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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HIAP HONG TRADING CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2804

ALFREDO PIO DE RODA, JR.,
Acting Commissioner of
Customs,
Respondent.

6/27/80

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D E C I S I O N

Action for recovery of alleged excess customs duty and advance sales tax paid on two (2) shipments of "Hokkado" brand canned mackerel imported by petitioner Hiap Hong Trading Co., Inc. Respondent Commissioner of Customs having affirmed the decision of the Collector of Customs of Manila denying its claim for refund of such excess customs duty and advanced sales tax, petitioner appealed to this Court.

Petitioner is a corporation organized and existing under the laws of the Philippines with office address at 626 M. de Santos Street, Binondo, Manila. As importer and seller of foodstuffs, among which are canned mackerel, petitioner imported from Japan on two occasions the following items, to wit:

(a) 10,000 cartons canned mackerel in natural oil "Hokkado" brand which arrived at the port of Manila on September 24, 1974 and unloaded from the vessel "Mount Fuji". (pp. 3-8, Customs records.)

(b) 5,000 cartons canned mackerel "Hokkado" brand which arrived at the port of Manila on October 10, 1974 and unloaded from the vessel S/S "Asiatica". (See back of p. 53, Customs records.)

Upon arrival of the aforementioned 10,000 cartons of canned mackerel, petitioner prepared on September 30, 1974 the necessary import entry and internal revenue declaration under oath. In the said entry, petitioner reflected the amount of $100,800.00 as the home consumption value of the whole shipment of the 10,000 cartons (see Exh. "3", p. 38, Customs records) or $10.08 per carton. (Exh. "3-A", p. 38, Customs records; pp. 7-8, t.s.n., Hearing of December 7, 1977.) Under the column "current wholesale home consumption value" of the consular invoice of the aforesaid shipment (TK No. 033948), there appears the amount of US $100,728.99, which more or less tallies with the home consumption value declared by petitioner in its import entry and internal revenue declaration. (Exh. "3-C", p. 39, Customs records; see also pp. 9-10, t.s.n., Hearing of December 7, 1977.) This home consumption value of $10.08 declared in the said entry by petitioner was accepted by respondent's appraiser as the basis of computing the customs duties and taxes due the government. (Exh. "3-D", back of Exh. "3"; see also p. 17, t.s.n., Hearing of December 7, 1977.)

As regards the second shipment consisting of 5,000 cartons of canned mackerel which was unloaded from the vessel S/S "Asiatica", petitioner, upon arrival of the said goods, prepared on October 11, 1974 the necessary import entry and internal revenue declaration under oath. (Exh. "4", p. 53, Customs records.) In the said entry, petitioner declared as the home consumption value of the whole shipment the amount of $31,092.48 or $6.218 per carton. (Exh. "4-A" and Exh. "4-B", p. 53, Customs records; see also t.s.n., pp. 13-14, Hearing of December 7, 1977.) Under the heading "current wholesale home consumption value" of the consular invoice of the said merchandise (TK No. 012917), there appears the amount of $31,092.48, which tallies with the home consumption value reflected by petitioner in its import entry and internal revenue declaration. (Exh. "4-C", p. 65, Customs records; see also t.s.n., pp. 15-16, Hearing of December 7, 1977.) This home consumption value appearing in the said import entry and internal revenue declaration was likewise adapted by respondent's appraiser in computing the amount of customs duties and taxes due the government on the said importation. (Exh. "4-D", p. 53, see back of Exh. "4", p. 53, Customs records; see also t.s.n., pp.16-17, Hearing of December 7, 1977.)

Customs Import Valuation Circular No. 745-74 dated October 15, 1974 shows that the published home consumption value of "Hokkado" brand, canned mackerel in natural oil, salmon style 48/7 oz., involved in the 5,000 carton shipment is $6.218 per carton. However, prior to October 15, 1974 the home consumption value of said article as published was $6.721 per carton. (Exhs. "1", "1-A" & "C", p. 13, CTA records.) And Customs Import Valuation Circular No. 747-74 dated October 15, 1974 reveals that the published home consumption value of "Hokkado" brand, canned mackerel from Japan, 48/15 oz. tall, involved in the 10,000 carton shipment is $10.08 per carton. Before October 15, 1974, the home consumption value of said canned mackerel was $11.30 per carton. (Exhs. "2", "2-A" & "D", p. 14, CTA records.)

The customs duties and taxes due on the 10,000 cartons of canned mackerel were paid on October 2, 1974 in the amount of ₱185,719.00 on the basis of a home consumption value of $10.08 per carton as per Central Bank Receipt No. 372226 issued by the China Banking Corporation. (p. 5, Customs records.) Likewise, on October 15, 1974 petitioner paid the amount of ₱56,062.00 as customs duties and taxes due on the shipment of the 5,000 cartons on the basis of a home consumption value of $6.218 per carton under Central Bank Receipt No. 93324 issued by the Equitable Bank. (p. 11, Customs records.)

Subsequently, on October 14, 1974 petitioner protested the assessment and collection of the customs duties and taxes on the 10,000 cartons of canned mackerel covered under Import Entry No. 89798-74. (Manila Protest No. 9475.) Likewise, on October 28, 1974 it protested the payment of the customs duties and taxes on the shipment of 5,000 canned mackerel covered by Import Entry No. 93324-74. (Manila Protest No. 9474.) In these protests, petitioner alleges, in the case of Entry No. 89798-74 that the amount of $100,728.98 appearing as "current wholesale home consumption value" in the consular invoice of merchandise (Exh. "3-C") is actually FOB value and from it all dutiable and non-dutiable charges, namely, value of packing materials, cost of labor in packing, inland freight and other charges, and pier and handling charges in the aggregate sum of US$12,395.77 should have been deducted to arrive at a home consumption value of $88,333.99 for 10,000 cartons or an average of $8.333 per carton; and that, in the determination of the home consumption value in the case of Entry No. 93324-74, the sum of US$3,124.27 representing alleged dutiable and non-dutiable charges, such as value of packing materials, cost of labor in packing and pier and handling charges should have been excluded from the value of $31,092.48 which appears under column "current wholesale home consumption value" in the consular invoice of merchandise (Exh. "4-C") but which petitioner claims the FOB value to make a total of a home consumption value of $27,968.21 for the 5,000 cartons or an average of $5.593 per carton.

On January 27, 1975 the Collector of Customs of Manila rendered a decision dismissing the protests filed by petitioner. Not satisfied with the decision, petitioner appealed to respondent Commissioner of Customs, claiming refund of excess customs duty and advance sales tax in the total amount of ₱20,019.00 under Entry No. 89798-74 and ₱4,976.00 under Entry No. 93324-74, broken down as follows:

Entry No. 89798-74		&	Entry No. 93324-74	
Customs Duty	=₱13,885.00		Customs Duty	=₱3,452.00
Adv. Sales Tax	=₱ 6,134.00		Adv. Sales Tax	=₱1,724.00
Total	₱20,019.00			₱4,976.00

In a decision dated March 29, 1976, respondent Commissioner of Customs affirmed, however, the judgment of the Collector of Customs. Hence, the present recourse.

No controversy exists between the parties as to the computation and amount of customs duty and advance sales tax allegedly refundable to petitioner as the case may be.

The only issue to be resolved in this proceeding is whether or not the Bureau of Customs was correct in applying the home consumption values of $10.08 and $6.218 per carton to the two shipments covered by Import Entry No. 89798, series of 1974, and Import Entry No. 93324, series of 1974.

The law involved, which is Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, is specific and mandatory. It merely calls for application as thus worded. There is no room for interpretation. It says:

> "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, 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) per cent 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 No. 5466 or other Philippine diplomatic officers and from such other information that may be available to the Bureau of Customs.

From the data 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 importer to produce the documents mentioned in the second paragraph, or where there exists a reasonable doubt 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) _per cent_ thereof for expenses and profits; and

(b) Duties and taxes paid thereon.

The applicable provision makes it clear that for purposes of _ad valorem_ duties, the basis of the dutiable value of an imported article is the home consumption value or price on the date or nearest to the date of exportation, including the value of all containers, coverings and/or packings and all other costs and expenses incident to placing the article for shipment to the Philippines, plus ten (10) _per cent_ of such home consumption value or price. The accent is on the term - "home consumption value" or HCV for short. And what is the home consumption value or price as contemplated by the law? The same law gives the ready answer. It specifies: "The home consumption value or price under this section shall be the value or price declared in the consular, commercial, trade or sales invoice."

Here in the case at bar, with regard to the first shipment consisting of 10,000 cartons of canned mackerel in natural oil, Hokkado brand, size 48x15 oz., the home consumption value actually declared by petitioner under oath is $100,800.00 for the whole shipment or $10.08 per carton. (Exhs. "3", "3-A" & "3-B"; pp. 7-8, t.s.n., December 7, 1977.) The home consumption value appearing in the consular invoice of merchandise (TK No. 033948), referred to as Consular Invoice No. 11766, is $100,728.99, which more or less tallies with the home consumption value of $100,800.00 declared under oath by petitioner in the import entry and internal revenue declaration of the shipment. (Exhs. "A", "3", "3-A" & "3-C"; pp. 9-10, t.s.n., December 7, 1977.) The home consumption value of $10.08 per carton declared under oath by petitioner was therefore accepted by the customs appraiser. (Exh. "3-D"; p. 17, t.s.n., December 7, 1977.) And with respect to the second importation consisting of 5,000 cartons, Hokkado brand, size 48x7 oz., the home consumption value actually declared under oath by petitioner in the import entry and internal revenue declaration is $31,092.48 or $6.218 per carton. (Exhs. "4-A" & "4-B"; pp. 13-14, t.s.n., December 7, 1977.). The home consumption value appearing in the consular invoice of merchandise (TK No. 012917) of $31,092.48 or $6.218 per carton tallies with the home consumption value declared under oath by petitioner. (Exhs. "B-3" & "4-C"; pp. 15-16, t.s.n., December 7, 1977.). The home consumption value declared by petitioner was also accepted by the customs appraiser. (Exh. "4-D"; pp. 16-17, t.s.n., December 7, 1977.).

To the extent that petitioner adhered strictly to the legal provision applicable by declaring under oath in the import entries and internal revenue declarations of the shipments in question the home consumption values appearing on the consular invoices of the merchandise, it cannot be assailed as erroneous. There being fidelity to what is required by the law, there would seem to be no basis, therefore, for an assertion that what was done by petitioner could be successfully assailed.

Nevertheless, in a complete about-face, petitioner would now want this Court to believe that the home consumption value of $10.08 per caton with respect to the first importation and of $6.218 per carton as regards the second shipment, appearing in the consular invoices of the merchandise, which were declared under oath by it in the import entries and internal revenue declarations of the imported articles, although in accordance with the law, are not their actual and correct home consumption values. It is the position of petitioner that it had to declare the home consumption values stated in the consular invoices of merchandise only because of fear that the import entries would be subjected to the penalty of surcharge if it did not do so.

According to petitioner, before the import declaration was filed for each of the two shipments, its customs broker verbally asked for information from the customs appraiser concerned regarding the home consumption value to be declared for each importation. The appraiser suggested that the value of US$10.072899 per carton appearing on the consular invoice attached to Entry No. 89798-74 be declared in the import entry as the home consumption value; and that the value of US$6.2118496 per carton appearing on the consular invoice attached to Entry No. 93324-74 be declared in the import entry as the home consumption value. In spite of the fact that its broker allegedly disagreed with these values, he had to declare them for fear that the import entries would be subjected to surcharge. (pp.44-45, CTA records.)

To emphasize its disagreement, petitioner avers that immediately after paying the customs duties and taxes on the basis of the values appearing on the consular invoices, the broker filed a protest on its behalf on October 14, 1974 for Entry No. 89798-74 and on October 28, 1974 for Entry No. 93324-74, which protests are attached to the import entries. In these two protests, petitioner alleges, in case of Entry No. 89798-74, that from the consular value of \$100,728.99, all dutiable and non-dutiable charges, namely, value of packing materials, cost of labor in packing, inland freight and other charges, and pier and handling charges in the aggregate sum of US\$12,395.77 should have been deducted to make a total of a supposed home consumption value of \$88,333.99 for 10,000 cartons or an average of \$8.333 per carton; and that, in the determination of the home consumption value in the case of Entry No. 93324-74, the total amount of US\$3,124.27 representing dutiable and non-dutiable charges, such as value of packing materials, cost of labor in packing and pier handling charges should have been excluded from the consular value of \$31,092.48 to arrive at an alleged home consumption value of \$27,968.21 for 5000 cartons or an average of

$5.593 per carton. These protests subsequently became Protest No. 9475 and 9474, respectively. (p. 45, CTA records.)

We find no merit in petitioner's cause.

To begin with, these values of $10.072899 per carton or a total of $100,728.29 for 10,000 cartons in the case of Consular Invoice TK No. 033948 (Exh. "3-C"), Entry No. 89798-74; and $6.218496 per carton or a total of $31,092.48 for 5,000 cartons in Consular Invoice TK No. 012915 (Exh. "4-C"), Entry No. 93324-74, are clearly and unmistakably reflected on said consular invoices, under the last column thereof, as <u>current wholesale home consumption values</u>. Considering the official character of these consular invoices, and there being no reasonable ground to deny to these documents the faith and credence normally due thereto (Commissioner of Customs and Commissioner of Internal Revenue vs. Miguel Fortich Celdran and Court of Tax Appeals, L-23425, February 26, 1968, 22 SCRA 742), no justification can be found for reading that the prices written under the column "current wholesale home consumption value" are not the home consumption values of the shipments in question. Petitioner's submission that since these invoices do not contain columns for C & F and FOB values, these prices are actually FOB values is therefore positively without any basis. If these prices are actually FOB values, that could have easily been done by a clarifying statement or explanation to that effect. The law provides that the home consumption value shall be the value declared in the consular invoice. Accordingly, the value declared thereon, specially if written under the column "current wholesale home consumption value", should be understood, in the absence of convincing evidence to the contrary, that it is the home consumption value of the article involved therein.

Secondly, there is absolutely no evidence that these current wholesale home consumption values of the two shipments in question are actually their FOB values. On the contrary, the consular invoices of the merchandise, which are the best evidence as to the exact nature of the values reflected thereon definitely and unequivocally declare that they are the current wholesale home consumption values of the imported articles. Where the consular invoice, executed in accordance with the law, states that the prices or values of merchandise mentioned thereon are their current wholesale home consumption values, that should not be read to FOB values. If biased and interested allegations or vague and uncertain averments, standing alone and unsupported by convincing and more than merely preponderant evidence, are deemed sufficient to overcome or contradict what appears in a clear and unequivocal manner on an official document, drawn up with all the formalities prescribed by law, then that would throw wide open the doors to frauds upon the Customs.

Thirdly, if the values or prices stated in the consular invoices of merchandise as current wholesale home consumption values are actually and truly FOB values, why is it that petitioner declared them under oath in the import entries and internal revenue declarations of the shipments as their home consumption values? Petitioner alleges that before the import declaration was filed for each of these two shipments, its customs broker verbally asked for information from the customs appraiser concerned regarding the home consumption value to be declared for each shipment and the appraiser suggested that the value of US$10.072899 per carton appearing on the consular invoice attached to Entry No. 89798-74, and that the value of US$6.2118496 per carton appearing on the consular invoice attached to Entry No. 93324-74, both under the column "current wholesale home consumption value", be declared in the import entries as home consumption values. While its customs broker allegedly disagreed with the suggested values, he had to declare them for fear that the import entri would be subjected to surcharge.

Aside from the fact that absolutely no evidence whatsoever was presented regarding this matter, the position taken by petitioner is assailable for a party aggrieved by wrongful or illegal action of tax collecting officers in the assessment and collection of duties and taxes has several remedies available to him dependent on the nature of the injury sustained and the kind of relief sought. At any rate, the information given by the customs appraiser was merely a suggestion, petitioner having the liberty or freedom to act according to its own judgment of what is right and proper under the circumstances, without willfulness or favor. Even more, these suggested values were apparently in conformity with the home consumption values specified on the consular invoices as provided by Section 201 of the Tariff and Customs Code.

And in this connection, such information or suggestion invites an equally plausible information or suggestion, namely, that 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 published home consumption value of such article as determined from the reports of revenue or commercial attaches, pursuant to Republic

Act No. 5466 or other diplomatic officers and from other data available to the Bureau of Customs. (pars. 2 & 3, Sec. 201, Tariff & Customs Code.) As testified to by the customs appraiser, who was presented as a witness for petitioner, had not petitioner placed as entered value the amount of $6.218* per carton with respect to the importation covered by Exhibit "B" and the amount of $10.08** per carton with respect to the shipment covered by Exhibit "A", which were the home consumption values appearing on the consular invoices, the customs appraiser could have applied the then published values at the time of $6.721 per carton with respect to the 5,000 cartons of mackerel covered by Exhibit "B" and the value of $11.30 per carton of canned mackerel covered by Exhibit "A". (Home consumption values of subject articles published under Customs Import Valuation Circualr No. 80-74 dated July 31, 1974.) Consequently, it was precisely these declarations under oath by petitioner, which the customs appraiser accepted as correct, that prevented the imposition of the then published home consumption values, which were much higher than the declared home

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*Home consumption value of subject article which was published under Customs Import Valuation Circular No. 745-74 dated October 15, 1974. (Exhs. "C", "1" & "1-A".)

**Home consumption value of subject article as published under Customs Import Valuation Circular No. 747-74 dated October 15, 1974. (Exhs. "D", "2" & "2-A".)

consumption values. As aptly stated by respondent, having benefited from said declaration, petitioner cannot now be permitted to back out from it.

> "In any event, the principle of estoppel would step in to prevent the plaintiffs from going back upon their own acts and representations to the prejudice of the other party who relied upon them. This is a principle of equity and natural justice, expressly adopted in our Civil Code (Arts. 1431 et.seq.) and articulated as one of the conclusive presumptions in Rule 31, Sec. 3(a), of our Rules of Court as follows:
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> > '(a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it." (Lazo vs. Republic Surety & Insurance Co., Inc., L-27365, January 30, 1970, 31 SCRA 329.)

Last, but not least, this case seeks the refund not only of excess customs duty but also advance sales tax in the amounts of ₱6,134.00 under Entry No. 89798-74 and ₱1,724.00 under Entry No. 93324-74. We note that insofar as the claim for refund of the advance sales tax is concerned, the Commissioner of Internal Revenue has not been impleaded as a party respondent in this judicial suit for recovery of an internal revenue tax alleged to have been erroneously or illegally collected so that this Court did not acquire jurisdiction over him. (Section 306 /now Section 292/, National Internal Revenue Code; see also Luna vs. Commissioner of Customs, CTA Case

No. 1947, November 29, 1968; Philippine Wallboard Corp. vs. Commissioner of Customs, CTA Case No. 2136, September 30, 1972; Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2155, Resolution dated April 15, 1971; Ace Publications, Inc. vs. Commissioner of Customs and Collector of Customs, L-18808, May 29, 1964, 11 SCRA 147; Tagum Electric Company, Inc. vs. Commissioner of Customs, CTA Case No. 2749, Resolution dated September 13, 1976.)

We are not unaware of the provisions of the second paragraph of Section 1708 of the Tariff and Customs Code, as amended, that "if as a result of the refund of customs duties there would necessarily result a corresponding refund of internal revenue taxes on the same importation, the Collector shall likewise certify the same to the Commissioner who shall cause the said excess taxes to be paid, refunded, or tax credited in favor of the importer, with advice to the Commissioner of Internal Revenue." However, under the fundamental rule of statutory construction that all statutes relating to the same subject are to be construed with reference to each other so that effect may be given to all the provisions of each (Madrigal vs. Rafferty, 38 Phil. 414; 51 Am. Jur. 363), the afore-quoted provision of law should be interpreted in connection with Section 306 (now Section 292) of the National Internal Revenue Code. The Commissioner of Internal Revenue being a person who is bound by the judgment to be rendered in a judicial suit for the recovery of any national internal revenue tax alleged to have been erroneously or illegally assessed or collected, he is a party necessary to a complete determination and settlement of the questions involved therein. (Bell Hobart Manufacturing Incorporated vs. Commissioner of Customs, CTA Cases Nos. 2750,2751, 2752 and 2753, March 10, 1978.)

The net result is that the home consumption values of $10.08 and $6.218 per carton of the 10,000 cartons canned mackerel in natural oil, Hokkado brand, size 48x15 oz., declared in Entry No. 89798-74, and of the 5,000 cartons canned mackerel in natural oil, Hokkado brand, size 48x7 oz., declared in Entry No. 93324-74, respectively, which have been applied by the Bureau of Customs as the basis of the dutiable value of these shipments at the time of their importations, are in conformity with the provisions of Section 201 of the Tariff and Customs Code. The decision of respondent Commissioner of Customs affirming the decision of the Collector of Customs of Manila dated January 27, 1975, denying the claim for refund of petitioner Hiap Hong Trading Co., Inc. for alleged excess customs duty and advance sales tax paid on the two (2) shipments of

"Hokkado" brand mackerel involved in this appeal must therefore be sustained.

WHEREFORE, the judgment appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, June 27, 1980.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge