REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ANDAN ENTERPRISES, INC.,
Petitioner,

- versus -

HON. NAPOLEON L. MORALES, in his capacity as the Commissioner of the Bureau of Customs *and* **HORACIO P. SUANSING, JR. in his capacity as the District Collector of the Port of Manila,**
Respondents.

CTA Case No. 7795

Members:

DEL ROSARIO, *P.J.*,
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

MAY 29 2014 ; 3:10 p.m.

x - x

DECISION

UY, J.:

Before Us is a *Petition for Review (With Motion for the Suspension of the Collection of Customs Duties and Tax Liabilities)*[1] filed by petitioner Andan Enterprises, Inc. against respondents Hon. Napoleon L. Morales, in his capacity as the Commissioner of Customs, and Horacio P. Suansing, Jr. in his capacity as District Collector of the Port of Manila, praying that judgment be rendered, annulling the Decision dated November 9, 2007 issued by respondent Morales, ordering petitioner to pay additional duties and taxes due on Import Entries Nos. C-25475-07, C-25478-07, C-25480-07, C-31485-07, C-31787-07, and C-31807-07; and that respondent Suansing, Jr. be permanently enjoined from collecting from petitioner the amount of ₱ 11,879,246.66.

[1] Docket (Vol. I), pp. 1 to 30.

THE FACTS

Prior to its incorporation, petitioner was operating as a single-proprietorship under the name *Andan Enterprises*, operated by Alicia P. Andan. *Andan Enterprises* was engaged in the business of operating gas stations since 1971. Before 2006, Alicia Andan owned and operated three (3) franchised gasoline stations: one (1) each for Caltex, Filoil (now called Petron) and Shell Petroleum. Alicia Andan bought her supply of petroleum products directly from said oil manufacturers.[2]

After the passage of Republic Act No. (RA) 8479, Andan learned that she can actually get cheaper oil products in other parts of the world. To give her financial credibility in dealing with foreign companies, she decided to put up a corporation; hence, petitioner came into being.[3]

On February 10, 2007, petitioner entered into its maiden contract for the purchase of diesel with RDF Maritime, S.A. (BVI) [RDF], a foreign business concern which holds office at R.G. Hodge Plaza, 2nd Floor Upper Main Street, Wickhams, Road Town, Tortola, British Virgin Islands. In their agreement, RDF committed to looking for the most competitively-priced diesel for sale and delivery to petitioner.[4]

The said parties executed and signed a document denominated as Sales Contract No. RDF/MARITIME/ANDAN/20072801,[5] containing the following data:

Product	:	Gasoil
Quantity	:	5,000 to 7,000 metric tons
Delivery	:	CIF Bataan, Philippines
Price	:	US$ 316.78 per metric ton
Payment	:	By TT Remittance in US Federal Funds
Vessel	:	MT Kamee[6]

The gas oil which petitioner purchased from RDF was supplied by Formosa Petrochemical Corporation (Formosa), a company (end-supplier) based in Taiwan. Formosa was able to ship the products

[2] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 239.
[3] Par. 2, Stipulation of Facts, JSFI, Docket (Vol. I), p. 239.
[4] Par. 3, Stipulation of Facts, JSFI, Docket (Vol. I), pp. 239 to 240.
[5] Exhibit "C," Docket (Vol. I), pp. 401 to 406.
[6] Par. 4, Stipulation of Facts, JSFI, Docket (Vol. I), p. 240.

out of Taiwan sometime in March 2007. The shipment was covered by three (3) commercial invoices and three (3) bills of lading, more particularly described as follows:[7]

Commercial Invoice No.	*Bill of Lading No.*	*Quantity Unit (metric tons)*	*Value/MT (US$)*	*Total (US$)*
20072801-A	ML-2279	2,000	316.78	633,500.00
20072801-A	ML-2280	2,000	316.78	633,500.00
20072801-A	ML-2281	1,913,872	316.78	606,276.37

While the products were in transit, petitioner opted to make an initial payment of the anticipated duties and taxes payable to the Bureau of Customs (BOC). In doing so, petitioner, through its accredited broker, filed "BOC Import Entry & Internal Revenue Declarations" for the three (3) bills of lading and paid the corresponding duties and taxes:[8]

Import Entry No.	*Bill of Lading No.*	*Dutiable Value (Pesos)*	*Initial IPF Paid by Petitioner (Pesos)*	*Date Paid and O.R. No.*
25475-07	ML-2279	29,366,037.86	4,523,104.00	14 March 2007 OR # 0101410
25478-07	ML-2280	29,366,037.86	4,523,104.00	14 March 2007 OR # 0101412
25480-07	ML-2281	27,942,635.88	4,303,984.00	14 March 2007 OR # 0101411

Before the shipments arrived at its port of destination, petitioner had already made an initial payment to the BOC in the total amount of ₱ 13,350,192.00 in duties and taxes.[9]

Having made initial payments on the three (3) invoices, petitioner applied for, and was able to secure, from the Bureau of Internal Revenue (BIR) the corresponding Authority to Release Imported Goods (ATRIG), which gave petitioner legal authority to unload the shipment at its designated terminal facility in Bataan, even before, or while the final assessment was being computed by the BOC.[10]

The above-described shipment of gas oil finally arrived in the Philippines sometime in March 2007. As soon as the goods arrived,

[7] Par. 5, Stipulation of Facts, JSFI, Docket (Vol. I), pp. 240 to 241.
[8] Par. 6, Stipulation of Facts, JSFI, Docket (Vol. I), p. 241; Exhibits "X," "Y," and "Z," Docket (Vol. I), pp. 430 to 432.
[9] Par. 7, Stipulation of Facts, JSFI, Docket (Vol. I), p. 242.
[10] Par. 8, Stipulation of Facts, JSFI, Docket (Vol. I), p. 242.

petitioner, through its broker, filed with the BOC for final assessment. Unfortunately, the BOC withheld the final assessment on the ground that the subject shipments, including that of petitioner's, were already under investigation by the Customs Intelligence & Investigation Service (CIIS).[11]

The CIIS investigation stemmed from the Findings and Recommendations of Eric Albano, Assistant Chief of the Intelligence Division and Head Operating Sections of the CIIS, which accused petitioner of technical smuggling of gas oil. According to Eric Albano's finding and recommendation, petitioner used the value of US$286.05/MT, while other companies who import the commodity coming from the same country of origin (Taiwan), used the value US$516.97/MT (Oil Link Int. Corp. under Entry # C-25452-07) and US$536/MT (Total Phils. Corp.).[12]

Several other divisions/offices of the BOC, namely: the Intelligence and Enforcement Group (IEG), Investigation and Prosecution Division (IPD), Post Entry Audit Group (PEAG), Run After the Smugglers (RATS), and the Valuation and Classification Review Committee (VCRC) also investigated petitioner and its importation.[13]

On April 27, 2007, the VCRC issued a Notice advising petitioner to appear and be present on April 30, 2007 and to submit the following documents to support petitioner's declared value for its importation: its Position Paper, duly authenticated sales contract and certified true copy of proof of payment.[14]

Apart from petitioner's subject three (3) import entries, VCRC included in the Notice petitioner's second importation consisting of three (3) additional Import Entries, namely: Entries Nos. C-31787-07, C-31485-07 and C-31807-07.[15]

On May 18, 2007, the VCRC issued its 1st Indorsement resolving to reassess petitioner's importation at the rate of US$560.41/MT based on previous importation of identical article under Entry No. C-25085-07 using Method 2 of the WTO Valuation Agreement. Petitioner filed on June 14, 2007 a Notice of Appeal with the Office of the Commissioner.[16]

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[11] Par. 9, Stipulation of Facts, JSFI, Docket (Vol. I), p. 242.
[12] Par. 10, Stipulation of Facts, JSFI, Docket (Vol. I), pp. 242 to 243.
[13] Par. 11, Stipulation of Facts, JSFI, Docket (Vol. I), p. 243.
[14] Par. 12, Stipulation of Facts, JSFI, Docket (Vol. I), p. 243.
[15] Par. 13, Stipulation of Facts, JSFI, Docket (Vol. I), p. 244.
[16] Par. 14, Stipulation of Facts, JSFI, Docket (Vol. I), p. 244.

On May 21, 2008, petitioner received a copy of the Commissioner's Decision[17] dated November 9, 2007 which affirmed the resolution of VCRC. Thereafter, the BOC's District Collector issued a demand letter[18] requiring petitioner to pay in seven (7) days the amount of ₱ 11,879,246.66, representing additional duties, taxes, and surcharges due on Import Entries C-31787, C-31485, C-31807, C-25478, C-25480, and C-25475.[19]

Petitioner paid the assessment under protest. Accordingly, it asked for the release of all gas oil products which have been detained on orders of the BOC. The BOC eventually granted the release of the gasoil upon petitioner's posting of a surety bond in the amount of ₱ 25,400,000.00.[20]

On June 13, 2008, petitioner filed the instant *Petition for Review (With Motion for the Suspension of the Collection of Customs Duties and Tax Liabilities)*, praying for the following reliefs, to wit:

> "(I.) Upon filing of this Petition, an Order be issued enjoining the respondent Horacio Suansing, Jr. (District Collector of the Port of Manila) from immediately collecting the amount of *Eleven Million Eight Hundred Seventy Nine Thousand Two Hundred Forty Six & 66/100 (Php11,879,246.66) Pesos*, representing additional duties and taxes due under *Import Entries Nos. C-25475-07, C-25478-07, C-25480-07, C-31485-07, C-31787-07* and *C-31807-07*.
>
> (II.) After due hearing, judgment be rendered annulling the decision of respondent Hon. Napoleon L. Morales (Commissioner of Customs) dated 9 November 2007, which ordered the petitioner to pay additional duties and taxes due *Import Entries Nos. C-25475-07, C-25478-07, C-25480-07, C-31485-07, C-31787-07 and C-31807-07*. It is also prayed that respondent Horacio Suansing, Jr. (District Collector of the Port of Manila) be permanently enjoined from collecting the amount of *Eleven Million Eight Hundred Seventy Nine Thousand Two Hundred Forty Six & 66/100 (Php11,879,246.66) Pesos* representing additional duties and taxes dues under *Import Entries Nos. C-25475-07, C-25478-07, C-25480-07, C-31485-07, C-31787-07 and C-31807-07*. Other

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[17] Exhibit "A," Docket (Vol. I), pp. 394 to 399.
[18] Exhibit "B," Docket (Vol. I), p. 400.
[19] Par. 15, Stipulation of Facts, JSFI, Docket (Vol. I), p. 244.
[20] Par. 16, Stipulation of Facts, JSFI, Docket (Vol. I), pp. 244 to 245.

reliefs which may just and equitable under the premises are also prayed for."[21]

Respondents, filed their *Answer/Comment (With Opposition to Motion for the Suspension of the Collection of Customs Duties and Tax Liabilities)*,[22] through registered mail, on August 8, 2008.

In the Resolution dated September 19, 2008,[23] this Court granted petitioner's *Motion for the Suspension of the Collection of Customs Duties and Tax Liabilities*, subject to the filing of a bond in the amount equal to one and one-half times the amount being collected, or ₱ 17,818,869.99, as well as the submission of the documents specified under Supreme Court A.M. No. 04-7-02-SC dated July 20, 2004, within ten (10) days from receipt of the said Resolution.

Respondents filed a *Motion for Reconsideration* on October 10, 2008,[24] to which petitioner filed its *Compliance* on October 15, 2008,[25] and *Opposition* on October 29, 2008.[26] In the Resolution dated January 23, 2009,[27] this Court denied respondents' said *Motion for Reconsideration* for lack of merit; noted petitioner's *Compliance*; admitted the surety bond as well as the documents attached to petitioner's *Compliance*; and enjoined respondents from collecting the additional customs duties and taxes assessed against petitioner in the amount of ₱ 11,879,246.66, until further orders from this Court.

During the pre-trial held on October 9, 2009, the Court ordered both parties to file a Joint Stipulation of Facts and Issues[28] within twenty (20) days from said date. Subsequently, the parties filed the required "*Joint Stipulation of Facts and Issues*" on November 16, 2009[29], and the same was approved by the Court in the Resolution dated November 17, 2009.[30]

During trial, petitioner presented three (3) witnesses in support of its Petition for Review, namely: Carmen B. Sintos, Alicia P. Andan, and Jonah A. Bonecillo. For their part, respondents presented only

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[21] Docket (Vol. I), p. 26.
[22] Docket (Vol. I), pp. 70 to 92.
[23] Docket (Vol. I), pp. 95 to 98.
[24] Docket (Vol. I), pp. 100 to 107.
[25] Docket (Vol. I), pp. 130 to 135.
[26] Docket (Vol. I), pp. 177 to 182.
[27] Docket (Vol. I), pp. 190 to 192.
[28] Minutes of hearing held on October 9, 2009, Docket (Vol. I), p. 235.
[29] Docket (Vol. I), pp. 238-248.
[30] Docket (Vol. I), p. 250.

one (1) witness: Vincent Gabriel Reyes. Thereafter, upon motion of petitioner, the Court allowed the presentation of rebuttal evidence by petitioner in the Resolution dated December 11, 2012.[31] However, considering the failure of petitioner to present its rebuttal despite several opportunities for it to do so[32], the Court considered petitioner to have waived its right to present rebuttal evidence during the hearing held on June 25, 2013. Correspondingly, the parties were directed to submit their respective Memoranda within thirty (30) days from June 25, 2013[33].

With the filing of petitioner's *Memorandum* on July 24, 2013,[34] sans respondents' memorandum, the instant case was deemed submitted for decision as of October 29, 2013.[35]

Hence, this Decision.

THE ISSUES

As stipulated by the parties, these are the issues submitted for the resolution of this Court,[36] to wit:

> "1. Whether petitioner is liable to pay additional customs duties and taxes for its importation of gasoil covered by Import Entries No. C-25475-07, C-25478-07, C-254080-07, C-31485-07, C-31787-07 and C-31807-07.
>
> 2. Whether respondent Hon. Napoleon L. Morales erred in applying Method 2 of the WTO Valuation Agreement to justify his decision in imposing additional customs duties and taxes on petitioner.
>
> 3. Whether respondent Commissioner of Customs' Decision dated November 9, 2007 which dismissed petitioner's appeal from the ruling of the POM-VCRC in 'POM-VCRC Ruling on Appeal on Gasoil (Diesel) Valuation, Andan Enterprises, Inc., Appellant' is proper.

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[31] Docket (Vol. I), pp. 190 to 192.
[32] The presentation of petitioner's rebuttal evidence was set on the following dates: January 29, 2013 (Docket ,Vol. II, p. 643), March 12, 2013 (Docket, Vol. II, p. 657), April 16, 2013 (Docket ,Vol. II, p. 670), May 23, 2013 (Docket, Vol. II, p. 676), and for the last time on June 25, 2013 ((Docket, Vol. II, p. 687).
[33] Minutes of the hearing held on June 26, 2013, Docket, Vol. II, p. 690.
[34] Docket (Vol. II), pp. 693 to 721.
[35] Docket (Vol. II), p. 738.
[36] Stipulation of Issues, JSFI, Docket (Vol. 1), pp. 245 to 246.

4. Whether estoppel runs against the Government.

5. Whether petitioner committed acts constituting a violation of Section 3602, Title VIII, Book II of the Tariff and Customs Code of the Philippines (TCCP)."

As the Court sees it, however, the foregoing issues may be summed up into this lone issue, *viz*:

> "Whether or not the BOC was correct in applying Method 2 as the basis of the dutiable value of the subject importations, pursuant to Section 201 of the TCCP, as amended by Republic Act No. 9135."

Petitioner's Arguments

It is the contention of petitioner that Method 1, also known as the *Transaction Value Method*, should be applied. In the said valuation method, the dutiable value shall be the transaction value, which is the price actually paid or payable for the goods when sold for export to the Philippines.

Petitioner further argues that there was no existing higher comparable value, which would cast doubt on the truthfulness or accuracy of the declared valuation; that there was no reasonable doubt as to the value of the imported articles; that the importations of petitioner was made in pursuance of the free market policy of the State; and that the free-market policy of the State vis-à-vis on importation is mirrored in the WTO (World Trade Organization) Customs Valuation Agreement, which was made the basis of the Transactional Value Method adopted by the BOC.

Finally, petitioner asserts that estoppel also applies to the State; and that it did not commit acts constituting a violation of Section 3602, Title VIII, Book II of the Tariff and Customs Code of the Philippines (TCCP).

Respondents' Counter-arguments

In their Answer, respondents contend that that the Decision dated November 9, 2007, issued by respondent Commissioner of Customs, which dismissed petitioner's appeal from the ruling of the Port of Manila (POM)-VCRC in "*POM-VCRC ruling on a appeal on*

Gas Oil (Diesel) Valuation, Andan Enterprises, Inc., Appellant," is proper.

According to respondents, Section 201 of the TCCP provides that where there is reasonable doubt as to the value of imported shipment declared by the importer, the correct dutiable value thereof shall be ascertained from other competent sources.

Respondent also points out that the valuation of imported items made by customs authorities is presumed correct and conclusive.

Moreover, respondents contend that estoppel does not run against the government; and that petitioner is not entitled to the suspension of the collection of its additional customs duties.

THE COURT'S RULING

We find merit in the instant Petition for Review.

A summary of the findings of the customs administration.

Based on the evidence on record, the findings of the customs administration may be found in the following documents: (1) the *Commissioner of Customs' Ruling on Appeal dated November 9, 2007 on Gas Oil (Diesel) Valuation, Andan Enterprises, Inc., Appellant* (hereinafter referred to as the *"Commissioner's Ruling on Appeal"*);[37] and (2) the *Final Audit Report and Recommendation dated August 12, 2008 of the Post Entry Audit Group (PEAG) and approved by the Commissioner of Customs* (hereinafter referred to as the *"Final Audit Report"*).[38]

In the *Commissioner's Ruling on Appeal*, the Commissioner of Customs adopted the Resolution of the Valuation and Classification Review Committee – Port of Manila (VCRC-POM), reassessing at US$560.41/MT based on previous importation of identical article under Entry No. C-25085-07 using Method 2 of the WTO Valuation Agreement. Furthermore, it was found that *"Method 1* (as) *not applicable for failure of the importer to still submit the requisite documentary evidences that will support the declared transaction value."* And lastly, it is likewise the finding of the customs

[37] Exhibit "2," Docket (Vol. II), pp. 624 to 629.
[38] Exhibit "1" to "1-D," Docket (Vol. II), pp. 615 to 618.

administration that *"(a)lthough the importer actually submitted evidences in its behalf she failed to explain the connection of the company (RDF Maritime SA) who issued the documents to the declared supplier on record, which was the Formosa Petrochemical Corporation, based on another country than Panama."*

On the other hand, in the *Final Audit Report*, the findings are as follows:

> "The Audit Team conducted the Exit Conference with Andan discussing the facts of the matter and the assessment on the subject importations of GASOIL.
>
> In its comments to the compliance issues disclosed by the Audit Team in the Exit Conference, Andan dismisses the allegations of undervaluation on the importations of GASOIL based on the presentation of pertinent import documents and records supporting the declared customs values and comparison of the same against the value range of VRIS poses a higher value or within the range.
>
> The audit team, however, considered all other facts of the matter and takes the position that subject importations of the companies were undervalued.
>
> First, on the issue of authenticity of the submitted Commercial Invoices/Sales Contract, inconsistencies were noted on the signature of the designated signatory, Mr. Marc Ortaliz.
>
> Second, Andan argue that their Commercial Invoices are within the value range of the VRIS[39], forgetting that in a transaction value regime, resort to notional values are not allowed. Customs cannot substitute its notion of what the transaction value ought to be – it can only use as benchmarks and references the values submitted to it. The fact is MOPS[40] is the only accepted valuation model in the oil industry. Deviating from MOPS will distort market prices and will inject confusion into the oil market.
>
> Lastly, the importations of the big oil companies follow the MOPS pricing and those companies order

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[39] That is, the Value Range Information System.
[40] That is, the Mean of Platts Singapore.

> GASOIL in far bigger quantities than both companies combined. Under the circumstances, it should be fair to consider that bigger quantity orders could be entitled to discounts while small quantity order such as those of the auditees, are given ordinary, arms-length prices. The situation is reverse in this case. The big ticket importers declare USD80.00 per barrel as transaction value while the small importations of Andan were declared at USD40.00 per barrel."[41]

However, it is interesting to note that, unlike in the *Commissioner's Ruling on Appeal*, the *Final Audit Report* (as approved by the Commissioner of Customs) is to the effect as follows:

> "In the course of the audit, Andan was requested to submit certified copies of its registration documents, company's background, Income Tax Returns, Audited Financial Statements, Summary of Importations, Import Entries with attachments, Proof of Payments for the period under audit. It was also requested to present for examination its Books of Accounts and other accounting records.
>
> **Andan fully-cooperated with the terms of the audit and had provided all documents requested. All documents presented were verified and found to be consistent with the declared customs values for the importations audited.**"[42] *(Emphasis supplied)*

Accordingly, as can be gathered from the foregoing, the following are now the grounds by which the customs administration adopted <u>Method Two</u> in reassessing petitioner, to wit:

1) The presence of other sources of valuation of the subject goods, whether it be based on previous importation of identical article under Entry No. C-25085-07 or from the Mean of Platts Singapore (MOPS); and

2) Petitioner's failure to explain the relationship between, or *"the connection of"*, RDF Maritime SA and Formosa Petrochemical Corporation.

[41] Docket (Vol. II), p. 617.
[42] Docket (Vol. II), p. 615.

As will be shown herein below, however, the foregoing grounds cannot be the proper basis for the reassessment of petitioner. Before proceeding, however, to discuss the applicability of proper method of valuation, the governing law must be clarified.

Section 201 of the TCCP, as amended by Republic Act No. 9135, being the latest expression of the legislative will, must be followed.

It is observed that respondents heavily rely on the old Section 201 in defending their case, as found in their Answer.[43] Nevertheless, it must be emphasized that the said old Section 201 has long been amended by Republic Act No. (RA) 9135 effective June 2, 2001.[44] Correspondingly, the instant case must be decided under (the new) Section 201 of the TCCP, as last amended by RA 9135, **not** under the old version thereof.

For easy reference, presented hereunder are the provisions of the old Section 201 of the TCCP, and the present Section 201 of the TCCP, as amended by RA 9135, to wit:

The old Section 201 of the TCCP	Section 201 of the TCCP, as amended by RA 9135
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 free in the usual wholesale quantities in the ordinary course of trade, in the principal markets 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	SEC. 201. *Basis of Dutiable Value. (A) Method One. – Transaction Value. –* **The dutiable value of an imported article subject to an *ad valorem* rate of duty shall be <u>the transaction value, which shall be the price actually paid or payable for the goods when sold for export to the Philippines</u>**, adjusted by adding: (1) The following to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods: (a) Commission and brokerage fees (except buying commissions); (b) Cost of containers;

[43] Docket, pp. 78 to 79.
[44] Having been published in newspapers of general circulation on May 18, 2001 (go to: http://www.tariffcommission.gov.ph/ra9135.html), RA 9135 took effect on June 2, 2001, pursuant to Section 20 thereof.

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 Numbered Fifty-four hundred and sixty-six or other Philippine diplomatic officers and from such other information that may be available to the Bureau of Customs. From the 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 reduce 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.	(c) The cost of packing, whether for labour or materials; (d) The value, apportioned as appropriate, of the following goods and services: materials, components, parts and similar items incorporated in the imported goods; tools; dies; moulds and similar items used in the production of imported goods; materials consumed in the production of the imported goods; and engineering, development, artwork, design work and plans and sketches undertaken elsewhere than in the Philippines and necessary for the production of imported goods, where such goods and services are supplied directly or indirectly by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods; (e) the amount of royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods to the buyer; (2) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller; (3) The cost of transport of the imported goods from the port of exportation to the port of entry in the Philippines; (4) Loading, unloading and handling charges associated with the transport of the imported goods from the country of exportation to the port of entry in the Philippines; and (5) The cost of insurance. All additions to the price actually paid or payable shall be made only on the basis of objective and quantifiable data. No additions shall be made to the price actually paid or payable in

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	determining the customs value except as provided in this Section: *Provided*, **That Method One shall <u>not</u> be used in determining the dutiable value of imported goods if:** **(a) There are restrictions as to the disposition or use of the goods by the buyer** other than restrictions which: (i) Are imposed or required by law or by Philippine authorities; (ii) Limit the geographical area in which the goods may be resold; or (iii) Do not substantially affect the value of the goods. **(b) The sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;** **(c) Part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller,** unless an appropriate adjustment can be made in accordance with the provisions hereof; or **(d) The buyer and the seller are related to one another, and such relationship influenced the price of the goods.** Such persons shall be deemed related if: (i) They are officers or directors of one another's businesses; (ii) They are legally recognized partners in business; (iii) There exists an employer-employee relationship between them; (iv) Any person directly or indirectly owns, controls or holds five percent (5%) or more of the outstanding voting stock or shares of both seller and buyer;

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	(v) One of them directly or indirectly controls the other; (vi) Both of them are directly or indirectly controlled by a third person; (vii) Together they directly or indirectly controlled by a third person; or (viii) They are members of the same family, including those related by affinity or consanguinity up to the fourth civil degree. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Act if they fall within any of the eight (8) cases above. **(B) *Method Two. – Transaction Value of Identical Goods.* – Where the dutiable value <u>cannot be determined under method one</u>**, the dutiable value shall be the transaction value of identical goods sold for export to the Philippines and exported at or about the same time as the goods being valued. "Identical goods" shall mean goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearances shall not preclude goods otherwise conforming to the definition from being regarded as identical. (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. xxx xxx xxx xxx (D) *Method Four. – Deducted Value.* – xxx

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	xxx xxx xxx (E) *Method Five. – Computed Value.* – xxx xxx xxx xxx (F) *Method Six. – Fallback Value.* – xxx xxx xxx xxx Nothing in this Section shall be construed as restricting or calling into question the right of the Collector of Customs **to satisfy himself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes**. When a declaration has been presented and where **the customs administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the customs administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Subsection (A) hereof**. If, after receiving further information, or in the absence of a response, **the customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may**, without prejudice to an importer's right to appeal pursuant to Article 11 of the World Trade Organization Agreement on customs valuation, **be deemed that the customs value of the imported goods cannot be determined under Method One**. Before taking a final decision, the Collector of Customs shall communicate to the importer, in writing if requested, **his grounds for doubting the truth or accuracy of the particulars or documents produced**

	and give the importer a reasonable opportunity to respond. When a final decision is made, the customs administration shall communicate to the importer in writing its decision and the grounds therefor.

Based on the provisions of the old Section 201 above-cited, there can be no question that as a general rule the home consumption value or price of an imported article subject to an ad valorem rate of duty shall be the value or price declared in the consular, commercial, trade or sales invoice. However, 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 RA 5466 or other diplomatic officers and from such other information that may be available to the Bureau of Customs.[45] And if still, it cannot be determined the value of the goods imported, using the said methods of valuation, *"for failure of the importer to reduce 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"*, the domestic wholesale selling price of such or similar article in Manila or other principal markets in the Philippines, subject to the requirements or conditions under the old Section 201.

The foregoing system of valuation, however, is no longer true under (the present) Section 201 of the TCCP, as amended by RA 9135.

Under the present Section 201, the law recognizes six (6) methods of valuation. As can be gleaned from the said provision, these methods are set out in sequential order of application.[46] If the customs administration has reasons to doubt *"the truth or accuracy"* of any statement, document or declaration presented for customs valuation purposes, it may ask for further explanation. And if, after receiving further information, or in the absence of a response, the customs administration still has reasonable doubts about *"the truth or accuracy"* of the declared value, it *"may"* be deemed that the customs value of the imported goods cannot be determined under Method One.

Thus, the present Section 201 is worded differently. The

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[45] *Commissioner of Customs vs. Procter and Gamble Philippine Manufacturing Corporation, et al.,* G.R. No. 56705, January 31, 1989.
[46] Section 2.6, Customs Memorandum Order No. 016-10.

principle then, that the deliberate selection of language other than that used in an earlier act is indicative that a change in the law was intended, calls for application.[47]

Method One should primarily be used, among other methods.

A careful reading of Section 201 of the TCCP, as amended by RA 9135, reveals that the primacy of Method One is intended. This is particularly apparent in paragraph (B) of the said Section, wherein it was decreed that Method Two will be applied, only *"(w)here the dutiable value cannot be determined under method one"*. This is also manifested in the second to the last paragraph of the same Section 201, which provides that in case of reasonable doubt as to the truth or accuracy of the particulars or of documents produced in support of the declaration, the further explanation that may be requested by the customs administration from the importer, including documents or other evidences, to show *"that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Subsection (A) hereof"*, referring to Method One. And if such further explanation is not satisfactory, or where no response was made for the request for further explanation, what may be deemed is *"that the customs value of the imported goods cannot be determined under Method One"* in accordance with the last paragraph of the present Section 201.

Moreover, paragraphs 2.6, 2.7 and 3.1 of Customs Memorandum Order No. 016-10[48] provides:

> "2.6 The methods of valuation are set out in a sequential order of application. **The primary method for customs valuation is the Transaction Value and imported goods are to be valued in accordance with the provisions of this method whenever the conditions prescribed for its use are fulfilled.**
>
> 2.7 **Where the dutiable value cannot be determined under the Transaction 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. xxx." *(Emphasis supplied)*

"3.0 *Rules on Customs Valuation*

[47] *Sarcos vs. Castillo, et al.*, G.R. No. L-29755, January 31, 1969.
[48] SUBJECT: Rules and Regulations to Implement Customs Administrative Order (CAO) No. 4-2004, More Particularly on Dutiable Value.

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". *(Emphasis supplied)*

Thus, if the customs value of the imported goods can be determined under Method One and the conditions prescribed for its use are fulfilled, then such method shall be used, to the exclusion of the other methods.

Section 201(A) of the TCCP, as amended by RA 9135, mandates that the *"dutiable value of an imported article subject to an* ad valorem *rate of duty shall be the transaction value, which shall be the price actually paid or payable for the goods when sold for export to the Philippines"*, subject to certain adjustments.

Nonetheless, said Section 201 also enumerates the instances when Method One shall **not** be used in determining the dutiable value of imported goods. They are as follows:

1. There are restrictions as to the disposition or use of the goods by the buyer other than restrictions which:

   (i) Are imposed or required by law or by Philippine authorities;
   (ii) Limit the geographical area in which the goods may be resold; or
   (iii) Do not substantially affect the value of the goods.

2. The sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

3. Part of the proceeds of any subsequent resale, disposal or

use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions hereof; or

4. The buyer and the seller are related to one another, and such relationship influenced the price of the goods. Such persons shall be deemed related if:

(i) They are officers or directors of one another's businesses;
(ii) They are legally recognized partners in business;
(iii) There exists an employer-employee relationship between them;
(iv) Any person directly or indirectly owns, controls or holds five percent (5%) or more of the outstanding voting stock or shares of both seller and buyer;
(v) One of them directly or indirectly controls the other;
(vi) Both of them are directly or indirectly controlled by a third person;
(vii) Together they directly or indirectly controlled by a third person; or
(viii) They are members of the same family, including those related by affinity or consanguinity up to the fourth civil degree.

At this juncture, it must already be stated that this case is not covered by the foregoing enumerations.

Apropos, the doctrine of *expressio unius est exclusio alterius* should be applied. To elaborate on the said doctrine:

> "Indeed, it is an elementary rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim '*expressio unius est exclusio alterius.*' Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned."[49]

[49] *Romualdez vs. Marcelo, et al.*, G.R. Nos. 165510-33, July 28, 2006.

Thus, the instances, as indicated in the said Section 201, where Method One shall not be used, may not be extended by interpretation beyond what are expressly mentioned by the same.

Method One must be used in the instant case.

At the onset, the Court finds that the following are the reasons why respondents resorted to Method Two, to wit:

1) The presence of other sources of valuation of the subject goods, whether it be based on previous importation of identical article under Entry No. C-25085-07 or from the MOPS; and

2) Petitioner's failure to explain the relationship between, or *"the connection of"*, RDF Maritime SA and Formosa Petrochemical Corporation.

However, it must be emphasized that such resort to Method Two cannot be justified, simply because the customs value of the subject imported goods of petitioner can already be determined under Method One, and petitioner's case does not fall under any of the instances where Method One shall not be used in determining the dutiable value of imported goods.

As a corollary, the presence of other sources of valuation of the subject goods is of no moment, because it is not one of the situations where resort can be had to another method of valuation.

On the basis of the following joint stipulation of facts of the parties, the dutiable value of the subject imported goods of petitioner, which is the *"transaction value"* or *"the price actually paid or payable for the goods when sold for export to the Philippines"*, has already been determined, to wit:

> "1. Prior to its incorporation, petitioner was operating as a single-proprietorship under the name *Andan Enterprises* operated by Alicia P. Andan. Andan Enterprises was engaged in the business of operating gas stations since 1971. Prior to 2006, Alicia P. Andan owned and operated three (3) franchised gasoline stations: one [1] each for Caltex, Filoil [now called Petron] and Shell Petroleum. Alicia P. Andan bought her supply of petroleum products directly from said oil manufacturers.

2. After the passage of Republic Act No. 8479, Alicia P. Andan learned that she can actually get cheaper oil products in other parts of the world. To give her financial credibility in dealing with foreign companies, she decided to put up a corporation; hence, petitioner came into being.

3. On February 10, 2007, petitioner entered into its *maiden* contract for the purchase of diesel with RDF Maritime, S.A. (BVI) [RDF], a foreign business concern which holds office at *R.G. Hodge Plaza, 2nd Floor Upper Main Street, Wickhams, Road Town, Tortola, British Virgin Islands.* In their agreement, RDF committed to look for the most competitively-priced diesel for sale and deliver to petitioner.

4. The said parties executed and signed a document denominated as *Sales Contract* No. RDF/MARITIME/ANDAN/20072801 containing the following data:

Product	: Gasoil
Quantity	: 5,000 to 7,000 metric tons
Delivery	: CIF Bataan, Philippines
Price	**: US$ 316.78 per metric ton**
Payment	: By TT Remittance in US Federal Funds
Vessel	: MT Kamee

5. The gas oil which petitioner purchased from RDF was supplied by Formosa Petrochemical Corporation (Formosa), a company (end-supplier) which is based in Taiwan. Formosa was able to ship the products out of Taiwan sometime in March 2007. The shipment was covered by three (3) commercial invoices and three (3) bills of lading, more particularly described as follows:

Commercial Invoice No.	Bill of Lading No.	Quantity Unit (metric tons)	**Value/MT (US$)**	**Total (US$)**
20072801-A	ML-2279	2,000	**316.78**	**633,500.00**
20072801-A	ML-2280	2,000	**316.78**	**633,500.00**
20072801-A	ML-2281	1,913,872	**316.78**	**606,276.37**

(Emphases supplied.)

It is clear from the foregoing that the subject transaction value or the price payable by petitioner for the gasoil it purchased for export to the Philippines has already been determined or established at US$ 316.78 per metric ton. Such being the case, there is no justification for failing to apply Method One.

In addition, it is understandable, if not reasonable, that petitioner was able to obtain a much lesser price for the subject imported goods because it is further established that *"(a)fter the passage of Republic Act No. 8479, Alicia Andan learn that she can actually get cheaper oil products in other parts of the world"*,[50] coupled with fact that *"RDF committed to look for the most competitively-priced diesel for sale and delivery to petitioner."*[51]

In this connection, it must be emphasized that the parties, especially the respondents, cannot escape the binding effect of their judicial admissions.

In *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*,[52] the Supreme Court classified a stipulated fact as a judicial admission, as follows:

> "The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made. The Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. **An admission made by a party in the course of the proceedings does not require proof.**" *(Emphasis supplied)*

It is well-settled that a judicial admission conclusively binds the party making it.[53] **A judicial admission also removes an admitted fact from the field of controversy.** Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and **all proofs to the contrary or inconsistent therewith should be ignored**, whether objection is interposed by the party or not.[54]

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[50] Par. 2, Stipulation of Facts, JSFI, Docket (Vol. I), p. 239.
[51] Par. 3, Stipulation of Facts, JSFI, Docket (Vol. I), pp. 239 to 240.
[52] G.R. No. 157594, March 9, 2010; *Commissioner of Internal Revenue vs. Petron Corporation*, G.R. No. 185568, March 21, 2012.
[53] *Cahilig, et al. vs. Terencio, et al.*, G.R. No. 164470, November 28, 2011.
[54] *Republic of the Philippines vs. De Guzman*, G.R. No. 175021, June 15, 2011.

Furthermore, a careful examination of the assailed Decision of BOC and of the arguments raised by respondents before this Court, reveals that it fails to state or discuss the non-applicability of Method One, notwithstanding the presence of the *"transaction value"* or *"the price actually paid or payable for the goods when sold for export to the Philippines".* Specifically, respondents failed to allege and prove that: (1) there were restrictions as to the disposition or use of the goods by petitioner, as buyer; (2) the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the subject goods (gasoil); (3) part of the proceeds of any subsequent resale, disposal or use of the goods by petitioner will accrue directly or indirectly to Formosa Petrochemical Corporation or RDF Maritime SA; and (4) petitioner, as buyer, and RDF Maritime SA, as seller, are related to one another, and such relationship (if there is any) influenced the price of the subject goods.

Anent the issue of the supposed relationship between the buyer and the seller, the assailed Decision of respondent Napoleon L. Morales, Commissioner of Customs, states:

> "The Committee found Method 1 not applicable for failure of the importer to still submit the requisite documentary evidences that will support the declared transaction value. **Although the importer actually submitted evidences in its behalf she failed to explain the connection of the company (RDF Maritime SA) who issued the documents to the declared supplier on record, which was the Formosa Petrochemical Corporation, based on another country than Panama.**" *(Emphasis supplied)*

Thus, it is clear that what was questioned by the customs administration is the relationship between *"the declared supplier on record"*, Formosa Petrochemical Corporation, and RDF Maritime SA. Plainly, the customs administration <u>never</u> questioned instead the relationship of petitioner, as buyer, with RDF Maritime SA, as seller. It must be noted that such relationship of petitioner and RDF Maritime SA has been likewise established in the parties' Joint Stipulation of Facts and Issues, to wit:

> "3. On February 10, 2007, **petitioner entered into its *maiden* contract <u>for the purchase</u> of diesel with RDF Maritime, S.A.** (BVI) [RDF]...
>
> 4. **The said parties executed and signed a document denominated as <u>*Sales Contract*</u>** No. RDF/MARITIME/ANDAN/20072801...

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> 5. **The gas oil which petitioner <u>purchased from RDF</u>** was supplied by Formosa Petrochemical Corporation (Formosa), a company (end-supplier) which is based in Taiwan. xxx"

But more importantly, even granting that petitioner and RDF Maritime SA are related, there is no showing that *"such relationship influenced the price of the* (subject) *goods."*

All told, the respondents erred in applying Method Two in the valuation of the subject goods for customs purposes, as Method One should have been used in this case.

WHEREFORE, all the foregoing considered, the instant *Petition for Review* is hereby **GRANTED.** The Decision dated November 9, 2007 issued by respondent Commissioner of Customs is hereby **REVERSED** and **SET ASIDE.**

Accordingly, respondent District Collector of the Port of Manila is hereby **PERMANENTLY ENJOINED** from collecting additional duties and taxes under Import Entries Nos. C-25475-07, C-25478-07, C-25480-07, C-31485-07, C-31787-07, and C-31807-07.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ANDAN ENTERPRISES, INC.,
Petitioner,

-versus-

HON. NAPOLEON L. MORALES in his capacity as Commissioner of the Bureau of Customs and HORACIO P. SUANSING JR., in his capacity as District Collector of the Port of Manila,
Respondents.

CTA CASE NO. 7795

Members:

Del Rosario, *Chairperson*
Uy, and
Mindaro-Grulla, JJ.

Promulgated:

MAY 29 2014 ; 3:10 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect to the *ponencia* of my learned and esteemed colleague, Honorable Associate Justice Erlinda P. Uy, it is my humble view that the Bureau of Customs (BOC) correctly applied Method Two (The Transactional Value of Identical Goods) instead of Method One (Transactional Value) in valuing the importation made by petitioner.

Under **Section 201** of Presidential Decree (PD) No. 1464, otherwise known as the Tariff and Customs Code (TCC) of 1978, as amended by Republic Act (RA) No. 9135[1], there are six (6) methods in determining the dutiable value of an imported article, namely: *Method One - Transaction Value; Method Two - Transaction Value of Identical Goods; Method Three - Transaction Value of Similar Goods; Method Four - Deductive Value; Method Five - Computed Value; and 6) Method Six - Fallback Value.* The dutiable value of imported goods shall be determined using one of the six methods of valuation, to be applied *sequentially* in the order provided by law.[2]

[1] An Act Amending Certain Provisions of Presidential Decree No. 1464, otherwise known as the Tariff and Customs Code of the Philippines, as amended, and for other purposes.
[2] Customs Administrative Order (CAO) No. 004-04 Subject: Amendment to Customs Administrative Order 5-2001 (Implementing Republic Act 9135: An Act Amending

While there is no denying of the primacy of *Method One-Transaction Value* as basis of dutiable value of imported articles, nevertheless, **Section 201 of the TCC, as amended,** is clear and unequivocal in declaring that nothing in such Section *"shall be construed as restricting or calling into question the right of the Collector of Customs to satisfy himself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes."* Quoted hereunder is the pertinent provision of Section 201 of the TCC, as amended by RA No. 9135:

> "SEC. 201. Basis of Dutiable Value. — **(A) Method One. — Transaction Value.** — The dutiable value of an imported article subject to an ad valorem rate of duty shall be the transaction value, which shall be the price actually paid or payable for the goods when sold for export to the Philippines xxx.
>
> No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Section: *Provided*, That Method One shall not be used in determining the dutiable value of imported goods if:
>
> (a) There are restrictions as to the disposition or use of the goods by the buyer xxx;
>
> (b) The sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
>
> (c) Part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions hereof; or
>
> (d) The buyer and the seller are related to one another, and such relationship influenced the price of the goods. xxx
>
> (B) **Method Two. — Transaction Value of Identical Goods.**
>
> (C) **Method Three. — Transaction Value of Similar Goods.**
>
> (D) **Method Four. — Deductive Value.**
>
> (E) **Method Five. — Computed Value.**
>
> (F) **Method Six. — Fallback Value.**

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Certain Provisions of Presidential Decree No. 1464, Otherwise Known as the Tariff and Customs Code of the Philippines, as Amended (Customs Code) and for Other Purposes).

> **Nothing in this Section shall be construed as restricting or calling into question the right of the Collector of Customs to satisfy himself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes**. When a declaration has been presented and where the customs administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the customs administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Subsection (A) hereof.
>
> **If, after receiving further information, or in the absence of a response, the customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may**, without prejudice to an importer's right to appeal pursuant to Article 11 of the World Trade Organization Agreement on customs valuation, **be deemed that the customs value of the imported goods cannot be determined under Method One**. Before taking a final decision, the Collector of Customs shall communicate to the importer, in writing if requested, his grounds for doubting the truth or accuracy of the particulars or documents produced and give the importer a reasonable opportunity to respond. When a final decision is made, the customs administration shall communicate to the importer in writing its decision and the grounds therefor." *(Emphases supplied)*

Otherwise stated, when reasonable doubt exists about the truth or accuracy of the transactional value as declared by the importer, then the customs value of imported goods cannot be determined under Method One. In such a case, the BOC shall then proceed to determine the dutiable value under alternative methods sequentially and in the order of succession as provided in Customs Administrative Order (CAO) No. 004-04[3], which implements Section 201 of the TCC, as amended by RA No. 9135, *viz.*:

> "SECTION II. *Dutiable Value.* —
>
> A. General
> **The dutiable value of imported goods shall be determined using one of the six methods of valuation listed below, to be applied sequentially in the order provided by law**.
>
> B. **Method — The Transaction Value**
> xxx xxx xxx
>
> C. **Method 2 — The Transaction Value for Identical Goods**

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[3] Subject: Amendment to Customs Administrative Order 5-2001 (Implementing Republic Act 9135: An Act Amending Certain Provisions of Presidential Decree No. 1464, Otherwise Known as the Tariff and Customs Code of the Philippines, as Amended (Customs Code) and for Other Purposes).

xxx xxx xxx

D. **Method 3 — The Transaction Value of Similar Goods**

xxx xxx xxx

E. **Method 4 — The Deductive Value**

xxx xxx xxx

F. **Method 5 — The Computed Value**

xxx xxx xxx

G. **Method 6 — The Fallback Value**

xxx xxx xxx

H. **Inability to accept or doubts as to the transaction value documents submitted by the importer at the time entry is filed/processed.**

1. This section shall apply to import releasing procedures including tentative release under sufficient guarantee.

2. Whenever the Bureau is unable to accept the transaction value or it has reason to doubt the truth or accuracy of the particulars or of documents produced in support of the import declaration, it should notify and give the importer the opportunity to provide further explanation. The Bureau shall communicate to the importer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars or documents produced and give the importer a reasonable opportunity to respond.

3. **If, after receiving further information, or in the absence of a response from the importer, the Bureau still has reasonable doubts about the truth or accuracy of the declared value, then it is deemed that the customs value of imported goods cannot be determined under Method One. The Bureau shall then proceed to determine the dutiable value under alternative methods sequentially and in the order of succession as provided by law.**

4. Upon written request, the importer shall have the right to an explanation in writing from the Bureau as to how the customs value of the importer's goods was determined. When a final decision is made, the Bureau shall communicate to the importer in writing its decision and the grounds therefor.

5. The above procedure is without prejudice to an importer's right to appeal pursuant to Article 11 of the WTO Agreement on Customs Valuation. *(Emphasis supplied)*

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In this case, facts and circumstances exist that create reasonable doubt as to the truth of the declared value of petitioner's importation at *US$316.78/Metric Ton (MT).*

The BOC found that there was gross undervaluation of petitioner's importations when compared to similar importations made by other companies coming from the same country of origin, *i.e., Oil Link Int. Corp used the value $516.97/MT under E#C-25452-07 and Total Phils. Corp. used the value $536/MT.*[4] The Port of Manila-Valuation and Classification Review Committee (POM-VCRC) found Method One inapplicable for failure of the petitioner to submit the requisite documentary evidence that will support the declared transaction value, such as, authenticated sales contract, and authenticated proof of payment, despite having been given sufficient time to produce the same.[5] On appeal, respondent Commissioner of Customs still rejected Method One holding that while petitioner submitted evidence, petitioner still failed to explain the connection of RDF Maritime SA - the company which issued the documents, to the declared supplier on record by the name Formosa Petrochemical Corporation.[6] Respondent Commissioner of Customs likewise ruled that the evidence presented by petitioner showing a lower customs value, *i.e., $300/MT published on February 21, 2007 and $320/MT based on customs assessment records*, which supposedly intends to prove that POM-VCRC valuation at $560.41/MT is grossly valued, is insufficient to overcome the presumption of the correctness of the valuation as the consignee in that importation used to file its import entries using provisional pro-forma invoices and then upon receipt of the final commercial invoice from supplier abroad finally liquidates the import entries with the BOC at $638.34 to $652.15/MT.[7]

The foregoing observations of the BOC indeed cast a reasonable doubt as to the truth of petitioner's declared values of its importations.

First, the marked difference between the declared value of US$316.78/MT by petitioner and the values declared by other importers is sufficient to engender, in a reasonable and prudent man, a doubt as to the veracity of petitioner's declared value. om

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[4] Exhibit "26"; CTA Docket, p. 619.
[5] Disposition Form dated May 18, 2007 of the Port of Manila-Valuation and Classification Review Committee (POM-VCRC); Exhibit "26"; CTA Docket, pp. 619-623.
[6] Exhibit "2"; CTA Docket, 624-629, 629.
[7] *Id*, CTA Docket, p. 626.

Second, the failure of petitioner to submit the required documentary evidence before the BOC that will support the declared transaction value, such as, authenticated sales contract and authenticated proof of payment constitute sufficient justification for respondents to reject Method One (Transaction Value), understandably, since there would be no other way in order to verify the accuracy of the declared value.

Petitioner's failure to explain the findings of the BOC with respect to the connection of RDF Maritime SA - the company which issued the documents, to the declared supplier on record by the name Formosa Petrochemical Corporation, is likewise fatal to its position on the applicability of the Transaction Value as basis in determining the dutiable value of the importations. Significantly, the required explanation is vital for the BOC as well as this Court to understand the agreement and, more importantly, the connection between RDF Maritime SA and Formosa Petrochemical Corporation, and their relationship with petitioner, *if any*. Note that the Transaction Value is allowed to be used as basis of the dutiable value of imported articles only if all the conditions set by law,[8] like *"the buyer and the seller are not related or where they are related, such relationship did not influence the price of the goods"*,[9] among others, are satisfied. While the BOC sought clarification on the relationship between Formosa Petrochemical Corporation, and RDF Maritime SA, it is incumbent upon petitioner to establish whether or not it is related either to Formosa Petrochemical Corporation or to RDF Maritime SA. Needless to say, if petitioner is related either to Formosa Petrochemical Corporation or RDF Maritime SA, the possibility of price influence may not be discounted.

The *ponencia* stressed that there are only four instances under Section 201 of the TCC, as amended by RA No. 9135, when Method One shall not be used, namely: *(1) there are restrictions as to the disposition or use of the goods by the buyer xxx; (2) the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued; (3) part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions hereof; or (4) the buyer and the seller are related to one another, and such relationship influenced the price of the goods;* and that these instances may not be extended by interpretation beyond what are expressly mentioned by law. Accordingly, the *ponencia* maintained that in this case what was questioned by the customs administration is the relationship between Formosa Petrochemical Corporation, the declared supplier on record, and RDF Maritime SA, the one which issued the

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[8] Section II.B.2, CAO 004-04.
[9] Section II.B.2.e, CAO 004-04.

documents, and not the relationship of petitioner as buyer, with RDF Maritime SA, as seller.

It is true that the existence of any of the afore-mentioned four instances seems to be the only ground to justify the non-application of Method One for purposes of determining the dutiable value of imported goods. Nonetheless, the use of Method One itself, as well as the other methods, are all *subject* to the penultimate provision of Section 201 of the TCC, as amended by RA No. 9135, which states that **"[n]othing in this Section shall be construed as restricting or calling into question the right of the Collector of Customs to satisfy himself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes."** Notwithstanding the absence of any of the four instances stated in Section 201 of the TCC, as amended by RA No. 9135, when there is reasonable doubt as to the truth or accuracy of the declared value, the BOC has the innate duty and responsibility to satisfy itself that the transaction value declared by the importer is true and accurate. If it is not satisfied, then Method One may not be used as reasonable and valid basis of valuation; instead, the BOC should *"proceed to determine the dutiable value under alternative methods sequentially and in the order of succession as provided by law."*[10]

The *ponencia* likewise emphasized that the customs value of the subject imported goods, which is at *US$316.78/MT*, can be determined under Method One taking into consideration the parties' joint stipulation of facts, *i.e., that parties executed and signed a sales contract reflecting the price at US$316.78 per metric ton; and that the shipment was covered by three commercial invoices and three bills of lading with a value of US$316.78 per metric ton.* Accordingly, respondents cannot escape from the effect of their judicial admission.

With due respect, I submit that the foregoing admitted facts do not make the BOC's valuation under Method Two erroneous. The admitted facts neither prove that the price stated in the contract which is also the price indicated in the commercial invoices and bills of lading is the true or accurate valuation. **It only proves the execution of the document and the supposed consideration/price agreed as stated therein.** The truthfulness or accuracy of the stated price, however, may not be taken as inherent in the stipulation of the parties.

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[10] Section II (H)(3), Customs Administrative Order No. 004-04; See also footnote 3.

As oft-repeated, considering that the BOC has reasonable doubt about the truth or accuracy of the price as stated in the sales contract, the burden is upon petitioner to establish that it is the true and accurate valuation of the imported goods.

Notably, even before this Court, petitioner failed to present all its records of importations and other pertinent documents, including, among others, its journal vouchers, books of accounts and proof of payment issued by its supplier to prove that the value declared by petitioner were the ones reflected in its books of accounts and that the proof of payment supported the declared value.

Incidentally, I am not unaware of the Final Audit Report[11] dated **August 12, 2008** (which was issued after the filing of the present Petition for Review on **June 13, 2008** appealing the Commissioner's Ruling on Appeal[12] dated **November 9, 2007**). While the Final Audit Report indicates that petitioner fully cooperated with the terms of the audit and provided the documents requested, still the conclusions and recommendations of the Audit Team which was approved by the Commissioner, is for the issuance of a demand letter against petitioner for the payment of deficiency taxes and duties in the amount of Php80,067,422.79, inclusive of the 200% penalty.

It is settled rule in this jurisdiction that the burden rests upon the importer disputing the customs valuation not only to prove the contrary and overcome the presumption of correctness of the valuation but also to show that the figures declared by him are in fact true and correct.[13] In view of the presumption of the correctness of the appraisal made by the BOC, petitioner's failure to overcome the burden of proving the contrary is fatal to its case.

In view of the foregoing, I **VOTE** to deny the Petition for Review. Accordingly, the valuation of the BOC under Method Two must be sustained.

ROMAN G. DEL ROSARIO
Presiding Justice

[11] Respondent's Exhibit "1", CTA Docket, pp. 615 to 618.
[12] Respondent's Exhibit "2", CTA Docket, pp. 624 to 629).
[13] The Coca-Cola Export Corporation v. The Commissioner of Internal Revenue and The Collector of Customs, Manila, as Deputy of the Commissioner of Internal Revenue, G.R. No. L-23604, March 15, 1974.