REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NESTLE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NOS. 5224 & 5225

COMMISSIONER OF INTERNAL REVENUE AND COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:

JAN 03 2000

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DECISION

These consolidated cases elevated before Us involve a claim for refund of the alleged erroneously collected duties and taxes on various milk products imported by petitioner in the aggregate amount of P2,547,744.00 in CTA Case No. 5224 and the sum of P2,586,013.00 in CTA Case No. 5225 or a grand total of P5,133,757.00.

Petitioner is a domestic corporation and is a regular importer of milk and dairy products. It is likewise engaged in the manufacture, processing, distribution and sale of processed, manufactured and formulated milk and milk products.

As adduced from the "Stipulation of Facts" submitted by the parties through their respective counsels, the following matters were agreed upon:

I. The facts of Importation

During the period covering June 1992 to January 1993, petitioner made several importations of certain milk and milk products at reasonably fair market prices from the different European countries.

II. Importer's advanced payment of duties and taxes based on the invoice value

Said importer paid the corresponding duties and taxes thereon based on actual cost or export price as indicated in the commercial invoices of exporting countries.

III. Filing of Consumption Entries

Each of these importations is covered by its corresponding Consumption Entries

IV. SGS's Valuation in its Clean Report of Findings

The Government then engaged the services of Societe Generale de Surveillance (SGS) Far East Ltd., to conduct pre-shipment inspection and submit valuation report thru the Clean Report of Findings (CRF).

V. Importer's appeal from SGS' high valuation before the BOC-SGS Import Valuation and Classification Committee (BOC – SGS – IVCC)

On the basis of SGS valuation, the Customs Collector tentatively assessed additional duties and taxes on the aforesaid importations which led the petitioner to appeal before the BOC – SGS – IVCC regarding the high assessment.

VI. Tentative liquidation and release of shipments pursuant to CMO No. 51-92

In the meantime, petitioner paid the balance of the corresponding duties and Value-Added Taxes due thereon and thereafter sought for the tentative liquidation and release of said shipments from customs custody.

VII. Amendment of SGS's Valuation and Issuance of amended CRF's

VIII. Recomputations and final assessments by the Collector based on amended CRFs

SGS reduced its own valuation through an amendment of its originally issued CRFs. Aforesaid modified valuation in the amended CRF's were adopted by the BOC – SGS Committee and the corresponding recomputation based thereon were then made by Custom's Collector

IX. Imposition of additional duties and taxes representing difference between those earlier paid based on invoice values and those based on higher SGS valuations on amended CRF's as per said final assessments

X. Payments made under protest of said additional duties and taxes

Since the impositions of additional duties and taxes were considered by petitioner as arbitrary and illegal, it tendered payments thereon under protests, duly acknowledged by the Bureau of Custom's official receipts, the details of which are as follows:

CTA CASE NO. 5224
Commodity Imported: Sweet Buttermilk Powder

MICP Protest Case No.	Consumption Entry No.	Bureau of Customs Official Receipt Number	Date	Payments made Under protest
190-93 bb	73303-92	41687545	4/14/93	₱ 470,899.00
190-93 w	87364-92	41687536	4/14/93	101,949.00
190-93 aa	7705-92	41687511	4/14/93	205,435.00
190-93 y	83712-92	41687527	4/14/93	126,951.00
190-92 v	76119-92	41657554	4/14/93	246,992.00
190-93 z	83605-92	41687563	4/14/93	84,763.00
190-93 e	79968-93	41564993	4/14/93	87,533.00
190-93 f	76150-92	41565002	4/14/93	174,131.00
190-93 g	90743-92	41687667	4/14/93	462,446.00
190-93 h	02452-92	41687676	4/14/93	179,366.00
190-93 x	87363-92	41687685	4/14/93	407,279.00
	Total amount of payments made under protest			₱ 2,547,744.00

CTA CASE NO. 5225
Commodity Imported: Skimmed Milk Powder LH

MICP Protest Case No.	Consumption Entry No.	Bureau of Customs Official Receipt Number	Date		Payments made Under protest
190-93 l	67687-92	41564984	4/14/93	₱	731,905.00
190-93	65937-92	41564862	4/14/93		404,832.00
190-93 a	65938-92	41564914	4/14/93		162,813.00
190-93 j	56788-92	41564835	4/14/93		246,296.00
190-93 m	50282-92	41564957	4/14/93		422,265.00
190-93 ee	68280-92	41564966	4/14/93		617,902.00
	Total amount of payments made under protest			₱	2,586,013.00

XI. Petitioner's filing of formal protests and petitioner's payments of protest fees and docketing of the corresponding protest cases before the Collector of Customs

On April 20, 1993, or within the 2-year reglementary period prescribed by law, petitioner filed the eleven (CTA Case No. 5224) and six (CTA Case No. 5225) formal letter protests with the Bureau of Customs (Exhibits H, P, X, AF, AO, AW, BF, BO, BX, CG, CO, H, R, AA, AJ, AS and BB) and paid the required protest fees, claiming refund of excess duties and taxes amounting to P2,547,744.00 in CTA Case No. 5224 and the sum of P2,586,013.00 in CTA Case No. 5225 or a grand total of P5,133,757.00 for having been erroneously and unlawfully assessed and collected by the Bureau of Customs.

On March 23, 1995, petitioner through counsel filed its formal claims for refund of the Value-added tax portion thereof with the Commissioner of Internal Revenue (Exhibits I, Q, Y, AG, AP, AY, BG, BP, BY, CH, CP, I, S, AB, AK, AT and BC).

The inaction and silence of the respondent prompted the petitioner to lodge an appeal before this Court by way of Petition for Review on April 10, 1995.

Meanwhile, on July 18, 1995, and before respondents could file their answer, the Commissioner of Customs moved for the dismissal of the Petition for Review on the ground that this Court has no jurisdiction over the said petition since the Commissioner of Customs has yet to render a decision on the protest cases that could be reviewable by the Court pursuant to Section 7(2) of RA 1125.

In granting the motion to dismiss, this Court in a Resolution dated January 3, 1996 ordered the discharge of the Commissioner of Customs from the instant petition, and the dismissal of the claim for refund in so far as custom duties is concerned.

A Motion for Reconsideration was filed by the Petitioner on January 29, 1996. In a Resolution dated March 29, 1996, the Court finding no new matters that has not been raised in the aforesaid Motion to Dismiss, denied the motion for reconsideration. However, on July 6, 1998, the Court in reversing its two previous resolutions, reinstated the Commissioner of Customs as an indispensable party to the instant case because of the difficulty in disposing the internal revenue aspect without the issue of customs valuation being resolved.

Both parties submitted their respective memoranda. It is the contention of the petitioner that the SGS' valuation on the imported articles is arbitrary, unjust, illegal and without proper basis. Petitioner further added that the scheme of mathematically adding to the invoice cost any amount which purportedly corresponds to subsidy being extended to European exporters by their own government is highly anomalous since it is not in accordance with Section 201 of the Tariff and Customs Code, secondly, it is lacking publication and lastly, the fact of export-subsidy enjoyed by European exporters is not established. Considering these reasons, petitioner reiterates that it is erroneous on the part of the Bureau of Customs to adopt the SGS' findings, thus, the amount it unlawfully collected from the petitioner should be refunded.

Respondent on his part contended that there is strict compliance with Section 201 of the Tariff and Customs Code but points out the fact that the invoice value cannot be the proper basis of valuation since there exists a reasonable doubt on its veracity, – such that, recourse to other information available is necessary.

To substantiate its claim for refund, petitioner submitted the following documents as evidence:

1. Invoices of the subject importations
2. Bills of Lading
3. Consumption Entry
4. Clean Report of Findings issued by SGS
5. Amended CRFs submitted by SGS to BOC – SGS committee
6. Collector of Customs recomputation of final assessment and additional duties and taxes
7. Bureau of Customs' official receipts
8. Letter protest with the Bureau of Customs
9. Letter claim for refund with the Bureau of Internal Revenue
10. Various indorsements reflecting the appraiser's report showing the disparity between the invoice and the SGS's CRFs
11. Comparative data on prices of milk and milk products based on invoice value, value per revision order and value per clean report of findings from SGS.

On the other hand, respondent adduced the following documents to support his arguments:

1. Memorandum of SGS' Operations Manager proving that the SGS recommended value is based on the actual price as per the seller's invoice plus the restitution paid to the exporters according to EEC agreements.
2. A sample computation of the Fair Market Value to show how SGS arrived at the dutiable value
3. Revenue of Dutiable Value on Import Advance Notice
4. A machine copy of CRFs which was used as basis in the sample computations
5. A central market and Price Report
6. Authentication before the Consul General of RP which considers the EEC Reg. No. 804/68 as public document
7. EEC Regulation No. 804/68 which provides for the export subsidy of the exporters of milk products.

Complexities having branched out in the controversy at bar, the parties then undertook to simplify the many issues at hand and arrive at two main issues to be resolved, to wit:

1. Whether or not SGS' valuations are arbitrary and unjust;
2. And whether or not petitioner is entitled to refund of the additionally imposed duties and taxes which were paid under protest.

The controversy in the case at bar calls for the application of Section 201 of the Tariff and Customs Code which provides:

> **Section 201.** ***Basis of Dutiable Value.*** The dutiable value of an imported article subject to an ad valorem rate of duty shall be based on the cost(fair market value) of same, like or similar articles, as bought and sold or offered for sale freely in the usual wholesale quantities in the ordinary course of trade, in the principal markets of the exporting country on the date of exportation to the Philippines, (excluding internal excise taxes to be remitted or rebated) or where there is none on such date, then on the cost (fair market value) nearest to the date of exportation including the value of all containers, coverings and/or packings of any kind and all other costs, charges and expenses incident to placing the article in a condition ready for shipment to

the Philippines, and freight as well as insurance premium covering the transportation of such articles to the port of entry in the Philippines.

Where the fair market value or price cannot be ascertained thereat or where there exists a reasonable doubt as to the fairness of such value or price, then the fair market value or price in the principal market in the country of manufacture or origin, if it is not the country of exportation, or in a third country with the same stage of economic development as the country of exportation shall be used.

When the dutiable value of the article cannot be ascertained in accordance with the preceding paragraphs or where there exists a reasonable doubt as to the cost (fair market value) of the imported article declared in the entry, the correct dutiable value of the article shall be ascertained by the Commissioner of Customs from the reports of the Revenue or Commercial Attache (Foreign Trade Promotion Attache), pursuant to Republic Act Numbered Fifty-four hundred and sixty-six or other Philippine diplomatic officers or Customs attaches and from such other information that may be available to the Bureau of Customs. Such values shall be published by the Commissioner of Customs from time to time.

When the dutiable value of the article cannot be ascertained as provided in the preceding paragraphs, or where there exists a reasonable doubt as to the dutiable value of the imported article declared in the entry, it shall be the domestic wholesale selling price of such or similar article in Manila or other principal markets in the Philippines or on the date the duty become payable on the article under appraisement , on the usual wholesale quantities and in the ordinary course of trade, minus -

(a) Not more than twenty-five (25%) per cent thereof for expenses and profits; and
(b) Duties and taxes paid thereon."(as amended by E.O. 156)

It is beyond question, as it is succinctly provided in the aforequoted provision, that the dutiable value of an imported article subject to ad valorem is based on its fair market value or price as freely offered for sale in wholesale quantities in the ordinary course of trade in the principal market of the country from where exported on the date of exportation to the Philippines. That fair market value or FMV (then worded as home consumption value or HCV) is the value or price as declared in the consular, commercial, trade or sales invoice. **(Commissioner of Customs vs. Court of Tax Appeals, Lovsted and Company, Inc 161 SCRA 376, May 21, 1988).**

However, there is a qualification. If there exists a reasonable doubt as to the value of the imported article declared in the invoices, the correct dutiable value is to be ascertained from the reports of the Revenue Attache or Commercial Attache and from such other information that may be available to the Bureau of Customs.

In the case at bar, the petitioner gave conclusive weight to the value declared in its sales invoice as it is the true price offered by the exporter such that no reasonable doubt existed as to its veracity, thereby precluding the determination of the dutiable value by any other means. Petitioner added that the Bureau of Customs had never taken any effort to establish the existence of the so-called reasonable doubt that would justify the Bureau of Customs to resort to other information available such as SGS' valuation in its CRF.

We do not agree with Petitioner's contention.

It is to be recalled that the additional duties and taxes imposed by the Bureau of Customs has for its bases the findings of the SGS which considers both the actual price as per seller's/exporter's invoice and the restitution paid to the Exporters according to the European Economic Community (EEC) agreement.

The law does not provide that the reasonable doubt must first be established strictly in a manner similar to that of the criminal case. Any condition that creates a probable cause to make the Commissioner of Customs believe in the inaccuracy of the invoice value of imported goods as reflected by the importer in his customs declaration is enough to cast a doubt as to the price declared in the invoice. Knowledge of the existing difference between the price offered by the exporter to its local market (domestic price) vis-à-vis the price it offered to the international market (export price) to our mind, is sufficient to engender in a reasonable and prudent man a doubt as to the veracity of the contract price indicated in the exporter-seller's invoice. This circumstance alone could well justify the Bureau of Customs to secure the services of the SGS to arrive at the true value of the goods as basis for taxation purposes.

In determining the propriety of the appraisal made by SGS based on the value declared in the sales invoice including the amount of subsidy/discount offered by European markets, it is imperative to look once again to the applicable provision in the valuation of the imported goods during the dates of importations in 1992.

A cursory reading of Section 201 of the Tariff and Customs Code reveal that what is controlling is the Fair Market Value or cost of the article as bought and sold. Said Fair Market Value should not be limited to the value or price declared in the consular, commercial, trade or sales invoice. There is another criteria which is too important to be left unnoticed -- that is, the price as freely offered for sale in wholesale quantities in the ordinary course of trade in the principal markets on the date of exportation to the Philippines.

The petitioner is fully aware that the price as indicated in the invoice is a discounted price brought about by the export policy of European Economic Council (EEC) in which European Governments extend to their own exporters a certain subsidy/refund on the prices of goods they exported to foreign countries. It could be inferred that if there is a discounted price being offered to their exporters, then there exists a higher price, which is customarily offered by these foreign merchants in the ordinary course of trade in their principal markets. It is then unfair as it is illogical that the price contained in the invoice is the same price which is customarily offered for sale in the exporter's principal market, considering the fact that it is well-established that a subsidy is granted to exporters of milk and milk products as an added incentive. Clearly, this discounted price cannot be considered the Fair Market Value (or Home Consumption Value) which is defined by Section 201 of the Tariff and Customs Code.

The subsidy/refund granted to European exporters as part of their government's foreign economic policy should not be used as the controlling price in the valuation of the goods imported in the Philippines. The benefit being provided by this export-subsidy policy to foreign merchants or to foreign governments, should not prejudice our country by depriving our Government of taxes due them. It was therefore no error on the part of the Bureau of Customs to disregard the value declared in the petitioner's invoice and to adopt instead the price indicated in the SGS' Clean Report of Findings.

As held by the Supreme Court in the case of **Caltex (Philippines), Inc. vs. Court of Appeals (292 SCRA 273, July 10, 1998):**

> "x x x Our conclusion is premised on the fact that sales, commercial or consular invoices are not conclusive on the government. Our customs laws should not be at the mercy of importers who may avail of schemes and other arrangements to lower and reduce the face value of the articles covered by such invoices. Noteworthy is the fact that: "If the customs authorities were bound by the invoice value, it is evidence that they would be, to a considerable extent at the mercy of foreign merchants and importers." The

purpose of Congress in providing for an appraiser was to prevent fraud upon the customs, and thus protect the revenues of the Government."

On the contention of the petitioner that SGS' valuation does not comply with the due process clause as it dispensed with the publication requirement, We rule in the negative. Non-publication of the appraiser's valuation is not an impediment for the Bureau of Customs to continue in assessing and collecting the lawful taxes owing to the Government. Thus, as held by the Supreme Court in the case of **Commissioner of Customs vs. Procter and Gamble Phil. Mfg. Corp. (169 SCRA 693, January 31, 1989):**

> The law does not provide that it is only after the "established" or "information" value is "published" that such home consumption value may be the basis of assessment of the customs duty and taxes. On the contrary, it is explicitly provided that upon reasonable doubt as to the accuracy of the declared value of the article in the consular or commercial invoice, the Commissioner of Customs may determine its home consumption value from other available and more reliable sources which "established" or "information" value shall then be the basis of the imposition of the customs duty and taxes. The publication of said "established" or "information" value is not a pre-requisite before it may be the basis of the imposition of customs duty and taxes. Conversely, its non-publication is no obstacle to the assessment of customs duty and taxes based on such "established" or "information" value. The publication is intended as a guide in the assessment of future shipment of similar articles. While such published value of an imported article is reliable, nevertheless, in the absence of the same, the Commissioner of Customs may establish said value from other sources as above provided by law."

It is thus apparent that the appraisal made by SGS which was adopted by the Bureau of Customs of the dutiable value of the imported shipments was made in accordance with the provisions of Section 201 of the Tariff and Customs Code and is devoid of arbitrariness and is a faithful observance of the due process standard.

The Supreme Court, in upholding the factual findings and determination of the Bureau of Customs as far as valuation of imported goods is concerned, held,

> "The court has long held consistently that "the rule is well established that the value of merchandise fixed by the appraiser and affirmed by the Collector of Customs is conclusive in the absence of an affirmative showing that the appraiser, in assessing the value, proceeded upon a wrong principle and contrary to law" and that x x x the burden thus rests upon the importer disputing the customs valuation not only to prove the contrary and overcome the presumption of correctness of the valuation but also to show that the figures declared by him are in fact true and correct. As restated by the Court in a 1960 case, "The determination of the tax deficiency by the Government has prima facie validity and the burden rests upon the taxpayer to overcome this presumption and to show to the satisfaction of the Tax Court that the determination was not correct." (The Coca-Cola Export Corporation vs. The Commissioner of Internal Revenue, 56 SCRA 5, March 15, 1974)

Since the Petitioner has not successfully discharged its burden to overcome this presumption, We are inclined to deny the instant petition for review.

WHEREFORE, in view of the foregoing, the instant petition for review is hereby **DISMISSED** for lack of merit. Petitioner's claim for refund of the additional taxes and duties imposed on the imported articles is **DENIED**. No pronouncement as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge