REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CAMPOS RUEDA CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2830

THE HONORABLE COMMISSIONER
OF CUSTOMS,
Respondent.

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3/19/85

DECISION

In this petition for review of the decision of respondent Commissioner of Customs dated July 30, 1976 in Customs Case No. 76-35-B, affirming the decision of the Collector of Customs of Manila dismissing Manila Protest Nos. 9274, 9275 and 9287, petitioner Campos Rueda Corporation seeks the refund of the sum of ₱74,223.00 representing overpaid custom duties and taxes on three shipments of merchandises, i.e. Tungsol Flashers which arrived in the Port of Manila on November 1, 1973; a similar shipment on February 12, 1974; and a shipment of G.E. Sealed beams which arrived on March 31, 1974.

There is no dispute between the parties as to the essential facts involved in the instant case as the controversy actually involves purely a question of law. Since this involves three separate importations, we shall discuss each importation on the basis of the evidence as appearing in the records.

In Manila Protest No. 9274, the pertinent facts are as follows:

On April 18, 1973, petitioner herein placed a purchase order with the E.B. Schwinger & Co. of Los Angeles California, U.S.A., through its subsidiary E.B. Schwinger Philippines for 4,000 pieces UP-229 D ordinary flasher; 12,000 pieces UP-273 D ordinary flasher, Tungsol Products, under Code No. EF-721-07.02, at $0.66 per piece, or for a total of $11,254.00, which already includes the shipping charges, documentation, handling and consular fee. This purchase order was approved by E.B. Schwinger, Philippines.

Petitioner opened a letter of credit in favor of E.B. Schwinger & Company of California U.S.A. in the sum of $11,254.00 to cover the costs of said importation.

On September 25, 1973, E.B. Schwinger & Company finally sold to the petitioner the aforesaid imported merchandise at $10,812.20, and on November 1, 1973 the aforesaid merchandise arrived at the Port of Manila under Bill of Lading No. CFS-7.

On December 28, 1973, petitioner filed with the Bureau of Customs the necessary Import Entry and Internal Revenue Declaration No. 0132892, stating among others, that the customs duties and taxes for the said imported goods in the total amount of ₱29,382.00 should be paid on the importation, based on the declared invoice price at $0.66 per piece. Petitioner accordingly paid the aforesaid sum of ₱29,382.00 on December 29, 1973 under

Official Receipt No. 0909181.

Subsequently, the Bureau of Customs re-appraised the said importation at the rate of $1.08 per piece on the basis of the "alert notice" allegedly received from the Finance Attache abroad, resulting therefore in the imposition of additional duties and taxes amounting to ₱18,591.00 which was then paid by petitioner under protest on March 26, 1974.

On April 4, 1974, petitioner filed a formal protest before the Collector of Customs seeking the refund of the amount of ₱18,591.00 and claimed to be the excess duties and taxes as a consequence of the erroneous re-appraisal made by respondent on the importation.

On October 16, 1974 the Collector of Customs rendered a decision, denying the claim for refund. This decision was appealed to the Commissioner of Customs. On July 30, 1976, the latter affirmed the decision of former _in-toto_.

In _Manila Protest No. 9275_, the pertinent facts may be summarized as follows:

On July 6, 1973, petitioner ordered Tungsol Flashers amounting to $18,949.00 from E.B. Schwinger & Company of the United States through E.B. Schwinger Philippines, under the Firm offer No. F-73893. On December 18, 1973, petitioner opened a covering letter of credit in the amount of $18,949.00 for the said importation with the

Prudential Bank & Trust Co. under Letter of Credit No. F-4700-73. Before the arrival of the aforesaid importation, E.B. Schwinger & Company sold the aforementioned merchandise to the petitioner in the sum of $18,220.10 on January 2, 1974 as evidenced by invoice No. 42287. The Consul General of the Philippines stationed in New York, U.S.A. issued a Consular Invoice of Merchandise No. N.Y. 05675 E for said importation in the amount of $18,220.10 on January 9, 1974.

On February 8, 1974, petitioner requested the Collector of Customs for value classification for the approval of a unit price of said merchandise at $0.66, but this request was denied by the Collector of Customs and instead the aforementioned importation was re-appraised at $1.08 per unit based on "alert notice" allegedly received by the Bureau of Customs from New York, U.S.A.

In the meantime, the subject importation arrived in the Philippines at the Port of Manila on February 12, 1974, on board the vessel SS "Luna Maerk", under Bill of Lading No. CFS-9. Consequently, petitioner filed the necessary Customs Import and Internal Revenue declaration No. 0103185 under Entry No. 26867 based on the "alert notice" re-appraised price per unit, and on March 26, 1974 petitioner paid the corresponding duty and taxes on said merchandise amounting to ₱134,377.00 under protest.

On April 4, 1974, petitioner herein lodged a formal protest before the Collector of Customs against the re-appraisal of the subject merchandise from $0.66 to $1.08 per piece, and requested a refund of the excess duties and taxes paid by it in the sum of ₱52,226.00. The protest having been denied on October 16, 1974, petitioner appealed to the Commissioner of Customs, who on July 30, 1976, rendered a decision affirming <u>in toto</u> the decision of the Collector of Customs.

In <u>Manila Protest No. 9287</u>, the pertinent facts are as follows:

Sometime on November 13, 1973, petitioner placed an order for 16,800 pieces of G.E. Sealed Beams including cost and freight at $18,115.00 with the General Electric of Glendle, New York, U.S.A., through the General Electric Philippines, Inc. To cover the costs of the mentioned importation petitioner opened a letter of credit No. F-4702-73. Before the arrival at the Port of Manila of the said importation, the General Electric Company on March 6, 1974 sold to the petitioner the merchandise at $18,964.54, inclusive of costs and freight. The said merchandise arrived at the Port of Manila on board the vessel S/S "Trade 16 V/ Rafael Semmes" under Bill of Lading No. 993-328720. As a consequence thereof, petitioner on April 1, 1974 filed with the Collector of Customs a request for value information, for the purpose of valuation and classification of the said imported merchandise. The Collector of Customs re-appraised this merchandise from the invoice price of $0.908 per piece to $1.35 per piece based on an alleged "alert notice" received by the Bureau of Customs from the Finance Attache abroad.

The Bureau of Customs, having re-appraised the said merchandise on the basis of "alert notice" at $1.35 per piece from the invoice price of $0.908, petitioner filed on April 30, 1974 Import Entry and Internal Revenue Declaration No. 0103196-73 before the Bureau of Customs based on the alerted price and paid a total of ₱67,525.00,representing duties and taxes, on the importation. Petitioner on May 7, 1974 paid the duties and taxes on the said importation under protest as evidence by Customs Order of Payment No. 296158 as well as the Official Receipt No. 313104.

The re-appraisal of the said merchandise was the result of disallowing the 5% Trade Discount normally granted to the petitioner by the exporter thus resulting to the payment of additional duties and taxes in the amount of ₱3,406.00, so much so, that petitioner on May 21, 1974, filed a formal protest with the Collector of Customs against disallowance of the aforesaid discount of 5% amounting to ₱3,406.00 as overpayment of the duties and taxes on the subject importation.

On October 16, 1974, the Collector of Customs rendered a decision denying petitioner's claim for refund. Consequently, petitioner appealed to the Commissioner of Customs, who, in his decision of July 30, 1976, affirmed in toto the decision of the former. This consolidated decision denying petitioner's claim for refund under Manila Protest Nos. 9274, 9275 and 9287, was appealed to this Court by way of Petition for Review on September 4, 1974.

Respondent in answer to the petition for review raised the following affirmative defenses to wit:

> 6. That respondent repleads and incorporates herein all the allegations in the preceding paragraphs 1 to 5 of this answer as integral parts hereof; and
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> 7. That it is a well settled rule in Philippine jurisprudence that "alert notice" sent by Philippine Revenue or Commercial Attaches are to be given much weight in determining the basis of dutiable value of imported articles when there exists a reasonable doubt as to the declared dutiable value of the importation. "Alert Notice" sent by finance attaches are given in their official capacity and as such should be deemed more weight than the declarations of the importers as to the value of their importations; otherwise, the revenue arm of the government will be placed at the mercy, and will be subject to the whims and caprises, of foreign merchants and importers (Lim Quim vs. Collector of Customs, 23 Phil. 509).

The only issue posed for resolution in the instant case is whether or not the "Alert Notice" could be the basis of determining the dutiable value of the shipments for the purpose of the assessment and collection of the duties and taxes due thereon.

The parties herein do not question the computation of the duties and taxes payable or the amount sought to be refunded by petitioner as the case may be. As we have said, the re-appraisal of the price of the imported merchandise by the respondent on these three separate shipments were based on the alledged "alert notice" received by the Bureau of Customs from the Finance Attache abroad, resulting in the payment of additional duties and taxes by petitioner in the total amount of ₱74,223.00.

In determining the dutiable value of any imported merchandise, the pertinent provision of the law applicable is Section 201 of the Tariff and Customs Code, as amended by P.D. No. 34, -now also as Section 201 of P.D. No. 1464, Tariff and Customs Code of 1978, and which states as follows:

> Sec. 201. <u>Basis of Dutiable Value.</u>- The dutiable value of an imported article subject to an ad valorem rate of duty shall be based on the home consumption value or price (excluding internal excise taxes) of same, like or similar articles, as bought and sold or offered for sale freely in the

usual wholesale quantities in the ordinary course of trade, in the principal markets of the country from where exported on the date of exportation to the Philippines, or where there is none on such date, then on the home consumption value or price nearest to the date of exportation including the value of all containers, coverings and/or packings of any kind and all other costs, charges and expenses incident to placing the article in a condition ready for shipment to the Philippines, plus ten (10) per cent of such home consumption value or price.

The home consumption value or price under this section shall be the value or price declared in the consular, commercial, trade or sales invoice. Where there exists a reasonable doubt as to the value or price of the imported article declared in the entry, 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 Numbered Fifty-four hundred and sixty-six or other Philippine diplomatic officers and from such other information that may be available to the Bureau of Customs.

From the data thus gathered, the Commissioner of Customs shall ascertain and establish the home consumption values of articles exported to the Philippines and shall publish such lists of values from time to time.

When the dutiable value provided for in the preceding paragraphs cannot be ascertained for failure of the importer to produce the documents mentioned in the second paragraph, or where there exists a reasonable doubt as to dutiable value of the imported article declared in the entry, it shall be the domestic wholesale selling price of such or similar article in Manila or other principal markets in the Philippines on the date the duty becomes payable on the article under appraisement, in the usual wholesale quantities and in the ordinary course of trade, minus -

(a) Twenty (20) per cent thereof for expenses and profits; and

(b) Duties and taxes paid thereon.

The above quoted provision of the law applicable is clear and explicit to say, in effect, that the home consumption value upon which the dutiable value of imported merchandise and/or articles should be based is that price declared in the consular, commercial, trade or sales invoice. The law is mandatory and, therefore, it should be applied and not to be interpreted. However, when there exists a reasonable doubt on the part of the Bureau of Customs as to the correct value or price of the shipments or merchandise declared by the importer, the re-appraisal of the correct dutiable value of such importations should be based on the ascertained report of the Revenue Attache or Commercial Attache (Foreign Trade Promotion Attache), in accordance with Republic Act No. 5466, or other Philippine diplomatic officers and from other informations that may be gathered by the Bureau of Customs that are available. On this basis, the Commissioner of Customs shall ascertain the correct home consumption value of the articles and/or merchandise imported and shall publish such list of values from time to time.

In the case at bar, it is worthy to state that the respondent's re-appraisal of the subject shipments or articles imported were based on the alleged piece of document known as "Alert Notice" which was not even presented by respondent to this court. At any rate, assuming that there really is such a document and the same was received by the Commissioner of Customs, the fact is that the records do not show from what data the alleged alerted value was taken, and how the Commissioner of Customs ascertained and established the home consumption value of the imported articles and/or merchandise, and when and where such alerted value was published as required by law. Under these circumstances, the re-appraisal made by respondent is clearly not in accordance with the provisions of Section 201 of the Tariff and Customs Code.

This find affirmance in the case of Campos Rueda Corporation vs. The Honorable Commissioner of Internal Revenue, C.T.A. Case No. 2828, August 15, 1984, wherein this court held as follows:

> As a matter of fact, the records of the case do not show, as required by law, from what data the alleged "alerted value" was gathered, how the Commissioner of Customs ascertained and established the home consumption value of the imported article, and where and when was such alerted value published. And while respondent was given ample time during the hearing of this case before this Court to produce or present as evidence such "alerted value" or "alert notice" which was the basis of the re-appraisal of the shipment under consideration,

no such alert notice or value, or evidence thereof, was presented or offered by respondent. The bare averment of respondent that the basis of re-appraisal of subject shipment is the "Alert Notice" furnished by the Philippine finance attache at San Francisco, California, unaccompanied by adequate evidence as to the existance of such notice, the basis of the value or price stated therein, as well as the publication thereof, suggests, as contended by petitioner, that there was no such alert notice or value. Clearly, therefore, the basis of the re-appraisal of the dutiable value of petitioner's shipment of GE sealed beam lamps was not in accordance with the provisions of Section 201 of the Tariff and Customs Code.

There being no fidelity to what are required by the legal provisions applicable, this Court could not look with approval on the re-appraisal by the Bureau of Customs of petitioner's imported GE sealed beam lamps based on an alleged "Alerted value" at US$1.35 per piece, and the assessment and collection of ₱15,657.00 as additional customs duty and ₱5,526.00 as additional advance sales tax on petitioner's importation. Where, as here, there is no adherence to the language of the statute, there is no basis for the assertion that there exists a reasonable doubt as to the value or price of the imported GE sealed beam lamps declared in the entry. <u>Considering the mandate of the law that the home consumption value or price shall be the value or price declared in the consular, commercial, trade or sales invoice, and the official character of these invoices; 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 or credence normally due thereto, the home consumption value declared in the commercial and consular invoices of merchandise, as well as the supplier's sales invoice of the shipment in question, should be the basis of the dutiable value of the imported GE sealed</u>

<u>beam lamps</u>. (Commissioner of Customs vs. Celdran, L-23425, February 26, 1968, 22 SCRA 743.) The language of the law, which expresses a definite and sensible meaning, is the safest guide as to the statutory policy, to which compliance is due, (See Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2788, February 27, 1981.)

The pronouncements in Bell Hobart Manufacturing Incorporated vs. Commissioner of Customs, CTA Cases Nos. 2750, 2751, 2752 and 2753, March 10, 1978; Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 2357, May 9, 1978; Hiap Hong Trading Co., Inc. vs. Alfredo Pio de Roda, Jr., CTA Case No. 2804, June 27, 1980, which were subsequently affirmed and reaffirmed in other cases, the latest of which is Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2788, February 27, 1981, are controlling in the case at bar. We quote from <u>Bell Hobart</u> and <u>Procter & Gamble</u>:

> . Nonetheless, assuming <u>arguendo</u> 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.
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> 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 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.

Definitely, respondent not having complied with the mandate of Section 201 of the Tariff and Customs Code, as amended by P.D. No. 34, the imposition of the additional taxes and duties has no basis and is, therefore, illegal.

As to petitioner's claim for tax refund, the same cannot be passed upon by the Court because there is nothing in the records to show that petitioner had filed its written claim for refund thereof with the Commissioner of Internal Revenue and that the latter was made a party to this case.

This again find affirmance in the same case of Campos Rueda Corporation vs. The Honorable Commissioner of Customs, supra, wherein this court held:

> We note however that with regard to the claim for refund of the amount of ₱5,526.00 as additional advance sales tax paid by petitioner on re-appraisal of the subject shipment, the same can not be passed upon by the Court in view of the fact that nothing in the records show that petitioner had filed its written claim for refund thereof with the Commissioner of Internal Revenue and that the latter was made a party to this case. Without satisfying these jurisdictional requirements provided in Section 306 (now Section 292) of the National Internal Revenue Code, which in the instant case are lacking, the same is fatal to the claim of petitioner for the refund of the overpaid advance sales tax on the importation in question. (Wise & Company vs. Commissioner of Customs, CTA Case No. 2717, December 29, 1977; see also resolution dated January 15, 1979, certiorari denied in G.R. No. L-51242, March 7, 1980; National Dental Supply Incorporated vs. Commissioner of Customs, CTA Case No. 2826, June 30, 1980; Campos Rueda Corporation vs. Commissioner of Customs, CTA Case No. 2829, July 28, 1980; Jardine Davies, Inc. vs. Commissioner of Customs, CTA Case No. 2634, October 16, 1980; Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2788, February 27, 1981.) There being no controversy between the parties that the additional amount of ₱15,657.00 assessed and collected from petitioner represents additional customs duty because of the re-appraisal of its shipment of GE sealed beam lamps at US$1.35 per piece, only said amount of ₱15,657.00 is refundable to petitioner.

In view of the foregoing, and since there is no controversy between the parties as to the computation of the customs duties sought to be refunded, only that amount of overpaid customs duties should be refundable to petitioner.

WHEREFORE, the appealed decision is modified. Respondent is hereby ordered to grant the refund of overpaid customs duties to petitioner Campos Rueda Corporation. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, March 19, 1985.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge