REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PROCTER & GAMBLE PHILIPPINE
MANUFACTURING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2156

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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4/21/77

D E C I S I O N

Petitioner Procter & Gamble Philippine Manufacturing Corporation is seeking the refund of the sum of ₱9,137.15 representing advance sales tax paid to respondent Commissioner of Internal Revenue on four (4) shipments of imported raw materials which arrived in the Philippines sometime in 1968.

Petitioner is a corporation duly organized and existing under the laws of the Philippines. Sometime in July, 1968, it imported the following merchandise:

1. First Cause of Action:-

One (1) drum of Industrial Essential Oil from France which arrived on board an airplane of the Scandinavian Airways System at the International Airport in Pasay City;

2. Second Cause of Action:-

Forty (40) drums of Non-Hazardous (tuasal) Disenfectant from the United States which arrived on board the SS "Pioneer Moon", discharged and deposited inside Shed C, Pier 9, Bureau of Customs, South Harbor, Manila Customs House;

3. Third Cause of Action:-

Forty (40) drums of Soap Auxiliary from Europe which arrived on board the SS

"Yamagata Maru" and similarly deposited in Shed C, Pier 9, Bureau of Customs, South Harbor, Manila Customs House;

4. Fourth Cause of Action:-

Five (5) drums of Liquid Amide which arrived on board an airplane of the Philippine Air Lines.

First Cause of Action:-

On the importation of one (1) drum of industrial essential oil, it appears that petitioner paid the amount of ₱1,960.00 as advance sales tax. (Exhs. D, D-1, and E, pp. 68-70, CTA record.) It however claims an overpayment of ₱1,164.00 because the freight prepaid on the shipment amounted to French Franc 2,632.37, but when the import entry and internal revenue declaration on the shipment were prepared by its customs broker, the amount of French Franc 2,632.37 was erroneously indicated as US$2,632.37, instead of its equivalent in US dollars of $583.57, which was the correct freight prepaid. Because of this error committed by its customs broker in declaring the expenses for prepaid freight, the landed-cost plus mark-up of the shipment was overstated. Consequently, the customs duties and advance sales tax thereon were also erroneously increased. As stated above, petitioner paid the incorrect customs duties and advance sales tax (in the amount of ₱1,960.43) This was paid to the Bureau of Customs as the deputy of respondent under receipts collected on Informal Entry No. 1792269, issued by the said Bureau. (Exhs. E and E-1, p. 70, CTA record)

The evidence shows that on July 20, 1968 and January 29, 1969 petitioner by letters (Exhibits F and F-1) requested the Bureau of Customs to refund the overpaid customs duties and advance sales tax on the shipment. Similar request was filed with respondent Commissioner of Internal Revenue on December 9, 1969 (Exhibits F-2 and F-3). It appears that on September 12, 1969, by Journal Voucher No. 707252, the Bureau of Customs credited to the account of petitionerthe amount of ₱5,097.00 representing the excess payment of the customs duties and surcharge on this importation of the industrial essential oil (Exhibit FF) although respondent has not acted on the claim of petitioner for refund of the excess advance sales tax paid on its shipment.

While respondent admits overpayment by petitioner of the advance sales tax, he insists however that the amount refundable should only be ₱715.91 and not ₱1,960.00.

Second and Third Causes of Action:-

In the second cause of action, which pertains to the 40 drums of non-hazardous (tussal) disinfectant that were discharged from the SS "Pioneer Moon" and deposited inside Shed C, Pier 9 of the Bureau of Customs at North Harbor, Manila, petitioner paid the amount of ₱2,918.00 as (advance) sales tax covered under Central Bank Official Receipt No. 230689 dated August 2, 1968. (Pp. 81-82, CTA record) Likewise, in the third cause of action which refers to the 40 drums of soap auxiliary imported from Europe which were discharged from the SS "Yamagata Maru" and deposited in the same Shed C, Pier 9 of the Bureau of Customs at the North Harbor, Manila, Customs House, petitioner paid the amount of ₱3,123.00 as (advance) sales tax covered under Central Bank Official Receipt No. 232334 dated August 1, 1968. (Pp. 90-92, CTA record)

It appears that while the goods were stored in Shed C, Pier 9, Bureau of Customs, Manila, they were completely razed and destroyed by fire caused by an earthquake of Intensity VI that rocked Manila in the early morning of August 2, 1968. Certifications attesting to this fact were issued by Acting Collector of Customs Jose T. Viduya on January 22, 1969. (Exhibits BB & CC, pp. 102 & 107, CTA record)

Because of the destruction of said goods, petitioner on August 12, 1968 and April 16, 1969, requested the refund of the respective advance sales tax paid thereon. (Exhibits Y & Y-1, pp. 93 & 94, CTA record). The record shows that respondent has not as yet taken action on these claims of petitioner.

Fourth Cause of Action:-

The five (5) drums of Liquid Amide imported by petitioner from the United States, subject matter of the fourth cause of action, arrived via a Philippine Air Lines plane as indicated in Airway Bill No. 079-018722 dated July 5, 1968. (Exhibit X, p. 96, CTA record) Because petitioner, it seemed, was in need of this product for its manufacturing operations, and the commercial and consular invoices have not yet arrived when the shipment was withdrawn by petitioner from the Bureau of Customs, it appears that the latter had to calculate the probable FOB and CIF values thereof and a tentative FOB value of US$6,412.58 and a CIF value of US$8,696.60 were used. These valuations were then made the basis of the payment of the (advance) sales tax in the amount of ₱3,243.00 which was accounted for by the Bureau of Customs under Statement and Receipts of Duties Collected in Informal Entry No. 173709 on November 10, 1968. (Exhibit Z, p. 98, CTA record)

When the commercial and consular invoices of the subject shipment arrived, they showed that the FOB value is only US$936.14 (Exhibit W, p. 95, CTA record) and the CIF value is US$3,267.16 (Exhibit Y-1, p. 97, CTA record) Since the values stated in these invoices are very much lower than those previously declared, petitioner on November 18, 1968 filed a written claim for refund of the amount of ₱2,002.00 erroneously paid as advance sales tax on the shipment. (Exhibits AA, AA-1, and AA-2, pp. 99-101, CTA record) Likewise, respondent has not yet acted on this claim for refund.

As stated earilier, there having been no decision or decisions rendered by respondent on the claims for refund, petitioner commenced this suit on July 23, 1970, for the recovery of the advance sales tax involved in each of its four causes of action, which are now all consolidated in this proceeding.

Involved herein for resolution of the Court are legal and factual issues, viz:

1. Under the first cause of action, whether or not the refundable amount of advance sales tax paid upon the importation of the industrial essential oil is ₱1,164.00 as claimed by petitioner or ₱715.91 as computed by respondent;

2. Under the second and third causes of action, whether or not the loss of the imported non-hazardous (tusal) disinfectant

and soup auxiliary caused by fire while the goods were still in the custody of the customs authorities and before their withdrawal from the customhouse entitles petitioner to a refund of the advance sales tax paid thereon; and

3. Finally, under the fourth cause of action, whether or not there is sufficient evidence to show the true and correct value of the importation which would serve as basis in the computation of the tax due.

On the first cause of action:-

Obviously, respondent has no quarrel with petitioner that the latter is indeed entitled to a refund! The collision occurs at the computation of the correct amount of advance sales tax refundable.

From an examination of the records and evidence presented, particularly the testimony of BIR Examiner Jesus M. Soriano, it was established that the correct base of the tax is ₱5,567.91 instead of ₱13,754.72 which was the basis of the advance sales tax paid by petitioner. However, in arriving at the amount of ₱715.91 allegedly refundable, respondent adopted the following computation, to wit:

	₱13,754.72	- Wrong basis
less	5,567.91	- Correct basis
	₱ 8,186.81	- Net error

Resume:

	₱22,405.02	- landed cost
less	8,186.81	- net error
	₱14,218.22	- correct landed cost
plus	3,554.50	- 25% mark up
	₱17,772.72	
	x .07	- sales tax rate
	₱ 1,244.09	- advance sales tax
	1,960.00	- advance sales tax paid

less 1,244.09

₱ 715.91 - Refundable amount

It could readily be seen that respondent directly deducted ₱8,186.81 (the difference between ₱5,567.91 and ₱13,754.72) from the total landed cost of ₱22,805.02 which was based on the erroneous CIF value of ₱13,754.72. This is of course wrong because it disregarded the fact that included in the erroneous landed cost are the customs duty computed at 50% of the CIF value and the surcharge at 25% of the customs duty which should have been adjusted accordingly. Thus, the resulting advance sales tax of ₱1,244.09 is still overstated.

On the other hand, petitioner correctly computed the advance sales tax by using the CIF Value of ₱5,567.91 as the starting point, as follows:

$1,427.67 - CIF value

₱5,567.91 - CIF at ₱3.90 per $1.00
2,783.95 - Duty at 50%
50.00 - Bureau's Fee
3.60 - Stamps
695.99 - Surcharge @ 25% of duty

₱9,101.45 - Landed Cost
2,275.36 - 25% Mark-Up

₱11,376.81 - Landed cost plus mark-up
x .07

₱ 796.3667 Sales tax

Hence, the refundable amount due petitioner under the first cause of action should be :

Amount paid -	₱1,960.43
Less: correct advance sales tax	796.38
Refund due -	₱ 1,164.05

On the Second and Third Causes of Action:-

Petitioner is of the contention that it is entitled to a refund of the advance sales tax paid on the imported non-hazardous (tussal) disinfectant and soap auxiliary which were destroyed by earthquake and fire while in customs custody and prior to release from the customhouse because the reason and basis for the imposition of the tax, which is the importation and sale of goods, no longer exist. Thus, there could possibly be no taxable transaction for which petitioner could be held liable since the goods were never released by the Bureau of Customs and never sold as originally intended.

Invoking, Section 309 of the National Internal Revenue Code, respondent, on the other hand, avers that since the advance sales tax in question has been "correctly paid", it is not at all refundable. He maintains that the Commissioner of Internal Revenue is authorized to credit or refund only taxes erroneously or illegally collected or penalties imposed without authority but not taxes legally paid.

It seems already well-settled that the imposition and collection of the advance sales tax have no legal basis if the goods have not been released by the customs authorities and the taxpayer has not actually received such goods. (American International Dairy Co. Inc., v. Misael Vera, etc., CTA Case No. 1975, June 30, 1972) Along this line, it has been held that the specific tax collected on imported articles, which are subsequently re-shipped out of the Philippines, is refundable; with more reason that the advance sales tax which has been paid and collected on articles attempted to be imported but were not actually delivered to the importer should be refunded. (Muller & Phipps (Manila) Ltd., vs. Collector of Internal Revenue, CTA Case No. 212, November 29, 1959)

Here, in the case at bar, the imported non-hazardous (tussal) disinfectant and soap auxiliary had never been released by the customs authorities and petitioner had not actually received them because they were all destroyed by earthquake and fire while in customs custody and before their withdrawal from the customhouse. To impose and collect the advance sales tax on such goods is therefore without legal basis since that would be levying the tax before it is legally due and payable and taxing the taxable transaction which had never occured or materialized.

As expressly stated in Section 183(b) of the National Internal Revenue Code, the advance sales tax is a "Sales tax on imported articles.- When the articles are imported, the percentage taxes established in sections 184, 185 and 186 of this Code (or the sales tax) shall be paid in advance by the importer, in accordance with regulations promulgated by the Secretary of Finance and prior to the release of such articles from customs' custody. x x x." It is, therefore, a percentage tax imposed upon articles imported from abroad for the purpose of sale or for use in the manufacture of articles for sale and are subject to the sales tax. It is in lieu of the sales tax on imported articles. The main purpose of said tax is to collect the sales tax in advance of the sale, that is, before the withdrawal of the goods from the customs house, to prevent leakage and simplify collection with the least expense. (Umali, Roman, Reviewer in Taxation, 1971 ed., p. 309.)

To say, therefore, that the advance sales tax paid on the imported non-hazardous (tuasal) disinfectant and soap auxiliary which were destroyed by fire before withdrawal from custom's custody and hence were never sold, was "correctly paid" and not refundable because it does not fall under taxes erroneously or illegally received under Section 309 of the National Internal Revenue Code is to incur in self-contradiction. The advance sales tax was paid and received before it was legally due and payable and the taxable transaction upon which the tax was supposed to have been imposed had never taken place. The destruction of the goods was burden enough for petitioner. The latter should not be made to suffer another burden by the imposition of a tax which is not legally due and demandable.

It may not be amiss to state, at this juncture, that the corresponding customs duties paid on the same importation, which were due and payable upon withdrawal from customs' custody just like the advance sales tax, had been duly credited by the Bureau of Customs to the account of petitioner under Journal Voucher No. 706973 dated April 2, 1969. (Exhibit "DD", p. 112, CTA record.)

<u>On the Fourth Cause of Action</u> -

Respondent contends that in the absence of a revenue declaration, he could not determine the correct amount of internal revenue tax due on petitioner's importation of five drums of liquid amide. In other words, without the revenue declaration, even if all the documentary evidence presented by petitioner as required by the law clearly and explicitly show the true and correct value of the importation which would be the basis for the computation of the tax due, any amount paid and collected in excess thereof is not refundable because it is not erroneously or illegally received under Section 309 of the National Internal Revenue Code. And in support thereof, respondent cites the case of Coca-Cola Corporation vs. The Commissioner of Internal Revenue, G.R. No. L-23604, March 15, 1974, 56 SCRA 5, wherein it was held that the value of the merchandise fixed by the appraiser and affirmed by the Collector of Customs is conclusive in the absence of an affirmative showing that the appraiser, in assessing the value, proceeded upon a wrong principle of law.

The then pertinent provision of Section 183(b) of the National Internal Revenue Code provides, and we quote:

"Sec. 183 - <u>Payment of percentage taxes</u>-

xxx xxx xxx

> (b) Sales tax on imported articles.- 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 importer, in accordance with the regulations promulgated by the Secretary of Finance and prior to 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 other similar charges. x x x." (Underlining supplied)

Petitioner precisely adduced during the hearing of this case the consular invoice of the article imported wherein the import invoice value thereof is clearly indicated. This is corroborated by the commercial invoice of the product which likewise shows the same FOB and CIF values of the article in question. As to the kind and amount of taxes paid, the same are evidenced and covered by Bureau of Customs Official Receipt No. 1732709 denominated also as Statement and Receipts of Duties Collected on Informal Entry. (Exh. Z, p. 98, CTA rec.) It must be stressed that respondent does not question these documents. On the contrary, he adopted and admitted them, but still stubbornly maintains that the correct basis in the computation of the advance sales tax due could not be determined therefrom.

It is difficult to understand why respondent insists that the import invoice value appearing in the consular and commercial invoices could not be made the basis of the proper computation of the advance sales tax due when he does not dispute the figures appearing therein as fraudulent nor question the documents themselves as spurious. In the case of Coca-Cola Export Corporation v. The Commissioner of Internal Revenue, supra, from which respondent attempts to draw support to bolster his stand, the Supreme Court upheld the valuation of the customs appraiser in disregard of the import invoice value of the importation for the reason that the latter was clearly shown to have been understated. We find the situation obtaining in the instant case wholly different. It was not respondent nor the customs appraiser who made a reappraisal of the subject importation. Petitioner merely tentatively calculated the FOB and CIF values of the shipment while the consular and commercial invoices covering the same were not yet available so that it could be withdrawn from customs' custody because the product was needed for petitioner's manufacturing operations. At the moment, what petitioner is seeking to do is to show, on the basis of the consular and commercial invoices, the true an d correct import invoice value of the importation and be required to pay only the correct and legal amount of the tax due thereon. The burden thus rests upon respondent to show that the consular certification on the import invoice value of the imported product is not true and correct. In the absence of proof to the contrary, we have no alternative but to accept the correctness of the valuation, and that the figures appearing in the said documents are true and correct.

At any rate, Section 183(b), supra, imposes the advance sales tax on imported articles for sale or for use by the importer in the manufacture of articles for sale, such tax to be based on the import invoice value of the imported articles, 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 the corresponding mark-up. In this case, it has been proven that the import invoice value of the imported liquid amide is US$3,267.16 and the correct advance sales tax that should have been paid is computed as follows:

$3,267.16	-	CIF Value
₱12,741.92	-	at ₱3.90 per US$1.00
1,274.19	-	Duty (10%)
965.00	-	Other charges
₱14,981.11	-	Landed cost
3,745.28		Mark-up
₱18,726.39		Landed cost plus Mark-up
.07		Sales tax rate
₱1,310.8473	-	Advance sales tax

It has been proven that the amount of ₱3,243.00 was paid by petitioner as advance sales tax as indicated in Exhibit Z. When the advance sales tax was computed on the basis of the import invoice value as shown above, the result was an overpayment of ₱1,932.15. That the payment was made voluntarily does not affect the right of petitioner to a refund of the overpayment. Sections 306 and 309 of the Revenue Code authorizing refund of national internal revenue taxes erroneously or illegally paid do not bar the right of petitioner to a refund in case of voluntary payment. (American International Dairy Company, Inc. vs. Miguel Vera, etc., et al., C.T.A. Case No. 1975, June 30, 1972).

Petitioner is therefore entitled to a refund of ₱1,932.15 as overpaid advance sales tax in its fourth cause of action.

WHEREFORE, finding the claims for refund of petitioner Procter & Gamble Philippine Manufacturing Corporation in the sums of ₱1,164.00, ₱2,918.00, ₱3,123.00 and ₱1,932.15 or a total of ₱9,137.15 paid as advance sales tax meritorious, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner the said amounts. Without pronouncement as to costs.

SO ORDERED.

Quezon City, April 21, 1977.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge