Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

COCA-COLA BOTTLERS PHILIPPINES, INC.,
Petitioner,

- versus - **CTA CASE NO. 4666**

COMMISSIONER OF CUSTOMS,
Respondent.

4/7/94

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D E C I S I O N

This is claim for refund of customs duties paid under protest by petitioner. The facts of the case are as follows:

Sometime in early 1989, petitioner imported an integrated unit of a Van Der Molen equipment from C.T. Struckman & Waege at Hamburg, West Germany. The importation was supposed to be effected in three different shipments, and the customs duties thereon totalling ₱9,993,565 were paid by petitioner in advance (pp. 13-14, Bu. of Customs Records).

The first shipment arrived from Netherlands on board the vessel "Professor Tovstykh" on March 9, 1989, and was declared under Import Entry No. 13585 (pp. 15-16, Bu. of Customs Records), for which petitioner paid taxes in the amount of P541,316.00 (p. 21, *ibid*). This shipment was temporarily stored at the Manila International Container Port (MICP), and was withdrawn by petitioner's authorized broker Sapphire Cargo Movers, Inc. on March 15, 1989 (id). The second shipment arrived on April 2, 1989 on board the vessel "Sumiyoshi Maru", and was declared under Import Entry No. 29042. After paying the corresponding taxes thereon, petitioner withdrew said shipment from the MICP on April 6, 1989 (id, pp. 6-12). The third shipment arrived on board the vessel "Nadezhda Obukhova" on March 16, 1989, and was declared under Import Entry No. 12523. The taxes on this shipment were likewise paid by petitioner, after which it took complete delivery thereof on March 15, 1989.

Subsequently, however, on April 22, 1989 another shipment consigned to petitioner arrived on board the vessel "Khudoznik Prorokov", and was declared under Import Entry No. 43262 (p. 22, Bu. of Customs Records). The covering documents for this shipment showed that this contained one (1) unit of "Bel Tyne" brand sugar bag emptying system, and was allegedly shortshipped from Entry No. 12523 and, accordingly, was shipped free of charge to petitioner (*ibid*, pp. 22-23). The Bureau of Customs assessed petitioner import duties and other taxes on this shipment totalling ₱1,187,130, which petitioner paid under protest on August 25, 1989 (id, pp. 31-32).

Meanwhile, on August 24, 1989, petitioner filed a protest with the Bureau of Customs questioning the assessment of additional import duties and taxes on the fourth and last shipment. Petitioner contended that the equipment covered by this last shipment was actually supposed to have been included in the third shipment which arrived on March 16, 1989, for which the corresponding duties and taxes had already been paid. However, the supplier of said equipment allegedly did not include this particular equipment (i.e., sugar bag emptying system) because of manufacturing defects discovered during the final acceptance test prior to the final shipment. After conducting the necessary hearings, District Collector Hermogenes F. Elfante rendered a decision dated April 24, 1991, denying petitioner's protest for lack of merit.

Petitioner appealed the decision to respondent Commissioner of Customs on June 7,

1991. On September 25, 1991, respondent Commissioner denied the appeal and upheld the finding of the collector of customs that the equipment covered by the fourth shipment was separate from those included in the first three shipments made to petitioner. Hence, this petition.

The only issue raised by petitioner is whether or not respondent Commissioner of Customs erred in upholding the finding of the collector of customs that the one (1) unit of sugar emptying system covered by the fourth and last shipment made to petitioner was not a shortshipment of the first three shipments and, accordingly, constituted a separate importation for which the corresponding duties and taxes must be paid.

We find against petitioner.

Petitioner disputes respondent Commissioner's findings that there was sugar bag emptying system already included in the third shipment covered by Import Entry No. 12523-89. It alleges that when the third shipment was opened and inspected at its Sta. Rosa, Laguna plant, its designated surveyor discovered that the equipment in question was not in either of the two container vans comprising said shipment. In support of this, petitioner points to the alleged Certificate of Survey prepared by its designated surveyor, Battad Adjusters & Surveyors, Inc.

It should be noted, however, that the Certificate of Survey relied upon by petitioner was prepared only on October 20, 1989, nearly two (2) full months after the protest was filed and more than seven (7) months from the time the third shipment was withdrawn by petitioner from the MICP. More importantly, it appears from the records that the Certificate in question was the only one prepared by petitioner's surveyors (aside from that covering the fourth shipment), despite the fact that there were three (3) shipments comprising the importation in question. The Court is thus led to conclude reasonably that the October 20, 1989 Certificate of Survey was prepared for the specific purpose of supporting petitioner's protest, rather than for the purpose of attesting to the facts that actually transpired during the survey. This conclusion is reinforced to a great extent by the fact that no representative of the Bureau of Customs was present during the alleged inspection and inventory. In this regard, it is worth noting that the alleged Certificate of Survey is not even under oath, thereby greatly reducing its probative value to the level of hearsay evidence. As far as respondent Commissioner was concerned, the records in his possession, specifically Import Entry No. 12523-89 showed that all the items covered by the importation, including the sugar bag emptying system were duly delivered and received by petitioner.

We cannot agree with petitioner's contention that it has sufficiently overcome the presumption of regularity of the entries in Import Entry No. 12523-89. The mere filing of the protest certainly is not sufficient proof that the entries in the aforesaid documents were erroneous. It was incumbent upon petitioner to timely inform respondent Commissioner of the fact of shortshipment (assuming that there indeed was a shortshipment), so that the corresponding corrections could have been made. Yet, from the time it took delivery of the third shipment until it filed its protest, petitioner took no steps to notify respondent Commissioner of the alleged shortshipment. It is rather incredible that petitioner opted to wait for official confirmation from its supplier of the fact of shortshipment (despite the fact that it had actual knowledge thereof) before taking any steps to rectify the alleged error.

Petitioner should have requested for a custom examiner and appraiser to attest or certify to the deficiency. This is a procedure laid down by law which petitioner failed to observe, under Section 1703 of the Tariff & Customs Code.

> "Sec. 1703. ***Abatement of Refund for Deficiency in Contents of Packages.*** - If, upon opening any package, a deficiency or absence of any article or of part of the contents thereof as called for by the invoice shall be found to exist, such deficiency shall be certified, under penalties of falsification or perjury, to the Collector by the examiner and appaiser, and upon the production of proof satisfactory to the Collector showing that the shortage occured before the arrival of the article in the Philippines, the proper abatement or refund of the duty shall be made."

That petitioner may have an unsullied record in respect of its compliance with the tax laws of this country is immaterial and irrelevant. Petitioner's proclivity to avoid taxes is not in issue here. The only question before the Court is whether, <u>in this particular instance</u>, petitioner should assess additional import duties and taxes on the subject fourth shipment of sugar bag emptying machine under Import/Entry No. 43262. As earlier stated, we find no cogent reason for reversing the decision of respondent Commissioner.

WHEREFORE, premises considered, the petition is hereby **DENIED** for lack of merit.

SO ORDERED.

Quezon City, Metro Manila, 07 April 1994.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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.**

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals