

PACIFIC COMMERCIAL COMPANY, PLAINTIFF AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLANT.

G. R. Nos. 44226-44228. February 27, 1937

Ponente: AVANCENA, C.J.

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AVANCENA, C.J.:

These three cases, which were heard jointly by agreement of the parties and wherein the court rendered the only decision appealed from, refer to fifty-four Chevrolet truck chassis imported from Japan and Java by the plaintiff Pacific Commercial Company. The subject matter of the appeal is the duties collected by the Collector of Customs upon these articles.

Paragraph 195 (a) and (b) of the Philippine Tariff Act of 1909 reads as follows:

"Automobiles;

"(a) For the transportation of merchandise, fifteen per centum ad valorem.

"(b) Other, twenty per centum ad valorem."

The Collector of Customs classified these fifty-four chassis under subparagraph (b), collecting the corresponding duties of 20 per cent ad valorem. The plaintiff Pacific Commercial Co. protested against said duties, alleging that the chassis in question, being for the transportation of merchandise, should be classified under subparagraph (a), and only 15 per cent ad valorem duties should be collected thereon. As it was found later that thirty-four of said chassis were used for the transportation of merchandise, the Collector of Customs agreed to make a refund of the difference between the amount of the duties collected thereon and that which should be collected, according to the plaintiff, but refused to do so with respect to the other twenty chassis which were used for transportation of passengers, the difference as to the latter amounting to P1,030.96, which is the subject matter of this appeal.

Therefore, the question is reduced to whether or not the twenty chassis, which were converted into autobuses for the transportation of passengers, should be classified under subparagraph (a), as the other thirty-four chassis which were used for the transportation of merchandise.

There is evidence to the effect that all the fifty-four chassis imported were constructed for use in the transportation of merchandise, imported as such, and ordered for said purpose. The plaintiff does not import Chevrolet chassis for the transportation of passengers, and when it imported chassis for that purpose, it was so done by means of a special order. It appears, therefore, that these chassis, when imported, were chassis for use in the transportation of merchandise. There is also evidence to the effect that the chassis in question, as imported, can only be used for the transportation of merchandise, and that, in order to use them for the transportation of passengers, it is necessary to make essential changes thereon. According to the foregoing, the chassis in question should be classified under subparagraph (a) for the transportation of merchandise, because that was their character when imported. The classification of articles for purposes of import duties should be made in accordance with the character thereof

when imported. The use later made of such articles, different from that for which they were constructed, imported and ordered, should not alter their classification, particularly in this case where, to give them a different use, it is necessary to make essential changes thereon. Otherwise, the same class of articles could be made subject to different duties (*Compania General de Tabacos vs. United States*, 8 Phil., 438).

This court is of the opinion that rule 12 (6) of the Tariff Act, as amended by Act No. 3916, which refers to the case where an article is susceptible of two classifications, is not applicable, because, as already stated, in this case the chassis in question, when imported, had the only classification of paragraph 195 (a) of the Tariff Act.

For the foregoing considerations, the appealed judgment, ordering the defendant to make a refund of the sum of P1,030.96 to the plaintiff, is affirmed, without special pronouncement as to costs. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, Laurel, and Concecion, JJ., concur.

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