

THE COMMISSIONER OF CUSTOMS, PETITIONER, VS. FARM IMPLEMENT AND MACHINERY CO., RESPONDENT.

G.R. No. 12203. May 30, 1961

Ponente: DIZON, J.

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DIZON, J.:

Appeal from the decision of the Court of Tax Appeals reversing one of the Commissioner of Customs, and decreeing the cancellation of PISC surety bond No. 014 of the Pioneer Surety & Insurance Corporation in the amount of P20,351.34 filed for the release of the importation in question, without pronouncement as to costs.

The facts of the case are set forth in the decision appealed from as follows:

"From the testimonial evidence adduced during the hearing before the Bureau of Customs and the documentary evidence presented before this Court upon which this case was submitted for decision, it appears that on August 3, 1954, a shipment, consisting of one hundred (100) packages of 'sotanghon' described as 'semolina' arrived at the Port of Manila on board S.S. Henrik from Hongkong; that the shipment was declared under Entry No. 63019, Exhibits 'B' and '5', and covered by commercial invoice No. 185, dated July 31, 1954, of Yeng's Commercial Co., Hongkong, Exhibit 'E', Consular invoice No. 1482 of the same date, Exhibit 'C', and Central Bank release certificate Reg. No. 6777, L/C No. 10843, dated August 5, 1954, Exhibits 'A' and '6', which described the shipment as 'semolina', classified it as 'NEC-04' and assigned to it Commodity Code No. 040802; that upon examination by the customs authorities, the importation was found to be 'sotanghon', which they classified as vermicelli, under Commodity Code No. 040804-UI, as a consequence of which it was seized; that the petitioner paid the assessed duties and taxes thereon; that pending the seizure proceedings, the importation was released to petitioner upon the filing of PISC Surety Bond No. 014 of the Pioneer Surety & Insurance Corp. in the amount of P28,351.34; and that after the proceedings, the Collector of Customs for the Port of Manila; rendered a decision decreeing the forfeiture of the shipment in question for violation of Central Bank Circular No. 44 in relation to Section 1363 (f) of the Revised Administrative Code, which decision was affirmed in toto by the respondent Commissioner of Customs in a decision rendered on February 25, 1956. From the last mentioned decision, the petitioner interposed the present appeal."

The issue in this case is whether the Sotanghon shipment in question falls under Commodity Code No.040802-NEC or under Commodity Code No. 040804-UI both of the Statistical Classification of Commodities implementing Central Bank Circulars Nos. 44 and 45. If it falls under the first, its importation by herein appellee was regular and in accordance with its importation papers, but if it falls under the second, the result would be otherwise and the shipment would be subject to forfeiture.

The issue has already been resolved by this Court on May 30, 1960 in G. R. No. L-12260 (108 Phil., 312) in which case appellee herein was also the importer. It, was therein held that Sotanghon falls under Commodity Code No. 040804-UI, and not under Commodity Code 040802-NEC, because it should be classified as "vermicelli", it being a preparation similar to "macaroni, spaghetti, noodle and vermicelli"-the preparations covered by Commodity Code 040804-UI.

Wherefore, the decision appealed from is hereby reversed and the one rendered by the Commissioner of Customs affirmed, with costs against appellee.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, De Leon, and Natividad, JJ., concur.

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