Diamang

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DAILY HARVEST MANUFACTURING AND MARKETING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4523

THE COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - - - x

8/18/92

D E C I S I O N

Petitioner appeals the decision of the Commissioner of Customs affirming the ruling of the District Collector of Customs, Port of Manila, ordering the forfeiture of the article declared as "334 Cartons PVC Wrap Film for Food Industrial Use 2004 rolls 0.012 mm. X 12" x 600 M $2.40/roll".

The subject article arrived at the Port of Manila on October 8, 1988 from Keelung, Republic of China on board the S/S "T Yuan", Registry Number DTA-086, Voyage Number 006, under Bill of Lading KLGMNL-0544 consigned to petitioner. The required Import Entry and Internal Revenue Declaration with number 91851-88 was filed. The article was examined and found to be as declared and was forwarded for appraisal. The Appraiser, however, discredited the value declared by petitioner for the article, $2.40/roll or 710.80/MT, and adopted the recommendation of the Technical Expert contained in the Philippine Chamber of Commerce and Industry - Customs Consultative Group (PCCI-CCG) Report which valued the article at $1,800.00/MT. The records show that the recommendation of the Technical Expert was based on an earlier PCCI-CCG Consolidated Report of Entries Subject to Alert dated August 9, 1988 involving another article described as "PVC Rigid Film Optic White 98 cartons Not Transparent 4MT" with Entry No. 66536-88 consigned to Plastic and Packages Inc. (p. 23, Customs Records). It appears that the "PVC Rigid Film Optic White" article was examined upon its arrival on August 24, 1988 as can be seen from the Discrepancy Report dated September 8, 1988 and was recommended a value of $1,800.00/MT, higher than the declared value of $1,200.00/MT. Thus, the Report of Seizure as to the subject article explained the cause of seizure as under-valuation and referred to a "Recent PVC resin importation from Taiwan (which) has a cost of $1270/MT add to this are the cost of other chemicals or additives and overheads, making a total of about $1800/MT for finished product. This is the PCCI TE recommendation" (p. 18, Customs Records). On November 7, 1988 a Warrant of Seizure and Detention for the subject article was issued by the Bureau of Customs. Eventually, the District Collector of Customs, Port of Manila, held that the "true and correct value of the shipment in question is the value recommended by the PCCI Technical Expert, e.i. (sic), $1.80/kg. based on a previous importation declared in Entry No. 66536-88 covering a shipment of '98 cartons PVC Rigid Film Optic White' which was followed by the Appraiser concerned xxx, there being no established nor published value thereon" (Decision of the Collector of Customs, p. 11 C.T.A. Records).

During the proceedings here only the petitioner was able to formally offer its evidence, as the Court in its resolution of January 13, 1992, in view of the non-appearance of respondent's counsel at a hearing for presentation of their evidence and several postponements previously, considered the case submitted for decision. The Customs Records, though, have been previously transmitted and received by the Court on October 23, 1991.

The decision of the District Collector of Customs, Port of Manila, leans much on the PCCI-CCG Report made by the Customs Technical Expert. The basis of the said report is a prior importation by Plastic and Packages, Inc. of "PVC Film Optic White, 98 cartons not transparent 4MT", there being no established or published value of the article. It was admitted nonetheless by the Technical Expert that the articles in this case and that imported by Plastic and Packages, Inc. "are not exactly the same the first being made of a soft kind of material while the other is made of rigid film". The Customs Records would also show that in the administrative proceedings below he acknowledged that the plastic made of rigid materials would have a higher cost due to, among others, higher additives cost for plastic or rigid materials, thus:

> "HEARING OFFICER TO THE WITNESS:
>
> For clarificatory question, the sample attached in your report the same as the sample attached in the entry as to their raw material?
>
> A: Basically the raw material are the same but the cost of product-rigid will be higher.
>
> Q: They are both finished product?
>
> A: Yes.
>
> (p. 52, Customs Records)
>
> x x x
>
> "MR. SIA TO THE WITNESS:
>
> Q: So the additives of soft and rigid film are different?

A: Yes.

(p. 50, Customs Records)

x x x

Q: You also said that additives of these shipments are different, and that additives for rigid film is higher than soft?

A: Yes.

(p. 49, Customs Records)

It appears that the valuation is insisted upon by the Technical Expert for the reason that they belong to the same family, plastic (p. 55, Customs Records).

A physical examination of the two materials of plastics submitted in evidence by petitioner (Exhibits "B" and "C", p. 56, C.T.A. Records) gives us the impression that the two articles are physically different. The article imported by petitioner (Exhibit "B") is transparent and is a plastic film. The other article (Exhibit "C") which was relied upon by the Technical Expert for his valuation is not transparent nor a plastic film like that of the first as it is white in color and definitely much thicker. We are inclined to give credence to the allegation of petitioner that the character of the latter article would make it more useful for cartons and packages or other sturdy and strong containers rather than as a wrapper. This inference is bolstered by the finding of the

Undersecretary of Finance on the request for Tariff classification by petitioner of the "Nan Ya Wrap", the name given to the article.

It was that the "Nan Ya Wrap" was classified by the Tariff Commission under HS Heading 3920-4290 referring in particular to film, among others, at 30% ad valorem duty while the Bureau of Customs classified the article under HS Heading 3926.90 referring to other articles of plastic at 50% ad valorem. The Tariff Commission ruled essentially that:

> "Based on the foregoing, NAN YA WRAP is esentially a plastic film used to wrap or cover foodstuffs. Its physical character shows that subject film is not further worked nor a container for the conveyance or packing of goods."

The Undersecretary of Finance concluded that:

> "It appearing that HS 3920.4290 in relation to HS 3920 provides a more specific description with respect to the physical character of NAN YA WRAP, this Department finds the classification thereof under HS 3920.4290 at 30% ad valorem to be the correct tariff classification."

For that matter, the pertinent part of Section 201 of the Tariff and Customs Code, as amended by Executive Order No. 156 mandates the following in ascertaining the basis of dutiable value:

> "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 cost (fair market value) of same, like or similar articles, as bought

and sold or offered for sale freely in the usual wholesale quantities in the ordinary course of trade, in the principal markets of the exporting country on the date of the exportation to the Philippines (excluding internal excise taxes to be remitted or rebated) or where there is none on such date, then on the cost, (fair market value) nearest to the date of exportation, including the value of all containers, coverings and/or packings of any kind and all other expenses, costs and charges incident to placing the article in a condition ready for shipment to the Philippines, and freight as well as insurance premium covering the transportation of such articles to the port of entry in the Philippines.

Where the fair market value or price of the article cannot be ascertained thereat or where there exists a reasonable doubt as to the fairness of such value or price, then the fair market value or price in the principal market in the country of manufacture or origin, if it is not the country of exportation, or in a third country with the same state of economic development as the country of exportation shall be used.

When the dutiable value of the articles cannot be ascertained in accordance with the preceding paragraphs or where there exists a reasonable doubt as to the cost (fair market value) of the imported article declared in the entry, the dutiable value of the article shall be ascertained by the Commissioner of Customs from the reports of the Revenue or Commercial Attache (Foreign Trade Promotion Attache), pursuant to Republic Act Numbered Fifty-four Hundred and Sixty-Six or other Philippine diplomatic officers or Customs Attaches and from such other information that may be available to the Bureau of Customs. Such values shall be published by the Commissioner of Customs from time to time.

When the dutiable value cannot be ascertained as provided in the preceding

> paragraphs, or where there exists a reasonable doubt as to the 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 of the duty become payable on the article under appraisement, on the usual wholesale quantities and in the ordinary course of trade, minus
>
> (a) not more than twenty-five (25) percent thereof for expenses and profits; and
>
> (b) duties and taxes paid thereon." (Emphasis supplied)
>
> (xxx xxx xxx."

We think that the differences between the article "PVC Wrap Film for Food Industrial Use" and the article "PVC Rigid Film Optic White not transparent" are significant not only physically but so much as to affect their value. In fact, there is testimony by the Technical Expert to the effect that at the time of importation the cost of the same article in Taiwan under SGS valuation was $912.00/MT. In this light, the Court could not hold that "PVC Rigid Film Optic White not transparent" is a "same, like or similar" article as "PVC Wrap Film for Food Industrial Use".

Further, the propriety of an "Alert notice" or an "Alert Report" (the PCCI CCG Consolidated Report on Articles Subject to Alert), as against the value declared in the invoice consistent with Section 201 of the Tariff and Customs Code has been ruled upon by the Supreme Court in **Commissioner of Customs v. Court of Tax Appeals** (161 SCRA 376 [1988]) citing a case of the same title with G.R. No. 70648, July 31, 1987) in favor of the mandate of Section 201. We quote:

> "The issue for determination is the propriety of the appraisal of the importations made by private respondent based on alert notices rather than on the values declared in consular invoices.
>
> "The applicable legal provision is Section 201 xxx.
>
> "The law is clear and mandatory. xxx."

We do not think that we can deviate from the substance of the said decision in the face of expositions made on the weakness of the recommendation of the Technical Expert, notwithstanding that the "Alert Report" was discussed in the proceedings in the Bureau of Customs, and the thorough examination of the records of this case. The deviation, if any, could only be that we are adopting the SGS valuation of $912.00/metric ton adverted to previously here as the basis of the dutiable value of the subject article in view of its recognized reliability. Consequently, the subject article cannot be held liable for forfeiture as the undervaluation is not more than 50% between the value declared in the entry and the correct value.

WHEREFORE, the reliefs prayed for in the Petition for Review is **GRANTED** and the decision of the Commissioner of Customs is **REVERSED**. The Warrant of Seizure and Detention against the article "334 Cartons PVC Wrap Film for Food Industrial Use" is **LIFTED** subject to the payment by petitioner of the correct taxes and duties and other charges due based on the value of the said article determined at $912.00/metric ton.

SO ORDERED.

Quezon City, Metro Manila, August 18, 1992.

ERNESTO D. ACOSTA
Presiding Judge

I **CONCUR:**

STELLA DADIVAS-FARRALES
Acting Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals