Rt.

NORBERTO J. QUISUMBING,
Petitioner,

- versus - C.T.A. CASE NO. 2861

THE COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - x

NORBERTO J. QUISUMBING,
Petitioner,

- versus - C.T.A. CASE NO. 2633

THE COMMISSIONER OF CUSTOMS,
Respondent. 10/20/82
x - - - - - - - - - - - - - - x

D E C I S I O N

These are two (2) cases jointly heard by this Court. The first case (CTA Case No. 2861) involves an appeal by petitioner from the decision of the Commissioner of Customs dated January 31, 1977 upholding that of the Collector of Customs holding petitioner liable for the payment of ₱504.00 customs duties, internal revenue compensating tax of ₱815.00 inclusive of ₱132.00 surcharge, or a total of ₱1,451.00, which was paid under O.R. No. 0936652. Petitioner had sought for the judicial refund of the total amount of ₱1,451.00.

The second case (CTA Case No. 2633) involves an appeal by the same petitioner from the same respondent Commissioner of Customs' decision dated September 4, 1974, upholding the decision of the Collector of Customs which held petitioner liable for ₱845.00 as additional customs duties which petitioner had paid and which he sought to be refunded by respondent.

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The said amount of ₱1,451.00 as itemized above, is an additional payment of taxes and duties on the importation of two (2) complete self-propelled workshop froggy type, which is ostensibly an underwater clearing equipment. In assessing this additional taxes and duties, which actually was imposed on the importation of 20 pieces of steel wire, which, went with the importation of the said two (2) underwater clearing equipment, with a unit price of $11.93 for each piece of steel wire. On the basis of said unit price of $11.93, the supplier charged petitioner only $226.60 for the 20 pieces of steel wire, instead of $238.60, which petitioner should have been charged had the unit price been correctly multiplied with the number of units imported. Consequently, petitioner's cost of this whole importation of 20 pieces of steel wire was at $226.60, the price which the supplier Phoceenne Sons Marine S.A. of France had actually charged petitioner. Contrarily, respondent based the additional assessment of customs duties and taxes at $238.60, the price which should have been charged against and paid by petitioner had the cost per unit ($11.93) been multiplied correctly by the number of pieces of steel wire imported, which was 20 pieces.

The contention of petitioner that the basis of the computation of the assessment should be the actual rate of exchange used by the supplier which which is in the sum of $226.60 and which was charged against petitioner should be adapted on the ground that it is the home consumption value or the price declared on the sales invoice is not meritorious. Even considering that an error has been committed in the computation of the actual purchase price and which became the basis of the cost of the imported articles, the Government should not be made to suffer, in terms of reduced payment of taxes, duties, or revenues arising from an error committed in the costing of articles imported into the Philippines and not brought to the attention of the supplier by petitioner in the course of sale. The fact that the supplier did not collect the correct purchase price or correct cost of the importation based on the actual price per unit is of no avail. The denial of the claim of petitioner for the refund of the total amount of P1,451.00 is therefore correct.

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The amount of P845.00 represents additional duties and internal revenue compensating tax paid and collected from petitioner on the importation of replacement parts with hidden defects which was later found after importation, which parts with defects were replaced by the supplier at no extra cost to petitioner in accordance with guarantees on the sale of two (2) underwater clearing equipments, as heretofore stated in CTA Case No. 2861, from Phoceene Sons Marine SA of France.

The question at issue in this latter case is whether or not petitioner is liable for the additional payment of the customs duties and internal revenue tax of P845.00 imposed by respondent Commissioner of Customs on the imported replacement parts to be fitted to, and are replacement of the parts of, the aforesaid two (2) major imported equipment due to hidden faults or defects, and which were replaced in consonance with the guarantees of the supplier under the contract of sale.

It is the opinion and belief of this Court that any and all articles imported from a foreign country, whether it is an original importation of the main equipment or replacement of its parts thereof and even due to hidden faults or defects, unless clearly exempt from customs duties or taxes by indubitable and specific provision of law, shall be subject to customs duties and other taxes. Such is the clear intention of Section 101 of the Tariff and Customs Code of the Philippines which provides thus:

> "Sec. 101. Imported Articles Subject to Duty. -All articles when imported from any foreign country into the Philippines shall be subject to duty upon each importation, even though previously exported from the Philippines, except as otherwise specifically provided for in this code or in clear laws."

That the parts which were replaced may have already been subject to customs duties and taxes is of no moment. The parts later imported as replacements are articles of distinct and independent importation into the country and, hence, undoubtedly should be subject to our Customs laws and other Government impositions and restrictions. The fact that the hidden defects of the parts of the original imported equipments which were replaced is not the fault of petitioner is not a valid defense for non-liability for taxes and duties. In order that importers, like petitioner in this case (CTA Case No. 2633) may not unduly suffer for the payment of additional customs duties and taxes imposed on replacement parts due to some hidden defects of the original parts, there should be provided in the contract of sale, in addition to the provision for replacement of parts if found to be with hidden defect and replaced with no cost to the importer - taxpayer, an additional provision should be incorporated in the contract that when hidden defects are found, the supplier or seller of the articles should be made to bear the additional customs duties and taxes due on the entry of the imported replacement parts in the Philippines. Otherwise, if such provision in the contract is not incorporated, the taxes and duties due thereon must necessarily have to be shouldered by the importer badly needing the replacement parts of the equipments for its use. Consequently, the denial by respondent of petitioner's claim for the refund of the additional customs duties and compensating tax of ₱845.00 paid on the replacement parts is in order.

WHEREFORE, the decisions of the Commissioner of Customs appealed from dated January 31, 1977 (CTA Case No. 2861) and September 4, 1974 (CTA Case No. 2633) are hereby affirmed *in toto*.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, October 20, 1982.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge