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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CAMPOS RUEDA CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2828

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

8/15/84

D E C I S I O N

In this petition for review of the decision of respondent Commissioner of Customs dated July 30, 1976 in Customs Case No. 76-35-C affirming the decision of the Collector of Customs of Manila dismissing Manila Protest No. 9288, petitioner Campos Rueda Corporation seeks the refund of the sum of ₱21,183.00 representing overpaid customs duty and advance sales tax on one shipment of GE sealed beam lamps.

There is no serious dispute between the parties as to the essential facts involved in the instant case. The controversy involves purely a question of law. As established by the evidence and narrated in petitioner's memorandum (pp. 210-212, CTA records), the undisputed facts may be summarized as follows:

1. That on November 13, 1973, petitioner placed an order for 16800 pieces of GE sealed beams amounting to C & F US $18,115.00 to the General Electric of Glendale, N.Y. U.S.A. through the General Electric Philippines, Inc.

2. Petitioner opened a letter of credit No. F-4702-73 to cover the costs of the said importations.

3. On March 6, 1974, the General Electric Co. finally sold to the petitioner the above imported items per its invoice No. 82735 for US $18,964.54 or at the price of $0.908 per piece.

4. On March 14, 1974, the Consulate General of the Philippines in New York issued consular invoice No. 48023 for the aforesaid imported goods.

5. The above imported goods arrived at the port of Manila via S/S "Trade 16W-" Trade V/Rafael Semmes" under bill of lading No. 993-328720 on March 31, 1974.

6. That on April 1, 1974, petitioner filed with the Collector of Customs a request for value/classification No. 00011216 for the approval of the unit price the corresponding Home Consumption Value (HCV) for duty value purposes.

7. That the above request was denied and the imported goods were re-appraised at US $1.35 per piece as the Home Consumption Value, allegedly based on the alert notice received from the Finance Attache abroad.

8. That on April 30, 1974, petitioner filed Import Entry & Internal Revenue Declaration No. 0103-196 under Entry No. 38051/74 for the above

imported goods at the alerted price of $1.35 per piece with the total DUTY AND TAX AMOUNTING TO ₱67,525.00.

9. The petitioner paid this tax amounting to ₱67,525.00 under protest on May 7, 1974 as evidenced by Customs Order of Payment No. 298158 and Central Bank Official Receipt No. 313104.

10. That because of the re-appraisal of the unit price of the imported items from $0.908 to $1.35 per piece allegedly based on the alert notice by the Finance Attache, petitioner was made to pay an additional duty of ₱15,657.00 and additional advance sales tax of ₱5,526.00 or a total duty and tax of ₱21,183.00.

11. The petitioner filed a formal protest with the Collector of Customs on May 17, 1974 against the aforesaid re-appraisal of the imported goods, who on October 16, 1974, without conducting any hearing dismissed the aforesaid protest allegedly for lack of merit.

12. On November 20, 1974, the petitioner appealed the decision of the Collector of Customs to the Honorable Commissioner of Customs, who, on July 30, 1978 issued an order affirming the decision of the Collector of Customs. This decision of the Honorable Commissioner of Customs is now the subject

of this petition.

13. In its answer to the petition, respondent interposed the defense that the duty that must be paid by petitioner should be based on the "Alert Notice" sent by the Philippine Commercial Attache, However, respondent failed to present in the trial of this case any alert notice.

The only issue posed for resolution in the instant appeal is the determination of the basis of the dutiable value of the shipment of GE sealed beam lamps for purposes of the assessment and collection of duties and taxes due thereon.

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. As stated earlier, because of the re-appraisal of the unit price of the imported item from US$0.908 to US$1.35 per piece based on an alleged alert notice from the Philippine finance attache at San Francisco, California, petitioner was made to pay by the Bureau of Customs an additional customs duty of ₱15,657.00 and additional advance sales tax of ₱5,526.00.

The applicable provision of law on the determination of the basis of the dutiable value of an imported article is Section 201 of the Tariff and

Customs Code, as amended by Presidential Decree No. 34, now Section 201 also of Presidential Decree No. 1464 otherwise known as the "Tariff and Customs Code of 1978", which states that:

> 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.

The provisions of the applicable law clearly and unequivocally state that the dutiable value of an imported article subject to an ad valorem rate of duty, like the shipment in question, 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.

In the instant case, the price for which the General Electric Co. of Glendale, N.Y., USA, offered to sell to petitioner the 16,800 pieces of GE sealed beam lamps was US$0.908 per piece, less 5% trade discount, or an estimated total selling price of US$18,115.00 C & F Manila, including ocean freight and forwarding charges. (Exh. "B", pp. 10-11, CTA records.) The commercial invoice of the shipment (Invoice No. 082735) dated March 6, 1974 shows that the General Electric Co. of Glendale finally sold to petitioner the 16,800 GE sealed beam lamps at the price of US$0.908 per piece. (Exh. "C", pp. 12-13, CTA records.) And as declared in the consular invoice of merchandise, NY 48023 F, dated March 14, 1974, certified to by the Philippine Consulate General, San Francisco, California, the price of the GE sealed beam lamps is US$14,491.58, less trade discount, or US$0.908 per piece; that is, a total price of US$18,964.54, including shipping expenses. (Exh. "D", pp. 15-16, CTA records.)

Since the provision of the law applicable is clear and specific that the "home consumption value" upon which the dutiable value of an imported article should be based is the value or price declared in the consular, commercial, trade or sales invoice, the home consumption value of the 16,800 pieces of GE sealed beam lamps should therefore be US$18,964.54 or US$0.908 per piece. The law seems clear and mandatory. It merely calls for application as worded.

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 GE sealed beam lamps declared by petitioner, was the re-appraisal of such importation made by the said Bureau at US$1.35 per piece as the home consumption value based on a supposedly "Alert Notice" furnished by the Philippine Finance Attache at San Francisco, California, USA, proper? As stated earlier, 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 case at bar, the valuation of the shipment of petitioner of GE sealed beam lamps was based on an alleged "Alert Notice", not on the published value thereof as required by law. As stated by respondent Commissioner of Customs in his memorandum: "Petitioner's declared price of $0.908 per piece was denied and a re-appraisal of the imported item was made by the Bureau of Customs placing the same at US$1.35 per piece as the Home Consumption Value. This re-appraisal was based on the alert notice received from the Philippine Finance Attache at San Francisco, California, U.S.A. by the Bureau of Customs." (p. 228, CTA records.) And as to petitioner's contention "that such notice was not supported by documentary proofs such as Quotation of price lists, prices of previous importations of identical or similar goods, meaning established value, and prices of such goods as published, meaning published value", respondent merely avers that "While there are no price lists of subject imported sealed beam lamps as established or published, the same was evaluated by the Bureau of Customs based on the Alerted value". (pp. 228-229, CTA records.)

As a matter of fact, the records of the case do not show, as required by law, from what data the alleged "alerted value" was gathered, how the Commissioner of Customs ascertained and established the home consumption value of the imported article, and where and when was such alerted value published. And while respondent was given ample time during the hearing of this case before this Court to produce or present as evidence such "alerted value" or "alert notice" which was the basis of the re-appraisal of the shipment under consideration, no such alert notice or value, or evidence thereof, was presented or offered by respondent. The bare averment of respondent that the basis of re-appraisal of subject shipment is the "Alert Notice" furnished by the Philippine finance attache at San Francisco, California, unaccompanied by adequate evidence as to the existence of such notice, the basis of the value or price stated therein, as well as the publication thereof, suggests, as contended by petitioner, that there was no such alert notice or value. Clearly, therefore, the basis of the re-appraisal of the dutiable value of petitioner's shipment of GE sealed beam lamps was not in accordance with the provisions of Section 201 of the Tariff and Customs Code.

There being no fidelity to what are required by the legal provisions applicable, this Court could not look with approval on the re-appraisal by the Bureau of Customs of petitioner's imported GE sealed beam lamps based on an alleged "Alerted value" at US$1.35 per piece, and the assessment and collection of ₱15,657.00 as additional customs duty and ₱5,526.00 as additional advance sales tax 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 GE sealed beam lamps 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, commercial, trade 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 or credence normally due thereto, the home consumption value declared in the commercial and consular invoices of merchandise, as well as the supplier's sales invoice of the shipment in question, should be the basis of the dutiable value of the imported GE sealed beam lamps. (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. (See Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2788, February 27, 1981.)

The pronouncements in Bell Hobart Manufacturing Incorporated vs. Commissioner of Customs, CTA Cases Nos. 2750, 2751, 2752 and 2753, March 10, 1978; Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 2357, May 9, 1978; Hiap Hong Trading Co., Inc. vs. Alfredo Pio de Roda, Jr., CTA Case No. 2804, June 27, 1980, which were subsequently affirmed and reaffirmed in other cases, the latest of which is Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2788, February 27, 1981, 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 trichlorocarbanilide 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 shipment of GE sealed beam lamps consigned to petitioner and declared under Entry No. 38051-74, Reg. No. 935, which arrived in Manila on March 31, 1974, should be at US$0.908 per piece as stated in the commercial invoice and consular invoice of merchandise. The protest of petitioner against the assessment and collection of additional customs duty and advance sales tax on its shipment of GE sealed beam lamps is therefore meritorious.

We note however that with regard to the claim for refund of the amount of ₱5,526.00 as additional advance sales tax paid by petitioner on re-appraisal of the subject shipment, 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 provided in Section 306 (now Section 292) of the National Internal Revenue Code, which in the instant case are lacking, the same is fatal to the claim of petitioner for the refund of the overpaid advance sales 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; Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2788, February 27, 1981.) There being no controversy between the parties that the additional amount of ₱15,657.00 assessed and collected from petitioner represents additional customs duty because of the re-appraisal of its shipment of GE sealed beam lamps at US$1.35 per piece, only said amount of ₱15,657.00 is refundable to petitioner.

WHEREFORE, the decision appealed from is modified as indicated in the above opinion of the Court. Respondent Commissioner of Customs is hereby ordered to refund to petitioner Campos Rueda Corporation the amount of ₱15,657.00. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, August 15, 1984.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge