REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NATIONAL DENTAL SUPPLY, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2757

THE COMMISSIONER OF CUSTOMS,
Respondent.

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5/16/79

DECISION

Appeal taken by petitioner National Dental Supply, Inc., from the consolidated decision of respondent Commissioner of Customs dated September 17, 1975, affirming the decisions of the Collector of Customs of Manila in Manila Protest Nos. 9342, 9684, 9685 and 9509, and modifying those in Manila Protest Nos. 9049 and 9696, which were all uniform denials of petitioner's protests against the assessment and collection of additional customs duties and taxes arising from alleged erroneous tariff classifications of various shipments of 2,832 cans of Magnesium Phosphate Embedding Refractory Materials (Multivest), 300 jars Nylon Imitation Catgut of Suturing and Debris Removing (Dental Floss) and 12 bottles New Opaquer Powder and Liquid; and the alleged erroneous valuation of Jeltrate and Lucitone.

It appears that petitioner is a corporation organized and registered with the Securities and Exchange Commission with business and postal address at R-201 Carmen Building, 685 Ronquillo St., Quiapo, Manila. Petitioner effected the importation on various dates of the following items, under the following entries, to wit:

A. Magnesium Phosphate Embedding Refractory Materials (Multivest) under Import Entry Nos.

1) 61746 (Protest No. 9342)
2) 034794 (Protest Nos. 9684 & 9685)
3) 034946 (Protest Nos. 9684 & 9685)
4) 73462-73 (Protest No. 9049)
5) 99893-74 (Protest No. 9509)

B. Nylon Imitation Catgut of Suturing & Debris Removing (Dental Floss) under Import Entry Nos.

1) 73462-73 (Protest No. 9049)
2) 304-75 (Protest No. 9696)
3) 99893 (Protest No. 9509)

C. New Opaquer Powder & Liquid under Import Entry Nos.

1) 73462-73 (Protest No. 9049)
2) 99893-74 (Protest No. 9509)

D. Jeltrate under Import Entry No. 99893(74) (Protest No. 9509)

E. Lucitone 199 under Import Entry No. 99893(74) (Protest No. 9509)

E-1. Lucitone 199 under Import Entry No. 99893(74) (Protest No. 9509)

Petitioner paid, and filed the above-mentioned protests against the assessment and collection of additional customs duties and taxes on the above importations, based on alleged erroneous tariff classification and valuation, to wit:

Protest No.		Value of claim
9049		₱7,074.00
9342		5,767.00
9509		8,598.00
9684		2,121.00
9685		5,552.00
9696		600.00
	TOTAL	₱29,712.00

After due hearing, the Collector of Customs of Manila in six separate decisions, dismissed these protest cases for lack of merit. Accordingly, petitioner appealed the said decisions to respondent Commissioner of Customs, who on September 17, 1975, rendered a consolidated decision, the dispositive part of which reads as follows:

> "WHEREFORE, the decisions of the Collector of Customs of Manila insofar as the tariff classification of Magnesium Phosphate Embedding Refractory Materials (Multivest) under Tariff Heading 38.19 at 50% ad valorem; New Opaquer Powder or Liquid under Tariff Heading 39.01-B at 50% ad valorem and the Home Consumption Values of Jeltrate at $19.20 per can and Lucitone 199 at $97.50 are hereby affirmed. However, the decisions of the same Collector of Customs (Manila Protest Nos. 9049 and 9696) relative to the correct tariff classification of Nylon Imitation Catgut of Suturing and Debris Removing (Dental Floss) is hereby modified from Tariff Paragraph 39.02-B at 50% ad valorem to Tariff Heading 51.02 at 30% ad valorem."

On October 16, 1975, petitioner filed its petition for review with this Court praying that its appeal be given due course.

Petitioner did not present a breakdown of the refundable amount claimed, in the total sum of ₱29,712.00, corresponding to each item under the questioned tariff classification and valuation. Inasmuch as the parties are not in dispute as to the computation of the customs duties and taxes paid by, or amount refundable to, petitioner as the case may be, for the purpose of this action, we will therefore accept the sum of ₱29,712.00 as claimed by petitioner and not controverted by respondent, to be the basis in determining the refundable amount, taking into account the alleged excess payment made for each article, in the event this Court decides the case in favor of petitioner and finds the latter entitled to the refund of the amount claimed by it, totally or partially.

The issues to be resolved are, to wit:

1) Whether or not the tariff classifications of the importation of Magnesium Phosphate Embedding Refractory Materials (Multivest) under Tariff Heading 38.19-B at 50% ad valorem, of Nylon Imitation Catgut of Suturing and Debris Removing (Den-

tal Floss) under Tariff Heading 51.02 at 30% ad valorem and of New Opaquer Powder or Liquid under Tariff Heading 39.01-B at 50% ad valorem are correct;

2) The correct home consumption value of the imported Jeltrate and Lucitone, as prescribed in Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, for purposes of basis in the assessment and collection of customs duties and taxes due thereon; and

3) Whether or not petitioner is entitled to the refund, totally or partially, of the additional customs duties and taxes it paid on the various importations in question.

A. Magnesium Phosphate Embedding Refractory Materials (Multivest)

Petitioner maintains that Multivest, being a mixture of heat insulating mineral materials by precise design and function, should be classified under Tariff Heading 68.07 at 20% ad valorem, to wit:

> 68.07 Slag wool, rock wool and similar mineral wools; exfoliated vermiculite, expanded clays, foamed slag and similar expanded mineral materials;

mixtures and articles of heat-insulating, sound-insulating, or sound-absorbing mineral materials, other than those falling in heading No. 68.12 or 68.13, or in Chapter 69 . . ad val. 20%

While respondent claims that Multivest, having been imported in retail containers numbering 2,832 5-lb. cans and clearly consisting of refractory materials for use in refractory molds and for establishing beds of dentistry, properly falls under Tariff Paragraph 38.19-B at 50% ad valorem, which reads as follows:

38.19 Chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included:

A. Prepared catalysts, hydraulic brake fluids and anti-oxidant retarders for processing or compounding rubber products . . . . ad val. 20%

B. Other . . . . ad val. 50%

The records show that Multivest is a reddish powder, consisting of 90% quartz and cristobalite, and 10% binders, magnesium oxide and acid phosphate, which if mixed in precise proportion with water, turns into a plastic mass which hardens in a few minutes. It contains no gypsum nor any derivatives. Therefore it contains no plasters.

The principal use of the article in question is to make high-heat resisting and insulating molds into which molten chrome cobalt metal may be cast. Subsidiary uses are for making crucibles, masonry for furnaces, and other purposes where heat resisting and insulating material is required. (pp. 107-108, CTA records).

It seems clear, therefore, that Multivest is a mixture of mineral materials that are by themselves heat-insulating. It is a heat-insulating mineral material, not by mere accident, but by design, and its precise function is to store heat. Only a heat-insulating material can perform this function. Since it is the general use to which articles are generally adapted and for which they are generally used which determines their character within the meaning of the tariff laws (La Compañia General de Tabacos de Filipinas vs. United States, 8 Phil. 438), there seems to be no doubt that Multivest should fall under Tariff Heading 68.07 at 20% ad valorem.

While the pertinent Explanatory Notes to the Brussels Nomenclature upon which the tariff law was based, state, under Tariff Heading 68.07, that "Subject to the tolerances concerning the asbestos content (referred to below), this heading also covers heat-insulating, sound-insulating or sound-absorbing mixtures of mineral materials in bulk, x x x" (p. 1068, Tejam, Montano, Commentaries on the Revised Tariff and Customs Code of the Philippines, Vol. II, 1973 Edition), it is not that "such mixtures should be packed in BULK", as respondent would want to stress (p. 234, CTA records), that affords the test of Multivest being covered under Tariff Heading 68.07. The pertinent Brussels Explanatory Notes do not state "such mixtures should be packed in Bulk," but merely append by way of addition that this "heading includes them even in bulk" or "also covers heat-insulating, sound-insulating or sound-absorbing mixtures of mineral materials in bulk."

It can not be said that the determinative test is lacking merely because the Multivest in question has been imported in retail containers numbering 2,832 5-lb. cans. It is the heat-insulating mixture of mineral materials, not necessarily the packing in bulk, to which Tariff Heading 68.07 refers. The words "mixtures and articles of heat-insulating mineral materials" mean that the mixtures or articles of mineral materials are by themselves heat-insulating, and while the mass or volume of the mixture may afford illustration of the article, the Tariff Heading should not be limited and its purpose thwarted by a rule of construction which would place "in bulk" the final criterion of whether or not such mixtures or articles fall under Tariff Heading 68.07.

And it can not be said that Multivest, assuming that it consists of refractory materials for use in refractory molds and for establishing beds of dentistry, properly falls under Tariff Paragraph 38.19-B at 50% ad valorem, as respondent maintains, because, according to the pertinent Brussels Explanatory Notes, refractory materials to be classified under the said Heading 38.19-B should be refractory cements or mortars based on chamotte and dinas earths, etc. (p. 699, Tejam, Montano, Commentaries on the Revised Tariff and Customs Code of the Philippines, Vol. I, 1970 Edition.) Such refractory cements or mortars are therefore based on clay products (chamotte and dinas earths) characterized by hardening only when <u>fired</u>, unlike Multivest, which is based on silica plus magnesium oxide and acid phosphate as binders, characterized by hardening only when mixed with <u>water</u>. (pp. 205-206, CTA records.) Even more, the pertinent Brussels Explanatory Notes clearly state that mixtures of heat-insulating materials falling under Heading 68.07, and heat-insulating mixtures based on asbestos or on abestos and magnesium carbonate of Heading 68.13, are not included in Tariff Paragraph 38.19. (p. 704, Tejam, ibid.)

There seems to be no doubt, therefore, that Multivest is covered under Tariff Heading 68.07 at 20% ad valorem.

B. Nylon Imitation Catgut for Suturing and Debris Removing (Dental Floss)

Petitioner submits that Dental Floss, by precise design and function, conforms in every respect to the definition of "instruments and appliances" provided in the Brussels Explanatory Notes, and therefore within the meaning and scope of Tariff Paragraph 90.17 at 10% ad valorem, quoted hereunder as follows:

> 90.17 Medical, dental, surgical and veterinary instruments and appliances (including electro-medical apparatus and ophthalmic instruments) . . . . ad val. 10%

While respondent maintains that the subject imitation catgut (Dental Floss) has the nature of "supplies" and not that of an instrument and therefore it is classified under Tariff Heading 51.02 at 30% ad valorem which covers, among others, imitation catgut of man-made fiber materials. Tariff Heading 51.02 reads:

> 51.02 Monofil, strip (artificial straw and the like) and imitation catgut, of man-made fibre materials . . . ad val. 30%

This article is a thread-like material of several extra-fine nylon strands, apparently not s - twisted along its axis, but waxed to form a thread-like appearance. It is "spooled" to a length of 150 yards, such that the beginning of the composite strand could be pulled out of the center of an imaginary spool. The article is encased in a cylindrical glass container with a metal cover, the center of which has a hole through which the thread comes through. Outside and near the periphery, one point of the cover is indented outward to serve as a cutter. The article is commonly known as "dental floss." (p. 110, CTA records.)

Dental Floss is used to remove foreign matter from proximal surfaces of the teeth. It works into the crevice between the tooth and gingiva to remove oral debris and interrupt plaque formation. Dental Floss may be used also to detect overchanging fillings and in some cases incipient tooth decay. And because of its "waxed" quality it may be used as a vehicle for cleaning and polishing compounds, even flourides, to reach interproximal and slightly beyond the gingival margins. Its secondary function, because of its relative strength and the convenience of its presence in a dental office, is for suturing as imitation catgut. The literature recommends sterilization before use as a suture. (pp. 110-111, CTA records.)

As correctly pointed out by respondent, an instrument is a tool, utensil or implement. As such it is capable of being reused over and over for the same purpose without being consumed or becoming useless. However, subject imitation catgut is consumed or discarded after each use and, therefore, has the nature of "supplies" and not that of an instrument. In other words, it is not an instrument, not even a dental instrument, which can be classified under Tariff Heading 90.17 as claimed by petitioner.

Under Tariff Heading 51.02, under which respondent classified the subject nylon imitation catgut or Dental Floss, imitation catgut made from yarn of man-made fibers covered therein consists of highly twisted yarn with a heavy dressing to increase its strength and render it waterproof and sometimes translucent. It is sometimes dyed. Imitation catgut remains in this heading irrespective of its cross-sectional dimensions. (Explanatory Notes to the Brussels Nomenclature quoted in Tejam, Commentaries on the Revised Tariff and Customs Code of the Philippines, Vol. II, 1973 Edition, p. 901.)

All these products are generally in long lengths, but remain classified here even if cut into short lengths and whether or not put up for retail sale. They are used according to their different characteristics in thé manufacture of, among others, brushes and surgical sutures. (Explanatory Notes to the Brussels Nomenclature quoted in Tejam, ibid.)

The Dental Floss in question was imported in 300 100-gram jars but not certified to be sterile. According to note 3(a) to Chapter 30, Tariff and Customs Code, nylon imitation catgut for suturing when sterile is covered by Tariff Heading 30.05. This material is, however, usually put up in antiseptic solutions or in sealed sterile container, unlike the subject Dental Floss which is spooled and encased in a cylindrical glass container with a metal cover, with a hole through which the thread comes through and not certified to be sterile. And the Brussels Explanatory Notes to Tariff Paragraph 30.05 state that this heading excludes non-sterile suture materials, which materials according to their nature fall within Schedule XI. (p. 572, Tejam, Ibid) As stated above, according to the Explanatory Notes to the Brussels Nomenclature, non-sterile nylon imitation catgut for suturing is classified under Tariff Heading 51.02 at 30% ad valorem which covers, among others, imitation catgut of man-made fiber materials.

There would seem to be no doubt, therefore, that the correct classification of Nylon Imitation Catgut for Suturing and Debris Removing (Dental Floss) is Tariff Heading 51.02 at 30% ad valorem.

C. New Opaquer Powder or Liquid

Petitioner contends that Tariff Heading 39.01-B at 50% ad valorem, which reads:

> 39.01 Condensation, polycondensation and polyaddition products, whether or not modified or polymerized, and whether or not linear (for example, phenoplasts, aminoplasts, alkyds, polyallyl esters and other unsaturated polyesters, silicones):

A.	Articles not including in sub heading B hereof . .	ad val. 30%
B.	Aminoplasts and phenoplasts, alkyd resins, unsaturated polyesters and epoxy esters, whether or not modified or polymerized; urea and phenol formaldehyde molding compounds and adhesive; plates, sheets, strips, film and foil and other extruded shapes . .	ad val. 50%

under which the new opaquer powder or liquid was classified by respondent, is not a "beautifier" made of "self-curing acrylic restoration" but covers dental cements and fillings which should fall under Tariff Heading 30.05 at 10% ad valorem:

30.05 Other pharmaceutical goods . ad val. 10%

Respondent, on the other hand, avers that the explanatory notes of Tariff Heading 30.05 is very specific that only dental cements and fillings based on inorganic materials fall under it. Opaquer being a self-curing acrylic restoration and, therefore, a beautifier, should fall under Tariff Paragraph 39.01-B at 50% ad valorem. (pp. 5-6, Memo. of Respondent.)

The stand of respondent is well taken. A perusal of Tariff Heading 39.01 shows that Opaquer should fall under this heading and not under Paragraph 30.05 which specifically covers dental cement and fillings. The evidence shows that Opaquer comes in powder form of various color shades, usually with liquid. One would be useless without the other. It is generally known as a self-curing acrylic resinous composition which has the following uses:

<u>At the Chair</u>:

a. For <u>concealing</u> discolored tooth structure.

b. For <u>masking</u> metal backings and reinforcements.

c. For <u>stopping</u> the dark shadow of the mouth from showing thru an incimal or proximal filling where the cavity is extensive, from lingual to labial.

<u>At the Laboratory</u>:

a. For <u>masking</u> vencer crowns, metal reinforcements or attachment. Its use as <u>masking</u> agent is not new. Lacquers of various shades have been used for years.

b. The opaquer powder is mixed with liquid to produce a smooth, creamy consistency that can be <u>easily painted</u> over the surface <u>to be masked</u>.

As correctly pointed out by respondent, from the foregoing list of uses, it is noted that subject article is never used as dental cement or dental filling. Instead, it is a coating to conceal, mask or stop from showing discolored tooth structures, steel backing and reinforcements, vencer crowns, attachments, and similar others, in dentistry. As stated by petitioner itself, it masks dark surfaces and shadows under acrylic restorations in order to conceal discolored tooth structure to stop dark shadows of mouth from showing through the filling where the cavity is extensive. While it may be used as a filling material upon which a vencer acrylic filling is superimposed, it is only to prevent shadows, reflections of underlying tooth tissue or metal hood from altering the actual color of the vencer filling. (p. 213, CTA records.)

Opaquer can hardly be classified, therefore, as a dental cement or filling since it is a self-curing acrylic restorator which beautifies human dentures. If as ruled by the Supreme Court in La Compañia General de Tabacos de Filipinas, supra, it is the general use to which articles are generally adapted and for which they are generally used which determines their character within the meaning of the tariff laws, then there seems to be no doubt that Opaquer for purposes of tariff classification falls under Tariff Heading 39.01-B at 50% ad valorem.

In resumé, the correct tariff classifications of the articles in question are as follows:

1. Magnesium Phosphate Embedding Refractory Materials (Multivest) . . . Tariff Heading 68.07 at 20% ad valorem.

2. Nylon Imitation Catgut for Suturing and Debris Removing (Dental Floss) . . . Tariff Heading 51.02 at 30% ad valorem.

3. New Opaquer Powder or Liquid . . . Tariff Heading 39.01-B at 50% ad valorem.

Going to the question as to the home consumption value or price of the imported Jeltrate and Lucitone as basis for assessment and collection of customs duties and taxes, petitioner argues that it is the value or price declared in the consular, commercial, trade or sales invoice at:

(a) US$ 12.96 for Jeltrate (8-can cartons)
(b) US$ 85.80 for Lucitone 199 (lab. pkg.)
(c) US$ 1.10 for Lucitone (1-unit pkg.)

and not at:

(a) US$ 19.20 for Jeltrate
(b) US$ 97.50 for Lucitone 199 (lab. pkg.)
(c) US$ 1.15 for Lucitone 199 (one-unit pkg.)

as established by respondent.

The law involved is Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, which reads as follows:

> SEC. 201. Basis of Dutiable Value. - 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 (exclu-

ding 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 law seems clear and specific. It merely calls for its application as worded. There is no room for interpretation. "The home consumption value or price under this section shall be the value or price declared in the consular, commercial, trade or sales invoice." The applicable provision makes clear that the value or price declared in the consular, commercial, trade or sales invoice is the home consumption value or price on which the dutiable value of the imported article should be based. If respondent has any reasonable doubt as to the value or price of the imported article declared in the entry, then the correct dutiable value should be ascertained, in accordance with the mandate of the law, from 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 such other information that may be available to the Bureau of Customs. From the data thus gathered, respondent should ascertain and establish the home consumption values of articles exported to the Philippines and publish such lists of values from time to time. (See Bell Hobart Manufacturing Incorporated vs. Commissioner of Customs, CTA Cases Nos. 2750, 2751, 2752 and 2753, March 10, 1978.)

It is to be stressed that respondent Commissioner of Customs is required by law to ascertain and establish the home consumption values of articles exported to the Philippines and publish such lists of values from time to time. He does not only have to ascertain and establish the home consumption values, 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 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 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 loss of time, money and energy. (Bell Hobart Manufacturing Incorporated vs. Commissioner of Customs, supra.)

Coming back to the instant case, it should be unequivocably stated, as the records and the evidence will show, that there were no published values of the subject Jeltrate and Lucitone declared or established by respondent, as required by paragraph 3 of Section 201, discussed above. As a matter of fact, the witness of respondent, Miss Maria Pura Noble, appraiser of the Bureau of Customs, explicitly admitted on cross-examination and examination by the Court during the hearing of this case that there were no published values of the subject articles. While she stated that she received an alert notice as to the value of the articles in question, she made it clear to the Court that the value as per alert notice did not conform with Section 201 of the Tariff and Customs Code because the items had no published values. (t.s.n., December 9, 1976, pp. 43-46.) And neither the records of this case show of the alert notice referred to by the witness or any published values of the imported Jeltrate and Lucitone.

Granting that there was reasonable doubt entertained by respondent Commissioner of Customs as to the value or price of the imported Jeltrate and Lucitone declared in the entries, the law specifies that the correct dutiable value of the items should have been ascertained from the reports of the Revenue Attache or Commercial Attache, pursuant to Republic Act No. 5466 or other Philippine diplomatic officers and from such other information that may be available to the Bureau of Customs. And from such data gathered, the Commissioner of Customs should have ascertained and established the home consumption values of the articles and published such values. Accordingly, under the second paragraph of Section 201, supra, the home consumption value or price should be the value or price declared in the consular, commercial, trade or sales invoice. Since there is no fidelity nor compliance of what are required by the legal provisions applicable, in the absence of evidence to the contrary, there is, therefore, no basis for the assertion of respondent that the established value of the imported Jeltrate was at US$19.20 and the Lucitone was at US$97.50. The terms of the statute provide the safest guide as to the statutory policy, to which obedience is due and from which deviation is not allowable. (See Bell Hobart Manufacturing Incorporated vs. Commissioner of Customs, supra.)

We find meritorious, therefore, petitioner's stand that the value which should be considered as the home consumption value is that which was declared in the consular and commercial invoices at US$12.96 for Jeltrate (8-can cartons); US$85.80 for Lucitone 199 (lab. pkg.); and US$1.10 for Lucitone 199 (one-unit pkg.).

This case seeks the refund not only of the additional customs duties but also the revenue taxes levied and collected by respondent as a result of the alleged erroneous tariff classification of the Multivest, Dental Floss and Opaquer, as well as the erroneous valuation of the Jeltrate and Lucitone. The records show that of the total sum of ₱29,712.00 claimed by petitioner as refundable customs duties and sales tax, the amount of ₱25,236.49 corresponds to the additional customs duties paid by petitioner on the erroneous tariff classification of the article Multivest and the erroneous valuation of Jeltrate and Lucitone. We note, however, that insofar as the claim for refund of the revenue tax (sales tax) is concerned, the Commissioner of Internal Revenue had not been impleaded in this judicial suit for recovery of an internal revenue tax erroneosly or illegally collected so that this Court did not acquire jurisdiction over him. (Section 306 /now Section 292/, National Internal Revenue Code.) As held by this Court in the cases of Bell Hobart Manufacturing Incorporated vs. Commissioner of Customs, supra; NCR Corporation (Philippines) vs. Commissioner of Customs, CTA Case No. 2599, February 28, 1978; Wise & Company, Inc. vs. Rolando G. Geotina, Commissioner of Customs, CTA Case No. 2717, December 29, 1977, the Court of Tax Appeals has no jurisdiction because petitioner failed to file the claim for refund in writing with the Commissioner of Internal Revenue in accordance with Section 309 (Section 295) of the National Internal Revenue Code, and that said Commissioner of Internal Revenue has not been made a party respondent. (Luna vs. Commissioner of Customs, CTA Case No. 1947, November 29, 1968; Philippine Wallboard Corp. vs. Commissioner of Customs, CTA Case No.

2136, September 30, 1972; Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2155, Resolution dated April 15, 1971; Ace Publications, Inc. vs. Commissioner of Customs and Collector of Customs, L-18808, May 29, 1964, 11 SCRA 147; Tagum Electric Company, Inc. vs. Commissioner of Customs, CTA Case No. 2749, Resolution dated September 13, 1976.)

We are not unaware of the provisions of the second paragraph of Section 1708 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, that "if as a result of the refund of customs duties there would necessarily result a corresponding refund of internal revenue taxes on the same importation, the Collector shall likewise certify the same to the Commissioner who shall cause the said excess taxes to be paid, refunded, or tax credited in favor of the importer, with advice to the Commissioner of Internal Revenue." However, under the fundamental rule of statutory construction that all statutes relating to the same subject are to be construed with reference to each other so that effect may be given to all the provisions of each (Madrigal vs. Rafferty, 38 Phil. 414; 51 Am. Jur. 363), the afore-quoted provision of law should be interpreted in connection with Section 306 (now Section 292) of the National Internal Revenue Code. The Commissioner of Internal Revenue being a person who is bound by the judgment to be rendered in a judicial suit for the recovery of any national internal revenue tax alleged to have been erroneously or illegally assessed or collected, he is a party necessary to a complete determination and settlement of the questions involved therein. (Bell Hobart Manufacturing Incorporated vs. Commissioner of Customs, supra.)

Accordingly, only the amount of ₱25,236.49, which corresponds to the excess payment of customs duties on the erroneous tariff classification of the imported article Multivest, and the erroneous valuation of Jeltrate and Lucitone is refundable to petitioner.

WHEREFORE, respondent Commissioner of Customs is hereby ordered to refund to petitioner National Dental Supply, Inc. the amount of ₱25,236.49. Without pronouncement as to costs.

DECISION -
CTA CASE NO. 2757

SO ORDERED.

Quezon City, May 16, 1979.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge