REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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E.V. DIAZ BROKERAGE INC.,
Petitioner,

C.T.A. CASE NO. 6602

Members:

- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

THE HONORABLE COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:

JUN 19 2007, 1:30 PM

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DECISION

CASANOVA, C., J.:

This is a Petition for Review, filed under Section 7(3) of Republic Act No. 1125, as amended, in relation to Sections 2402 and 2315 of the Tariff and Customs Code, of the Decision of respondent dated September 24, 2002, in Port of Manila designated as Resolution No. 01-2002.

Petitioner E.V. Diaz Brokerage, Inc. is a corporation duly established and registered under Philippine laws with business address at No. 6 MIA Road, Tambo, Paranaque City. It is represented herein by Rosalito T. Mendoza, Assistant General Manager, through a special meeting of the Board of Directors.

Respondent is the Commissioner of Customs with postal address at the Bureau of Customs (BOC) Manila, where summons and other court processes may be served.

The antecedent facts, as culled from the records, are as follows:

On October 27, 2001, a set of equipment originating from India and consigned to the Mabuhay Poultry & Livestock Producers' Cooperative (MPLPC) arrived at the Manila International Container Port (MICP) under Entry No. 116010-01. The equipment was initially described as poultry keeping, packed in 36 cases, placed in a 1 x 20' container, and shipped through vessel "S/S OOCL AUTHORITY V.71". The importation was covered by the following documents: (a) Bill of Lading (B/L) No. FINP/MNL/4593/9426 USL dated October 12, 2001;[1] (b) Val Products India Private Company Invoice No. EXP-043 dated September 28, 2001;[2] and (c) Packing List to Invoice No. EXP-043.[3] As contained in the Packing List[4], the equipment is comprised of the following parts:

Net Weight	Gross Weight	Part No.	Description of Goods	Quantity	Box No.	Size in cm L x W x H
2160	2280	VA501OGS	50" Ventilation Fan Assembled complete unit w/ 1.0 HP, 220 Volts 60 Cycle, 3-Phase, Auto Belt Tensioner, Auto Shutter, Stainless Steel, GI Housing	30	7-36	140 x 140 x 42
48	77	GEVE017001	Thermotrac 7000-8 Stage Electromechanical Control for Back Up	8	1-2	91 x 85 x 52
		GEVE017901	Thermotrac Timer Kit for Back Up	8	1-2	50 x 52 x 52
14	16	VA15	Val Air Thermostat	35	4	77 x 51 x 19
75	77		50" Fan Motor (3-PH, 1.0 H.P., 220 V, 60 Cycle) (M/c No. 0501 H-336384, 0501H-336357, 0501H-336348	3	3	63 x 60 x 30

[1] Customs Records, pages 2 & 7
[2] Customs Records, page 15
[3] Customs Records, page 10
[4] *Ibid.*

7	8	VB 401 P	Pipe w/ 15-Universal Saddle	10	6	315 x 15 x 17
13	15	VAC 912	Curtain End Pocket (3' x 9')	16	5	60 x 61 x 30

Upon arrival of the equipment, Collector Ricardo R. Belmonte, Deputy Collector on Assessment, MICP, classified the same under Harmonized Commodity Description and Coding System or simply, Harmonized System[5], (H.S.) Code 8414.59.00 at 5% *ad valorem* duty.

On November 8, 2001, petitioner, the customs broker of MPLPC, wrote the District Collector of Customs, MICP, expressing his disagreement with the classification under H.S. Code 8414.59-00-5%.[6]

On November 15, 2001, petitioner again wrote the District Collector of Customs, MICP, asking for reconsideration of the classification of the October 27, 2001 shipment.[7]

In a meeting held on January 3, 2002, the Valuation and Classification Review Committee (VCRC) of the MICP issued its 1st Indorsement dated January 8, 2002 containing its findings/resolution where it classified the equipment under H.S. Code 8414.59-00 at 5% *ad valorem* duty.[8]

On January 23, 2002, petitioner submitted a notice of appeal to the Chairman of the VCRC which was addressed to the respondent Commissioner of Customs.[9]

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[5] The Harmonized Commodity Description and Coding System is an international product nomenclature based on the Customs Cooperation Council Nomenclature (CCCN) and the Standard International Trade Classification (SITC) Revision 2. The CCCN was the product nomenclature authored by the then Customs Cooperation Council (CCC) now known as the World Customs Organization (WCO), while SITC Revision 2, drafted by the United Nation (UN), is used in trade statistics.

The H.S. was implemented in October 1988 in accordance with the NEDA Board Resolution dated November 25, 1987 and Executive Order No. 688, dated May 9, 1981 mandating the Tariff Commission to align the Philippine Tariff and Customs Code with all future amendments to the CCN. *(Tariff Commission, A Primer on New Developments in Trade and Tariff Policy, August 2003 Ed.)*

[6] Exhibit "E"
[7] Exhibit "F"
[8] Exhibit "I"
[9] Exhibit "J"

On September 24, 2002, the Valuation and Classification Appeals Board of the Bureau of Customs issued Resolution No. 01-2002, approved by respondent, dismissing, without prejudice to the remedy available, the appeals of various importers, including petitioner's, which assailed the findings of the VCRC of the MICP.[10] However, petitioner admitted that it was not formally served this resolution. Instead, petitioner allegedly came across Resolution No. 01-2002 at the Cash Division, Port of MICP on January 24, 2003.[11]

In a letter dated January 14, 2003 from the District Collector of Customs addressed to MPLPC, the former demanded from the latter the payment of additional duties and taxes in the amount of P32,967.00 within ten (10) days from receipt thereof.[12]

Hence, petitioner filed this Petition for Review on February 11, 2003.

On March 28, 2003, respondent filed a Motion to Dismiss which the Court denied in a resolution dated September 2, 2003.[13]

Then, on September 24, 2003, respondent filed his Answer wherein he alleged the following pertinent Affirmative and Special Defenses:

"x x x

> 18. Within fifteen (15) days from receipt of said resolution, petitioner as customs broker of the Mabuhay Poultry & Livestock Producers' Cooperative filed a notice of appeal addressed to the Commissioner of Customs through the Chairman of the Valuation and Classification Review Committee, MICP.
>
> 19. However, paragraph 12 of Customs Memorandum Order No. 3-02 reads:
>
>> "12. An appeal to the Commissioner of Customs shall only be perfected upon: a) filing of notice of appeal; b) payment of appeal docket fee in accordance with the prescribed rates; and c) Memorandum of Appeal at the option of the appellant within fifteen (15) days from receipt of the notice of decision."

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[10] Exhibit "D"
[11] Par. 4 of the Petition for Review, *Rollo*, page 2
[12] *Rollo*, page 30
[13] *Rollo*, pages 45-58, 73-77

20. Likewise, paragraph [IV](B) of Customs Memorandum No. 37-2001 provides that an appellant is required to execute an affidavit of undertaking to undergo voluntary post entry audit, before an appeal can be given due course.

21. In the case at bar, petitioner failed to pay the required appeal docket fee. Likewise, it did not submit an affidavit of undertaking to undergo voluntary post entry audit.

22. Hence, it is decisively clear that petitioner was not able to perfect its appeal. And even if it was able to do so, the same could not be given due course for petitioner's failure to submit an affidavit of undertaking.

23. The perfection of an appeal in the manner and within the period prescribed by law is not only mandatory, but jurisdictional, and the failure to perfect the appeal effectively renders the judgment final and executory (**Apex Mining, Inc. vs. Court of Appeals**, 319 SCRA 456 [1999]; **Demata vs. Court of Appeals**, 303 SCRA 690 [1999]).

24. Thus, the findings/resolution of the Valuation and Classification Review Committee of the MICP, dated January 3, 2002, classifying the subject imported articles under Heading 8414.59.00 at 5% *ad valorem*, is now effectively final and executory.

25. The January 3, 2003 Resolution of the Valuation and Classification Review Committee is clear. There is basis to classify the subject imported articles under Heading 8414.59.00.

26. In fine, the dismissal of the petition for review is warranted, in view of the foregoing grounds."

On October 22, 2004, the case went into Pre-Trial and both parties submitted their Joint Stipulation of Facts and Issues on November 18, 2004.

During trial, petitioner presented Mr. Rosalito T. Mendoza, its Assistant General Manager, as its sole witness. Respondent, on the other hand, dispensed with the presentation of his evidence as there was no factual issue involved.[14]

On January 8, 2007, the case was submitted for decision taking into consideration the memorandum filed by petitioner on December 21, 2006, *sans* any memorandum from respondent.

[14] TSN dated February 4, 2006, page 4

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Under their Joint Stipulation of Facts and Issues, the parties submitted the following issues to be resolved by this Court:

1. Whether or not the subject findings/resolution of the VCRC of the MICP classifying the subject imported articles under H.S. Code 8414.59.00 at 5% *ad valorem* tax, has basis and is therefore valid.

2. Whether or not the subject findings/resolution of the VCRC of the MICP classifying the subject imported articles under H.S. Code 8414.59.00 at 5% *ad valorem* tax, is now final and executory.

3. Whether or not Executive Order no. 133 is applicable to the instant case.

For ease of discussion, the Court shall initially determine whether the findings/resolution of the respondent had become final and executory.

Petitioner contends that the findings/resolution of the VCRC has not become final and executory because it was able to perfect an appeal in compliance with paragraph 25, Section VI of Customs Memorandum Order (CMO) No. 10-2000 which provides:

> "If the importer disputes the decision of the VCRC, the importer may appeal said decision to the Commissioner of Customs by submitting a Notice of Appeal to the VCRC Chairman within 15 days from receipt of the VCRC decision. The Notice of Appeal must contain, among others, an assignment of errors of the VCRC decision."

Respondent, on the other hand, claims that petitioner failed to perfect an appeal for failure to comply with the requirements of paragraph 12 of CMO No. 3-2002 and paragraph IV (B) of CMO No. 37-2001. Paragraph 12 of CMO No. 3-2002 provides:

> "An appeal to the Commissioner of Customs shall only be perfected upon: a) filing of notice of appeal; b) payment of appeal docket fee in accordance with the prescribed rates; and c) Memorandum of Appeal at the option of the appellant within fifteen (15) days from receipt of the notice of decision."

Meanwhile, paragraph IV (B) of CMO No. 37-2001 provides that an appellant is required to execute an Affidavit of Undertaking to undergo voluntary post entry audit before an appeal can be given due course.

Respondent now argues that for petitioner's failure to perfect an appeal, the findings/resolution of the VCRC had become final and executory; thus, it can no longer be reviewed by this Court.

We find for the petitioner.

According to petitioner, it was misled by the findings/resolution where the VCRC quoted a revoked/repealed CMO, which reads as follows:

> "VCRC decision however, is appealable to the Commissioner of Customs by submitting a notice of appeal to the VCRC Chairman within 15 days from receipt thereof pursuant to CMO 10-2000 dated August 31, 2000."

A reading of paragraph 25, Section VI of CMO No. 10-2000 shows that there is no requirement of submission of an Affidavit of Undertaking, undergoing a voluntary post entry audit and payment of appeal docket fee. This leads the Court to conclude that the alleged failure of petitioner to comply with the procedural requirements was caused by respondent's misleading directives. Thus, the findings/resolution by the VCRC had not become final and executory.

Considering that the first and third issues are intertwined, the Court shall jointly discuss the merits thereof.

In December 22, 1997, Republic Act (R.A.) No. 8435, otherwise known as the "Agriculture and Fisheries Modernization Act of 1997" (the "Act') was enacted into law. As defined in the Act, agriculture and fisheries modernization is "the process of transforming the agriculture and fisheries sector into one that is dynamic, technologically advanced and competitive yet centered on human development, guided by the sound practices of sustainability and the principles of social justice."[15] One of its objectives is to modernize the agriculture and fisheries sectors by transforming these sectors from resource-based to technology-based industry.[16]

[15] Section 4, Agriculture and Fisheries Modernization Act of 1997
[16] Section 3 (a), *supra*

In order to achieve the goals of this Act, the following trade and fiscal incentives were provided as follows:

> "**Section 108.** Taxation policies must not deter the growth of value-adding activities in the rural areas.
>
> **Section 109.** All enterprises engaged in agriculture and fisheries as duly certified by the Department in consultation with the Department of Finance and the Board of Investment, shall, for five (5) years after the effectivity of this Act, be exempted from the payment of tariff and duties for the importation of all types of agriculture and fisheries inputs, equipment and machinery such as, but not limited to, fertilizer, insecticide, pesticide, tractor, trailers, trucks, farm implements and machinery, harvesters, threshers, hybrid seeds, genetic materials, sprayers, packaging machinery and materials, bulk-handling facilities such as conveyors and mini loaders, weighing scales, harvesting equipment, spare parts of all agricultural equipment, fishing equipment and parts thereof, refrigeration equipment, and renewable energy systems such as solar panels: *Provided, however,* That the imported agricultural and fishery inputs, equipment and machinery shall be for the exclusive use of the importing enterprise.
>
> The Department, in consultation with the Department of Finance and the Board of Investment, shall, within ninety (90) days from the effectivity of this Act, formulate the implementing rules and regulations governing the importation of agriculture and fishery inputs, equipment and machinery."

Thus, Executive Order (E.O.) No. 133 dated July 31, 1999 was issued to implement these incentives by modifying the rates of import duty on certain imported articles under Section 104 of the Tariff and Customs Code of 1978 (Presidential Decree No. 1464) as amended. ANNEX "B" thereof lists agriculture and fishery inputs, machinery and equipment eligible for duty-free importation. Some of these equipment are as follows:

HDG NO.	HS CODE	PRODUCT DESCRIPTION
84.36	8436.10 00	Machinery for preparing animal feeding stuffs
	8436.21 00	Poultry incubators and brooders
	8436.29 00	Other poultry-keeping machinery
	8436.80 10	Automated horticultural climate control plant and equipment
	8436.80 90	Other agricultural, horticultural, forestry, bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment
	8436.91 00	Parts of poultry-keeping machinery or poultry incubators and brooders
	8436.99.00	Other parts of heading No. 84.36

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In the case at bar, petitioner sought the classification of its imported equipment under H.S. Code 8436.29.00 as *other poultry-keeping machinery*.

Meanwhile, respondent maintains that the subject equipment should be classified under H.S. Code 8414.59.00 as *fans other than table, floor, wall, windows, ceilings or roof fans with self contained electric motor of an output not exceeding 125W* for which a 5% *ad valorem* duty under the Section 104 of the Tariff and Customs Code is imposed.

The question now is whether or not the respondent erred in classifying the subject equipment as *other poultry-keeping machinery*.

We rule in the negative.

According to Section 3 (m), Rule 131 of the Rules of Court[17], the presumption that official duty has been regularly performed is among the disputable presumptions. Thus, a classification of imported articles by the collector is presumed correct and the articles are of such character as to bring them within the classification made, unless rebutted or overcame by evidence or by an admission or concession of incorrectness. Where it is rebutted by a *prima facie* case to the contrary, it is no longer in the case and has no evidentiary force permitting it to be weighed against the challenging evidence.[18]

Likewise, the Supreme Court had occasion to rule in *The Coca-Cola Export Corporation vs. the Commissioner of Internal Revenue*[19] that:

> "The 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 on imported articles and confirmed by the customs commissioner

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[17] **Section 3.** *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence;

xxx xxx xxx

(m) That official duty has been regularly performed;

[18] Nague, Ferdinand Asejo, Handbook on the Tariff and Customs Code of the Philippines, as Amended, and the Customs Brokers Act of 2004 (R.A. 9280) and the Implementing Rules and Regulations, 2005 ed., pp. 101-102, citing 25 C.J.S., "Customs Duties," § 75

[19] *G.R. No. L-23604, March 15, 1974, 56 SCRA 5*

> and/or respondent revenue commissioner . . . 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.
>
> The burden thus rests upon the importer disputing 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. As restated by the Court in a 1960 case, 'the determination of the tax deficiency by the Government has *prima facie* validity and the burden rests upon the taxpayer to overcome this presumption and to show to the satisfaction of the Tax Court that the determination was not correct." [Citations omitted]

By analogy, the foregoing jurisprudence on presumption of correctness of valuation by the Commissioner of Customs also applies to classification by the latter. In order to overcome the presumption, the importer must also prove that there was fraud or illegality in the classification of the imported equipment.

In the instant case, petitioner presented as its sole evidence a Certification issued by the Department of Agriculture stating that the imported equipment are included under the H.S. Code 8436.29.00 as *other poultry-keeping machinery.*[20] The Court, however, finds such Certification insufficient to rebut or overcome the presumption of correctness because:

First, a Certificate of Eligibility (CE) is not required to be issued for equipment listed in ANNEX "B" of E.O. No. 133 where the subject equipment belongs. To be entitled to duty-free importation, only the equipment listed under ANNEX "C" are required to have a CE issued. Section 1 Rule IV of E.O. No. 133 is in point:

> "**Section 1.** Agriculture and fisheries enterprises availing of tariff-exempt importation shall apply for a Certificate of Eligibility (CE) from the DA [Department of Agriculture] or its deputized agencies. The CE entitles an enterprise for duty-free importation of agriculture and fisheries inputs, machinery, equipment listed in ANNEX 'C'."

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[20] Exhibit "O"

The foregoing is made more obvious upon perusal of ANNEX "B" which explicitly states that no CEs are required for equipment listed therein as follows:

"ANNEX 'B'

List of Agricultural and Fishery Inputs, Machinery and Equipment Eligible for Duty-Free Importation for Five (5) Years

(Certificates of Eligibility and Accreditation are not required)"

Therefore, the Certification does not have the effect of entitling the MPLPC to any duty-free importation of the subject equipment.

Second, the duty of classifying imported articles belongs to the Bureau of Customs, not with the Department of Agriculture. Section 1403 of the Tariff and Customs Code pertinently provides:

> "**Section 1403.** *Duties of Customs Officer Tasked to Examine, Classify and Appraise Imported Articles.* – The customs officer tasked to examine, classify, and appraise imported articles shall determine whether the packages designated for examination and their contents are in accordance with the declaration in the entry, invoice and other pertinent documents and shall make a return in such a manner to indicate whether the articles have been truly and correctly declared in the entry as regard their quantity, measurement, weight, and tariff classification and not imported contrary to law. He shall submit sample to the laboratory for analysis when feasible to do so and when such analysis is necessary for the proper classification, appraisal, and/or admission into the Philippines of imported articles.
>
> x x x"

Other than the Certification issued by the Department of Agriculture, petitioner presented no other evidence, documentary or testimonial, which will prove that the subject equipment should be classified under H.S. Code 8436.29.00 as *other poultry-keeping machinery.* Moreover, petitioner failed to prove that the classification was tainted with fraud or illegality. Thus, the classification made by the respondent must be correct. For petitioner's failure to successfully discharge its burden to overcome this presumption, respondent's classification is upheld; E.O. No. 133 does not apply to the instant case.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of P32,967.00 as additional duties and taxes for the importation of the subject equipment.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division