REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIAN TRANSMISSION CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4605

COMMISSIONER OF CUSTOMS,
Respondent.

12/24/93

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DECISION

This is a petition for review which seeks to annul and set aside the decision of respondent Commissioner of Customs dated March 20, 1991 affirming the decision of the Collector of Customs dated December 4, 1990 in the protest case filed by petitioner.

The undisputed facts are as follows:

Petitioner, Asian Transmission Corporation, is a BOI registered industry engaged in the manufacture of motor vehicle transmission units and components and parts of Mitsubishi vehicles partly for local consumption and the bulk for export to Japan.

Sometime in 1986, petitioner imported from Tokyo, Japan one (1) container of Trichloroethylene consisting of 55 iron drums with gross weight of 17,765 kg. or 16.5 mt. covered by Bill of Lading No. 941-12251 (Exh. D, p. 61, Customs records.) On July 18, 1986, the shipment arrived at the Port of Manila on board the vessel S/S "Lipper Ace" (Registry No. POL 009).

On July 22, 1986, a Formal Import Entry and Internal Revenue Declaration (No. 40727-86) was filed by Assurance Customs Brokerage, petitioner's customs broker, declaring 55 iron drums (17,765 kgs.) or 16.5 mt. of trichloroethylene with a Home Consumption Value (HCV) of US$570.00 per metric ton or a total of $9,405.00 (Exhs. A and 1, p. 51, ibid.).

On the same date, petitioner paid the customs (import) duty of P21,959.00 (O.R. No. 706052); advance sales tax of P48,711.00 (O.R. No. 1842422) and the import processing fee of P250.00 (O.R. No. 746206) or the sum of P70,920.00 for the corresponding shipment based on the HCV of US$570.00 per metric ton (Exh. C, p. 62, id.) as indicated in the Import Entry Declaration and Invoice.

The shipment was examined and was found to be as declared by petitioner. However, the customs appraiser applied the published value of ¥144.00 per kilo or equivalent to US $887.76 per metric ton based on Revision Order No. 5-86 instead of the declared HCV of US $570.00 per metric ton. Having been appraised at a higher value, petitioner paid the additional Import Duty of P11,922.00 and Advance Sales Tax of P26,257.00 or the sum of P38,179.00 (O.R. No. 1871910, dated August 14, 1986).

Petitioner verified from its supplier by means of telex and overseas calls the export price of trichlorethylene at the time of exportation. As per request, petitioner received a Certification dated August 7, 1986 issued by Nissho Iwai Corporation Philippine Branch to the effect that the current export price of Tricholorethylene from Japan is US$570.00 per metric ton C&F Manila. Thereafter, petitioner requested its broker to file on its behalf a protest (dated August 26, 1986) requesting for the refund of P38,179.00, representing additional payment of customs duties and advance sales tax.

On January 11, 1991, petitioner received a copy of the Decision of Acting District Collector of Customs Titus B. Villanueva, dated December 4. 1990, dismissing the protest for lack of merit. The rationale behind said Decision was stated as follows:

> "It is to be noted that when there is a published value for the articles imported and doubt is cast on its applicability, what should be done is to resort to the last paragraph of Section 201 which is the adaption of the domestic wholesale selling price. If the published value becomes of doubtful applicability, this Office do not simply revert and accept the invoice value of the importer because it too, is considered of doubtful applicability because of the existence of the published value. It must be emphasized that any invoice value which provides for a value different from the published value always rests on doubtful footing hence, it could not be applied. Inasmuch as both the invoice value and the published value may be considered doubtful, the resort in on the last paragraph of Section 201 of the TCCP for adoption of the wholesale domestic price. As earlier stated, tax assessment are presumed correct because of the presumption of good faith on the part of the tax assessor and on the validity of their action. The

> burden of proof is on the taxpayer to show clearly that the assessment is erroneous in order to be relieved from it. In the instant case, Protestant through counsel failed to show any proof of what is the correct market price and relied solely on the Certification from the supplier as well as the invoice. On this score, this Office aware of the inherent possibility of collusions between suppliers and importers and the fact that they would go to all extends in devision way and means just to lessen the collectible levies on the importations. Because of this, there is always the great possibility of spurios invoices and arranged certifications being submitted.
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> In view of all the foregoing and in the absence of competent proof therefore on value, the upgrade value based on RO 5-86 in the amount of US$887.76 is in Order."

On January 24, 1991, petitioner filed an appeal with the Commissioner of Customs questioning the Decision of the Collector of Customs. Petitioner alleged that if the Collector himself considers the publish value of doubtful applicability then he should not have affirmed the application thereof by the customs appraiser in assessing petitioner for additional customs duties and advance sales tax. The last paragraph of Section 201 of the Tariff and Customs Code provides "where there is reasonable doubt as to the 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 become payable on the article under appraisement, on the usual wholesale quantities and in the ordinary course of trade, minus 20% thereof for expenses and profits and duties and taxes paid thereon." It is therefore evident that where there is doubt as to the dutiable value of the goods in question the recourse should be the domestic wholesale selling price of such good in Manila. The customs appraiser instead applied the published value of Trichloroethylene in Japan which is ¥144.00/kg., the price indicated in Revision Order No. 5-86 prepared by the Valuation and Classification Division of the Bureau of Customs. Furthermore, the Acting Collector of Customs insinuated collusion or fraud between the importer-petitioner and the supplier (Nissho Iwai Corporation, Japan). This was not proven as a matter of fact considering that there was no evidence to support said accusation.

On March 20, 1991, respondent Commissioner of Customs rendered a Decision affirming the Decision of Titus B. Villanueva, Acting Collector of Customs, pertinent portions thereof are hereunder quoted:

> "Moreover, it is to be noted that when there is a published value for the articles imported and doubt is cast on its applicability, what should be done is to resort to the last paragraph of Section 201 of the Tariff and Customs Code which is the adoption of the domestic wholesale selling price. If the published value becomes of doubtful applicability, this Office do not simply revert and accept the invoice value of the importer because same is considered of doubtful applicability because of the existence of the published value. It must be emphasized that any invoice value which provides for a value different from the published value always sets on a doubtful footing, hence, it could not be applied. In as much as both the invoice value and the published value may be considered doubtful, resort is on the last paragraph of Section 201 of the Tariff and Customs Code.

> Considering that protestant failed to show clear and convincing proof that the assessment is erroneous and considering further that there is no competent proof of the value of the shipment in question, the upgraded value based on RO 5-86 in the amount of US$887.76 is in order."

The Decision of respondent Commissioner of Customs was received by petitioner on April 3, 1991. On April 23, 1991, petitioner filed the instant petition for review praying for the reversal of the Decision of respondent dated March 20, 1991 and the refund of P38,179.00, representing erroneously paid additional customs duties and advance sales tax.

Petitioner maintains that Revision Order No. 5-86 having been based on a two-year old issue of Japan Chemical Week (published sometime on September 20, 1984) places a doubt as to the applicability of the published value of ¥144.00/kg. or US$887.00/MT of Trichloroethylene. Since the declared value of US$570.00/MT is higher than the published value of Trichloroethylene in China (US$547.98/MT), Spain (US$532.27/MT), Beguim (US$375.77/MT) and Germany (US$312.47/MT), countries with the same stage of economic development as the country of exportation - Japan, the doubt placed on the declared value was therefore erased. Therefore, the declared HCV as indicated in the Import Entry Declaration and Invoice should prevail.

Respondent answered that the upgraded value of ¥144.00/kg. (published value) or US$887.00/MT of Trichloroethylene is in the nature of a tax assessment. Tax assessments are presumed correct and made in good faith. The burden of proof lies with the petitioner to show that the assessment is erroneous.

The issue raised is whether or not the appraisal based on the published value, not the declared value indicated in the commercial invoice, was proper.

The law applicable in this case is Section 201 of the Tariff and Customs Code. Section 201 provides:

> "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 report of the Revenue Attaché (Foreign Trade Promotion Attaché), 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 dometic 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, on the usual wholesale quantities and in the ordinary course of trade, minus -

(a) Twenty (20) *per cent* thereof for expenses and profits; and

(b) Duties and taxes paid thereon."

The Supreme Court interpreted this provision to mean as it is so worded, thus:

"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 or 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 or price 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 Attaché or Commercial Attaché 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 the home consumption values." **[Commissioner of Customs v. Court of Tax Appeals, 161 SCRA 376, (1988).]**

In this case, the customs appraiser used the published value instead of the HCV as declared in the invoice. The upgraded value used was based on Revision Order No. 5-86 which was merely a republication of the prices of Trichloroethylene in the Japan Chemical Week published sometime September 20, 1984.

The general rule embodied under Section 201 of the TCCP is that the basis of the dutiable value of an imported article is its HCV as appearing in the consular or commercial invoice. In case of reasonable doubt, the exception is that the correct dutiable value is to be ascertained from the reports of the Revenue Attaché or Commercial Attaché and from such other information that may be available to the Bureau of Customs. The Commissioner of Customs is required to publish from time to time the lists of the home consumption values.

In this case, the only reason relied upon by respondent's appraiser in upgrading the value was the fact that the published value of trichloroethylene was higher than the HCV as declared in the commercial invoice. For its part, petitioner presented and offered evidence to support its claim that the doubt existing due to the discrepancy in price was overcome by the following evidence:

1. Commercial Invoice issued by Nissho Iwai Corporation showing that the unit price C&F Manila per M/T of Trichloroethylene is US$570.00/MT or the total price of US$9,405.00 (Exhs. C, C-1 and C-2);

2. Import Entry and Internal Revenue Declaration (NO.0613553) showing the HCV of Trichloroethylene at US$570.00/MT (Exh. A);

3. Published HCV of Trichloroethylene based on Revision Order No. 5, dated May 1, 1986 in the following countries of exportation: (Exhs. B, B-1 to B-7)

a.	England	$276.00/MT
b.	Singapore	$491.67/MT
c.	China	$547.98/MT
d.	Spain	$532.27/MT
e.	Japan	¥144.00/kg.
f.	Germany	$312.47/MT
g.	Belguim	$375.77/MT

will show that the declared HCV of US$570.00/MT is still higher compared to the published HCV of Trichloroethylene in England, Singapore, China, Spain, Germany and Belguim except that of Japan which is ¥144.00/kg or US$887.00/MT.

4. Certification dated August 6, 1986 issued by Nissho Iwai Corporation, petitioner's supplier, to the effect that the current export price of Trichloroethylene from Japan is US$570.00/MT, the price prevailing from September 1, 1985 up to the date of exporation to the Philippines (Exh. E); and

5. Certification dated January 7, 1987 issued by Traders Royal Bank to show that the exchange rate of one Japanese Yen to a US Dollar has appreciated from 0.004070 on September 20, 1984 as compared to 0.006263 on July 13, 1986 (Exh. I).

While it is true that petitioner in filing for a claim for refund has the burden of proving entitlement thereto, it is our opinion that the onus have been overcome by sufficient evidence presented by petitioner. In the case of **Commissioner of Customs v. Court of Tax Appeals, 195 SCRA 12 (1991),** the Supreme Court thru Justice Marcelo Fernan had the occasion to rule:

> "A higher assessment on its imported goods having been made, it became incumbent upon private respondent to show that the value declared in its consular invoice was the true and correct home consumption value thereof. It cannot simply rely on the consular invoice, precisely because a question on the veracity of the figure contained therein had been raised by the re-assessment made by the Customs appraiser, which re-assessment was affirmed by the Collector and the Commissioner of Customs. Private respondent could have easily obtained a certification or affidavit from its sister company that the price declared in the consular invoice is the price customarily given to customers in open market transactions. x x x."

In the case at bar, petitioner was able to present a Certification issued by its supplier showing the current export price of Trichloroethylene in Japan to be the same as that declared in the commercial invoice. The imputation made by the

Collector of Customs that there was collusion between petitioner and its supplier has no basis since the burden of evidence is on the part of respondent to show that indeed there was collusion. Fraud is a question of fact and the circumstances constituting fraud must be alleged and proved. Fraud is never lightly to be presumed because it is a serious charge. **(Commissioner of Internal Revenue v. Ayala Securities Corporation, 70 SCRA 204.)** Fraud must be supported by clear and convincing evidence. The mere imputation of fraud or collusion will not lie without the proof required to establish said fact. In this case, there was no showing whatsoever that collusion between the supplier and petitioner existed. Therefore, the burden of evidence was not shifted to petitioner to disprove said claim made by the Collector of Customs. It is in fact the duty of Collector of Customs to prove his claim. The *onus probandi* rests on whoever invokes fraud and must prove it by clear and positive evidence. By far there is nothing that can be imputed from the Certification issued by Nissho Iwai Corporation except the fact that the current export price of Trichloroethylene on the date of exportation from Japan was US$570.00/MT.

Then again, the basis of Revision Order No. 5-86 was the September 20, 1984 issue of Japan Chemical Week. Undisputedly, Revision Order No. 5-86 was a republished copy from a two-year old publication of Japan Chemical Week. Thus, at the time the Trichloroethylene were imported on July 18, 1986 there is no doubt that the Yen to a Dollar has appreciated for a period of two years. Admittedly, the published HCV was also considered to be of doubtful applicability. Similarly, the Court of Appeals in the case of **Republic of the Philippines, represented by Alfredo Pio De Roda, Jr. v. Hon. Court of Tax Appeals and Procter & Gamble Philippines Corporation, CA-G.R. SP No. 25438, February 21, 1992,** decided in line with this reasoning that the HCV as declared in the consular or commercial invoice should prevail, which we quote:

> "For one, it is not disputed that CIVCC Circular Nos. 280-76 and 270-76 were issued more than two (2) years before the importation subject hereof was effected on October 2, 1978. In short, the HCV's in the circulars were neither the values "on the date of the exportation to the Philippines" or values "nearest to the date of exportation", as required under Section 201, supra. of the Tariff and Customs Code. It may be so that on December 1, 1978, Revision Order No. 12 was published. Significant it is to note, however, that the Revision Order merely maintained the same HCVs in CIVCC Circulars Nos. 280-76 and 270-76. Between the issuance of the CIVCC circulars in midyear 1976 and the publication of Revision Order No. 12 on December 1, 1978 is a span of more than two (2) years. It is simply unlikely that during the interregnum, the value of the imported products in dispute did not fluctuate or change either in the downward or upward level. In fact, no less than the Collector of Customs in his decision of May 12, 1980 (Annex "C", Petition), found that the HCVs in CIVCC Circulars Nos. 280-76 and 270-76 'were a stale published value'."

In view of the fact that the published HCV is of doubtful applicability and considering that petitioner have proven beyond reasonable doubt that the HCV declared in the invoice was the current export price of Trichloroethylene at the time of exportation, the reasons relied by respondent in affirming the decision of the Collector of Customs has no valid ground to stand on. The burden of proof having been overcome by clear and convincing evidence, petitioner is therefore entitled to the refund claimed.

WHEREFORE, the respondent, COMMISSIONER OF CUSTOMS is hereby ordered to **REFUND** in favor of petitioner, ASIAN TRANSMISION CORPORATION, the sum of P38,179.00, representing erroneously paid additional customs duties and advance sales tax.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, December 24, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between 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