

CALDER & CO., PLAINTIFF AND APPELLEE, VS. THE UNITED STATES, DEFENDANT AND APPELLANT.*G. R. No. 2837. August 07, 1907*

Ponente: JOHNSON, J.

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The plaintiff, on the 29th day of April, 1903, imported into the Philippine Islands a portable steam engine as a motor for a rice-cleaning plant. The Collector of Customs classified such engine as "other machinery" under subdivision (6) of paragraph 257 at 20 per cent ad valorem instead of under paragraph 246 of said law. (Act No. 230.) Against this classification the importer duly pro- tested and appealed to the Court of Customs Appeals. The Court of Customs Appeals, after hearing the evidence in said cause, rendered the following decision :

"The evidence presented at the hearing and the record in the case disclose that the engine in controversy is a common portable steam engine and that it is so constructed, that it does not move itself, neither can it be used for draft purposes. It is similar to and practically the same as a "traction engine." It is of the same material, quality, and is used for the same purposes except the purpose of draft.

"Applying the provisions of rules 13 and 15 of the Tariff Revision Act of 1901, the court finds that the engine in controversy should be assimilated to and should pay the same rate of 'duty as 'traction engines,' which are specifically enumerated in paragraph 246 of said Tariff Act."

From this decision the Collector of Customs appealed to this court. The lower court found that the steam engine in question was of the same material and quality, and is used for practically the same purposes as a traction engine. Paragraph 257 of the said Tariff Act provides for duties upon "other machinery and detached parts not otherwise provided for: (a.) Of copper and its alloys; (b) of other material " Paragraph 246 of said law provides for a tariff upon "locomotives, including tenders and traction engines of all kinds using steam or other power." Rule 13 of the same law provides that articles not enumerated in the tariff shall, for the application of duty, be assimilated to those which they most closely resemble, etc. Rule 15 provides that—

"Each and every imported article not enumerated in this Act, which is similar, either in material, quality, texture, or the use to which it may be applied, to any article enumerated in this Act as chargeable with duty, shall pay the same rate of duty which is levied upon the enumerated article which it most closely resembles in any of the particulars before mentioned."

The lower court found that the engine in question was similar to, and practically the same as a traction engine; it was declared to be "of the same material, quality, and is used for the same purposes, except the purpose of draft." However, the rules of assimilation have no application when the articles are enumerated under some provision of the law. The portable engine in question certainly can not be classified under paragraph 246, for the reason that said article includes locomotives, etc., and traction engines of all kinds, using steam or other power. The portable engine in question is neither a locomotive nor a traction engine and these are the only articles included in the said paragraph 246. There is no other provision of the law which enumerates portable engines, and therefore the same must be included under paragraph 257 of Act No. 230 of the laws of the Commission.

We are, therefore, of the opinion, and so hold, that the classification of the engine in question by the 'Collector of Customs should be sustained. The judgment of the lower court is therefore hereby reversed and the case is hereby ordered to be returned to the Court of First Instance of the city of Manila, with directions that judgment be entered in accordance herewith, and without any finding as to costs. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

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