

Arthur Vs. Stephani

Arthur Vs. Stephani

SooperKanoon Citation : sooperkanoon.com/83323

Court : US Supreme Court

Decided On : 1877

Appeal No. : 96 U.S. 125

Appellant : Arthur

Respondent : Stephani

Judgement :

Arthur v. Stephani - 96 U.S. 125 (1877)

U.S. Supreme Court Arthur v. Stephani, 96 U.S. 125 (1877)

Arthur v. Stephani

96 U.S. 125

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

1. For tariff purposes, Congress has at all times since the passage of the Act of May 2, 1792, 1 Stat. 259, intended to preserve the distinction between "chocolate" and "confectionery."

2. Chocolate, *eo nomine*, is, by the first section of the Act of June 6, 1872, 17 Stat. 231, dutiable at the rate of five cents per pound, and although put up in a particular form and sold as "confectionery," is not subjected to the duty imposed on the latter article by the first section of the Act of June 30, 1864, 13 *id.* 202.

This was an action by A. Stephani & Co., to recover an

Page 96 U. S. 126

alleged excess of duty paid upon certain chocolate imported by them from Liverpool in 1873, and upon which the collector of the port of New York, holding it to be "confectionery," exacted a duty of fifty cents per pound *ad valorem*, under the first section of the Act of June 30, 1864, 13 Stat. 202. The importers claimed it to be dutiable as "chocolate" under the first section of the Act of June 6, 1872, 17 *id.* 231, which imposes a duty of five cents per pound.

The case was tried by the court below without the intervention of a jury, and by an agreed statement of facts it was admitted that the chocolate was in boxes containing thirty-six little bricks, done up in separate papers, each box weighing about half a pound, and that the chocolate, being such as is ordinarily sold by confectioners as confectionery, and by the box or package, was valued at over thirty cents per pound. It was also admitted that chocolate comes in other forms.

Judgment having been rendered in favor of the plaintiffs, the collector brought the case here.

MR. JUSTICE HUNT delivered the opinion of the Court.

The first section of the Act of June 30, 1864, imposes

"on all confectionery not otherwise provided for, made wholly or in part of sugar, valued at thirty cents per pound or less, a duty of fifteen cents per pound; on all confectionery valued above thirty cents per pound, or when sold by the box, package, or otherwise than by the pound, fifty percent *ad valorem*. "

13 Stat. 202.

The Act of June 6, 1872, imposes a duty of five cents per pound "on chocolate." 17 *id.* 231.

The article in question was chocolate simply, but presented in a form in which it was ordinarily sold as confectionery. Was it dutiable as confectionery or as chocolate?

The case differs from those already decided in this, that the last act expressing the legislative will is that which imposes the lower rate of duty. It is like the others in this, that it presents the question whether the articles are dutiable under general

Page 96 U. S. 127

terms which may embrace them, or under that specific language which can be applied to nothing else. That the latter is the rule by which the duty is fixed is too well settled to require argument. [*Reiche v. Smythe*](#), 13 Wall. 162; [*Homer v. The Collector*](#), 1 Wall. 486; *Movius v. Arthur*, [95 U. S. 144](#) .

Should it be admitted, therefore, that chocolate is composed in part of the same substances that enter into the composition of ordinary confectionery, it must nevertheless stand upon the customs list as the distinct article so often described in the acts of Congress by its specific name.

As early as 1792, chocolate, *eo nomine*, was subjected to a duty of three cents per pound. 1 Stat. 259.

In 1816, the same duty was again imposed upon it. 3 *id.* 311.

In 1824, a duty of four cents per pound was imposed upon it by name. 4 *id.* 28.

In the Revised Statutes, it is subject to a duty of five cents per pound. Rev.Stat. p. 478.

Contemporaneously and side by side, all the way down, the statutes provide for different rates of duty on the varieties of sugar and on confectionery, as well as on chocolate. Confectionery and chocolate are uniformly recognized as being

different articles for the purpose of duties.

In the first paragraph of sec. 8 of the Tariff Act of 1842, 5 Stat. 558, sugar of various kinds, comfits, sweetmeats, and confectionery are subject to a duty of twenty-five percent *ad valorem*; in the second paragraph of the same section, a duty four cents per pound is imposed upon "chocolate."

In the Tariff Act of 1846, 9 *id.* 44, "comfits and sweetmeats" are dutiable at forty percent, "confectionery" of all kinds, at thirty percent, and "chocolate," at twenty percent.

In the Act of 1861, "comfits and sweetmeats" are placed at thirty percent, "confectionery of all kinds not otherwise provided for," at thirty percent; "chocolate" at twenty percent. 12 *id.* 180, 189.

By the Act of July, 1870, chocolate is again made dutiable by name, 16 *id.* 262, and again by the Act of June, 1872, 17 *id.* 231.

In the Revised Statutes, "sugar candy and confectionery" are

Page 96 U. S. 128

provided for, as are "comfits, sweetmeats, and preserved fruits," and, separately, "chocolate," at a different rate of duty. Rev.Stat. pp. 472, 478.

It is quite evident that Congress has at all times intended to preserve the distinction between these articles, and that the circuit judge decided correctly when he held that chocolate, although in the form and of the character described, was not dutiable as "confectionery" under the Act of 1864.

Judgment affirmed.