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GOODYEAR TIRE & RUBBER COMPANY
OF THE PHILIPPINES, LTD.,
Petitioner,

- versus - C.T.A. CASE NO. 2841

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - - x

5/22/78

D E C I S I O N

This is an appeal interposed from the decision of respondent dated September 30, 1976 affirming that of the Collecter of Customs for the Port of Manila dated January 5, 1976 dismissing Protest Cases Nos. 8627, 8627-A, 8628 and 8628-A.

The uncontroverted factsas appearing in the records show that during the period from November 10, 1972 to December, 1972, petitioner imported from Japan, synthetic rubber and rubber substitutes which petitioner purchased from Japan Synthetic Rubber Co., Ltd. of Japan (hereinafter referred to as JSRC) through the latter's local agent Mitsui Co., Ltd. Upon arrival of the shipments in the Philippines, petitioner filed with the Bureau of Customs the following import entries:

a) Import Entry No. 89077-72 -- 179 pallets of synthetic rubber and/or rubber substitutes --

Spryic-A	176,400 kgs. at ₱11.50/lb
Stovic	11,550 kgs. at ₱14.00/lb

b) Import Entry No. 94204-72 -- 96 pallets of synthetic rubber and/or rubber substitutes --

Spryic-A	148,149 lbs.	at ₱11.50
Lunaric-A	30,093 lbs.	at ₱11.50
Stovic	16,204 lbs.	at ₱14.00
Chillic	27,778 lbs.	at ₱11.50

c) Import Entry No. 94216-72 -- 205 pallets of synthetic rubber and/or rubber substitutes --

Lunaric	354,169 lbs.	at ₱11.50
Chillic	71,760 lbs.	at ₱.125
Stovic	25,463 lbs.	at ₱.145
Madonic	53,148 lbs.	at ₱15.00

d) Import Entry No. 94218-72 -- 45 pallets synthetic rubber and/or rubber substitutes --

Chillic	104,167 lbs.	at ₱11.50

On the basis of the commercial and consular invoices, petitioner declared the importation values of said shipments and paid the corresponding customs duties, taxes and charges due thereon.

However, upon examination of the goods in question by the customs appraiser, a higher valuation was applied based on the Customs Valuation Circular No. 38-72 dated November 20, 1972 and the Customs records, as follows:

a) Import Entry No. 94204-72

Spryic-A	at ₱13.00 per lb.
Lunaric-A	at ₱12.00 per lb.
Stovic	at ₱16.00 per lb.
Chillic	at ₱13.25 per lb.

b) Import Entry No. 94216-72

Lunaric-A	at ₱.12 per lb.
Chillic	at ₱.1325 per lb.
Stovic	at ₱.16 per lb.
Madonic	at ₱.15.00 per lb.

c) Import Entry No. 94218-72

Chillic at $.1325 per lb.

d) Import Entry No. 89077-72

Spryic A at $13.00 per lb.
Stovic at $16.00 per lb.

As a consequence thereto, additional customs duties and taxes in the total amount of ₱9,735.00 and ₱6,537.00, respectively, were assessed against petitioner, details of which are as follows:

	Duties	Advance Sales Taxes
a) Import Entry No. 89077-72	₱6,651.00	₱4,332.00
b) Import Entry No. 94204-72	1,373.00	922.00
c) Import Entry No. 94216-72	1,033.00	694.00
d) Import Entry No. 94218-72	878.00	589.00
	₱9,935.00	₱6,537.00

Aside from the above additional customs duties and taxes, a fine of ₱2,746.00 on the importation covered by Import Entry No. 94204-72 was slapped on petitioner. Upon receipt of the above-mentioned assessment, payment was immediately made by petitioner to the Bureau of Customs.

Subsequently, petitioner filed Protest Cases Nos. 8627, 8627-A, 8628, 8628-A with the Collector of Customs on the following grounds:

(1) That the importation in question should have been assessed on the values stated in the commercial and consular invoices and other pertinent documents as provided for under Section 201 of the Tariff and

Customs Code of the Philippines, as amended;

(2) That subject importation of synthetic rubber materials manufactured by Japan Synthetic Rubber Co. while code-named "Sprylc A" or "Lunaric A," "Stovic" and "Chillic" by petitioner, are, in fact, the very same synthetic rubber materials code-named "JSR 1712H," "JSR 1502" and "JSR 1778N" on page 32 of the Customs Valuation Circular having the following home consumption values:

JSR 1712H	$.125/lb
JSR 1502	$.145/lb
JSR 1778N	$.0125/lb

(3) Insofar as the 96 pallets covered by Import Entry No. 94204-72, under Protest No. 8627, is concerned, there is no basis for the imposition of the two-time fine inasmuch as there has been no misdeclaration as contemplated under Section 2503 of the Tariff and Customs Code.

On January 5, 1976, after a series of administrative hearings, the Collector of Customs of the Port of Manila rendered a decision dismissing the protests as without merit.

Within the reglementary period, petitioner appealed said decision to respondent Commissioner of Customs, who, on September 30, 1976, affirmed the aforesaid decision of the Collector of Customs. Hence, this appeal.

Parties submitted the case on the bases of the pleadings and the records.

The issues involved herein are:

(1) Whether or not respondent erred in disregarding the commercial and consular invoices as the bases of the home consumption values of the controverted imported rubber substitutes for the purpose of imposing the ad valorem duty under Section 201 of the Tariff and Customs Code; and

(2) Whether or not respondent erred in imposing the "two-time" fine on the shipment covered by Import Entry No. 94204-72 under Section 2503 of the Tariff and Customs Code for misdeclaration.

Anent the first issue, petitioner asserts: (1) that respondent erred in sustaining the Collector's decision disregarding the values declared in the commercial and consular invoices notwithstanding the absence of reasonable doubt as regards the correctness of said declared values; (2) that respondent arbitrarily disregarded its evidence indubitably showing that the commercial and consular invoice values of subject importations are true and correct; (3) that respondent virtually amended the provision of Section 201 of the Tariff and Customs Code by the unnecessary interpretation of the clear, plain, certain and unambiguous wordings of above-said provision which states that "the home consumption value shall be the value or price declared in the consular, commercial, trade or sales invoices," and instead had taken the published valuation of the Bureau of Customs, more specifically the Customs Valuation Circular No. 38-72 dated November 20, 1972, as the basis for the home consumption value; and (4) that if ever the commercial and consular invoices were to be disregarded, at least the value found on page 32 of the Customs Valuation Circular should be followed, for the imported synthetic rubber materials of "Spryic A," or "Lunaric A," "Stevic" and "Chillie" are the very same synthetic materials code-named "JSR 1712H," "JSR 1502," and "JSR 1778N."

Respondent, on the other hand, maintains (1) that the probative value of the commercial and consular invoices is prima facie only and that the Collector of Customs is given the widest latitude in ascertaining the correct home consumption value from all available sources before final appraisal is conducted on imported articles in order to prevent the commission of fraud upon customs revenues; (2) that Section 1405 of the Tariff and Customs Code authorizes the appraiser to conduct a study and verify the current prices or values of importations subject of examination and appraisement, and to tie the hands of the Collector of Customs in establishing the correct and true home consumption value as submitted by his subordinates will defeat the purpose of the law in protecting the customs revenue;

(3) that the prices of imported products are not stable but subject to changes; and that if customs authorities are always to be bound by the invoice value, then they would be, to a considerable extent, at the mercy of foreign exporters, and this would open the avenue for more fraud upon the customs.

The Court finds merit in petitioner's contentions. Section 201 of the Tariff and Customs Code provides:

> 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 home consumption value or price (excluding internal excise taxes) 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 country from where exported on the date of exportation to the Philippines, or where there is none on such date, then on the home consumption value or price nearest to the date of exportation including the value of all containers, coverings and or packings of any kind and all other costs, charges and expenses incident to placing the article in a condition ready for shipment to the Philippines, plus ten (10) per cent of such consumption value or price.
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> The home consumption value or price under this section shall be the value or price declared in the consular, commercial, trade or sales invoice. Where there exists a reasonable doubt as to the value or price of the imported article declared in the entry, the correct dutiable value of the article shall be ascertained from the reports of the Revenue Attache or Commercial Attache (Foreign Trade Promotion Attache), pursuant to Republic Act Numbered Fifty-four hundred and sixty-six or other Philippine diplomatic officers and from such other information that may be available to the Bureau of Customs.
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> From the data thus gathered, the Commissioner of Customs shall ascertain and establish the home consumption value of articles exported

> to the Philippines and shall publish such lists of values from time to time.
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> When the dutiable value provided for in the preceding paragraphs cannot be ascertained for failure of the importer to produce the documents mentioned in the second paragraph, or where there exists a reasonable doubt as to 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 the duty becomes payable on the article under appraisement, in the usual wholesale quantities and in the ordinary course of trade, minus --
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> (a) Twenty (20) per cent thereof for expenses and profits; and
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> (b) Duties and taxes paid thereon.
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> (Underlining supplied.)

From the wordings, of the above-mentioned section, it is clear, plain, and unambiguous that the "home consumption value or price shall be the value or price declared in the consular, commercial, trade or sales invoices." Petitioner has religiously complied with said requirements of law by submitting the following evidence: the commercial and consular invoices (Exhs. A-A to A-C, pp. 307-309, Customs record); the Central Bank Release Certificates confirming the unit price per pound as stated in the said commercial and consular invoices (Exh. A-5); the draft drawn against petitioner for subject shipment (Exh. A-M) under the appropriate letter of credit in the total amount of U.S. $25,995.86 (Exh. A-L); and the debit made by Rizal Commercial Banking Corporation for the peso equivalent of the US $25,995.86 (Exh. A-N).

Aside from these documents, to further corroborate the truthfulness and correctness of the declared values in said documents, petitioner submitted additional documents like: (1) the firm offer dated November 9, 1972 issued by Mitsui & Co., Ltd., local agent for JSRC, showing that the values of subject importation are those as declared (Exh. A-1), and (2) the certification issued by JSRC to the same effect, properly authenticated by Mr. Fortunato D. Oblena, Vice-Consul, Embassy of the Philippines, Tokyo, Japan (Exh. A-J).

As against all these overwhelmingly convincing proof, no shred of evidence whatsoever was introduced by respondent to rebut petitioner's stand. While it is true, as alleged by respondent, that the probative value of the questioned importation is _prima facie_ only, and therefore not binding upon respondent, yet in the absence of any concrete evidence to overturn said value, the Court cannot do otherwise but rely upon it. Even respondent himself believes that the value stated in the commercial and consular invoices can be the primary basis of the home consumption value and can be set aside only in case of reasonable doubt, in favor of other home consumption values, based on more reliable information, when he stated in his decision, to wit:

> x x x While the value given to said documents may be the primary basis of the home consumption value, yet on reasonable doubt, the same may be set aside in favor of other home consumption value especially when the latter is based on more reliable information.

A perusal of the records yields negative results as to "other more reliable information" that might have been submitted by respondent to bolster his stand. He has not submitted any revenue or commercial attache report as provided for under Republic Act 5766 to support his valuation. He even asserted that the prices of imported products are not stable and subject to change and that the values applied in the instant case are the HCV's for articles of similar nature coming from the ports of origin at the time of exportation. However, even respondent's witness, the appraiser who personally made the discrepancy report on the home consumption value, could not state the basis for his valuation, except to state that the Customs Valuation Circular No. 38-72 dated November 20, 1972 was his sole basis (T.S.N., pp. 336-337, Customs rec.) When cross-examined as to the basis of aforesaid Customs Valuation Circular, abovementioned witness could not pinpoint any specific document but just vaguely and generally stated that it was based on previous records of shipments and importation (T.S.N., p. 336, Customs record). No single document was even presented to substantiate his allegation. On October 9, 1974, when cross-examined as to whether aforesaid Customs Valuation Circular No. 38-72 has been updated since November 20, 1972, aforementioned respondent's witness categorically stated that there were no other published values. He even admitted that even if prices of commodities in fact went down, the customs appraisers will still maintain their values at customs. (T.S.N., p. 335, Customs rec.)

With the testimony of the above-mentioned respondent's witness, this Court believes that Customs Valuation Circular No. 38-72 cannot be taken as the sole and only reliable source of the home consumption value. Moreover, even the very Customs Valuation Circular No. 38-72 itself was not submitted in evidence. Respondent has not indubitably shown that there was reasonable doubt as to the values declared in the commercial and consular invoices. Neither has it submitted convincing evidence that the customs valuation was based from reports of revenue and commercial attaches, nor from any other reliable information.

In the absence of any iota of proof to repudiate the <u>prima facie</u> correctness of the values stated in the commercial or consular invoices submitted by petitioner, this Court finds no compelling reason to discard said values. Moreover, this very issue as to the basis of the home consumption value of an importation has already been squarely ruled upon by this Court in the recent decision in the case of Wise & Co. vs. Comm. of Customs, CTA 2717, Dec. 29, 1977, wherein it was held:

> Analysing the 2nd paragraph of Section 201 of the Tariff and Customs Code, which is that particular portion of the law applicable to this case, it provides that the home consumption value is that value which is found or reflected, among others, in the "consular invoice." It is also stated in said Section 201 that where there exists a reasonable doubt as to the correctness of the home consumption value or price of the imported article declared in the entry as borne by the consular, commercial, trade or sales invoices, the dutiable value shall be ascertained from the reports of the Revenue Attache or Commercial Attache, Foreign Trade Promotion Attache or other Philippine diplomatic officers, and that from out of these reports (or data), the home consumption values of articles imported shall be ascertained and published. x x x It was not shown here that there was a doubt as to the home consumption value placed in the consular invoices. Furthermore, the home consumption value has not been ascertained from the reports of the attaches and other Philippine diplomatic officers and published lists of the home consumption value of said titanium dioxide. Thirdly and finally, while it can be noted that there is the general principle that the assessments of values by appraisers or official acts of customs officers are presumed to be correct (US v. Glendinning, McLeish & Co. Inc. 12 Cu App. 222 TD 40229, aff'g Circ. Reap. 33510, p. 449, Vol. 2, Customs Law Digest; US v. Frank Lambert, 2 Cu App 239, TD 31973, Rev'g Abs 21027, TD 29690) this principle can, however, be overcome even by an affidavit which will show a value which is different from what was determined or placed by the appraisers. (Melba B. Rodriguez, 23 CCR 296, RD 7752, Rev'g 19 CCR 268, RD 7405, cited at p. 422, Vol. 2, Customs Law Digest.) Moreover, an invoice, which is unimpeached and undiscredited, can not only be *prima facie* evidence of the value of the goods wherein it was declared, but is moreover controlling in the absence of proof to the contrary (Carey & Skinner

Inc. v. US 16 CCR 361 RD 6279, p. 478 Vol. 2, Customs Law Digest) and that the price paid for merchandise that is imported, as shown by the invoice, is evidence of the market value thereof. (US v. Sahin, 12 Cu App. 520, TD 40731, reh den. 13 Cir App 161, TD 41023, p. 483, Vol. 2, Customs Law Digest.)

It is a rule that in weighing the evidence of the parties, the presumption of correctness which attaches to the findings of the Collector of Customs or Commissioner of Customs can not have any evidentiary value and can not be weighed against the evidence that may have been presented by the party-importer which challenged the correctness of such finding. (SS Kresge v. US 25 CCR 89, CD 1269; Morse Bros. (Inc.) v. US 13 Cu App 553, TD 41432; US v. Hudson Forwarding & Shipping Co. 18 CCPA 253, TD 44427, aff'g TD 42750). Where, as here, affidavits were submitted, without any objection on the part of the Government, (see US v. Baldwin Universal Co. 18 CCPA 394, TD 44641, Rev'g and remanding TD 4412, p. 604, Vol. 2, Customs Law Digest; A J Bracher Co., Inc. (The Darby Co.) v. US Reap.Dec 3285, 65 TD 1677, 1678) to succinctly prove or show the home consumption value of merchandise to the Court, as well as the price lists, these records constitute competent and relevant evidence of the home consumption values of the imported articles.

It must be noted that petitioner had, as aforesaid, presented affidavits confirming the fact that the home consumption values of the imported titanium dioxide were truly those found in the consular invoices in the price lists, and those reflected in the entry papers. However, respondent never presented any evidence against the above affidavits and price lists which reflect the home consumption values of said titanium dioxide products. The presumption of the correctness of the valuation of the imported articles not being evidential and it having been overcome by the evidence or the records of this case, or the evidence of petitioner not having been _prima facie_ rebutted by respondent, therefore, the burden to show the correctness of his assessment or appraisal uncompromisingly shifted to the latter. Where the government counsel saw fit, as in this case,

> to rely solely upon the presumption of correctness of the finding of value by appraiser, and did not take the natural steps to introduce competent and credible evidence in support of the correctness of the appraiser's finding of value, it is fatal, for, in the absence of that countervailing evidence presented by respondent or the government, the importer-petitioner becomes obviously entitled to a decision in its favor. (SS Kreage v. US, op. cit.; Morse Bros. (Inc.) v. US, 13 Cust. App. G. 553, 562, TD 41432, cited in U.S. v. Marshall Field & Co. TD 44761, 59 TD 774; U.S. v. Wanamaker, 14 CA Cust. App G. 285, TD 41388, cited in Gallaghan & Ascher, Inc. v. US Reap Dec. 73536, 67 TD 1365). Moreover, in the absence of evidence or record establishing the statutory dutiable value, it is that value as invoiced and declared in the import entry that will be considered for purpose of imposing the ad valorem duty under the rule that an invoice, unimpeached and undiscredited is not only prima facie evidence of what it declares but is controlling in the absence of proof to the contrary. (Carey & Skiner, Inc. v. US 16 CCR 361, RD 6279, p. 617, Vol. 2, Customs Law Digest.)

As regards the second issue, since no credible evidence was submitted by respondent to show that there was misdeclaration, misdescription or undervaluation of the synthetic rubber importations in question, this Court finds no rational basis for the imposition of the "two-time" fine.

Anent the judicial claim for the refund of the advance sales taxes on these importations in the total sum of ₱6,537.00, this Court has heretofore adjudged and declared that it has no jurisdiction over it inasmuch as petitioner had failed to file a formal written claim for refund thereof with the Commissioner of Internal Revenue and that the latter has obviously not been made a party to this case. (Wise & Co., Inc. vs. Rolando G. Geotina, Comm. of Customs, ibid., citing Luna vs. Comm. of Customs, CTA No. 1947, Nov. 29, 1968; Phil. Wallboard Corp. vs. Comm. of Customs, CTA No. 2136, Sept. 30, 1972; Procter & Gamble PMC vs. Comm. of Customs, CTA No. 2155, Resolution, April 15, 1971; Ace Publications, Inc. vs. The Comm. of Customs and Coll. of Customs, G.R. No. L-18808, May 29, 1964; Tagum Electric Co., Inc. vs. Comm. of Customs, CTA Case No. 2749, Resolution, Sept. 13, 1976.)

WHEREFORE, in view of all the foregoing, the decision appealed from is hereby reversed. Respondent is hereby ordered to refund to petitioner the amount of P9,935.00 representing additional customs duties paid by it. Without pronouncement as to costs.

SO ORDERED.

Quezon City, May 22, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge