

WING WO CHUNG v. UNITED STATES.

(Circuit Court, S. D. New York. January 19, 1899.)

No. 2,769.

CUSTOMS DUTIES—CLASSIFICATION—DRIED FRUIT—LYCHEE.

The Chinese fruit called "lychee," which consists of a shell dried, but not edible, and an interior pulp, in its natural state, which is edible for children, is dutiable as a dried fruit, under paragraph 559 of the act of 1897, and is not included among "other edible fruits dried," provided for in paragraph 262.

This was an application by Wing Wo Chung for a review of a decision of the board of general appraisers in respect to the classification for duty of certain imported merchandise. The goods in question consisted of dried lychee, invoiced as dried fruits, and were returned by the appraisers as dried fruits, two cents per pound, under paragraph 262 of the act of 1897, as "other edible fruits dried." The importer protested, claiming that the merchandise was free of duty, under paragraph 559 of that act, as fruits ripe or dried. The board of general appraisers found that they were edible fruits dried, and affirmed the collector's decision.

Howard T. Walden, for appellant.

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

WHEELER, District Judge. This is a Chinese fruit called "lychee," consisting of a shell which is dried, but not edible, and an interior pulp, in its natural state, which is edible for children. The edible part is not dried, and the dried part is not edible. Therefore it does not appear to be an edible dried fruit, which necessarily implies that the edible part is itself dry. Decision reversed.

UNITED STATES v. ROSENSTEIN et al.

(Circuit Court, S. D. New York. December 17, 1898.)

No. 2,770.

CUSTOMS DUTIES—CLASSIFICATION—RUSSIAN SARDINES.

Herrings, pickled and spiced, imported in small kegs, and commercially known as Russian sardines, but which are not commercially known as sardines, and are not sardines in fact, are dutiable, under paragraph 260 of the tariff law of 1897, as "herring, pickled," and not under paragraph 258, as "fish known or labeled as * * * sardines."¹

This was an appeal by the United States from the decision of the board of general appraisers sustaining the protest of Rosenstein Bros. as to the classification of certain imported fish.

H. P. Disbecker, Asst. U. S. Atty.

Albert Comstock, for importers.

¹ As to interpretation of commercial and trade terms in general, see note to Dennison Mfg. Co. v. U. S., 18 C. C. A. 545.

TOWNSEND, District Judge (orally). The fish herein, upon the testimony, and in view of the decision of Judge Coxe in *Rosenstein v. U. S.*, 71 Fed. 949, and upon the evidence therein, which covered the same class of articles as are under consideration herein, are herrings, pickled and spiced, commercially known as Russian sardines, and imported in small kegs. Although they are commercially known as Russian sardines, the evidence and the decision aforesaid show that they are not commercially known as sardines, and are not sardines in fact. If it were necessary to the decision in this case, I should be inclined to support the further contention of the importers, based upon an examination of paragraph 258, and upon the consideration of such portion of the testimony in the other *Rosenstein Case* as I have heard, that the phrase in said paragraph 258, "if in other packages," referred only to the packages of the classes stated, namely, bottles, jars, tin boxes, or cans, in the earlier portion of the paragraph. As I have not had an opportunity to fully examine said evidence, and as it is not necessary to the decision of the case, I prefer not to rest my opinion upon that ground. The decision of the board of general appraisers is affirmed, and the goods are properly dutiable, under paragraph 260 of said act, at one-half cent per pound.

UNITED STATES v. REISINGER.

(Circuit Court, S. D. New York. December 17, 1898.)

No. 2,816.

CUSTOMS DUTIES—CLASSIFICATION—CARBONS FOR ELECTRIC LIGHTING.

Carbons designed for use only in electric lighting, though 36 inches long, and requiring to be cut or broken into lengths of 12 or 14 inches before actual use, are dutiable under paragraph 98 of the tariff law of 1897, at 90 cents per 100, as "carbons for electric lighting," and not under paragraph 97, as "carbons not specifically provided for"; nor can the collector estimate the number of shorter carbons into which each will be made, and assess duty on such number at the rate fixed by paragraph 98.¹

This is an appeal by the United States from the decision of the board of general appraisers sustaining the protest of Hugo Reisinger as to the duties imposed on certain imported carbons.

D. Frank Lloyd, Asst. U. S. Atty.

W. Wickham Smith, for importer.

TOWNSEND, J. (orally). The articles in question are composed of carbon, assessed at \$2.70 per 100, as "carbons for electric lighting," under the provisions of paragraph 98 of the act of 1897. The importer protested, claiming that they are either "carbons for electric lighting," at 90 cents per 100, under said paragraph, or "carbons not specifically provided for," under paragraph 97 of said act. The board of general appraisers sustained the contention of the importer as to paragraph

¹ As to classification of goods for the purpose of assessing customs duties, see note to *Dennison Mfg. Co. v. U. S.*, 18 C. C. A. 545.