REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PROCTER AND GAMBLE PHILIPPINES,
MANUFACTURING COMPANY,
Petitioner,

-versus -

C.T.A. CASE NO. 4171

ALEXANDER PADILLA,
COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This case comes on a simple issue of whether the published home consumption value prevails over the consular or commercial invoice value as basis for determining the dutiable value of imported commodities subject to an ad valorem rate of duty.

The material facts are found accordingly.

Sometime on February 3, 1986, the S.S. "Southern Princess", Registry No. 42-86 arrived at the Port of Batangas from Ulsan, South Korea and discharged a shipment of 987, 688 metric tons of Dodecylbenzene with a total C & F value of $691,381.60. The value indicated in the Commercial Invoice is $630.00/MT.

Under Entry No. 0096-86, petitioner declared $700.00/MT, the published home consumption value (HCV) for Dodecylbenzene, per Revision Order No. 10, dated October 1, 1985 and Revision Order No. 1, dated January 2, 1986, in anticipation of an increase appraisal in accordance with Section 1408 of the Tariff and Customs Code and avoid the imposition of surcharge.

Petitioner paid the amount of P1,501,500.00 and P3,156,127.00 as customs duty and internal revenue taxes, respectively. It did file a protest however with a claim for refund of P145,282.00 representing an alleged excess duty resulting from a higher appraisal, waiving the internal revenue tax portion.

The Collector of the Port of Batangas dismissed the protest and denied the refund and on appeal by the petitioner, the respondent Commissioner of Customs affirmed the Collector's decision on May 27, 1987.

Follows the instant petition.

The records show that the petitioner entered a shipment of Dodecylbenzene at an HCV of $700.00/MT (published value) vis a vis $630.00/MT (commercial invoice) to avoid "running the risk of being imposed a heavy surchage or seizure under Section 2503 of the Tariff and Customs Code." After having effected the release sans the anticipated penalties, petitioner in a volte-face assailed its own declared valuation by invoking the commercial invoice value instead, that the first and foremost consideration in ascertaining the HCV of an imported product being the commercial invoice 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" which "shall be the value or price declared in the consular, commercial, trade or sales invoice." (Sec. 201, Tariff and Customs Code.) And here's the rub! petitioner would want to avail of a refund on a different stroke.

Respondent's unvarying assertion is that the published HCV of $700.00/MT constituted in the revision orders and so declared by the petitioner itself for the entry of the imported merchandise was the result of a careful and thorough compilation and comparison of invoices for articles of the same nature and kind exported at a particular time and place as hewed close to the statutory mandate that "the correct dutiable value of the article shall be ascertained from the reports of the Revenue Attache or Commercial Attache x x and from such other information that may be available to the Bureau of Customs" and from "the date gathered, the Commissioner of Customs shall ascertain and establish the home consumption values of the articles exported to the Philippines and shall publish such lists of values from time to time." (Sec. 201, ibid.) And such appraisal thereon based the presumption that official duty has been regularly performed and must prevail over the commercial invoice value or price. On the same focusing question, "If customs authorities were bound by the invoice value, it is evident that they would be, to a considerable extent, at the mercy of foreign merchants and importers." (**Coca-Cola Export Corporation v. Commissioner of Customs, et al. 56 SCRA 13.**) The pronouncement offers no longer an occasion to further speculate upon which value to base the assessement. We therefore hesitate to fashion an issue into a satisfactorily settled legal situation.

Moreover, this recurring seemingly troubling legal question on the valuation of imported articles was squarely met and ruled upon in a case similar in many or so in tenor and circumstances involving as it does the herein petitioner lending stifling eloquence to the issue raised, thus,

> The law does not provide that it is only after the "established" or "information" value is "published" that such home consumption value may be the basis of assessment of the customs duty and taxes. On the contrary, it is explicitly provided that upon reasonable doubt as to the accuracy of the declared value of the article in the consular or commercial invoice, the Commissioner of Customs may determine its home cosumption value from other available and more reliable sources which "established" or "information" value is not a prerequisite before it may be the basis of the imposition of customs duty and taxes. Conversely, its non-publication is no obstacle to the assessment of customs duty and taxes based on such "established" or "information" value. The publication is intended as guide in the assessment of future shipment of similar articles. While such published value of an article is reliable, nevertheless, in the absence of the same, the Commissioner of Customs may establish said value from other sources as above provided by law. **(Commissioner of Customs v. Procter and Gamble Philippine Manufacturing Corporation, et al., 169 SCRA 701.)**

All told, petitioner after having defused the imposition of the irressistible legal sanctions by declaring the published value of $700/MT, now starvellingly agitates for another valuation based on the commercial invoice value to avail of a refund as sweetener as well. This comes as an aggravated chutzpah. It wants to have its cake and eat it too, so to speak. Such a quick shuttle of a posture in prying loose from its own declared valuation is something of a convoluted expedient denouement that is not entirely justified. We are not to confuse the circumstances that might be but as they actually were at the time of entry. We therefore distrust the logic that leads to such a sciamachy.

No matter how petitioner harps and tinkers with the idea of having the revision orders rendered inutile, the basic fact remains that the import and force of such published values subsists precisely as then contemplated to the extent that the value information can validly be located. "It is to be stressed that the Commissioner of Customs is required by law to publish such list of values from time to time. He does not only have to ascertain and establish the home consumption value, but must also publish such lists of values from time to time. Public policy would seem to require that importers be informed in advance of the home consumption values of article exported to the

Philippines. This would prevent uncertainty, let alone the exercise of purely personal discretion, specially on the part of customs appraiser, in the matter of ascertainment and determination of the price or value of imported articles, Furthermore, if importers are informed in advance of the home cosumption values or information values of article's exported to the Philippines, they can properly declare the dutiable values of their shipments and thus avoid the heavy penalties imposed for misdeclaration, if not delays in the release of goods from the customs custody which entail loss of time, money and energy. **(Bell Hobart Manufacturing Incorporated v. Commissioner of Customs, CTA Cases Nos. 2750,2751,2752 and 2753, March 10, 1978; Procter & Gamble PMC v. Commissioner, CTA Case No. 2357; cited in Commissioner of Customs v. Procter & Gamble Phil. Mfg. Corp. 169 SCRA 699.)**

And neither do we think that the consular invoice was intended to discombobulate the effective application of the published value as "such valuation is presumed to be correct and therefore conclusive in the absence of fraud or illegality of an affirmative showing by protesting importer that the customs authorities in fixing or assessing the value of the importation or proceeded upon a wrong principle and contrary to law." (Commissioner of Customs v. Court of Tax Appeals and NCR (Philipppines), G.R. No. L-48027, March 11, 1991, citing Coca-cola Export Corporation v. Commissioner of Internal Revenue, 56, SCRA 5.)

We shall be less than respecting the full and compelling import of the statute should we grant further exception into it.

Petitioner cannot have the best of both worlds.

ACCORDINGLY, petition is hereby dismissed with costs aginst petitioner.

SO ORDERED.

Quezon City, Metro Manila, August 16, 1991.

ALEX Z. REYES
Presiding Judge

WE CONCUR:

(on leave)
CONSTANTE C. ROAQUIN
Associate Judge

ERNESTO D. ACOSTA
Associate Judge