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NCR CORPORATION (PHILIPPINES),
Petitioner,

- versus - C.T.A. CASE NO. 2599

COMMISSIONER OF CUSTOMS,
Respondent.

2/28/78

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D E C I S I O N

This is an appeal by petitioner, NCR Corporation (Philippines), from the decision of the respondent Acting Commissioner of Customs dated March 18, 1974, affirming that of the Collector of Customs of Manila in Customs Case No. 73-149 (Mla. Protest No. 8786), dismissing petitioner's protest against the payment of additional customs duty and sales tax in the amounts of ₱2,670.00 and ₱1,296.00, respectively, plus surcharge, or a total amount of ₱9,306.00.

It appears that petitioner is a corporation organized and existing under and by virtue of the laws of the Philippines, with principal office at Araza Building, Paseo de Roxas, Makati, Rizal. Pursuant to a purchase order of petitioner addressed to NCR Japan, a shipment of ten (10) cases of adding machines, Model NCR 14-4-09-1, arrived at the Port of Manila aboard the "MV DON HERMAN" on February 17, 1973, declared under Entry No. 13999-73.

The value of the shipment was declared at $62.34 a unit, it being the value shown in the corresponding consular and commercial invoices, and based on said value, the amount of ₱16,742.00 was paid as customs duties and taxes.

After the processing of the Entry papers, petitioner was required by the Collector of Customs to pay ₱2,670.00 as additional customs duty, and ₱1,296.00 as additional (in sales) taxes, plus surcharges, or a total of ₱9,306.00 which petitioner paid on April 13, 1973 under Official Receipt No. 0823809. These additional customs duties and taxes paid were the result of a valuation of the imported machines based on a "Home Consumption Value" stated in Customs valuation Circular No. 34-72 of the Bureau of Customs dated November 20, 1972 at $77.55 per unit allegedly issued pursuant to Section 201 of the Tariff and Customs Code of the Philippines, as amended by P.D. 34, granting the Commissioner of Customs authority to ascertain and establish the home consumption value of articles exported to the Philippines.

On April 26, 1973, petitioner filed a written protest against the collection of the additional customs duty, sales tax, and surcharge.

After due hearing, the Collector of Customs rendered a decision on October 8, 1973 dismissing the said protest on the ground that the valuation was in accordance with the home consumption value as published in Customs Valuation Circular No. 34-72. Petitioner appealed the said decision to respondent Commissioner of Customs who, on March 18, 1974, affirmed the decision of the Collector of Customs.

On April 19, 1974, petitioner filed its petition for review with this Court praying that judgment be rendered declaring that the dutiable value of the imported adding machines is that value of $62.34 declared in the consular and commercial invoice and not the home consumption value under Customs Circular No. 34-72 and ordering respondent Commissioner of Customs to refund the total amount of ₱9,306.00 representing the additional customs duty, sales tax and surcharge collected on the imported article.

This case was submitted for decision by the parties based upon the pleadings and records of this case.

The sole issue to be resolved is whether or not the Home Consumption Value published in the Customs Valuation Circular No. 34-72 is the dutiable value of the imported adding machines as prescribed in Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34.

The law involved in this case 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 (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 condition ready for shipment to the Philippines, plus ten (10) *per cent* of such home consumption value or price.
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> 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.
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> 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.
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> 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 declare in the entry, it shall be the domestic wholesale selling price of such or similar article in Manila or other principal market 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-
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> (a) Twenty 20) per cent thereof for expenses and profits; and
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> (b) Duties and taxes paid thereof.

Petitioner argues that under the aforequoted provision of law, the "home consumption value", as this term is used, is the value or price declared in the consular, commercial, trade or sales invoice. Therefore, the value that should have been considered for purposes of customs duty as the "home consumption value" of the imported machines in question was the value declared in the consular and commercial invoice at U.S. $62.34 per unit, and not at U.S. $77.55 per unit, which is the home consumption value specified in Customs Circular No. 34-72. (p. 5, Memo. of petitioner.)

We find meritorious the petitioner's argument that the value that should have been considered as the "home consumption value" is that which was declared in the consular and commercial invoices at U.S. $62.34, and could not be the $77.55 indicated in Customs Circular No. 34-72.

Under Section 201 of the Tariff and Customs Code quoted above, the basis of the dutiable value of an imported article is the home consumption value or price of the same as found in its consular or commercial invoice. We said in our decision in the case of Wise & Company, Inc. vs. Rolando G. Geotina, Commissioner of Customs, CTA Case No. 2717, Dec. 29, 1977:

> The applicable law, Section 201, as amended by P.D. No. 34, states quite clearly that the dutiable value should be the home consumption value, and for purposes of customs duties, it is the home consumption value that is indicated in the consular, commercial, trade, or sales invoices. The law had literally defined the home consumption value as that price of the articles bought and sold freely in the wholesale quantities in the ordinary course of trade in the principal market of the country from where the merchandise is exported to the Philippines, less internal excise taxes paid thereon, but 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. Applying the above xxx law in this case, there is a concrete showing, as can be seen from the records and particularly the consular invoices, that the home consumption values of the titanium dioxide were those values certified as such by the Export Clerk of the British Titan Products Co. Ltd. and subscribed before the Philippine Consul B. Ch. Rabe (pp. 20, 34, 74, Folder II, Customs Rec.) in the port of origin of the titanium dioxide which is in England. The correctness of the home

consumption values appearing in the consular invoices of the imported titanium dioxide were later on, or on March 12, 1975, or after the appraisal of the shipments were made, corroborated by the affidavits of Thomas George Sinclair, Joint Secretary of the British Titan Products Co. Ltd., the manufacturer and supplier of titanium dioxide, wherein he stated under oath that the home consumption values of the imported titanium dioxide specifically declared in the consular invoices were correct. (pp. 17-18, CTA Rec.; pp. 20-21, CTA Rec.) Sinclair, in another affidavit, equally declared that the home consumption values of the titanium dioxide reflected in a price list attached to his affidavit were the true and correct home consumption values thereof effective between the periods from March 18, 1974 and July 30, 1974, which were the periods at which the importations in question (pp. 40-43, CTA Rec.) were made, or near the dates of said importation. These declarations made in these affidavits have, to our minds, the badges of truth inasmuch as Sinclair was at the time of their execution the Secretary of the manufacturer and seller of the titanium dioxide and can be presumed to know personally the market conditions obtaining in England and, of course, the home consumption values of the titanium dioxide, or the value at which it was sold or offered for sale freely in the usual wholesale quantities in the ordinary course of trade in the principal markets in England. It is obvious that these affidavits can be taken into account by virtue of the stipulation entered into by the parties to submit this case for decision based on the pleadings and records. (U.S. v. Metro Goldwyn-Mayer Corp. 19 CCPA 119, TD 45247; p. 416 Vol. 2, Customs Law Digest.) It is to be noted that these affidavits were made part of the pleadings and records of this case.

The respondent was not able to contradict the home consumption values reflected in the consular invoices, affidavits and price lists, except only to make a general assertion that petitioner has not overcome the presumption of correctness of the appraisal made by respondent's appraiser or has shown that the customs authorities proceeded upon a wrong principle in fixing or assessing the dutiable value of importations, or to show that the figures (perhaps referring to the CIF value) are not true and correct. (See Memorandum for the Respondent, pp. 46, 47-48, CTA Rec.) Moreover, respondent had relied strongly, in support of his stand, upon the case of Lim Quim vs. Collector, op. cit., in which the Supreme Court applied Rule 13(a), Tariff Law of 1909 (Public Laws, Vol. 7, pp. 367-371) which provides as follows:

> RULE 13(a). When an imported merchandise is subject to an ad valorem duty the duty shall be assessed upon the actual market value or wholesale price of such merchandise as bought and sold in usual wholesale price of such merchandise, as bought and sold in usual wholesale quantities, at the time of exportation to the Philippine Islands, in the principal markets of the country from where imported, and in the condition in which such merchandise is there bought and sold for exportation to the Philippine Islands, or consigned to the Philippine Islands for sale including the value of all customs, cases, crates, boxes, packs, and coverings of any kind, and all other costs, charges, and expenses incident to placing the merchandise in question, packed ready for shipment to the Philippines.

Rule 13(a), Tariff Law of 1909 is the forerunner of Section 201 of the Tariff and Customs Code, as amended, but which latter law is now textually different from the former. The Supreme Court had laid down in that case of Lim Quim, based on said Rule 13(a), Tariff Law of 1909, the general rule that the value of merchandise fixed by the appraiser and affirmed by the Collector of Customs is conclusive, except upon an affirmative showing that the appraiser in assessing the value had (1) proceeded upon a wrong principle and (2) is contrary to law. The case of Lim Quim is inapplicable because the law involved therein is very different from Section 201 of the Tariff and Customs Code, as amended, since the 2nd paragraph of the latter, which defines the home consumption value, and which should be the basis for the imposition of additional customs duty in this case, is absent from the former. The 2nd paragraph of Section 201 as amended, is hereby quoted for emphasis.

> 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.

Analyzing the 2nd paragraph of Section 201 of the Tariff and Customs Code, which is that particular portion of the law applicable to this case, it provides that the home consumption value is that value which is found or reflected, among others, in the "consular invoice." It is also stated in said Section 201 that where there exists a reasonable doubt as to the correctness of the home consumption value or price of the imported article declared in the entry as borne by the consular, commercial, trade or sales invoices, the dutiable value shall be ascertained from the reports of the Revenue Attache or Commercial Attache, Foreign Trade Promotion Attache or other Philippine diplomatic officers, and that from out of these reports (or data), the home consumption values of articles imported shall be ascertained and published. The finding of fact made by the Supreme Court, in the said cited case of Lim Quim, to the effect that the consular certificate presented therein was merely a notarial act, and that the consul did not make any declaration as to the value of the merchandise is different from the factual situation in this case. In the first place, the Philippine Consul R. Ch. Rabe in this case did not merely perform a notarial act by the simple expedient of subscribing upon oath the declaration made by the Export Clerk of the manufacturer of titanium dioxide regarding the home consumption values of said titanium dioxide in English Pounds, but he had also officially certified, as shown at the back of the consular invoices in question, that "after proper verification, the invoice value as well as the export values stated on this invoice and statements above x x x are correct to the best of my knowledge and belief." (See back of consular invoices, at pp. 20, 34, and 74, Folder II, Customs Rec.) In the second place, while it may be admitted that the appraisement made under Rule 13(a) of the Tariff Law of 1909 in the cited case of Lim Quim is based upon the actual market value or wholesale price of the imported article, which may perhaps be the same as that provided in the first paragraph of Section 201 of the Tariff and Customs Code, as amended, it did not, however, contain the 2nd paragraph of the latter, which states in part that the "home consumption value or price x x shall be the value or price declared in the consular, commercial, trade or sales invoices," and that in the case of reasonable doubt as to the home consumption value or price declared in the importation, it shall be ascertained from the reports of the revenue or commercial attaches (Foreign Trade Promotion Attache) and other Philippine diplomatic officers and from such information available to the Bureau of Customs. It was not shown here that there was a doubt as to the home consumption value placed in the consular invoices. Furthermore, the home consumption value has not been ascertained from the reports of the attaches and other Philippine diplomatic officers and published lists of the home consumption value of said titanium dioxide. Thirdly and finally, while it can be noted that there is the general principle that the assessments of values by appraisers or official acts of customs officers are presumed to be correct (US v. Glendinning, McLeish & Co. Inc. 12 Cu App. 222 TD 40229, aff'g Circ. Reap. 33510, p. 449, Vol. 2, Customs Law Digest; US v. Frank Lambert, 2 Cu App 239, TD 31973, Rev'g Abs 21027, TD 29690) this principle can, however, be overcome even by an affidavit which will show a value which is different from what was determined or placed by the appraisers. (Melba B. Rodriguez, 23 CCR 296, RD 7752, Rev'g 19 CCR 268, RD 7405, cited at p. 422, Vol. 2, Customs Law Digest.) Moreover, an invoice, which is unimpeached and undiscredited, can not only be prima facie evidence of the value of the goods wherein it was declared, but is moreover controlling in the absence of proof to the contrary (Carey & Skinner Inc. v. US 16 CCR 361 RD 6279, p. 478 Vol. 2, Customs Law Digest) and that the price paid for merchandise that is imported, as shown by the invoice, is evidence of the market value thereof. (US v. Sabin, 12 Cu App. 520, TD 40731, reh den. 13 Cu App 161, TD 41023, p. 483, Vol. 2, Customs Law Digest.)

