeclaration of the same, rendering them subject to forfeiture under Section 1363(m)3 and 4 of the Revised Administrative Code.

Central Bank Circulars Nos. 44 and 45 require the presentation of a release certificate issued by the Central Bank before an importation is released to the claimant or consignee.

It is appellant's contention that the goods in question are covered by the release certificate presented. An examination of said release certificate, however, shows that it covers only "parts of cycles" classified as 730302 EP. The shipment consisted not of cycle "parts" but of "complete" bicycles which do not fall under 730302 EP (Essential Producer) but under 730.302 NEC (Non-Essential Consumer).

The record shows that the testimony referred to by appellant in support of its contention that at least the children's cycles were only "parts" states precisely the opposite:

"Q.* * * Did you find the shipment?

"A.

I found out that instead of parts of cycles, the shipment consist [sic] of complete children's bicycles.

"Q.

Already assembled?

"A.

No, in parts." (C.T.A. Record, p. 3(5.)

We need hardly point out that complete bicycles, even in knocked-down condition, are dutiable as an entirety[1] find that the rates of duty on parts of cycles and on complete cycles are different.[2] Such being the case the goods in question—complete bicycles and general merchandise—do not fall under the release certificate presented. Accordingly, their importation ran counter to the aforesaid Central Bank Circulars Nos. 44 and 45, for lack of release certificate. Forfeiture of said goods by the Bureau of Customs is therefore in order, pursuant to Section 13633 (f) of the Revised Administrative Code,[3] since violation of Circulars Nos. 44 and 45 made them fall thereunder as "merchandise of prohibited importation" or merchandise "the importation of which is effected * * * contrary to law".[4]

Appellant's final argument is that Central Bank Circular No. 133, effective January 21, 1962, impliedly repealed Circulars Nos. 44 and 45, thereby rendering the present seizure and forfeiture proceedings without legal basis. Suffice it to state on this point, that, far from being impliedly repealed, the requirement of a release certificate is reiterated in Circular No. 133:

"6. Imports shall be released from Hie port of entry only upon presentation of a release certificate issued by the Central Bank based on the letters of credit opened."

Wherefore, the decision appealed from is hereby affirmed, with costs against appellant.

IT IS SO ORDERED.

Bengzon, C.J., Bautista Angelo, Concepción, Reyes, J.B.L., Paredes, Dizon, Regala, Makalintal and Zaldivar, JJ., concur.

Decision affirmed.

[1] Close & Stewart vs. U. S., 2 CCA 318, CD 151.

[2] See Headings 87.10 and 87.12, Tariff and Customs Code of 1957.

[3] "Sec. 1363. Property subject to forfeiture under customs laws. — Vessels, cargo, merchandise, and other objects and things shall, under the conditions hereinbelow specified, be subject to forfeiture.

"(f) Any merchandise of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law, and all other merchandise which, in the opinion of the collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former."

[4] Pascual vs. Commissioner of Customs, L-10797, June 30, 1959; Commissioner of Customs vs. Serree Investment Co., 108 Phil. 1; Commissioner vs. Eastern Sea Trading, L-14279, Oct. 31, 1961; Commissioner vs. Santos, L-11911, March 30, 1962; Commissioner vs. Nepomuceno, L-11126, March 31, 1962; Pascual vs. Collector of Customs, L-12219, April 25, 1962; Serree Investment Co., vs. Commissioner of Customs, L-19564, Nov. 28, 1964.

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