

FARM IMPLEMENT & MACHINERY CO., PETITIONER, VS. COMMISSION OF CUSTOMS, RESPONDENT.*G.R. No. L-22212. August 30, 1968*

Ponente: SANCHEZ, J.

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Petitioner sought the entry, duty-free, of 118 bags of zinc oxide dry pigment. The Customs Collector took petitioner's importation out of the area in which the Bell Trade Act, also known as the Philippine Trade Act of 1946,[1] operates; and directed seizure and forfeiture of the shipment upon the ground of fraudulent misdeclaration within the meaning of Section 1363 (m)-3, (m)-4, and (m)-5 of the Revised Administrative Code. The Customs Com-missioner affirmed. The Tax Court sustained. Hence, this appeal.

First to the facts. On December 27, 1953, the shipment arrived in Manila from New York per SS "Pioneer Mail" consigned by P.J. Rhodes & Co. of San Francisco, California, the supplier, to petitioner. These goods in packages marked "Made in U.S.A." were manufactured by New Jersey Zinc Sales Co. at its factory in Palmerton, Pennsylvania. They were entered as "United States articles" free of customs duty under the provisions of Section 311 of the Bell Trade Act.

Upon examination, customs officers observed the presence of red labels on all packages. Convinced because of this that the raw materials of the goods in question were imported into the United States and were placed under bond until the finished product was re-exported, the customs authorities concluded that said goods were subject to 20% duty pursuant to Section 8, No. 59(c) of the Philippine Tariff Act of 1909. On June 22, 1954, petitioner paid under protest the customs duties in the sum of P360.00 and advance sales tax of P31.50 or a total of P391.50.[2] And on July 3, 1954, the Customs Collector at consignee's behest released the shipment upon bond of Plaridel Surety and insurance Co., Inc. in the sum of P3,815.00, the value of the goods.[3] The goods having been decreed forfeited, the Collector of Customs called upon bondsman and consignee to pay the amount of this bond.

Return of P391.50 and the nullification of the forfeiture are sought herein by petitioner.

1. From the factual setting, we go to the law. Section 311 of the Bell Trade Act - the applicable statute - reads:

"SEC. 311. FREE ENTRY OF UNITED STATES ARTICLES.

During the period from the day after the date of the enactment of this Act to July 3, 1954, both dates inclusive, United States articles entered, or withdrawn from warehouse, in the Philippines for consumption shall be admitted into the Philippines free of ordinary customs duty."

The term "United states article" is defined in paragraph (a) (5), Section 2 of the same Bell Trade Act. We quote:

"(5) The term 'United States article' means an article which is the product of the United States, unless, in the case of an article produced with the use of materials imported into the United States from any foreign country (except the Philippines) the aggregate value of such imported materials at the time of importation into the United States was more than twenty per centum of the value of the article imported into the Philippines, the

value of such article to be determined in accordance with, and as of the time provided by, the customs laws of the Philippines in effect at the time of importation of such article. x x x."

Contemplated in the statutory definition of the term "United States article" are two groups of tax-free products, namely: (1) those produced in the United States which are "wholly of the growth, product or manufacture of the United States";[4] and (2) those produced in the United States, "with the use of materials imported into the United States (except from the Philippines) the aggregate value" of which "at the time of importation into the United States" does not exceed twenty per centum of the value of the article exported to the Philippines, as determined by our customs laws. As a fill-in, Rule 3(a), Section 3 of the Philippine Tariff Act of 1909, now Section 201 of the Tariff and Customs Code, provides: "Whenever imported merchandise is subject to an ad valorem rate of duty, the duty shall be assessed upon the actual market value or wholesale price of such merchandise, as bought and sold in usual wholesale quantities, at the time of exportation to the Philippine Islands, x x x."

2. We now address ourselves to the mechanics of customs law application. A known characteristic of our revenue statutes is that exemption from payment thereunder must be construed strictly. And this, we hasten to add, is in line with the general rule that everyone must bear his share of the expenses of the Government.[5] Accordingly, one who claims the privilege of exemption has the burden of proof.[6]

3. In this backdrop, we examine consignee's evidence. Its posture is that the zinc oxide dry pigment was "wholly of the growth, product or manufacture of the United States." [7] It presented two documents: (1) the sworn certificate of origin dated November 18, 1953 signed by R.R. Mynderse of P.J. Rhodes & Co., the supplier, that "the articles covered by this product of United States origin are wholly of the growth, product or manufacture of the United States" and that "[no] foreign materials other than those of the Philippines were used at any stage in the manufacture or production of such articles";[8] and (2) a verified certificate dated February 18, 1954 of Robert G. Kenly, vice president of the New Jersey Zinc Sales Co., manufacturer, "having knowledge of the facts," that "the 118 bags" of zinc oxide in question "were produced in the United States." [9]

The Tax Court denying probative value to the two documents expressed itself in the following terms:

"The certificate of origin signed R.R. Mynderse of P.J. Rhodes & Co., the exporter of the shipment in question, is not a satisfactory showing that said article is wholly of the growth, product or manufacture of the United States, and that no foreign materials other than those of the Philippines were used at any stage in the manufacture or production of the same because, in the absence of a contrary proof, a shipper which did not manufacture or produce the article cannot be presumed to have knowledge of the source of the raw materials used in the manufacture of said article. The sworn statement of Robert G. Kenly, Vice President of the manufacturing company, to the effect "that the 118 bags of XX-4 zinc oxide exported to the Philippine Islands in November, 1953 under bond x x x were produced in the United States" does not certify as to the source of the raw materials. The fact that the zinc oxide in question was produced in the United States does not give rise to the pre-sumption that the raw materials used therein were obtained from sources within the United States." [10]

We find ourselves unwilling to downgrade the Court of Tax Appeals' legal conclusions just recited. Indeed, it is not enough that the zinc oxide was manufactured in the United States. To enter the Philippines duty-free, the zinc oxide must either be (1) wholly of the growth, product or manufacture of the United States; or (2) produced in the United States with the use of materials imported therein in part or in whole (except from the Philippines) provided the value of the raw materials imported "at the time of importation into the United States" does not exceed "twenty per centum of the value of the articles imported into the Philippines," as determined by our customs laws. The sworn certificate of an employee of the supplier really is not determinative of the exemption. He holds office in San Francisco, California, located on the opposite side of the North American continent, more than 2,000 miles

distant from the place of manufacture. By itself, that certificate would prove nothing. It is hearsay. The sworn declaration of the vice president of the New Jersey Zinc Sales Co., the manufacturer, fares no better. All that was certified to therein was that the zinc oxide was "produced" in the United States. Absent therefrom is a categorical statement that the zinc oxide was wholly of the growth, product or manufacture of the United States; or that said zinc oxide was made in the United States with the use of materials imported into the United States (except from the Philippines) the value of which, reckoned as of the time of importation thereof into the United States, does not exceed 20% of the value - according to our customs laws - of said finished product at the time of exportation to the Philippines.

Certainly, the foregoing evidence does not make out a duty-free case under Section 311 of the Bell Trade Act.

4. Not that there is mere lack of evidence here. Evidence there is that at least part[11] of the materials used in the manufacture of zinc oxide here involved was actually imported into the United States. To be recalled at this point is the red label pasted on each of the packages containing the zinc oxide. This label reads:

"U.S. CUSTOMS

Transportation Entry No. 01987

From Palmerton to New York

This package is Under Bond and must be Delivered Intact to the Chief Officer of the Customs at New York.

- WARNING -

Two years imprisonment or \$5000.00 fine or both, is the penalty for unlawful removal of this package or any of its contents."[12]

Why were those stickers attached to the packages of zinc oxide? The April 2, 1954 letter of G.S. Peffall, Assistant Collector of Customs at Philadelphia, to the manufacturer, the New Jersey Zinc Sales Co., furnishes the ready answer. That letter reads:

"Reference is made to your letter of March 31, 1954 (SJacobsen: LVM), in respect to 118 bags zinc oxide produced in your class 7 Smelting and Refining Warehouse established under the Customs Regulations and Section 312 of the Tariff Act of 1930. This shipment was x x x consigned to the Collector of Customs, New York, the port of exit for final destination, Manila, P.I.

You request an explanation from this office why red stickers were attached to the bags of zinc oxide.

In reply you are informed that the customs regulations provide that red stickers or labels should be used as a precautionary measure to insure that the merchandise is delivered to the Collector of Customs at a port of exit for exportation to a foreign country. x x x."[13]

In brief, the above-quoted letter gives us the following: (1) the 118 packages of zinc oxide were produced in a smelting and refining warehouse established pursuant to Section 312 of the United States Tariff Act of 1930; (2) that said packages were withdrawn from the smelting and refining warehouse and transported to New York as the port of exit for exportation to Manila; and (2) that the red stickers were precisely placed to insure delivery of the same merchandise intact to the Collector of Customs of New York, "for exportation". While no explicit statement was made in said letter as to the actual origin of the raw materials, nonetheless, it mentions Section 312 of the United States Tariff Act of 1930. And a reading of said Section 312 under whose provisions the smelting and refining warehouse at Palmerton was established, would show that the zinc oxide in controversy may have been produced either from wholly imported raw materials, or from materials of home - together with foreign - production. Section 312 says:

"The works of manufacturers engaged in smelting or refining, or both, of ores and crude metals, may, upon the giving of satisfactory bonds, be designated as bonded smelting warehouses. Ores or crude metals may be removed from the vessel or other vehicle in which imported or from a bonded warehouse, into a bonded smelting warehouse without the payment of duties thereon, and there smelted or refined, or both, together with ores or crude metals of home or foreign production: Provided, That the bonds shall be charged with a sum equal in amount to the regular duties which would have been payable on such ores and crude metals if entered for consumption at the time of their importation, and the several charges against such bonds shall be canceled upon the exportation or delivery to a bonded manufacturing warehouse established under section 1311 of this title of a quantity of the same kind of metal equal to the quantity of metal producible from the smelting or refining, or both, of the dutiable metal contained in such ores or crude metals, due allowance being made of the smelter wastage as ascertained from time to time by the Secretary of the Treasury: Provided further, That the said metals so producible, or any portion thereof may be with-drawn for domestic consumption or transferred to a bonded customs warehouse and withdrawn therefrom and the several charges against the bonds canceled upon the payment of the duties chargeable against an equivalent amount of ores or crude metals from which said metal would be producible in their condition as imported: x x x." [14]

The gist of the United States statute just quoted is that imported ores or materials were allowed to be released to bonded smelting or refining warehouses without first paying the corresponding import duties thereon for purposes of their manufacture into some other finished products. No duty would subsequently be collected thereon if the finished product is exported. However, if such finished product is released for local consumption then duties are collected.

The foregoing amply explains the appearance of United States customs red labels pasted on the packages. They were placed by the customs authorities to show that those packages were "Under Bond". Which means that no customs duties were actually paid in the United States for the imported materials used in the manufacture of the zinc oxide therein contained, as provided in the United States Tariff Act. They "must be Delivered Intact to the Chief Officer of the Customs at New York" - the port of exit to the Philippines. And this, obviously to prevent the articles (zinc oxide) from being diverted in transit for home consumption and thus avoid payment of the said duties on component raw materials imported into the United States.

The net result is that the certification of the Assistant Customs Collector at Philadelphia tied up with the red labels proves that materials imported into the United States, were used - wholly or partly - in the manufacture of the zinc oxide in dispute. And since there is no evidence that the "aggregate value of such imported materials at the time of importation into the United States" does not exceed 20% of the value of the finished product exported to the Philippines, as aforesaid, then a clear case is made out by our customs authorities in their refusal to allow entry thereof as duty-free.

In consequence, the prayer for the refund of customs duty and advance sales tax in the total amount of P391.50 cannot be granted.

5. We now dwell on the forfeiture phase of the issues. Of course, the Court of Tax Appeals correctly found that there was no justification to reverse the findings and conclusions of the Commissioner of Customs "that the 118 bags of zinc oxide imported by petitioner into the Philippines were not wholly of the growth, product or manufacture of the United States". But then immediately followed the Tax Court's pronouncement that "[c]onsidering the above finding, the goods in question are subject to forfeiture under Section 1363 (m)-3, (m)-4 and (m)-5 of the Revised Administrative Code." The non sequitur is apparent.

Paragraphs (m)-3, (m)-4, and (m)-5, Section 1363 of the Revised Administrative Code, under which the forfeiture decree is predicated, state:

"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:

x x x

(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 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.

(5) Upon the causing or procuring, by the same person or persons, of any merchandise to be entered or passed at any customhouse by any other fraudulent practice, device, or omission by means whereof the Government is or might be deprived of its lawful duties on such merchandise." [15]

Requisites for forfeiture under subparagraphs (3) and (4) above-quoted are: (1) the wrongful making by the owner, importer, exporter or consignee of any declaration or affidavit, or the wrongful making or delivery by the same persons of any invoice, letter or paper - all touching on the importation or exportation of merchandise; and (2) that such declaration, affidavit, invoice, letter or paper is false. The consignee - petitioner here - caused to be prepared the import entry or declaration. But it cannot be charged with the wrongful making thereof. Such entry or declaration merely restated faithfully the data found in the corresponding consular invoice and bill of lading which in turn were prepared by the suppliers abroad. If any, the wrongful making or falsity of the consular invoice and/or bill of lading could only be laid at the door of the foreign suppliers or shippers. They are not the very persons enumerated in subparagraphs (3) and (4). Moreover, the evidence does not show - the decision of the Tax Court is silent on this point - that the consignee or its agent delivered to the customs authorities the importation papers with knowledge of any falsity thereof. Forfeiture will not lie.

