REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

AJINOMOTO PHILIPPINES CORPORATION, Petitioner,	C.T.A. CASE NO. 7901
	Members:
- versus -	UY, *Chairperson and* FABON-VICTORINO, *JJ*
	Promulgated:
COMMISSIONER OF CUSTOMS, Respondent.	JUN 24 2013 ; 2:20 p.m.

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DECISION

Fabon-Victorino, J.:

This case involves petitioner Ajimomoto Philippines Corporation's (APC) appeal against the letter dated February 9, 2009[1] of respondent Commissioner of Customs (COC), demanding the payment of ₱18,677,904.09, representing alleged deficiency import duties and value-added tax (VAT), inclusive of penalty, on the royalty payments it made to Ajinomoto Co., Inc. (AJICO) for taxable period covering July 1, 2001 to December 31, 2003.

Petitioner, formerly known as Union Ajinomoto, Inc., is engaged in the sale of Monosodium Glutamate (MSG), as well as the manufacture and sale of MSG-based seasonings and food products. It is a duly organized local corporation with principal office at 331 Sen. Gil Puyat Avenue, Makati City.[2]

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[1] Annex "A", Petition for Review, docket, p. 22; Par. 1, Petition for Review, docket, p. 1.
[2] Par. 1.1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 140.

Respondent, on the other hand, is the head of the Bureau of Customs (BOC), holding office at the Ground Floor, OCOM Building, Bureau of Customs, Port Area, Manila.[3]

Petitioner is a wholly-owned subsidiary of AJICO, a Japanese corporation engaged in the manufacture, distribution and sales of various kinds of seasonings and food products in Japan.[4]

AJICO granted petitioner a license to manufacture MSG-based food products through AJICO's "Licensed Process" and "Know-How" pursuant to a Technological Assistance Agreement duly registered with the Intellectual Property Office. Under this Agreement, petitioner has right to use AJICO's manufacturing process and trademarks for the sale of MSG and seasoning products.[5] As consideration thereof, petitioner shall pay AJICO technological assistance fees or royalties at the rate of four percent (4%) of the net sales of MSG.[6]

For taxable period July 2001 to December 2003, petitioner filed its Monthly VAT Declaration (BIR Form No. 2550M), Quarterly VAT Return (BIR Form No. 2550Q), and Monthly Remittance Return of VAT and Other Percentage Taxes Withheld (BIR Form No. 1600), on the following dates:

EXHIBIT		**FOR THE MONTH/QUARTER**	**DATE FILED**
"O"	Monthly Value-added Tax Declaration (BIR Form No. 2550M)	December 2001	Jan. 10, 2002

[3] Par. 1.2, Stipulation of Facts, JSFI, docket, p. 140.
[4] Par. 1.3, Stipulation of Facts, JSFI, docket, p. 141.
[5] Par. 1.4, Stipulation of Facts, JSFI, docket, p. 141.
[6] Par. 1.5, Stipulation of Facts, JSFI, docket, p. 141.

"Q"	Quarterly Value-Added Tax Return (BIR Form No. 2550Q)	1st Quarter 2002[7]	April 10, 2002
"R"	Quarterly Value-Added Tax Return (BIR Form No. 2550Q)	2nd Quarter 2002[8]	July 10, 2002
"S"	Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600)	September 2002	Oct. 10, 2002
"T"	Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600)	December 2002	Jan. 10, 2003
"V"	Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600)	March 2003	April 10, 2003
"W"	Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600)	June 2003	July 10, 2003
"X"	Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600)	September 2003	Oct. 10, 2003
"Y"	Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600)	December 2003	Jan. 12, 2004

On May 21, 2004, respondent, through the Bureau of Customs-Post Entry Audit Group (BOC-PEAG), issued Audit Notification Letter No. 0405103 for a post entry audit on petitioner's import operations. Thus in June 2004, the BOC-PEAG conducted the audit of the import entries and other

[7] The Quarterly VAT Return marked as Exhibit Q had an "x" mark stating that the said return was for the 4th quarter of year 2002. However, the amount of tax paid as stated in Exhibit Q is P2,335,152.60, which amount, based on the Summary of VAT payments for the year 2002 (Exhibit "U") supporting the said return, is the amount of VAT paid for the period January to March 2002, or the 1st quarter of 2002. That the VAT payment of P2,335,152.60 is for the 1st quarter of 2002 is confirmed in Exhibit "UUUU", the Affidavit of Rommel B. Arroyo dated December 4, 2009, wherein the witness identified the VAT Return filed and paid on April 10, 2002 to cover the 1st Quarter of 2002. Hence, Exhibit Q must be the Quarterly VAT Return for the 1st quarter of 2002.

[8] Exhibit R is the Quarterly VAT Return for the 1st quarter of 2002, based on the "x" mark on the said return to indicate the quarter. However, Exhibit R is actually the Quarterly VAT Return for the 2nd quarter of 2002, based on the Summary of VAT payments for the year 2002 (Exhibit "U-2") supporting the return, and Exhibit "UUUU", the Affidavit of Rommel B. Arroyo dated December 4, 2009 wherein the witness identified the VAT Return filed and paid on July 10, 2002 to cover the 2nd Quarter or 2002. Exhibits U and UUUU state that the amount of tax paid for the 2nd quarter of 2002 amounts to P2,206,164.83, which is also the amount of tax paid in Exhibit R.

documents relative to petitioner's import transactions for the period July 1, 2001 to December 31, 2003.[9]

During the informal conference on March 9, 2006, the BOC-PEAG informed petitioner that it failed to include the technological assistance fees or royalties it paid to AJICO in determining the dutiable value of the imported MSG.[10]

In the exit conference conducted on June 16, 2008, the BOC-PEAG issued to petitioner a computation of deficiency duties and VAT for the years 2001, 2002, and 2003 in the total amount of ₱18,677,904.09.[11]

On July 31, 2008, petitioner filed with the BOC-PEAG its letter protest dated July 30, 2008[12] assailing the assessment in accordance with the Tariff and Customs Code of the Philippines (TCCP).

In a letter dated December 9, 2008,[13] received on December 15, 2008, petitioner's protest was denied for lack of factual and legal bases. Petitioner was granted (15) days from notice to pay the assessed deficiency duties and VAT.

Aggrieved, petitioner formally moved for a reconsideration[14] which was denied in a letter dated February 9, 2009, [15] received by petitioner on March 2, 2009.

Hence, this recourse via a Petition for Review filed on April 1, 2009.

In his Comment dated May 26, 2009,[16], respondent argues that that royalty fees, denominated as "Technological Assistance Fees" that petitioner paid to AJICO are dutiable pursuant to Section 201 of the TCCP, as amended by

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[9] Par. 1.6, Stipulation of Facts, JSFI, docket, p. 141.
[10] Par. 10, Petition for Review, docket, p. 5.
[11] Par. 1.7, Stipulation of Facts, JSFI, docket, p. 141; Exhibit "VVVV".
[12] Par. 1.8, Stipulation of Facts, JSFI, docket, p. 142; Annex "C", Petition for Review, docket, pp. 24-31.
[13] Annex "D", Petition for Review, docket, pp. 32-36.
[14] Annex "E", Petition for Review, docket, pp. 37-42.
[15] Annex "A", Petition for Review, docket, p. 22.
[16] Docket, pp. 70-79.

Republic Act (RA) No. 9135, and further strengthened by Advisory Opinion Nos. 4.4[17] and 4.6[18] of the Technical Committee on Customs Valuation of the World Trade Organization. It is not double taxation since petitioner is assessed for VAT only for the undeclared royalty fees it paid to AJICO which have not been taxed. Prescription to collect the deficiency duties and VAT has not also set in pursuant to Section 1603 of the TCCP, as implemented by Customs Administrative Order (CAO) No. 5-2001, as amended by CAO No. 4-2004. Finally, the June 2004 post entry audit conducted within the prescriptive period of three (3) years prevented the import entry/duties paid from attaining finality.

To prove its case, petitioner presented as witnesses its Finance Manager Rommel B. Arroyo;[19] Assistant Manager, Finance Department Salome D. Luber[20] and retired Head of its Sales and Administration Services Section Raul G. Anacin,[21] all of whom appeared in court with their respective judicial affidavits in lieu of their direct testimonies.

Witness **Rommel B. Arroyo** testified that he was petitioner's Section Manager from 2001 to 2003. As a manufacturer of food seasoning products, petitioner paid

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[17]**Advisory Opinion No. 4.4**
A patented concentrate is purchased by importer I from manufacturer M who is also the patent holder; the imported concentrate is simply diluted with ordinary water and consumer packed before it is sold in the importing country. In addition to the price of the goods, the purchaser is required to pay the manufacturer M, as a condition of sale, a royalty for the right to incorporate or use the patented concentrate in products intended for resale. The amount of the royalty is calculated on the sale price of the finished products.
The Technical Committee on Customs Valuation expressed the opinion that the royalty is a payment related to the imported goods that the buyer is required to pay as a condition of sale of those goods and accordingly should be added to the price actually paid or payable in accordance with Article 8.1 (c). This opinion refers to the royalty paid for the patent incorporated in the imported goods and is without prejudice to other situations.
[18] ***Advisory Opinion No. 4.6***
An importer makes two separate purchases of a concentrate from foreign manufacturer M. M owns a trademark which may or may not be applied to the goods when they are sold after dilution depending on the terms of a particular sale for importation. The fee for use of the trademark is paid on a per unit basis. The concentrate is diluted and resold with trademark and as a condition of the sale for the import there is a requirement for payment of the fee.
The Technical Committee on Customs Valuation expressed the opinion that the royalty is a payment related to the imported goods that the buyer is required to pay as a condition of sale since the fee required by M must be added to the price actually paid or payable for the imported goods.
[19] Minutes, docket, p. 311; Judicial Affidavit of Rommel B. Arroyo dated December 4, 2009, Exhibit "UUUU".
[20] Minutes, docket, pp. 320; Judicial Affidavit of Salome D. Luber dated January 24, 2011, Exhibit "AAAAA".
[21] Minutes, docket, pp. 344 and 374; Judicial Affidavit of Raul G. Anacin dated May 30, 2011, Exhibit "GGGGGG".

royalties to AJICO for the use of the latter's trademarks and processes for the manufacture and sale of imported MSG. The royalties were computed by multiplying the total amount of MSG sold by the royalty rate of 4%.

The witness opined that should petitioner be held liable for customs duties on its MSG importations, the amount must be based on the actual royalty payments made to AJICO, and not on mere estimates by the BOC-PEAG using the best evidence obtainable. But since petitioner already paid VAT on its MSG importation for the years 2001 to 2003, and on its generic royalty payments to AJICO, petitioner should no longer be held liable for VAT anew.

The witness claimed that all the documents he identified in court were made available to the BOC-PEAG at the time of the audit.

Witness **Salome D. Luber** testified that as petitioner's Assistant Manager of the Finance Department, she prepares and files petitioner's financial statements, Income Tax Returns (ITRs), and all other tax returns with the BIR. She also deals with the BIR and the BOC in relation to petitioner's business operation, thus she is familiar with the circumstances of the case.

In a Letter dated June 10, 2008, the BOC-PEAG informed petitioner about the exit conference to discuss the results of its post entry audit.

On June 16, 2008, while having the exit conference, Atty. Angelito G. Ursabia of the BOC-PEAG presented an assessment finding petitioner liable for deficiency duties and VAT for the years 2001 to 2003 in the amount of P18,677,904.09.

Petitioner protested the assessment in a letter dated July 30, 2008. It was however denied in a Letter dated December 9, 2008, received by petitioner on December 15, 2008.

Petitioner sought a reconsideration of the denial of its protest in a letter filed on December 23, 2008. The same was denied this time by respondent COC himself in a Letter dated February 9, 2009, received by petitioner on March 2, 2009. This prompted petitioner to file this appeal on March 2, 2009.

On cross-examination, Salome D. Luber stated that although it was never mentioned in any of its correspondences, petitioner provided the BOC with its own computation of the tax due albeit no acknowledgement of such receipt by the latter.

Raul G. Anacin, a retired Head of the Sales and Administration Service Section of petitioner, testified that he used to prepare petitioner's monthly report on its local sales. The data in his monthly report came from petitioner's Electronic Data Processing Section (EDPS) which in turn was sourced from petitioner's various stations in the country. This monthly sales report would be forwarded to the Accounting, now the Finance Department, and to the Director for Sales. Petitioner used this monthly report to determine the technological assistance fees or royalties to be paid to AJICO.

By agreement, petitioner paid technological assistance fees at the rate of 4% of the net sales of MSG and 2.5% for other seasoning products. Since the technological assistance fees could be determined only after the sales, the monthly sales report was the only means by which the amount of royalties could be ascertained.

Raul G. Anacin admitted that he was never a part of the EDPS and had no participation in the gathering of data much more in their verification. He only assumed their accuracy since they were electronically checked by the EDPS.

Respondent, on the other hand, presented **Angelito G. Ursabia**, Chief Customs Operation Officer of Division II of the Compliance Assessment Office, BOC-PEAG,[22] as her lone

[22] Minutes, docket, pp. 612 and 615.

witness.[23] He testified that he headed the audit team that conducted the post entry audit of petitioner's importations for the period of July 1, 2001 to December 31, 2003 by virtue of Audit Notification Letter No. 0405103 dated May 21, 2004 issued by respondent. He confirmed that the post audit was conducted in June 2004 and revealed that petitioner was liable for deficiency duties and VAT since it did not pay any tax on its royalty payments to AJICO.

Despite request to submit pertinent financial records on its actual sales of imported MSG, petitioner presented only VAT declarations and invoices of MSG importation. In view thereof, the audit team proceeded to assess petitioner based on the best available evidence pursuant to Customs Administrative Order (CAO) 5-2001.

The audit team estimated the sales of MSG by comparing the ratio of imported MSG to the total importation of petitioner. From the result, they computed the royalties by multiplying the sales with the royalty rate of 4%.

The total deficiency duties were computed by taking the approximate royalty fees on imported MSG and multiply it by the 7% duty rate. On the other hand, the VAT deficiency of petitioner was computed by multiplying the amount of deficiency duties to the VAT rate of 10%.

For failure to pay duties and VAT on its royalty payments to AJICO, petitioner is also liable for penalties pursuant to Republic Act No. 9135.

The computation by the audit team showed that petitioner had a deficiency duties of P16,979,912.81 and deficiency VAT of P1,697,991.28 or a total of P18,677,907.09 tax liability.

Further, there could be no double taxation in the imposition of VAT on the royalty fees payment since the VAT was imposed only on the undeclared royalty fees paid to AJICO on which no duties and VAT were paid.

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[23] Judicial Affidavit of Angelito G. Ursabia dated October 25, 2011, Exhibit "1", docket pp. 625-628.

Petitioner was informed of the deficiency assessment during the exit conference and was issued a Preliminary Assessment Notice (PAN).

Petitioner did not offer its own computation as manifested in its counsel's letter dated July 30, 2008 requesting for reconsideration of the PAN. Consequently, the audit team proceeded to estimate petitioner's tax liability based on the best evidence obtainable. In its letter dated December 9, 2008, the BOC-PEAG addressed petitioner's objections to the assessment enumerated in its letter dated July 30, 2008.

Respondent approved the findings of the BOC-PEAG submitted on February 9, 2009 and forthwith issued a demand letter for petitioner's payment of P18,677,904.09 deficiency duties and VAT, inclusive of penalty.

The audit was conducted in June 2004 and the PAN was issued on June 16, 2008, hence within the three (3) year prescriptive period mandated under Section 1603 of the TCCP and Section 3E of CAO No. 5-2001.

The Audit Notification Letter dated May 21, 2004 sent to petitioner indicated BOC-PEAG's request for submission of pertinent financial records and documents. This and another written request for financial documents sent to petitioner were already deemed lost when they transferred to another building.

The amount of imported MSG for the subject years was based on a photocopy of a document denominated as Details of Importation and Import Entries provided by petitioner's accountant. He did not verify the accuracy of the figures in the said document as he assumed them correct being similar to that appearing in the Financial Statements also provided by petitioner.

He clarified that the royalty fees assessment in this case pertains only to the imported MSG and not to the locally produced. From 2001 to 2003, petitioner had a manufacturing plant in the Philippines and locally manufactured MSG. Presently however, petitioner totally imports MSG. Thus, during the years covered by the assessment, petitioner's sales were not totally derived from imported MSG given that at that time, petitioner also locally manufactured MSG. While the subject imported MSG originated from different countries, all were deemed imported from AJICO which had manufacturing stations in different parts of the word.

STATEMENT OF ISSUES

The parties posed the following issues[24] for the determination of the Court:

> 2.1. Whether import duties and VAT were due on the royalty payments made by APC to AJICO.
>
> 2.2. Whether the assessment of deficiency import duties and VAT is already barred by prescription"

THE RULING OF THE COURT

In determining petitioner's entitlement to the relief sought, the Court deems it appropriate to first determine if prescription has set to justify the invalidation and subsequent cancellation of the assessments for VAT and deficiency duties issued by respondent against petitioner.

Section 203 of the NIRC, as amended, pertinently provides, thus:

> SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, **internal revenue**

[24] Stipulation of Issues, JSFI, docket, p. 142.

> **taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return,** and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, **That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed**. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. *(Emphasis supplied)*

Plain from the foregoing provision that internal revenue taxes must be assessed within three (3) years reckoned from the period fixed by law for the filing of the tax return or the actual date of filing, whichever is later. [25]

This three-year prescriptive period for assessment may however be extended pursuant to Section 222(b) of the NIRC, as amended, through the execution of a valid waiver by the taxpayer duly accepted by the taxing authority. [26]

In the case at bar, there is no slightest hint that petitioner executed a waiver authorizing the extension of the three-year prescriptive period for respondent to issue an assessment and collect the taxes allegedly due from petitioner.

Pursuant to Section 107 of the NIRC of 1997, as amended, the three-year period to assess VAT commences to run: (a) on the last day prescribed by law for the filing of the return, which in this case is the same date that the petitioner paid the VAT for the release of the goods from customs' custody; or (b) on the day the return was filed in a case where a return is filed beyond the period prescribed by law.

[25] Commissioner of Internal Revenue vs. FMF Development Corporation, G.R. No. 167765, June 30, 2008 (556 SCRA 698).
[26] Id.

Note that the subject assessments pertain to: (a) deficiency VAT for the period July 1, 2001 to December 31, 2003; and (b) deficiency duty for the same period. Since there is no indication that a return was filed with the BIR and it is not disputed that petitioner's imported MSG which were actually released from BOC's custody after their importations from July 1, 2001 to December 31, 2003 and payment of import taxes, respondent had until 2004, 2005 and 2006, respectively, to assess the alleged deficiency VAT for said period of importations.

Evidence however show that it was only on June 16, 2008[27] that respondent, through BOC-PEAG, issued to petitioner a computation of the VAT assessment in the aggregate amount of ₱1,697,991.28 for the period covering July 1, 2001 to December 31, 2003. This was followed by a succeeding assessment notice on December 9, 2008[28] or both after the lapse of more than seven (7) years from the start of the importation in July 2001. Clearly, the VAT assessment covering July 1, 2001 to December 31, 2003 is invalid since it was issued beyond the three-year prescriptive period mandated by the law.

Anent the assessment for customs duties, Section 1603 of the TCCP, as amended by Section 4 of R.A. No. 9135[29], provides, as follows:

> SEC. 1603. *Finality of Liquidation.* - When articles have been entered and passed free of duty or final adjustments of duties made, with subsequent delivery, such entry and passage free of duty or settlements of duties will, after the expiration of **three (3) years** from the date of the final payment of duties, in the absence of **fraud** or **protest** or **compliance audit** pursuant to the provisions of this Code, be final and conclusive upon all parties, unless the liquidation of the import

[27] Par. 1.7, Stipulation of Facts, JSFI, docket, p. 141; Exhibit "VVVV"; Exhibit "AAAAA", docket, p. 515.
[28] Annex "D" of the Petition for Review, docket, pp. 32-36.
[29] 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, approved on April 27, 2001

> entry was merely tentative. *(Emphasis supplied)*

Ensconced from the provision are the four (4) exceptions to the three (3)-year period of finality of liquidation, to wit:

(a) the existence of fraud;
(b) a pending protest;
(c) compliance audit pursuant TCCP; or
(d) the liquidation of import entry was merely tentative.

To implement the provision, the Secretary of Finance issued Customs Administrative Order (CAO) No. 5-2001[30]; which provides for the period of finality of liquidation of import entries, to wit:

> **SEC. III. Administrative Provisions**
>
> xxx xxx xxx
>
> **E. Finality of Liquidation of Import Entries**
> The liquidation of an import entry shall be deemed final and conclusive upon all parties after the expiration of three (3) years from the date of final payment of the duties due, except where:
>
> 1. Fraud as defined in Section VI.C.1.c hereof as committed;
> 2. A protest has been filed under the provision of Section 2308 of the Customs Code;
> 3. **Where the import entry is selected for post audit within the three (3) year period required for record-keeping provided that once started, the audit can be completed beyond said period;**
> 4. The liquidation of the import entry was merely tentative. *(Emphasis supplied)*

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[30] Subject: 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.

Thus reckoned from July 1, 2001 to December 31, 2003,[31] when APC imported MSG into the country, the three-year period to assess customs duties prescribed between the period from July 1, 2004 to December 31, 2006, respectively. There is no denying that respondent conducted a compliance audit covering the subject assessment in June 2004.[32] Such audit, which is one of the exceptions provided by law, was conducted within the three-year period prescribed in Section 1603 of the TCCP which effectively toll the running of the period for the liquidation of the import entry to become final and conclusive. In fine, the subject assessment for customs duties has not been barred by prescription. The law is clear and in categorical language, there is no room for interpretation. There is only room for application.[33]

As to the propriety and the basis of the computation of import duties assessed by respondent against petitioner in the amount of ₱16,979,912.81[34] covering the years 2001, 2002, and 2003, inclusive of principal deficiency duty and penalties, the relevant provision is Section 201 of R.A. No. 9135 and Section II(B) of Customs Administrative Order No. 5-2001, which provides that royalties and license fees related to the goods being valued may be added as part of the transaction value for purposes of computing customs duties. Section 201 of R.A. No. 9135 and Section II(B) of Customs Administrative Order No. 5-2001 are quoted below for easy reference:

<u>Section 201, R.A. No. 9135</u>

> 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, adjusted by adding:

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[31] Par. 5, Statement of Facts, Petition for Review, docket p. 3.
[32] Par. 1.6, Stipulation of Facts, JSFI, docket, p. 141.
[33] *Crisostomo Sucaldito, et al. vs. The Hon. Juan Montejo, et al.*, G.R. No. 75080, February 6, 1991.
[34] Exhibit "VVVV".

(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:

xxx xxx xxx

(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**; *(Emphasis supplied)*

<u>Section II(B) of CAO No. 5-2001</u>

SEC. II. DUTIABLE VALUE

A. General

The dutiable value of imported goods shall be determined using **one of the six methods of valuation listed below. These methods must be applied in sequence** xxx.

B. Method 1 - The Transaction Value

1. The dutiable value for an imported article shall be the Transaction Value which is the price actually paid or payable for the goods when sold for export to the Philippines adjusted in accordance with the provisions of Section II.B.3 of this Order, and subject to the conditions specified in Section II.B.2 herein.

xxx xxx xxx

3. **In determining the Transaction Value, the following adjustments shall be added to the price actually paid or payable** for the imported goods being valued if such

value has not been included in the price actually paid or payable:

xxx xxx xxx

e. **Royalties** and **license fees** related to the goods being valued; *(Emphasis supplied)*

Corollary thereto is Section II of Customs Administrative Order No. 5-2001 which enumerates the six (6) methods of valuation that can be used to determine the dutiable value of imported goods, thus: (1) The Transaction Value; (2) The Transaction Value for Identical Goods; (3) The Transaction Value of Similar Goods; (4) The Deductive Value; (5) The Computed Value; and (6) The Fallback Value. These methods must be applied in sequence.

In this particular case, respondent used the first method or the **transaction value method** which authorizes royalties, among others, to be added as part of the dutiable value.

There are however criteria to satisfy before such royalties and license fees may be added as part of the dutiable value, namely: (1) the royalties and license fees are related to the goods being valued (relationship); (2) the royalties and license fees are paid by the buyer to the seller directly or indirectly (payment); and (3) the payment of royalties and license fees is a condition of sale of the goods to the buyer (condition). All the above are obtaining in this case.

Under the Agreement[35] petitioner shall pay AJICO technological assistance fees or royalty fees at the rate of four percent (4%) of the net sales of MSG as consideration for the use of AJICO's manufacturing processes and trademarks[36], to wit:

[35] Annex "F", Petition for Review, docket, pp. 43-52.
[36] Par. 1.5, Stipulation of Facts, JSFI, docket, p. 141.

ARTICLE IV – TECHNOLOGICAL ASSISTANCE FEES

(1) **In consideration of** the grant by AJINOMOTO and the receipt by UAI of the benefits under this Agreement, specifically **the use and exploitation of AJINOMOTO's letters patents, Licensed Process, Know-How and Trademarks, UAI agrees to pay** AJINOMOTO a **Technological Assistance Fee at the rate** of four percent **(4%) of the Net Sales of the Licensed Products**. *(Emphasis supplied)*

Moreover, the Agreement granted petitioner the right to use AJICO's manufacturing processes and trademarks for the manufacture and sale of MSG and seasoning products in the Philippines,[37] *viz.*:

ARTICLE II – LICENSE GRANT

(1) **AJINOMOTO hereby agrees, during the term of this Agreement, to allow UAI the exclusive and non-transferable right and license** to:

(i) **use and exploit the letters patent of AJINOMOTO** concerning inventions, processes and methods of use as appearing in the list hereto attached and made an integral part hereof as Annex 'A';

(ii) **use and exploit the Licensed Process and Know-How, and improvements thereon as may be developed by AJINOMOTO** during the term of this Agreement in connection with the manufacture of the Licensed Products in the Philippines;

(iii) **use on and in connection with the Licensed Products**, including their

[37] Par. 1.4, Stipulation of Facts, JSFI, docket, p. 141.

> packaging and accompanying literature and permitted advertisements thereof, **the trademarks of AJINOMOTO** appearing in the list hereto attached and made an integral part hereof as Annex 'B'. *(Emphasis supplied)*

Manifest from the Agreement that: (a) the royalties and license fees are related to the goods being valued, *i.e.*, the royalty is computed at the rate of four percent (4%) of the net sales of the licensed products – which mainly include the MSG component; (b) the royalties and license fees are paid by the buyer to the seller directly; and (c) the payment of royalties and license fees is a condition of sale of the goods to the buyer, not only because the parties agreed that the amount of payment shall depend on the MSG sale, but also because without the royalties, the MSG would not have been purchased, packaged, and sold in the Philippines under AJINOMOTO trademark. In fact, there is no evidence presented to establish that the imported MSG would have been sold separately in the Philippines under a different brand than AJINOMOTO.

Significantly, petitioner's own witness Rommel Arroyo[38] categorically declared that petitioner directly paid royalties for the use of AJICO's trademarks and technical processes for the manufacture and sale of imported MSG covering the periods of 2001, 2002, and 2003, which is consistent with the conclusion that the said royalty payments directly made by petitioner to AJICO was a condition of the sale of the imported MSG.

We now come to the propriety of the following computation by respondent to arrive at the amount of ₱16,979,912.81 assessment for deficiency import duties:

	2001	**2002**	**2003**
IMPORTATION OF MSG IN BULK	94,978,075.47	202,819,003.20	104,926,661.70
ADD: IMPORTATION OF FINISHED GOODS (MSG)	5,374,820.75	77,882,600.09	55,303,162.17
TOTAL IMPORTATION OF MSG	100,352,896.22	280,701,603.29	160,229,823.87

[38] Exhibit "UUUU", Affidavit of Rommel Arroyo dated December 4, 2009.

TOTAL IMPORTATION OF AJINOMOTO PHILIPPINES OF MSG & OTHER PRODUCTS	305,245,517.71	682,565,861.85	603,423,074.50
RATIO OF MSG TO TOTAL IMPORTATION OF AJINOMOTO PHILIPPINES	0.33	0.41	0.27
TOTAL NET SALES OF Monosodium Glutamate	1,223,650,117.00	2,310,603,055.04	2,482,468,148.05
RATE OF ROYALTY	4%	4%	4%
ROYALTY PAYMENT TO AJICO	48,946,004.68	92,424,122.20	99,298,725.92
MULTIPLY BY THE RATIO	0.33	0.41	0.27
ROYALTY TO BE SUBJECTED TO DUTY (ON MSG/BULK)	16,152,181.54	37,893,890.10	26,810,656.00
RATE OF DUTY OF MONOSODIUM GLUTAMATE[39]	7%	7%	7%
DEFICIENCY DUTY	1,130,652.71	2,652,572.31	1,876,745.92
PENALTY(2 times the Revenue Loss as per Republic Act 9135)	2,261,305.42	5,305,144.61	3,753,491.84
TOTAL DEFICIENCY DUTY	**3,391,958.12**	**7,957,716.92**	**5,630,237.76**
GRAND TOTAL DEFICIENCY DUTY	**₱16,979,912.81**		

In computing the deficiency import duties of ₱16,979,912.81, the BOC-PEAG used the ratio of imported MSG to the total importations of petitioner to approximate the portion of petitioner's total net sales of MSG pertaining to the sales of imported MSG.[40]

Petitioner, in its Memorandum, contends that the use of the BOC-employed ratio is manifestly erroneous and utterly devoid of any basis as it is not logical to use the ratio of importations of MSG to petitioner's total importations in order to approximate the portion of the sales of imported MSG to petitioner's total sales.

Petitioner explains that respondent's witness, Atty. Ursabia himself declared that not all of petitioner's sales were from imported MSG purchased from AJICO. During the period of 2001 to 2003, petitioner manufactured MSG and other MSG-based food products in its own manufacturing plant and sold them to their customers. In other words, portions of the total sales were locally manufactured or produced. Petitioner maintained that the assessment does not indicate its actual level of sales from which the BOC-PEAG derived the "Net Sales of Monosodium Glutamate".

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[39] Executive Order (E.O.) No. 334 "Modifying the Nomenclature and the Rates of Import Duty on Certain Imported Articles Under Section 104 of the Tariff and Customs Code of 1978 (Presidential Decree No. 1464), as amended."
[40] Exhibit "1", Q & A No. 7.

Assuming that petitioner is liable for deficiency customs duties, the amount must be based only on the royalty fees it actually paid to AJICO for the sale of imported MSG for the covered years in the amount of ₱24,638,729.48 and not ₱80,856,727.71, per respondent's computation. Hence, the additional duties for which petitioner may be held liable must only be seven percent (7%) of ₱24,638,729.48 or ₱1,724,711.06.

But jurisprudence has it that tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise.[41] It is therefore incumbent upon petitioner to prove otherwise. The burden is also upon petitioner to establish that its own computation is correct.

In support of the royalty payments made in the amount of ₱24,638,729.48, petitioner adduced various documents such as Certification[42] of Remittances and the related Statements[43] of Account issued by the Bank of Tokyo-Mitsubishi, Manila Branch, Summaries[44] of Royalty Remittances, sales invoices[45], Affidavit[46] of Rommel Arroyo dated December 4, 2009, schedules of "Sales with Kilogram Equivalent for the months of July 2001 to December 2003[47]. Likewise, petitioner presented a "Summary Report on MSG Imported"[48] which provided columns for the date of importation, invoice no., description of the imported MSG, name of supplier, quantity (in kilograms) of imported MSG, Serial No. of Import Entry and Internal Revenue Declaration (IEIRD), subsequent local selling price of the imported MSG and the corresponding 4% royalty fees and 7% import duties on royalties.

The foregoing documents however are insufficient to prove the actual quantity of MSG imported by petitioner for the subject period and the actual selling price of the said

[41] RCBC vs. CIR, G.R. No. 168498, April 24, 2007
[42] Exhibit "A".
[43] Exhibits "B", "D", "E", "F", "G", "I", "J", "K", and "L".
[44] Exhibits "C", "H", "M" and "N".
[45] Exhibits "HH" to "MM", "OO", "PP", "RR" to "ZZ", "AAA" to "ZZZ", and "AAAA" to "SSSS"
[46] Exhibit "UUUU".
[47] Exhibits "CCCCC" to "ZZZZZ" and "AAAAAA" to "FFFFFF".
[48] Exhibit "TTTT".

importations upon which the 4% royalty payments made by petitioner were based, without the presentation of petitioner's financial statements, detailed general ledger and other financial records, and complete source documents for the covered years of the assessment.

In the absence of sufficient evidence to prove the actual quantity of MSG imported by petitioner, the Court cannot uphold the computation of petitioner that the royalty fees it actually paid to AJICO amounts only to ₱24,638,729.48 and not ₱80,856,727.71 as determined by the BOC-PEAG. In other words, petitioner failed to present sufficient proof to support its own computation that it is liable for only seven percent (7%) of ₱24,638,729.48 or ₱1,724,711.06 as customs duties.

Given the presumption in favor of the correctness of the assessment coupled with the failure of petitioner to prove otherwise, the Court finds that the assessment for basic deficiency import duties covering the periods of July 1, 2001 to December 31, 2001, 2002, and 2003, as computed by respondent in the respective amounts of ₱1,130,652.71, ₱2,652,572.31 and ₱1,876,745.92 or in the sum of ₱5,659,970.94 must be upheld.

Anent the imposition of the penalty of two (2) times the deficiency import duties or purported revenue loss, petitioner argues that it is void on account of respondent's inability to comply with the administrative procedures under Customs Memorandum Order (CMO) Nos. 001-02 and 002-02.[49] Under CMO No. 2-2002,[50] there are four different sets of penalties and the corresponding rates imposed depending on four grounds, to wit: negligence, gross negligence, fraud, and criminal prosecution under Section 3611 of the TCCP, as quoted below:

V. Administrative Fines and Penalties

xxx xxx xxx

[49] Memorandum, docket, pp. 730-732.
[50] Subject: Record-keeping and Post Entry Audit Guidelines.

C. Failure to pay correct duties and taxes on imported goods

1. Any person who, after being subject to post-entry audit and examination as provided in Sections IV B and C of Customs Administrative Order No. 5-2001, is found to have incurred deficiencies in duties and taxes paid for imported goods, shall be penalized according to three (3) degrees of culpability subject to any mitigating, aggravating or extraordinary factors that are clearly established by the available evidence:

   a. **Negligence. When a deficiency results from an offender's failure, through an act or acts of omission or commission, to exercise reasonable care and competence to ensure that a statement made is correct, it shall be determined to be negligent and punishable by an administrative fine equivalent to not less than one-half (1/2) but not more than two (2) times the revenue loss.**

   b. **Gross Negligence.** When a deficiency results from an act or acts of omission or commission done with actual knowledge or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligation under these rules or the Customs Code, it shall be determined to be grossly negligent and punishable by an administrative fine equivalent to not less than two and a half (2-1/2) but not more than four (4) times the revenue loss.

   c. **Fraud.** When the material false statement or act in connection with the transaction was committed or omitted knowingly, voluntarily and intentionally, as established by clear and convincing evidence, it shall be determined to be fraudulent and be punishable by an administrative fine equivalent to not less than five (5) times but not more than eight (8) times the revenue loss.

d. Criminal prosecution under Section 3611 of the TCCP.

xxx xxx xxx

VI. Appeals Provisions

The decision of the Commissioner of Customs, **upon proper hearing**, to impose the penalties prescribed in Section V of this Order may be appealed in accordance with Section 2402 of the TCCP. The procedure in the determination of administrative sanctions provided for in said Section V shall be governed by Customs Memorandum Order No. 1-2002. *(Emphasis supplied)*

In this case, petitioner was imposed a penalty of 200% of the principal assessment, the impossable penalty for negligence.

In relation thereto, Customs Memorandum Order No. 1-2002[51] provides, thus:

I. Objectives

xxx xxx xxx

2. **To afford importers**/customs brokers **the opportunity to be heard and to present evidence to rebut the foregoing** administrative charges and/**or the imposition of such administrative fines and penalties**.

II. Administrative Provisions

1. **This Order shall cover administrative complaints** (a) against importers and customs brokers for failure to keep certain records and documents as required and as defined in the law and the existing implementing rules and regulations, or for refusal to grant free and full access to such records and documents for official audit purposes; and (b) **against importers for failure to pay the correct duties and taxes with negligence** or fraud, as uncovered during the official audit. **Complaints shall**

[51] Subject: Procedure in the determination of administrative liability and the imposition of administrative fines provided for in Section VI subsections A, B, and C of Customs Administrative Order (CAO) No. 5-2001.

> **be filed under oath before a notary public or any customs officer authorized by law to administer oaths.**
>
> xxx xxx xxx
>
> 3. The administrative complaint shall be heard at the Legal Service with due notice to the complainant office and the concerned respondents. The complainant office shall be represented by a prosecutor or team of prosecutors as shall be specifically designated by the Commissioner of Customs. The administrative case shall be heard by the Director of Legal Service.
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> **III. Operational Provisions**
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> xxx xxx xxx
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> 3. Upon receipt of the complaint, the Legal Service shall immediately send a copy of the complaint, including attachments pertinent to the complaint, to the importer and/or customs broker, as the case may be, who shall be given a period of fifteen (15) days from receipt of the complaint, to answer said complaint. Upon receipt of the answer, the complainant office shall be given a period of five (5) days to make an optional reply copy-furnished the respondents, after which the case shall be scheduled for hearing with notice to all concerned parties.
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> xxx xxx xxx
>
> 5. In lieu of formal hearing, the parties may opt for the submission of memoranda with optional time to file rebuttal and sur-rebuttal, after which the case shall be deemed submitted for resolution." *(Emphasis supplied)*

The foregoing provisions of the Customs Memorandum Order provided the roadmap in the administrative imposition of fines and penalties, which gives the importers and customs brokers their day in court.

In this case, the Court cannot take up respondent's cause as there is no showing that the above-outlined administrative procedures were duly followed. Consequently, the penalty imposed on petitioner at two (2) times the deficiency import duties or purported revenue loss, or a total of ₱11,319,941.87 is deemed arbitrary.

While it may be true that the proceedings before the Collector of Customs insofar as the determination of any act or irregularity that may involve a violation of any customs law or regulation is concerned, or of any act arising under the TCCP, are not judicial but merely administrative in character, where the rules of procedure are generally disregarded, still due process must be observed as it is a right deeply ensconced in our Constitution. The right to due process is not merely statutory. It is a constitutional right. Our Constitution provides that "No person shall be deprived of life, liberty, or property without due process of law", which clause epitomizes the principle of justice which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial.[52]

Petitioner further argues that there is double taxation in the imposition of duties on the royalties as a component of the value of imported products as petitioner has previously paid VAT.

Double taxation is defined as taxing the same property twice when it should be taxed once. It has also been defined as taxing the same person twice by the same jurisdiction over the same thing.[53] In general, double taxation is not forbidden by the Constitution.[54] It becomes obnoxious only when the taxpayer is taxed twice for the benefit of the same government entity,[55] and that both taxes are imposed on the same property or subject matter, for the same purpose, by the same State, Government, or taxing authority within the same jurisdiction or taxing district during the same taxing period and of the same kind or character of tax.[56]

In this case, insofar as customs duties and VAT are concerned, there is no double taxation since customs duties and VAT are two different kinds of taxes. They are not the same taxes, since the customs duties on the said

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[52] *National Development Company, et al. vs. The Collector of Customs of Manila*, G.R. No. L-19180, October 31, 1963.
[53] *Victorias Milling Co., Inc. vs. Municipality of Victorias, Province of Negros Occidental*, G.R. No. L-21183, September 27, 1968.
[54] *Pepsi-Cola Bottling Co. of the Philippines, Inc. vs. City of Butuan, et al.*, G.R. L-22814, August 28, 1968.
[55] *Commissioner of Internal Revenue vs. Lednicky*, G.R. Nos. L-18169, L-18262, L-21434, July 31, 1964.
[56] *Eusebio Villanueva, et al. vs. City of Iloilo*, G.R. No. L-26521, December 28, 1968.

importation of MSG were imposed under the TCCP, while the VAT on royalty payments was imposed pursuant to the NIRC of 1997.

On a note, taxes are the lifeblood of the nation. Tariff and customs duties are taxes constituting a significant portion of the public revenue which enables the government to carry out the functions it has been ordained to perform for the welfare of its constituents. Hence, their prompt and certain availability is an imperative need and they must be collected without unnecessary hindrance.[57]

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessment representing deficiency VAT, as well as the penalties imposed thereon, in the aggregate amount of ₱1,697,991.28 for the taxable period July 1, 2001 to December 31, 2003, is hereby **CANCELLED** and **SET ASIDE** due to prescription.

However, the assessment for basic deficiency import duties covering the period of July 1, 2001 to December 31, 2003 is hereby **AFFIRMED with MODIFICATIONS**. The penalties imposed thereon in the aggregate amount of ₱11,319,941.87 are **CANCELLED**. Accordingly, petitioner is **ORDERED** to **PAY** respondent the basic deficiency import duties covering the period of July 1, 2001 to December 31, 2003 in the aggregate amount of ₱5,659,970.94.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
Associate Justice

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[57] *Chevron Philippines, Inc. vs. Commissioner of the Bureau of Customs*, G.R. No. 178759, August 11, 2008.

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.

ERLINDA P. UY
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is 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