

FROELICH & KUTTNER, PLAINTIFFS AND APPELLANTS, VS. THE COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.

G.R. No. 4316. October 01, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

These three cases were tried together in the court below and in this court and involve the same question.

The plaintiffs and appellants imported certain cotton undershirts. These were classified by the Collector of the port of Manila under paragraph 125 (b) [of Act No. 230], which in part is as follows:

"125. Knitted goods, even with needlework:

* * * * *

" (b) Jerseys, undershirts, and drawers, N. W. kilo

* * * * *

" NOTE—The articles classified under this paragraph shall have no surtax for the making-up, but shall be liable to such other surtaxes as may be applicable."

To this classification no objection is made by the importers. This paragraph 125 is found in class 4, which relates to cotton and its manufactures, and in group 3 of that class, which relates to textiles. In accordance with Rule B of the rules found under group 3, the collector of the port of Manila imposed a surtax of 30 per cent. That rule is as follows:

"RULE B. Articles included in this group, which are within the undermentioned conditions, shall be liable to the following surtaxes (see rules 2 to 12, inclusive) :

* * * * *

"(b) Textiles embroidered by hand or by machine after weaving or with application of trimmings shall be liable to the duties leviable thereon, plus a surtax of thirty per centum."

Against the imposition of this surtax the importers protested. Their protest was overruled by the collector, they appealed to the Court of First Instance where judgment was entered against them, and they have again appealed to this court.

The collector based his imposition of the surtax upon the ground that upon these garments there was "an application of trimmings."

It appears that the undershirts in controversy are knitted of cotton yarn, and a parti-colored border knitted in an ornamental way is sewed around the collar and down the opening in the front of the undershirts. The undershirt is knitted upon a machine, and the border is also knitted with another machine. The evidence shows that, without

the border in question, the shirt could not be worn without danger of unraveling. One witness testified as follows:

"They are quite necessary; if they were not put on, the undershirt would unravel. In a commercial sense they are always made in this way, simply with a band; the band is absolutely necessary for this kind of goods."

The evidence also shows that these bands are knitted and not plaited. No evidence was presented by the Government to contradict this testimony, and we think it must be held that the shirts without this band were not completed garments.

The paragraph in the Act immediately preceding Rule B is as follows:

"The provisions of this rule shall not apply to knitted stuffs, tulles, laces, and blondes (see rule 5), to ribbons (rule 6), or to trimmings (rule 7)."

It will be observed that Rule B, above quoted, also refers to rules 2 to 12, inclusive. Rule 7, thus twice referred to in this connection, is found in the first part of the Act and is as follows:

"RULE 7. Trimmings.—Trimmings shall be dutiable on the total weight, as if exclusively composed of the apparent or visible textile material.

"Trimmings composed on their apparent or visible part of various textile materials shall be subject to the corresponding duties of the class comprising the material most highly taxed. When the predominating component material consists of metallic threads of any kind, the trimmings shall be dutiable according to Class Seven.

"Trimmings are distinguished from ribbons and galloons by the latter being real textiles, with warp and weft, while trimmings are plaited."

After this rule 7 come rules 8, 9, and 10. The first paragraph of the last is as follows :

"RULE 10. Embroidery.—Textiles embroidered by hand or machine after weaving or with application of trimmings shall be liable to the duties leviable thereon, plus the surtaxes established in every case."

It will be noticed that the language in this paragraph of rule 10 is identical with the language of Rule B (b) under which this surtax was imposed. It can not be doubted that the word "trimmings," where it is used in said Rule B (b), in the paragraph immediately preceding that rule, in rule 10 and in rule 7, must be given the same meaning in each. The paragraph immediately preceding Rule B expressly refers to rule 7. Rule B (b) contains an exact copy of the language of the first paragraph of rule 10, which is found following rule 7 in the same page. The claim of the importers is that, under rule 7, nothing can be called a trimming which is not plaited. The theory of the collector is that anything which ornaments the garment, whether it is plaited or not, constitutes a trimming, and the evidence in this case shows that undershirts made exactly as the ones in question are, with the exception that the band is plain and not colored, are not subjected to the surtax of 30 per cent; in other words that, if the band in this case had not been red but had been of the same color as the undershirt, no surtax would have been imposed. The expert from the customs testified as a witness for the Government as follows:

"Q. The fact is the distinction is made purely and simply upon the question of color.—A. Yes; having improved the appearance of the undershirt."

After an examination of the various provisions of the Act, we have come to the conclusion that the protest of the importers must be sustained.

The use of the phrase "with application of trimmings," found both in rule 10 and in Rule B (b), indicates that the trimming is something separate and distinct from the garment and not a necessary part of it.

Moreover, the question is not what is the ordinary meaning of the word "trimmings," but what is the meaning which the law has given to that word. An article completely made may be ornamented by the attachment of silk ribbons. In the ordinary use of the word "trimmings," it may be trimmed with ribbons, but in such case it would seem that the ribbons, although they trim the garment, should not be classified under rule 10 as an application of trimmings, but rather under rule 6, which expressly refers to ribbons, and provides for the manner of taxing them. Rule 7, above quoted, in terms makes a distinction between trimmings and ribbons.

The judgment in each one of these cases is reversed and they are remanded to the Court of First Instance with direction to enter judgment in favor of the importers in accordance with the views herein expressed. No costs will be allowed to either party in this court. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.

MOTION FOR REHEARING.

OCTOBER 29, 1908.

WILLARD, J.:

The Government has moved for a rehearing in this case. The motion, so far as it relates to the merits of the matter here involved, is but a reargument of the questions, heretofore argued in the briefs of counsel, and decided. It must, therefore, be denied.

It is claimed by the Solicitor-General that the court below in deciding the case took into consideration other similar cases that had been decided either in the Court of First Instance or in the Court of Customs Appeals, and that all of the evidence introduced in all of those cases is properly a part of the record in this case and should have been brought to this court, and he moves to have the case remanded, as we understand it, for the purpose of having that evidence attached. None of the evidence in any of these other cases was actually offered or received in the trial of this case in the court below, but the Solicitor-General says that it is the practice of the Board of General Appraisers of the United States, in deciding questions to take into consideration the evidence in other similar cases already decided by it. Whatever may be the practice in the administrative department of the Government in this matter, it can have no application to a judicial proceeding. The suggestion that all the evidence offered in all of the undershirt cases heretofore decided in this jurisdiction is legally a part of the evidence in this case, can not be admitted.

At the end of the decision heretofore rendered is found the following statement:

"An article completely made may be ornamented by the attachment of silk ribbons. In the ordinary use of the word trimmings, it may be trimmed with ribbons, but in such case it would seem that the ribbons, although they trim the garment, should not be classified under rule 10 as an application of trimmings, but rather under rule 6, which expressly refers to ribbons, and provides for the manner of taxing them. Rule 7 above quoted in terms makes a distinction between trimmings and ribbons."

The Solicitor-General says that this statement was not called for by anything in the case then before the court, and that the question, whether a silk ribbon was a trimming or not, was not raised in the court below, was not argued by either of the counsel at the hearing in this court, and was not properly the subject of any determination in the action. There is force in this contention, and in order to avoid any misunderstanding, we now state that the question discussed in the paragraph above cited is not considered by the court as being decided, but that it is still open for consideration and resolution when it may come before the court in the future. The motion is denied.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.

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