REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COLGATE-PALMOLIVE PHILIPPINES, INC.,
Petitioner,

CTA *EB* No. 1471
(CTA Case No. 7806)

-versus-

COMMISSIONER OF CUSTOMS,
Respondent.

x---x

COMMISSIONER OF CUSTOMS,
Petitioner,

CTA EB No. 1475
(CTA Case No. 7806)

-versus-

COLGATE-PALMOLIVE PHILIPPINES, INC.,
Respondent.

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
JUN 04 2018 3:32 p.m.

x -- x

R E S O L U T I O N

BAUTISTA, J.:

For resolution are the following:

1. Commissioner of Customs' ("COC") Motion for Partial Reconsideration (Of the Decision dated 04 January 2018)[1] ("COC's MPR") filed on February 9, 2018; with Colgate-Palmolive Philippines, Inc.'s ("CPPI") Comment (Re: Motion for Reconsideration dated February 7, 2018)[2] ("Comment") filed on April 5, 2018; and

2. CPPI's Motion for Partial Reconsideration (Re: Decision dated January 4, 2018)[3] ("CPPI's MPR") filed on February 9, 2018; with the COC's Manifestation and Motion (In Lieu of Comment on CPPI's Motion for Partial Reconsideration)[4] ("Manifestation and Motion") filed on April 5, 2018.

On January 4, 2018, the Court *En Banc* promulgated a Decision[5] ("Assailed Decision"), the dispositive portion of which states:[6]

> **WHEREFORE,** premises considered, the instant Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the Decision dated January 26, 2016, and the Resolution dated May 26, 2016, both promulgated by the First Division of the Court of Tax Appeals, are hereby **AFFIRMED.**
>
> **SO ORDERED.**

The COC's MPR

The COC avers that while he agrees with the dismissal of the Petition for Review filed by CPPI, the Petition for Review he filed should have been granted, thereby directing CPPI to pay the entire assessed amount of Php204,170,803.00, representing deficiency duties and value-added tax ("VAT"), inclusive of penalties.

The COC insists that the entire amount of royalties computed based on the Memorandum of Agreement ("MOA") between CPPI and Colgate Palmolive Corporation ("CPC") is dutiable because full payment thereof is the condition underlying CPPI's enjoyment of the

---

[1] *Rollo, CTA EB No. 1471, Motion for Partial Reconsideration (Of the Decision dated 04 January 2018),* pp. 241-261.
[2] *Id., Comment (Re: Motion for Reconsideration dated February 7, 2018),* pp. 284-300.
[3] *Id., Motion for Partial Reconsideration (Re: Decision dated January 4, 2018),* pp. 262-275.
[4] *Id., Manifestation and Motion (In Lieu of Comment on CPPI's Motion for Partial Reconsideration),* pp. 279-283.
[5] *Id., Decision,* pp. 195-219.
[6] *Id., Dispositive Portion,* p. 218.

intellectual property rights granted to it by CPC. The COC avers that, consistent with the MOA, royalties were paid by CPPI to CPC regardless of whether the products sold were finished goods, or locally manufactured. Further, since the amount of royalties, and not just a portion thereof, account for both the right to import licensed products or materials from Colgate entities, and to sell the licensed products in the Philippines, the COC insists that there is no basis to divide or reduce the same for purposes of assessment of duties; and that to do so is to go against the very intent of the parties to the MOA.

The COC repeats that it is erroneous for the Court to adopt the formula proposed by the Independent Certified Public Accountant ("ICPA"). For one, the COC claims that the MOA is the law between the parties, and as such, the ICPA, a non-party to the agreement, cannot deviate from its express provisions. The COC also claims that the ICPA's decision to compute the royalty base only on imported products, excluding those supposedly manufactured locally, is in stark contradiction with the Relationship and Condition Tests found by this Court. According to the COC, the entire amount of royalties is a condition for the exercise of all intellectual property rights, which includes the right to import raw materials used in the manufacture of finished products sold and distributed locally. The COC continues that even if CPPI sold locally manufactured products, this does not automatically exempt such products from being dutiable. The same principle on dutiability should apply because, according to the COC, the payment of the entire amount of royalty is likewise a condition for the purchase of raw materials.

Moreover, based on the Relationship and Condition Tests, the COC is of the view that payment of the whole amount of royalty contemplated under the MOA is the sole consideration for CPPI's enjoyment of all intellectual property rights listed therein. Under the MOA, CPC would not allow importation of its finished products without the agreement to pay royalties, and CPPI would not also be able to import raw materials from similar entities that will eventually become part of finished products similarly sold and distributed under CPC's intellectual property rights. In any case, the COC avers that the claim of CPPI that it is locally manufacturing products is controverted by the findings of the Post-Entry Audit Group ("PEAG") audit team, who discovered that: *(1)* majority of CPPI's importation consisted of finished goods or products; and *(2)* CPPI maintained no manufacturing operations.

Thus, the COC insists that the entire amount of royalties paid by CPPI, as reflected in the letter of demand dated May 5, 2008, amounting to Php204,170,803.00 must be paid.

The COC also implores the Court *En Banc* to take a second look on the claim of CPPI that it was not given any opportunity to contest the imposition of additional penalties, thus depriving it of due process.

The COC claims that CPPI was hardly deprived of any chance to contest the recommendations of the PEAG audit team. In fact, according to the COC, CPPI itself admitted that it was granted multiple opportunities to explain its side, which it even used as an argument to support its contention that it exhausted all administrative remedies available before the COC. The COC avers that CPPI cannot maintain on one hand that it was provided several administrative remedies which it was able to exhaust, and later on exclaim deprivation of administrative due process simply because no complaint was filed before it at the Legal Service of the Bureau of Customs. In any case, the COC asserts that he observed in full the tenets of administrative due process by granting CPPI more than enough opportunities to be heard on its legal arguments against the assessed deficiency taxes and penalties.

In its Comment, CPPI counter-argues that while it is true that the MOA clearly spells out how the amount of royalty to be paid by CPPI is computed, the computation of dutiable royalty is not discussed therein. CPPI avers that royalties do not automatically form part of the dutiable value of the goods, and that only the royalty payments related to the actual goods imported from CPC should be considered. Since the royalties paid to CPC were computed based on the net sales of both imported and locally produced goods, following *Section 201*[7] *of Republic Act No. 9135*[8] *("TCCP")* which provides that

---

[7] SEC. 201. *Basis of Dutiable Value.* – (A) *Method One. – Transaction Value.* – The dutiable value of an imported article subject to an *ad valorem* rate of duty shall be the transaction value, which shall be the price actually paid or payable for the goods when sold for export to the Philippines, adjusted by adding:

(1) The following to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods:

xxx xxx xxx

(e) The amount of royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods to the buyer;

xxx xxx xxx

the dutiable value of the imported products shall be adjusted by the amount of royalties paid "related to the goods being valued," CPPI asserts that a computation on the amount of royalty attributable to imported goods is but proper. Accordingly, CPPI submits that the Court *En Banc* did not err in relying on the ICPA Report, particularly on the computation of dutiable royalties.

Anent the issue on the imposition of administrative penalty against CPPI as a violation of due process, CPPI asserts that the COC's arguments are mere rehash of the arguments he previously raised, which have been addressed by the Court in Division.

In sum, CPPI avers that the COC's MPR should be denied for lack of merit.

CPPI's MPR

In its MPR, CPPI insists that it is not liable for deficiency duties and VAT on royalties. According to CPPI, contrary to the finding of the Court *En Banc*, no royalty was involved in the production or sale of the imported merchandise; the royalties were paid in consideration of the right to use the patent, trademarks, and other intellectual property of CPC in the Philippines; and thus, not inextricably intertwined with the importations.

Anent the letter dated May 17, 2007 which was not considered by the Court *En Banc* for being self-serving, CPPI avers that the same should be given weight for being an admission against interest made by CPC. To declare that the payment of royalty is not a condition for the sale of any goods to CPPI, and that CPPI may import any of CPC's licensed products at any time and without condition is, according to CPPI, against CPC's entitlement to refuse sales to CPPI when royalties have not been paid - an admission against interest by CPC, being in privity with or identified in legal interest with CPPI. Accordingly, CPPI submits that the royalties should not have been added to the transaction value of the imported goods for not forming part of a "single transaction" with the importation.

---

[8] An Act Amending Certain Provisions of Presidential Decree No. 1464, Otherwise Known as The Tariff And Customs Code Of The Philippines, as amended, and For Other Purposes, April 27, 2001.

Anent the finding of deficiency VAT on arrastre and wharfage fees, CPPI reiterates that arrastre and wharfage fees are not "other charges;" and that to hold it liable to VAT would amount to double taxation since CPPI would have to pay VAT on arrastre and wharfage fees to the COC, on top of its payment of wharfage fees to the Philippine Ports Authority, and arrastre fees to International Container Terminal Services, Inc. As regards the imposition of twenty percent (20%) delinquency interest on the alleged deficiency VAT, CPPI asserts that the same is inconsistent with *Section 249(C)(3)*[9] *of the 1997 National Internal Revenue Code*[10], *as amended,* because the notice and demand to pay VAT was made by the COC, and not by the Commissioner of Internal Revenue, as required under said *Section 249(C)(3).*

On April 6, 2018, the COC filed his Manifestation and Motion, adopting his Comment dated October 11, 2016 and Memorandum dated January 4, 2017.

On April 24, 2018, the Court *En Banc* issued a Resolution submitting the case for resolution.[11]

The Court *En Banc* will now resolve.

A careful evaluation of the arguments raised by the COC and CPPI in their MPR reveals that they failed to raise any new or substantial matter or any compelling reason that will justify modifications, much less reversal of the Court *En Banc*'s findings. These arguments are mere rehash of the matters which have already been thoroughly discussed and passed upon by the Court *En Banc* in the Assailed Decision. Consequently, the Court *En Banc* finds the parties' MPR devoid of merit.

The COC insists that the entire amount of royalties paid by CPPI to CPC should have been the basis in computing deficiency

---

[9] SEC. 249. *Interest.* -

xxx xxx xxx

(C) *Delinquency Interest.* - In case of failure to pay:

xxx xxx xxx

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

[10] *Republic Act No. 8424,* January 1, 1998.

[11] *Rollo, CTA EB No. 1471, Resolution,* pp. 302-303.

customs duties and taxes, because the said entire amount represents the consideration for CPPI's importation of licensed products, whether finished goods or raw materials. To rule otherwise would be, according to the COC, going beyond the clear intent of the parties in the MOA.

The Court *En Banc* is not convinced.

Royalties are dutiable only when they relate to the goods being valued. This is clear in *Section 201 of the TCCP,* and in *Customs Administrative Order ("CAO") No. 4-2004,*[12] amending *CAO No. 5-2001,*[13] implementing the said *Section 201,* which provide as follows:

> SEC. 201. *Basis of Dutiable Value.* – (A) *Method One. – Transaction Value.* – The dutiable value of an imported article subject to an *ad valorem* rate of duty shall be the transaction value, which shall be the price actually paid or payable for the goods when sold for export to the Philippines, adjusted by adding:
>
> (1) The following to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods:
>
> xxx xxx xxx
>
> (e) <u>The amount of royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods to the buyer;</u>
>
> SEC. II. DUTIABLE VALUE
>
> xxx xxx xxx
>
> B. Method 1 – The Transaction Value
>
> 1. The dutiable value of an imported article shall be the Transaction Value which is the price actually paid or

[12] Amendment to Customs Administrative Order 5-2001 (Implementing Republic Act 9135: An Act Amending Certain Provisions of Presidential Decree No. 1464, Otherwise Known as the Tariff and Customs Code of the Philippines, As Amended (Customs Code), And for Other Purposes), November 8, 2004.

[13] Implementing Republic Act 9135: An Act Amending Certain Provisions of Presidential Decree No. 1464, Otherwise Known as the Tariff and Customs Code of the Philippines, As Amended (Customs Code), And for Other Purposes, November 16, 2001.

> payable for the goods when sold for import to the Philippines adjusted in accordance with the provisions of Section II.B.3 of this Order, and subject to the conditions specified in Section II.B.2 herein.
>
> xxx xxx xxx
>
> 3. <u>In determining the Transaction Value, the following adjustments shall be added to the price actually paid or payable for the imported goods being valued if such value has not been included in the price actually paid or payable</u>:
>
> xxx xxx xxx
>
> e. <u>Royalties and license fees related to the goods being valued;</u>
>
> xxx xxx xxx[14]

In the instant case, the amount of royalties paid by CPPI to CPC is computed based on CPPI's net sales of licensed products consisting of imported finished goods and locally manufactured products.[15] Meanwhile, the raw materials used for the production of locally manufactured products were sourced from both Colgate and non-Colgate entities.[16] Clearly, the Php1,249,810,687.75 royalty paid by CPPI is not representative of the amount of royalty related to the goods imported. Accordingly, only the equivalent amount of sales of importations from CPC shall be the dutiable royalty.

Anent the imposition of penalties, the COC implores this Court to take a second look and rule in his favor. Again, the Court *En Banc* is not persuaded.

As correctly found by the Court in Division, the COC failed to show that the prescribed administrative procedures were duly followed. Herein quoted is the pronouncement of the Court in Division, to which the Court *En Banc* agrees with:

---

[14] Underscoring ours.

[15] *Records, Box 10, Folder 32, Exhibit "P-4-1a," Audited Financial Statements ("AFS") for the Years 2003 to 2006,* p. 16; *Records, Box 10, Folder 32, Exhibit "P-4-1b," AFS for the Years 2003 to 2006,* p. 13; *Records, Box 10, Folder 32, Exhibit "P-4-2a," AFS for the Years 2003 to 2006,* p. 24; *Records, Box 10, Folder 32, Exhibit "P-4-2b," AFS for the Years 2003 to 2006,* p. 24.

[16] *Records, Vol. 2, Exhibit "V," Judicial Affidavit of Mr. Luis N. Tura,* pp. 1530-1531; *Records, Exhibit "P-1," ICPA Report,* p. 7.

Imposition of penalty in an amount not more than twice of the revenue loss is authorized when the importer's failure to pay correct duties and taxes on imported goods is attended with negligence. In this regard, *Section 3611 of the TCCP*, as amended, provides:

xxx xxx xxx

The manner and procedure by which the aforesaid penalty may be imposed is governed by *Section V of Customs Memorandum Order (CMO) No. 2-2002 vis-a-vis Customs Memorandum Order No. 1-2002.*

CMO No. 1-2002 provides:

> "I. Objectives
>
> xxx xxx xxx
>
> 2. To afford importers/customs brokers the opportunity to be heard and to present evidence to rebut the foregoing administrative charges and/or the imposition of such administrative fines and penalties.
>
> II. Administrative Provisions
>
> 1. This Order shall cover administrative complaints (a) against importers and customs brokers for failure to keep certain records and documents as required and as defined in the law and the existing implementing rules and regulations, or for refusal to grant free and full access to such records and documents for official audit purposes; and (b) against importers for failure to pay the correct duties and taxes with negligence or fraud, as uncovered during the official audit. Complaints shall be filed under oath before a notary public or any customs officer authorized by law to administer oaths.
>
> xxx xxx xxx
>
> 3. The administrative complaint shall be heard at the Legal Service with due notice to the complainant office and the concerned respondents. The complainant office shall be represented by a prosecutor or team of prosecutors as shall be specifically designated by the Commissioner of

> Customs. The administrative case shall be heard by the Director of Legal Service.
>
> III. Operational Provisions
>
> xxx xxx xxx
>
> 3. Upon receipt of the complaint, the Legal Service shall immediately send a copy of the complaint, including attachments pertinent to the complaint, to the importer and/or customs broker, as the case may be, who shall be given a period of fifteen (15) days from receipt of the complaint, to answer said complaint. Upon receipt of the answer, the complainant office shall be given a period of five (5) days to make an optional reply copy-furnished the respondents, after which the case shall be scheduled for hearing with notice to all concerned parties.
>
> xxx xxx xxx
>
> 5. In lieu of formal hearing, the parties may opt for the submission of memoranda with optional time to file rebuttal and sur-rebuttal, after which the case shall be deemed submitted for resolution."

The afore-quoted provisions of the Customs Memorandum Order prescribe the roadmap in the administrative imposition of fines and penalties, which gives the importers and customs brokers their day in court.

As there is no showing that the above-outlined administrative procedures were duly followed and considering petitioner's vehement contention that it did not receive a complaint on the supposed determination of imposable penalties on its failure to pay the correct customs duties from the Legal Service of the BOC, the Court cannot impose said penalty for petitioner's right to due process will be violated. Truth to tell, even in the administrative proceedings, due process may not be ignored because it is not merely a statutory right but a constitutional right. Indeed, our Constitution provides that "no person shall be deprived of life, liberty, or property without due process of law", which clause epitomizes the principle of justice which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial.[17]

---

[17] Underscoring supplied.

It must be emphasized that among the ends to which a motion for reconsideration is addressed, one is precisely to convince the Court that its ruling is erroneous and improper, contrary to laws and evidence.[18] Having failed to do so, the parties' MPR must necessarily fail.

WHEREFORE, premises considered, Commissioner of Customs' Motion for Partial Reconsideration (Of the Decision dated 04 January 2018), and Colgate-Palmolive Philippines, Inc.'s Motion for Partial Reconsideration (Re: Decision dated January 4, 2018), both filed on February 9, 2018, are hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated January 4, 2018 is hereby **AFFIRMED** and **UPHELD.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

[18] *Coquilla v. Commission on Elections,* G.R. No. 151914, July 31, 2002, 434 Phil. 861.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice