REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LA SUERTE CIGAR and
CIGARETTE FACTORY,
Petitioner,

- versus - C.T.A. CASE NO. 4511

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

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D E C I S I O N

This case involves an assessment of additional customs duties on the petitioner's importations of acetate tow.

The facts in the opinion of the petitioner are undisputed.

On 12 July 1989, La Suerte received a letter from the Bureau of Customs dated 3 July 1989, signed by Isauro C. Garcia, Acting Commissioner of Customs, demanding payment of additional duties (P5,928,584.00) on its 1987-88 importations of acetate tow. The assessment was based on an alleged provision of the Harmonized Commodity Description and Coding System (Harmonized System) which took effect on 19 October 1988. The letter alleged:

> "The records of the Bureau of Customs show that the total additional amount of P5,928,584.00 is collectible from you on your importations of acetate tow passed upon under Tariff Heading 56.02.400 (CCCN) with 10% rate of duty. The prevailing rate of duty applicable on your importations is 20% under Tariff Heading 55.02.00.00 (Harmonized System). Demand is therefore made upon you to settle this obligation within fifteen (15) days from receipt hereof, otherwise, the Bureau will be constrained to take necessary legal steps to protect the interest of the government." (see Exh. A)

On 13 July 1989, La Suerte wrote to the Honorable Isauro C. Garcia, Acting Commissioner of Customs, requesting information as to the date of effectivity of the Harmonized System, the breakdown of the importations involved, and the date(s) of importation(s) on the basis of which the payment of P5,928,584.00 was being collected.(see Exh. B)

In its reply of 17 July 1989 signed by deputy Commissioner Isauro C. Garcia, the Bureau stated that the Harmonized System took effect on <u>19 October 1988</u>. The Bureau enclosed a list of import entries covering La Suerte's importations of acetate tow under Tariff Heading 56.02.400 at 10% rate of duty filed at the Port of Manila and the Manila International Container Port. The import entries showed that the importations were all effected from 20 December 1987 to 25 August 1988 inclusive. (see Exhs. C and D)

On 21 July 1989, La Suerte requested that the demand for payment be withdrawn on the ground that all the shipments for which the amount of P5,928,584.00 was being collected arrived <u>prior</u> to the effectivity date of the Harmonized System, citing Customs Memorandum Circular (CMC) No. 228-88 dated 13 October 1988, which provides that the Harmonized System shall be effective thirty (30) days after the official issuance and release of the Harmonized System Code by the Director General of NEDA, which is 19 October 1988. Per the list (Exh. "D") provided by the Bureau, all of the said shipments arrived <u>prior</u> to 19 October 1988, to wit:

Entry No.	Amount	Date of Arrival
01959-88	647,502.00	12-20-87
68265-88	985,468.00	06-02-88
60990-88	493,077.00	07-13-88
84095-88	292,893.00	08-25-88
75977-88	978,356.00	08-16-88
60451-88	1,235,777.00	06-04-88
77789-88	1,051,468.00	08-21-88
22826-88	124,226.00	04-29-88
25419-88	119,887.00	06-14-88
	P5,928,584.00	

(see Exh. E)

In its reply of 28 August 1989, which La Suerte received on 6 September 1989, the Bureau reiterated its demand for the payment of P5,928,584, but for a <u>different reason.</u> The Bureau did not, however, specify the statute on which its new posture was based. It said:

> "In this connection, it is informed that the Tariff Commission in a letter to the Chief, Intelligence and Investigation Service, this Bureau, has clarified that artificial filament tow prior to the effectivity of the Harmonized System on 19 October 1988 was 5602.500. The rate of duty of this article was increased from 10% for the year 1987 to 20% for the year 1988. The equivalent tariff classification of the subject article in the new Harmonized System is H.S. Heading No. 5502.0000.
>
> Since the import entries of the shipments subject of our demand letter dated 3 July 1989 were all filed in 1988, it is clear that the rate of duty applicable on your importations of acetate tow should have been 20% under Tariff Heading 5602.500. We are therefore reiterating our demand for you to settle the amount of P5,928,584.00 representing additional duties and taxes on your importations of acetate tow within ten (10) days from receipt hereof, otherwise, this Bureau will be constrained to take necessary legal steps to protect the interest of the government." (see Exh. F)

On 18 September 1989, La Suerte wrote to the Bureau enclosing an opinion dated 16 September 1989 rendered by Angara Abello Concepcion Regala & Cruz ("ACCRA") Law Offices ("ACCRA Opinion"), requesting that the points raised therein be referred to the Legal Service of the Bureau or Department of Justice for an authoritative ruling. (Exhs. G and H)

On 21 October 1989, La Suerte received a letter from the Bureau dated 9 October 1989, signed by Deputy Commissioner Isauro C. Garcia, whereby the Bureau reiterated its demand for the payment of P5,928,584.00, this time invoking not the Harmonized System but Executive Order No. 1038 dated 9 July 1985. The Bureau enclosed a copy of a letter dated 5 October 1989 of the Chairman of the Tariff Commission to the Commissioner of Customs. The Tariff Commission letter to the Customs Commissioner states:

> "Pursuant to Executive Order 1038 (copy attached) dated July 9, 1985, acetate tow classified under Heading No. 56.02.500 as filament tow of regenerated fibres was assigned a rate of duty of 10% ad valorem starting July 1, 1985 to December 31, 1987 and 20% ad valorem starting January 1, 1988.
>
> The increase in the rate of duty from 10% to 20% on acetate tow starting January 1, 1988 was not brought about by the adoption of the Harmonized System which took effect 10 months later on October 19, 1988 but by express provision of E.O. No. 1038. The transposition and/or alignment of the classification of acetate tow from CCCN Heading No. 56.02.500 to HS Heading No. 5502.00.00 did not effect a change in the existing rate of 20% ad valorem on the subject article.
>
> Under the Harmonized System (HS), acetate tow is now classified as "artificial filament tow" under HS Heading No. 5502.00.00 maintaining the same rate of duty of 20% ad valorem." (see Exhs. I and J)

On 31 October 1989, La Suerte wrote to the Bureau protesting the demand for the payment of P5,928,584.00 enclosing in its letter another opinion dated 31 October 1989 of ACCRA Law Offices raising the following points: (a) that Executive Order (E.O.) No. 1038 did not increase the duty on acetate tow, but merely <u>deferred</u> the scheduled tariff duty <u>increase</u> on "regenerated fibers including rayon" (acetate tow excepted) mandated by E.O. No. 926, series of 1983; and (b) that even assuming that E.O. No. 1038 had intended to increase the duty on acetate tow, the said Executive Order did not become effective for lack of publication in the Official Gazette. The said ACCRA opinion traced the changes of tariff rates for acetate tow, which unmistakably show that in adopting E.O. No. 1038, the Government did not at all purport to increase the tariff rate for acetate tow from 10% to 20%. Both the language and history of E.O. No. 1038 sustain this conclusion. (see Exhs. K and L)

In its letter of 4 October 1990, which La Suerte received on 9 October 1990, the Bureau denied La Suerte's protest. (see Exh. M)

On 17 October 1990, La Suerte, through the letter of its counsel dated 12 October 1990, requested that the Bureau suspend the effectivity of its 4 October 1990 letter to give La Suerte an opportunity to take the matter up with the Tariff Commission. (see Exh. N)

To date, the Bureau has not issued any reply. Such failure may be considered a denial of La Suerte's request.

Thus, this petition for review.

The issues to be resolved are the following:

> 1) Whether or not E.O. No. 1038 increased the duty on acetate tow.
>
> 2) More importantly, however, is the resolution on whether or not E.O. 1038 became operative for lack of publication in the Official Gazette.

The first issue hinges on the second issue, so that a resolution of the latter issue will necessarily render the former purely an empty academic discussion.

And rightly so.

In fact, it is evident that the respondent was, from the very start, defending a hollow and lost cause. The series of events will only lead, even to the most unprejudiced mind, to the conclusion that the petitioner was assessed not without basis but only with the purest of intentions in the mind of the then Acting Commissioner of Customs, the Hon. Isauro . Garcia. We doubt it. First, he issued an assessment on the ground that "the prevailing rate of duty applicable on your importations is 20% under Tariff Heading 55.02.00.00 (Harmonized System)" (see Exh. A) which according to him took effect on October 19, 1988. However, all the questioned shipments arrived <u>prior</u> to October 19, 1988, to wit: (see Exh. E)

Entry No.	Amount	Date of Arrival
01959-88	647,502.00	12-20-87
68265-88	985,468.00	06-02-88
60990-88	493,077.00	07-13-88
84095-88	292,893.00	08-25-88
75977-88	978,356.00	08-16-88
60451-88	1,235,777.00	06-04-88
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22826-88	124,226.00	04-29-88
25419-88	119,887.00	06-14-88
	P5,928,584.00	

Not affected by the embarassment he suffered, the same respondent reiterated his demand for the payment of P5,928,584 in a letter dated August 28, 1989 (see Exh. F) but this time for a <u>different reason and without specifying the statute on which his new posture was based</u>. In a subsequent letter dated October 9, 1989, the same respondent Deputy Commissioner Isauro C. Garcia reiterated his demand for payment this time invoking not the Harmonized System but Executive Order No. 1038 dated July 9, 1985. It should be taken note that the respondent knew of this ground only after consulting with the chairman of the Tariff Commission (see Exhs. I and J).

So there.

We have here a case wherein in his overzealousness to collect revenues for the Government, the respondent made the assessment first, and then sought to verify the appropriate ground to justify it or look for other grounds if the first ground where the first assessment was based will not work. We could only hope that the respondent only had the best of intentions in issuing said assessment. However, such practice does not speak well of the fund raisers of the Government.

Second, in all the hearings scheduled for this case since it was lodged on November 8, 1990, only once did the counsel of the respondent appear, knowing fully well that he will be defending a lost and empty cause.

And rightly so.

On the hearing of November 18, 1991, this Court took judicial notice that Executive Order No. 1038 (of which the questioned assessment was based) was not published in the Official Gazette. This was based on the certification issued by Mr. Heriberto M. Bacalla, Chief, Official Gazette Publication, National Printing Office, that "Executive Order No. 1038 entitled: "MODIFYING THE RATES OF DUTY ON IMPORTED RAYON ARTICLES AS PROVIDED UNDER PRESIDENTIAL DECREE NO. 1464, AS AMENDED, OTHERWISE KNOWN AS THE TARIFF CUSTOMS CODE OF 1978" was not submitted to this office for publication in Official Gazette" (see Exh. T)

E.O. No. 1038, accordingly, never took effect. For as stated in Article 2 of the New Civil Code:

> Art. 2. Laws take effect after fifteen (15) days following the completion of their publication in the Official Gazette unless it is otherwise provided. xxx

As eloquently written by Mr. Justice Isagani A. Cruz in the case of **Tanada vs. Tuvera**:

> Laws must come out in the open in the clear light of the sun instead of skulking in the shadows with their dark, deep secrets. Mysterious pronouncements and rumored rules cannot be recognized as binding unless their existence and contents are confirmed by a valid publication intended to make full disclosure and give proper notice to the people.. The furtive law is like a scabbarded saber that cannot feint, parry or cut unless the naked blade is drawn (No. L-63915, December 29, 1986, 146 SCRA 446).

Our conclusion that in fact said E.O.1038 never took effect is strengthened by the fact that on May 23, 1988, then President Corazon C. Aquino issued

Executive Order No. 325 which took effect on April 1, 1988, "Modifying the rates of import duty on certain imported articles to implement the decision of the Third Asean Summit on the twenty third meeting of the Committe on trade and tourism to provide a minimum level of 25% margin of preference." This latter Executive Order specifically identifies acetate tow under T.H. 56.02.400 with an existing rate of duty of 10% and an Asean preferential tariff rate of 7.5%. It is a fundamental principle in statutory construction that the lawmaker in issuing a law or decree is aware of the existing law on the matter. If E.O. 1038 is valid and existing as of May 23,1988, the President should have mentioned that the existing rate of duty is 20%.

WHEREFORE, in all the foregoing, the Customs assessment of additional duties amounting to P5,928,584.00 subject of Customs demand letter of July 3, 1989 and reiterated in its letter dated October 4, 1990 is hereby rendered **ANNULLED** and **SET ASIDE**. The respondent is therefore directed to **CANCEL** said demand letter.

SO ORDERED.

Quezon City, Metro Manila, December 24, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Assocaite Judge

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

I hereby certify that the 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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals

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