REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PROCTER AND GAMBLE PHILIPPINE MANUFACTURING CORPORATION,
Petitioner,

- versus - CTA CASE NO. 2323

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

The basic question in this suit for recovery of overpaid advance sales tax alleged to have been erroneously or illegally collected is whether the commercial and consular import invoice value of an imported article as attested by the consular certification may be disregarded on the strength of a mere credit invoice of the exporter/supplier, crediting the importer with the price difference of the attested import invoice value and the price appearing in the credit invoice.

Petitioner Procter & Gamble Philippine Manufacturing Corporation, an affiliated company of the Procter & Gamble Manufacturing Company, Cincinnati, Ohio, U.S.A., is a domestic corporation organized and existing under the laws of the Philippines. (Exh. "E", p. 30, CTA records.) With the Procter & Gamble Manufacturing Company of Cincinnati, Ohio, as the exporter/supplier, petitioner imported eleven (11) drums of industrial essential oil, weighing 4,100 pounds from the United States, which arrived in Manila on September 1, 1969 on board the SS "Clara Maersk" under Bill of Lading No. 38 and declared and entered under Customs Entry No. 84577-69. (Exh. "A"; Exh. "1", p. 27, CTA records.)

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The Consular Invoice of Merchandise issued by the Consulate General of the Philippines in New York, duly attested by consular certification, as well as the Combined Commercial Invoice & Packing List of the supplier/ exporter, the Procter & Gamble Manufacturing Company of Cincinnati, Ohio, shows that the imported industrial essential oil had a CIF, Manila, value of US$17,007.98, with an invoice price of US$4.006 per pound. (Exhs. "B" & "C"; Exhs. "2" & "3", pp. 28-29, CTA records.) On the basis of these shipping documents submitted by petitioner to the Bureau of Customs, the importation in question was duly examined and appraised by the Customs authorities, and petitioner made a total payment to the Bureau of Customs, prior to the withdrawal of the imported article from Customs custody, in the amount of ₱38,283.00, covered by Central Bank of the Philippines Official Receipt No. 72202 dated September 15, 1969 (Exh. "D"; Exh. "4", p. 29, CTA records), representing:

Customs duty	₱29,849.00
Advance Sales Tax . .	8,429.00
Wharfage Fee	5.00
T o t a l	₱38,283.00

By letter dated October 13, 1969, petitioner requested respondent the refund of the sum of ₱7,035.00 on the ground that, through inadvertence, there was an erroneous billing made by the supplier of the shipment in question. (Exh. "F", pp. 31-32, CTA records.)

Because the parties are not in dispute with respect to the basis, computation and amount of advance sales tax paid by, or refundable to, petitioner as the case may be, the contents of said letter are quoted in full as follows:

> This is to request for the refund of ₱7,035.00 representing overpayment of advance sales tax on subject shipment.
>
> Through inadvertence, the above shipment of eleven (11) drums industrial essential oil weighing 4,100 lbs. was erroneously priced by the supplier, the Procter & Gamble Manufacturing Company, with address at P.O. Box 599, Cincinnati, Ohio, at $4.006 per pound instead of the correct price of only about $.572 per pound. This erroneous billing has resulted in our overpayment of customs duty and advance sales tax as follows:
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> 1. Customs duty and advance sales tax actually paid by Procter & Gamble PMC under Central Bank Official Receipt No. 72202 for ₱38,283.00 dated September 15, 1969:

Customs Duty	-	₱29,849.00
Advance Sales Tax	-	8,429.00
Wharfage	-	5.00
Total		₱38,283.00

38,283.00

> 2. The proper amount that Procter & Gamble PMC should have paid based on the correct price should be:

Customs Duty	-	₱4,924.00
Advance Sales Tax	-	1,394.00
Wharfage	-	5.00
Total		₱6,324.00

> 3. There is, therefore, an overpayment of customs duty in the amount of ₱24,925.00 and ad-

vance sales tax in the amount of ₱7,035.00 computed as follows:

a)	Duty Paid	₱29,849.00
	Correct Duty	- 4,924.00
	Overpayment	₱24,925.00
b)	Advance Sales Tax Paid	₱8,429.00
	Correct Advance Sales Tax	-1,394.00
	Overpayment	₱7,035.00

We are filing a claim for refund on the overpayment of customs duty directly with the Collector of Customs.

It appears that up to the date when the present petition for review was filed on September 8, 1971, respondent Commissioner of Internal Revenue has not rendered any decision on the claim for the refund of the overpaid advance sales tax filed by petitioner. And in view of the period of limitation provided by law for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, which, under Section 306 of the National Internal Revenue Code, is two (2) years from date of payment of the tax, or September 15, 1969, petitioner considered the failure of respondent to render his decision on its claim for refund as denial thereof which would entitle it to appeal to this Court. Hence the instant appeal.

As to whether or not petitioner is entitled to the refund of the amount of ₱7,035.00, representing alleged overpayment of the advance sales tax on its importation of industrial essential oil, would depend on the question of what is the correct value of the imported article for purposes of computing and collecting the advance sales tax. If the correct price of the shipment in question is US$4.006 per pound as shown in the shipping documents submitted by petitioner to the Bureau of Customs, then there is no overpayment by petitioner of the advance sales tax on its importation and, therefore, is not entitled to the refund of ₱7,035.00. On the other hand, if the correct price of the imported industrial essential oil is US$.572 per pound as alleged by petitioner, then the advance sales tax due on the shipment would only amount to ₱1,394.00, and petitioner would be entitled to the refund of ₱7,035.00.

Under Section 183(b) of the National Internal Revenue Code, the sales tax on imported articles (or advance sales tax) shall be "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 similar charges", plus the corresponding mark-up thereof. The advance sales tax on imported articles is based on the landed cost thereof plus the corresponding mark-up. The landed cost of an imported article is 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 similar charges. (Genato Commercial Corporation vs. Court of Tax Appeals, 104 Phil. 615; Philippine American Drug vs. Collector of Internal Revenue, 106 Phil. 161; Caltex vs. Acting Commissioner of Customs, L-24619, February 22, 1968, 22 SCRA 779; Commissioner of Customs and Commissioner of Internal Revenue vs. Miguel Fortich Celdran and Court of Tax Appeals, L-23425, February 26, 1968, 22 SCRA 742.)

The law applicable seems clear and specific. It merely calls for application as thus worded, leaving no room for interpretation. It says the advance sales tax shall be "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 similar charges", plus the corresponding mark-up. In its controlling portion, the accent is on the words - "import invoice value thereof, certified to as correct by the Philippine Consul." Accordingly, the import invoice value of an imported article may not be disregarded in the absence of an affirmative showing that the same does not represent the true value. (The Coca Cola Export Corporation vs. Commissioner of Internal Revenue, L-23604, March 15, 1974, 56 SCRA 5; See also Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 2357, May 9, 1978.)

Here, in the instant case, the import invoice value or price of petitioner's importation of industrial essential oil as specified in the Consular Invoice of Merchandise issued by the Consulate General of the Philippines in New York and duly attested by consular certification (Exhs. "B" & "2") is US$17,007.98 or US$4.006 per pound. The same US$17,007.98 or US$4.-006 per pound is also the value or price indicated in the Combined Commercial Invoice and Packing List of the exporter/supplier, the Procter & Gamble Manufacturing Company, Cincinnati, Ohio, to which petitioner is affiliated. (Exhs. "C" & "3".) And on the basis of these documents which petitioner itself submitted to the Bureau of Customs to prove the correct and true value of its importation, which apparently adhered literally to the applicable provision of Section 183(b) of the National Internal Revenue Code, the advance sales tax was computed and collected.

Nonetheless, alleging that its shipment of eleven (11) drums of industrial essential oil was erroneously valued by the parent company at US$4.006 per pound instead of the price of about US$.572 per pound, petitioner would want to deny its own documents the faith and credence normally due thereto, and now requests for refund of alleged overpaid customs duty and advance sales tax. As proof thereof, petitioner presented copies of the Credit Invoices of the exporter/supplier, the Procter & Gamble Manufacturing Company of Cincinnati, Ohio, dated September 24, 1969 and February 26, 1974, crediting petitioner the amount of ₱14,202.40, the price dif-

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ference of US$4.006 and US$.572 per pound (Exhs. "E" and "K".); and a copy of a commercial invoice of a previous shipment of the same item (industrial essential oil) from Procter & Gamble Manufacturing Company of Cincinnati, Ohio, reflecting the price of US$.527 per pound. (Exhs. "J" & "J-1".)

We find no merit in petitioner's cause.

1. It is true that the import invoice value in the commercial and consular invoices as attested by consular certification may be disregarded if the same does not represent the true value (The Coca Cola Export Corporation vs. Commissioner of Internal Revenue, L-23604, March 15, 1974, 56 SCRA 5), but in the case at bar, it may be considered conclusive upon petitioner for purposes of computing and collecting the advance sales tax on its own importation since the documents adverted to were the very evidence presented by it to the Bureau of Customs to prove the true and actual value of its shipment. The applicable provision makes clear that the landed cost of an imported article is the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin, including certain charges, plus the corresponding mark-up, and to the extent that there was full and unconditional compliance with the language of the law by petitioner to prove the true and correct value of its importation, petitioner should not be allowed to assail such value as erroneous on the strength of a mere credit or commercial invoice of a previous sim-

ilar shipment, which is not certified to as correct by the Philippine Consul at the port of origin; otherwise, the requirement of the consular certification would make no sense.

2. The Supreme Court has long held consistently that the value of 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 and contrary to law. (Lim Quim vs. Collector of Customs, 23 Phil. 509.) The Supreme Court has likewise consistently held as a necessary corollary that 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 Customs Commissioner and/or respondent Revenue Commissioner (who in this case directly confirmed the Customs Collector's determination since the matter involved advance sales tax on imported articles imposed by the National Internal Revenue Code and collected by the Customs Collector as his agent) that such valuation 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. (Te Chin Boo vs. Collector of Customs, 32 Phil. 76, and cases cited.)

Since there is no affirmative showing, much less the presence of fraud or illegality, in the instant case that the appraiser, in assessing the value of the imported industrial essential oil, proceeded upon a wrong principle and contrary law, the value of the merchandise as fixed by the customs authorities and confirmed by respondent Commissioner of Internal Revenue should be conclusive upon petitioner. As a matter of fact, the records of the case show that in computing and collecting the advance sales tax on the imported article, the Bureau of Customs adhered strictly to the requirements of the law. There being fidelity to what is required by the legal provision applicable, there is no basis therefore for an assertion that the customs authorities in fixing or assessing the value of the importation in question proceeded upon a wrong principle and contrary to law.

3. Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, cited by petitioner to support its cause, is not in point. Section 201, in its textual completeness, deals with the determination of the basis of the dutiable value of an imported article subject to an ad valorem rate of duty for purposes of computing customs duties, but not to the basis of the advance sales tax on imported articles, which as discussed above, is governed by Section 183(b) of the National Internal Revenue Code. Further, the value or price declared in the consular, commercial, trade or sales invoice as the basis of the dutiable value of

an imported article subject to an ad valorem rate of duty under Section 201 of the Tariff and Customs Code was introduced only as an amendment to the law by Presidential Decree No. 34 upon its promulgation in 1972. Since the importation in question occurred in 1969, it is not therefore applicable to the instant case. Nevertheless, it can never be said that the value or price declared in the consular, commercial, trade or sales invoice, provided in Section 201 as the home consumption value, was not used as the basis in the computation and collection of the advance sales tax on the imported industrial essential oil of petitioner because, as has already been discussed above, the advance sales tax thereon was based on the import invoice value specified in the Combined Commercial Invoice and Packing List and the Consular Invoice, certified to as correct by the Philippine Consul at New York.

4. There is no valid reason for us not to apply to petitioner the well-settled rule that this suit being for the refund of tax, it partakes of the nature of an exemption, and the same cannot be allowed unless granted in the most explicit and categorical language. (Resins, Inc. vs. Auditor General, L-17888, October 29, 1968, 25 SCRA 754.) So, when exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim. (Farrington vs. Tennessee & Country of Shelby, 95 U.S. 679; See Asiatic Petroleum vs. Llanes, 46

Phil. 466.)

WHEREFORE, we find no merit in this Petition for Review and the same is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, June 30, 1978.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

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