

LUTZ & CO., PLAINTIFFS AND APPELLANTS, VS. THE COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.

G.R. No. 3648. September 05, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

On June 1, 1905, the appellants, Lutz & Co., imported from France a Shipment of silk and cotton textiles, which shipment left France in March, 1905. They declared the value of the goods at 0.55 of a franc per meter, less 20 per cent and 2 per cent, or at about 0.43 of a franc. The customs officers appraised the value of the goods at 0.55 of a franc, less 2 per cent, or about 0.54 of a franc! From the decision of the Collector sustaining this appraisal Lutz & Co. appealed to the Court of First Instance.

On the 14th of July, 1905, Lutz & Co. made another importation of the same kind of goods, which left France about June 1. They declared this entry at 0.57 of a franc per meter, less 20 per cent and 2 per cent, or about 0.44 of a franc. The customs officers appraised the goods at 0.57 of a franc, less 2 per cent, and from the decision of the Collector confirming this appraisal the appellants appealed to the Court of First Instance and the case was tried in that court and the appraisal of the Collector sustained. From the decision of the court Lutz & Co. have appealed to this court.

Section 177 of Act No. 355 provides as follows :

Whenever imported merchandise is subject to an ad valorem rate of duty, or to a duty placed upon or regulated in any manner by the value thereof, 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 in the principal markets of the country from whence imported, and in the condition in which such merchandise is there bought and sold for exportation to the Philippine Islands * * *."

It thus appears that the only question in the case is, What was the market value of the first shipment when it left France in March, 1905, and of the second shipment when it left France about June 1?

Upon this point the appellants in their brief say that— "There is in the record not one word of evidence to show the value of such goods in France in March and June, 1905, except this testimony of Mr. Dessauer."

This witness was the only one produced by the appellants. While in his direct examination he testified that the appellants paid for the goods the amounts for which they declared them in the customs, yet on cross-examination it appeared that he had on August 10, 1906, been in the employ of the appellants one year and four months; that is, he had been in their employ since April, 1905.

Both of the shipments were ordered by the appellants before that time. It also appeared from his testimony that his duties with the appellants was the performance of their custom-house work; that his testimony in regard to prices was derived from the books of the company; that he could not tell by an examination of the samples their comparative value, and that he knew nothing personally about such value.

The evidence presented on the part of the Collector was that of the officers engaged in the appraisal of such merchandise. They testified that the average price of this merchandise was about 0.55 of a franc a meter; that it ran as low as 0.535 of a franc a meter, but that the average price to merchants who were buying in large quantities was 0.55 of a franc per meter. It appeared, however, that their information was derived from the records of importations of these articles by other firms and from invoices, confidential invoices, and private invoices.

The principal objection of the appellants is that the documents introduced in evidence in support of the testimony of the Collector's witnesses related to importations made in 1903, 1904, and 1905, and that those relating to importations in 1903 and 1904 could have no tendency whatever to prove the value of the articles in 1905.

In our opinion the testimony of the appellants and of the Collector is of the same character. The only knowledge that the witnesses on either side had was the knowledge which they derived from the examination of papers relating to importations. That of the appellants' witness was limited to importations made by his own house; that of the witnesses of the Collector to importations made by several different commercial houses. We do not consider that there is any competent evidence in the case to show the actual price paid by Lutz & Co. for this merchandise. Any information which the witness Dessauer had he derived from an examination of the books. His duties were limited to work in the custom-house. No one of the appellants was called as a witness to testify as to the actual price paid for this property.

While it is true that most of the importations made by other firms relate to years prior to 1905, yet there is one importation, No. 40911, the invoice of which is dated February 13, 1905, which was within a month, probably, of the time the first shipment left France. That invoice shows that the value of the goods was 0.68 of a franc, less 20 per cent,

If we assume that evidence of this character is competent—that is, evidence furnished by invoices of the same goods imported at about the same time—we then have as to the first shipment an invoice presented by the appellants and one presented by the Collector. It becomes important, therefore, to know where the burden of proof rests in cases of this character. Section 286 of said Act No. 355[1] provides that the decision of the Collector of Customs at a subport of entry as to the rate and amount of duties shall be final and conclusive unless the owner give notice in writing to the Collector of Customs of his objection thereto. It also provides that the decision of the Insular Collector upon such protest shall be final and conclusive unless an appeal is taken to the Court of Customs Appeals. The Court of Customs Appeals having been abolished, the appeal now goes to the Court of First Instance. When such an appeal comes on for hearing in that court, we apprehend that if the parties appear and neither one introduces any evidence, the judgment of that court would necessarily be one affirming the decision of the Collector. In other words, there is a presumption upon such an appeal that the decision of the Collector is correct, and the burden is on the appellant to show the contrary. In the case of *Arthur vs. Unkart* (96 U. S., 118) the court said at page 121:

"When an appeal is taken from his decision, the decision of the collector ceases to be conclusive and the same is true of the decision of the Secretary of the Treasury. These officers are, however, selected by law for the express purpose of deciding these questions. They are appointed and required to pronounce a judgment in each case, and the conduct, management, and operation of the revenue system seem to require that their decisions should carry with them the presumption of correctness. This rule is not only wise and prudent, but is in accordance with the general principle of law that an officer acting in the discharge of his duty upon the subject over which jurisdiction is given him is assumed to have acted rightly."

It is true that in that case the question related to the classification of the merchandise and not to its value, but an examination of the laws in force in the United States and the decisions of the Supreme Court thereon will show

that upon the question of value of imported merchandise the decision of the collector is not only presumed to be correct but it is made final in the absence of fraud. In the case of *Muser vs. Magone* (155 U. S., 240) the court said at page 246:

"The conclusiveness of the valuation of imported merchandise made by the designated officials in the absence of fraud is too thoroughly settled to admit of further discussion."

While the Customs Administrative Act, above cited, in force in these Islands does not seem to give to the decision of the Collector such conclusive effect, yet it can not be doubted that there is the same presumption in regard to correctness of his ruling upon the question of value as there is to the correctness of his ruling upon the question of classification.

We do not think that the appellants in the court below introduced sufficient evidence to overthrow this presumption, and the judgment of the court below is accordingly affirmed, with the costs of this instance against the appellant. So ordered.

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

[1]I Pub. Laws, 853.

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