REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PETRON CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5386

COMMISSIONER OF THE BUREAU OF CUSTOMS,
Respondent.

Promulgated:
FEB 17 1999

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DECISION

This is an appeal from the decision of the Commissioner of Customs, dated April 29, 1996, which adopted the ruling of then Secretary of Finance, Roberto de Ocampo, dated April 8, 1996, denying Petitioner's claim for refund in the amount of ₱188,282,348.00 representing the 9% additional ad valorem duties paid on its importations of crude oil.

During the period April 9, 1992 to June 24, 1992, Petitioner imported crude oil from the Middle East and correspondingly paid duties and taxes, the specific details of which are herein-below listed:

Date	Vessel	Duties/Taxes Paid	Duties/Taxes Due	Subject of Refund Claim
4-09-92	N.P. Tatina	₱ 35,244,572.00	₱ 22,189,262.00	₱ 13,055,310.00
4-21-92	Dovechem V01	3,191,168.50	2,690,176.50	500,992.00
5-10-92	World Progress	380,003,896.00	332,785,789.00	47,218,107.00
5-13-92	Telaga Ayu	45,097,441.50	37,383,516.50	7,713,925.00
5-28-92	Azija V01	53,182,833.50	44,282,636.50	8,900,197.00
5-31-92	Raha Sulayman V12	192,107,448.50	177,288,681.50	14,818,767.00
6-12-92	Chilham Castle	48,419,586.50	43,756,982.50	4,662,604.00
6-12-92	World Admiral	374,182,007.00	337,495,162.00	36,686,845.00
6-20-92	Ambra Stresa	381,175,685.00	340,945,253.00	40,230,432.00
6-24-92	Diego Silang V196	156,961,461.50	142,466,292.50	14,495,169.00
				₱188,282,348.00

Undisputed facts show that the taxes and duties paid by Petitioner upon arrival of these importations included the additional duty of nine (9%) percent ad valorem imposed by Executive Order No. 443. Subsequently, Petitioner filed the formal consumption entries corresponding to these importations between August 28, 1992 to October 2, 1992, in accordance with the procedure prescribed by the Tariff and Customs Code of the Philippines (TCCP).

On July 1, 1992, Executive Order No. 443 which imposed the additional nine (9%) percent ad valorem tax, ceased to be effective as can be clearly seen from its provisions, thus:

> "**Section 5.** This Executive order shall take effect after ten (10) days following the completion of its publication in two (2) national newspapers of general circulation, <u>and shall remain effective until June 30, 1992 or unless sooner revoked or modified.</u>" (Underscoring supplied)

It is the theory of the Petitioner that the applicable rate of import duty should be the one existing at the time its shipments were "entered" in accordance with Sections 205 and 206 of the TCCP, hence, the additional nine (9%) percent duties it paid to the Bureau of Customs is refundable due to the fact that, at the time the formal consumption entries were filed, Executive Order No. 443 was no longer in effect.

Based on this theory, Petitioner made several written requests to the Customs Collector of Limay, Bataan, for a refund of the amount of ₱188,282,348.00 representing the aggregate sum of additional ad valorem duties it paid on the aforementioned importations.

In a letter, dated April 29, 1996, and received by petitioner on May 15, 1996, Deputy Commissioner Licerio Evangelista denied Petitioner's claims for refund reiterating the ruling made by the Secretary of Finance Roberto de Ocampo in a second indorsement, dated April 8, 1996 (see pages 12 and 13, CTA records).

On June 14, 1996, Petitioner appealed the decision of the Deputy Commissioner to this Court by way of a Petition for Review reiterating its claim for refund in the aggregate sum of ₱188,282,348.00.

At issue in this case is the correct determination of the rates of import duties to be applied on Petitioner's importations of crude oil which arrived during the period April 9, 1992 to June 24, 1992.

Petitioner submits that the rates of import duty which are in effect at the time of filing of the formal consumption entries, together with other related documents, shall govern and since the consumption entries were filed after E.O. No. 443 ceased to be in effect, then the nine (9%) percent additional duties should no longer be imposed.

Petitioner anchors its theory on Sections 205 and 206 of the TCCP which provides, thus:

> "**Sec. 205.** ***Effective Date of Rates of Import Duty.*** - Imported articles shall be subject to the rate or rates of import duty existing <u>at the time of entry</u>, or withdrawal from warehouse, in the Philippines for consumption. x x x"
>
> "**Sec. 206.** ***Entry or Withdrawal from Warehouse for Consumption.*** - Imported articles shall be deemed "entered" in the Philippines for consumption <u>when the specified entry form is properly filed and accepted</u>, together with the related documents required by the provisions of this Code and/or regulations to be filed with such form at the time of entry, at the port or station by the customs official designated to receive such entry papers and any duties, taxes, fees, and/or other lawful charges required to be paid at the time of making such entry have been paid or received to be paid with the customs official designated to receive such monies, provided that the article has previously arrived within the limits of the port of entry. x x x."

As mentioned earlier, Petitioner filed the formal consumption entries corresponding to the importation between August 28, 1992 to October 2, 1992 when E.O No. 443 was no longer in effect.

Petitioner maintains that the delay in the filing of the formal consumption entries from the dates of arrival of the imported crude oil was not deliberate on its part and is largely attributed to the late transmittal of documents by its suppliers abroad. These documents refer to the bills of lading, the survey reports and the original invoices, information from which were needed to fill up the formal consumption entries.

To counteract Petitioner's argumentations, Respondent invokes Section 1301 of the TCCP which provides, thus:

> **Section 1301.** ***Persons Authorized to Make Import Entries.*** - Imported articles must be entered in the Customshouse at the Port of Entry within five (5) days from the date of discharge of the last package from the vessel either (a) by the importer, being the holder of the bill of lading, (b) by the duly licensed customs broker acting under authority from a holder of the bill of lading or (c) by a person duly empowered to act as agent or attorney-in-fact for each holder; ***Provided***, that the collector may grant an extension of not more than five (5) days: x x x" (Underscoring supplied)

Respondent submits that the aforequoted Section 1301 mandates that formal entries must be filed within the five (5) or ten (10)-day period from the date of discharge of the last package from the vessel and, when read together with Sections 204 and 205 of the TCCP, would show that the questioned importations are subject to ad valorem duty provided by E.O. No. 443 due to the fact that at the time the last packages were discharged, the said Executive Order was still in effect.

Petitioner counters that its payment of underguarding (overtime) fees on its shipments computed from their arrival up to the time the entries were filed has rendered the five-day period prescribed by Section 1301 of the Code merely permissive.

Petitioner further posits that three of its previous shipments which were subjected to new rates of duty existing at the time their import entries were filed, notwithstanding the fact that they arrived much earlier and beyond the five or ten-day period provided in Section 1301 of the Code.

Respondent belittles these observations made by Petitioner and declares that the payment of the underguarding fees, as allowed by Sections 608 and 3506 of the Code and as implemented by Customs Administrative Order No. 2-82, as amended by CAO 3-91, cannot be read together with Section 1301 of the same Code, inasmuch as they differ in subject matter, the latter pertaining to the period within which an import entry must be filed and the former, on underguarding fees. With respect to the previous shipments cited by Petitioner, Respondent argues that these are not applicable to the case at bar because the former complied with the provisions of Section 1301 of the Code, their import entries having been filed within the prescribed five or ten-day period.

It should be noted that Respondent does not take issue with the fact of payment of the nine (9%) percent additional ad valorem duties made by Petitioner but focuses his arguments on the applicability of the tax rates provided under Executive Order No. 443 on the importations of petroleum products during the period April 9, 1992 to June 24,1992 (see Respondent's Comment on pages 63 to 68, CTA Records).

After a painstaking scrutiny of the attending facts, the arguments of the parties and the applicable provisions of law and jurisprudence in point, this Court rules in favor of the Petitioner.

Based on a synthesis of the aforecited provisions of Sections 205 and 206 (*supra*), it is clear and unambiguous that the rate of import duty to be applied should be that which is existing <u>at the time of entry</u> of the specified entry form, together with the related documents, as required by the Code and regulations of Respondent's Bureau. We cannot, thus, adhere to Respondent's view that the rate of import duty to be imposed should be reckoned only during the first five or ten-day period after arrival of the shipments, because to do so would result in the perpetration of falsehood and distortion of events.

The facts of the case unmistakably reveal that no act of "entry" or filing of the requisite entry form transpired during the first five or ten-day period after arrival of petitioner's shipments. Such filing of the entry occurred months after. Section 205 of the TCCP clearly provides that the imported articles shall be subject to the rate or rates of import duty existing at the time of entry. These imported articles are deemed "entered" upon the filing and subsequent acceptance of the consumption entries, pursuant to the provisions of Section 206 of the same Code. In the instant case, when the consumption entries were filed, E.O. No. 443 was no longer in effect, hence the nine (9%) percent additional duties paid by Petitioner should be refunded.

The attempt, therefore, of Respondent to relate Sections 205 and 206 to Section 1301, of the Tariff and Customs Code, is untenable and simply violative of the literal import and categorical language of the provisions of said Sections 205 and 206.

The special attention given by the Respondent to Section 1301 should be limited to what it is mainly intended under its heading and, that is, to name the persons authorized to make an import entry. This is in contrast to Sections 205 and 206 which specifically provides for the *effective date of rates of import duty*, which is, undeniably the one at issue in this case, and the definition and requirements of a valid entry, respectively.

With this pronouncement, We chose not to dwell anymore on a substantive discussion of the permissive or mandatory nature of Section 1301; the presence of underguarding fees; history of previous shipments being subjected to rates at the time of filing of entry, weeks or even months beyond their arrival date; and the rule on strict construction of tax laws. We have observed that they are merely peripheral to the issue at bar, more in the area of statutory construction, and beyond the direct expression of the text of the Code.

Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see that its mandate is obeyed. (**Chartered Bank Employees Assn. vs. Ople,** 138 SCRA 273)

Delving into the evidence formally offered by the Petitioner (Exhibits A-SS, inclusive), We find the same to be sufficient in establishing its entire claim for refund. Hereunder enumerated are the amount of duties to be refunded to the petitioner, *viz*:

Date of Arrival	Foreign Vessel	Consumption Entry Form No.	Consumption Entry Date Filed	Exh.	Refundable Amount
04/09/92	NP TATINA	05581473	08/28/92	V	P 13,055,310.00
04/21/92	DOVECHEM V02	06143033	08/28/92	W	500,992.00
05/10/92	WORLD PROGRESS	05581462	09/04/92	X	47,218,107.00
05/13/92	TELAGA AYU	06143304	10/02/92	Y	7,713,925.00
05/28/92	AZIJA V01	06143024	09/04/92	Z	8,900,197.00
05/31/92	RAHA SULAYMAN V120	06143112	09/16/92	AA	14,818,767.00
06/12/92	CHILHAM CASTLE	06143015	09/04/92	BB	4,662,604.00
06/12/92	WORLD ADMIRAL	06143103	09/10/92	CC	36,686,845.00
06/20/92	AMBRA STRESA V1	06143164	09/13/92	DD	40,230,432.00
06/24/92	DIEGOSILANG V196	05581495	09/04/92	EE	14,495,169.00
					P188,282,348.00

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED.** Accordingly, Respondent Commissioner of Customs is hereby **ORDERED** to

REFUND to Petitioner PETRON CORPORATION the amount of P188,282,348.00 immediately.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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