

SECOND DIVISION

[G.R. No. 169352, February 13, 2009]

COMMISSIONER OF CUSTOMS, PETITIONER, VS. GELMART INDUSTRIES PHILIPPINES, INC., RESPONDENT.

DECISION

TINGA, J.:

The Commissioner of Customs assails the Decision^[1] of the Court of Tax Appeals (CTA) dated August 15, 2005, which reversed the decree of forfeiture issued by petitioner, lifted the Warrants of Seizure and Detention (WSD) issued by petitioner, and ordered the release to Gelmart Industries Philippines, Inc. of its imported fabrics on the condition that the correct duties, taxes, fees and other charges thereon be paid to the Bureau of Customs.

The narration of facts by the CTA, although rather lengthy, is quoted hereunder for its accuracy:

Petitioner is a corporation established in the year 1953 and is duly registered in accordance with Philippine laws, with office address at Km. 15 South Superhighway, Parañaque City. It is represented by its Corporate Secretary, Atty. Roberto v. Artadi.

It is primarily engaged in the manufacturing of embroidery and apparel products for the export market. It is, likewise, authorized to operate a Bonded Manufacturing Warehouse (BMW), BMW No. 39, as evidenced by the Certification dated January 16, 1991, issued by the Garments and Textile Export Board (GTEB). It is, likewise, granted two licenses to import tax and duty-free materials and accessories for re-exportation under License to Import No. 077-99 dated May 13, 1999 and valid until February 13, 2000 and Import License No. 048468 dated July 7, 1999 and valid until April 7, 2000. Under these licenses, petitioner was authorized to import "FABRICS/YARNS/LEATHERS/SUBMATERIALS" from various foreign principals with a total value of US\$4,771,308.00 and \$2,472,579.20, respectively, with the limitation that these licenses do not entitle the manufacturer to import finished and semi-finished goods, cut-to-panel/knit to shape materials, and cut-piece goods.

Since the start of its operations, petitioner has manufactured several product lines. It started manufacturing embroidered handkerchiefs' branched out to infants' and children's wear, knitted blouse and apparel products, shirts, ladies dresses, night gown, pajama, swim wear, nylon stockings, brassieres and intimate ladies' underwear. For the year 1999, petitioner stopped manufacturing some of the lines which were not viable anymore. It, however, maintained the manufacturing of brassieres and

related intimate ladies garments, children's and infants' wear products, knitted gloves, socks and the like.

During the year 1999, petitioner, in the course of its operations and on three (3) different occasions in 1999, received consignments of various textile materials and accessories from its supplier, to be manufactured into finished products for subsequent exportation to principals abroad.

The three shipments of imported various textile materials and accessories were declared in the BOC Entry, Internal Declaration and the attached Bill of Lading, Commercial Invoice and/or Packing List, detailed as follows:

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| 1. Entry No. | 44780-99 PO2A Port of Manila |
| Date of Arrival | August 8, 1999 |
| Number and Kind | 2x40' Container S.T.C. 646 Rolls of 100% Polyester Knitted Fabrics Weight: 265-270 GM/M2 Width: 60" Usable, 62" Edge to Edge PIO#99K668 |
| Color | Midnite - 2,253.30 lbs. Royal Blue - 5,573.20 lbs. Midnite - 6,069.10 lbs. Royal Blue - 7,390.00 lbs. Royal Blue - 1,840.30 lbs. Midnite - 4,330.30 lbs. AND 100% Polyester Knitted Fabrics Weight: 130-140 GM/M2 Width: 60" Usable, 62" Edge to Edge Royal Blue - 507.70 lbs, Cardinal - 591.40 lbs. Midnite - 676.20 lbs. |
| 2. Entry No. | 46269-99, PO2A Port of Manila |
| Date of Arrival | August 14, 1999 |
| Number and Kind | 1x40' Container S.T.C. 276 Rolls of 100% Polyester Knitted Fabric Weight: 265-270 GM/M2 Width: 60" Usable, 62" Edge to Edge PO#99K667 |
| Color | Midnite - 3,752.70 lbs. Cardinal - 8,625.80 lbs. |
| 3. Entry No. | 46297-99, PO2A Port of Manila |
| Date of Arrival | August 14, 1999 |
| Number and Kind | 1x20' Container S.T.C. 142 packages, 20 Rolls of 100% Cotton Knitted Fabric Weight 813.90 lbs. Thread Cones - 4,833.00 Cones Elastic - 553.00 GR Velcro - 8,333.00 Yds. Poly Tape - 9000 Yds. |

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| Woven Tape (ST73) - 23400 Yds. Neck Tape (TCP 507) 12020 Yds. Main Label - 6,147.50 Doz. Care Label - 2,060.00 Doz. Price Ticket - 75.00 K Carton Sticker - 3,127.00 PR |
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On August 20, 1999, then Commissioner of Customs Nelson Tan, issued a Memorandum requiring the 100% examination of all shipments consigned to petitioner on its transfer/release from the piers to CBW No. G-39. This Memorandum was prompted by the Indorsement of the Warehouse and Assessment Monitoring Unit (WAMU) which recommended the examination of the subject shipments by the examiner of the Warehouse and Assessment Division (WAD) for alleged misdeclaration.

On August 31, 1999, Inspector Rodolfo Alfaro submitted a report stating that the shipments under Entry Nos. 46297-99 and 46269-99 were examined at pier 3, South Harbor, Manila, while Entry No. 44780-99 was examined inside the Bonded Manufacturing Warehouse of petitioner, CBW No. G-39. After the inspection, a report was issued stating that the subject shipments contained cotton fabrics with three (3%) percent spandex for shirting and fleece textile materials. The Inspection Report concluded that these articles are not normally used for the manufacture of brassieres and/or lace, for the Bra and Lace Division of petitioner, which according to the BOC, is the only operational division. In the same Inspection report, Mr. Alfaro recommended that the Import License of petitioner be verified to determine if the subject shipments should be seized for violation of existing Customs Rules and Regulations. Thereafter, respective representatives from the GTEB and the BOC conducted an ocular inspection of the Bonded Manufacturing Warehouse of petitioner.

During the ocular inspection, it was discovered that petitioner was operating the Bra and Lace Division as well as the Auxiliary Division. It was likewise found that only machineries for the two divisions exist and that there were no facilities for the other lines of products.

In a letter dated September 3, 1999, petitioner's Corporate Secretary and in-house counsel requested the GTEB for a Certification to clarify the description of "FABRICS/YARNS/LEATHERS/SUBMATERIALS" or the articles petitioner is authorized to import based on its License No. 077-99.

On September 6, 1999, a Certification was issued by the GTEB, certifying petitioner's license to import the following raw materials, to wit:

- a. Polyester, acrylic, cotton and other natural or synthetic piece-goods
- b. Various types of yarns and threads, nylon, polyester, wool and other synthetic or natural piece-good
- c. All types of leather and synthetic leathers

- d. Non-woven fabrics and similar items
- e. Various types of staple fibers (synthetic and natural)
- f. Various drystuffs and chemical
- g. Various accessories and supplies

On September 14, 1999, a certification was likewise issued by the Garments/Textile Mfg. Bonded Warehouse Division-Port of Manila (GTMBWD-POM) that "Import License Nos. 48468 and 77-99 are the current licenses being utilized by GELMART INDUSTRIES PHILS., INC." which covers fabrics/yarn/leathers sub materials but "does not entitle the manufacturer to import finished and semi-finished goods, cut-to-panel/knit to shape materials, and cut-piece goods."

On September 15, 1999, Atty. Tugday of the BOC presented the following observations and recommended the seizure of the subject shipments:

1. The subject shipments which actually contained cotton fabrics with 3% spandex for shirtings and 100% spun polyester polar fleece with one side anti-pilling, 2 side brush are not needed in the operation of the existing divisions of GIPI, namely: the bra and lace divisions.
2. Upon the closure of the Infant's Wear Division, Children's Wear Division, Swimwear Division, Knit Glove Division, all of GIPI, the import licenses on articles not consistent in the operation of its remaining divisions for bra and lace are deemed cancelled. In short, the importations of the subject shipments were made without authority.
3. In renewing its license to operate a customs manufacturing bonded warehouse, GIPI submitted documents misrepresenting that it has machineries and operating a division capable of manufacturing the questioned shipments into finished products.
4. GIPI has no facilities to comply with Rule VIII, Section 1(d) of the GTEB Rules and Regulations, *i.e.*, the requirement on the "production, capacity geared for export of at least 70%." With this, GIPI would be transferring 100% of these subject materials to third parties under the guise of subcontracting, a practice violative of the GTEB and Customs regulations.
5. GIPI abused the privileges given to operate a manufacturing, bonded warehouse by unjustly interpreting the phrase "fabrics" in the import license issued by the GTEB to cover any kind of fabrics or textile materials even though not consistent in the operations of its existing bra and lace divisions.
6. Observations 1, 2, 3, 4 and 5 constitute prima facie evidence that without authority, GIPI is allowing third parties to utilize its import license and consequently its export quota.
7. Misrepresentations and/or use of false or fraudulent entries and details in all document applications, papers submitted to the Board for consideration and approval as well as unauthorized importations and transfer of export quotas, all are classified as major violations of GTEB rules and regulations.
8. Importation of raw materials such as knitted or woven fabrics, yarn, leather, ribbings, interlining, pocket lining, polyfill, thread, collars,

cuffs and laces with the width of more than 10 inches shall require an import license from the GTEB. In short these are regulated raw materials that would require import license.

Furthermore, Atty. Tugday of the WAMU questioned petitioner's authority to manufacture the particular garments for which the imported articles may be used on the ground that most of the production processes for these garments would be done outside the bonded warehouse by petitioner's subcontractors. WAMU is of the opinion that this act would contravene Rule VIII, Section 1.d of the GTEB Rules, which provides that:

SECTION 1. REQUIREMENTS. The following are the requirements for the application for operation of a bonded manufacturing warehouse (BMW):

x x x

d. Production capacity geared for export of at least 70%.

In a letter dated September 14, 1999, the BOC, through Atty. Rustom L. Pacardo requested from the GTEB an interpretation of Rule VIII, Section 1.d of the GTEB Rules.

On September 16, 1999, the GTEB interpreted the foregoing provision as follows:

Please be informed that said provision requires that the production capacity of the applicant for bonded manufacturing warehouse is at least 70% for export and 30% is allowed for local market, subject to payment of taxes and duties. Further, said provision does not relate to the limit that the applicant for bonded warehouse may produce in-house and through subcontractors.

On October 1, 1999, petitioner assailed the recommendation for the issuance of the Warrant of Seizure and Detention against shipments covered by Entry Nos. 46297-99, 46269-99, and 44780-99. In the same letter, petitioner requested the BOC to allow the re-shipment of the subject shipments, contending, among others, that "GELMART have subcontractors duly approved by the GTEB for the manufacture of Boy's pants and tops which requires the subject shipments (of) raw materials."

Meanwhile, a letter dated September 9, 1999 was received by petitioner from one of its principals for the imported articles, PADA Industrial (Far East) Co. Ltd. Of Hong Kong (PADA), informing the former of the latter's intention to cancel the order and instructed petitioner to return the shipment of raw materials back to PADA. Petitioner, thus, requested the District Collector of Customs for authority to effect the reshipment of the subject shipments back to PADA.

On October 21, 1999, Bureau of Customs Deputy Commissioner Emma M. Rosqueta upheld the favorable recommendation of the Port of Manila for the return of the shipment, declaring that: