

FARM IMPLEMENT MACHINERY CO., PETITIONER, VS. THE COMMISSIONER OF CUSTOMS, RESPONDENT.*G. R. No. L-12613. May 30, 1962*

Ponente: PAREDES, J.

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On July 9, 1954, 833 cases of merchandise arrived at the Port of Manila on board the "S.S. Vigan". The Farm Implement Machinery Company, importer of the above merchandise, presented a "Release Certificate" issued by the Central Bank, purporting to show that the importation consisted of "Semolina" falling under Commodity Code No. 040802-NEC of the Statistical Classification of Commodities of the Central Bank. Examination of the 833 cases conducted by appraisers of the Bureau of Customs, disclosed that the importation consisted of "Macaroni" and "Spaghetti" falling under a different classification (Commodity Code No. 040804-UI). The goods were declared liable to seizure, it having been imported in violation of law (Central Bank Circular No. 44, in relation to Sec. 1363 (f), of the Rev. Adm. Code), or for not having been covered with proper certificate of importation. Seizure and forfeiture proceedings were accordingly instituted. Before hearing thereof, the 833 cases were released to the importer, upon the filing of a surety bond in the amount of P6,777.00. After hearing, the Collector of Customs of Manila, on July 25, 1955, rendered judgment ordering the forfeiture of the 833 cases of "Macaroni" and "Spaghetti", or the surety bond filed in substitution thereof, on the ground that the Central Bank release certificate, purporting to cover said importation, does not correspond to the true nature of the goods imported. This decision of the Collector was affirmed by the Commissioner of Customs who, in turn, was sustained by the Court of Tax Appeals, in a decision rendered on April 1, 1957, the pertinent portions of which reads—

"The only issue in this case relates to the proper classification of the article in question.

Petitioner was granted a foreign exchange allocation by the Central Bank for the importation of "semolina" included within Commodity Code No. 040802-NEC of the Statistical Classification of Commodities, which embraces:

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

Upon examination by customs authorities of the articles imported by petitioner, the former classified the articles as macaroni and spaghetti under Commodity Code No. 040804-UI, covering:

'Macaroni, spaghetti, noodles, vermicelli and similar preparation.'

An analysis of samples of the subject importation made by Mr. Florencio Soliven, Head of the Department of Food Technology of the Institute of Science and Technology, disclosed that—

Sample A is Semolina Macaroni while Sample A-1 Semolina Spaghetti. Both are made of Semolina and are American and European cereal food preparation. (Exh. 'A-1', p. 42, Customs Records).'

The petitioner contends that the report of analysis of Mr. Soliven conclusively shows that the subject shipment

consists of 'semolina'. Whether an article is classified as Semolina Macaroni, or Semolina Spaghetti, or simply Semolina does not alter the fact that the article is semolina. Thus, it argues that the importation was properly classified under Code No. 040802-NEC, and, therefore, should not have been forfeited.

The respondent, on the other hand, maintains that the articles in question are 'macaroni' and 'spaghetti' and, therefore, fall under Commodity Code No. 040804-UI of the Statistical Classification of Commodities, which is a more specific classification.

A cursory reading of the aforesaid classifications shows that for 'semolina' to fall under Code No. 040802-NEC, it should be 'flaked, pearl or prepared in a manner not elsewhere specified'. While the macaroni and spaghetti in question are made of semolina, yet they cannot justifiably be classified under the commodity code number authorized by Central Bank Release Certificate Ref. No. 15480. They are not flaked, or pearled or prepared in a manner not elsewhere specified. On the contrary, they are prepared as macaroni and spaghetti of Commodity Code No. 040804-UI of the Statistical Classification of Commodities.

Finding the articles subject of the present seizure, proceedings as falling squarely under Commodity Code No. 040804-UI, the said articles were brought into the Philippines in contravention of the foreign exchange license granted for the same, and as such were imported contrary to law. We are, therefore, of the opinion and so hold that the said articles were properly forfeited under Sec. 1363 (f) of the Revised Administrative Code, in relation to Central Bank Circular No. 44.

WHEREFORE, the decision of respondent is hereby affirmed. We decree the forfeiture of Surety Bond No. C-54/7708 of the South Sea Surety & Insurance Co., Inc. in the amount of P6,677.00 which was filed for the release of the importation in question, with oosts against petitioner."

A reversal of the above judgment is urged on three (3) counts, all of which converged on the singular issue of the proper classification of the importation in question.

There is no dispute as to the fact that the appellant was granted a foreign exchange allocation by the Central Bank to import "semolina" falling under Commodity Code No. 040802-NEC of the Statistical Classification of Commodities. The importation which was made under the authority of the license (for semolina) was found, when examined, to be semolina "macaroni" and semolina "spaghetti". Commodity Code No. 040802-NEC states "groats, semolina and cereals; flaked, pearled or prepared in a manner not elsewhere specified. While the Macaroni and Spaghetti, which were contained in the 833 cases are made of semolina, its conversion into another form and condition of food preparation has taken it away from the classification and placed it directly under Commodity Code No. 040804-UI. A description of the articles will point more clearly the distinctions. Webster's International Dictionary gives the following:—

"Semolina—the purified middlings of durum or other hard wheat, used for macaroni and similar edible pastes; sezings or course middlings;

"Macaroni—kind of paste, composed chiefly of wheat flour, dried in the form of slender tubes;

"Spaghetti—A variety of alimentary, paste made in cords of small diameter but larger than vermicelli and solid (not tubular as in macaroni)."

It thus becomes manifest that semolina in its original form and condition, falls under Commodity Code No. 640802-NEC, and once it is converted into another form, and condition, it loses its classification as semolina and comes under the purview of any other preparation. In the instant case, it was converted or transformed into macaroni and spaghetti, and fall under Commodity Code No. 040804-UI. There is, therefore, variance between the release certificate given by the Central Bank, pursuant to appellant's foreign exchange allocation and the goods it had imported.

The insinuation that the issuance of Central Bank Circular No. 44, is improper, is untenable, as it is without merit. The authority of the CB to pass such circular has been sustained in a number of cases.[1] It is, contended further that even if the importation is in violation of Circular No. 44, still the subject-matter is not liable to seizure and forfeiture, because said circular does not provide penalty for violation thereof. True, there may be no penalty prescribed by Circular No. 44. The goods are, however, being forfeited, pursuant to Circular No. 44, in relation to Section 1363 (f) of the Administrative Code. Circular No. 44, among others, provides that "No item of import shall be released by the Bureau of Customs without the presentation of a release certificate issued by the Central Bank or any authorized Agent Bank in a form prescribed by the Monetary Board". There is no valid release certificate issued for the importation at bar. What was issued was a release certificate for "semolina" under Commodity Code No. 040802-NEC and not for Macaroni or Spaghetti, under Commodity Code No. 040804-UI. This being the case, the goods actually imported are of prohibited category and liable to forfeiture, as having been imported contrary to law, in accordance with the provisions of the Administrative Code which states: "Vessels, cargo, merchandise, and other objects and things, shall, under the condition hereinbelow specified, be subject to forfeiture; * * *

Any merchandise of prohibited importation or exportation, the importation or exportation c-f which is effected or attempted contrary to law, * * *". (Sec. 1363 [f]). The law violated here, is CB Circular No. 44, in relation to the grant of license to import semolina, and the penalty is provided for by the above-cited provision of the Administrative Code.

Wherefore, the decision appealed from is hereby affirmed, with costs, in both instances, against the appellant Farm Implement Machinery Company.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Dizon, JJ., concur.

[1] Commissioner of Coustoms vs. Nepomuceno, G. R. No. L-11126, March 31, 1962, and cases cited therein.

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