File

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BELL HOBART MANUFACTURING INCORPORATED,
Petitioner,

- versus - C.T.A. CASE NO. 2750

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - - x

BELL HOBART MANUFACTURING INCORPORATED,
Petitioner,

- versus - C. T. A. CASE NO. 2751

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - - x

BELL HOBART MANUFACTURING INCORPORATED,
Petitioner,

- versus - C.T.A. CASE NO. 2752

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - - x

BELL HOBART MANUFACTURING INCORPORATED,
Petitioner,

- versus - C.T.A. CASE NO. 2753

COMMISSIONER OF CUSTOMS,
Respondent.

3/10/78

x - - - - - - - - - - - - - x

D E C I S I O N

These four cases involving as they do the same parties, similar facts and identical issues were consolidated with only one decision being rendered. In its separate petitions for review, petitioner Bell Hobart Manufacturing Incorporated appeals from a joint decision of respondent Commissioner of Customs affirming that of the Collector of Customs of the Port of Manila dismissing Manila Protest Nos. 9411, 9412, 9448 and 9476 filed by it against the assessment and collection of additional customs duties and taxes on four (4) shipments of wire rods abroad different bills of lading and declared under separate entries.

The facts are not in dispute. As stated by the Collector of Customs of the Port of Manila and adopted by respondent Commissioner of Customs:

CTA Case No. 2750
(Manila Protest No. 9412)

That a shipment, consisting of 59 bundles steel wire rods, arrived at this Port from Yawata, Japan on July 16, 1974 aboard the S/S "Toma", Reg. No. 1196, covered by Bill of Lading No. YA-NA-9 and consigned to herein protestant; that the said shipment was declared under Entry No. 68558-74 at $280.00 per metric ton, with an estimated customs duty of P59,878.00, sales

HUNDRED AND THIRTEEN (₱5,613.00) PESOS.

CTA CASE NO. 2752
(Manila Protest No. 9448)

That a shipment, consisting of 60 bundles steel wire rods, arrived at this Port from Yawata, Japan on board the SS "Eastern Comet", Reg. No. 1535, covered by Bill of Lading No. YA-MA-11 and consigned to the herein protestant; that the said shipment was declared under Entry No. 84878-74 at $306.35 per metric ton but was re-appraised to $325.00 per metric ton, thereby resulting to a discrepancy of ₱5,634.00, which was paid per Bureau of Customs Official Receipt No. 43758 dated September 26, 1974. These re-appraisal and payment were contested by the herein protestant claiming that the duty and tax should have been based on the declared value and the corresponding Protest was filed on Oct. 8, 1974 for the refund of FIVE THOUSAND SIX HUNDRED AND THIRTY-FOUR (₱5,634.00) PESOS.

CTA Case No. 2753
(Manila Protest No. 9476)

That a shipment of 57 bundles "hot-rolled wire rods" arrived at this Port covered by Bill of Lading No. N-MA-10 and consigned to the herein importer; that the said shipment was declared under Entry No. 94009-74 at $306.35 per metric ton; that, upon appraisal, the appraiser concerned appraised the said shipment at $325.00 per metric ton, thereby resulting in the discrepancy in the amount of ₱2,202.00 and ₱1,224.00, representing additional duty and tax, respectively, which said amounts were paid per Bureau of Customs, Official Receipt No. 1005353 dated October 18, 1974; that these appraisal and payment were contested by the herein protestant claiming that the duty and tax should have been based on the declared value and the corresponding Protest was filed on October 30, 1974 for the refund of the excess payment by reason thereof.

The lone question tendered for resolution is the determination of the correct dutiable value of the steel wire rods imported by petitioner from Japan, as prescribed in Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34.

Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, reads as follows:

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

In disregarding the value of the shipments in question appearing in the consular invoices duly authenticated by the Philippine Consul of Kobe, Japan, as well as the trade invoices, respondent merely presumes that since "the importations involved in these protest cases were all the products of a negotiated sale between the protestant (petitioner herein) and the supplier, x x x, the articles were bought and sold at factory prices. In other words, these articles were secured at a price much lower than if one were to have them in the ordinary course of buying. This being so, it cannot be said then that the value at which these articles were bought and sold was the value at which these articles were 'offered for sale <u>freely</u> in the usual wholesale quantities in the ordinary course of trade, in the principal markets of the country from where exported.''' According to respondent, the wire rods were sold to petitioner at a "volume price", hence, the value of $28[illegible].00 and $3[illegible]6.35 per metric ton, the value at which these subject importations were bought and sold, is not the value contemplated by Section 201 of the Tariff and Customs Code. (pp. 2-3 of the Decision of Respondent; p. 3, Memorandum of Respondent.)

Respondent concedes at least that since he entertains doubt as to the value or price of the imported article declared by petitioner, the dutiable value of the subject importations was not 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, as required by the second paragraph of Section 201, *supra*. And averring that the dutiable value of an article shall be the value that is prevailing "in the principal markets of the country from where exported on the date of exportation to the Philippines," he failed to indicate his position how he determined the basis of the dutiable value of $325.00 per metric ton of the imported articles in question.

For purposes of *ad valorem* duties, Section 201, *supra*, provides that the dutiable value of an imported article shall be based on its home consumption value or price (excluding internal excise taxes), as bought and sold or offered for sale freely in the usual wholesale quantities in the ordinary course of trade, in the principal market 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) *per cent* of such home consumption value. Then comes the crucial and decisive provision: "The home consumption value or price under this section shall be the value or price declared in the consular, commercial, trade or sales invoice."

Construed together, the above provisions yield no other conclusion but that the "home consumption value" as the basis of the dutiable value of an imported article subject to an *ad valorem* duty is the value or price declared in the consular, commercial, trade or sales invoice. And the home consumption value as declared in the consular, commercial, trade or sales invoice is that price (excluding internal excise taxes) of the imported article 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, including the value of all containers, covering and/or packings and incidental expenses to placing the article for shipment.

However, where there exists a reasonable doubt as to the value or price of the imported article declared in the entry, the law specifies that 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 to the Bureau of Customs. And from such data 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.

Now to the cases at bar. Here, the basis of the value of the imported steel wire rods used by respondent in assessing and collecting the additional customs duties is $325.00 per metric ton after disregarding the value of:

(a) $280.00 per metric ton as appearing in the duly authenticated Consular Invoice of Merchandise dated July 16, 1974 (Exhs. E, E-1 & E-2, p. 129, Customs Records) and in the Invoice dated June 25, 1975 (Exh. F, p. 130, Customs Records) in CTA Case No. 2750;

(b) $306.35 per metric ton as appearing in the duly authenticated Consular Invoice of Merchandise (Exh. E, pp. 35-26, Customs Records) and the Invoice Value (Exh. F, p. 49, Customs Records) in CTA Case No. 2751;

(c) $306.35 per metric ton as appearing in the duly authenticated Consular Invoice of Merchandise (Exhs. E, E-1 & E-2, pp. 256-257; Exh. F, p. 251, Customs Records) in CTA Case No. 2752;

(d) $306.35 per metric ton as appearing in the duly authenticated Consular Invoice of Merchandise (Exhs. E, E-1 & E-2) and the Invoice Value (Exh. F) in CTA Case No. 2753.

That the additional duties and taxes assessed and collected by respondent on petitioner's importations were the result of the increase in dutiable value per metric ton of the imported article to $325.00 instead of the price appearing in the duly authenticated Consular Invoice of Merchandise specified above is admitted by respondent in paragraph 4 of his consolidated Answer to the four petitions for review.

The law seems clear and specific. It merely calls for its application as worded. There is no room for interpretation. "The home consumption value or price under this section shall be the value or price declared in the consular, commercial, trade, or sales invoice." (Emphasis supplied) The applicable provision makes clear that the value or price declared in the consular, commercial, trade, or sales invoice is the home consumption value or price on which the dutiable value of the imported article should be based. Consequently, the home consumption value or price of the various shipments of steel wire rods in question to be considered as basis of their dutiable value for purposes of the customs duties and taxes should be $280.00 per metric ton in CTA Case No. 2750 and $366.35 per metric ton in CTA Cases Nos. 2751, 2752 and 2753 as appearing in their respective Consular Invoice of Merchandise duly authenticated by the Philippine Consul of Kobe, Japan, and the Invoice Value. It is well-settled that a statute, free from any constitutional infirmity, should be enforced as written.

If respondent had any reasonable doubt as to the value or price of the imported article declared in the entry, the correct dutiable value should have been ascertained, in accordance with the mandate of the law, 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, respondent should ascertain and establish the home consumption values of articles exported to the Philippines and publish such lists of values from time to time.

It is to be stressed that respondent Commissioner of Customs is required by law to ascertain and establish the home consumption values of articles exported to the Philippines and publish such lists of values from time to time. He does not only have to ascertain and establish the home consumption values, but must also publish such lists of values from time to time. Public policy would seem to require that importers be informed in advance of the home consumption 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 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 loss of time, money and energy.

Going back to the instant cases, it should be unequivocally stated, as the records will show, that there was no published value of the subject steel wire rods declared or disseminated by respondent, as required by paragraph 3 of Section 201, discussed above. Clearly, therefore, there was no reasonable doubt entertained by respondent Commissioner of Customs as to the value or price of the imported steel wire rods declared in the entries; otherwise, as mandated by the law, the correct dutiable value of the shipments in question should have been ascertained from reports of the Revenue Attache or Commercial Attache or other Philippine diplomatic officers and from such other information that may be available to the Bureau of Customs, and from the data gathered, the Commissioner of Customs should have ascertained and established the home consumption value of the imported article. Accordingly, under the second paragraph of Section 201, supra, the home consumption value or price should be the value or price declared in the consular, commercial, trade or sales invoice. Since there is no fidelity nor compliance of what are required by the legal provisions applicable, in the absence of evidence to the contrary, there is no basis therefore for the assertion of respondent that the correct dutiable value of the imported steel wire rods is at $325.00 per metric ton. The terms of the statute provide the safest guide as to the statutory policy, to which obedience is due and from which deviation is not allowable. (Padilla vs. City of Pasay, L-24039, June 29, 1968, 23 SCRA 1349.)

As ruled by this Court in the case of Wise & Company, Inc., vs. Rolando G. Geotina, Commissioner of Customs, CTA Case No. 2717, December 29, 1977, and reiterated in the recent case of NCR Corporation (Philippines) vs. Commissioner of Customs, CTA Case No. 2599, February 28, 1978, "the applicable law, Section 201, as amended by Presidential Decree No. 34, states quite clearly that the dutiable value should be the home consumption value, and for purposes of customs duties, it is the home consumption value that is indicated in the consular, commercial, trade or sales invoices. The law had literally defined the home consumption value as that price of the articles bought and sold freely in the wholesale quantities in the ordinary course of trade in the principal market of the country from where the merchandise is exported to the Philippines, less internal excise taxes paid thereon, but 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." And since the consular invoices of merchandise of the article involved in these cases were all duly authenticated by the Philippine Consulate General at Kobe, Japan, in the absence of any showing to the contrary, the value or price declared therein is the home consumption value as defined above, in accordance with the provisions of the second paragraph of Section 201.

It is true, as respondent alleges, that Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, requires that the dutiable value of an article shall be the value that is prevailing "in the principal markets of the country from where exported on the date of exportation to the Philippines." But during the joint hearing of these cases before this Court. Mr. Aitoshio Tanai, Assistant Manager of Mitsui & Company, with whom petitioner dealt with in connection with the shipments in question, testified that at the time of shipment and arrival of the steel wire rods in the Philippines, the prices quoted in the Invoices and/or Consular Invoice of Merchandise were still the same and that these prices were the prevailing market prices. (t.s.n., pp. 5-8).

The appealed judgment cannot therefore stand. According to the express provision of the statute, the home consumption value or price shall be the value or price declared in the consular, commercial, trade or sales invoice. As appearing in the duly authenticated consular invoice of merchandise, the value or price of the shipments of steel wire rods is $280.00 per metric ton in CTA Case No. 2750 and $306.35 per metric ton in CTA Cases Nos. 2751, 2752, and 2753. The dutiable value of the imported article in question should therefore be based on $280.00 per metric ton and $306.35 per metric ton which are the home consumption values declared in the consular invoices.

The parties are not in dispute as to the computation of the additional customs duties and taxes paid by, or refundable to, petitioner as the case may be. As stated by the Collector of Customs of the Port of Manila in his decision dated November 25, 1974, and as can be gleaned from the allegations of petitioner in its petitions for review which were admitted by respondent in his Answer:

1. In C.T.A. Case No. 2750.- Upon appraisal of the shipment involved therein at $325.00 per metric ton, the amounts of ₱10,250.00 and ₱3,522.00, representing additional duty and tax, respectively, were collected from and paid by petitioner;

2. In C.T.A. Case No. 2751.- Upon appraisal of the shipment covered therein at $325.00 per metric ton, the amounts of ₱4,169.00 and ₱1,444.00, representing additional duty and tax, respectively, were collected from and paid by petitioner;

3. In C.T.A. Case No. 2752.- Upon appraisal of the shipment involved therein at $325.00 per metric ton, the amounts of ₱4,185.00 and ₱1,449.00, representing additional duty and tax, respectively, were collected from and paid by petitioner; and

4. In C.T.A. Case No. 2753.- Upon appraisal of the shipment covered therein at $325.00 per metric ton, the amounts of ₱2,202.00 and ₱1,224.00

representing additional duty and tax, respectively, were collected from and paid by petitioner.

Since the above-stated additional duties and taxes levied and collected by respondent were the result of the increase in value or price of the four (4) shipments of steel wire rods of petitioner over and above the home consumption values declared in their respective duly authenticated consular invoice, there being no showing that there existed a reasonable doubt as to the value or price declared therein, the afore-said additional duties and taxes are therefore refundable to petitioner Bell Hobart Manufacturing Incorporated. We note, however, that insofar as the claims for refund of the taxes (advance sales tax) are concerned in the amounts of P3,522.00, P1,444.00, P1,449.00 and P1,224.00 are concerned, the Commissioner of Internal Revenue had not been impleaded in these judicial suits for recovery of an internal revenue tax erroneously or illegally collected so that this Court did not acquire jurisdiction over him. (Section 306, National Internal Revenue Code).

As held by this Court in the recent cases of Wise & Company, Inc., vs. Rolando G. Geotina, supra; NCR Corporation (Philippines) vs. Commissioner of Customs, supra, the Court of Tax Appeals has no jurisdiction as petitioner failed to file the claim for refund in writing with the Commissioner of Internal Revenue in accordance with Section 309 of the National Internal Revenue Code, and that said Commissioner of Internal Revenue has not been made a party respondent. (Luna vs. Commissioner of Customs, CTA Case No. 1947, November 29, 1958; Philippine Wallboard Corp. vs. Commissioner of Customs, CTA Case No. 2136, September 30, 1972; Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2155, Resolution dated April 15, 1971; Ace Publications, Inc. vs. The Commissioner of Customs and Collector of Customs, L-18808, May 29, 1964, 11 SCRA 147; Tagum Electric Company, Inc., vs. Commissioner of Customs, CTA Case No. 2749, Resolution dated September 13, 1976.)

We are not unaware of the provisions of the second paragraph of Section 1708 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, that "if as a result of the refund of customs duties there would necessarily result a corresponding refund of internal revenue taxes on the same importation, the Collector shall likewise certify the same to the Commissioner who shall cause the said excess taxes to be paid, refunded, or tax credited in favor of the importer, with advice to the Commissioner of Internal Revenue." However, under the fundamental rule of statutory construction that all statutes relating to the same subject are to be construed with reference to each other so that effect may be given to all the provisions of each (Madrigal vs. Rafferty, 38 Phil. 414; 51 Am. Jur. 363), the afore-quoted provision of law should be interpreted in connection with Section 306 of the National Internal Revenue Code. The Commissioner of Internal Revenue being a person who is bound by the judgment to be rendered in a judicial suit for the recovery of any national internal revenue tax alleged to have been erroneously or illegally assessed or collected, he is a party necessary to a complete determination and settlement of the questions involved therein.

Accordingly, only the amounts of ₱10,250.00, ₱4,169.00, ₱4,185.00 and ₱2,202.00, or a total of ₱20,806.00, representing additional customs duties levied and collected on the four (4) shipments of steel wire rods covered in CTA Cases Nos. 2750, 2751, 2752 and 2753 are refundable to petitioner.

WHEREFORE, respondent Commissioner of Customs is hereby ordered to refund to petitioner Bell Hobart Manufacturing Incorporated the sums of ₱10,250.00, ₱4,169.00 , ₱4,185.00 and ₱2,202.00 or a total of ₱20,806.00. Without pronouncement as to costs.

SO ORDERED.

Quezon City, March 10, 1978.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge