

SMITH et al. v. UNITED STATES.

(Circuit Court, S. D. New York. January 27, 1899.)

No. 2,617.

1. CUSTOMS DUTIES—CLASSIFICATION.

Glass jars containing preserves, and holding one pint or less, are not "vials," in the meaning of paragraph 88 of the act of 1894, but were dutiable as part of the market value of the merchandise contained in them, as provided in section 19 of the customs administrative act of 1890.¹

2. SAME—SUFFICIENCY OF PROTEST.

The collector having classified certain glass jars containing preserves as "vials," under paragraph 88 of the act of 1894, the importers protested that under said paragraph there was no duty on any filled bottles, or on "bottles exceeding $\frac{3}{4}$ of a cent per pound. Our bottles are not vials. They are not merchandise, but the envelopes of merchandise, and pay no separate duty." *Held*, that this was a sufficient protest.

This was an application by James P. Smith & Co. for the review of a decision of the board of general appraisers affirming the action of the collector in respect to the classification for duty of certain imported merchandise.

Edward Hartley, for appellant.

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

WHEELER, District Judge. Paragraph 88 of the act of 1894, after providing for a duty on bottles, demijohns, and carboys, provided for one on "other molded or pressed green and colored and flint or lime bottle glassware, not specially provided for in this act, three fourths of one cent per pound; and vials holding not more than one pint and not less than one quarter of a pint, one and one-eighth cents per pound"; and section 19 of the customs administrative act of 1890 provided for the assessment of duties on the market value of the merchandise in the condition in which it is bought and sold for exportation to the United States, "including the value of all coverings." The articles in question are glass jars containing preserves, holding one pint or less, and were assessed at $1\frac{1}{2}$ cents per pound, under the last clause quoted from paragraph 88. The importers protested that, under paragraph 88, there was no duty on any filled bottles, etc., or on "bottles exceeding $\frac{3}{4}$ of a cent per pound. Our bottles are not vials. They are not merchandise, but the envelopes of merchandise, and pay no separate duty." The collector stated that the importation did not include any glass bottles; that the jars were "properly dutiable as the usual coverings of the merchandise; but as the importers have failed to make a proper claim, this office affirms the assessment." The board found the facts stated to be true, and overruled the protest. The jars, not being bottles, would seem to have been dutiable with the preserves, as coverings. *U. S. v. Dickson*, 19 C. C. A. 428, 73 Fed. 195. The principal question seems to be as to the protest. The statement

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

in it that the "bottles" were not vials was a plain objection to the assessment at the rate of vials; and the statement that they were "the envelopes of merchandise, and pay no separate duty," would seem to point out that they were claimed to be coverings, to be appraised with their contents, to make market value, although the statute was not named, nor the word "covering," of the statute, used. One definition of "envelope" is "a covering," and "envelope" in the protest meant the same as "covering" would. The collector appears to have understood well enough what the protest meant, but to have thought this understanding should not be followed because it had not been well enough expressed. The best form of expression is not required, and this seems to be sufficient. Decision reversed.

GIGLIO v. UNITED STATES.

(Circuit Court, S. D. New York. January 23, 1899.)

No. 2,594.

CUSTOMS DUTIES—OLIVE OIL—ASSESSMENT.

Olive oil imported in tins holding from about a quart to five gallons, the quantity of which when sold here is reckoned according to the quarts or gallons of the various sizes, without regard to exact measurement, and which is returned by the gauger according to the quantity of the various sizes, though this measure exceeds the true measure by about $\frac{1}{32}$, as testified by the gauger, and about $\frac{1}{12}$, as claimed by the importer, is properly assessed on the quantity so returned, in the absence of more exact testimony to furnish a guide for reliquidation.

This was an application by S. Giglio for a review of a decision of the board of general appraisers in respect to the amount of duties payable on certain imported olive oil.

Stephen C. Clarke, for appellant.

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

WHEELER, District Judge. This protest relates to a quantity of olive oil fit for salad purposes imported from Genoa, dutiable at 35 cents per gallon under paragraph 32 of the act of 1894. It is bought by the kilo there, and comes in tins in sizes of about a quart and from one to five gallons; and, when sold in the tins here, the quantity is reckoned according to the quarts or gallons of the sizes, without regard to exact measurement. The duties were assessed upon the quantity returned by the gauger, which corresponded with the sizes. The importer says this measure exceeds the true measure by about $\frac{1}{12}$, and the gauger by about $\frac{1}{32}$, part of the whole, generally, but in some cases not any; and that is as near right as is practicable. Quantity, and accuracy about it, are facts, and no evidence other than that before the board has been taken. The quantity returned would seem to exceed the exact quantity in standard gallons to some extent, but to what extent is not made to so appear as to furnish any guide for reliquidation. The finding cannot, with propriety, be disturbed. Decision affirmed.