

## ALTMAN &amp; CO. v. UNITED STATES.

(Circuit Court, S. D. New York. January 4, 1896.)

**CUSTOMS DUTIES—ACT AUG. 28, 1894—CLASSIFICATION—PAINTINGS ON PLAQUES.**

Free-hand paintings on plaques, painted with mineral colors, and subjected to a process of firing, which sets and changes the colors, held to be dutiable at 35 per cent. ad valorem, as "plaques \* \* \* painted in any manner," under paragraph 85 of the tariff act of August 28, 1894, and not free as "paintings, in oil or water colors, \* \* \* not otherwise provided for in this act," and "not made wholly or in part by \* \* \* mechanical process," under paragraph 575 of said act.

This was an appeal by Altman & Co. from a decision of the board of general appraisers affirming the action of the collector of the port of New York in the classification for duty of certain imported free-hand paintings on china plaques, which were fired to fix the colors; the colors used being mineral colors.

The contention of the importers was that the goods were free, under paragraph 575, as free-hand paintings.

Per contra, the government contended:

(1) That paragraph 575 covers only paintings in oil or water colors. The goods in suit were plaques painted with mineral colors.

(2) That paragraph 575 does not include paintings made wholly or in part by mechanical process. The goods in suit were fired, which set and changed the colors, and this was a mechanical process, producing the finished plaque.

(3) That paragraph 575 covers only such paintings as are not otherwise provided for, while paragraph 85 includes all "plaques \* \* \* painted \* \* \* in any manner," without reservation or exception.

(4) That paragraph 85 is the most specific provision for the goods in the act of 1894, and specifically provides for them.

(5) Section 2 of the act of August 28, 1894 (the free list section), only covers articles that are not "otherwise provided for in this act."

Stephen G. Clarke, for importers.

Henry C. Platt, Asst. U. S. Atty.

WHEELER, District Judge. By paragraph No. 85 of the tariff act of 1894, "china, porcelain, parian, bisque, earthen, stone and crockery ware, including plaques, ornaments, toys, charms, vases, and statuettes, painted, tinted, enameled, printed, gilded or otherwise decorated in any manner," are subjected to a duty of 35 per centum ad valorem; and, by paragraph No. 575, "paintings in oil or water colors, \* \* \* not otherwise provided for, \* \* \* and not made wholly or in part by stencilling or other mechanical process," are placed upon the free list. This importation is of plaques, free-hand painted, without other process, but firing to fix the colors to the ware, and has been assessed under paragraph 85, notwithstanding a protest that it should have been admitted free, under paragraph 575. Paragraph No. 85 clearly provides for painted plaques, without qualification as to the kind or value of the painting. This is more specific than the provision putting oil paintings on the free list; and these paintings cannot take the plaques to that list. Judgment affirmed.

**MATHESON & CO., Limited, v. UNITED STATES.**

(Circuit Court of Appeals, Second Circuit. January 8, 1896.)

**1. CUSTOMS DUTIES—CLASSIFICATION—PREPARATIONS OF COAL TAR—ACIDS.**

The act of October 1, 1890, contains the following provisions: "All preparations of coal tar, not colors or dyes, not specially provided for in this act, 20 per cent. ad valorem." Paragraph 19. "Acids used for medicinal, chemical or manufacturing purposes, not specially provided for in this act." Paragraph 473, free list. *Held*, that in respect to the classification of sulphotoluic acid, which is both an acid and a preparation of coal tar, but not a color or dye, the presence, in both provisions, of the words "not specially provided for," neutralized their effect in each, so that each might be read as if these words were omitted, and that the article would then fall within the specific designation "acids," in the free list.

**2. CONSTRUCTION OF TARIFF LAWS.**

In cases of doubt in the construction of tariff laws, the courts resolve the doubt in favor of the importer. *Hartranft v. Wiegmann*, 7 Sup. Ct. 1240, 121 U. S. 609, and *Twine Co. v. Worthington*, 12 Sup. Ct. 55, 141 U. S. 468, followed.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This was an appeal by Matheson & Co., Limited, from a decision of the board of general appraisers sustaining the action of the collector of the port of New York in respect to the classification of certain merchandise for duty. The circuit court affirmed the decision of the board, and the importer appealed.

Comstock & Brown, for appellant.

Wallace MacFarlane, U. S. Atty., and James T. Van Rensselaer, Asst. U. S. Atty.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

WALLACE, Circuit Judge. In June, 1892, the appellant imported certain merchandise into the port of New York, known as "sulphotoluic acid," which was classified and subjected to duty under the provision of the tariff act of October 1, 1890, which reads as follows:

"(19) All preparations of coal tar, not colors or dyes, not specially provided for in this act, twenty per centum ad valorem."

The importer protested, claiming the merchandise to be free of duty under the provision of the free list of that act which reads as follows:

"473. Acids used for medicinal, chemical or manufacturing purposes, not specially provided for in this act."

The board of general appraisers and the circuit court sustained the action of the collector.

According to the evidence in the record, sulphotoluic acid is a coal-tar preparation, but not a color or dye; and it is also an acid used for chemical and manufacturing purposes. Its chief use is for chemical combination with other ingredients in the manufacture of coal-tar colors or dyes. There are many preparations of