PROCTER & GAMBLE PHILIPPINES
MANUFACTURING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3942

ALFREDO PIO DE RODA, JR.,
Deputy Minister of Finance,
Respondent.
x - - - - - - - - - - - - - - - - x

9/26/90

D E C I S I O N

This is a petition for the review of the decision of the Deputy Minister of Finance dated October 15, 1980, under his automatic review powers pursuant to Section 2315 of Presidential Decree No. 1464, which took effect on April 1, 1979.

Petitioner Procter & Gamble Philippines Manufacturing Corporation had imported 15 Drums Geraniol BJ and 15 Drums Citronellol AJ, which arrived on November 6, 1978 in Manila and were exported from Savannah, Georgia, U.S.A. on October 2, 1978.

As per covering Consular Invoice No. 304406 dated October 10, 1978 and Commercial Invoice No. 25280-34, the shipment had the home consumption values as follows:

Geraniol bj at $2.21/lb. and
Citronellol aj at $2.79/lb.

Before the filing of the entry of the shipment, petitioner through its broker, filed with the Bureau of Customs, Port of Manila, an RVI (Request for Value Information) dated October 18, 1978. Upon the processing of the RVI by the Customs Officers, the HCV (Home Consumption Values) were upgraded as follows:

1. Geraniol bj - from $2.21/lb. to $2.70/lb. based on CIVCC (Customs Information Valuation and Classification Circular) No. 280-76, page 156, July 1, 1976, *(Exh. F)*

2. Citronellol aj - from $2.79/lb. to $6.00/lb. based on CIVCC (Customs Information Valuation and Classification Circular) No. 270-76, page 155, dated October 1, 1976, *(Exh. G)*

Article Geraniol, as published in CIVCC No. 280-76 *(Exh. F)* was published as <u>Geraniol Extra</u> *(p. 19, CTA rec.)* at $2.70/lb.

Citronellol, as published in CIVCC No. 270-76 *(Exh. G)* was published as <u>Citronellol only</u> *(p. 19, CTA rec.)* at $6.00/lb.

Procter & Gamble Philippines Manufacturing Corporation entered the higher values in their Entry No. 111615-78 in order to avoid imposition of surcharges on the shipment in question pursuant to Section 2503 of the Customs Law and at the same time protesting the purported upgrading by the Customs official who processed RVI No. 11-114 and the appraisal made by the appraiser at the upgraded published HCVs pursuant to RVI No. 11-114, thereby requiring petitioner to pay the duty and tax amounting to P104,000.00, which petitioner paid under protest, as evidenced by Official Receipt No. 698168 dated November 28, 1978.

The Collector of Customs decided in favor of petitioner ordering the reliquidation of the entry on the basis of $2.21/lb. for the 15 drums Geraniol bj and at $2.70/lb. for the 15 drums citronellol aj, and the excess amount refunded in the form of tax credit.

In a 1st Indorsement dated September 15, 1980 of the Commissioner of Customs, Ramon V. Farolan, he concurred with the findings of the Collector sustaining the protest and refund of the duties and taxes paid by petitioner stating thus -

> The shipment consisting of 15 drums of geraniol bj and 15 drums of citronellol aj has an entered value of $2.21/lb. for geraniol bj and $2.79.lb. for citronellol aj based on the consular and commercial invoices attached to the entry. However, the VCD upgraded the

value at $2.70/lb. for geraniol bj and $6.00/lb. for citronellol aj.

Chemical Engineer Victorio Mejia, the Vice-President of the Indent Division, Migra Trading Corporation, testified that he worked as an indentor for the SCM International Ltd., Cleveland, Ohio, U.S.A., covering all kinds of perfumery products exported into this country; that he was the one who mediated in the consummation of the sale of the subject shipment between the SCM International Ltd. and the protestant company; that he was also the one who wrote a letter dated November 16, 1978, addressed to the protestant stating, among other things, that he received a letter of the same date from a certain Mr. Nagai, the Marketing Manager of the Glidden Organics, which was the manufacture of the shipment in question, and that attached to the said letter was the photostat copy of the telex of Mr. Nagai certifying that the Glidden Organics was and still is not engaged in the manufacture of the geraniol extra; that there were two kinds of geraniol, namely: (1) geraniol extra; and (2) geraniol bj; that if the geraniol extra will be manufactured in the future, the Glidden Organics will produce the same with a higher purity of 85%, 95% and 99% than the current geraniol bj which has only a purity of 70%; and that the letters :bj" and "aj' are the secret codes of the manufacturer of perfumery products which differentiates the purity of the subject shipment from the other.

In view of the foregoing and other basis appearing on the decision, this Office concurs with the findings of the Collector sustaining the protest and the refund of duties and taxes paid by the herein protestant.

But in a 2nd Indorsement dated October 15, 1980 of the Deputy Minister of Finance, Alfredo P.

De Roda, Jr., he denied the protest and refund of the duties and taxes paid stating as follows:

> It appears that the entered values of the shipment based on the consular and commercial invoices were $2.21/lb. for geraniol-bj and $2.79/lb. for citronellol-aj. However, the customs appraiser assessed the shipment at the higher rates of $2.70/lb. and $6.00/lb. for geraniol-bj and citronellol-aj, respectively, based on the respective CIVCC No. 280-76 dated July 1, 1976 and CIVCC No. 270-76 dated April 1, 1977. As a consequence, protestant was required to pay duties and taxes on the shipment amounting to One Hundred Four Thousand One pesos (P104,001.00) under Official Receipt No. 298168 dated November 28, 1978.
>
> Protestant impugns the correctness of the assessment made by the appraiser concerned on the ground that it was not based on the home consumption value indicated in the commercial and consular invoices. Protestant contended that the articles described as "geraniol extra" in CIVCC No. 280-76 and "citronellol" in CIVCC No. 270-76, upon which the upgraded values were based, were different from the articles comprising the shipment which are known as "geraniol-bj" and citronellol-aj. It is further argued that since the HCV appearing in the commercial and consular invoices were the prices on or about the date of exportation, the said HCV should be correctly applied on the shipment.
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> It may be stated, in this connection that CIVCC Nos. 280-76 and 270-76 are the implementing circulars of Section 201 of the Tariff and Customs Code, in relation to Section 602-A of the said Code. They are in full force and effect and therefore enforceable. Records show that the shipment in question was exported

> from Savannah, Georgia, U.S.A., on October 2, 1978 and Revision Order No. 12, upon which the appraisal of the subject articles was based, has been issued on December 1, 1978. Considering the nearness of the date of exportation and the issuance of the said Revision Order No. 12, it is believed that the used of the published value in the instant protest is tenable. The use of the published value in the assessment and appraisal of duties and taxes has been consistently upheld by this Ministry, except in cases when such value becomes stale and obsolete and necessitates revision. This Ministry is not inclined to adhere to the testimony of Chemical Engineer Victorio Mejia that the imported geraniol-bj is different from that listed in the CIVCC No. 280-76. Engineer Mejia's testimony could only be considered as self-serving and lacks evidentiary proof. *(p. 9, CTA rec.)*

The issue posed for our determination is whether or not the imported "Geraniol bj" and "Citronellol aj" home consumption values should be based on the values shown by the commercial or the consular invoices at $2.21/lb. and $2.79/lb., respectively, or the CIVCC (Customs Information Valuation and Classification Circular) Nos. 280-76 *(Exh. F)* dated July 1, 1976 and 270-76 *(Exh. G)* dated October 1, 1976 at $2.71/lb. and $6.00/lb., respectively.

The CIVCC's upon which the Deputy Minister of Finance based its finding were firstly issued more that 2 years before the importation of the commodities (Geraniol bj and Citronellol aj) on October 2, 1979; hence, the values in the CIVCC's were neither values on the date of exportation or values nearest to it. (Decision, Collector of Customs, Port of Manila, May 12, 1980, p. 17, CTA rec.); that the said imported Geraniol bj and Citronellol aj are of different names *(Exh. E)* than those stated in the CIVCC's which are named Geraniol Extra *(Exh. F)* and mere Citronellol *(Exh. G) [pp. 49-50, CTA rec.]*. Therefore, the CIVCC and the RVI should not apply to the subject shipment; that the entered values were the correct Home Consumption Values because there was no published value applicable to the subject shipment which has a lower percentage of purity than that of the geraniol extra and plain citronellol and that such entered values were supported by the consular invoices and commercial invoices of petitioner.

During the hearing before the Collector of Customs, it was shown by evidence, through the testimony of Chemical Engineer Victorio Mejia, Vice-President of the Indent Division, Migra Trading Corporation, that xxx "he worked as an indentor for the SCM International Ltd., Cleveland, Ohio, U.S.A., covering all kinds of perfumery products exported into this country; that he was the one who mediated in the consummation of the sale of the subject shipment between the SCM International Ltd. and the protestant company; that he was also the one who wrote a letter dated November 16, 1978, addressed to the protestant stating, among other things, that he received a letter of the same date from a certain Mr. Nagai, the Marketing Manager of the Glidden Organics, which was the manufacturer of the shipment in question, and that attached to the said letter was the photostat copy of the telex of Mr. Nagai certifying that the Glidden Organics was and still is not engaged in the manufacture of the geraniol extra; that there were two kinds of geraniol, namely: (1) geraniol extra; and (2) geraniol bj; that if the geraniol extra will be manufactured, in the future, the Glidden Organics will produce the same with a higher purity of 85%, 95% and 99% than the current geraniol bj which has only a purity of 70%; and that the letters "bj" and "aj" are the secret codes of the manufacturer of perfumery of products which differentiates the purity of the subject shipment from the others.

And to substantiate its allegation that the consular and commercial invoices state the true and correct Home Consumption Values; petitioner submitted the following documents:

> Import Entry No. 111615-78 *(Exh. "A")*; Declaration in the entry of the values of the subject shipment, that is, from \$2.21/lb. to \$2.70/lb., and from \$2.79/lb. to \$6.00/lb. *(Exh. "A-1")*; Consular Invoice No. 304406 dated October 10, 1978 *(Exh. "B")*; Commercial Invoice No. 25280-34 *(Exh. "C")*; letter dated November 16, 1978 of Mr. Victorio Mejia to the protestant firm *(Exh. "D")*; Photostat copy of the telex dated November 16, 1978 of Mr. Nagai of the Glidden Organics to Mr. Mejia *(Exh. "E")*; CIVCC No.280-76, page 156, dated July 1, 1976 *(Exh. "F")*; CIVCC No. 270-76, page 155, dated April 1, 1977 *(Exh. "G")*; Affidavit duly executed and signed on April 29, 1979 by Mr. Ralph Close, the Vice-President of the Terpene Products Group, SCM Corporation, Jacksonville, Florida, U.S.A., attesting, among other things, that upon examination, he found that the consular and commercial invoices covering the shipment in question valued at \$27,999.48 had HCVs of \$2.21/lb. of geraniol bj and \$2.79/lb. of citronellol aj and that they were the true and correct HCVs in the U.S.A. at the time of their exportation to this country *(Exh. "H")*; and Page 414 of the book entitled "The Condensed Chemical Dictionary", showing that the grades for geraniol are standard, soap and synthetic *(Exh. "I")*.

Rather than substantiate the respondent Deputy Minister of Finance position in denying the protest of petitioner, the witness for the Collector of Customs, Appraiser Pedro Madrigal, has miserably testified "that he never knew who placed those upgraded prices in the RVI; that on page 410 of "The Condensed Chemical Dictionary", the grades for geraniol are standard, soap and synthetic; that he knew that the chemical formulas of "bj" and "aj" have something to do with the subject shipment; and that inasmuch as he could not explain or interpret their chemical meaning, he could not determine the particular grade to which the geraniol bj falls.

Even Mrs. Ofelia Fernando, Chief, Valuation and Classification Officer, testified that "xxx the VCD is the office charged under the publication of the home consumption values of imported articles; that the upgraded published indicated in RVI No. 11-114 were based on a U.S. publication entitled "The Chemical Marketing Reporter" dated September 4, 1978 *(Exh. "4")* and Revision Order No. 12 dated December 1, 1978 *(Exh. "5")*; that as shown on page 414, 8th edition of "The Condensed Chemical Dictionary", the grades for geraniol are standard, soap and synthetic; that if the percentage of purity between the geraniol extra and the geraniol bj was specified, there must be a difference; that she did not have in her office any sample of the subject shipment; that she never came across the chemical analysis of the subject articles; that before the publication of the values appearing in R.O. No. 12 dated December 1, 1978, the HCVs for the subject articles which were exported to this country on October 2, 1978, were still the same, as reflected in CIVCC No. 280-76 dated July 1, 1976 and CIVCC No. 270-76 dated April 1, 1977."

The published values (CIVCC Nos. 280-76 and 270-76) of July 1, 1976 and October 1, 1976 cannot certainly be used without disregarding the requirements of Section 201 of the Tariff and Customs Code, as amended, as it can be safely concluded that there was no published value in the case.

Based on these undisputed evidence, the assessment of the subject articles should be based on the accompanying consular *(Exh. B, p.44, CTA rec.)* and commercial invoices *(Exhs. C, D, E, E-1, I, I-1, J, J-1, K, K-1, L, L-1, M, N, N-1, O, O-1)* pursuant to the 2nd paragraph of Section 201 of the Tariff and Customs Code which provides as follows:

> "The home consumption value or price under this section shall be the value or price declared in the consular, commercial, trade or sales invoice. xxx." ***(Comm. of Customs vs. C.T.A. et al.**, G.R. Nos. 72069-70, May 21, 1988.)*

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We therefore fully concur with the decision of the Commissioner of Customs, Ramon J. Farolan, in concurring with the findings of the Collector sustaining the protest and refund of the duties and taxes paid by petitioner in this case.

WHEREFORE, the decision of the Deputy Minister of Finance dated October 15, 1980 is hereby reversed.

SO ORDERED.

Quezon City, Metro Manila, September 26, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ALEX Z. REYES
Associate Judge

CERTIFICATION

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

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