

COMMISSIONER OF CUSTOMS, PETITIONER, VS. COURT OF TAX APPEALS AND JARDINE DAVIES, INC., RESPONDENTS.

G.R. No. 55525. May 10, 1990

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is a petition for review of the decision dated October 16, 1980 of the Court of Tax Appeals in CTA Case No. 2634 modifying the decision dated September 27, 1974 of the Commissioner of Customs and changing the classification of the private respondent's importation of refractory materials resulting in the reduction of the tariff thereon.

The Court of Tax Appeals made the following findings of facts:

“As borne out by the records, petitioner Jardine Davies, Inc. (formerly Theo H. Davies & Co., Far East, Ltd.) is a corporation organized and existing under the laws of the Philippines, with principal office and place of business at Jardine Davies Building, 222 Buendia Avenue, Makati, Metro Manila. It was, and still is, an importer of refractory materials supplied by Morgan Refractories Ltd., in Liverpool, England. On two separate occasions, petitioner imported refractory materials abroad (sic) the S/S ‘Puerto Princesa’ and the S/S ‘Ebani,’ which arrived at the Port of Manila on 8, 1973 and June 22, 1973, and covered by Entry Nos. 28674 and 89634, both series of 1973. Alleging over-assessment and payment of customs duties and advance sales tax by the Collector of Customs of Manila on these two separate shipments, petitioner filed Manila Protest No. 8902 and Manila Protest No. 8903.

“The particulars of the shipments involved in Manila Protest Nos. 8902 and 8903, as stated in the decision of the Collector of Customs of Manila dated April 8, 1974, are as follows: (pp. 37-38, Customs records).”

Manila Protest No. 8902

“That a shipment, consisting of 182 packages of refractory constructional goods marked ‘T.H.D. 869 E. Makati, Rizal,’ consigned to the herein protestant arrived at this Port on May 8, 1973 from Liverpool aboard the S/S ‘Puerto Princesa,’ Reg. No. 777, under the Bill of Lading No. M-51; that the said shipment was declared under Entry No. 28674, Series of 1973, under Tariff Heading 69.02 at 10% ad valorem; however, the customs appraiser concerned, appraised the said shipment under Tariff Heading 38.19-B at 50% ad valorem; and because of this the amount of P54,587.00, representing additional duty, tax and other charges, was paid as evidenced by Central Bank O.R. No. 205459 dated June 19, 1973. This assessment was contested by the protestant claiming that the duty and tax should have been based on Tariff Paragraph 69.02 at 10% ad valorem and the corresponding Protest was filed for the refund of the sum of FIFTY-FOUR THOUSAND FIVE HUNDRED AND EIGHTY-SEVEN (P54,587.00) PESOS; and

MANILA PROTEST NO. 8903

“That a shipment, consisting of 126 packages of refractory constructional goods marked ‘T.H.D. 870-E, Makati, Rizal,’ consigned to the herein protestant arrived at this Port on June 16, 1973 from Liverpool aboard the S/S ‘Ebani,’ Reg. No. 1027, under Bill of Lading No. M-138; that the said shipment was declared under Entry No. 39634, Series of 1973, under Tariff Heading 69.02 at 10% ad valorem; however, the appraiser concerned appraised the said shipment under Tariff Heading 38.19-B at 50% ad valorem; and because of this, the amount of P19,967.00, representing additional duty, tax and other charges, was paid as evidenced by Central Bank O.R. No. 205493 dated June 22, 1973. This assessment was contested by the protestant claiming that the duty and tax should have been based on Tariff Paragraph 69.02 at 10% ad valorem and the corresponding Protest was filed for the refund of the sum of NINETEEN THOUSAND NINE HUNDRED AND SIXTY-SEVEN (P19, 967.00) PESOS.”

“The parties are not in dispute on the computation of the customs duty and advance sales tax paid by, or amount refundable to, petitioner as the case maybe. As itemized by petitioner, which is not disputed by respondent, the following is the computation of the amounts of customs duty and advance sales tax being claimed by petitioner as refundable in case the shipments in question should be classified under Tariff Heading 69.02 at 10% ad valorem as claimed by it instead of Tariff Heading 38.19-B at 50% ad valorem as applied by respondent:

126 pkgs. Refractory Materials ex SS Ebani, B/L No. M138, Reg. #1027 Entry No. 39634 (1973) - O/R No. 205493 - P29, 725. 00

10% 50% Difference

CUSTOMS DUTY P4, 590.00 P22,951.00 P18,361.00

ADVANCE SALES TAX 4,828.00 6,434.00 1,606.00

P9,418.00 P29,385 .00 P19,967.00

vvvvvvvv vvvvvvvvv vvvvvvvvv

182 pkgs. Refractory Materials ex SS PUERTO PRINCESA, B/L No. M51, Reg. # 773 ENTRY NO. 38674 (1973) - O/R No. 205459 - P83,346.00

10% 50% Difference

CUSTOMS DUTY P12, 549.00 P62,744.00 P50,195.00

ADVANCE SALES TAX 15,172.00 19,564.00 4,392.00

P27,721.00 P82,308.00 P54,587.00”

vvvvvvvv vvvvvvvvv vvvvvvvvv

(Emphasis supplied; pp. 26-29, Rollo).

On April 8, 1974, the Collector of Customs of Manila dismissed the protests for lack of merit. A motion for reconsideration was filed on April 17, 1974, but it was denied.

Since private respondent’s appeal to the Commissioner of Customs likewise failed, the private respondent filed a petition for review in the Court of Tax Appeals (CTA Case No. 2634).

On October 16, 1980, the Court of Tax Appeals rendered a decision modifying the decision of the Commissioner

of Customs by reclassifying the importation as falling under Classification No. 68.07 of the Tariff and Customs Code subject to ad valorem duty of 20%, instead of Classification No. 38.19 with ad valorem duty of 50%, and ordering the Commissioner of Customs to refund the excess payment made by the importer. The dispositive portion of the Court of Tax Appeals' decision reads:

“WHEREFORE, the decision appealed from is modified. Respondent Commissioner of Customs is hereby ordered to refund to petitioner the sum of P51,417. 00. Without pronouncement as to costs. ” (p. 39, Rollo.)

Expectedly, the Commissioner of Customs filed a petition for review.

The only issue in this case is whether the imported refractory materials fall under Classification No. 68.07 at 20% ad valorem duty as held by respondent Court of Tax Appeals or under Classification No. 38.19-B at 50% ad valorem duty, as alleged by the Commissioner of Customs.

Section 38.19 of the Tariff and Customs Code provides:

“Section 38.19 - Chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included;

“A. Prepared catalysts, hydraulic brake fluids,

and anti-oxidant retarders for processing or

compounding rubber products -

ad valorem 20%

“B. Other - ad valorem - 50%”

On the other hand, Section 68.07 provides:

“Section 68.07 - Sag wool, rock wool and similar mineral wools; exfoliated vermiculite; expanded clays, foamed slag and similar expanded mineral materials; mixtures and articles of heat-insulating, sound insulating, or sound-absorbing mineral materials, other than those falling under Heading No. 68.12 or 68.13, or in Chapter 69 -- ad valorem 20%.” (Underlining supplied.)

Refractory materials are described in the Kent Handbook on Design and Production, 12th Edition, as follows:

“Refractories are structural materials used at high temperatures to [sic] industrial furnaces. They are supplied mainly in the form of brick of standard sizes and of special shapes. Refractories also include refractory cements, bonding mortars, plastic firebrick, castables, ramming mixtures, and other bulk materials such as dead-burned grain magnesite, chrome or ground ganister and special clay.’ ”(p. 65; Rollo.)

The materials included under classification 68.07 of the Tariff and Customs Code are:

“Slag wool and rock wool (e.g. of granite, basalt, limestone or dolomite) are obtained by melting one or more of these constituents and converting a stream of the resulting liquid into fibers, usually by a blast of steam or compressed air or by centrifugal action.

“The mineral wools of this heading, like the glass wool of heading 70.20, have a flocculent or fibrous appearance. They differ from the latter by their chemical composition (see note 3 to Chapter 70), while their fibres are generally shorter and not as white in colour.

“Expanded or exfoliated vermiculite is obtained from vermiculite (heading 25.32) by heat treatment which causes a very large expansion of the material, sometimes up to thirty-five times its original volume.

“The heading also includes the expanded forms of perlite, chlorites, obsidian, etc., similarly obtained by heat treatment. These generally consist of very light-weight spheroidal grains. Perlite activated by heat treatment is in the form of shiny white microlamellar powder and is classified in heading 38.03.

“Expanded clays are made either calcining specially selected clays, or by calcining a mixture of clays with other materials (e.g. sulphite lye). Foamed slag is made by adding small amounts of water to molten slag, and should not be confused with granulated slag which has a much higher density; the latter is made by pouring molten slag into water and is classified in heading 26.02.

“All the above materials are incombustible and excellent heat and sound-insulating products. The heading includes them even when in bulk.

“xxx xxx xxx.

“Subject to the tolerances concerning the asbestos content (referred to below), this heading also covers heat-insulating, sound-insulating or sound absorbing mixtures of minerals/materials in bulk, e.g. mixtures composed essentially of kieselguhr, siliceous fossil meals, magnesium carbonate, etc., often with added plaster, slag, powdered cork, sawdust or wood shavings, textiles fibres, etc. The mineral wools described above may also form part of such mixtures which, on the mass, are used as packing materials in the insulation of ceilings, roofs, walls, etc.” (Emphasis ours; pp. 1514-1515, Commentaries on the Revised Tariff and Customs Code of the Philippines, Vol. II, 1984 Revised Edition, Montano A. Tejam.)

Fernando Tecson, Jr., Jardine Davies’ Mills Supplies Manager, testified that the refractory materials imported by the private respondent are “used in anything wherein there is a need to contain heat and are structural materials used at high temperatures in industrial furnaces” (p. 68, Rollo).

The ruling of the Court of Tax Appeals that the refractory materials imported by Jardine Davies fall under classification 68.07 of the Tariff and Customs Code is based on an earlier decision of the Tariff Commission in TCC No. 2932 dated September 22, 1972, involving also the classification of refractories, the pertinent portion of which reads:

“It will be noted that both castable and plastic refractories are made from the common materials used in firebrick and other refractory products, namely: fireclay, silica, magnesite, dolomite, etc., all of which are mineral products falling in Chapter 25 of the Code.

“Heading 68.07 of the Tariff Code provides for, among others, compounded heat resisting or heat or sound insulating mineral substances or articles thereof, not fired, other than substances and articles with a basis of asbestos. The pertinent Brussels Explanatory Notes provide that the heading also covers compounded heat-resisting or heat or sound insulating mixtures of mineral materials imported in bulk provided they contain no asbestos (apart from certain specified tolerances).

“In view of the foregoing, subject articles are classified in heading 68.07 with rate of duty at 15% ad valorem.” (pp. 33, Rollo).

The Court of Tax Appeals further observed that subsequent importations of the same refractory materials of the private respondent were taxed under Classification No. 68.07, hence, an indication that succeeding customs commissioners acquiesced with the ruling or classification made in 1972 by the Tariff Commission.

“As a matter of fact, as discussed above, on subsequent importations of petitioner of the same refractory materials, respondent classified the said articles under Tariff Heading 68.07 with rate of duty at 20% ad valorem in accordance with TCC No. 2932 dated September 22, 1972 of the Tariff Commission, which apparently indicates acquiescence if not concurrence thereto. The same is true with respect to the position taken by petitioner as to the correct tariff classification of its importations. While contending that its two

shipments of refractory materials involved in this case are classifiable under Tariff Heading 69.02 at 10% ad valorem, petitioner's evidence, both oral and documentary, clearly and unmistakably prove the fact that they fall under Tariff Heading 68.07 at 20%, ad valorem." (Emphasis supplied; pp. 37-38, Rollo.)

Indeed, the Court is persuaded, after a careful perusal and comparison of Sections 38.19 and 68.07 that refractory materials are classifiable and taxable under Section 68.07 instead of Section 38.19.

WHEREFORE, finding no grave abuse of discretion in the decision elevated to review, the Court resolved to deny the petition to review for lack of merit. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.

Gancayco, J., on leave.

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