File.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PROCTER & GAMBLE PHILIPPINE
MANUFACTURING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2357

COMMISSIONER OF INTERNAL
REVENUE,

5/9/78

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DECISION

In this suit for the refund of advance sales tax alleged to have been erroneously or illegally collected, the substantial question posed by the case, as we see it, is whether the commercial and consular import invoice value of the imported article, certified to as correct by the Philippine Consul at the port of origin, may be disregarded in the absence of an affirmative showing that the same does not represent the true import invoice value thereof.

As narrated by respondent Commissioner of Internal Revenue, following are the uncontroverted facts that gave rise to the present controversy:

> Petitioner herein imported from Hongkong sixty (60) drums of trichlorocarbanilide, weighing 6,000 lbs. which arrived in Manila on October 11, 1969, on board the S.S. "Philippine Rizal", under Bill of Lading No. 2 and Customs Entry No. 97127(69). (Exh. 1 & 2, respectively) While the Consular invoice and Supplier's or Commercial invoice submitted by the petitioner to the Bureau of Customs

at the time of importation show that the imported items had a CIF value of $2.04 per lbs., (Exh. 1 & 3, resp.), however, at the time the said importation arrived and was duly examined and appraised by the Customs authorities, the latter disregarded the declared value in the entry and in the invoice and adopted the information value which was at $2.90 per lb. at the time of their arrival. (Exh. 4 & 8, resp. & pp. 10-13,t.s.n.) Based on this information value and prior to their withdrawal from Customs custody, the petitioner paid to the Bureau of Customs the total amount of ₱14,408.00 under CB Official Receipt No. 84990, dated December 9, 1969, broken down as follows: (p. 25, BIR rec.)

Customs Duty	₱6,107.00
Advance Sales Tax	6,484.00
Wharfage fee	6.00
Fines	1,811.00
T o t a l . .	₱14,408.00

Thru its letter dated June 22, 1971, and received by the respondent only on June 30, 1971, and followed by another letter dated July 22, 1971 and received also by respondent on July 28, 1971, (pp. 1-4, BIR rec.), petitioner herein requested the refund of the sum of ₱1,919.00 representing alleged overpayment of the advance sales tax, alleging that there was error in the appraisal made by the Customs authorities to the effect that the unit price of subject importation should have been $2.02 per lb. FOB Hongkong or at $2.04 per lb. CIF Manila, instead of the appraised or information value of $2.90 per lb. CIF Manila, as duly found by the Customs authorities. (Exh. 4, resp.; pp. 11-14, t.s.n. & p. 38, BIR rec.).

On account of the alleged erroneous appraisal of the value of the imported articles in question, having been based on the information value and not on the consular or supplier's invoice value, petitioner now claims there was an overpayment not only of the advance sales tax but also of the customs duties collected on the said importation. Hence, this claim for refund.

The parties do not quarrel with respect to the basis, computation and amount of advance sales tax, paid by or refundable to, petitioner as the case may be. The collision occurs at the correct unit price of the sixty (60) drums of Trichlorocarbanilide imported by petitioner. Petitioner contends that the unit price of the subject item is $2.02 per pound F.O.B. Hongkong or $2.04 per pound C.I.F. Manila, while respondent maintains that the unit price is $2.90 per pound C.I.F. Manila as determined by the Bureau of Customs.

Parenthetically, it may be stated that based on the unit price of $2.04 as declared by petitioner with the Bureau of Customs, the landed cost plus mark-up of the aforesaid imported article is ₱65,210.89 and the advance sales tax would be ₱4,564.76. Actually, however, petitioner paid on December 9, 1969 to the Collector of Customs of Manila the amount of ₱6,484.09 as advance sales tax on the imported article on the basis of the landed cost and mark-up thereof of ₱92,629.84-the landed cost of the article having been computed by the Collector of Customs on the unit price of $2.90 per pound. Since petitioner paid the amount of ₱6,484.09 as advance sales tax on the imported article when, according to its computation based on the unit price of $2.04 per pound the tax should only be ₱4,564.76, there is therefore an overpayment of the sum of ₱1,919.33 or ₱1,919.00 as rounded by the parties.

It appears that up to the date when the present petition for review was filed on December 7, 1971, respondent Commissioner of Internal Revenue has not rendered any decision on the claim for the refund of the 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 period is two (2) years from date of payment of the tax, or December 9, 1969, petitioner filed the instant appeal.

As to whether or not petitioner is entitled to the refund of the amount of ₱1,919.33, or ₱1,919.00, would therefore depend on the question as to what is the correct unit price per pound of the imported sixty (60) drums of Trichlorocarbanilide. If the correct unit price is $2.04 as declared by petitioner, the proper landed cost plus mark-up is only ₱65,210.89, and the advance sales tax on which is only the amount of ₱4,564.76. On the other hand, if the correct unit price is $2.90 per pound as determined by the Bureau of Customs, the landed cost and mark-up thereof is

₱92,629.84 and the advance sales tax thereon is ₱6,484.09.

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 Fertich 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.)

Here, in the case at bar, the import invoice value or price of the trichlorocarbanilide on or about the date of exportation to the Philippines as indicated in the Consular Invoice of Merchandise, certified to as correct by Cesar C. Pastores, Vice Consul at the port of origin (Exhibit "A"), was US $2.04 per pound. The same US$2.04 per pound being also the value or price stated in the Commercial Invoice issued by the supplier, Monsanto Company-U.S.A., Monsanto Far East Limited, Hongkong. (Exhibit "B".) That this, US$2.04 per pound was the domestic wholesale selling price of trichlorocarbanilide in Manila was confirmed by witness Lamberto Maligaya, Manager of Connell Bros. Co. (Phil.), local indentor for the supplier, Monsanto Far East Ltd. There is even a certification from the indentor (Exhibit "G") that petitioner used to get the same merchandise at only US$2.02 per pound.

Respondent finds comfort, however, in the exception to the rule contained in Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, regarding the basis of the dutiable value of an imported article subject to an <u>ad valorem</u> rate of duty "that where there exists a reasonable doubt on the part of the Customs authorities, 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 No. 5466, or other Philippine diplomatic officers and from <u>such other information</u> that may be available to the Bureau of Customs." Since "the Customs authorities were doubtful as to the export value or price of the imported article(s) in question, there was, therefore, the need to avail of the so-called "information value", which is the free market value prevailing at the time and gathered from all ports of origin of the same, like or similar kind of imported article, as compiled by the Bureau of Customs, based on the reports of the different Revenue or Commercial Attaches or other Philippine diplomatic officers abroad. Accordingly, this information value as used by the Customs authorities was adopted as the dutiable value of the imported article(s) in question, in accordance with the exceptions provided for under Section 201 of the Tariff and Customs Code." (p. 4, Memorandum for the Respondent.)

It bears emphasis, however, as respondent himself stressed, "that since the importation in question occurred in 1969, the provisions of Section 201 of the Tariff and Customs Code should be applied in its context before its amendment by Presidential Decree No. 34, and not after, because the amendatory Decree took effect only upon its promulgation in 1972." (p. 6, Memorandum for the Respondent.) Home consumption value and/or the so-called "information value" 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. Following respondent's argument that the amendatory Decree took effect only upon its promulgation in 1972, and the importation in question occurred in 1969, it was therefore an error on the part of respondent, through the Bureau of Customs, to apply the so-called "information value" to the present case. And even more, Section 201 of the Tariff and Customs Code, 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 stated earlier, is governed by Section 183(b) of the National Internal Revenue Code.

Nonetheless, assuming arguendo that there exists a reasonable doubt as to the value or price of the imported trichlorocarbanilide declared in the consular, commercial and sales invoices, as well as in the entry, and the correct dutiable value of the article should be ascertained from the reports of the Revenue Attache, Commercial Attache (Foreign Trade Promotion Attache) or other Philippine diplomatic officers and from such other information that may be available to the Bureau of Customs, pursuant to Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, as alleged by respondent, it is to be stressed that the Commissioner of Customs is required by law to publish such list of values from time to time. He does not only have to ascertain and establish the home consumption value, but must also publish such lists of values from time to time.

Public policy would seem to require that importers be informed in advance of the home consumption values, or information values, of articles exported to the Philippines. This would prevent uncertainty, let alone the exercise of purely personal discretion, specially on the part of customs appraisers, in the matter of the ascertainment and determination of the price or value of imported articles. Furthermore, if importers are informed in advance of the home consumption values or information values of articles exported to the Philippines, they can properly declare the dutiable values of their shipments and thus avoid the heavy penalties imposed for misdeclaration, if not delays in the release of goods from customs custody which entail lose of time, money and energy. (Bell Hobart Manufacturing Incorporated vs. Commissioner of Customs, CTA Cases Nos. 2750, 2751, 2752 and 2753, March 10, 1978.)

Now to the instant case, it should be unequivocally stated, as the records will show, that there was no published value of the subject trichlorocarbanilide declared or disseminated by the Bureau of Customs, as required by paragraph 3 of Section 201, discussed above. Clearly, therefore, there was no reasonable doubt entertained by the Customs authorities as to the import value or price of the imported trichlorocarbanilide declared in the consular, commercial, trade and sales invoices, or in the entry. Consequently, there is no basis for the assertion that since the Customs authorities were doubtful as to the export value or price of the imported article in question, there was need to avail of the so-called "information value", which is the free market value prevailing at the time and gathered from all ports of origin of the same, like or similar kind of imported article, as compiled by the Bureau of Customs, based on the reports of the different Revenue or Commercial Attaches or other Philippine diplomatic officers abroad. Since there is no fidelity nor compliance of what are required by the legal provisions cited and relied upon by respondent, in the absence of evidence showing that the import invoice value of the trichlorocarbanilide in question is $2.90 a pound, and none has been presented during the hearing of this case, there is no basis, therefore, for the claim of respondent that the "information value" of the subject shipment is $2.90 a pound CIF Manila.

Accordingly, considering the public character of the commercial or sales invoice of the supplier and the official character of the consular invoice of merchandise, certified to as correct by the Philippine Consul at the port of origin, and there being no reasonable ground to deny to these documents the faith and credence normally due thereto, we hold that the import invoice value or price of US$2.04 a pound of the subject trichlorocarbanilide specified therein should not be disturbed. (Commissioner of Customs and Commissioner of Internal Revenue vs. Miguel Fertich Celdran and Court of Tax Appeals, L-23425, February 26, 1968, 22 SCRA 742.)

Anent respondent's observation "that there is no evidence on record to show that the Bureau of Customs had made any correction or rectification on the appraised value of the imported article so as to be able to arrive at the alleged correct computation which would result in an overpayment of both the customs duties and the advance sales tax" (p.6, Memorandum for the Respondent), suffice it to say that this is a matter for petitioner to take up with the Bureau of Customs. The records of this case show that petitioner had already filed with the Collector of Customs of Manila its protest against the imposition and collection of the additional customs duty on the basis of its stand that the imported trichlorocarbanilide has an appraised value of US$2.04 instead of US$2.90 per pound. As to the steps petitioner will take to enforce its claim in the Bureau of Customs, that is a matter which is governed by the Tariff and Customs Code and not covered by this appeal which is a proceeding arising under the National Internal Revenue Code. Any question which may arise later regarding the amount of customs duty or advance sales tax payable by petitioner, depending upon the outcome of the customs case, not being an actual controversy between the parties involved in this appeal, the Court has no jurisdiction to entertain the same. Parenthetically, it may be stated by way of personal observation only that since the advance sales tax subject of this case was paid on December 9, 1969, any further suit for recovery of any additional overpayment thereof would seem to have been barred already by Section 306 of the National Internal Revenue Code.

As succintly expressed by respondent himself in his memorandum under his Statement of the Case: "This case refers to the petitioner's claim for refund of the sum of ₱1,919.00 as alleged overpayment of the advance sales tax collected on its shipment of sixty (60) drums of Trichlorocarbanilide weighing 6,000 pounds imported from Hongkong on October 1, 1969." (p. 1, Memorandum for the Respondent.) And finding, based on the records of this case, including the evidence presented by the parties, and the law and jurisprudence applicable hereto, as discussed above, petitioner Procter & Gamble Philippine Manufacturing Corporation entitled to the refund of the amount of ₱1,919.00, the same should therefore be allowed.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund or grant a tax credit to petitioner Procter & Gamble Philippine Manufacturing Corporation the amount of ₱1,919.00, Without pronouncement as to costs.

SO ORDERED.

Quezon City, May 9, 1978.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge