REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE WALLBOARD CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 2482

COMMISSIONER OF CUSTOMS,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Customs dated December 29, 1972, affirming that of the Collector of Customs of Manila, denying petitioner's claim for the refund of the amount of ₱24,807.00 paid as customs duty and ₱1,736.00 as compensating tax, or a total sum of ₱26,543.00, on the importation of oiticica oil from C. Tennant Sons & Company, New York, U.S.A., in 1961.

Both parties have adopted the undisputed facts appearing in the aforesaid decision of the Commissioner of Customs, which we equally reproduce below as our own:

> 1. The protestant is a manufacturer of construction material, commonly known in the market as "LAWANIT" hardboard. The raw materials used in the manufacture of these hardboards come from sawmill wastes and forest residues. To make the hard-

> board weather resistant tempering of the product with drying oils like tung, lumbang and oiticica becomes necessary;
>
> 2. On December 29, 1961, an importation of Brazilian oiticica oil consisting of 100 metric tons was received by protestant from C. Tennant, Sons and Company, in New York. This importation was declared under Sub-paragraph A-(2) of Tariff Heading 15.07 at 35% ad valorem. However, when the corresponding examination and appraisal was made, the oil was instead classified under Sub-paragraph B-(2) of the same Tariff and Customs Code at 70% ad valorem because of the doubt entertained by the Customs Appraiser as to the exact physical and chemical state of the oiticica oil at the time of examination. Additional customs duties and compensating tax were paid by the Protestant (Philippine Wallboard Corporation) in the total amount of ₱26,543.00 under official Receipt No. 4901.
>
> 3. The instant protest case was filed. The same was duly heard but later on the protest was denied by the Collector of Customs of Manila. Hence, this appeal.

As aforesaid, petitioner had appealed the decision of the Collector of Customs to the Commissioner of Customs, who, in his decision of December 29, 1972, affirmed that of the former. Consequently, not satisfied with the Commissioner of Customs decision, petitioner filed, on February 15, 1973, the instant petition for review.

57

The issues presented for decision are as follows:

> 1. Whether or not the 100 metric tons of Brazilian oiticica oil should be classified as crude oil under Tariff Heading No. 15.07-A-2 of the Tariff and Customs Code, as declared by petitioner, and taxable at 35% ad valorem, or as refined oil classified under Tariff Heading No. 15.07-B-2 of the same Code at 70% ad valorem; and
>
> 2. Whether or not petitioner is entitled to the refund of ₱26,543.00 paid as additional customs duty and compensating tax.

The above issues are interlaced. We will, therefore, consider them at the same time.

Tariff Heading No. 15.07 of the Tariff and Customs Code of the Philippines, the law involved in this case, reads as follows:

> 15.07 FIXED VEGETABLE OIL, FLUID OR SOLID, CRUDE, REFINED OR PURIFIED:
>
> A. Crude:
>
> 1. Palm, linseed and caster oil . . . . . . ad val. 15%
>
> 2. Other . . . . ad val. 35%
>
> B. Refined or Purified
>
> 1. Palm, linseed and caster oil . . . . ad val. 30%
> 2. Others . . . . ad val. 70%

Petitioner, invoking the above cited law, contends that its imported Brazilian oiticica oil is "crude" oil under Tariff Heading No. 15.07-A-2 subject to 35% ad valorem. On the other hand, due to a doubt entertained as to the physical and chemical characteristics of the oiticica oil, respondent contends that he had classified said oil as "refined" under Tariff Heading No. 15.07-B-2, subject to a higher rate of duty, or 70% ad valorem, and, hence, petitioner is not entitled to the refund of the customs duty and compensating tax paid.

We find the contention of respondent untenable. The change of the customs duty from 35% to 70% ad valorem, imposed on the oiticica oil in question was brought about by the fact that there was a doubt entertained by Vicente Muñoz, Customs Appraiser, that the oiticica oil is raw oil inasmuch as it has been prepared for certain use and that there was no analysis of the product submitted by petitioner at the time of the appraisal thereof.[1] However, respondent

---

[1] Customs Records, pp. 97-98, 103.

had presented only one evidence to support his action and to sustain the classification made of the Brazilian oiticica oil as "refined" and not crude or raw, and causing him to subject said oil to 70% *ad valorem* duty under Tariff Heading No. 15.07-B-2. This was the Laboratory Report No. 64-182 dated July 7, 1964 of Horacio Tan Torres, Chief Laboratory Analyst of the Bureau of Customs, on the alleged examination of the oiticica oil. But this report only contains the conclusion that the "*Sample submitted under Entry No. 103055(61) is refined oiticica oil.*"[2] There was, however, neither a report on the actual tests conducted on the imported oiticica oil, nor on the chemical findings or results arrived at, based on such alleged test. Tan Torres was never presented to testify before this Court as to the veracity or truth of his conclusion in his report which only curtly stated that the oiticica oil is "refined". We believe that this evidence, standing alone and with-

---

[2] *Ibid.*, p. 201.

61

out more, cannot validly support the position of respondent, as against the overwhelming evidence, both testimonial and documentary, offered by petitioner, which prove beyond the scintilla of doubt that the oiticica oil in question is "crude" or raw.

During the hearing of this case, petitioner's witness Simeon de Jesus,[3] a chemist for 25 years, and former chief chemist of petitioner, now connected with the A.Soriano Corporation, uncontrovertedly testified that Tan Torres' report which stated that the imported oiticica oil is refined oil was only a mere conclusion; and that this conclusion had no basis. De Jesus stated that oiticica oil can be used for tempering of petitioner's products (lawanit hardboard). And during the hearing of the administrative case before the Customs Bureau, he also testified and stated, and which was adopted by petitioner for purposes of this appeal, and also during the hearing in this Court, that

---

[3] T.S.N., pp. 7-11.

based upon laboratory tests he conducted on the sample of Brazalian oiticica oil, supplied by the same indentor of the oiticica oil in question, he found out categorically that said oil was crude.[4] Actually, tests on the oiticica oil were conducted by De Jesus as early as March 10, 1961[5] and he recommended on August 7, 1961 that this oil be used by petitioner, in lieu of tung oil, for tempering the latter's lawanit board products.[6]

Another witness of petitioner, Abelee M. Jimiera, Chemist of the Check-up Research and Development and Quality Control unit of petitioner unrebuttedly testified that petitioner used for tempering purposes drying oils such as tung and lumbang oil, but on account of the rise in the prices of tung oil, he conducted tests on the oiticica oil on March 10, 1961 for purposes of possible adoption or substitution as

---

[4] T.S.N., pp. 7-11.

[5] Exh. D, CTA records, p. 22.

[6] Exh. C, <u>ibid</u>, p. 24.

tempering oil; that tests were actually made on said oiticica oil based upon the specifications and samples furnished by the manufacturing company - the Brazilian Oiticica Inc., thru its indent company, the C. Tennant Sons & Co., New York, U.S.A.; that after his tests, he found out that the oiticica oil in question was "crude" or raw; that his findings were in accord with, or match the specifications given by said C. Tennant Sons & Co. and that, consequently, on the basis of these findings, he recommended the adoption or use by petitioner of oiticica oil for tempering of its lawanit products.[7]

The results of two (2) actual analytical tests conducted on the oiticica oil sample,[8] which was given by said C. Tennant Sons & Co., of New York, U.S.A., are quoted below:

Analysis of Oiticica Oil Sample from C. Tennant Sons & Co. of New York labelled CICOIL Laboratory Controlled Uniform Qualify Raw Liquid Oiticica Oil.-

---

[7] T.S.N., pp. 32-38.

[8] Exhs. D-2 & E, CTA records, pp. 24-25, respectively; T.S.N. pp. 32-38, 50-51.

	Trial 1	Trial 2	Ave.	CICOIL Specs.*
Refractive Index @ 27 deg. C.	1.5094	1.5092	1.5093	1.5090-1.5130 @ 25°C
Specific Gravity 27/27°C	0.9837	0.9838	0.98375	0.9770-0.9880
Saponification Value	178	180	179	186-193
Free Fatty Acid as Oleic Acid, %	3.60	3.65	3.625	max. 4% FFA
Gel Time, minutes	12 min & 10 secs	12 min.	12 min. & 5 secs	max. 17 min.

*
Laboratory Controlled
Uniform Quality Raw
Liquid Oiticica Oil

Analyzed by:

(Sgd.) A. M. JIMIERA

	Trial 1			Trial 2		
	Drum No. 1	Drum No. 1	Ave.	Drum No. 2	Drum No. 2	Ave.
Refractive Index @ 27 deg. C	1.5090	1.5092	1.5091	1.5087	1.5085	1.5086
Specific Gravity C 27/27°C	0.9837	0.9837	0.9837	0.9819	0.9819	0.9819
Iodine Value	142.38	141.97	142.17	136.28	130.27	133.27
Saponification Value	177.20	177.02	177.11	178.00	176.00	177.00
Acid Value	7.12	7.14	7.13	7.14	7.10	7.12
Per Cent Free Fatty Acid as Oleic Acid	3.61	3.62	3.615	3.62	3.60	3.61
Gel Time, Minutes				11 min. 45 secs.		12 min.

Analyzed by:
(Sgd.) A.C. BUGAS (Sgd.) R. C. GABALLO

65

which show that they substantially conform to the official specifications of the oiticica oil, the trade name of which is CICOIL,[9] which product is actually distributed by the Brazil Oiticica, Inc. of New York, U.S.A., but "Produced only by" the Brazil Oiticica S.A., Rio de Janaeiro, Brazil, as follows:

VISCOSITY (Gardner-Holdt 25°C).....	W to Y
COLOR (Gardner)	9 - 11
*HEATING TEST (S.S.T.M.)............	max. 17 minutes
SPECIFIC GRAVITY (20°C)	0.9770 to 0.9880
REF. IND. (25°C)	1.5090 to 1.5130
ACID VALUE	max. 4% F.F.A.
SAPONIFICATION VALUE	186 - 193
UNSAPONIFIABLE MATTER	1.5%

*Equivalent Gelling Time (Browne Heat Test) - Max. 15 minutes

The Brazilian oiticica oil, which is commercially registered as an export product from Brazil, is shown to be permanently liquid product

---

[9] Exhs. B & B-1, at p. 4 of Exh. B, Customs Records, p. 145.

in order to facilitate its handling, shipping, and prevention from chemical change due to oxidation which can occur in the raw oil since it is a semi-solid at ordinary temperatures. Like any wood oil, Brazilian oiticica oil dries with matt fin; and, therefore, it must be heat-processed in order to give the product of uniform glossy gas-proof films.[10] In other words, the only processing this oil has to undergo in order to keep it constantly in liquid form for export purposes is by heating.[11] This oil is produced from the nuts of a Brazilian tree, called *Licania rigida Benth*,[12] which grows in the northeastern part of Brazil. The tree is large and bushy, and its nuts varies in length from 2.5 to 6 cms. which consist of 35% shell, and the remainder being the kernel. The kernel contains approximately 60% of oil. The tree does not produce

---

[10]Exh. B-2, at p. 5 of Exh. B, Customs Records, p. 145.

[11]*Ibid*.

[12]Exh. B-2, *ibid*.; also Customs Records, pp. 117-118.

fruits until it is about 25 years and lives as long as 100 years. Tens of thousands of oiticica trees grow in the northeastern area of Brazil, insuring, therefore, adequate and regular supplies of oil.[13]

It has also been testified to by said Simeon de Jesus, heretofore stated as chemist of petitioner, that the shells of the oiticica nuts is first removed, and the kernels taken therefrom are crushed drawing therefrom the fluid known as oiticica oil.[14] The same witness also testified that the only process undertaken in order to keep the oil in liquid form is by heating,[15] and that heating is the normal procedure found in all textbooks to make the oiticica oil in a liquid state.[16]

---

[13] Exh. B, *ibid.*, p. 145.

[14] *Ibid.*, p. 145.

[15] Customs Records, pp. 117-118.

[16] Exh. B-2, p. 5, Customs Records, p. 145; Customs Records, pp. 117-118.

He also testified that in order to determine whether an oil is refined or crude, the data on specific graph, melting points, saponification value, acid value and others must be shown, and these data were never indicated in Laboratory Report No. 64-182 of Tan Torres of the Bureau of Customs dated July 7, 1964.[17]

Not only are the evidence of petitioner ample to draw an intelligent conclusion that the oiticica oil, in its imported state, is raw and not refined, but also the brochure of the commercial trade name of the Brazilian oiticica oil as CICOIL (also known as CITOIL), shows and describes that this product is "Laboratory-controlled", "Uniform quality", "Raw Liquid oiticica oil", and it is, as aforesaid, produced exclusively by the "Brazil, Oiticica S.A." of Rio de Janeiro, Brazil, and which commercial product is distributed in the United States and Canada exclusively by Brazil Oiticica, Inc. U.S.A.[18] Oiticica oil is

---

[17] Customs Records, p. 117.

[18] Customs Records, p. 201.

internationally known to be a "crude or raw oil" and is characterized as "white or cream" semi-liquid. The oil is similar to tung oil in many ways, having a high specific gravity, high refractive index and a tendency to gel when heated.[19] The just stated description of the oiticica oil that it has a high specific gravity and refractive index conforms also to the description contained in the commercial brochure that it is laboratory-controlled, uniform quality, and raw liquid.[20] And we would like to add, and we agree as corroboratedly testified to, that the oiticica oil imported was crude, for if it were true that petitioner imported refined, and not raw, oiticica oil, that will naturally give rise to the increased cost of production of its hardboard products and also payment by petitioner of increased

---

[19] Customs Records, pp. 145-146; Jeffrey R. Stewart, An Encyclopedia of the Chemical Process Industries, 1956 Ed. (New York, USA: Chemical Publishing Co., Inc., 1956), pp. 496-497.

[20] Customs Records, ibid; Jeffrey R. Stewart, op. cit.

customs and tariff duty,[21] which to us is averse to the normal reaction of an astute businessman to reduce as much as possible the costs of production of its main products.

Considering these evidence on hand, there is no room for doubting that oiticica oil (CICOIL or CITOIL) is "crude". We are of the opinion and so hold that said oiticica oil, being "crude" or raw, is classifiable under Tariff Heading No. 15.07-A-2, subject only to 35% ad valorem duty. Petitioner, therefore, is entitled under the law to a refund, but only to the extent of the amount of ₱24,807.00, representing additional customs duty on its importation of the 100 metric tons of oiticica oil. No interest, however, can be imposed on respondent Commissioner of Customs on the said refundable amount of customs duty since he was only acting in good faith, or there was a reasonable doubt entertained as to whether said oil in question should be classified as refined subject to customs duty at 70% ad valorem. Not having acted with arbitrariness,

---

21 T.S.N., p. 19.

71

therefore, no interest on the refundable amount is imposable upon the respondent.

We have noted a flaw on petitioner's appeal. As regards the refund of the compensating tax paid by petitioner in the sum of ₱1,736.00, which is an internal revenue tax, the recovery thereof is governed by Sections 306 and 309 of the National Internal Revenue Code and Sections 7(1) and 11 of Republic Act No. 1125. And in every appeal from a decision concerning an internal revenue tax, or in a judicial claim for refund thereof, as set by the aforesaid provisions of law, the Commissioner of Internal Revenue must always be made a party respondent thereto.[22] In the case at bar, the procedure set therein for recovery of said compensating tax, which is to implead always the Commissioner of Internal Revenue to be effective, has not been complied with by herein petitioner. We, therefore, have no jurisdiction to pass upon its claim for the refund or recovery of the said compensating tax for lack of jurisdiction over the person of the Commissioner of Internal Revenue.[23]

---

[22] See Tagum Electric Co., Inc. vs. Comm. of Customs, CTA 2749 (Resolution), Sept. 13, 1976 and cases cited therein.

[23] Sec. 1, Rule 16 of the Revised Rules of Court of the Philippines.

7V

WHEREFORE, judgment is hereby rendered ordering respondent Commissioner of Customs to refund to petitioner the amount of ₱24,807.00 as additional customs duty, without interest.

No pronouncement as to costs.

SO ORDERED.

Quezon City, December 16, 1976.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Presiding Judge

AMANTE FILLER
Associate Judge