REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

SANOFI-AVENTIS PHILIPPINES, INC.
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS,
Respondent.

CTA CASE NO. 9323

Members:

FABON-VICTORINO, *and*
RINGPIS-LIBAN, JJ.

Promulgated:
OCT 05 2018
2:48 p.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

This Petition for Review filed by Sanofi-Aventis Philippines, Inc. prays that the Court declare the August 5, 2014 Decision of the District Collector has become final and executory, or in the alternative, reverse the Assailed Letter dated February 29, 2016 of the Commissioner of Customs (COC) insofar as the Assailed Letter reversed the August 5, 2014 Decision's ruling that the Valuation and Classification Review Committee's (VCRC) upgraded valuation of the subject shipments and the corresponding assessment of additional duties and charges are null and void, and order the Commissioner of Customs to refund the amount of ₱1,102,623.00 adjudged under the August 5, 2014 Decision.

THE FACTS

Petitioner Sanofi-Aventis Philippines, Inc. is a corporation organized and existing under Philippines laws, with principal office address at 21st Floor, One World Place, 32^{nd} Street, Bonifacio Global City, Taguig City.[1] It is engaged in the importation, selling at wholesale, distribution, transportation and promotion of pharmaceutical preparations, drugs, and medicine.[2]

Respondent is the Commissioner of the Bureau of Customs (BOC), with office address at the G/F, OCOM Bldg., Port Area, Manila.

Petitioner was the consignee of the following shipments:[3]

1. Nine (9) packages of STC Ercefuryl 200mg and Maalox Plain Susp 60ml weighing 3,143 kilograms, which arrived on board Etihad Airways Flight EY 428 from France on July 20, 2013, and covered by Airway Bill No. (AWB) No. 607-9994 1704 and House Airway Bill No. (HAWB) CDG 27116689;[4]

2. One (1) package of STC Clomid tablets 50mg 30's, weighing 55.30 kilograms, which arrived on board Eva Airways Flight BR 271 from the United States of America on August 28, 2013, and covered by AWB No. 695-4102 98822 and HAWB No. ATL 50000144;[5] and

3. One (1) package of STC Clomid tablets 50mg 30's, weighing 30.80 kilograms, which arrived on board Eva Airways Flight BR 271 from the United States of America on August 28, 2013, and covered by AWB No. 695-4102 98822 and HAWB No. ATL 50000145.[6]

On July 24, 2013, petitioner, through Mr. Alfredo B. Aquino, a Licensed Customs Broker, filed Formal Entry No. C93114 [Import Entry & Internal Revenue Declaration (IEIRD) SN 128800244][7] through the Green Lane Scheme, declaring the shipment consisting of nine (9) packages of STC Pharma Products with customs value of US$51,930.33 as indicated in Invoice Nos. 3807029290 to 91[8] issued on July 17, 2013 by sanofi-aventis Singapore Pte. Ltd. ("sanofi-Singapore" for brevity).[9]

On September 2, 2013, petitioner, through Mr. Aquino, filed Formal Entry No. C111783 (IEIRD SN 129933854)[10] through the Green Lane Scheme, declaring the shipment consisting of one (1) package of STC Pharma

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1 Docket, vol. 2, Exhibit "P-10", pp. 858-869; petitioner's Memorandum, par. 1, p. 1116.
2 Id., Q/A5, Exhibit "P-70", pp. 520-521.
3 Id., vol. 1, Pars. 4(a), (b), and (c), Petition for Review, p. 12; admitted in par. 2, respondent's Answer, p. 344.
4 Id., vol. 2, Exhibit "P-14", p. 903.
5 Id., Exhibit "P-23", p. 919.
6 Id., Exhibit "P-31", p. 928.
7 Id., Exhibit "P-13", p. 902.
8 Id., Exhibit "P-16", pp. 906-907.
9 Id., vol. 1, Par. 5, Petition for Review, p. 12; admitted in par. 2, respondent's Answer, p. 344.
10 Id., Exhibit "P-22", p. 918.

Products with customs value of US$63,535.76, as indicated in Invoice No. 3807030186[11] issued on August 21, 2013 by sanofi-Singapore.[12]

On September 2, 2013, petitioner, through Mr. Aquino, also filed Formal Entry No. C111799 (IEIRD SN 129933063)[13] through the Green Lane Scheme, declaring the shipment consisting of one (1) package of STC Pharma Products with customs value of US$22,074.73, as indicated in Invoice No. 3807030187[14] issued on August 21, 2013 by sanofi-Singapore.[15]

An inspection was made on the shipment covered by Import Entry No. C93114 consisting of nine (9) pallets of Ercefuryl 200mg and Maalox Plain Susp 60ml, which were classified under Tariff Heading 3004.9099.[16]

On July 25, 2013, the IEIRD for Import Entry No. C93114, with its supporting attachments (*i.e.*, the Airway Bill[17], packing list[18], invoice[19], and Supplemental Declaration on Valuation[20]) were forwarded to the VCRC for clearance.[21]

Subsequently, petitioner, through Mr. Aquino, received a copy of the Request for VCRC Review Form No. 1[22], which was filled by Mr. Alberto G. Tan, Customs Operations Officer (COO) III and approved by Mr. O.R. Mamadra, Acting COO V.[23]

For Import Entry No. C93114, the VCRC recommended to upgrade the dutiable value of the Ercefuryl 200mg and Maalox Plain Susp 60ml from US$51,930.33 to US$112,326.31, after referring to "values from the internet/domestic price" as shown on the back portion of VCRC Form No. 2.[24]

The VCRC Form No. 2 for Import Entry No. C93114 did not indicate the basis for the method used or the reason for applying such method of valuation and the fields corresponding to "R.O.", "VIRS"[25], and "Others (Appeals Committee, DOF)" were left blank.[26]

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[11] Id., Exhibit "P-25", p. 921.
[12] Id., Par. 6, Petition for Review, pp. 12-13; admitted in par. 2, respondent's Answer, p. 344.
[13] Id., Exhibit "P-30", p. 927.
[14] Id., Exhibit "P-33", p. 930.
[15] Id., Par. 7, Petition for Review, p. 13; admitted in par. 2, respondent's Answer, p. 344.
[16] Id., Par. 8, Petition for Review, p. 13; , admitted in par. 3, respondent's Answer, p. 345.
[17] Id., Exhibit "P-14", p. 903.
[18] Id., Exhibit "P-15", pp. 904-905.
[19] Id., Exhibit "P-16", pp. 906-907.
[20] Id., Exhibit "P-17", pp. 908-909.
[21] Id., Par. 9, Petition for Review, p. 13; admitted in par. 4, respondent's Answer, p. 345.
[22] Id., Exhibit "P-20", p. 916.
[23] Id., Q/A29, Exhibit "P-69", p. 376.
[24] Id., Exhibit "P-21", p. 917.
[25] Although the blank VCRC Form No. 2 (Annex 2 of CMO No. 037-01) shows that the acronym should be "VRIS" (or Value Reference Information System), the three (3) VCRC Form No. 2 (Exhibits "P-21", "P-28", and "P-36") filled up in this case show that the acronym was typed as "VIRS".
[26] Docket, vol. 2, Exhibit "P-21", p. 917.

On the basis of the recommended total upgraded value of US$112,326.31, petitioner was required to pay additional duties and taxes in the amount of ₱505,728.00.[27]

An inspection was made on the shipment covered by Import Entry No. C111783 consisting of one (1) package of STC pharma products containing 1,000 packs of Clomid Tablets 50mg 30's tabs, which were classified under Tariff Heading 3004.9099.[28]

An inspection was also made on the shipment covered by Import Entry No. C111799 consisting of one (1) package of STC pharma products containing 350 packs of Clomid Tablets 50mg 30's tabs, which were classified under Tariff Heading 3004.9099.[29]

On September 3, 2013, the IEIRD for Import Entry Nos. C111783 and C111799, with its supporting attachments (the Airway Bill[30], packing list[31], invoice[32], and Supplemental Declaration on Valuation[33]) were forwarded to Ms. Emi Balatbat, Chief of the Formal Entry Division of the BOC.[34] On the same day, petitioner, through Mr. Aquino, received a copy of the Request for VCRC Review Forms (VCRC Form No. 1)[35] filled in by Mr. Arnel Bigalbal, COO III, and approved by Mr. Porfirio Tizon, Acting COO V for Import Entries Nos. C111783 and C111799.[36]

During the processing of Import Entries Nos. C111783 and C111799, Ms. Emi Balatbat, Chief of the Formal Entry Division, bought Clomid from a drugstore.[37]

For Import Entry No. C111783, the VCRC recommended to upgrade the dutiable value of the Clomid Tablets 50mg 30's tabs from US$63,535.76 to US$117,504.00, after referring to "domestic price and making a backward computation".[38]

For Import Entry No. C111799, the VCRC recommended to upgrade the dutiable value of the Clomid Tablets 50mg 30's tabs from US$22,074.73 to

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27 Assessment Notice Reference 2013 L 97620 in the amount of ₱1,057,870.00 less ₱552,142.00 (initial assessment), BOC Records, Folder 1, pp. 12 and 16.
28 Docket, vol. 1, Par. 18, Petition for Review, p. 15; admitted in par. 7, respondent's Answer, p. 345.
29 Id., Par. 19, Petition for Review, p. 16; admitted in par. 7, respondent's Answer, p. 345.
30 Id., Exhibits "P-23" and "P-31", pp. 919 and 928, respectively.
31 Id., Exhibits "P-24" and "P-32", pp. 920 and 929, respectively.
32 Id., Exhibits "P-25" and "P-33", pp. 921 and 930, respectively.
33 Id., Exhibits "P-26" and "P-34", pp. 922-923 and 931-932, respectively.
34 Id., Q/A52, Exhibit "P-69", p. 382.
35 Id., Exhibits "P-27" and "P-35", pp. 924 and 933, respectively.
36 Id., Q/A60, Exhibit "P-69", p. 383.
37 Docket, vol. 1, Par. 22, Petition for Review, pp. 16-17; admitted in par. 9, respondent's Answer, p. 346.
38 Id., Par. 26, Petition for Review, p. 17; admitted in par. 11, respondent's Answer, p. 346; Exhibit "P-28", p. 925.

US$41,126.40, after referring to "value from the domestic price and making a backward computation".[39]

On the basis of the recommended upgraded value of US$117,504.00 for Import Entry No. C111783 and US$41,126.40 for Import Entry No. C111799, petitioner was required to pay additional duties and taxes in the amount of ₱441,196.00 for Import Entry No. C111783 and ₱155,699.00 for Import Entry No. C111799.[40]

The VCRC Form No. 2 for Import Entry No. C111783 did not indicate the VCRC's reason for applying Method 3 and the fields corresponding to "R.O.", "VIRS", "Others (Appeals Committee, DOF)", and "Basis" were left blank.[41]

Likewise, the VCRC Disposition Form No. 2 for Import Entry No. C111799 did not indicate the VCRC's reason for applying Method 3 and the fields corresponding to "R.O.", "VIRS", "Others (Appeals Committee, DOF)", and "Basis" were left blank.[42]

On October 1, 2013, petitioner paid under protest the following additional duties and taxes:

IMPORT ENTRY NO.	BOC OFFICIAL RECEIPT NO.	ADDITIONAL DUTIES AND TAXES PAID
C93114	01821885856[43]	₱ 505,728.00
C111783	01821885878[44]	441,196.00
C111799	01821885867[45]	155,699.00
TOTAL		**₱ 1,102,623.00**

On October 2, 2013, the BOC released under protest the shipments covered by Import Entries Nos. C93114, C111783, and C111799.[46]

On October 8, 2013, Mr. Aquino caused the filing of protests letters dated October 3, 2013 for Import Entries Nos. C93114, C111783, and C111799.[47] The BOC Law Division stamped "received" the protest letters

[39] Id., Par. 28, Petition for Review, pp. 17-18; admitted in par. 11, respondent's Answer, p. 346; Exhibit "P-36", , p. 934.
[40] Id., Par. 30, Petition for Review, p. 18; admitted in par. 11, respondent's Answer, p. 346.
[41] Id., Par. 27, Petition for Review, p. 17; admitted in par. 12, respondent's Answer, p. 346; Docket, vol. 2, Exhibit "P-28", p. 925.
[42] Id., Par. 29, Petition for Review, p. 18; admitted in par. 12, respondent's Answer, p. 346; Docket, vol. 2, Exhibit "P-36", p. 934.
[43] Docket, vol. 2, Exhibit "P-38", p. 936.
[44] Id., Exhibit "P-39", p. 937.
[45] Id., Exhibit "P-40", p. 938.
[46] Id., Par. 32, Petition for Review, p. 18; admitted in par. 14, respondent's Answer, p. 346.
[47] Id., Exhibits "P-44", "P-46", and "P-48", pp. 942, 944, and 946, respectively.

dated October 3, 2013 for Import Entries Nos. C93114, C111783, and C111799.[48]

On the same date, petitioner paid the following docket and protest fees:

IMPORT ENTRY NO.	DOCKET FEES PAID	BOC OFFICIAL RECEIPT NO.	PROTEST FEES PAID	BOC OFFICIAL RECEIPT NO.
C93114	₱ 1,015.00	01840736953[49]	₱ 210.00	01840736942[50]
C111783	₱ 1,010.00	01840736975[51]	₱ 210.00	01840736964[52]
C111799	₱ 710.00	01840736997[53]	₱ 210.00	01840736986[54]

The protests for Import Entries Nos. C93114, C111783, and C111799 were docketed as Protest Cases Nos. 167-2013, 168-2013, and 169-2013, respectively.[55]

In its protest letters, petitioner objected to the upgraded value of the subject shipments and moved for the nullification of the additional assessed duties and taxes.[56]

During the hearing on the protest cases held on January 28, 2014, petitioner was able to secure a copy of a letter dated December 16, 2013 addressed to Atty. Agnes Domines, Chief of the BOC-NAIA's Law Division[57], containing Ms. Nelly Ochoa's findings on the subject shipments and purported reasons for using Method 3 valuation.[58]

On February 26, 2014, petitioner filed its Position Paper[59] dated February 25, 2014 for the protest cases.

