

UNITED STATES v. MERCK & CO.

MERCK & CO. v. UNITED STATES.

(Circuit Court, S. D. New York. January 21, 1899.)

Nos. 1,973 and 1,979.

CUSTOMS DUTIES—ADDITIONS TO INVOICE VALUE—PENAL DUTIES.

Section 7 of the customs administrative act of 1890 permits the importer to make such additions, in the entry, to the invoice value, as, in his opinion, may raise the same to the actual market value. *Held*, that an addition so made, though marked upon the invoice itself, becomes a part of the entered value, and that the collector cannot ignore such addition, and then assess a penal duty which would not otherwise have accrued.

These were applications by the government and by the importers, respectively, for a review of the decision of the board of general appraisers in respect to the imposition of certain penal duties upon goods imported at the port of New York.

James T. Van Rensselaer, Asst. U. S. Atty.

Albert Comstock, for Merck & Co.

WHEELER, District Judge. Section 7 of the administrative act (26 Stat. 134) provided that the importer may "make such addition in the entry to the cost or value given in the invoice, or pro forma invoice, or statement in form of an invoice, which he shall produce with his entry as, in his opinion, may raise the same to the actual market value"; that all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly-certified invoice shall be alike applicable to goods entered by a pro forma invoice, or statement in form of an invoice, and that the duty should not "be assessed upon an amount less than the invoice or entered value." These importers made such an addition upon the invoice produced with the entry, which was disregarded, and a penal duty assessed that would not have accrued if it had been regarded. The board sustained the protest. The invoice seems to be the foundation of information of value; and this does not seem to be confined to the original consular invoice, for the provisions extend to pro forma invoices and statements. This statement of addition was upon the invoice when it was produced with the entry, and so was a part of the invoice value, to which, by the statute, all additional duties, penalties, or forfeitures were alike applicable, and below which, as distinguished from entered value, the collector could not go. It was to be regarded upward as well as downward, in liquidating the entry, and was an addition to make market value "in the entry" as a whole, although not written into the paper technically called the "entry." Decision in 1,973 affirmed, in 1,979 reversed.

ROBERTSON v. EDELHOFF et al.

(Circuit Court of Appeals, Second Circuit. January 5, 1899.)

No. 9.

1. CUSTOMS DUTIES—CLASSIFICATION—MANUFACTURES OF SILK.

To authorize the classification of an article as a manufacture of silk, under a tariff law providing separately for manufactures of which silk is the component of chief value, such article must be entirely or substantially made of silk; and an article of silk and cotton, of which the cotton constitutes more than 25 per cent. in value, cannot be so classified, in the absence of any commercial designation requiring it.

2. SAME—HAT TRIMMINGS.

Silk and cotton trimmings, silk chief value, and cotton more than 25 per cent. in value, used for making or ornamenting hats, and commercially known as hat bands, hat trimmings, bands, and bindings, were dutiable under Rev. St. 1874, § 2504, schedule M (Heyl, par. 1300), as hat trimmings not otherwise provided for, and not under schedule H (Heyl, par. 1113), as manufactures of which silk is the component of chief value, not otherwise provided for; the former paragraph being the more specific.¹

3. SAME—SUIT TO RECOVER EXCESSIVE DUTIES PAID—RELEASE.

The voluntary refunding to an importer, whose protest was in the alternative, of the excess of duty collected according to one of his claims, and the discontinuance of a suit brought for the collection of such excess, in the absence of any release or evidence of accord and satisfaction, will not preclude him from maintaining another suit to recover the remaining excess according to his other claim.

In Error to the Circuit Court of the United States for the Southern District of New York.

This was a suit by Charles A. Edelhoff and Emil Rinke against William H. Robertson, collector, to recover an alleged excess of duties paid under protest on certain imported merchandise. There was a judgment for plaintiffs, and the defendant brings error.

This cause comes here upon writ of error to review a judgment of the circuit court, Southern district of New York, entered June 11, 1897, upon a verdict directed by the court. The action was brought to recover alleged excess of duties paid under protest on certain importations of silk and cotton goods in 1882. The various provisions of law which are referred to in the discussion of this and of two other similar causes which were argued at the same time are these: Rev. St. U. S. 1874, § 2504, schedule H: "Dress and piece silks, ribbons, and silk velvets, or velvets, of which silk is the component material of chief value: 60% ad valorem." Heyl, par. 1110. "Silk vestings, pongees, shawls, scarfs, mantillas, pelerines, handkerchiefs, pillows, veils, laces, shirts, drawers, bonnets, hats, caps, turbans, chemisettes, hose, mitts, aprons, stockings, gloves, suspenders, watch chains, webbing, brigs, fringes, galloons, tassels, cords, trimmings and ready-made clothing of silk, or of which silk is the component material of chief value: 60% ad valorem." Heyl, par. 1111. "Manufactures of silk, or of which silk is the component material of chief value, not otherwise provided for: 50% ad valorem." Heyl, par. 1113. Schedule M: "Braids, plaits, flax, laces, trimmings, tissues, willow sheets and squares, used for making or ornamenting hats, bonnets and hoods, composed of straw, chip, grass, palm leaf, willow, or any other vegetable substance, or of hair whalebone or other material, not otherwise provided for: 30% ad valorem." Heyl, par. 1300. Act Feb. 8, 1875 (18 Stat. 307): "On all goods, wares, and merchandise not otherwise herein provided for, made of silk, or of which silk is the component material of chief value, irrespective

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