REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NESTLE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NOS. 5226 & 5227

THE COMMISSIONER OF CUSTOMS AND COMMISSIONER OF INTERNAL REVENUE,
Respondents.

Promulgated:

JUN 14 2000

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DECISION

The cases at bar which have been consolidated seek the refund of the total amount of P5,259,777.00 (P2,223,112.00 in CTA Case No. 5226 and P3,036,665.00 in CTA Case No. 5227), allegedly representing the excess duties and value-added taxes unlawfully imposed and collected by the Collector of Customs on Petitioner's sixteen (16) importations of Skimmed Milk Powder, High Heat, Medium Heat and Low Heat, and Instant Milk Powder 28% from different European countries during the period May to October, 1992.

As represented, Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with office address at Jade Building, 335 Sen. Gil J. Puyat Avenue Ext., City of Makati. It is a regular importer of milk and milk products, and is engaged in the manufacture, processing, distribution and sale of processed, manufactured and formulated milk and milk products.

On various dates in 1992, Petitioner made several importations of "Skimmed Milk Powder" High, Medium and Low Heat and Instant Milk Powder 28% from different European countries.

The said importations were effected with all the necessary import documents and payments of advance duties and taxes based on the commercial invoice value.

Upon the shipments' arrival at the Port of Manila on various dates in 1992 and 1993, Petitioner accomplished and filed the corresponding Consumption Entries declaring the invoice costs as bases of their dutiable values.

However, the *Societe Generale de Surveillance* (SGS, for brevity), which conducted the pre-shipment inspection and valuation of the subject shipments, pronounced a higher valuation of said imported milk products in its Clean Report of Findings (CRFs).

Due to the higher valuations of SGS, the Collector of Customs assessed additional duties and taxes on each of the subject importations. Petitioner protested and appealed the additional assessment before the Customs-SGS Import Valuation and Classification Committee (BOC-SGS IVCC).

While awaiting the final resolution of the BOC-SGS IVCC, Petitioner availed of the remedy provided for by Customs Memorandum Order (CMO) No. 51-92 which allows the tentative release of the subject importations.

Thereafter, the BOC-SGS IVCC modified the valuations in the original CRFs in accordance with the amended CRFs submitted by the SGS (which values were still much higher than the invoice value), purportedly based on the EEC domestic price as published in Europe, less normal cash discount. The modified valuations served as the bases for the

Collector of Customs to make the recomputation of the additional duties and taxes for Petitioner to pay in the above-stated importations, which Petitioner paid on April 14, 1993 under protest, thus:

MICP PROTEST CASE NO.	CONSUMPTION ENTRY NO.	BUREAU OF : CUSTOMS O.R.#		PAYMENTS MADE UNDER PROTEST
190-93u	78484-92	41687651, 4/14/93	P	64,214.00
190-93p	56787-92	41564923, 4/14/93		324,447.00
190-93ff	64619-92	41564896, 4/14/93		30,274.00
190-93hh	62601-92	41687597, 4/14/93		371,701.00
190-93gg	62964-92	41687642, 4/14/93		357,650.00
190-93o	75253-92	41687572, 4/14/93		362,269.00
190-93d	54328-93	41687624, 4/14/93		143,633.00
190-93b	65936-92	41687615, 4/14/93		131,801.00
190-93ii	59357-92	41687633, 4/14/93		246,775.00
190-93r	76348-93	41687606, 4/14/93		190,348.00
TOTAL AMOUNT OF PAYMENTS UNDER PROTEST IN CTA CASE NO. 5226			P	2,223,112.00

MICP PROTEST: CASE NO.	CONSUMPTION: ENTRY NO.	BUREAU OF: CUSTOMS O.R. #		PAYMENTS MADE UNDER PROTEST
190-93q	60897-92	41564871, 4/14/93	P	229,540.00
190-93dd	68879-92	41564932, 4/14/93		842,614.00
190-93cc	72187-92	41564844, 4/14/93		654,487.00
190-93k	55116-92	41564975, 4/14/93		728,972.00
190-931	50551-92	41564853, 4/14/93		375,346.00
190-93	42015-92	41687581, 4/14/93		205,706.00
TOTAL AMOUNT OF PAYMENTS UNDER PROTEST IN CTA CASE NO. 5227			P	3,036,665.00

On April 20, 1993, Petitioner formally placed under protest its payments of the aforestated additional duties and taxes with the Bureau of Customs and claimed that the said payments be refunded as the imposition of the same was arbitrary, unjust and illegal.

On March 23, 1995, Petitioner likewise filed its formal claims for refund of the value-added tax portions thereof with the Commissioner of Internal Revenue.

The two Bureaus did not act upon said claims for refund, hence, on April 10, 1995, Petitioner filed with this Court the instant Petition for Review.

On January 5, 1996, the Commissioner of Customs was ordered discharged as party Respondent in the above-entitled cases on the ground of lack of jurisdiction. However, in view of the difficulty in disposing the internal revenue aspect of these cases without the issue of customs valuation being resolved, the Court on August 11, 1999 reinstated the Commissioner of Customs as party Respondent in the instant cases.

There is no controversy as to the computation of the amount of excess duties and value-added taxes claimed by Petitioner as refundable. The pivotal issues which were presented by the parties to the Court for resolution, as stated in its Joint Stipulation of Facts & Stipulation of Issues dated December 8, 1998, are:

1. Whether or not the SGS' valuations are arbitrary and unjust, and
2. Whether or not Petitioner is entitled to the refund of the additionally imposed duties and taxes which were paid under protest.

It is the submission of Petitioner that it is entitled to the refund of excess duties and taxes in question. It argues said that Section 201 of the Tariff and Customs Code of the Philippines (TCCP), as amended by Executive Order No. 156, quoted hereunder, states that the principal basis of dutiable value is the invoice value. It claimed that no less than the Supreme Court, in the case of *Acting Commissioner of Customs vs. Wise & Company, Inc., G.R. No. 47890, Oct. 16, 1992, 214 SCRA 597*, has held that the cost or fair market value of the imported articles is the price or value declared in the consular, commercial, trade or sales invoice, and that its dutiable value must therefore be based on such cost or price as freely offered for sale in wholesale quantities in the ordinary course of trade in the principal markets of the exporting country. It further stated that to discard the invoice value, it must be established first that reasonable doubt exists as to the declared value; second, that it must be shown that recourse to reports from commercial attaches' or other information was properly made; and third, that there was compliance with the requisite publication of the new dutiable value. Thus, Petitioner concluded that since the above requirements for the discarding of the invoice value are wanting in the cases at bar, the SGS' valuations and the Collector's final assessment on the subject importations are null and void for having been made arbitrarily and in gross violation of Section 201, TCCP, (as amended by E.O. 156) which we quote:

> ***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 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.
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> 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 stage of economic development as the country of exportation shall be used.

> When the dutiable value of the article 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 correct 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.
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> When the dutiable value cannot be ascertained as provided in the preceding paragraphs, or where there exist 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 the duty become payable on the article under appraisement, on the usual wholesale quantities and in the ordinary course of trade minus
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> (a) not more than twenty-five (25) per cent thereof for expenses and profits; and
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> (b) duties and taxes paid thereon."

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Corollary to the above, Petitioner argued that Respondent's reliance on SGS valuations is misplaced as SGS is not exempt from complying with the requirements of the law. It said that SGS does not enjoy the legal presumption of regularity in the performance of its functions, being a private and foreign owned enterprise with offices and employees not covered by the Civil Service law, hence, Petitioner further reasoned that SGS must show competent proof as to how it arrived at its own valuations on the subject importations. Furthermore, Petitioner stressed that SGS' scheme of mathematically adding to the invoice any amount which purportedly corresponds to subsidy of European countries being extended to their exporting companies, is highly anomalous, and bereft of legal and factual basis.

On the other hand, Respondent Commissioner of Customs (COC) advanced the proposition that Petitioner is not entitled to the refund of the additionally imposed duties and taxes which were paid under protest. He argued that while he agreed with Petitioner's stance that the home consumption value of imported article shall be the value or price declared in the consular, commercial, trade or sales invoice, the same should not apply in the cases at bar since there exist a reasonable doubt as to the correctness of the value or price of the imported article declared in the entry, hence, the correct dutiable value of the article shall be the value recommended by the SGS in its Clean Report of Findings which was adopted by the Collector of Customs and not the invoice value declared by Petitioner in its consumption entries. He said that the reason why the Philippine Government contracted the service of SGS is for the latter to provide the government the correct price or value of imported goods, otherwise, the government will be at the mercy of foreign merchants and importers in matters involving customs valuation. It further argued that SGS valuation is merely recommendatory in nature and is not conclusive upon the Bureau of Customs, ***ergo,*** once the Collector of Customs adopts the CRF value as endorsed by the Customs Examiner/Appraiser, it is no longer considered a mere SGS-CRF value, but for tariff and customs purposes, such value is already deemed official customs value of articles involved, thus, it enjoys the presumption of regularity. Therefore, any party, including the importer, who questions said valuation has the burden of proving that the same is wrong or arbitrary.

He likewise asseverates that the non-publication of the "established" or "information" value is no obstacle to the assessment of customs duty and taxes based on such "established" or "information" value as publication is intended as a guide in the assessment of future shipment of similar articles. Since the re-assessment made by the customs officials based on SGS-CRF created in effect reasonable doubt on the truthfulness and accuracy of the importer's/shipment's commercial invoice, the SGS valuation and the Collector's final assessment are not therefore arbitrary and unjust, it is now incumbent upon the Petitioner to prove that its commercial invoice is correct.

Further, Respondent Commissioner of Customs articulated that the intervention of European governments in the ordinary course of trade between the seller exporter and the buyer/importer has in effect removed the element of freedom being ordained by Section 201, TCCP, in view of the policy of the Europe Economic Community (EEC) of restituting/refunding the supplier in Europe with export subsidy, thus, the seller's invoice value under consideration cannot be considered as the home consumption value being defined by Section 201, as it is not based on the price 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.

After a circumspect study of the instant cases, the Court is construed to uphold Respondents' contentions.

The issues at bar being interrelated, a joint discussion will prove facile.

There can be no question that as a general rule the home consumption value or price of an imported article subject to an ad valorem rate of duty shall be the value or price declared in the consular, commercial, trade or sales invoice. However, 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 No. 5466 or from other diplomatic officers and such other sources of information that may be available to the Bureau of Customs. *(Commissioner of Customs vs. Procter and Gamble Phil., Mfg. Corp. 169 SCRA 693).* Thus, the consular and commercial invoice can in no way be conclusive on the government. *(Caltex (Philippines) Inc. vs. Court of Appeals, G.R. No. 140781, July 10, 1998).*

Stated otherwise, while the provision of Section 201 TCCP prescribes the rule that the home consumption value of the imported article shall be the value or price declared in the commercial, consular, trade or sales invoice, the same should not be applied in case the correctness of such value or price declared in the invoice is contaminated with reasonable doubt.

In the cases at bar, what should then be considered as the correct Home Consumption Value? Should it be the value or price declared in the commercial and consular invoices, or the value or price ascertained and established by the SGS & the Collector of Customs pursuant to Section 201, supra?

This Court believes that the value or price established by the SGS and Collector of Customs is more appropriate. The Collector of Customs has ascertained and established that the SGS-CRF is not without basis. The Courts acquiesce with Respondent COC's stance that the Fair Market value (FMV) of the subject imported articles consists of the actual price as per seller's final invoice to the Philippine importer plus the restitution paid to the exporters according to the European Economic Community agreements (Exh. 1), because this is the price existing in the domestic market in the country of supply, of the imported article based on same, like or similar articles, as bought and sold or offered for sale freely in the usual wholesale quantities in the ordinary source of trade, in the principal markets on the date of exportation to the Philippines. The subsidy given by the EEC to its exporters makes the price of the imported articles lower than that of the price in the domestic market of the exporters. Thus, the subsidy given by the EEC should form part of the Home Consumption Value of the imported article.

The SGS valuation in its CRFs in effect created a reasonable doubt as to the truthfulness and accuracy of the value or price of the imported article declared in the entry, hence, it is not error for the Respondent COC to disregard the invoice value and use instead the FMV of the imported article per seller's invoice plus the restitution/refund paid to the exporters as the true and correct home consumption value. The burden thus rests upon the importer to dispute the customs valuation not only to prove the contrary and overcome the presumption of correctness of the valuation but also to show that the figures declared by him are in fact true and correct *[(Coca-Cola Export Corporation vs. The Commissioner of Internal Revenue, 56 SCRA 5, cited in Commissioner of Customs vs. Court of Tax Appeals, 195 SCRA 12)].* This burden was not overcome by the Petitioner in the cases at bar. A higher assessment on its imported goods having been made, it became incumbent upon private Respondent to show that the value declared in the consular invoice was the true and correct home consumption value thereof *(Commissioner of Customs vs. Court of Tax Appeals, 195 SCRA 12).*

Likewise, the Court disagrees with Petitioner that Respondent COC's valuation are arbitrary and unjust as the latter failed to comply with the requisite publication of the new dutiable value.

The law does not provide that it is only after the "established" or "information" value is "published" that such home consumption value may be the basis of assessment of the customs duty and taxes. On the contrary, it is explicitly provided that upon reasonable doubt as to the accuracy of the declared value of the article in the consular or commercial invoice, the Commissioner of Customs may determine its home consumption value from other available and more reliable sources which "established" or "information" value shall then be the basis of the imposition of the customs duty and taxes. The publication of said "established" or "information" value is not a prerequisite before it may be the basis of the imposition of customs duty and taxes. Conversely, its non- publication is no obstacle to the assessment of customs duty and taxes based on such "established" or "information" value. The publication is intended as a guide in the assessment of future shipment of similar articles. While such published value of an imported article is reliable, nevertheless, in the absence of the same, the Commissioner of Customs may establish said value from other sources as above provided by law. *[(Commissioner of Customs vs. Procter and Gamble Philippines Manufacturing Corp., 169 SCRA 693).* There being fidelity to what are required by the legal provisions, what was done by Respondent Commissioner of Customs could not therefore be successfully challenged as improper and illegal.

It is not a redundancy to state that if the customs authorities were always bound by the invoice value, it is evident that they would be, to a considerable extent, at the mercy of foreign merchants and importers *[(Lim Quim vs. Collector of Customs, 23 Phil. 509, cited in Caltex (Philippines) Inc. vs. Court of Appeals, G.R. No. 104781, July 10, 1998)]*. The value of imported articles as fixed by the customs authorities in the discharge of their function of assessing and collecting the lawful revenues justly due on imported articles and confirmed by the Commissioner of Customs is presumed to be correct and therefore conclusive in the absence of fraud or illegality or of an affirmative showing by the protesting importer that the customs authorities, in fixing or assessing the value of the importation proceeded upon a wrong principle and contrary to law. Where, as here, there was full and unconditional compliance with the wordings of the law applicable, and there being no allegation of irregularity on the part of the customs authorities, the presumption of correctness of the dutiable values of the subject imported articles becomes conclusive upon herein Petitioner.

IN THE LIGHT OF ALL THE FOREGOING, the instant petitions for refund are hereby **DISMISSED** for lack of merit, without pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge