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Republic of the Philippines
COURT OF TAX APPEALS
Manila

THE COCA-COLA EXPORT CORPORATION,
Petitioner,

June 27, 1964

- versus - C.T.A. CASE NO. 759

THE COMMISSIONER OF INTERNAL REVENUE and THE COLLECTOR OF CUSTOMS, MANILA, as Deputy of the Commissioner of Internal Revenue,
Respondents.

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D E C I S I O N

The petitioner is an American corporation with principal place of business in New York City, New York, U. S. A. It is duly licensed to engage in business in the Philippines and maintains a place of business on Epifanio de los Santos Avenue, Quezon City. Sometime in March, 1958, petitioner's Philippine branch received from its New York office a consignment of 1,114 cartons of Coca-Cola concentrate with an invoice value of US \$38,542.55 (C & F Manila) covered by Bill of Lading No. 32, Registry No. 408, issued in New York on February 6, 1958 by the American President Lines. Petitioner paid the sum of ₱7,298.00 as advance sales tax on this shipment based on the invoice value, plus expenses and the corresponding mark-up of 25% of the landed cost, as provided in Section 183(b) of the National Internal Revenue Code. Subsequently, the Collector of Customs of Manila advised petitioner that the advance sales tax due on said shipment was ₱19,827.00, not ₱7,298.00, and requested payment of the deficiency amounting to

₱12,529.00, which was paid by petitioner.

Claiming that the correct amount of advance sales tax is ₱7,298.00 and not ₱12,529.00, petitioner filed a claim for refund of ₱12,529.00. Before a decision could be rendered on the claim for refund, petitioner filed the instant "Petition for Review and Refund" pursuant to Section 306 of the Revenue Code. In his amended answer, respondent Commissioner of Internal Revenue alleges that this Court has no jurisdiction over the case or that the petition states no cause of action, for the reason that the Collector of Customs of Manila and/or the Commissioner of Customs has not rendered any decision on the matter in accordance with Section 2312 of the Tariff and Customs Code or that petitioner's claim for refund has not as yet been decided by the proper authority, and that as finally determined the amount of the advance sales tax due is ₱20,596.00 so that, instead of a refund, petitioner is still liable for the payment of the balance of ₱769.00, as deficiency advance sales tax. (See pp. 4-5, Amended Answer.)

In view of the importance of the legal question raised on the merits, this Court decided to defer consideration of the question of jurisdiction raised by respondents and to resolve all questions raised by the parties in one proceeding.

After trial and submission by the parties of their respective memoranda, the case was submitted for resolution of two principal issues, viz. (1) whether or not this Court has jurisdiction over the case, and (2) whether or not the determination made by respondent Commissioner of Internal Revenue of the advance sales tax on the shipment in question is in accordance with Section 183(b) of the Revenue Code.

Petitioner claims that the correct amount of advance sales tax is ₱7,298.00, computed as follows:

Invoice value of 1,114 cartons of Coca-Cola concentrate, C & F Manila ----------------	$ 38,542.55
Converted to Pesos at ₱2.015 to $1.00 ----------	₱ 77,663.24
Local insurance ------------	1,383.42
Duty --------------------	3,923.00
Wharfage -----------------	60.00
Arrastre -----------------	223.69
Brokerage ----------------	50.00
Stamps -------------------	5.75
1/8% bank charge ----------	97.08
Landed cost --------------	₱ 83,406.18
25% mark-up --------------	20,851.55
Taxable value ------------	₱104,257.73
Advance sales tax at 7% ----	₱ 7,298.04 or ₱ 7,298.00

On the other hand, respondent Commissioner of Internal Revenue determined that the advance sales tax on said shipment is ₱20,596.00, computed as follows:

Appraised value of 1,114 cartons of Coca-Cola concentrate, C.I.F. Manila --	$110,998.97
Equivalent in Pesos --------	₱223,662.92
Duty --------------------	₱ 11,099.90
Wharfage -----------------	60.00
Arrastre -----------------	223.69
Brokerage ----------------	50.00
Stamps -------------------	5.75
1/8% bank charge ----------	277.50
Landed cost --------------	₱235,379.76
25% mark-up --------------	58,844.94
Taxable value ------------	₱294,224.70
Advance sales tax at 7% ----	₱ 20,596.00
Amount previously paid -----	19,827.00
Deficiency advance sales tax-	₱ 769.00

It is contended on behalf of respondent Commissioner of Internal Revenue that this Court has no jurisdiction over the case because the legality of the amount of customs duty collected on said shipment by the Collector of Customs is still a question pending in the Bureau of Customs, which has not yet been finally decided; and since the amount of customs duty on imported articles is part of the landed cost of such articles for purposes of the advance sales tax, the final determination of the correct amount of customs duty is essential to the determination of the correct amount of advance sales tax. Until the amount of customs duty is finally determined in the customs proceeding, it is alleged that this Court is not competent to pass upon the legality of the assessment of the advance sales tax.

In this appeal, the sole issue raised by petitioner is the correctness of the amount of the advance sales tax as determined by the Commissioner of Internal Revenue. It is true that customs duty is an item forming part of the landed cost of an imported article, but as long as the Commissioner has considered the amount of cudoms duty actually paid, the right of the taxpayer to claim a refund of excess advance sales tax may not be defeated by the claim that the question in regard to the amount of such duty has not yet been finally determined in an appropriate proceeding in the Bureau of Customs. We are, therefore, of the opinion that this Court has jurisdiction over the case.

As regards the correctness of the advance sales tax as determined by the Commissioner of Internal Revenue, Section 183(b) of the Revenue Code provides that -

> When the articles are imported, the percentage taxes established in sections one hundred eighty-four, one hundred eighty-five, and one hundred eighty-six of this Code shall be paid in advance by the import-

> er, in accordance with regulations promulgated by the Secretary of Finance and prior to the release of such articles from customs' custody, based on the _import invoice value_ thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges, plus one hundred _per centum_ of such total value in the case of articles enumerated in section one hundred eighty-four; fifty _per centum_ of such total value in the case of articles enumerated in section one hundred eighty-five; and twenty-five _per centum_ in the case of articles enumerated in section one hundred eighty-six. (Emphasis supplied.)

The law provides that the advance sales tax on an imported article which is taxable under Section 186 of the Revenue Code is the import invoice value thereof plus expenses (freight, postage, insurance, commission, customs duty, and all similar charges) and 25% of such total value. The principal issue raised relates to the meaning of the term "import invoice value" of an imported article. Petitioner contends that in this case the import invoice value is $1.634 per kilo; respondent Commissioner of Internal Revenue maintains that the value that should be considered is not the import invoice value as shown in the bill of lading but $6.70, sustaining the findings of respondent Collector of Customs of Manila.

It is admitted that petitioner is a wholly owned corporation of the manufacturer of the Coca-Cola concentrate, the Coca-Cola Company. The manufacturer allegedly sold the Coca-Cola concentrate at $1.634 per kilo to petitioner's New York office which in turn sold the article to its Philippine branch at the same price.

The Philippine branch of petitioner subsequently sold the article to the San Miguel Brewery, Inc. for \$7.70. Finding that the correct value of the article for purposes of the customs duty and advance sales tax is not the invoice value, the Collector of Customs of Manila ordered an appraisal of the true and correct value thereof. After a protracted investigation, it was determined that the true and correct value is \$6.70 and not \$1.634 per kilo. The determination of the value of said article at \$6.70 per kilo has been described by counsel for the Government as follows:

> The value of the imported concentrate in question at \$6.70 per kilo was used as basis in the computation and collection of the advance sales tax involved in this case upon instructions of Mr. Isidro Angangco, the Collector of Customs for the Port of Manila from 1955 to 1960. According to Mr. Angangco, it was ascertained that the invoice value of imported Coca-Cola concentrate was only \$1.634 per kilo, but he found out from the testimony of Mr. Ernest Khan, Vice-President-Comptroller of San Miguel Brewery, Inc., in an administrative investigation, that its contract price with the petitioner in the purchase of Coca-Cola concentrate is \$7.70 per kilo. From this value of \$7.70 per kilo, the amount of \$1.00 was deducted for expenses not forming part of the landed cost and profit, thereby leaving the amount of \$6.70 per kilo. Mr. Angangco then instructed his appraisers to use this value of \$6.70 per kilo in the computation of the advance sales tax on imported Coca-Cola concentrate. Mr. Angangco also stated that no objection was interposed when he deducted \$1.00 for expenses and profit from the contract price of \$7.70 per kilo and for that reason he considered such deduction as reasonable. The aforesaid method of ascertaining the market value or the true and correct value of imported Coca-Cola concentrate is authorized and in accordance with the provisions of Section 201 of the Tariff and Customs Code. (Page 33, Memorandum for Respondent, Jan. 31, 1964.)

Respondent Commissioner of Internal Revenue sustained the findings and conclusion of the Collector of Customs and proceeded to determine the amount of the advance sales tax due on the shipment in question on the basis of an import value of $6.70 per kilo. Petitioner contends that such determination of the Commissioner of Internal Revenue is not sanctioned by law as Section 183(b) of the Revenue Code specifically provides that the "import invoice value" must be used in the computation of the advance sales tax.

We do not think that the term "import invoice value," as used in Section 183(b) of the Revenue Code, means any value appearing in the invoice or bill of lading covering an imported article. Such value is not conclusive upon the Government so as to preclude it from determining the advance sales tax on the basis of a different valuation if the invoice value does not reflect the correct value. The "import invoice value" referred to in the law simply means the true and correct value of an article as agreed upon between the foreign shipper and the local buyer in an arm's length transaction. That the value of $1.634 per kilo of Coca-Cola concentrate is not the true value thereof is apparent from the records of the case. It was sold for that price by the manufacturer to a wholly owned corporation, petitioner's New York office, and later shipped by the latter for the same price to its Philippine branch which sold the article to the San Miguel Brewery, Inc. for $7.70. The great disparity between the landed cost of the article on the basis of the import invoice value and its actual selling price to an uncontrolled corporation shows beyond doubt that the alleged import invoice value is not the correct and true value of the article, such as the one which is normally arrived at in a transaction between seller and buyer in the open market. From whatever angle we view the case, we fail to see how the transfer of the article in question from the manufacturer to its wholly owned corporation and to its Philippine branch, under the circumstances mentioned above, could be considered at arm's length transaction.

Finding no merit in petitioner's claim for refund, the same is hereby denied. The determination made by respondent Commissioner of Internal Revenue being in order, petitioner is ordered to pay the sum of ₱769.00 as deficiency advance sales tax within thirty days from the date this decision becomes final. With costs against petitioner.

SO ORDERED.

Manila, June 27, 1964.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge