REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PROCTER & GAMBLE PHILIPPINE
MANUFACTURING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2788

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

2/27/81

D E C I S I O N

In this petition for review of the decision of respondent Commissioner of Customs dated March 9, 1976, affirming the decision of the Collector of Customs of Manila dismissing for lack of merit Manila Protest No. 9659, petitioner Procter & Gamble Philippine Manufacturing Corporation seeks the refund of the sum of ₱34,680.00, plus interest thereon from date of payment until date of refund, representing alleged overpaid customs duty and internal revenue taxes on a shipment of 5,000 bags of Soda Ash Dense.

There is no controversy as to the facts of the case. As alleged by petitioner in its petition for review and admitted by respondent in his answer:

1. Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines. Respondent Commissioner of Customs

may be served with processes at the Bureau of Customs, Port Area, Manila.

2. In April 1975, 5,000 bags of Soda Ash Dense (200 metric tons) consigned to petitioner were landed in the port of Manila and declared under Entry No. 33511, series of 1975.

3. Petitioner's importation, per supplier's invoice and the Consular Invoice of Merchandise covering the same, had a valuation of US$37,606.16, or US$188.0308 per metric ton (FOB Japan). Accordingly, petitioner paid to the Bureau of Customs the total sum of ₱59,753.00 in duties and taxes. Said payment was covered by Official Receipt No. 62797, dated April 10, 1975.

4. Before final liquidation, however, the Bureau of Customs reappraised petitioner's shipment and, applying the Bureau's RVIC No. 4-438 dated April 14, 1975, assessed petitioner's shipment at US$307.00 per metric ton, or a total of US$61,400.00 for the entire shipment. Petitioner was thereafter required to pay ₱34,680.00 in additional duties and taxes. Under protest, petitioner paid to the Bureau of Customs the said sum of ₱34,680.00. The payment was covered by Official Receipt No. 63747, dated April 21, 1975.

5. On April 23, 1975, petitioner formally protested the payment of additional duties and taxes on its importation. The protest was docketed as Manila Customs Protest Case No. 9659.

6. The Collector of Customs, in a decision dated June 20, 1975, dismissed petitioner's protest for alleged lack of merit.

7. Petitioner seasonably appealed the Collector's decision to the Commissioner of Customs. In a decision dated March 9, 1976, the Commissioner of Customs affirmed in full the Collector's decision. Petitioner received notice and copy of the Commissioner's decision on March 24, 1976.

8. In determining the dutiable value of petitioner's importation, the Collector of Customs relied on the Bureau's RVIC No. 4-438, altogether disregarding the value or price of petitioner's shipment as contained in the supplier's sales invoice as well as that indicated in the Consular Invoice of Merchandise covering the importation.

9. Under Section 201 of the Tariff and Customs Code of the Philippines, as amended by Presidential Decree No. 34, the dutiable value of an imported article subject to ad valorem rate of duty shall be based on the "home consumption value" of such article. The same provision defines "home consumption value"

as the "value or price declared in the consular, commercial, trade or sales invoice."

In his answer to petitioner's petition for review, respondent alleges by way of affirmative and special defenses that:

5. The only issue posed for resolution in the instant appeal is the determination of the correct home consumption value (HCV) of the shipment in question, whether under RVIC No. 4-438 when there exists a reasonable doubt as to the dutiable value of the imported articles declared in the entry, and which fixes the HCV thereof at $307.00 per metric ton, or on the value shown by the Consular Invoice which is $188.0308 per metric ton FOB, Japan;

6. Petitioner's contentions that the dutiable value of the shipment in question should be based on the value appearing in the Consular Invoice duly authenticated by the Philippine Consul and that the appraiser is duty bound to rely on the value appearing therein as the correct home consumption value, are untenable because Section 1405 of the Tariff and Customs Code provides:

> "Sec. 1405. Proceedings and Reports of Appraisers. - Appraisers, shall by all reasonable ways and means, ascertain, estimate and determine the value or price of the articles as required by law, <u>any invoice or affidavit thereto or statement of cost, or of cost of production to the contrary notwithstanding</u>, x x x." (Underscoring supplied).

7. The Supreme Court, applying the above provision of the Code, aptly stated:

> "If the Customs authority were bound by the invoice value, it is evident that they would be, to a considerable extent, at the mercy of foreign merchants and importers x x x." (The Coca-Cola Export Corporation vs. The Commissioner of Internal Revenue and the Collector of Customs, Manila G.R. No. 123604, March 15, 1974, 56 SCRA 7).

8. Petitioner should know that the home consumption values published and circulated by the respondent Bureau like RVIC No. 4-438 is a product of a careful and a thorough compilation of values for articles of the same nature and kind exported at a particular time and date.

The parties are not in dispute on the computation of the customs duty and internal revenue tax (advance sales tax) payable by, or the amount refundable to, petitioner as the case may be.

The decisive question to be resolved in this case is the determination of the dutiable value of petitioner's shipment of 5,000 bags of Soda Ash Dense. Is it the value established by the Bureau of Customs for soda ash dense under RVIC No. 4-438 dated April 14, 1975 at US$307.00 per metric ton, as applied by respondent, or the value/ price indicated on the covering Consular Invoice of Merchandise as well as the supplier's sales invoice at US$188.0308 per metric ton, FOB Japan, as contended by petitioner?

The controlling statute is Section 201 of the Tariff and Customs Code, which textually reads:

> 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 a 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.

> 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 -
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> (a) Twenty (20) per cent thereof for expenses and profits; and
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> (b) Duties and taxes paid thereon.

Adverting to the terms of the statute, it is quite clear that the dutiable value of an imported article subject to an ad valorem rate of duty, like the shipment in question which is at 10% ad valorem under Tariff Heading No. 28.42, is based on its home consumption value or price (excluding internal excise taxes), as freely offered for sale 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, including the value of all containers, coverings and/or packings and incidental expenses to placing the article for shipment, plus ten (10) <u>per cent</u> of such home consumption value. And the home consumption value or price is 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 should be 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. The Commissioner of Customs is required however to publish from time to time the home consumption values of articles exported to the Philippines as ascertained and established from the data gathered.

Now, to the case at bar. Here, petitioner in April 1975 imported from Japan a shipment of five thousand (5,000) bags of soda ash dense for its manufacturing business which was declared under Entry No. 33511, series of 1975. The law is clear and specific. What was the market value or price at which, at the time of exportation, soda ash dense was freely offered for sale in the principal markets of Japan for exportation to the Philippines, in the usual wholesale quantities and in the ordinary course of trade? As shown in the April 3, 1975 issue of the Japan Chemical Week, the price of soda ash dense as bought and sold or offered for sale freely in the usual wholesale quantity in the ordinary course of trade, in the principal markets of Japan on or about the date of the exportation of petitioner's shipment was 40 yen/kg. or US$137.40 per metric ton. (Exhs. "F" & "F-1", pp. 73-75, CTA records; See also Exhibit "G", certified true copy of the Daily Bulletin on Exchange Rates on April 3, 1975 of the Central Bank; and Exhibit "H", certification of Amado B. Santos, tracer clerk, foreign traffic of petitioner, that the value of soda ash dense on or about the date of importation on April 3, 1975 at 40 Yen per kilogram as indicated in the Japan Chemical Week, in accordance with the exchange rate of Yen to US Dollar per Central Bank Daily Bulletin on Exchange Rates dated April 3, 1975, was US$137.40 per metric ton, FOB Japan, pp. 76-77, CTA records.)

And going back to the applicable law, it further provides that the home consumption value or price shall be the value or price declared in the consular, commercial, trade or sales invoice. What is the home consumption value or price of the shipment of soda ash dense declared in the consular, commercial, trade or sales invoice? The Consular Invoice of Merchandise dated April 1, 1975 (Exh. "A", p. 66, CTA records) and Sales Invoice dated April 1, 1975 issued by C. Itoh & Co. Ltd. (Exh. "B", p. 67, CTA records) covering the importation in question show that the 5,000 bags of soda ash dense has a "home consumption value" of US$37,606.16 or US$188.0308 per metric ton (FOB Japan). Accordingly, petitioner paid to the Bureau of Customs the total amount of ₱59,753.00 in customs duties and internal revenue taxes. (par. 3, Petition for Review; admitted, par. 1, Answer.)

Given however that there existed a reasonable doubt on the part of the Bureau of Customs as to the correct value or price of the shipment of soda ash dense declared by petitioner, was the application by said Bureau of its RVIC (Request for Value Importation Classification) No. 4-438 dated April 14, 1975, which fixed the home consumption value of soda ash dense at US$307.00 per metric ton, in accordance with law? The same applicable statute provides that, in such case, the correct dutiable value of the imported article shall be ascertained from the 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, the Commissioner of Customs shall ascertain and establish the home consumption value of the article exported to the Philippines and shall publish such list of value from time to time.

Here, in the instant case, the valuation of the shipment of petitioner of soda ash dense was based on the established value, not on the published value thereof as required by law. As clearly and explicitly stated by respondent Commissioner of Customs in his decision appealed from dated March 9, 1976 in Customs Case No. 75-117 (Manila Protest No. 9659): "The Collector of Customs appraised the article on the basis of the established value for Soda Ash Dense at the rate of $307.00 per metric ton." (P. 4, CTA records.) This was confirmed by respondent's witness, Ms. Noemi Rebaya, supervising valuation and classification officer of the Bureau of Customs, who testified that the value indicated in RVIC 4-438 dated April 14, 1975 (Exhs. "1" & "1-A", p. 87, CTA records) was the "established" or "information" value of Soda Ash Dense. (pp. 5-6, t.s.n., July 31, 1980.)

While Ms. Noemi Rebaya testified that she "passed upon" RVIC No. 4-438, she does not have personal or official knowledge of the publication of said RVIC. As stated therein, RVIC No. 4-438 merely "replaces page 18, CIVCC # 7-A-75"; it is not signed; neither it is sealed. Even more, it is dated April 14, 1975 and approved, as stated therein, on June 20, 1975, that is, after the arrival of petitioner's shipment of soda ash dense and payment of the customs duties and taxes due thereon on April 10, 1975. The records of the case do not show from where the data stated therein were gathered, how the home consumption values of the articles listed therein were ascertained or established by the Bureau of Customs and when such list was published, although all of these should be apparent on the record. Clearly, therefore, there was no compliance with the terms of the law.

There being no fidelity to what are required by the legal provisions applicable, this Court could not look with approval on the application by the Bureau of Customs of the value for soda ash dense at the rate of US$307.00 per metric ton fixed under RVIC No. 4-438, and the assessment and collection of ₱34,680.00 as additional customs duty and taxes on petitioner's importation. Where, as here, there is no adherence to the language of the statute, there is no basis for the assertion that there exists a reasonable doubt as to the value or price of the imported soda ash dense declared in the entry.

Considering the mandate of the law that the home consumption value or price shall be the value or price declared in the consular or sales invoice, and the official character of these invoices, certified to as correct by the Philippine Consul at the port of origin; and there being no reasonable ground to deny to these documents the faith and credence normally due thereto, the home consumption value declared in the consular invoice of merchandise and the supplier's sales invoice of the importation in question should be the basis of the dutiable value of the imported soda ash dense. (Commissioner of Customs vs. Celdran, L-23425, February 26, 1968, 22 SCRA 743.) The language of the law, which expresses a definite and sensible meaning, is the safest guide as to the statutory policy, to which compliance is due.

The pronouncements in Bell Hobart Manufacturing Incorporated vs. Commissioner of Customs, CTA Cases Nos. 2750, 2751, 2752 and 2753, March 10, 1978; and Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 2357, May 9, 1978, which were subsequently affirmed and reaffirmed in other cases, the latest of which is Hiap Hong Trading Co., Inc. vs. Alfredo Pio de Roda, Jr., CTA Case No. 2804, June 27, 1980, are controlling in the case at bar. We quote from Bell

Hobart and Procter & Gamble:

> "Nonetheless, assuming arguendo that there exists a reasonable doubt as to the value or price of the imported trichloro-carbanilide declared in the consular, commercial and sales invoices, as well as in the entry, and the correct dutiable value of the article should be ascertained from the reports of the Revenue Attache, Commercial Attache (Foreign Trade Promotion Attache) or other Philippine diplomatic officers and from such other information that may be available to the Bureau of Customs, pursuant to Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, as alleged by respondent, it is to be stressed that the Commissioner of Customs is required by law to publish such list of values from time to time. He does not only have to ascertain and establish the home consumption value, but must also publish such lists of values from time to time.
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> Public policy would seem to require that importers be informed in advance of the home consumption values, or information 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 or information 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 lose of time, money and energy.

Accordingly, the home consumption value or price as basis of the dutiable value of the 5,000 bags of soda ash dense (200 metric tons) consigned to petitioner and declared under Entry No. 33511, series of 1975, should be the value or price shown in the Consular Invoice of Merchandise and the Supplier's Invoice covering the importation at a valuation of US$37,606.16, or US$188.0308 per metric ton.

We note however that with regard to the claim for refund of internal revenue taxes (advance sales tax) in the amount of ₱16,228.00 (Exh. "C", pp. 68-69, CTA records), the same can not be passed upon by the Court in view of the fact that nothing in the records show that petitioner had filed its written claim for refund thereof with the Commissioner of Internal Revenue and that the latter was made a party to this case. Without satisfying these jurisdictional requirements, which in the instant case are lacking, the same is fatal to the claim of petitioner for the refund of the overpaid internal revenue tax on the importation in question. (Wise & Company vs. Commissioner of Customs, CTA Case No. 2717, December 29, 1977; see also resolution dated January 15, 1979, certiorari denied in G.R. No. L-51242, March 7, 1980; National Dental Supply Incorporated vs. Commissioner of Customs, CTA Case No. 2826, June 30, 1980; Campos Rueda Corporation vs. Commissioner of Customs, CTA Case No. 2829, July 28, 1980; Jardine Davies, Inc. vs.

Commissioner of Customs, CTA Case No. 2634, October 16, 1980.) It appearing from Exhibit "C" (pp. 68-69, CTA records) that of the additional ₱34,680.00 assessed and collected from petitioner, ₱18,453.00 represents overpaid customs duty because of the reappraisal of its shipment of 5,000 bags of soda ash dense at the rate of US$307.00 per metric ton fixed by RVIC No. 4-438 of the Bureau of Customs, only said amount of ₱18,453.00 is refundable to petitioner.

Not much need be said on petitioner's claim for interest thereon from date of payment to date of refund. Interest may be awarded only if the collection of a tax is attended with arbitrariness. (Collector of Internal Revenue vs. Prieto, L-11976; September 26, 1961, 112 Phil. 907; Commissioner of Internal Revenue vs. Asturias Sugar Central, L-15013, August 3, 1961, 2 SCRA 1140.) Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions. Reversal of a ruling previously rendered is not per se evidence of arbitrariness; neither is the fact that the administrative ruling is found by the courts not in accordance with law. (Victorias Milling vs. Commissioner of Internal Revenue, L-24785 & L-24779, February 25, 1967, 19 SCRA 430.)

WHEREFORE, the decision appealed from is modified. Respondent Commissioner of Customs is hereby ordered to refund to petitioner Procter & Gamble Philippine Manufacturing Corporation the amount of ₱18,453.00. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, February 27, 1981.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge