

GO HO LIM, PLAINTIFF AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLANT.

G. R. No. 43148. January 30, 1937

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

The question submitted to this court for decision is a question of law which consists in determining whether or not the incorrect declaration of the weight of imported merchandise, made in an application for a special permit for the immediate delivery thereof, comes within the meaning of the word "entry," as used in section 1290 of the Revised Administrative Code, for the purpose of determining whether or not a surcharge should be imposed upon an importer who has incorrectly declared the weight of imported merchandise.

Go Ho Lim appealed to the Court of First Instance of Manila from the decision of the Collector of Customs imposing upon him a surcharge of customs duty, and this appeal was taken by the Collector of Customs from the decision of the Court of First Instance reversing his decision.

The following facts are undisputed: That on May 5, 1933, Go Ho Lim applied for a special permit for the immediate delivery to him of 800 cases of fresh eggs imported from Shanghai. In the application, Exhibit A, he stated that the gross and net weight of the 800 cases of eggs was about 25,400 kilos. The special permit was granted on the same date (Exhibit E); but, upon verification of the declared weight by the customhouse examiner, it was found that the 800 cases of eggs weighed not 25,400 but 29,237 kilos. For this reason, the chief appraiser refused to deliver the merchandise and required Go Ho Lim to file the original entry and importer's declaration and to deposit the corresponding duties plus an additional sum to answer for the payment of a possible fine. On May 8, 1933, Go Ho Lim filed the original entry and importer's declaration, Exhibit B, stating the true weight of 29,237 kilos of said 800 cases of eggs. The chief appraiser, however, informed Go Ho Lim that he would not turn over the cases to him unless the latter stated the originally declared weight of 25,400 kilos, which Go Ho Lim did by erasing the figures 29,237 from the sheet, Exhibit B, in order to obtain delivery of said cases of eggs, fearing that the eggs might be spoiled. Somebody in the customhouse, in turn, erased the figures 25,400, substituting them with the figures 29,237, and there being a difference of more than 10 per cent between the weight originally declared and the true weight, a surcharge of P613.92 was imposed upon Go Ho Lim pursuant to the provision of section 1290 of the Revised Administrative Code. Go Ho Lim paid said surcharge under protest.

It is disputed by the parties whether the application for the special permit, Exhibit A, containing the misdeclared weight of the 800 cases of eggs, comes within the meaning of the word "entry" used in section 1290 of the Revised Administrative Code, or said word "entry" means only the "original entry and importer's declaration." The court below reversed the decision of the Insular Collector of Customs on the ground that the provisions of section 1290 of the Revised Administrative Code refer to the regular consumption entry and not to a provisional declaration made in an application for a special permit, as the one filed by the appellee, to remove the cases of eggs from the customhouse.

This court is of the opinion that certainly the application, Exhibit A, cannot be considered as a final regular entry of the weight of the 800 cases of eggs imported by the appellee, taking into account the fact that said application sought the delivery of said 800 cases of eggs "from the pier after examination," and the special permit granted, Exhibit E, provided for "delivery to be made after examination by the appraiser." All the foregoing, together with the circumstance that the appellee had to file the regular consumption entry which he bound himself to do, as shown by the application, Exhibit A, logically lead to the conclusion that the declaration of the weight of the 800 cases of eggs made in said application, is merely a provisional entry, and as it is subject to verification by the customhouse examiner, it cannot be considered fraudulent for the purpose of imposing a surcharge of customs duties upon the importer.

The judgment appealed from, ordering the appellant to refund the sum of P613.92 to the appellee, is affirmed, without costs. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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