The BOC filed a Comment[60] dated May 2, 2014 to petitioner's Position Paper dated February 25, 2014.

Mr. Alfredo R. Aquino and Ms. Baby Jeane Marcelo executed affidavits[61], both dated February 21, 2014, narrating how the subject importations were processed by them.[62]

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48 Id., Par. 34, Petition for Review, p. 19; admitted in par. 15, respondent's Answer, pp. 346-347.
49 Id., Exhibit "P-41", p. 939.
50 Id., Exhibit "P-45", p. 943.
51 Id., Exhibit "P-42", p. 940.
52 Id., Exhibit "P-47", p. 945.
53 Id., Exhibit "P-43", p. 941.
54 Id., Exhibit "P-49", p. 947.
55 Id., Par. 35, Petition for Review, p. 19; admitted in par. 14, respondent's Answer, p. 346.
56 Docket, vol. 1, Par. 37, Petition for Review, p. 20; admitted in par. 17, respondent's Answer, p. 347.
57 Id., Par. 38, Petition for Review, pp. 20-21; admitted in par. 18, respondent's Answer, p. 347.
58 Id., Exhibit "P-52", pp. 955-956.
59 Id., Exhibit "P-66", pp. 995-1038.
60 Id., Par. 40, Petition for Review, p. 22; admitted in par. 19, respondent's Answer, p. 347.
61 Id., Par. 36, Petition for Review, pp. 19-20; admitted in par. 16, respondent's Answer, p. 347.

The District Collector of Customs rendered a Decision[63] on August 5, 2014, ordering that the following additional taxes and duties, which were illegally assessed and/or upgraded vis-à-vis the following Import Entries, be refunded to petitioner:[64]

IMPORT ENTRY NO.	**ADDITIONAL DUTIES AND TAXES PAID**
C93114	₱ 505,728.00
C111783	441,196.00
C111799	155,699.00
TOTAL	**₱ 1,102,623.00**

The August 5, 2014 Decision acknowledged, among others, the "government's failure to give a well-founded explanation as to why it did not inform [petitioner] that the VCRC [was] conducting a valuation/classification query vis-à-vis [the subject] shipments" and ruled that:

> *xxx* This act is a blatant disregard of the import clearance procedures being set forth in Customs Memorandum Order No. 037-71. In other words, [petitioner's] rights under the due process clause of the 1987 Philippine Constitution were clearly violated. [Petitioner] was denied of any avenue to defend and/or present evidence in its behalf during the said VCRC proceeding. Further, granting arguendo that the procedural due process clause was observed, the manner, however, by which the government applied the methods of valuation as provided for and required under Section 201 of the TCCP, as amended, was still not observed. Said valuation is considered null and void and has no force and effect for the reason that the VCRC violated and disregarded the order of priority in the application of the said valuation methods. The government immediately jumped why it has to bypass Methods 1, 2 and 3. Even then, granting arguendo that Method No. 3 is the correct form of valuation, the same is still null and void according to Protestant as the said Method is not supported by any explanation, evidence or proofs. Arguably, the VCRS's conclusion is just based on mere general allegations.[65]

Petitioner received the Notice of Decision dated August 7, 2014 on August 22, 2014.[66] The Notice of Decision stated that the case folder for the protest cases would be forwarded to respondent COC by way of automatic

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62 Id., Exhibit "P-50", pp. 948-951, and Exhibit "P-51", pp. 952-954 (Exhibit "P-51" was denied admission for failure to identify, nevertheless, the existence of which was admitted by respondent in par. 16 of his Answer, p. 347).
63 Id., Par. 41, Petition for Review, p. 22; admitted in par. 19, respondent's Answer, p. 347; Exhibit "P-54", pp. 958-962.
64 Id., Par. 43, Petition for Review, p. 23; admitted in par. 20, respondent's Answer, p. 347.
65 Docket, vol. 1, Par. 42, Petition for Review, pp. 22-23; admitted in par. 20, respondent's Answer, p. 347; Exhibit "P-54", pp. 958-962.
66 Id., Exhibit "P-53", p. 957.

review pursuant to Section 2313 of the Tariff and Customs Code of the Philippines (TCCP).[67]

Based on the 1st Indorsement[68] dated September 3, 2014 signed by NAIA Acting District Collector Edgar Z. Macabeo, the case folders of the protest cases, together with the August 5, 2014 Decision, were forwarded to then COC John P. Sevilla and duly received by his office on September 12, 2014.

On November 28, 2014, petitioner wrote a letter to respondent, invoking the lapse of the thirty (30)-day period within which to resolve the protest cases and requested that, since the August 5, 2014 Decision had become final and executory, respondent COC should issue tax credit certificates and/or refund to petitioner the total amount of ₱1,102,623.00, which is the amount the August 5, 2014 Decision ordered to be refunded to petitioner.[69] Petitioner did not receive a response from respondent.[70]

On July 24, 2015, petitioner once again filed a Letter[71] dated July 23, 2015 to respondent reiterating its request for the issuance of tax credit certificates and/or refund.

Sometime in August 2015[72], petitioner received a Letter[73] dated August 10, 2015 signed by Deputy Commissioner Arturo M. Lachica of the Revenue Collection and Monitoring Group (RCMG) stating that "xxx upon verification made by the Tax Credit Secretariat, the docket of the subject claim is presently being reviewed by our Legal Service. We have already endorsed your letter to the Legal Service, with specific instruction to ensure the immediate resolution thereof."

On March 4, 2016[74], petitioner received a Letter[75] dated February 29, 2016 from the BOC, signed by Atty. Manuel C. Relorcasa, Chief, Law Division, informing it that then Commissioner John P. Sevilla, in a 2nd Indorsement dated September 18, 2014, denied its claim for refund covered by Protest Case Nos. 167-2013, 168-2013, and 169-2013. Attached to the said letter was a copy of the 2nd Indorsement[76] dated September 18, 2014 issued by then Commissioner John P. Sevilla reversing the August 5, 2014 Decision recommending the approval of the protests.

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67 Id., Par. 44, Petition for Review, p. 23; admitted in par. 20, respondent's Answer, p. 347.
68 Id., Exhibit "P-55" (also Exhibit "P-9"), p. 857.
69 Id., Exhibit "P-56", pp. 963-964.
70 Id., Q/A18 to Q/A19, Exhibit "P-72", p. 461.
71 Id., Exhibit "P-57", pp. 982-983.
72 Id., Par. 49, Petition for Review, p. 25.
73 Id., Exhibit "P-58", p. 984.
74 Id., Par. 51, Petition for Review, p. 25.
75 Id., Exhibit "P-1", p. 847.
76 Id., Exhibit "P-8", p. 856.

Hence, on April 1, 2016, petitioner filed the instant Petition for Review pursuant to Section 7(a)(4) of Republic Act No. 1125, as amended, in relation to Section 3 of Rule 8 of the Revised Rules of the Court of Tax Appeals, which provides that a party adversely affected by a decision or ruling of the COC has 30 days from receipt of a copy of such decision or ruling within which to file its Petition for Review with this Court.

Respondent filed his Answer[77] on July 28, 2016, alleging the following special and affirmative defenses:

> 23. Administrative due process was observed in the promulgation of the 2nd Indorsement dated 18 September 2014 by then Commissioner John P. Sevilla. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of (***Office of the Ombudsman v. Reyes****, 658 SCRA 626, 640; citing* ***Ledesma v. Court of Appeals****, 541 SCRA 444*).
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> 24. Petitioner's due process right was not violated as he was given the opportunity to be heard before the Acting District Collector, Port of NAIA, who even favorably acted on its protest and request for refund. However, the decision of the Acting District Collector, Port of NAIA granting petitioner's protest is subject to automatic review pursuant to Section 2313 of the Tariff and Customs Code of the Philippines.
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> 25. Moreover, the reversal of the decision of the Acting District Collector, Port of NAIA resulted in the reinstatement of theb [*sic*] Method 3 valuation of the subject importations.
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> 26. Petitioner Sanofi Aventis Phils. Inc. and Sanofi Winthrop Industries, as per the Supplemental Declaration on Valuation duly signed by Mr. Alfredo R. Aquino, Licensed Broker and MR. Andro Antazo, Logistics Manager are related buyers and sellers.
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> 27. Section 1308 E of the Tariff and Customs Code of the Philippines. as amended. states that "[t]he purchase price of each article is in the currency of exportation" but in the case of Sanofi-Aventis, Philippine Peso was used instead of EURO. This is per the fact that the Country of Dispatch is France/USA as reflected in the Master Airway Bill No. 607-999 1704 from France and MA WB No. 695-4102 9822 from USA.

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77 Id., pp. 344-351.

28. The case of Sanofi-Aventis is a clear case of Transfer Pricing disguised thru Intercompany Billing. Intercompany Billing is same as cross company stock transfer. A reference to the Valuation Manual page 54 Section I-X verification of customs value paragraph 9 states:

> "Determine whether the buyer is a branch office of the seller on the seller's own employee. If so, the parties may be regarded depending on the national law, as being part of the same legal entity. A company cannot sell to itself and therefore the transaction would normally NOT be regarded as SALE."

29. Verily, the instant case should be dismissed.

The pre-trial conference was set on November 8, 2016[78]. The Pre-Trial Brief For the Petitioner[79] was filed on November 3, 2016; while respondent failed to file his Pre-Trial Brief.

Only petitioner appeared during the pre-trial conference. Hence, petitioner moved that it be allowed to present its evidence *ex parte*, which the Court granted.[80]

Thereafter, the Court issued a Pre-Trial Order[81] on December 7, 2016 and the pre-trial was deemed terminated.

During trial, petitioner presented Mr. Alfredo R. Aquino[82], petitioner's customs broker; Ms. Jazel Anne G. Calvo[83], petitioner's corporate secretary and country legal head; and Atty. Beatrice S. Alampay [84], petitioner's lawyer.

Petitioner formally offered its documentary evidence[85] on June 6, 2017, which were all admitted by this Court, except for Exhibits "P-51" and "P-51-a", in the Resolutions dated October 20, 2017[86] and January 24, 2018[87]. The Court also noted petitioner's tender of Exhibits "P-51" and "P-51-a".

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78 Docket, vol. 1, Notice of Pre-Trial Conference, p. 354.
79 Id., pp. 698-726.
80 TSN dated November 8, 2016, p. 3.
81 Id., pp. 734-744.
82 Id., Minutes of the Hearing dated February 28, 2017, p. 802; Exhibit "P-69", pp. 370-395.
83 Minutes of the Hearing dated March 28, 2017, p. 808; Exhibits "P-70" and "P-71", pp. 519-534 and pp. 748-754, respectively.
84 Docket, vol. 2, Minutes of the Hearing dated April 25, 2017, p. 817; Exhibit "P-72", pp. 457-465.
85 Id., Formal Offer of Evidence, pp. 822-846.
86 Id., pp. 1095-1096.
87 Id., pp. 1112-1114.

The case was deemed submitted for decision on March 9, 2018, considering petitioner's Memorandum[88] filed on March 2, 2018 sans respondent's Memorandum.[89]

THE ISSUES

The parties submitted the following issues[90] for this Court's resolution:

1. Whether or not the August 5, 2014 Decision has become final and executory.

2. If it is found that the August 5, 2014 Decision has not become final and executory, whether or not respondent correctly reversed the August 5, 2014 Decision.

    a. Whether or not the VCRC's upgraded valuations of the subject shipments are null and void and without force and effect for having violated petitioner's constitutional rights to due process;

    b. Whether or not the VCRC's upgraded valuations of the subject shipments are null and void and without force and effect for having disregarded the import clearance procedures set forth in Customs Memorandum Order (CMO) No. 037-01; and

    c. Whether or not the VCRC's upgraded valuation of the subject shipments are null and void and without force and effect for having disregarded the order of priority as provided in Section 201 of the TCCP and its implementing rules and regulations.

RULING OF THE COURT

Petitioner avers that the August 5, 2014 Decision of the District Collector has become final and executory. Petitioner argues that the Letter dated February 29, 2016 from the BOC (or the Assailed Letter) and its attachments, insofar as they purport to rule on the protest cases, are void for failing to state the facts and the law on which they are based, rendering the August 5, 2014 Decision final and executory.

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[88] Id., pp. 1115-1173.
[89] Id., Resolution dated March 9, 2018, p. 1175.
[90] Id., Issues, Pre-Trial Order, pp. 739-740.

Petitioner further argues that even assuming that the Assailed Letter can produce any legal effect despite having been rendered without any basis whatsoever, the reversal of the August 5, 2014 Decision in the Assailed Letter was rendered beyond the 30-day period provided in Section 2315 of the TCCP, making the August 5, 2014 Decision final and executory.

Section 2315 of the TCCP provides:

> SEC. 2315. *Supervisory Authority of Commissioner and Secretary of Finance in Certain Cases.* — If any case involving the **assessment of duties**, the **Collector renders a decision adverse to the Government, such decision shall automatically be elevated to, and reviewed by, the Commissioner**; and if the Collector's decision would be affirmed by the Commissioner, such decision shall be automatically elevated to, and be finally reviewed by, the Secretary of Finance: Provided, however, That **if within thirty (30) days from receipt of the record of the case by the Commissioner** or by the Secretary of Finance, as the case may be, **no decision is rendered** by either of them, **the decision under review shall become final and executory**: Provided, further, That any party aggrieved by either the decision of the Commission or of the Secretary of Finance may appeal to the Court of Tax Appeals within thirty (30) days from receipt of a copy of such decision. For this purpose, Republic Act numbered eleven hundred and twenty-five is hereby amended accordingly.
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> Except as provided in the preceding paragraph, the supervisory authority of the Secretary of Finance over the Bureau of Customs shall not extend to the administrative review of the ruling or decision of the Commissioner in matters appealed to the Court of Tax Appeals. (*Emphasis supplied*)

In this case, the District Collector rendered a Decision on August 5, 2014[91], ordering that the additional taxes and duties which were illegally assessed and/or upgraded vis-à-vis Import Entries Nos. C93114, C111783, and C111799[92] be refunded to petitioner.

Considering that the District Collector's decision is adverse to the government, Section 2315 of the TCCP quoted above provides that such decision shall be automatically elevated to, and reviewed by, the COC and if within 30 days from receipt of the record of the case by the COC, no decision is rendered, the decision under review shall become final and executory.

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[91] Docket, vol. 2, Exhibit "P-54", pp. 958-962.
[92] The Decision referred to the Entry No. as "111999".

Based on the 1st Indorsement[93] dated September 3, 2014 signed by NAIA Acting District Collector Edgar Z. Macabeo, the case folders of the protest cases, together with the August 5, 2014 Decision rendered by the District Collector, were forwarded to then COC John P. Sevilla, and duly received by his office on September 12, 2014.

Hence, counting 30 days from September 12, 2014, the COC had until October 12, 2014 within which to render a decision.

It appears that, within the 30-day period to decide, then Commissioner John P. Sevilla rendered a "decision" on September 18, 2014, as evidenced by the 2nd Indorsement[94] dated September 18, 2014 issued by him reversing the August 5, 2014 Decision of the District Collector, which indorsement was attached to the BOC Letter dated February 29, 2016[95] signed by Atty. Manuel C. Relorcasa, Chief of the Law Division, informing petitioner that the COC, in an undated 5th Indorsement[96], has affirmed the Decision of then Commissioner John P. Sevilla, who in the 2nd Indorsement dated September 18, 2014, denied the claim for refund covered by Protest Cases Nos. 167-2013, 168-2013, and 169-2013.

Going over the Disposition Forms dated February 17, 2016[97] and August 25, 2015[98], signed by Atty. Edwin T. Mendoza, Acting Director, Legal Service and Executive Director, RATS Group and approved by then Commissioner Alberto Lina, which were attached to the BOC Letter dated February 29, 2016, it was held therein that on the basis of the 2nd Indorsement dated September 18, 2014 of the Office of the Commissioner, specifically the 2nd paragraph, the Consolidated Decision of the Acting District Collector, NAIA, was deemed reversed by the COC via the said 2nd Indorsement.

Moreover, the afore-mentioned undated 5th Indorsement also states that the docket of the protest cases was returned to the District Collector, NAIA, for proper notification of the parties anent the 2nd Indorsement dated September 18, 2014 of the then COC.

From the foregoing, the BOC Letter dated February 29, 2016, the undated 5th Indorsement and the Disposition Forms were all referring to the 2nd Indorsement dated September 18, 2014 as the Decision of then Commissioner John P. Sevilla on the protest cases.

93 Docket, vol. 2, Exhibit "P-9" or "P-55", p. 857.
94 Docket, vol. 2, Exhibit "P-8", p. 856.
95 Id., Exhibit "P-1", p. 847.
96 Id., Exhibit "P-2", p. 848.
97 Id., Exhibit "P-3", pp. 849-850.
98 Id., Exhibit "P-4", pp. 851-852.

However, upon scrutiny of said indorsement, the Court finds that the said decision does not comply with the requirement of due process in administrative proceedings.

Section 1 of Article III of the 1987 Philippine Constitution provides that no person shall be deprived of life, liberty or property without due process of law.

The cardinal requirements of due process in administrative proceedings were highlighted in *Ang Tibay, et al. vs. Court of Industrial Relations, et al.*[99], thus: (1) there must be a right to a hearing, which includes the right to present one's case and submit evidence in support thereof; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) the evidence must be substantial; (5) the decision must be based on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; (6) the tribunal or body or any of its judges must act on its own independent consideration of the law and the facts of the controversy, and not simply accept the views of a subordinate; (7) the board or body should, in all controversial questions, render its decision in such a manner as would allow the parties to know the various issues involved and the reason for the decision rendered.[100]

As can be seen above, among these rights is that the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; and that the decision be rendered in such a manner that the parties to the proceedings can know the various issues involved, and the reasons for the decisions rendered. Note that there is no requirement in the *Ang Tibay* case that the decision must express clearly and distinctly the facts and the law on which it is based. For as long as the administrative decision is grounded on evidence and expressed in a manner that sufficiently informs the parties of the factual and legal bases of the decision, the due process requirement is satisfied.[101]

In this case, the Court finds that the requirement that "(5) the decision must be based on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected" and "(7) the board or body should, in all controversial questions, render its decision in such a manner as would allow the parties to know the various issues involved and the reason for the decision rendered" were not satisfied.

The 2nd Indorsement[102] dated September 18, 2014 merely stated the following:

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99 G.R. No. L-46496, February 27, 1940.
100 *Nicolas vs. Desierto*, G.R. No. 154668, December 16, 2004.
101 *Solid Homes, Inc. vs. Laserna, et al.*, G.R. No. 166051, April 8, 2008.
102 Docket, vol. 2, Exhibit "P-8", p. 856.

"**OFFICE OF THE COMMISSIONER**

2nd Indorsement
18 September 2014

Respectfully forwarded to the **Deputy Commissioner, Revenue Collection Monitoring Group (Attention: The Director, Legal Service)**, *for appropriate action*, the herein 1st Indorsement together with attachments dated 3 September 2014 from Edgar Z. Macabeo, District Collector, NAIA Customhouse, relative to the case folder of Protest Case Nos. 167, 168 and 169, series of 2013, SANOFI-AVENTIS PHILS. INC., Protestant, with the Decision rendered by the NAIA Customhouse recommending for the approval of the protests filed and to refund the amounts Php155,699.00 for Entry No. C-111999, Php441,196.00 for Entry No. C-111783 and Php505,728.00 for Entry No. CO93114.

However, **please be informed that this Office is reversing the Decision recommending the approval of the protests filed and the above mentioned refunds**. (*Emphasis supplied*)

(Sgd.) **JOHN P. SEVILLA**
Commissioner"

Clearly, the indorsement is silent as to the reason for the decision rendered. The decision was not expressed in a manner that sufficiently informs petitioner of the factual and legal bases of the decision.

Moreover, the Court also perused the three (3) BOC folders forwarded to this Court for Protest Cases Nos. 167-2013, 168-2013, and 169-2013. However, there is nothing therein that would show the reason for the reversal of the decision of the District Collector.

Further, assuming for the sake of argument, that the decision was based on evidence contained in the BOC records, the same was not disclosed to petitioner. Petitioner was not properly apprised of the evidence which were made as bases for the reversal of the decision of the District Collector.

It would have been different if the COC affirmed the decision of the District Collector considering that the latter's decision had a discussion of the evidence considered and his finding thereon. It would be purposeless to repeat the findings of the District Collector if the COC is in full accord with the findings of the District Collector. However, in this case, the COC disagreed with the finding of the District Collector, in which case he should have stated the reasons for his disagreement.[103]

From all the foregoing, the Court finds that petitioner was denied due process when the COC rendered his decision in such a manner that petitioner was not apprised of the reason for the decision rendered. Hence, the 2nd Indorsement dated September 18, 2014 issued by then Commissioner John P. Sevilla is void.

Consequently, it is as if no decision was rendered by the COC within the 30-day period provided under Section 2315 of the TCCP and decisions of the District Collector on cases not decided by the COC within 30 days from receipt of the records become final and executory.

In his Answer, respondent cited Section 2313 of the TCCP as the basis for the automatic review of the decision of the Acting District Collector, Port of NAIA, to the COC.[104] Section 2313 of the TCCP provides:

> SEC. 2313. *Review by Commissioner.* — The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification in writing by the Collector of his action or decision, file a written notice to the Collector with a copy furnished to the Commissioner of his intention to appeal the action or decision of the Collector to the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision: Provided, That when an appeal is filed beyond the period herein prescribed, the same shall be deemed dismissed.
>
> If in any **seizure proceedings**, the Collector renders a decision adverse to the Government, such decision shall be automatically reviewed by the Commissioner and the records of the case elevated within five (5) days from the promulgation of the decision of the Collector. The Commissioner shall render a decision of the automatic appeal within thirty (30) days from receipt of the records of the case. If the Collector's decision is reversed by the Commissioner, the decision of the Commissioner shall be final and executory. However, if the Collector's decision is affirmed, or **if within thirty (30) days from receipt of the**

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103 Applying by analogy the Supreme Court's ruling in *Indias vs. Philippine Iron Mines, Inc.*, G.R. No. L-9987, April 29, 1957.
104 Docket, vol. 1, Par. 24, respondent's Answer, p. 348.

> **records of the case by the Commissioner no decision is rendered** or the decision involves imported articles whose published value is Five million pesos (P5,000,000) or more, **such decision shall be deemed automatically appealed to the Secretary of Finance** and the records of the proceedings shall be elevated within five (5) days from the promulgation of the decision of the Commissioner or of the Collector under appeal, as the case may be: Provided, further, That if the decision of the Commissioner or of the Collector under appeal, as the case may be, is affirmed by the Secretary of Finance, or if within thirty (30) days from receipt of the records of the proceedings by the Secretary of Finance, no decision is rendered, the decision of the Secretary of Finance, or of the Commissioner, or of the Collector under appeal, as the case may be, shall become final and executory.
>
> In any seizure proceeding, the release of imported articles shall not be allowed unless and until a decision of the Collector has been confirmed in writing by the Commissioner of Customs. (*Emphasis supplied*)

However, based on the above-quoted provision, the Court finds that the said section is not applicable considering that it refers to "seizure proceedings", which is not the case herein. It should be noted that in seizure proceedings, if within 30 days from receipt of the records of the case by the Commissioner, no decision is rendered, such decision shall be deemed automatically appealed to the Secretary of Finance (SOF).

Despite the foregoing, the Court shall resolve the issue of whether the assessment of the additional duties and taxes against petitioner is null and void to settle the said issue once and for all.

Petitioner argues that the upgraded valuation of the subject shipments is null and void and without force and effect for disregarding the import clearance procedures set forth in CMO No. 037-01.

Petitioner points out the following:

1. the VCRC did not notify it that the subject shipments were subject to a valuation/classification query and the reason therefor, as required under Section IV(D)(5) of CMO No. 037-01;

2. the VCRC did not give petitioner the opportunity to submit a written explanation as to the method of valuation used in determining the

declared value of the subject shipments and to provide supporting documents, as required under Section IV(D)(5) of CMO No. 037-01;

3. the VCRC did not explain to petitioner why Method 1 (Declared Valuation Method) was supposedly not applicable to the subject shipments, as required under Section IV(E)(6) of CMO No. 037-01;

4. the VCRC's decision was rendered without any legal basis, as required under Section IV(D)(7) of CMO No. 037-01;

5. the VCRC's upgraded valuation is null and void because the applicable method of valuation/classification of the subject shipments is Method 1 (Transaction Value) and not Method 3 (Transaction Value of Similar Goods);

6. the VCRC violated and disregarded the order of priority in the application of the methods of valuation when it used Method 3 (instead of Method 1), as required under Section 201 of the TCCP and relevant rules and regulations of the BOC; and

7. the VCRC's upgraded valuation is false because the VCRC used Method 4 (and not Method 3) in computing the upgraded values of the subject shipments.

After going over the import clearance procedure under the World Trade Organization (WTO) Valuation System, laid down in CMO No. 037-01 and the rules and regulations on the determination of dutiable value provided in CMO No. 16-10, the Court finds that the VCRC indeed disregarded the procedures laid down in CMO No. 037-01, which violated due process requirements, and the rules on customs valuation.

Considering that there are various violations of the import clearance procedure and valuation rules in this case, the Court shall limit its discussion to the significant ones.

First, the VCRC Form No. 1 (Request for VCRC Review) was not properly filled up.

A review of VCRC Form No. 1 for Import Entry Nos. C93114[105], C111783[106], and C111799[107] shows that these forms were incompletely accomplished, specifically, the forms did not indicate whether the subject

105 Docket, vol. 2, Exhibit "P-20", p. 916.
106 Id., Exhibit "P-27", p. 924.
107 Id., Exhibit "P-35", p. 933.

importations were "Hit by Valuation Screen" or "Appraiser-Initiated" and the portion on "Observation on Comparability for Purposes of Establishing Doubt" was not accomplished.

As provided in Section IV(C)(4), (5) and (6) of CMO No. 037-01, if hit by the Valuation Screen, the COO III must indicate in the Request for VCRC Review (New VCRC Form No. 1) that the shipment is hit by the Valuation, by checking the appropriate box, or if not hit by the Valuation Screen but the appraiser contests the declared value, then indicate in the New VCRC Form No. 1 that the request for VCRC review is appraiser-initiated, by checking the appropriate box as well, or if the appraiser contests the classification, whether or not hit by the Valuation Screen, then indicate in the New VCRC Form No. 1 that the request for VCRC review is appraiser-initiated by checking the appropriate box, including the reason for contesting the tariff heading as declared. Moreover, the COO III must fill out the New VCRC Form No. 1 on the comparability between the articles covered by the reference value and the articles being assessed including observations of the COO III as to the comparability between the articles and a finding on whether the comparable value information establishes doubt as to the truthfulness of the value declaration that should trigger a query as to the applicability of the method of valuation used by the importer. Afterwards, the duly filled up New VCRC Form No. 1 shall be attached to the Entry and forwarded with all the attachment/supporting documents to VCRC-TST.

By filling up the pertinent information on the VCRC Form No. 1, the importer/customs broker will be apprised of what triggered the valuation query on the applicability of the method valuation used by the importer and the ground for doubting the truthfulness of the value declaration.

Second, the VCRC erroneously used VCRC Form No. 2 in this case.

In Section IV(D)(2) and (4) of CMO No. 037-01, it was provided therein that the Head, VCRC-TST may, subject to the approval of the District Collector, likewise resolve cases without formal VCRC deliberation such as when the importer manifests in writing to voluntarily waive the application of Method 1 and allow Customs to adopt the appropriate method of valuation, or when he is willing to pay based on classification rulings by the Department of Finance, the Commissioner of Customs, BOC-SGS Appeals Committee, or the VCRC. In which case, the Head, VCRC-TST shall fill up the New VCRC Disposition Form (VCRC Form No. 2) and refer it with the Entry to the concerned COO V for final assessment. The import entry shall then be forwarded to the Collection Division for payment verification and/or collection of additional duties and taxes, and surcharge, if any.

In this case, there is nothing in the records that would show that petitioner manifested in writing that it voluntarily waives the application of

Method 1 and allow Customs to adopt the appropriate method of valuation, or that it is willing to pay based on classification rulings by the Department of Finance, the Commissioner of Customs, BOC-SGS Appeals Committee, or the VCRC.

Moreover, as observed earlier, the VCRC Form No. 2 for Import Entry No. C93114[108] did not indicate the basis for the method used or the reason for applying such method of valuation and the fields corresponding to "R.O.", "VIRS", and "Others (Appeals Committee, DOF)", were left blank while the VCRC Form No. 2 for Import Entry Nos. C111783[109] and C111799[110] did not indicate the VCRC's reason for applying Method 3 and the fields corresponding to "R.O.", "VIRS", "Others (Appeals Committee, DOF)", and "Basis" were left blank.

Third, the VCRC did not notify petitioner, by sending VCRC Form No. 3, to submit a written explanation/justification as to the truthfulness and/or accuracy of the declared value, including any document or record in support thereof; hence, petitioner was not given the opportunity to submit such written explanation and to provide supporting documents. Consequently, it was premature for the VCRC to reject the method of valuation used by the importer, and to proceed with the alternate methods of valuation.

As required under Section IV(D)(5) of CMO No. 037-01, in all other cases where formal VCRC deliberation will be necessary, the Head, VCRC-TST shall notify the importer or his customs broker to submit within ten (10) days from receipt of such notice, a written explanation/justification as to the truthfulness and/or accuracy of the declared value, including any document or record in support thereof. The notice (VCRC Form No. 3) shall be served by registered mail or personally, as the case may be. Failure to submit within the regulated period the required explanation and for specific documents without justifiable cause shall be a ground for the VCRC to reject the method of valuation used by the importer, and to proceed with the alternate method of valuation.

In this case, no VCRC Form No. 3 was presented to show that petitioner was given an opportunity to submit a written explanation as to the truthfulness and/or accuracy of the declared value and to provide documents in support thereof.

Fourth, the VCRC did not explain to petitioner why Method 3 was used. Moreover, granting that Method 1 should not apply in this case, no reason was provided why Method 2 was not used. By using Method 3, the VCRC disregarded the hierarchical order of application of the six (6) methods of

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108 Docket, vol. 2, Exhibit "P-21", p. 917.
109 Id., Exhibit "P-28", p. 925.
110 Id., Exhibit "P-36", p. 934.

valuation as required under Section 201 of the TCCP and relevant rules and regulations of the BOC.

As a general rule, in an arm's length transaction, imports shall be assessed using Method 1 of the transaction value. However, when a higher comparable value exists to cast doubt as to the truthfulness or accuracy of a given value declaration and the subsequent verification done establishes that any of the elements or conditions of Method 1 is not present or complied with, the importation shall be assessed using the alternate methods of valuation in their order of priority.[111]

Moreover, as required under Section IV(E)(6) of CMO No. 037-01, the VCRC decision shall essentially contain the following: (a) brief statement of facts — description of the goods, consignee, entry number, country of exportation/origin/manufacture, declared value and tariff heading, other information available which is relevant to the case; (b) issue — importer's declaration is being challenged/why Method 1 can or cannot apply/what tariff heading to use; (c) BOC basis/position vs. importer's; (d) VCRC decision indicating reasons for adopting Method 1 or importer's declaration, or for rejecting Method 1 and decreeing the use of an alternate Method of valuation or use of a different tariff heading; and (e) dutiable value based on the method of valuation and the tariff classification as decided upon.

Ms. Nelly Ochoa, Member NAIA VCRC Technical Support Team, in a letter[112] dated December 16, 2013, disregarded Method 1 (Transaction Value), and opted to use Method 3, allegedly due to the following reasons:

1. As per Supplemental Declaration of Valuation duly signed by Mr. Alfredo R. Aquino, Licensed Broker and Mr. Andro Antazo, Logistics Manager, it was declared that the buyer and seller are related.

    Supplier: Sanofi Winthrop Industries
    Consignee: Sanofi Aventis Phils. Inc.

2. The Invoice submitted show the following:

    A. Country of Dispatch is France/USA as reflected in the Master Airway Bill No. 607-9994 1704 from France and MAWB No. 695-4102 9822 from USA, but the currency used is Philippine Peso.

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[111] Section III(C), CMO No. 037-01.
[112] Docket, vol. 2, Exhibit "P-52", p. 955.

a. Section 1308 E of the TCCP as amended states, "The purchase price of each article is in the currency of the country of exportation" but in this case Philippine Peso was used instead of Euro.

B. Sanofi Aventis Singapore Pte. Ltd issued the invoice.

b. Singapore serve only as a transshipment point not the country of manufacture.

C. A notation on the submitted invoice state "Intercompany Billing."

c. Intercompany billing same as cross company stock transfer, cross company sales thus the pricing is normally termed as "Transfer Price".

Valuation Manual page 54 Section I-X verification of customs value paragraph 9 states:

"Determine whether the buyer is a branch office of the seller or the seller's own employee. If so, the parties may be regarded depending on the national laws, as being part of the same legal entity. A company cannot sell to itself and therefore the transaction would normally NOT be regarded as a SALE.

In view of the circumstances, the undersigned made a research thru the internet as a point of reference and bought the same article from the local market in order to come up with the valuation using Method 3.

Aside from informing petitioner of the above reasons only during the hearing on the protest cases held on January 28, 2014[113], the Court finds that the above reasons are not enough to disregard Method 1.

From the said letter dated December 16, 2013, it can be inferred that the VCRC used Method 3 mainly because the buyer and seller are related parties.

However, as provided in Section 3.2.4.1 of CMO No. 16-2010, it is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be

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[113] Docket, vol. 1, Par. 38, Petition for Review, pp. 20-21; admitted in par. 18, respondent's Answer, p. 347.

required where there are doubts about the acceptability of the price. Where the Collector of Customs has no doubts on the acceptability of the price, it should be accepted without requesting further information from the importer.

In this case, there is no showing how "doubts about the acceptability of the price" arose. As mentioned earlier, the VCRC Forms No. 1 filled up in this case were incompletely accomplished, hence, did not indicate what triggered the valuation query.

Moreover, based on the said letter, the use of Method 3 was brought about by the invoice being an "intercompany billing" issued by sanofi-Singapore and denominated in Philippine Peso while the country of dispatch is France/USA and that the buyer is allegedly a branch of the seller.

Granting that these circumstances influenced the price, as mentioned earlier, petitioner should have been given an opportunity to respond. Had petitioner been given the said opportunity, it could have given its written explanation and supporting documents, which the VCRC should have considered prior to proceeding to the other methods of valuation.

As pointed out by petitioner, it did not receive any formal written request from the VCRC for it to submit documents relating to the valuation of the subject shipments. For Import Entry No. C93114, the only documents verbally requested by Ms. Nelly Ochoa of the VCRC and submitted by petitioner are the Certificate of Product Registration, purchase order, and sample products for Ercefuryl 200mg and Maalox Plain Susp 60ml.[114]

Moreover, based on the evidence presented by petitioner, it is not a branch or subsidiary of sanofi-Singapore, although they are affiliates.[115] Hence, the VCRC erroneously concluded that petitioner is a branch of the seller.

Also, even if Method 1 should be disregarded, then Method 2 should have been used.

Section 2.7 of CMO No. 16-2010 provides:

> 2.7 Where the dutiable value cannot be determined under the Transaction Value method, it is to be determined by proceeding sequentially through the succeeding methods to the first such method under which the dutiable value can be determined. Except as provided under Section 3.1, paragraph 3 of this Order, it is only when the dutiable value cannot be

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[114] Docket, vol. 1, Q/A22 to Q/A27, Exhibit "P-69", pp. 375-376.
[115] Id., Q/A54, Exhibit "P-70", p. 529; Exhibit "P-12", p. 897.

determined under the provisions of a particular method that the provisions of the next method in the sequence can be used.

In relation thereto, Section 3.1 of CMO No. 16-2010 states:

3.1 **General Provisions**

The primary method in determining the dutiable value of imported goods shall be Method One: The Transaction Value, whenever the conditions prescribed for its use are fulfilled.

However, if the dutiable value cannot be determined with the use of Method One, the following valuation methods shall be applied in sequential order:

Method Two:	The Transaction Value of Identical Goods
Method Three:	The Transaction Value of Similar Goods
Method Four:	Deductive Value
Method Five:	Computed Value
Method Six:	Fallback Value

Here, no reason was provided why Method 3 was used instead of Method 2.

Lastly, even though the valuation used by the VCRC was denominated as "Method 3", in substance it is actually Method 4.

Section 201(C) of the TCCP describes Method 3 as follows:

(C) Method Three. — Transaction Value of Similar Goods. — Where the dutiable value cannot be determined under the preceding method, the dutiable value shall be the transaction value of similar goods sold for export to the Philippines and exported at or about the same time as the goods being valued. "Similar goods" shall mean goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark shall be among the factors to be considered in determining whether goods are similar.

As indicated in the VCRC Form No. 2 for Import Entry Nos. C111783 and C111799, Method 3 was applied. However, the "Remarks" on the said forms indicated that the recommend value was made after referring to "domestic price and making a backward computation"[116].

Also, during the processing of Import Entries Nos. C111783 and C111799, Ms. Emi Balatbat, Chief of the Formal Entry Division, bought Clomid from a drugstore.[117]

Section 201(D) of the TCCP describes Method 4 as follows:

> (D) Method Four. — Deductive Value. — The dutiable value of the imported goods under this method shall be the **deductive value which shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the Philippines**, in the same condition as when imported, in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons not related to the persons from whom they buy such goods, **subject to deductions** for the following:
>
> (1) Either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind;
>
> (2) The usual costs of transport and insurance and associated costs incurred within the Philippines; and
>
> (3) Where appropriate, the costs and charges referred to in subsection (A) (3), (4) and (5); and
>
> (4) The customs duties and other national taxes payable in the Philippines by reason of the importation or sale of the goods.

Clearly, the upgraded valuation was arrived at using domestic prices less deductions or "making a backward computation", which is substantially Method 4. Hence, the VCRC should have provided the reason why it proceeded to apply Method 4 before applying Methods 2 and 3.

[116] Docket, vol. 2, Exhibits "P-28" and "P-36", pp. 925 and 934, respectively.

[117] Id. Par. 22, Petition for Review, pp. 16-17; admitted in par. 9, respondent's Answer, p. 346.

Considering the foregoing discussion and the declarations made by petitioner in the Supplemental Declaration on Valuation[118], Method 1 or the Transaction Value is applicable to the subject shipments.

In fine, the Court finds that the August 5, 2014 Decision of the District Collector has become final and executory. Moreover, even if this Court would disregard such finding and looked into the validity of the VCRC's valuation, the Court holds that the upgraded valuation of the subject shipments is null and void for (1) disregarding import clearance procedures, the specific violations herein being violative of due process; and (2) violation of the rules on customs valuation. Consequently, petitioner is entitled to the refund sought.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND** to petitioner the amount of **₱1,102,623.00** representing the additional taxes and duties paid under protest for shipments covered by Import Entries Nos. C93114, C111783, and C111799.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

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118 Docket, vol. 2, Exhibits "P-17", "P-26", and "P-34", pp. 908-909, 922-923, and 931-932, respectively.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Acting Division Chairperson's Attestation, is it hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice