Lit.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NATIONAL DENTAL SUPPLY, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3043

COMMISSIONER OF CUSTOMS,
Respondent.

10/19/83

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D E C I S I O N

This is an appeal by petitioner from the decision of respondent Commissioner of Customs dated October 18, 1979 affirming that of the Collector of Customs and denying petitioner's claim for the refund in the amount of ₱468.00 as excess duties and taxes which alleged excess was due to respondent's allegedly erroneous classification of petitioner's importation of polyclav pressure vessel under Tariff Heading No. 73.38 at 70% ad valorem instead of under Tariff Heading No. 84.95 at 30% ad valorem which it alleged should be the correct classification.

As borne out by the pleadings and evidence presented, petitioner is a duly registered domestic corporation engaged in the importation of dental supplies for resale to local dental companies.

On September 27, 1974, petitioner lodged a formal protest against the Collector of Customs of Manila, and sought the refund of excess duties and taxes due on the alleged erroneous classification of its importation of polyclav pressure vessel, which the latter classified as a kitchen pressure cooker under Tariff Heading No. 73.38 at 70% ad valorem, instead of under Tariff Heading No. 84.59 at 30% ad valorem, resulting in excess duties and taxes in the amount of ₱468.00; and the refund of ₱970.90 due to the erroneous classification of its imported ligual buttons and eyelets under Tariff Heading No. 73.4 at 70% ad valorem, instead of 10% ad valorem under Tariff Heading No. 90.19 under which it alleged should be classified.

In support of its claim for refund, petitioner asserted that the polyclav pressure vessel which it imported should be classified under Tariff Heading No. 84.59 at 30% ad valorem duty because although the polyclav pressure vessel may look like a common kitchen pressure cooker, there is a great difference between it and the latter, thus - (1) the polyclav pressure vessel has an "air inlet valve," the heart of the apparatus, to introduce air pressure, while the kitchen pressure cooker does not have; (2) the former uses air pressure, while the latter uses steam pressure; (3) the former uses minimum heat of short duration, while the latter uses high heat and of longer duration; (4) the former eliminates weakening of internal bubbles in dentures processed in open vessel without air pressure, while this characteristic is not present in the latter; and (5) the former is evidently used as a denture cooker, while the latter is used as a kitchen cooker. Petitioner further declared that it is not a dealer of domestic appliances, as evidenced by the catalogue it had presented.

Acting on the said protest, the Collector of Customs rendered a decision dated January 2, 1975, and received by petitioner on January 23, 1975, dismissing the protest and denying petitioner's claim for refund. On February 27, 1975, petitioner filed with the Commissioner of Customs an appeal from the said decision of the Collector of Customs. However, before respondent Commissioner of Customs could act on said appeal, the Collector of Customs again rendered another decision dated March 10, 1975, and received by petitioner on May 17, 1975, modifying his previous decision of January 2, 1975. The latter decision ordered a re-liquidation as regards the imported lingual buttons and eyelets and the excess customs duty and revenue tax collected thereon in the amount of ₱970.90 was credited in favor of petitioner. However, with regards to the article polyclav pressure vessel, the Collector of Customs stood pat on his former decision by classifying it under Tariff Heading No. 73.38 at 70% _ad valorem_.

The Collector of Customs having resolved the question on the tax liability of petitioner with regards to the articles lingual buttons and eyelets in the latter's favor, only the decision on the article polyclav pressure vessel remain unresolved.

Finally, acting on the said appeal, the Commissioner of Customs rendered a decision dated October 18, 1979 (Annex G, CTA rec.), affirming the decision of the Collector of Customs. This decision having affirmed _in toto_ the prior decision of the Collector of Customs, petitioner, on November 16, 1979, appealed to this Court.

After the issue was joined with the filing by respondent on February 11, 1980 of his answer to the petition for review, the case was set for trial on the merits. During the hearing of this case on June 19, 1981, both parties manifested their willingness to adopt the pleadings and evidence in CTA Case No. 2710.

Respondent did not question the arithmetical computation of petitioner's claim for refund in the total amount of ₱468.00.

The only issue remaining in this case is whether or not the imported polyclav pressure vessel should be classified under Tariff Heading No. 73.38, subject to 70% ad valorem as ruled by respondent Commissioner of Customs, or under Tariff Heading No. 84.59, subject to 30% ad valorem as contended by petitioner.

Petitioner maintains that the polyclav pressure vessel has a specific use. Being a laboratory equipment for the treatment of material (denture resin), using a process involving a change in temperature, the polyclav pressure vessel is designed specially for the processing of dentures. The polyclav pressure vessel differs essentially from an ordinary pressure cooker in that the latter does not have an inlet valve for the introduction of air pressure. (Appendix "B", p. 14, BIR rec.). Respondent was prompted to classify the polyclav pressure vessel under Tariff Heading 73.38 at 70% *ad valorem*, because it is such -

> "Articles of a kind commonly used for domestic purposes, sanitary ware for indoor use, and parts of such articles and ware of iron steel . . . *ad valorem* 70%."

Respondent had considered the polyclav pressure vessel as a cooker and therefor resolved that the polyclav pressure vessel is synonymous to or the same as a kitchen pressure cooker on the strength of his legal observation that classification must be determined by what they actually were at the time of importation and he reasoned out that it would be impractical to follow up imported merchandise to its destined use and it would be impossible in most cases to penetrate the intentions of manufacturers, shippers and importers.

Petitioner, however, in support of its stand, asserted that being an experienced importer of dental supplies having been engaged in this particular business enterprise throughout its existence, and it having made a careful study and analysis of the article (polyclav pressure vessel), its practicality and commercial fitness, or the use for which it was imported, and having presented unimpeachable documentary evidence in support of the accuracy of the classification of polyclav pressure vessel to the Collector of Customs as not being an article for domestic or home use, or not a kitchen pressure cooker, it claimed that the article should be classified as a "Machine and mechanical appliances, not falling within any other heading of this Chapter - ad valorem 30% (T.H.84.59)".

In support of its claim, petitioner also cited American jurisprudence which states that "The commercial designation is of first importance, and if that fails to give the article its proper classification, resort must be had to the common designation". (Robertson v. Salomon, 130 U.S. 412; 32 L. Ed. 995.)

This court conforms to petitioner's claim that the proper classification of the imported articles should be based on what they actually were at the time of importation. From the time the imported polyclav pressure vessel arrived under Entry No. 76599, its complete technical designation including its pertinent literature were furnished the customs appraiser. These are enough evidence to show that the standard use for which the polyclav pressure vessel was designed and catalogued by the exporter is that of a dental equipment and, hence, petitioner had properly classified the article under Tariff Heading 84.59 at 30% ad valorem.

It is incorrect, therefore, for respondent to insist, in support of his position, that it would be impracticable to follow up the imported article to its destined use and impossible to penetrate the intentions of manufacturers, shipper and importer in determining its tariff heading because this claim would not only be illegal but illogical as well.

"Polyclav pressure vessel" has a very special and exclusive use. It is a dental laboratory equipment manufactured for dental use and not for ordinary kitchen use. Furthermore, we note that the price which has been placed on this article is much too high compared to the ordinary pressure cooker intended for ordinary purposes. We are, therefore, of the opinion that the polyclav pressure vessel should fall under Tariff Heading No. 84.53 and subject to a tariff duty of 30% ad valorem, and not under Tariff Heading No. 73.38 at 70% ad valorem, which covers articles commonly used for domestic purposes, and sanitary wares for indoor uses which said polyclav pressure vessel, a dental equipment, cannot be so classified. This must be so clearly since polyclav pressure vessel is a laboratory equipment essentially designed to treat materials (denture resins), and the air pressure introduced is to increase the boiling point of the denture resin while in the heating process. Moreover, it is within the articles in Tariff Heading No. 84.53 to which the polyclav pressure vessel is most akin and, hence, should be classified thereunder. (Sec. 203, Rule 4 of the Tariff and Customs Code.)

In determining the correct classification of an imported article for tariff duty purposes, resort must be made to the commercial designation of the article, and if that fails, resort must be made to its common designation. It cannot be said that polyclav pressure vessel, even assuming that the importer had entered it in its import entry as kitchen cooker will in no way affect the designation given to, and the use of, the said article. As correctly pointed out by petitioner, polyclav has an air inlet valve. There is definitely no kinship between this pressure vessel fitted with an air inlet valve for processing dentures and the ordinary pressure cooker destined for use in a kitchen.

Finally, it is very clear and can be noted beyond doubt, the intention to manufacture the polyclav pressure vessel for dental laboratory use and not for kitchen cooking. It is also worthwhile to reiterate that a pressure vessel being a dental laboratory equipment evidently carries a price too expensive than the price used for ordinary pressure cooker. The polyclav pressure vessel in question should, therefore, be classified under Tariff Heading No. 84.59 subject to tariff duty at 30% *ad valorem*, the tariff heading which appropriately carries the articles to which the polyclav pressure vessel is most akin. Accordingly, the amount of ₱468.00 paid by petitioner and which corresponds to the excess payment of customs duties due to the erroneous tariff classification of the imported polyclav pressure vessel by respondent is refundable to petitioner.

WHEREFORE, respondent Commissioner of Customs is hereby ordered to refund to petitioner, the National Dental Supply, Inc., the amount of ₱468.00 as erroneously paid customs duties.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, October 19, 1983.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge