SUGAR PRODUCERS COOPERATIVE
MARKETING ASSOCIATION, INC.,
Petitioner,

- versus -

July 30, 1957

C.T.A.
CASE NO. 303

MANUEL P. MANAHAN, Commissioner
of Customs,
Respondent.

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D E C I S I O N

Petitioner Sugar Producers Cooperative Marketing Association, Inc., imported and received shipments of fertilizers from Albatros Superfesfastfabrikan, N. V. of Utrecht, Province of North Holland, Kingdom of Netherlands. In the Kingdom of Netherlands, a 4% turnover tax is levied and collected on similar fertilizers sold and consumed therein. However, being for export, the fertilizers in question were not subject to this 4% turnover tax when shipped to the Philippines.

Petitioner upon making entry of these goods for customs purposes, added the amount equivalent to the 4% turnover or home consumption tax to the value of the goods as part of the dutiable value of the importations. On the basis of these import entry declarations filed by petitioner with the customshouse, the assessments of the corresponding duties were made. Hence, there was assessed on the imported fertilizers the 5% ad valorem duty provided for in paragraph 72-a of the Philippine Tariff Act of 1909, as amended, on the basis of the total amount representing the value of the merchandise and the home consumption tax.

The petitioner paid the customs duties assessed on the shipments of fertilizers, but later protested against the payment of the 5% customs duties on the 4% turnover tax in the total amount of ₱1,277.20 on the ground that said turnover tax should not be added to the invoice value of the goods imported for purposes of collecting the duties. Inasmuch as the protest of the petitioner was denied by the Collector of Customs of Iloilo and the respondent Commissioner of Customs, the petitioner filed its petition for review with this Court praying that the decision of the respondent be reversed and the said amount of ₱1,277.20 be ordered refunded.

The only issue in this case is whether or not the amount representing the 4% turnover tax, collected by the Government of Netherlands on fertilizers sold within its territory, but which is not collected on merchandise exported to other countries, should be included as part of the dutiable value in the ascertainment of the duties when said merchandise is imported into the Philippines. Stated in simple terms, what is the correct basis for the assessment of the customs duties on the imported fertilizers in question?

The controversy in the case at bar centers on the interpretation that should be given to Rule 13 (a) of the Philippine Tariff Act of 1909, as amended. It reads as follows:

> "Rule 13. (a) Whenever imported merchandise is subject to an ad valorem rate of duty, <u>the duty shall be assessed upon the actual market value or wholesale price of such merchandise, as bought and sold in usual wholesale quantities, at the time of exportation to the Philippine Islands, in the principal markets of the country from whence imported</u>, and in the condition in which such merchandise is there bought and sold for exportation to the Philippine Islands, or consigned to the Philippine Islands for sale, including the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the Philippine Islands." (Underscoring supplied.)

The question before us has already been squarely decided by the Supreme Court in the case of Oriental Glass Palace vs. The Insular Collector of Customs (70 Phil. 700). More precisely, in the words of the Supreme Court, the decisive question resolved in said case was: "Which value is the proper basis in assessing the duty to be paid on the merchandise in question, the export value of $2,311.33, or the home consumption value in Germany of $4,254.96?"

After stating that "the answer is to be read in Rule 13 (a) of the Philippine Tariff Act of 1909," the Supreme Court concluded:

> "Without straining the letter of the law as it stands, we reach the obvious conclusion that the amount of $4,254.96 (the home consumption value in Germany) is the

> 'actual market value or wholesale price x x x at the time of exportation to the Philippine Islands, in the principal markets of the country from whence imported.' The fact is that the home consumption value mentioned in the consular invoice is broad enough to cover both the actual as well as the wholesale value."

In the same case, the Supreme Court cited with approval the holding of the United States Supreme Court in the case of U. S. vs. Passavant, 169, U.S. 16:

> "Was the action of the appraiser lawful in treating the so-called German duty as an element of value in determining the actual market value of wholesale price of these cotton velvets, at the time of exportation, in the principal markets of Germany?
>
> "What was to be ascertained was the actual market value or wholesale price of the merchandise as bought and sold in usual wholesale quantities at the time of exportation, in the principal markets of the country from whence imported. This market value or price was the price in Germany and not the price after leaving that country, and the act does not contemplate two prices or two market values.
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> "The certificate of facts states that the German duty is imposed on merchandise when 'sold by the manufacturers thereof for consumption or sale in the markets of Germany'; and 'is collected when the finished product goes into consumption in Germany.' As the tax accrues when the manufacturer sells, his wholesale price includes it, and the purchaser who buys these cotton velvets in wholesale quantities in the German market pays a price covering the tax, and that is the price for the merchandise when bought and sold in those markets."

We are therefore of the opinion and so hold that the correct basis for the assessment of the customs duties on the imported fertilizers in question is its home market value in Netherlands and that the 4% turnover tax forms a part of the home market value which should be taken into consideration in computing the customs duties that should be collected on the imported fertilizers.

Moreover it is a general rule provided by Section 1286 of the Revised Administrative Code (now Section 1408, Tariff and Customs Code) that "duty shall not be assessed in any case upon an amount less than the entered value". The exception from said general rule provided for in the same section is when an "importer certifies at the time of entry that the entered value is higher than the foreign market value and that the goods are so entered in order to meet increases made by the appraiser in similar cases then pending on request for reappraisement". In the case at bar, the assessments of customs duties were made on the basis of the entered values declared by petitioner itself. In the absence of a timely certificate of petitioner for the application of the exception, such entered value becomes binding on it as a basis for the ascertainment of duties from which no refund may be validly authorized.

WHEREFORE, finding the decision of the respondent Commissioner of Customs to be in accordance with the law, the same is hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, Philippines, July 20, 1957.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

Not appealed