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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

P.I. MANUFACTURING, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 3074

THE ACTING COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

12/28/88

D E C I S I O N

In its letter of February 4, 1980 to respondent Commissioner of Internal Revenue, petitioner P.I. Manufacturing, Incorporated, requested for the refund or tax credit of the total amount of P38,386.00 representing alleged excess advance sales taxes paid by it on its importations of enamelling quality cold-rolled sheets to be used in the manufacture of household appliances such as gas range, electric range, gas stove and enamelled wares. Since no action was taken seasonably by respondent on its claim for tax refund/credit, petitioner filed the instant petition for review for recovery of the said amount of P38,386.00 on March 27, 1980.

From the records of the case and the evidence presented, it appears that:

1. Petitioner is a domestic corporation duly organized and existing under and by virtue of Philippine laws, doing business as a manufacturer, with principal office at 97 Industrial Avenue, Northern Hills, Malabon, Metro Manila.

2. For the period September 1, 1977 to March 29, 1979, petitioner paid advance sales tax totalling P250,725.00 on various importations of cold rolled steel sheets of enamelling quality (Exhibits B-3-a, B-5-a, B-6-a, B-7-a, B-8-a, C-2-a, C-3-a, C-4-a, C-5-a, C-6-a, D-2-a, D-3-a, D-4-a, D-5-a, D-6-a, E-2-a, E-3-a, E-4-a, E-5-a, E-6-a, F-2-a, F-3-a, F-3-b, F-4-a, F-4-b, F-5-a, F-6-a, F-6-b, G-2-a, G-3-a, G-4-a, G-4-b, G-5-a, G-6-a, H-2-a, H-2-b, H-3-a, H-4-a, H-5-a, H-6-a, H-6-b). These advance sales tax payments were as follows:

EXHIBIT	OR NO.	AMOUNT
B B-2	BC-056) BC-065)	P 30,713.00
C	CB-615824	46,725.00
D	CB-615830	6,344.00

E	CB-737071	14,112.00
F	CB-733911	41,534.00
G	CB-794466	54,125.00
H	CB-672938	57,222.00
		P250,775.00

3. In its letter dated September 22, 1979 to the then Ministry of Finance (Exhibit A-3, pp. 8-9, CTA Record), petitioner, through its Executive Vice-President and General Manager, requested that its importations of cold rolled steel sheets of enamelling quality used in the manufacture of household appliances such as stoves and ranges be imposed a duty rate of 10% under Tariff Heading 73.13-A-1 instead of at 30% under Tariff Heading 73.13-A-2, pursuant to Customs Tariff Circular No. 7-79, on the grounds stated in said exhibit A-3, to wit:

> "1) That we are a bona fide manufacturer of household appliance as evidenced by the attached certification from the Board of Investments (BOI) stating among others that our NORTHERN HILL electric range, gas range with/without electric plate, electric and gas stoves are qualified as "locally manufactured products" under Section 197 of the National Internal Revenue Code as amended by PD-1358 and implemented by Revenue Regulation No. 7279;
>
> "2) That we are a holder of Certificate from both the Tariff Commission and the defunct

National Economic Council certifying that we are a bona fide manufacturer of enamelling quality cold rolled steel sheets at a lower rate of duty when E.O. No. 336 was still in effect as mentioned in the above-subject CTC No. 7-79;

"3) That our importation of enamelling quality cold rolled steel sheets were also classified under Tariff Heading No. 73.13-A-a at 10% ad valorem when the then acting Commissioner of Customs Rolando G. Geotina issued Customs Tariff Circular No. 69-74 granting a lower rate of duty of enamelling quality cold rolled steel sheets based on the recommendation of the Iron and Steel Authority-Board of Investments (ISA-BOI);

"4) That we are in the same line of Industry with that of Technogas (Phils.) Manufacturing Corporation and Philippine Appliance Corporation (PHILACOR) and therefore should also be covered by the subject Customs Tariff Circular No. 7-79."

4. Under date of October 25, 1979, the Board of Investments (BOI) had earlier certified to the Minister of Finance (now Secretary of Finance) that P.I. Manufacturing, Inc. is a bonafide manufacturer of household appliances and that it "had the same line of activity with that of Technogas (Philippines) Manufacturing Corporation and Philippine Appliance Corporation (PHILACOR) previously authorized and since our local supplier is not yet in a position to produce economically the enamelling quality cold-rolled sheets for household refrigerators and stove

manufacturers, the BOI has the opinion that the rate of tariff duty granted to the two aforecited manufacturers shall also apply to P.I. Manufacturing, Inc.", and thus the rate of duty applicable to importations of cold rolled steel sheets of petitioner should be 10% under Tariff Heading 73.13-A-1 (Exhibit A-2 and A-2-a, p. 7, CTA Records).

5. On October 30, 1979, the then Ministry of Finance, acting on the Second Indorsement dated October 25, 1979 of the BOI, and the previous ruling of this Ministry dated September 28, 1979, ruled that the preferential rate of 10% ad valorem duty on importations of enamelling quality cold rolled steel sheets was applicable to petitioner P.I. Manufacturing, Inc. (Exhibit A-1 and A-1-a, p. 6, CTA Record);

6. On February 8, 1980, petitioner through its auditors SGV & Co., filed with respondent's Bureau's Appellate Division a written claim for refund of P38,386.00, attaching therewith copies of the pertinent official receipts and other relevant documents (Exhibit A, pp. 3-11, CTA Record).

2. And their petition for review for judicial recovery of the amount of P30,386.00 filed with this Court on March [illegible], 1980.

Is petitioner entitled to the refund or tax credit of erroneously computed and overpaid advance sales tax?

At the outset, petitioner's claim for refund or tax credit of the total amount of P30,386.00 representing overpaid advance sales tax on importation of enamelling quality cold rolled steel sheets is due to the overstatement of marked-up landed cost of said importation. The Bureau of Customs classified such importations under Tariff Heading No. 73.1[illegible] (a-2) and imposed the rate of 30% ad valorem customs duty, instead of under Tariff Heading 73.1[illegible] (b) of 10% ad valorem customs duty advocated to by petitioner. Naturally, said alleged overpaid duty of 20% was part of the landed cost. And to the extent of the excess 20% the landed cost was overstated. Consequently, the 25% mark-up was also overstated, and concomittantly, the advance sales tax based on such overstated marked-up landed cost was also overpaid.

It should be stressed that respondent did not present any evidence controverting the correctness of the material facts stated above. As a factly matter, respondent simply submitted this case for decision on the basis of the pleadings after petitioner has presented and offered its evidence, on the ground that the information requested of the Bureau of Customs were not furnished respondent. (p. 121, CTA records.) It may suffice that "Since one who prays for judgment on the pleadings without offering proof as to the truth of his allegations, must be understood to have admitted the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on these allegations taken together with such of his own as are admitted" (Bauermann vs. Casas, 10 Phil. 380; Evangelista vs. De la Rosa, et al., 76 Phil. 115), respondent may be considered as not questioning seriously petitioner's entitlement to its claim for refund or tax credit. More so when the evidence presented, which was not disputed by respondent, sufficiently established petitioner's right to the tax credit/refund. (Commonwealth Management and Service Corporation vs. Commissioner of Internal

Revenue, CTA Case No. 3232, June 24, 1985; Yardley International, Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 3934, November 11, 1987.)

At any rate, the basis of petitioner's claim for refund or tax credit of overpaid advance sales tax is not short of legal and factual support. As sufficiently and adequately established by petitioner:

Presidential Decree No. 34, which was promulgated on October 27, 1972, became effective 30 days after such promulgation. Section 104 became effective on January 1st, 1973.

Tariff Heading No. 73.13 states:

Sheets and plates, of iron or steel, hot-rolled or cold-rolled:

A. Uncoated:

1. Articles not included in subheading A-2 hereof . ad valorem 10%

2. Cold-rolled black sheets . . . . ad valorem 30%

Customs Circular No. 7-79 (Exh. A-4) states the rationale for subjecting cold-rolled sheets such as those used in the appliance industry to the preferential rate of 10% Said Circular No. 7-79, reverses as erroneous a ruling dated January 30, 1978 quoted therein as follows:

> "It appearing that the change brought by Executive Order No. 456, in Tariff Heading No. 73.13 A-2 removed the provision for a preferential rate and provides two rates for different commodities the rate applicable to the commodity involved should be applied."

Thus, said Customs Tariff Circular quotes further from the indorsement dated March 14, 1979 of then Acting Minister Alfredo Pio de Roda, Jr. which states:

> "In this connection, it may be recalled that the ruling of this Ministry in the aforesaid Technogas case was rendered in line with the opinion of the Iron and Steel Authority-Board of Investments (ISA-BOI) that the local appliance and ware industry deserve continued protection in the form of a lower ad valorem duty of 10% on imported cold rolled sheets. Both the Board of Investments and the Tariff Commission, in their respective letters above-mentioned, still believe that the local industry is not yet in a position to produce economically the enamelling-quality cold rolled sheets for household refrigerators and stove manufacturers."

The rationale for the preferential rate may be found in a letter from the BOI to the Tariff Commission, cited on page 4 of CTC 7-79 to wit:

> "The intention of P.D. 34 as amended by Executive Order No. 456 s. 1975 is to grant post-operative tariff protection to the local industry of cold-rolled steel products as originally embodied under Executive Order No. 336 s. 1971. Considering that the local manufacturer is not in a position yet to

economically produce enamelling quality cold rolled sheets, the Board of Investments has the opinion that the rate of tariff duty granted to Technogas (Phils.) Manufacturing Corporation shall still apply to PHILACOR."

Since, as confirmed by the Ministry of Finance, in its letter dated October 30, 1979, the preferential rate of duty on enamelling quality cold-rolled sheets enjoyed by Technogas (Phils.) Manufacturing Corporation and Philippine Appliance Corporation, was applicable to petitioner, its importations in question should have been subjected to 10% duty.

As recognition of the fact that the duty properly imposable on petitioner's importations of cold-rolled steel sheets of enamelling quality, the Bureau of Customs thereafter subjected petitioner's importations of such materials only to 10% (Exhibits I-2, I-2-a, I-2-b, I-3, I-3-a, I-4, I-4-a, I-5, I-5-a, I-6, I-6-a & I-5-b).

And since the parties are not in dispute on the computation of the advance sales tax paid, and in case of refund, amount recoverable by petitioner;

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant in favor of petitioner I. Manufacturing, Inc., a tax credit of

P38,396.00 representing overpaid advance sales tax. No costs.

SO ORDERED.

Quezon City, Metro Manila, December 28, 1988.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals