REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

COLGATE-PALMOLIVE PHILIPPINES, INC., *Petitioner,*	**CTA CASE NO. 7806**
	Members:
-versus-	DEL ROSARIO, *PJ, Chairperson* UY, and MINDARO-GRULLA, JJ.
COMMISSIONER OF CUSTOMS, *Respondent.*	Promulgated: MAY 26 2016, 9:55a.m.

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RESOLUTION

DEL ROSARIO, P.J.:

For resolution of the Court are the following:

1. **Motion for Partial Reconsideration [Of the Decision dated 26 January 2016]** filed by respondent on February 12, 2016, with petitioner's **Comment (Re: Respondent's Motion for Partial Reconsideration)** filed on April 1, 2016; and

2. **Motion for Partial Reconsideration (Re: Decision dated January 26, 2016)** filed by petitioner through registered mail on February 12, 2016, with respondent's **Manifestation** filed on March 18, 2016 stating that it is adopting its Memorandum dated 24 June 2015 as its Comment on petitioner's Motion for Partial Reconsideration (Of the Decision dated 26 January 2016).

Both motions of the parties assailed this Court's Decision promulgated on January 26, 2016 partially granting petitioner's Petition for Review, the dispositive portion of which reads:

"WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, Colgate-Palmolive Philippines, Inc. is hereby ORDERED to PAY respondent Commissioner of Customs the basic deficiency duties and taxes on royalty fees, arrastre and wharfage in the amount of P39,373,571.93, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

	Basic Tax Due	**25% Surcharge**	**Total**
I. Deficiency Duties and taxes on Royalties Fees			
Customs duty	P34,531,402.34	P -	P34,531,402.34
VAT on duty	3,622,689.80	905,672.45	4,528,362.25
II. Deficiency VAT on Arrastre & Wharfage			
VAT	251,045.87	62,761.47	313,807.34
Total Assessment	**P38,405,138.01**	**P968,433.92**	**P39,373,571.93**

In addition, petitioner is liable to pay delinquency interest at the rate of twenty percent (20%) per annum on the amount due of P4,842,169.59, computed from June 9, 2008 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED."

Respondent's Motion for Partial Reconsideration

While respondent agrees with the Court's affirmation of its position that royalty payments by petitioner to its parent company, Colgate-Palmolive Company (CPC) are dutiable, respondent raised its disagreement in the computation of dutiable royalties, *i.e., total importations adjusted by the grossed-up average cost ratio of 46.6% to arrive at a projected equivalent amount of sales,* as it is accordingly inconsistent with the Memorandum of Agreement (MOA) between petitioner and CPC which obliges a 5% royalty fee on net sales of the licensed products.

Relatedly, respondent questions the computation for allegedly it excluded those locally manufactured products of petitioner which used imported raw materials from related subsidiaries. Respondent asserts that royalty is a condition of sale of the imported products, both for finished goods and raw materials.

Respondent argues that its evidence showed that the total amount of royalties paid by petitioner was P1,249,810,680.87 for the importations of finished products as well as raw materials, distributed and sold by petitioner under patent; thereby concluding that the assessment in its entirety must be paid by petitioner.

Respondent further submits that it has complied with the strict tenets of administrative due process in the imposition of penalties on top of the deficiency duties and VAT assessed against petitioner.

In its **Comment (Re: Respondent's Motion for Partial Reconsideration)**, petitioner argues that respondent's position that the entire amount of royalty payments must be subject to customs duties lacks factual and legal basis.

Petitioner highlights the fact that under Sec. 201 of the Tariff and Customs Code as amended by Republic Act No. 9135, only royalty payments relating to imported goods purchased from CPC and other related entities should be added up to determine the transaction value. Allegedly, including the royalty payments attributable to products manufactured in the Philippines to the transactional value of products will accordingly run contrary to the essence of customs duties.

Petitioner also contends that since the evidence of the parties point to the fact that not all goods sold were imported finished goods from CPC and that not all raw materials imported by petitioner were from CPC and related entities, the ICPA's verification and computation of the amount of royalty payments that should have been subjected to customs duties is necessary and proper.

Finally, petitioner states that the Court correctly found that the imposition of the administrative penalty against petitioner is in violation of petitioner's right to due process.

Respondent's motion must fail.

The Court cannot sustain respondent's position to impose the additional duties on the total royalty payments of P1,249,810,687.75 since part of such royalty payments correspond to the net sales for locally manufactured products,[1] wherein most of the raw materials

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[1] Exhibit "V", CTA Docket, pp. 1524-1533, 1532.

used thereon were obtained from local suppliers.[2] There is no cogent reason to sustain respondent's view since to do otherwise would sanction an unlawful imposition of duties and taxes to petitioner's payments of royalties connected to its nets sales of locally manufactured products that involve the use of raw materials obtained from local suppliers. The Court finds no basis to reconsider the assailed Decision as the computation presented therein is based on evidence on record.

Respondent's contention that it complied with the strict tenets of administrative due process in the imposition of penalties since the purpose of the complaint was served by the two successive recommendations of the PEAG audit team is bereft of merit.

Suffice it to say that Customs Memorandum Order No. 1-2002 prescribes the roadmap in the administrative imposition of fines and penalties, which is initiated with the filing of an administrative complaint. Failure, therefore, to strictly observe the procedure concerning the administrative imposition of penalty is fatal to respondent's cause.

Petitioner's Motion for Partial Reconsideration

Petitioner insists that it is not liable for deficiency duties and VAT on royalties; and it is not liable for the deficiency VAT on arrastre and wharfage fees. Petitioner also contends that it is not liable for 20% delinquency interest on deficiency VAT as said interest is imposed only when the deficiency tax is assessed upon "notice and demand of the Commissioner of Internal Revenue." It is petitioner's belief that the notice and demand contemplated by Sec. 249(C)(3) of the Tax Code is one that comes from the CIR herself, and not from respondent.

The Court reiterates that royalty payments relating to importation of CPC's products form part of the transaction value subject to customs duties and VAT, and that arrastre and wharfage fees are considered as "other charges" subject to VAT as expounded in the assailed Decision, pertinent portion of which reads:

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[2] Exhibit "V", CTA Docket, pp. 1524-1533, 1531; October 26, 2010 Transcript of Stenographic Notes, pp. 13-14.

"***Customs Duties on Royalty Payments Relating to Importation***

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Section 201 of the TCCP, as amended, provides:

SEC. 201. *Basis of Dutiable Value. — (A) Method One. — Transaction Value. —* **The dutiable value of an imported article subject to an *ad valorem* rate of duty shall be the transaction value, which shall be the price actually paid or payable for the goods when sold for export to the Philippines, adjusted by adding**:

(1) **The following to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods**:

(a) Commissions and brokerage fees (except buying commissions);

(b) Cost of containers;

(c) The cost of packing, whether for labour or materials;

(d) The value, apportioned as appropriate, of the following goods and services: materials, components, parts and similar items incorporated in the imported goods; tools; dies; moulds and similar items used in the production of imported goods; materials consumed in the production of the imported goods; and engineering, development, artwork, design work and plans and sketches undertaken elsewhere than in the Philippines and necessary for the production of imported goods, where such goods and services are supplied directly or indirectly by the buyer free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods;

(e) **The amount of royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods to the buyer**; *(Boldfacing & underscoring supplied)*

From the foregoing provision, it is evident that in order for royalties and license fees to be added as part of the dutiable value, the following are indispensable: (1) the royalties and license fees are related to the goods being valued *(relationship)*; (2) the royalties and license fees are paid by the buyer directly or indirectly *(payment)*; and (3) the payment of royalties and license fees is a condition of sale of the goods to the buyer *(condition)*.

The aforesaid requirements are obtaining in this case. Under the MOA, petitioner shall pay CPC royalty fees at the rate of five percent (5%) of the net sales of petitioner as a consideration for the use of CPC's patents and trademarks, trade names, packaging trade dress and its know-how, to wit:

'MEMORANDUM OF AGREEMENT

xxx xxx xxx

NOW, THEREFORE, in consideration of the premises and of the premises by each party to the other hereafter made, the parties mutually agree as follows:

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5. **OWNER [CPC] agrees to grant USER [CPPI] the non-exclusive right to use all of its Patents and Trademarks, trade names, packaging trade dress and its Know-how in the TERRITORY.** **<u>Said rights are set forth in Addendum I (Patents), Addendum II (Trademarks) and Addendum III (Know-how)</u>** which are attached hereto and the terms and conditions set forth in said Addenda are incorporated herein.

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10. **In consideration of the rights hereby granted** to USER, **USER shall pay to OWNER as royalty**, exclusive of value-added tax (VAT), **Five Percent (5%) of its total Net Sales of Licensed Products**.'

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'ADDENDUM I
PATENTS CONTRACT

3. OWNER hereby grants to USER the non-exclusive right **to use The Patents including the right to** make, have made, use and **sell Licensed Products**.'

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'ADDENDUM II
TRADEMARKS CONTRACT

2. OWNER hereby grants to USER **the right to use The Trademarks on products** manufactured, packaged, or **sold** by USER in accordance with standards specified by OWNER. USER may apply the Trademarks to such goods and use the same in selling and advertising and otherwise as approved by OWNER, including but not limited to the use thereof in conjunction with USER's corporate name.'

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'ADDENDUM III
KNOW-HOW CONTRACT

> 2. OWNER hereby grants to USER **the right to use its Know-how** to make, have made, use **and sell the Licensed Products**.'
> *(Boldfacing & underscoring supplied)*

While petitioner presented in evidence the May 17, 2007 letter of Edward J. Filusch, the Treasurer of CPC, which confirms that royalty payment to CPC is not a condition of the sale of goods to petitioner, and that petitioner may import any licensed products at any time without condition, the other pieces of documentary evidence of petitioner, however, show otherwise. The MOA and its addenda reveal that (a) the royalty payments relate also to imported goods since the same is computed at the rate of five percent (5%) based on the net sales of the licensed products ***without distinction as to the source of the products sold whether imported or locally manufactured***; (b) the royalties are paid by the petitioner to the seller, CPC; and (c) the payment of royalties is a condition of sale of the goods to the buyer because ***without the royalties, petitioner could not have sold the licensed products in the Philippines under the CPC trademark as the MOA provides that the agreement may be terminated once petitioner fails to pay the royalty***. In fact, there is no evidence presented to establish that the imported products would have been sold separately in the Philippines under a different brand other than that of CPC. Thus, the royalties which are related to the goods being valued (and which were paid by petitioner to CPC as a condition of the sale of the imported goods) are considered part of the dutiable value subject to customs duties pursuant to Section 201 of the TCCP.

To be sure, all importations of CPPI of CPC's products covered by the MOA are subject to customs duties. The computation of the dutiable value includes the 5% of the royalty payments made by CPPI to CPC.

Royalties related to imported goods form part of the transaction value which is subject to customs duties and taxes

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Arrastre and Wharfage Fees Considered as 'Other Charges' Subject to VAT

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The Court cannot sustain petitioner's theory limiting the phrase 'other charges' to mean as those of the same nature as customs duties and excise taxes. The afore-quoted Section 107 of the NIRC of 1997, as amended, is clear, plain and unequivocal in providing that VAT on importation of goods is imposed **on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges**. The elementary rule in statutory construction is that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum*. From the words of a statute there should be no departure. The *verba legis or plain meaning rule* rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute.

The Court, therefore, finds no error in respondent's imposition of VAT on arrastre and wharfage fees as these are considered *'other charges'* contemplated under Section 107 of the NIRC of 1997, as amended. Equally settled is the rule that *wharfage* is a charge against the cargo which is loaded or unloaded in the safety and security of the port. *Arrastre charge*, on the other hand, is the amount which the owner, consignee, or agent of either, of merchandise or baggage, has to pay for the handling, receiving and custody of the imported or exported merchandise or the baggage of the passengers.

Considering that the arrastre and wharfage fees are considered *'other charges'* included as part of the tax base of VAT on importation under Section 107 of the NIRC of 1997, as amended, the VAT imposed thereon, apart from the VAT imposed under Section 108 of the NIRC of 1997, as amended, on services rendered by PPA and ICTSI, does not constitute double taxation.

Double taxation means taxing the same property twice when it should be taxed only once; that is taxing the same person twice by the same jurisdiction for the same thing. It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as direct duplicate taxation, the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character.

The subject matter of Section 107 of the NIRC of 1997, as amended, is the importation of goods, the tax base of which is the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges; in Section 108 of the NIRC of 1997, as amended, the subject matter is the sale or exchange of services, including the use or lease of properties and the tax base thereof is the gross receipt derived from such sale or exchange of services. The two taxes levied under Sections 107 and 108 of the NIRC of 1997, as amended, are not imposed on the same subject matter for the same purpose.

Furthermore, petitioner is not the taxpayer of the VAT under Section 108 of the NIRC of 1997, as amended; it merely shoulders the tax burden passed-on by the seller of the service. This proceeds from the well-established principle that in indirect taxes, like VAT, the incidence of taxation falls on one person but the burden thereof can be shifted or passed on to another person. The VAT under Section 107 of the NIRC of 1997, as amended, on the other hand, is imposed on petitioner for being the importer of the product as the law clearly provides that such tax is to be paid by the importer prior to the release of such goods from customs custody. Evidently, there is no double taxation.

From the foregoing, petitioner is therefore liable for deficiency VAT on arrastre and wharfage for the fourth quarter of 2003 to the third quarter of 2006 in the total amount of P251,045.87." *(Citations omitted)*

The Court finds that aside from its objection against the propriety of 20% delinquency interest on VAT, the contentions presented in petitioner's motion are mere reiteration or amplification of the arguments raised in its Memorandum, which had been duly considered and resolved in the assailed Decision. Thus, no cogent reason exists to justify a modification or reversal of the conclusions reached in the assailed Decision.

With respect to petitioner's objection anent the imposed delinquency interest, the Court finds the same bereft of merit.

The Bureau of Customs (BOC), which is headed and subject to the management and control of the Commissioner of Customs is tasked to collect customs duties, taxes, fees, charges and penalties accruing to the Government.[3] The BOC is also mandated to assess

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[3] Section 23(1) of the Administrative Code of 1987 (Executive Order No. 292) provides:
"SEC. 23. Bureau of Customs. – The Bureau of Customs which shall be headed and subject to the management and control of the Commissioner of Customs, who shall be appointed by the President upon the recommendation of the Secretary and hereinafter referred to as Commissioner shall have the following functions:

(1) Collect custom duties, taxes, and the corresponding fees, charges and penalties; xxx"

and collect revenues from imported articles and all other dues, fees, charges, fines and penalties accruing under the tariff and customs laws.[4] The foregoing clearly shows that the BOC, its Commissioner and Collectors are empowered to assess and collect revenues, like the internal revenue taxes imposed under the NIRC. The said authority to assess and collect taxes, like VAT, necessarily includes the authority to assess and collect penalties imposed under Section 249 (C)(3) of the NIRC.

WHEREFORE, premises considered, respondent's **Motion for Partial Reconsideration [Of the Decision dated 26 January 2016]** filed on February 12, 2016 and petitioner's **Motion for Partial Reconsideration (Re: Decision dated January 26, 2016)** filed on February 12, 2016 are **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

ON LEAVE
CIELITO N. MINDARO-GRULLA
Associate Justice

Section 27 of the Administrative Code of 1987 also provides:
"SEC. 27. The Collection Districts. – (1) The Bureau shall have thirteen (13) Collection Districts under the direct control and supervision by the Commissioner. Each Collection District shall have as many subports as necessary to maximize revenue collection and the prevention of smuggling and fraud against customs. Each Collection District shall be headed and supervised by a District Collector while each subport will be headed by a Port Collector. The Collectors shall have the following functions:

(a) Collect duties, taxes, fees, charges, penalties and fines accruing to the Government under the Tariff and Customs Code and related laws; xxx"

[4] Section 602 of the Tariff and Customs Code of the Philippines, as amended provides:
"SEC. 602. Functions of the Bureau. – The general duties, powers and jurisdiction of the bureau shall include:

a. The assessment and collection of the lawful revenues from imported articles and all other dues, fees, charges, fines and penalties accruing under the tariff and customs laws; xxx"