

LI TECK SAN, PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.*G.R. Nos. 33393-33398. December 20, 1930*

Ponente: AVANCEÑA, C.J.

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The facts in these six cases, according to the agreement of the parties are, substantially, as follows: (1) That on November 4, 1927, the plaintiff imported 33 boxes of undershirts into the port of Manila, declaring their value to be 6,750 yen, but the defendant appraised them at 8,081 yen; (2) that on the 22d of the same month, the plaintiff imported 21 boxes of undershirts, declaring their value to be 4,280 yen, but the defendant appraised them at 4,995 yen; (3) that on the 15th of December, 1927, the plaintiff imported 15 boxes of undershirts, declaring their value to be 3,880 yen, but the defendant appraised them at 4,460 yen; (4) that on the 22d of the same month, the plaintiff imported 48 boxes of undershirts, declaring their value to be 9,234 yen, but the defendant appraised them at 10,600 yen; (5) that on the 6th of January, 1928, the plaintiff imported 21 boxes of undershirts, declaring their value to be 4,627 yen, but the defendant appraised them at 5,600.36 yen; (6) that on the 16th of the same month, the plaintiff imported 10 boxes of undershirts, declaring their value to be 2,520 yen, but the defendant appraised them at 3,280 yen.

The plaintiff's values were based upon the consular invoices, while the defendant based his appraisal of the undershirts upon the prices declared upon the respective dates by wholesale importers of the same class of merchandise.

Consequently, the declared value of the undershirts as given by the plaintiff is more than 10 per cent less than the value appraised by the defendant. Therefore, in accordance with section 1290 of the Administrative Code, the defendant imposed a certain surcharge upon the plaintiff. The latter paid it under protest and appealed to the Court of First Instance of Manila. The lower court dismissed the appeal taken in the six cases holding them to be groundless. It is from this judgment that the plaintiff has appealed to this court.

The only question raised in this instance in connection with the six cases is whether or, not the plaintiff having acted without malice or fraud, the surcharge imposed upon him by the defendant is legal.

As the court below correctly held, the importer need not have acted fraudulently in order that a surcharge may be imposed upon him under section 1290 of the Administrative Code; a lower declaration of the value of the merchandise is sufficient. This opinion is based upon the letter and the spirit of the law, which does not require fraud on the importer's part, for the imposition of the surcharge. If the declaration is fraudulent, the merchandise will be subject to seizure in accordance with section 1363 of said Administrative Code.

Furthermore, conceding that section 1290 of the Administrative Code grants the Insular Collector of Customs discretion to impose the surcharge for undervaluation of the merchandise by the importer, the circumstances of the six cases here appealed justify the use of this discretion made by the defendant, considering that the plaintiff declared the lower valuation upon the different dates when the facts in these cases occurred.

The judgments appealed from are hereby affirmed, with costs against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Johns, Romualdez and Villa-Real, JJ., concur.

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