To support forfeiture under subparagraph (5), there must be fraud on the part of the importer/consignee to evade payment of the duties due. [16] Nothing extant in the decision of the Court of Tax Appeals would tag petitioner with fraud. For really there is none.

There is no evidence that the consignee actually knew before hand that the goods in question did not constitute United States articles importable duty-free. In fact, as late as March 5, 1954, [17] petitioner had to request in writing from its indenter, F.E. Zuellig, Inc., for further evidence to bolster the supplier's (P.J. Rhodes Co.'s) certification upon which it relied for its claim that the zinc oxide should be allowed entry duty-free. This only goes to show that right from the start, the importer was in good faith.

The red labels were attached to the packages, it is true. But they were not sent here in advance with the bill of lading. Their existence came to light only upon notice thereof during the examination of the merchandise by the customs authorities, but after the filing of the entry.

And yet, these red labels could not at once make the zinc oxide come within the compass of dutiable articles under the Bell Trade Act. For, at this end, it is well nigh impossible for the importer - unless informed before entry - to know whether the value of the materials imported into the United States and which entered into the manufacture of the zinc oxide would go beyond the 20% limit set forth in the said Bell Trade Act. And petitioner was not so informed.

Upon the other hand, there is the said certificate of origin sworn to by the shipper's employee to back up the entry.

True, the certificate of origin is not competent evidence. But nothing in the decision of the Tax Court would show that it is false either. Nor could the consignee presume that it is. Reliance on that certificate of origin is a mistake as a matter of law. But in spite of such a mistake, the consignee could yet be considered to have acted in good faith.[18]

And then fraud is never presumed. It must be proved.[19] Failure of proof of fraud is a bar to forfeiture. The reason is that "forfeitures are not favored in law and equity".[20]

For the reasons given, the judgment of the Court of Tax Appeals under review is hereby modified,

And judgment is hereby rendered -

(1) Reversing said judgment of the Tax Court insofar as it declares the forfeiture of the 118 packages of zinc oxide dry pigment, the subject of the suit;

(2) Declaring as cancelled and without force effect the bond issued by Plaridel Surety and Insurance Co., Inc. to secure the release of the said 118 packages of zinc oxide from customs custody to petitioner; and

(3) Affirming said judgment insofar as it denies refund of the sum of P391.50 paid for customs duty and advance sales tax.

No cost.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Castro, Reyes, Fernando, JJ., concur.

[1] 42 O.G. No. 5, p. 1011.

[2] Customs Record, p. 34.

[3] Customs Record, p. 45.

[4] See: Certificate of origin in Consular Invoice, Customs Record, p. 45.

[5] Castle Bros., Wolf & Sons vs. McCoy, 21 Phil. 300, 306.

[6] Collector of Internal Revenue vs. Manila Jockey Club, 98 Phil. 670, 676; Commissioner of Internal Revenue vs. Visayan Electric Co., G.R. No. L-22611, May 27, 1968, citing authorities.

[7] Petitioner's Brief, p. 22; Petition for Review, p. 5; Rollo p. 5.

[8] Customs Record, p. 45.

[9] Customs Record, p. 29.

[10] CTA Record, pp. 83-84.

[11] This, in terms of percentage, is undetermined.

[12] Customs Record, p. 41-A.

[13] Exhibit "2" for the consignee, petitioner here. Customs Record, p. 30.

[14] 46 Stat. 692, 2 United States Code 2126; emphasis supplied. Also partially quoted by the Tax Court, C.T.A. Record, p. 83.

[15] Emphasis supplied.

[16] *Li Tech San vs. Collector of Customs*, 55 Phil, 482, 484.

[17] Exhibit "3" for the consignee, Customs Record, p. 31.

[18] *Kasilag vs. Rodriguez*, 69 Phil, 217, 230-232.

[19] *Republic vs. Ker & Company, Ltd.*, G.R. No. L-21609, September 28, 1966.

[20] *Yu Phi Kim vs. Amparo*, 86 Phil. 441, 446.

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