It is a rule that in weighing the evidence of the parties, the presumption of correctness which attaches to the findings of the Collector of Customs or Commissioner of Customs can not have any evidentiary value and can not be weighed against the evidence that may have been presented by the party-importer which challenged the correctness of such finding. (SS Kresge v. US 25 CCR 89, CD 1269; Morse Bros. (Inc.) v. US 13 Cu App 553, TD 41432; US v. Hudson Forwarding & Shipping Co. 18 CCPA 258, TD 44427, aff'g TD 42750). Where, as here, affidavits were submitted, without any objection on the part of the Government, (see US v. Baldwin Universal Co. 18 CCPA 394, TD 44641, Rev'g and remanding TD 4412, p. 604, Vol. 2, Customs Law Digest; A J Bracher Co., Inc. (The Darby Co.) v. US Reap. Dec 3285, 65 TD 1677, 1678) to succinctly prove or show the home consumption value of merchandise to the Court, as well as the price lists, these records constitute competent and relevant evidence of the home consumption values of the imported articles.

It must be noted that petitioner had, as aforesaid, presented affidavits confirming the fact that the home consumption values of the imported titanium dioxide were truly those found in the consular invoices in the price lists, and those reflected in the entry papers. However, respondent never presented any evidence against the above affidavits and price lists which reflect the home consumption values of said titanium dioxide products. The presumption of the correctness of the valuation of the imported articles not being evidential and it having been overcome by the evidence or the records of this case, or the evidence of petitioner not having been *prima facie* rebutted by respondent, therefore, the burden to show the correctness of his assessment or appraisal uncompromisingly shifted to the latter. Where the government counsel saw fit, as in this case, to rely solely upon the presumption of correctness of the finding of value by appraiser, and did not take the natural steps to introduce competent and credible evidence in support of the correctness of the appraiser's finding of value, it is fatal, for, in the absence of that countervailing evidence presented by respondent or the government, the importer-petitioner becomes obviously entitled to a decision in its favor. (SS Kreage v. US, *op. cit.*; Morse Bros. (Inc.) v. US, 13 Cust. App C. 553, 562, TD 41432, *cited* in U.S. v. Marshall Field & Co. TD 44761, 59 TD 774; U.S. v. Wanamaker, 14 CA Cust. App C. 285, TD 41888, cited in Gallaghan & Ascher, Inc. v. US, Reap Dec. 73536, 67 TD 1365). Moreover, in the absence of evidence or record establishing the statutory dutiable value, it is that value as invoiced and declared in the import entry that will be considered for purpose of imposing the *ad valorem* duty under the rule that an invoice, unimpeached and undiscredited is not only *prima facie* evidence of what it declares but is controlling in the absence of proof to the contrary. (Carey & Skiner, Inc. v. US 16 CCR 361, RD 6278, p. 617, Vol. 2, Customs Law Digest.)

In order that the home consumption value stated in the consular and commercial invoices can be disregarded, doubt of its correctness must be shown before it can apply another value based upon proper informations and reports forwarded by the revenue or commercial attaches and other Philippine diplomatic officers. "

In this case, respondent Commissioner of Customs based this valuation of the merchandise upon Circular No. 34-72 dated November 20, 1972. Since this case was submitted upon the customs records and the pleadings, there is no evidence presented to show that there was a reasonable doubt as regards the home consumption value stated in the consular and commercial invoices.

We note that Circular No. 34-72, which was dated November 20, 1972, was issued seven (7) days prior to the effectivity of P.D. 34 on November 27, 1972. In order, therefore, that Circular No. 34-72 dated November 20, 1972 will have force and effect, it must be one which is intended to implement Section 201 of the Tariff and Customs Code, as amended by P.D. 34, and/or that it must be established that the value as found in the consular or commercial invoices is not correct. Moreover, said Circular No. 34-72 cited by respondent to contain the home consumption value of the adding machines is nowhere to be found in the records. Neither does it show that the adding machines have a home consumption value which can be drawn from the reports and informations submitted by the revenue, commercial attaches or diplomatic officers. There is no published price list presented as of the date, or near the date, of the purchase or acquisition of the adding machines on January 31, 1973 (Consular Invoice No. 0-74; p. 1, Decision, Acting Commissioner of Customs). Consequently, we hold that the home consumption value is the amount of $62.34 per unit of adding machine.

This case sought the refund not only ~~of~~ the customs duties in the sum of ₱2,670.00, ~~but~~ also the revenue tax of ₱1,296.00, exclusive of surcharges, which latter surcharges is not exactly established in this case. Considering that the internal revenue tax (sales tax) in order to be refunded must be subject to a separate written claim for refund filed with the Commissioner of Internal Revenue, and the latter must be made a party to this case, which written claim and inclusion as party hereto has not been shown in the records, the prayer seeking the refund of the sales tax is fatal to the claim of petitioner and, hence, can not be refunded. (See Wise & Company vs. Rolando G. Geotina, etc.; supra). With respect to the amount of ₱2,670.00 paid as additional customs duty, this can be legally refunded to petitioner.

The exact amount of surcharges not having been specified by the parties as aforesaid, it can not, therefore, be legally refunded. It is incumbent upon petitioner, in a claim for refund, to point out exactly the amount which it is legally entitled as refundable taxes. We said in the same case of Wise & Co. vs. Rolando G. Geotina, ibid.:

> However, with respect to the said Import Entry No. 82428-74, and in order that petitioner be entitled to the refund of the additional customs duty, out of the sum of ₱19,674.00, it paid on the imported titanium dioxide, this claim for refund of duties and taxes being derogatory to the taxing power of the state, it is incumbent upon it to prove the exact amount of customs duty to be refundable to it. Note that in this importation the customs duties and revenue taxes paid thereon in the total sum of ₱19,674.00 were neither itemized by petitioner nor by respondent. The records, therefore, do not disclose exactly how much of the ₱19,674.00 represents the customs duties to be refunded. Having failed to show the exact amount of customs duties refundable from out of the sum of ₱19,674.00 paid, it is not entitled to the refund of the customs duty thereon. And with regards to that part of said amount of ₱19,674.00 which corresponds to the advance sales tax paid, this Court has heretofore said that it had no jurisdiction for the same grounds that the petitioner had failed to file a written claim for refund thereof with the Commissioner of Internal Revenue and that the latter has not been made a party to this case.

IN VIEW OF THE FOREGOING, the decision appealed from is hereby modified. Respondent is hereby ordered to refund the sum of ₱2,670.00 to petitioner as additional customs duty. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Philippines, February 28, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Amante Filler

AMANTE FILLER
Acting Presiding Judge