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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PAPER INDUSTRIES CORPORATION
OF THE PHILIPPINES (PICOP),
Petitioner,

- versus - C.T.A. CASE NO. 3371

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

10/31/84

D E C I S I O N

The precise issue in this action to enforce a claim for refund of alleged overpaid customs duties is nothing more than whether or not the imposition thereof is in accord with the pertinent provisions of the Decree as implemented, quoted as follows:

> "Section 1. All importations which are at present totally or partially exempt from customs duties and/or internal revenue taxes under the provisions of any general or special law shall be subject to a five (5%) per cent internal revenue tax subject to the same limitations and conditions prescribed under such law, if any.
>
> "In case of importations enjoying partial exemptions the said duty and tax shall be imposed on the exempt portion, in addition to the duty and tax on the taxable portion.
>
> "The duty and tax imposed herein shall be computed in accordance with the applicable provisions of the Tariff and Customs Code of the Philippines as amended, and the National Internal Revenue Code of 1977 as amended, respectively." (Presidential Decree No. 1395, May 31, 1978)

Implementing Department Order No. 13-78 dated June 7, 1978, to the extent applicable provides:

> "2. The five per cent customs duty shall be based on the home consumption value of the imported articles as determined under Section 201 of the Tariff and Customs Code of the Philippines, as amended, x x x.
>
> "3. The five per cent internal revenue tax shall be levied, assessed and collected in accordance with the pertinent provisions of the National Internal Revenue Code, as amended."

As it appears, petitioner, a registered pioneer enterprise under R.A. No. 5186 (Investment Incentives Act) enjoys a partial duty and tax exemption on importations to the extent of 75% for the years 1979 and 1980. Presidential Decree No. 1395, supra, subjected any such privileged enterprises accorded full or partial exemptions to additional 5% customs duty and 5% internal revenue tax on the exempt portion. Pursuant therefor, the Collector of Customs of the port of Bislig assessed and collected the additional levies on the various importations for the period in question which petitioner paid, but protested the payment of the corresponding customs duties alleged to have been erroneously based on the "total landed cost" plus mark-up and not on the "home consumption value", formalized in Bislig Protest Nos. 15-79; 16-79; 17-79; 18-79; 19-79; 22-79; 23-79; 1-80; 5-80; 10-80; 11-80 and 13-80. The Collector of Customs dismissed the protests in decisions dated December 27 and 28, 1979, and February 8 and May 5,

1980. On appeal, under Consolidated Customs Case Nos. 80-05; 80-10; and 31-80, respondent Commissioner of Customs sustained the Collector's in a decision rendered on October 14, 1980.

Hence this petition for review.

Petitioner wraps up its position this wise: "The Collector of Customs imposed and collected the 5% customs duty (per PD 1395) on the exempt portion of the subject importation based on the total landed cost plus mark up thereof and not on the home consumption value of the subject importation as determined under Section 201 of the Tariff and Customs Code in relation to PD 1395 as implemented by Department Order No. 13-78. The Collector of Customs relied on the provisions of Section 3 of Department Order No. 13-78 and of Section 193 of the National Internal Revenue Code which provisions of law have no application to the case at bar because what is involved here is not the 5% internal revenue tax but the 5% customs duties per PD 1395."

The respondent avers, "The contention of appellant (herein petitioner) that the computation of the 5% tax should be based merely on the home consumption value as determined under Section 201 of the Tariff and Customs Code is devoid of any legal basis in the light of all the aforequoted provisions of law, implementing regulations and PD 1395. When we speak of internal revenue tax (advance sales tax in these cases, specifically), the afore-cited provision of the revenue code and Revenue Regulations No. 8-78 should apply which invariably include the mark-up. And as ordained under PD 1395, the 5% tax should be levied, assessed and collected in accordance with the pertinent provisions of such code, which is what the Collector correctly did." And, as earlier maintained by the Collector of Customs, "Section 201 of the Tariff and Customs Code of 1978 invoked by protestant (herein petitioner) has positively no applicable basis to the case at bar considering that said Section 201 relates to the computation of 'dutiable value' for purposes of imposing 'customs duty' and not 'tax' because in arriving at the 'taxable value' as in this instant protests the pertinent provisions of National Internal Revenue Code of 1977 is the law applicable." Moreover, "The question or issue of the assessment and payment of 'customs duty' is settled inasmuch as protestant (herein petitioner) is required by law to pay in full said customs duty on the entries under protest. What is left at issue then is the assessment and payment of five (5%) tax which is to be imposed on the exempt portion, in addition to the tax due on the taxable portion. The argument then that this Office erred in computing the five (5%) per cent tax based on the total landed cost and not on the home consumption value is erroneous, it being devoid of any legal authority since Section 201 of the Tariff and Customs Code is not applicable."

Given the quirky particulars of the circumstances obtaining, the parties seem to have substantially differed and diverged most sharply on the material factual issue. But the only point urged upon our consideration of why the decision appealed from should be reversed is the alleged incorrectly based imposition and collection of customs duties by virtue of Presidential Decree 1395 on the exempt portion of the subject importations which consequence proved onerous to the petitioner by such overpayment of ₱184,941.92 outlined as follows:

Bislig Protest No. 15-79 =	₱ 498.00
Bislig Protest No. 16-79	3,835.00
Bislig Protest No. 17-79	5,392.09
Bislig Protest No. 18-79	3,177.00
Bislig Protest No. 19-79	46,419.00
Bislig Protest No. 22-79	46,542.37
Bislig Protest No. 23-79	8,954.58
Bislig Protest No. 1-80	6,386.37
Bislig Protest No. 5-80	55,951.04
Bislig Protest No. 10-80	420.68
Bislig Protest No. 11-80	92.19
Bislig Protest No. 13-80	1,682.56
T O T A L . . .	₱184,941.92 (sic)

Respondent must have lost the forest for the trees so to speak by assuming a question relative to an incorrectness of the computation of the internal revenue tax based on the total landed cost plus mark up "since Section 201 of the Tariff and Customs Code is not applicable."

Putting aside the apparent quibble, it is hardly necessary to observe that the terms of PD 1395, supra, as implemented, the additional 5% customs duty is directly tacked on the home consumption value while the 5% internal revenue tax is essentially addressed to the total landed cost of the imported articles. Section 201 of the Tariff and Customs Code determines the first and Section 193(b) of the National Internal Revenue Code, the latter, quoted respectively as follows:

> "Section 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, x x x 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."

> "Section 193. (b) Sales tax on imported articles. -x x x the percentage taxes x x x shall be paid in advance by the importer, x x x based on the home consumption value or price (excluding internal revenue excise taxes) thereof, plus ten (10%) per cent of such home consumption value or price, including postage, commission, customs duty and all similar charges, x x x."

We find no threat of ambiguity from the language of the said provisions insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar. The terms are amply sufficient to dispel any pall of uncertainty cast over the petitioner's claim. The particular imposition of either a duty or tax appears compellingly explicit and severely constrained. The requirements for effective implementation thereof are of clear import and one may not be hard put to rest a choice of the basis for the levies. As had happened, the respondent not only failed to infuse valid cognizance, but would have the focusing question expediently treated as neither here nor there. "For, instead of basing the 5% customs duty on the home consumption value of the subject importation as determined under Section 201 of the Tariff and Customs Code the Collector of Customs imposed the 5% customs duty on the basis of the total landed cost plus mark up of the imported articles." We think the respondent has fumbled into a reversible error.

Under the circumstances, we are persuaded to extend the relief sought by the petitioner relative to its claim for refund of the amount representing overpayments of the 5% customs duties on the exempt portion of subject importations conditioned however upon a reliquidation of the corresponding import entries covered by the protests.

WHEREFORE, as above qualified, the respondent is hereby directed to grant the refund without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, October 31, 1984.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge