

**BEHN, MEYER & CO., LIMITED, PLAINTIFF AND APPELLEE, VS.
THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND
APPELLANT***G. R. No. 7987. September 11, 1913*

Ponente: MORELAND, J.

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On October 27, 1907, the plaintiff imported into the Philippine Islands fifty cases of .faience plates. The value as appraised for duty was \$1,291.15 United States currency. This was also the value stated in the consular invoice, dated Hamburg, August 29, 1907, presented at the time of the entry. According to this invoice the merchandise was purchased by the importer from one Arnold Otto Meyer of Hamburg, and, although shipped from that port, appears to have been placed on board ship at the port of Antwerp, Belgium. The back of this invoice has the statement that Arnold Otto Meyer was the agent of the purchaser, Behn, Meyer & Co., Limited, the importer.

Some time after the entry was liquidated, the importer filed a protest against said liquidation on the ground that a clerical error had been made in the preparation of the consular invoice, in that the person who had prepared it had mistaken the currency of the manufacturer's invoice for Dutch florins and converted it into marks at the rate of 1.70 marks per florin, whereas in fact the prices appearing in said manufacturer's invoice were in francs and should have so appeared. In its protest the importer made an offer to produce a corrected consular invoice, if necessary, and obtain the same from Europe without delay. No bond, how ever, was filed for the production of such corrected consular invoice as required by law and the regulations of the Bureau of Customs and the long established custom in such cases.

Thereafter a second consular invoice, alleged to be a correction of the first, was presented, issued at Antwerp, Belgium, in which the currency is stated in francs and Antwerp is given as the port of shipment. This invoice was not accepted by the Bureau of Customs as a correction of the invoice previously presented, for the reason that it had been consulated in a different country and by a different consul, the first one having been certified by the American consul at Hamburg, Germany, where, says the invoice, the goods were purchased by the importer.

Later a third consular invoice, issued, as was the first one, at Hamburg, and dated April 22, 1908, was filed as a substitute for the first one. In this invoice the currency shown is francs, which had been reduced to marks, and the port of shipment is given as Hamburg. This third invoice was not accepted by the Bureau of Customs for the reasons that; "In each of these three invoices, Arnold Otto Meyer appears as the seller of the merchandise on the faces of the documents and also in the briefs of the invoices, yet in each instance he has declared himself as 'agent of the purchasers.' All of which said invoices are, therefore, irregular for the reason that Arnold Otto Meyer cannot use a seller's invoice and act in the dual capacity of seller and agent of the purchasers in one and the same transaction. If, as a matter of fact, he is the agent of the purchasers in this transaction, then each of the invoices is defective, be cause no original invoice showing from whom he obtained the goods, and whence he obtained them and at what price, is attached to the invoice filed, as required by law. (See Tariff Decision Circular No. 863.)

"On comparison of a French commercial invoice, which forms part of the record (which may be the original bill of the item involved, and which gives Paris as the place of original sale) with the invoice from Antwerp, and the so called corrected invoice from Hamburg, it is found that the latter are merely copies of the commercial invoice. Consequently, the consulated copies of the French commercial invoice do not represent the value of the merchandise either at Antwerp, or at Hamburg the place of sale.

"In so far as the importer has failed in each instance to present an invoice which conforms with the law and the facts, the appraiser's return, based on an invoice filed at the time of entry, must be accepted."

The last two invoices not being in conformity with the law, the protest of the importer was overruled, it being held that no corrected consular invoice had been presented as required by law.

Plaintiff appealed to the Court of First Instance of the city of Manila from the decision of the Insular Collector of Customs overruling its protest, and that court, after hearing the case, reversed the decision of the Insular Collector of Customs and held that the Collector erred in accepting as correct the appraiser's return, as it was based upon an incorrect invoice.

Sections 2, 3, and 4 of the Act of Congress of June 10, 1890, as amended, known here as the Customs Administrative Act of the United States, are as follows:

"SEC. 2. That all invoices of imported merchandise shall be made out in the currency of the place or country from whence the importations shall be made, or, if purchased, in the currency actually paid therefor, shall contain a correct description of such merchandise, and shall be made in triplicate or in quadruplicate in case of merchandise intended for immediate transportation without appraisement, and signed by the person owning or shipping the same, if the merchandise has been actually purchased, or by the manufacturer or owner thereof, if the same has been procured otherwise than by purchase, or by the duly authorized agent of such purchaser, manufacturer, or owner.

"SEC. 3. That all of such invoices shall, at or before the shipment of the merchandise, be produced to the consul, vice-consul, or commercial agent of the United States of the consular district in which the merchandise was manufactured or purchased, as the case may be, for export to the United States, and shall have indorsed thereon, when so produced, a declaration signed by the purchaser, manufacturer, owner, or agent, setting forth that the invoice is in all respects correct and true, and was made at the place from which the merchandise is to be exported to the United States; that it contains, if the merchandise was obtained by purchase, a true and full statement of the time when, the place where, the person from whom the same was purchased, and the actual cost thereof, and of all charges thereon, as provided by this act; and that no discounts, bounties, or drawbacks are contained in the invoice but such as have been actually allowed thereon; and when obtained in any other manner than by purchase, the actual market value or wholesale price thereof, at the time of exportation to the United States, in the principal markets of the country from whence exported; that such actual market value is the price at which the merchandise described in the invoice is freely offered for sale to all purchasers in said markets, and that it is the price which the manufacturer or owner making the declaration would have received, and was willing to receive, for such merchandise sold in the ordinary course of trade in the usual wholesale quantities, and that it includes all charges thereon as provided by this act; and the actual quantity thereof; and that no different invoice of the merchandise mentioned in the invoice so produced has been or will be furnished to anyone. If the merchandise was actually purchased, the declaration shall also contain a statement that the currency in which such invoice is made out is that which was actually paid for the merchandise by the purchaser.

"SEC. 4. That, except in case of personal effects accompanying the purchaser [passenger], no importation of any merchandise exceeding one hundred dollars in dutiable value shall be admitted to entry without the production of a duly certified invoice thereof as required by law, or of an affidavit made by the owner, importer, or consignee, before the collector or his deputy, showing why it is impracticable to produce such

invoice; and no entry shall be made in the absence of a certified invoice, upon affidavit as aforesaid, unless such affidavit be accompanied by a statement in the form of an invoice, or otherwise, showing the actual cost of such merchandise, if purchased, or if obtained otherwise than by purchase, the actual market value or wholesale price thereof at the time of exportation to the United States in the principal markets of the country from which the same has been imported; which statement shall be verified by the oath of the owner, importer, consignee, or agent desiring to make entry of the merchandise, to be administered by the collector or his deputy, and it shall be lawful for the collector or his deputy to examine the deponent under oath, touching the sources of his knowledge, information or belief, in the premises, and to require him to produce any letter, paper, or statement of account, in his possession, or under his control, which may assist the officers of customs in ascertaining the actual value of the importation or any part thereof; and in default of such production, when so requested, such owner, importer, consignee, or agent shall be thereafter debarred from producing any such letter, paper, or statement for the purpose of avoiding any additional duty, penalty or forfeiture incurred under this act, unless he shall show to the satisfaction of the court or the officers of the customs, as the case may be, that it was not in his power to produce the same when so demanded; and no merchandise shall be admitted to entry under the provisions of this section unless the collector shall be satisfied that the failure to produce a duly certified invoice is due to causes beyond the control of the owner, consignee, or agent thereof: Provided, That the Secretary of the Treasury may make regulations by which books, magazines and other periodicals published and imported in successive parts, numbers or volumes, and entitled to be imported free of duty, shall require but one declaration for the entire series. And when entry of merchandise exceeding one hundred dollars in value is made by a statement in the form of an invoice, the collector shall require a bond for the production of a duly certified invoice."

These sections are applicable to the Philippine Islands by virtue of the provisions of section 20 of Act No. 355, known as the Philippine Customs Administrative Act, reading as follows:

"SEC. 20. If any case shall arise not provided for by this Act or by the regulations of the Insular Collector, or by the lawful decrees, orders or regulations existing at the passage of this Act and not by this Act repealed, the laws of the United States and the regulations of the Treasury Department of the United States in analogous cases, so far as the same are consistent with the provision of this Act, in the discretion of the Insular Collector, shall be followed and applied so far as they may be practicable."

Under these provisions the importer in this case was, from the facts appearing, under obligation to file with his entry a consular invoice from the place of manufacture or purchase, and having presented one certified at Hamburg, Germany, showing the merchandise in question to have been purchased there, the presumption was that the goods were either purchased or manufactured at that place. That being the case, the market value of said articles for tariff purposes was their value at Hamburg and not what they would be sold for in Gien, France, the alleged place of manufacture, where the importer claims to have purchased them.

Sections 174 and 177 of Act No. 355 are as follows:

"SEC. 174. In the assessment of duties upon merchandise subject to an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof, the kind of money expressed in the invoice shall be reduced to the currency of the United States at the rate of value of foreign money, as established by the Secretary of the Treasury of the United States upon the first days of January, April, July, and October of every year. The date of the invoices will indicate the value of the money, but the reduction of Insular or local currency of the United States shall be at the ratio fixed for the current quarter by the Civil Governor in accordance with law.

"SEC. 177. 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, or consigned to the Philippine Islands for sale, including the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the Philippine Islands; and if there be used for covering or holding imported merchandise, whether dutiable or free, any unusual article or form designed for use otherwise than in the bona fide transportation of such merchandise to the Philippine Islands, additional duty shall be levied and collected upon such material or article at the rate to which the same would be subject if separately imported. The words 'Value' or 'actual market value,' whenever used in any law relating to the appraisement of imported merchandise, shall be construed to mean the actual market value or wholesale price as above defined,"

Under these provisions the market value of imported articles is their value in the country of export, which is required to be shown upon a consular invoice covering the importation; and as the goods in this case were imported from Hamburg, Germany, as shown by the consular invoice certified at that place and by the statement of the shipper on the back thereof, it is clear that the correct dutiable value of the importation was that in Hamburg, Germany, and not the value at which the manufacturer would sell them at Gien. According to the testimony of Edward Plique, manager of the Comptoir Ceramique of Paris, France, the manufacturer of the plates imported, the prices appearing in the commercial or manufacturer's invoice were factory prices and they represented, with slight modification, the market value of the plates in France. It is not denied that the prices shown in the commercial invoice and the evidence attached thereto are more or less fairly representative of the market value of the articles in France; but it is clear that they do not show the market value of said goods either at Hamburg, where the goods were sold and consigned, or at Antwerp, where they were placed on board ship bound to the Philippine Islands.

It is obvious that if the goods are of French manufacture and were taken to Antwerp or to Hamburg and sold in either of these places, as the consular invoices in the case show, something must be added to their price in Paris, France, or at Gien, the place of manufacture, in order to arrive at the correct market value in either Hamburg or Antwerp. There should be added to their value at the place of manufacture the cost of transportation to Antwerp or Hamburg, as the case may be, the duties to which such goods would be subject upon their importation into Belgium or France for consumption therein, the cost of placing them in the market ready for sale in the particular country, and a reasonable profit to the seller.

In the case of *United States vs. Passavant* (169 U. S., 16), certain velvets were imported from Germany into the United States, which had been originally imported from another country in the gray and there subjected to processes of dyeing and finishing while under bond in that country. The invoices covering the merchandise gave certain figures as the net invoice value and contained also certain additional sums under the heading "German duty." This duty was a tax imposed by the German Government on the particular class of merchandise in question when it was sold by the manufacturers thereof for consumption or sale in the markets of Germany, but which duty or tax was remitted by the German Government when the merchandise was purchased in bond or consigned while in bond for exportation to a different country. The merchandise was purchased in bond for exportation to a foreign country at the net invoice price stated and the so called German duty was not paid upon its exportation. In the appraisement of the merchandise the appraiser, in determining the whole sale price thereof at the time of exportation in the principal markets of the country whence imported, decided that the dutiable value of the same was the net invoice value, plus the German duty. The importers filed a protest in accordance with the provisions of law, and the Board of General Appraisers acting thereon reversed the decision of the collector of customs on the ground that the so called German duty was not a lawful element of dutiable value. An appeal was taken to the United States circuit court for the southern district of New York, where the decision of the Board of General Appraisers was affirmed. That court certified two questions for review to the Supreme Court of the United States. The first one was whether or not the Board of General Appraisers had a right to inquire into and reverse the

collector's decision as to dutiable value, and the second, if it was decided that the Board of General Appraisers had such right, was the German duty lawfully included in the estimate of dutiable value?

In the decision of this case the court interpreted section 19 of the Act of Congress of June 10, 1890, and from which section 177 of Act No. 355 is adapted. That section reads as follows:

"That whenever imported merchandise is subject to an ad valorem rate of duty, or to a duty based 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 United States, in the principal markets of the country from whence imported, and in the condition in which such merchandise is usually [there] bought and sold for exportation to the United States or consigned to the United States for sale, including the value of all cartons, cases, * * *."

The court answered the first question in the affirmative and held "that what was to be ascertained was the actual market value or wholesale price of the merchandise as bought and sold in usual wholesale quantities at the time of exportation in the principal markets of the country from whence imported. This market value or price was the price in Germany and not the price after leaving that country, and the Act does not contemplate two prices or two market values. The certificate of facts states that the German duty is imposed on merchandise when 'sold by the manufacturers thereof for consumption or sale in the market of Germany;' and is collected when the finished product goes into consumption in Germany. As the tax accrues when the manufacturer sells, his wholesale price includes it, and the purchaser who buys these cotton velvets in wholesale quantities in the German markets pays a price covering the tax, and that is the price for the merchandise when bought and sold in these markets * * * but the laws of this country in the assessment of duties proceed upon the market value in the exporting country and not upon that market value less such remission or amelioration as that country chooses to allow in accordance with its own views of public policy. * * *

"The second question must also be answered in the affirmative."

It is to be noted in the case at bar that the value appearing on the first invoice presented by the importer at the customhouse was accepted as the dutiable value of the merchandise. If this value was incorrect, then it became the duty of the importer to treat such invoice as pro forma merely and file a bond for the presentation of a correct consular invoice. (United States vs. Frank & Lambert, United States Treasury Decision No. 31973; United States vs. Bennett & Loewenthal, id., No. 31975.) This was not done, but the importer sought to amend the original invoice by the presentation of a second invoice consulated in another consular district, and, on the hearing in the Court of First Instance, he was permitted, over the objections and exceptions of the appellant herein, to prove the value of the merchandise in France, a place and country from which no consular invoice covering the merchandise in question had been presented. The importer did not, however, offer any evidence as to the value of the goods either in Hamburg, the place from which they were originally invoiced, or in Antwerp, the place where they were alleged to have been placed on board ship bound to the Philippine Islands.

In the absence of a bond to produce a corrected consular invoice, and especially where a second and third invoice have been presented which are defective, the first invoice cannot be impugned by the importer presenting it, nor can he be heard to say that it is incorrect. If an importer desires to correct his own mistake relative to the contents of an invoice, he must comply with the requirements of the law and the rules and regulations of the department pertaining to such correction. It is presumed that every importer is familiar with the law and with the rules of the department. It is usually his own fault if he does not comply with them. While the result in this particular case may be a hardship on the importer and while, in many respects, it is clear that he has paid a higher duty than he ought to have paid if his contention as to the facts is true, nevertheless it appears that all that was a result of his own negligence or failure to meet properly the requirements of the law and the rules and regulations of the

department. Courts are not permitted to abrogate laws or destroy reasonable rules and regulations of a department. They were made, the one by the legislature, the other by officials with full power in the premises. Courts cannot abrogate the one unless unconstitutional, and it will not interfere with the other where they are just and reasonable.

The presumption is that the action of the Insular Collector of Customs was correct (par. 14, sec. 334, Code of Civil Procedure; *Vandiver vs. United States*, 156 Fed. Rep., 961; *Lazard vs. Magone*, 40 Fed. Rep., 662), and the burden being upon the importer to prove that his contention is right (*Chung Yune vs. Kelly*, 14 Fed. Rep., 639; *In re Austin*, 47 Fed. Rep., 873; *In re Sherman*, 49 Fed. Rep., 224), if he fails in sustaining this burden, the action of the collector stands. (*Tiffany vs. United States*, 105 Fed. Rep., 766; *In re Solvay Process Co.*, 134 Fed. Rep., 678; *United States vs. Knowles*, 122 Fed. Rep., 971; *Legg vs. United States*, 163 Fed. Rep., 1006.) When an importer challenges by legal steps the correctness of the assessment of a duty by the Collector of Customs, the question to be decided is not whether the collector was wrong, but whether the importer was right, the burden being on the latter to establish the correctness of his own contention. In view of the statutory requirement relative to the presentation of a consular invoice showing the value of the merchandise in the country in which it was purchased, sold or consigned for shipment to the Philippine Islands, the presumption that an invoice presented conforms to this requirement, the acceptance of the invoice presented and the appraisal of the merchandise in accordance therewith by the customs authorities, the failure of the importer to treat the invoice presented by him as pro forma and file a bond for the presentation of a corrected consular invoice as required by law, it cannot be said that the protestant has removed the burden laid upon him or that he has shown cause to overrule the decision of the Insular Collector of Customs.

The judgment of the trial court is reversed and the decision of the Insular Collector of Customs overruling the protest is affirmed.

Arellano, C. J., Torres, Johnson, Carson, and Trent, JJ., concur.

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