REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EEC GENERAL MERCHANDISE, INC.
Petitioner,

- versus -

C.T.A. CASE NO. 5429

THE COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:
FEB 25 1998

x - x

DECISION

This is a petition for review which seeks to set aside the decision of the respondent Commissioner of Customs imposing a 60% penalty of the landed cost of the subject shipment and to refund to herein petitioner alleged overpayment in the amount of P2,606.322.60.

The undisputed facts are as follows:

Petitioner E.E.C. General Merchandise, Inc. imported from Hongkong six (6) container vans of STC Motorcycle spare parts, bicycle parts, accessories and parts of other motor vehicles. The shipments arrived at the port of Manila on June 30, 1995 on board the vessel Wan Hai 205 in its Voyage No. 5072, covered by Bill of Lading No. HKMNC01825, and under Entry No. 105092-95. The shipments were also covered by Clean Report of Findings (CRF) of the Societe Generale de Surveillance (SGS) Hongkong, specifically, SGS CRF No. HKG185623.

The CRF showed that there were 5,592 packages duly examined and inspected by the SGS Hongkong Technical

Expert before these were placed inside the six containers. It likewise reflected the tariff classification and rate of duty of each item.

One of the articles declared under the entry was common timing chain, classified under Tariff Heading (T.H.) No. 7315.89.00 and subject to 10% rate of duty. Upon examination, however, the shipment yielded roller chains, which are properly classified under T.H. No. 7315.11.00 and subject to 30% rate of duty. Moreover, the roller chains were valued only at $0.30 per piece while the same has a value-on-file at the Customs Valuation Center and Library at $3.53 per piece, hence there was gross undervaluation of the imported articles. Thus, petitioner was not able to effect the release of the shipment as the District Collector of Customs issued on July 3, 1995 a Warrant of Seizure and Detention against it.

Alleging that no fraud was committed, petitioner filed on August 23, 1995 a letter-request addressed to the District Collector of Customs seeking that it be allowed to avail of the provisions of Executive Order No. 38 on settlement of seizure cases, by virtue of which it would pay a penalty of 20% of the landed cost of the items seized.

The matter was referred to the Law Division of the Bureau of Customs and after hearings subsequently conducted thereon, issued a memorandum to the Collector of Customs recommending settlement under E.O. No. 38 upon payment of the 20% penalty based on the landed cost of the seized items.

However, Deputy Commissioner Licerio Evangelista ordered the Law Division to conduct a rehearing of the seizure case for reception of evidence anent the issue of the existence of fraud as alleged by the prosecution. Again, the Law Division issued another memorandum dated October 27, 1995, affirming its earlier findings that no fraud was committed by the petitioner. The District Collector of Customs then sought the approval of the respondent Commissioner of Customs with respect to the settlement of the seizure case based on the recommended 20% penalty.

On January 4, 1996, respondent issued his memorandum to the District Collector of Customs advising him of the acceptance of the proposed settlement subject, however, to the imposition of 60% penalty based on the total landed cost.

On January 26, 1996, petitioner wrote to the Secretary of Finance seeking reconsideration of the action taken by respondent. This letter was indorsed by the Secretary of Finance to the Commissioner of Customs on February 19, 1996.

On September 15, 1996, petitioner received the reply of the Secretary of Finance dated August 19, 1996, to which was enclosed the decision of respondent Commissioner of Customs dated May 23, 1996, explaining the basis for denying reconsideration of the imposition of the 60% penalty instead of the 20% penalty recommended by its Law Division.

Hence, this Petition.

Section 1 of Executive Order No. 38 provides:

> **SECTION 1.** Section 2307 of the Tariff and Customs Code of the Philippines is hereby amended to read as follows:
>
> > "SEC. 2307. ***Settlement of Case by Payment of Fine or Redemption of Forfeited Property.*** - Subject to approval of the Commissioner, the district collector may while the case is still pending, <u>except when there is fraud,</u> accept the settlement of any seizure case provided that the owner, importer, exporter, or consignee or his agent shall offer to pay to the collector a fine imposed by him upon the property, or in case of forfeiture, the owner, exporter, importer or consignee or his agent shall offer to pay for the domestic market value of the seized article. The Commissioner may accept the settlement of any seizure case on appeal in the same manner.
> >
> > <u>Upon payment of the fine as determined by the district collector which</u>

> shall be in an amount not less than twenty percentum (20%) or more than eighty percentum (80%) of the landed cost of the seized imported article or the F.O.B. value of the seized article for export, or payment of the domestic market value, the property shall be forthwith released and all liabilities which may or might attach to the property by virtue of the offense which was the occasion of the seizure and all liability which might have been incurred under any cash deposit or bond given by the owner or agent in respect to such property shall thereupon be deemed to be discharged.
>
> Settlement of any seizure case by payment of the fine or redemption of forfeited property shall not be allowed in any case where the importation is absolutely prohibited or where the release of the property would be contrary to law." (Underscoring supplied)

Verily, settlement is allowed in seizure cases provided that first, there is no fraud and second, fine as determined by the district collector ranging from 20-80% of the landed cost of the seized imported article is paid and lastly, that the importation is not absolutely prohibited or contrary to law.

Subsequently, Customs Administrative Order No. 4-94 simplified matters further by providing a "uniform imposition of fines in the settlement of seizure cases pending hearing for purposes of consistency of action."

The relevant Section D of CAO 4-94 provides:

D. VIOLATION OF SECTION 2503 OF THE TCCP

> D.1 Undervaluation, misdeclaration and misclassification with more than 30% discrepancy in duty but prima facie evidence of fraud satisfactorily rebutted ... 60%
>
> D.2 Second violation ..... no settlement by fine. (Underscoring supplied)

Therefore, it is beyond doubt that the 60% penalty imposed by herein respondent may be allowed as it already took into account the absence of fraud. Otherwise, settlement may not prosper.

The issue may thus be narrowed down to whether or not the 60% penalty should be imposed against petitioner considering the attendant circumstances.

We find for the respondent.

In his second indorsement dated May 23, 1996, respondent explained the basis for denying reconsideration of the imposition of the 60% penalty, thus:

> "1. The Government imputed violations of Section 2503 in relation to Section 2530 f and l (5) of the Tariff and Customs Code of the Philippines as amended by R.A. 7651. Thus, it substantiated during the hearing the following:
>
> a) the Importer committed misdescription or misclassification as it actually imported roller chains, as against its claim that they are timing chains, the commodity for which the Bureau of Import Services gave the Importer the Authority to Import, in order to avail of the lower rate of duty at 10% (T.H. 7315-89-00) from 30% (T.H. 7315-11-00);

b) the Importer committed gross undervaluation as the roller chains, which constitute the bulk of the shipment was valued only at $0.30 per piece while the same has value-on-file at the Customs Valuation Center and Library at $3.53 per piece;

2. The imposition of the questioned penalty is with legal basis as the Claimant-Importer invoked the settlement provisions of Section 2307 of the TCCP as amended by EO No. 38 by claiming good faith, in view of the existence of the SGS-CRF covering the shipment. The said law is in conjunction with CAO 4-94, a copy of which is attached, allows the settlement of seizure cases upon payment of the penalty of 60% of the landed cost of the shipment plus the duties and taxes due if the prima facie existence of fraud is rebutted.

Petitioner would like us to follow its line of reasoning that since the existence of fraud was not proven in this case, the 60% penalty should not have been imposed by the respondent.

It must be noted that the 60% penalty based on the landed cost of the seized articles, was imposed pursuant to the aforequoted Customs Administrative Order No. 4-94 issued on April 29, 1994 which provides among others, that in cases where the existence of fraud was successfully rebutted by the claimant, the penalty imposed shall be 60%. In other words, in the absence of fraud, the penalty shall still be 60% and not 20% as claimed by the petitioner. Customs Administrative Order No. 4-94 was issued primarily to promulgate the provisions of Executive Order No. 38 (amending Section 2307 of the Tariff and Customs Code) which mandated the Collector of Customs to formulate a schedule of fines in settlement of seizure cases in amounts not less than 20% but not more than 80% of the landed cost of the seized articles. By means of CAO No. 4-94, the penalty in cases where the "prima evidence of fraud was satisfactorily rebutted" is pegged at 60%.

Petitioner failed to grasp the substance of said CAO No. 4-94, thus it continued to insist that they are liable only to a 20% penalty. A cursory reading of the provisions of CAO No. 4-94 will readily expose the futility of petitioner's claim.

WHEREFORE, in view of the foregoing, judgment is hereby rendered **DENYING** petitioner's claim for refund in the amount of ₱2,606,322.60.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(On leave)
RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with 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