REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CALTEX (PHILIPPINES), INC.,
Petitioner,

-versus -                                        C.T.A. CASE NO. 3869

COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - - - x          8/9/91

# D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs dated October 23, 1984, which affirmed that of the Collector of Customs dated December 19, 1983 dismissing the protests cases docketed as 37/82, 41/82, 1/83, 3/83, 4/83, 5/83, 6/83, 8/83, 10/83, 12/83, 13/83, 14/83, 15/83, 16/83, 17/83, 18/83, 19/83 and 20/83.

On or about April 10, 1982 a shipment of crude oil described as "Arabian Light/Medium Mix Special and Arabian Heavy" arrived at the Port of Batangas ex S/S "TEXACO PANAMA". It was declared under Entry No. 163/83. The Batangas Customs Collector assessed the said shipment based on actual gross barrels received by petitioner in the amount of P97,697,143.00 as duties due which amount was paid by petitioner under protest alleging overpayment because water and other substances technically known as Bottom Sediment or Basic Sediment and Water (BSW) in the shipment were included in the assessment.

On or about July 7, 1982 a similar shipment arrived at the Port of Batangas ex S/S "OTTO MILLER" consigned also to petitioner. It was declared under Entry No. 204/82 and petitioner had to pay duties based again on gross actual receipts in the amount of P119,572,319.00. Said payment was likewise protested contending overpayment since "BSW" were included in the assessment.

On or about July 17, 1982 another shipment of crude oil arrived at the Port of Batangas ex S/S/ "BUBIYAN" consigned again to petitioner. It was declared under Entry No. 293/82. The same was assessed and petitioner paid duties based on gross actual receipts in the amount of P60,769,367.00. Also, payment of said amount was protested since "BSW" were included in the assessment.

Respondent had assessed customs duties on petitioner based on a Memorandum dated January 26, 1971 of the Acting Commissioner of Customs which directed the assessment of duties and taxes based in actual gross barrels received which include Bottom Sediment or Basic Sediment and Water. The Memorandum reads:

January 26, 1971

MEMORANDUM TO -

The Collector of Customs
Port of Manila
Port of Batangas
Subport of Limay, Bataan

"Effective February 1, 1971, Customs duties and taxes on importations of crude oil shall be based on the gross actual receipts without deducting the BSW as has been previously done.

"In determining the freight, the amount indicated in the bill of loading or as certified by the ship agent shall be used as basis. However, if it is found by the examiner that the actual receipt is more than the manifested weight, the freight shall be adjusted accordingly.

"Please see to it that all the personnel concerned in your respective ports are informed of these instructions.

(SGD)) ROLANDO G. GEOTINA
Acting Commissioner of Customs"

Petitioner assails the Memorandum as null and void for having been issued contrary to Section 3502 of the Tariff and Customs Code (T & CC) which states:

"Section 3502. Application of Established Ruling or Decision. A ruling or decision of the Commissioner of Customs which determines the construction or application of any provision of law

> decreeing forfeiture of imported articles or imposing customs duties, fines, fees and appraisal, and which changes any existing established appraisal, interpretation or practice shall not take effect until after thrity (30) days public notice shall have been given in the form of a published customs decision. When such ruling or decision favors the taxpayers it shall become effective immediately."

Respondent defends the Memorandum as having been issued merely for reasons of expediency in the three ports mentioned and "to erase whatever doubts there may be to parties concerned" on the tax consequences of importations of crude oil. That "similarly, by issuing the subject Memorandum respondent Commissioner of Customs did not render ruling or decision in contemplation of Section 3502 of the Tariff and Customs Code."

We agree that the said Memorandum does not constitute a ruling. More properly, the Memorandum should be defined as a rule or regulation promulgated by the Commissioner for the effective enforcement of the provision of the T&CC, in contrast to a ruling which proceeds from an inquiry from a taxpayer in the construction or application of a provision of law, in this case, the T&CC.

Still, we cannot conform to the opinion of respondent that under Section 203 of the T&CC, the

Memorandum would be justified. The pertinent portion of this cited Section provides:

> "Section 203. General Rules on Classification - The interpretation and application of the provisions of this Code relating to the classification of articles imported into the Philippines shall be governed by the following principles:
>
> xxx xxx xxx
>
> Rule 2. (b) Any reference in a heading or subheading to a material or substance shall include a reference to mixtures or combinations of that material or substance with <u>other materials or substances</u>. Any reference to articles of a given material or substance shall include a reference to articles consisting wholly or partly of such material or substance. The classification of articles consisting of more than one material or substance shall be according to the principles of Rule 3. (Underscoring supplied)
>
> Rule 3. When articles are prima facie classifiable under two or more headings or subheadings, or imported in sets consisting of several articles, classification shall be effected as follows:
>
> xxx xxx xxx
>
> (b) <u>Mixture and composite articles which consist of different materials or which are made up of different components and which cannot be classified</u> by reference to "3(a)" shall be classified as if they consisted of the material or component which gives the articles their essential character, insofar as this criterion is applicable". (Underscoring supplied)

Petitioner would imply that the "BSW" would fit as the "other" matters and substances" referred to in paragraphs (b) of Rules 2 and 3.

It is clarified under Rule 3(b) that the application of Section 203 is premised on the condition that before articles can be classified as forming part of the essential article, the other article should be a "composite" part or "component" of the essential article. This is clear from the phrase "Mixture and composite articles which consist of different materials or are made of different components." It appears that basic sediment and water are not "components" or "composites" of crude oil.

"Crude oil" has been defined in P.D. No. 87 (which promulgated the Oil Exploration and Development Act of 1972) and before this, the Petroleum Act of 1949 as "oil in its natural state before the same has been refined or otherwise treated. It does not include sand x x x water and foreign substances"; and "oil in its natural state before the same had been refined or otherwise treated, but excluding water and foreign substances", respectively.

There appears to be no conflict between the definitions given by the cited laws and the description of "crude oil" in the Tariff Classification Heading of the T&CC. The heading reads:

> "T.H. 27.09 Petroleum oils and oils obtained from bituminous minerals, crude:
>
> (a) for use as fuel oils for the generation of electric power - 10%
>
> (b) others - 20%

It is also appropriate to note that Ministry of Energy Memorandum Circular No. 82-07-36 with its implementing memorandum has delimited the measure of volume of crude oil to be:

> "2. The volume of crude oil shall be the net received volume at 60 F as determine by the duly authorized surveyors in coordination with the receiving oil company. The bottom, sediment, and water content as established by PNOC's suppliers and other allowable deductions, e.g. free water in the delivering tanker, shall be subtracted from the gross received volume to arrive at the net received volume." (Annex "B-1")

It is not amiss to add the note of petitioner that the said ministry was then responsible for the importation and allocation of crude oil for the country.

Petitioner further contends that the

Memorandum of January 26, 1971 violates Section 201 of the T&CC. Section 201 provides as follows:

> "Section 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.
>
> 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 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.
>
> From the date 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.

> 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 of the duty become payable on the article under appraisement, in the usual wholesale quantities and in the ordinary course of trade, minus -
>
> (a) Twenty (20%) per cent thereof for expenses; and
>
> (b) Duties and taxes paid thereon." (Underscoring supplied)

It has been held by the Supreme Court (**Commissioner of Customs v. Procter & Gamble Phils.**, G.R. No. 56705, Jan. 31, 1989; 169 SCRA 693), interpreting Section 201, that:

> "From the foregoing provisions of the statute (Section 201), 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 sale 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 Revenue Attache or Commercial Attache (Foreign Tade Promotion Attache) pursuant to Republic Act Numbered Fifty-Four Hundred and Sixty-Six or other diplomatic officers and from such other information that may be available to the Bureau of Customs."

Evidence is on the side of petitioner showing that it had paid for the crude oil based on the net barrels. Pricing and billing of purchases of crude based on net barrels is the practice in the ordinary course of trade. This is confirmed by no less than the acts of the local oil company, Philippine National Oil Company (PNOC) when it billed petitioner net of BSW (Annex "C" of Reply Memorandum, Invoice No. 08346). Petitioner through the attachments in its Reply Memorandum of December 22, 1989 also submitted evidence that PNOC itself is a beneficiary of the practice of valuing crude oil based on net barrels.

The foregoing evidence, however, are sought to be rendered ineffective by respondent by mere allusion to an alleged Ministry of Finance ruling of June 21, 1979 based on the information that the unit price of crude oil is per unit barrel at 42 U.S. gallons per unit barrel. We find this allegation that a unit barrel is pegged at 42 U.S. gallons of no weight in the light of petitioner's evidence clearly showing how the definition of crude oil and the measure of its volume is applied in practice by business entities involved in the oil trade.

It is recognized that the consular or commercial invoice is not conclusive upon the government and that when there is reasonable doubt reference to other sources for the value of the article may be pursued. Although the law presumes that official duty has been regularly performed, the aforesaid report of the Finance Official, is belied by evidence that petitioner had submitted. We consider that, based on the facts gathered from this case, the related commercial invoices presented have not been discredited or impeached by respondent and should be given evidentiary value in the absence of better evidence from respondent.

We find another argument by petitioner convincing - That to assess it of duties based on gross barrels would, effectively, cause it to pay duties on articles it had not purchased in the first place. Thus, we agree that as far as the Bottom Sediment and Water are concerned there is no taxable transaction. There is testimony that "BSW" is destined to be thrown away (t.s.n, April 14, 1986, pp. 21 & 22). The duty being **ad valorem,** the same cannot be made to attach to something which has no value.

**WHEREFORE,** the petition is **GRANTED.** Respondent should and is hereby ordered to refund or credit to petitioner the following amounts:

P212,959.00 under Entry No. 163/82; P759,385.00 under Entry No. 204/82; P532,732.00 under Entry No. 293/82.

SO ORDERED.

Quezon City, Metro Manila, August 9, 1991.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ALEX Z. REYES
Presiding Judge

ERNESTO D. ACOSTA
Associate Judge

C E R T I F I C A T I O N

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

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals