

MACONDRAY & CO., PLAINTIFF AND APPELLEE, VS. THE UNITED STATES, DEFENDANT AND APPELLANT.*G. R. No. 2838. August 07, 1907*

Ponente: JOHNSON, J.

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The plaintiff imported from the United States a certain quantity of hams. These hams were packed in salt and the salt was assessed the same as the hams, not separately, as the plaintiff claims should have been done. The plaintiff claimed that the salt was used in the same way, for the purpose of packing the hams, as excelsior is used to fill up the vacant spaces not used by the contents, and to keep the ham from spoiling. The plaintiff also claimed that salt was the usual packing for hams, the same as sawdust and excelsior is for packing other goods. The Acting Collector of Customs for the Philippine Islands classified the hams under paragraph 270 of the Tariff Revision Law of 1901 at \$3 per hundred kilos, including the salt, and charged duty upon the weight of the hams and salt.

The plaintiff claims that the Acting Collector of Customs had no right to charge duty upon the total weight of the hams and salt, but upon the hams only. From the decision of the Collector of Customs the plaintiff appealed to the Court of Customs Appeals. The Court of Customs Appeals after hearing the evidence, rendered the following decision:

"This is an appeal by Messrs. Macondray & Co. against the decision of the Collector of Customs for the Philippine Islands against the method of arriving at the 'net weight' referred to in paragraph 270 of the present Tariff Law, in order to determine the duty which should be paid on certain hams imported in barrels, packed with salt to preserve said hams, said hams paying \$3 per 100 kilos of net weight. The examiner considered, as part of the net weight of the hams, the weight of the salt contained in the barrels, while the appellants contend that by net weight should be understood the weight of the hams exclusive of the weight of the salt. It appears that the question before the court reduces itself to whether or not the weight of the salt contained in the barrels should be considered as being a part of the net weight of this article.

"Rule 18 of the tariff in force defines the method of arriving at net weight as follows: "

'In all cases in which dutiable merchandise shall by its tariff number be dutiable upon net weight, the dutiable weight of such merchandise shall not include the weight of any exterior cover, receptacle, package, wrappers, or packing, but shall include the interior or immediate receptacles.'

"According to this rule the weight of the interior receptacle of the article should be included in determining the net weight for the assessment of duties. May the salt contained in the barrel in which the hams in question were packed be considered as interior receptacle of the hams?

"The court is of the opinion that even under the most liberal interpretation which might be given to this rule, it could never be understood as including the salt in which the hams were packed as interior receptacle, as far as the article in question is concerned.

"For this reason, the court holds that the net weight in this case should be understood as the weight of the hams

exclusive of the weight of the salt contained in the barrels in which said hams were imported, and orders that the excess of duty paid by the importers, as the weight of the salt, shall be refunded to them."

From this decision the Acting Collector of Customs appealed to this court. The Acting Collector of Customs alleges that the question involved in this case had been already passed upon in Tariff Revision Circular No. 35. An examination of Tariff Revision Circular No. 35 shows that on December 14, 1901, the then Collector of Customs held that in order to obtain the dutiable weight of hams packed in salt there should be deducted the weight of the barrel, case, or exterior packages containing the hams, and that what should remain should be considered "the dutiable net weight of the hams." Thus the Collector of Customs held that the salt in which the hams were packed within the barrel or other exterior package should be weighed with the hams in order to ascertain the net weight of the hams.

Paragraph 270 of the Tariff Law of the Philippine Archipelago provides that "upon hams, bacon, and other meats, smoked or cured, also sausages not in cans" shall be collected \$3 per 100 kilos, net weight.[1] The record discloses the fact that the hams were inclosed within a canvas sack or cover, and the salt was packed around them in barrels.

Rule 16 of the regulations to be applied to levying duty on packing, packages, and receptacles, provides that "exterior common packing, packages, receptacles, and coverings of imported merchandise in use and imported with such merchandise, shall be dutiable under their corresponding paragraphs of the tariff except in the case of goods dutiable by gross weight or ad valorem." This rule was invoked by the Collector of Customs for the purpose of levying duty upon the salt and hams at the same rate. An examination of the language of this rule will show, however, that exterior common packing, etc., and coverings of imported merchandise in use and imported with such merchandise shall be dutiable under their corresponding paragraphs of the tariff when the article imported is dutiable on its net weight. It would appear, therefore, that this rule excludes the idea of including salt as a part of the net weight of the hams. This rule provides that when the article imported is dutiable by gross weight or ad valorem, then the exterior packing, etc., may constitute a part of the weight of the article.

By reference to said rule 18 it will be seen that the dutiable weight of imported merchandise shall not include the weight of any exterior covering, etc., but shall include the interior or immediate receptacles. The immediate receptacle of the hams was the canvas sack or cover, and therefore we are of the opinion that rule 18 should be applied in ascertaining the net weight of the hams, and that the salt should not be included as a part of the immediate receptacle of the hams. We are persuaded that this interpretation is justifiable for the reason that Congress, in its amendment of said paragraph 270 above quoted (10 Fed. Stat., Annot., p. 216), provided "that the salt ordinarily used for the packing of any of the articles enumerated in this paragraph shall be classified under paragraph 94 (a).[1] Paragraph 94 provides for a duty upon salts. And, moreover, as was said in the case of *Calder & Company vs. The United States*[2] (G. R. No. 2836) tariff provisions should be given a plain, ordinary interpretation of the language used; and what importer or merchant, upon reading said paragraph 270 together with the regulations to be applied to levying duty, etc., would be led to believe that the salt in which hams were imported should be included in the net weight of the hams?

We are of the opinion that the judgment of the lower court, holding that the net weight of the hams was the weight of the hams exclusive of the salt and the barrel in which they were packed, should be sustained. Therefore this cause is hereby remanded to the Court of First Instance of the city of Manila with direction to enter a judgment in accordance with the foregoing decision. So ordered.

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

[1] Act No. 230, I Pub. Laws, 608.

[1] IV Pub. Laws., 213

[2] P. 334, post.

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