REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LAU LAI WING, doing business
under the name and style
"Commercial Auto Supply"
Petitioner,

- versus - C.T.A. CASE NO. 3788

HON. RAMON I. FAROLAN, in his
capacity as Commissioner of
Customs,
Respondent.

6/30/89

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D E C I S I O N

The case is about the forfeiture of an importation of 206 cartons found to contain autoparts declared for Customs purposes as follows:

700 pcs. - lamps .... @ $0.70

400 pcs. - fog lamps .... @ $2.00

400 pcs. - lens: KB-71 .... @ $0.40

200 pcs. - lens: KB-4085 ..... @ $2.50

992 pcs. - Air cleanser ...... @ $0.25

200 pcs. - Moulding 576 ...... @ $2.00

500 pcs. - Moulding 303 ...... @ $0.80

900 pcs. - Moulding .... @ $0.50

The facts before Us are briefly recounted as follows:

1. That the petitioner is a commercial enterprise operating and doing business in the Philippines under a business name and style "Commercial Auto Supply";

2. That on December 19, 1980, a shipment of 206 cartons autoparts arrived at the Port of Manila from Kobe, Japan, on board the SS "Eastern Mariner", Reg. No. 2344;

3. That the said shipment was declared under Import Entry No. 100864, S. of 1980, with support documents (Commercial Invoice No. K-3903, Bill of Lading No. KMA-67);

4. That in the covering Entry, subject importation was declared as having a HCV of P23,415.37, and that the amount of P11,623.00 was due thereon as duties and taxes; upon being appraised, the shipment was required to pay as customs duty in the amount of P104,937.00 in lieu of P11,623.00, based on a higher value or HCV for each of the articles comprising the 206 cartons autoparts;

5. That the entire shipment was ordered forfeited by the Collector of Customs in Manila (S.I. No. 8-81 dated June 16, 1982) for mis-declaration thru gross under-valuation pursuant to Section 2503 in relation to Section 2530 (1) - 3,4 & 5 of the Tariff and Customs Code, as subsequently affirmed by the Commissioner of Customs in his decision (Customs Case No. 82-19 dated January 24, 1984.

Hence the petitioner's recourse.

By and large, petitioner-claimant considers the subject shipment sufficiently covered and supported by the requisite genuine and proper documents, viz.: Bill of Lading, Commercial Invoice, Packing List and Import Entry, reflecting the correct declared value upon which based the payment of the corresponding duties and taxes amounting to P11,623.00. And, that the alleged undervaluation was brought about by the arbitrary, capricious and whimsical application of a higher Home Consumption Value (HCV) imposed by the Customs' appraisers in disregard of the pertinent provision of Section 201 of the Tariff and Customs Code.

Respondent's unvarying assertion is that the law imposes upon Customs appraisers the duty to determine the accurate appraisal of imported goods and such appraisal so determined under Section 1405 of the same Code, may be equal, higher or lower than the invoice and/or entered value of the article. Thus as between the declared value and the value as determined by the Customs appraiser concerned, that of the latter must prevail, it appearing that there was no showing in the records that the discretion was abused.

The case before Us presents no dispute as to the relatively simple material facts but the parties seem trying to get the better of each other over by a quibble on the propriety of an appraisal made by the Customs' appraiser in disregard of value or price declared in the invoice.

The applicable provision of Section 201 of the Tariff and Customs Code, as amended, provides:

> SEC. 201. *Basis of Dutiable Value.*- The dutiable value of an imported article subject to *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.
>
> 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 -
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> xxx xxx xxx

Construed in the light of Our decision in the ***Lovsted & Co.*** case, the Supreme Court in affirmance said -

> The law is clear and mandatory. The dutiable value of an imported article subject to an *ad valorem* rate of duty is based on its home consumption value of price as freely offered for sale in 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. That home consumption value or price is the value declared in the consular, commercial, trade or sales invoice.
>
> But where there is a reasonable doubt as to the value of the imported article declared in the entry, the correct dutiable value is to be ascertained from the reports of the Revenue Attache or Commercial Attache and

> from such other information that may be available to the Bureau of Customs. The Commissioner of Customs is required, however, to publish from time to time the lists of home consumption value.
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> ***(Commissioner of Customs v. Lovsted & Co., Inc. & C.T.A.,*** *G.R. Nos. 72069 and 72070, May 21, 1988)*

Brought to bear upon the circumstances obtaining We find nothing to take the case out of the operative effects of the statutory proscription as understood and applied. Petitioner quoted the prices of the imported autoparts in the corresponding Import Entry as declared in the commercial invoice and as required by Section 201. It is hardly necessary to observe that the respondent points neither to any irregularity nor error of relevance and competence required to bash that patina of legality over petitioner's declaration. "Reasonable doubt regarding the declaration was not shown to have existed such that recourse to reports from commercial attaches or other information became necessary. Neither was there compliance with the requirement in Section 201 regarding publication of the lists of dutiable values of imported articles from time to time." ***(Commissioner of customs vs. C.T.A. & Campos Rueda Corporation,*** *152 SCRA 647).* The basis for the reappraisal appeared neither here nor there, much less, the Bureau's records of the case remained unavailing even to this Court.

Suffice it to state, this Court's decisions in cases similar in many or so in terms and circumstances involving the same issue as now raised and sustained by the Supreme Court provide a feel of the basic aspect of a re-appraisal under Sec. 1405 of the Tariff and Customs Code, thus -

> While it is true that appraisers of the Bureau of Customs are given ample leeway in determining the correct customs duties under Section 1405 of the Tariff and Customs Code, Section 201 of the same Code, which prescribes the criteria for the determination of the dutiable values of imported articles, has not been complied with. What is more, administrative proceedings are not exempt from the operation of due process requirements one of which is that a finding by an administrative tribunal should be supported by substantial evidence presented at the hearing or at least contained in the records or disclosed to the parties affected. ***(Air Manila, Inc. v. Balatbat,*** *L-29064, April 29, 1971; 38 SCRA 489-90).* In this case the "Alert Notices" on which petitioner (Bureau) based on its reappraisal were not disclosed during the proceedings before the Bureau of Customs nor presented in evidence before respondent Court. The reappraisal made by petitioner, therefore, can be faulted with arbitrariness in disregard of the standard of due process to which all government action should conform to impress upon it the stamp of validity." ***(Commissioner of Customs v. C.T.A. & Campos Rueda Corpo-***

*ration, L-70648, July 31, 1987, 152 SCRA 646; **Commissioner of Customs v. C.T.A. and Bell Hobart Manufacturing, Inc.**, G.R. Nos. L-48144-47, June 28, 1988)*

The import of these decisions are unmistakable. We hesitate to further fashion an issue much less graft a precipititious distinction into a satisfactorily settled legal question.

WHEREFORE, respondent's decision is hereby set aside and the bond earlier posted for the release of the shipment, discharged. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, June 30, 1989.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

(on leave)
CONSTANTE C. ROAQUIN
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.

Amante Filler

AMANTE FILLER
Presiding Judge
Court of Tax Appeals