REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PAPER INDUSTRIES CORPORATION
OF THE PHILIPPINES (PICOP),
Petitioner,

- versus - C.T.A. CASES NOS. 3376 & 3479

RAMON J. FAROLAN,
Respondent.
x - - - - - - - - - - - - - - - x

11/16/90

D E C I S I O N

This concerns a Petition for Review seeking to set aside the decision of the Commissioner of Customs dated February 23, 1981 (1) holding petitioner liable for payment of additional customs duty on a shipment of sodium sulphate, anhydrous, which arrived by the MS Ocean Breeze on February 4, 1988, covered by Entry No. 139(78) and paid under O.R. No. 331877 dated April 25, 1978; (2) holding petitioner liable for the payment of customs duty on a shipment of sodium sulphate, anhydrous which arrived by the MS Narra on November 18, 1976, covered under Entry No. 1647(76), and paid under O.R. No. 3310835 dated April 25, 1978 *(CTA Case No. 3479)*; and in another Petition for Review, which seeks to annul a decision of the Acting Commissioner of Customs in Customs Case No. 81-28

(Bislig Protest No. 2-78) dated March 31, 1982, holding petitioner liable for P94,181.00 representing payment of customs duty and tax on a shipment of 18,750 bags (750 m.t.) of sodium sulphate, anhydrous, 98.5% min. which arrived at the Port of Bislig, Surigao del Sur from Tachibana, Japan on July 10, 1976. *(CTA Case No. 3376)*

Re: Bislig Protest No. 3-78

In January, 1978, petitioner PICOP imported from Tachibana, Japan 600 bags (600 m) of sodium sulphate, anhydrous, 93% min. pulp grade, on board the MS Ocean Breeze. Import Entry No. 179(78) was filed February 9, 1978 covering such importation properly supported by the requisite documents. Pending the submission by petitioner of some papers from the Finance Ministry or the Board of Investments relative to its tax exemption privileges, the Collector required petitioner to pay the sum of P63,793.00 in customs duties and taxes by way of tentative liquidation per O.R. No. 3310707 dated April 25, 1978.

Re: Bislig Protest No. 4-78

In October, 1976, petitioner PICOP imported from Tachibana, Japan 18,750 bags (750 MT) of sodium sulphate anhydrous for use as agent in the processing of pulp materials in connection with its manufacture of newsprint and Kraft papers. The same were shipped aboard the MS Narra, which arrived in the Port of Bislig on November 18, 1976. Import Entry No. B-1647(76) was filed on December 14, 1976 and by way of tentative liquidation, PICOP was required to pay the sum of P32,553.00 per O.R. No. 3310885 dated April 25, 1978.

The home consumption value actually declared for the January, 1978 and October, 1976 importations (Bislig Protest No. 3-78 and Bislig Protest No. 4-78, respectively) was $27.97 per metric ton but was assessed by the Customs Appraiser at $140.00 per metric ton based on the published value under Customs Import Valuation and Classification Circular (CIVCC) No. 270-76, which provides in part as follows:

> "Pursuant to the provisions of Section 201 in relation to Section 602-A of the Tariff and Customs Code of the Philippines, as amended by Presidential Decree No. 34, this list of home consumption values and tariff classifications of articles exported to the Philippines from different countries is hereby published.
>
> "The home consumption values and tariff classifications shall serve as the basis in determining the dutiable values of same, like or similar imported articles in the assessment of duties and taxes."

Re: Bislig Protest No. 2-78

In July 10, 1976, petitioner PICOP received a shipment consisting of 18,750 bags (750 m.t.) of sodium sulphate, anhydrous, 98.5% min. which arrived at the Port of Bislig, Surigao del Sur from Tachibana, Japan. These materials were used as agent in the processing of pulp material in connection with PICOP's manufacture of newsprint with Kraft paper. Import Entry No. B-1257(76) was duly filed on July 15, 1976 from which the required amount of P94,181.00 was paid.

The entered home consumption value of subject sodium sulphate anhydrous was $36.0266 per metric ton, while the published home consumption value or the Customs Import Valuation and Classification Circular (CIVCC) was $140.60 per metric ton.

Petitioner PICOP filed its protest with the Collector of Customs of the Port of Bislig, Surigao del Sur regarding the assessment of the customs appraiser in the aforesaid first two importations. (Bislig Protest Nos. 3-78 and 4-78) dated November 4, 1980, and the Collector of Customs dismissed the protests filed by petitioner.

On appeal, the respondent Commissioner of

Customs sustained the dismissal of said protest.

Again, petitioner PICOP filed its protest with the Collector of Customs of the Port of Bislig, Surigao del Sur regarding the assessment of the Customs appraiser in the third importation (Bislig Protest No. 2-78). In a decision of the Collector of Customs dated September 15, 1978, he upheld the appraiser's assessment and by his applying the Customs Import Valuation and Classification Circular (CIVCC) No. 270-76, which provides in part as follows:

> "Pursuant to the provisions of Section 201 in relation to Section 602-A of the Tariff and Customs Code of the Philippines, as amended by Presidential Decree No. 34, this list of home consumption values and tariff classifications of articles exported to the Philippines from different countries is hereby published.
>
> "The home consumption values and tariff classifications shall serve as the basis in determining the dutiable values of same, like or similar imported articles in the assessment of duties and taxes."

Appeal was taken by petitioner PICOP on October 14, 1978 of the Collector's decision. On March 31, 1982, respondent Commissioner of Customs affirmed the appealed decision.

Hence, the filing of the instant petitions for review *(CTA Cases Nos. 3376 and 2479)*.

The only issue for determination in the two cases is whether it is the Home Consumption Value as declared in the Consular and Commercial Invoices, or the alleged published value as contained in Customs Import Valuation and Classification Circular (CIVCC) No. 270-76, which should be the basis of the dutiable value of the subject shipments.

Petitioner contends that the home consumption value as declared in the consular and commercial invoices should be the basis of the dutiable value of the various shipments of sodium sulphate anhydrous for use as agent in the processing of pulp materials in connection with its manufacture of newsprint and Kraft paper. On the other hand, respondent Commissioner of Customs contends that the home consumption value as declared in the Customs Import Valuation and Classification Circular (CIVCC) No. 270-76 should be the basis of the dutiable value of the subject shipments.

The determination of the dutiable value of an imported article hinges on Section 201 of the

Tariff and Customs Code, as amended, which provides as follows:

> "Sec. 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 home consumption value or price (excluding internal excise taxes) of same, like or similar articles, as bought and sold or offered for sale freely in the usual wholesale quantities in the ordinary courses of trade, in the principal markets of the country from where exported on the date of exportation to the Philippines, or where there is none on such date, then on the home consumption value or price 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, plus ten (10) percent of such home consumption value or price.
>
> "The home consumption value or price under this section shall be the value or price declared in the consular, commercial, trade or sales invoice. Where there exists a reasonable doubt as to the value or price of the imported article declared in the entry, the correct dutiable value of the article shall be ascertained from the reports of the Revenue Attache or Commercial Attache (Foreign Trade Promotion Attache), pursuant to Republic Act Numbered Fifty-four hundred and sixty-six or other Philippine diplomatic officers and from such other information that may be available to the Bureau of Customs.
>
> "From the date thus gathered, the Commissioner of Customs shall ascertain

> and establish the home consumption values of articles exported to the Philippines and shall publish such lists of values from time to time.
>
> "When the dutiable value provided for in the preceding paragraphs cannot be ascertained for failure of the imported to produce the documents mentioned in the second paragraph, or where there exists a <u>reasonable doubt</u> as to 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 on the date the duty becomes payable on the article under appraisement, in the usual wholesale quantities and in the ordinary course of trade, minus -
>
> (a) Twenty (20) percent therefor for expenses and profits; and
>
> (b) Duties and taxes paid thereon."

Pursuant to the Tariff and Customs Code, respondent Commissioner of Customs thus issued on July 1, 1976 Customs Import Valuation and Classification Circular No. 270-76. Portions of the Circular provides:

> "Pursuant to the provisions of Section 201 in relation to Section 602-A of the Tariff and Customs Code of the Philippines, as amended by Presidential Decree No. 34, this list of home consumption values and tariff classifications of articles exported to the Philippines from different countries is hereby published.

> "The home consumption values and tariff classifications shall serve as the basis in determining the dutiable values of same, like or similar imported articles in the assessment of duties and taxes."

CIVCC No. 270-76 was issued to serve as the basis for the correct valuation of imported merchandise therein described. The values listed therein were arrived at after a careful research and study of the reliable value information furnished by government instrumentalities abroad. Such values are furthermore not static and are to serve as bases in determining the dutiable values of subject articles as the circular provides.

We agree *in toto* with the memorandum of respondent Commissioner of Customs who, with respect to CIVCC No. 270-76, said as follows:

> The legality of the circular is unassailable. The said section grants the Commissioner of Customs authority to ascertain and establish the home consumption values of articles exported to the Philippines and to publish such lists of values from time to time.
>
> It is undeniable that the pertinent customs appraiser precisely had entertained doubts that the declared HCV value of $27.974 per metric ton as indicated in the covering consular and commercial invoices reflected that true value of the articles as basis for fixing their correct dutiable values. Because

of the doubts, the appraiser found that the published HCV in CIVCC No. 270-276 more accurately reflected the true consumption value of the importation at $140 per metric ton, rather than the value stated in the consular or commercial invoices.

Neither can it ba said that the customs appraiser acted without authority in disregarding the values stated in the consular or commercial invoices. Section 1405 of the Tariff and Customs Code provides:

> "SEC. 1405. Proceedings and Report of Appraisers. - Appraisers shall, by all reasonable ways and means, ascertain, estimate and determine the value or price of articles as required by law, any invoice or affidavit thereto or statement of cost, or of cost of production to the contrary notwithstanding, and after revising and correcting the reports of the examiners as they may judge proper, shall report in writing on the fact of the entry of the value to be determines, irrespective of whether such value is equal, higher or lower than the invoice and/or entered value of the articles." (underscoring supplied)

Since the law presumes that official duty has been regularly performed, it can be asserted that the customs appraiser ascertained the HCV from the reports of the attache and other Philippine diplomatic officers before publishing the list of the HCV of the subject importation, in the absence of contrary evidence. Thus -

> 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 and the absence of an affirmative showing that the appraiser, in assessing the value, proceeded upon a wrong principle and contrary to law and that if the customs authorities were bound by the invoice value, it is evident that they would be, to a considerable extent, at the mercy of foreign merchants and importers. (The Coca-Cola Export Corp. v. The Commissioner of Internal Revenue and the Collector of Customs, 56 SCRA 5[1974])
>
> "All presumptions are in favor of the correctness of tax assessment. The good faith of the tax assessors and the validity of their tax assessment are presumed.
>
> "As a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the property owner to clearly show that the assessment was erroneous, in order to relieve himself from it." (Collector of Internal Revenue v. Bohol Land Trans. Co., 107 Phil. 965 [1960]).

Sec. 201 of the Tariff and Customs Code puts to rest any doubt as to whether the HCV as provided in CIVCC No. 270-276 is consistent with the actual purchase price of the subject articles. To wit:

> SEC. 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 home consumption value or price (excluding internal excise taxes) 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 country from where exported on the date of exportation to the Philippines."

The Commissioner of Customs has a great latitude in determining the correct HCV. The published HCV of the Bureau of Customs prevails over any value listed in the consular or commercial invoices. Why consular certifications of value of products exported to the Philippines are not conclusive on the Philippine revenue authorities is thus explained by the Supreme Court:

> "If the customs authorities were bound by the invoice value, it is evident that they would be, to a considerable extent, at the mercy of foreign merchants and importers." (Coca-Cola Export Corp. v. Commissioner of Internal Revenue, supra)

WHEREFORE, the appealed decisions of the Commissioner of Customs in CTA Cases Nos. 3376 and 3479 are hereby affirmed.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, November 16, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals