REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NATIONAL DENTAL SUPPLY,
INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2816

THE COMMISSIONER OF CUSTOMS,
Respondent.

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

6/29/79

D E C I S I O N

Appeal brought to us by petitioner National Dental Supply, Inc., from a decision of respondent Commissioner of Customs dated May 6, 1976, affirming the decision of the Collector of Customs of the Port of Manila (in Customs Case No. 75-173), denying petitioner's protest and claim for refund of the amounts of ₱5,585.86 and ₱1,392.94, representing alleged illegally collected customs duty and sales tax, respectively, or a total of ₱6,876.80, on a shipment of various articles declared under Entry No. 66806-75.

This case has been submitted for decision on the basis of the pleadings, records of the Bureau of Customs, evidence adduced by petitioner, and respective memoranda of the parties.

It appears that sometime in the middle of 1975, petitioner imported from the United States various articles, among which were several packages and cartons of Jeltrate and Lucitone. The whole importation had a total invoice price of $4,905.15, and the corresponding value per unit of Jeltrate and Lucitone, as specified in the commercial and consular invoices, was $12.15 and $85.80, respectively. After appraisal by the Bureau of Customs, the value of the whole shipment was increased to $5,421.28 because the customs appraisers disregarded the value (per unit) of Jeltrate and Lucitone as stated and declared in the commercial and consular invoices and, instead, applied the customs valuation thereof per unit at $19.20 and $97.50, respectively, as established and published by the Bureau of Customs.

On August 4, 1975, in order to facilitate the release of the whole importation, petitioner paid the amount of ₱19,462.00 (as customs duty) and the sum of ₱5,890.00 (as sales tax) assessed by the Bureau of Customs. However, on August 19, 1975, petitioner filed with the Collector of Customs a written protest, assailing as erroneous the customs valuation of the following articles:

	Per Unit Consular Inv.	Per Unit Customs HCV
(A) Jeltrate (8-can cartons)	$12.15	$19.20
(B) Jeltrate (100-pouch cartons)	12.15	19.20
(C) Lucitone (199/120-unit packages)	85.80	97.50

and asking for the refund of the amounts of ₱5,583.86 and ₱1,392.94, representing alleged illegally collected customs duty and sales tax, respectively, or a total of ₱6,976.80.

On September 17, 1975, in Customs Case No. 75-173, the Collector of Customs rendered a decision denying the protest and claim for refund of petitioner on the following grounds:

> The protestant contended that the true and correct value per unit is $12.15 for Jeltrates and $85.80 for Lucitone 199 which were increased to $19.20 and $97.50, respectively, which the protestant contended to be illegal and baseless. Granting, without admitting, that the protestant's contention, that is, $12.15 and $85.80 are the true and correct prices which the importer actually paid for the articles, this Office nevertheless believes that the same are not the correct Home Consumption Value pursuant to Section 201 of the Tariff and Customs Code. The values applied by the Appraiser's Division are the established (published) value for Jeltrates and Lucitone, and until and unless the said values have changed in the course of time and in the ordinary course of trade, this Office has no alternative but to apply them. The protestant failed to realize the fact that the prices of the articles are compiled from time to time and values applied in the instant case are the established Home Consumption Value for articles of similar nature from the country of origin at the time of exportation. If Customs authorities are always to be bound by the invoice value, it is evident that they would be, to a considerable extent, at the mercy of foreign and local importers and would open wide the avenue for more fraud upon the Customs.
>
> WHEREFORE, by virtue of authority vested in me under Section 2312 of the Tariff and Customs Code, as amended, it is hereby ordered and decreed that Manila Protest No. 9775 be, as it is hereby declared DISMISSED.

On May 6, 1976, after appeal by petitioner, the Commissioner of Customs affirmed the decision of the Collector. Hence the present recourse.

There is no controversy between the parties as to the computation of the amounts of customs duty and sales tax claimed by petitioner as refundable. The only question presented for the Court's resolution is whether, under the provisions of Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, the correct home consumption value of the subject articles (Jeltrate and Lucitone), which should be the basis of the customs duty and sales tax, is the value or price declared in the commercial and Consular invoices or the value or price established and published by the Bureau of Customs. Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, textually 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 con-

> dition 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 profits; and
>
> (b) Duties and taxes paid thereon.

The contention of petitioner is that the correct home consumption value of subject articles should be the value or price stated in the consular invoice as allegedly authenticated by a consular certification. (See petition for review and memorandum of petitioner). On the other hand, respondent maintains that the correct home consumption value of subject articles should be the value or price established and published by the Bureau of Customs, stressing the reasons therefor in his memorandum, as follows: (pp. 106-108, CTA records.)

> The records show that the established and published value of "Jeltrate" is $19.20 per unit and $97.50 per unit for "Lucitone" at the time of exportation. These values were determined for purposes of uniform taxation and after a thorough study and research by the Valuation and Classification Division, Bureau of Customs, which is the sole repository of all reports, information and other data regarding the correct dutiable value on imported articles as ascertained from the reports of revenue attaches, commercial attaches and other diplomatic and consular officers.
>
> Indeed, any isolated value information obtained by the importer from any outside source should be considered with caution vis-a-vis the dutiable value arrived at by the Bureau of Customs. To act otherwise will make the system adopted by the Bureau of Customs of publishing the home consumption value of imported articles from time to time vulnerable to attacks by importers who can easily offer value information obtained from abroad whose genuineness and veracity might be difficult to ascertain. This will pave the way for unscrupulous importers to commit fraud against the government.
>
> Petitioner contends that the true and correct value per unit is $12.15 for "Jeltrate" and $85.80 for "Lucitone", citing the value of the shipment appearing in the consular invoice, which it claims is the primary evidence as to the home consumption value of

> the articles pursuant to Section 201 of the Tariff and Customs Code.
>
> There is no merit to petitioner's contention. Sec. 201 itself provides that where there exists a reasonable doubt as to the value or price of the imported articles declared in the entry, resort should be made to the lists of values published by the Bureau of Customs.
>
> If Customs authorities should be bound by the invoice value, they would be, to a considerable extent, at the mercy of foreign exporters and local importers, thereby opening the avenue wide for fraud upon the Bureau of Customs.

We agree with the stand of respondent Commissioner of Customs. It is clear from the provisions of Section 201 of the Tariff and Customs Code, as amended, that the home consumption value of the imported article shall be the value or price declared in the commercial, consular, trade or sales invoice. However, the same provisions state that where there exists a reasonable doubt as to the correctness of the value or price declared in the entry, the correct dutiable value of the article shall be ascertained from the 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 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.

In other words, while the law prescribes the rule that the home consumption value of the imported article shall be the value or price declared in the commercial, consular, trade or sales invoice, the same should not be applied in case the correctness of such value or price declared in the invoice is vitiated by reasonable doubt. And what should then be considered as the correct home consumption value, in such case, should be the value or price ascertained by the Bureau of Customs from the reports of the Revenue Attache or Commercial Attache or other Philippine diplomatic officers, and which value has been established and published by said Bureau from time to time.

In the case at bar, the reasonable doubt as to the correctness of the value declared in the commercial and consular invoices is too apparent to be ignored. The very evidence presented, and the memorandum filed by petitioner, would indicate that before the filing of the import entry, petitioner filed with the Bureau of Customs a <u>request for value and classification information</u> relating to the subject articles, although it had already in its possession the commercial and consular invoices at the time. (See Memorandum of petitioner & Exh. "G", p. 60, CTA rec.) And the values supplied and furnished by the Bureau of

Customs (i.e., \$19.20 /per unit/ for Jeltrate and \$97.50 /per unit/ for Lucitone) are the values declared in the import entry and subscribed under oath as true and correct by petitioner. (See Exh. "H", p. 61, CTA rec.). Indeed, if the values of the subject articles stated in the commercial and consular invoices (i.e., \$12.80 per unit for Jeltrate and \$85.80 per unit for Lucitone) are true and correct, why should petitioner still request the Bureau of Customs for value and classification information before filing the import entry, and subsequently declare therein as true and genuine the values furnished by the Bureau of Customs?

Certainly, under these circumstances, we find no valid grounds to reject the home consumption values applied by the Bureau of Customs. This is especially so when these values are, admittedly, the values established and published by the Bureau of Customs from time to time; and petitioner has not in any way disputed and disproved that the said values had been gathered and ascertained by the Bureau of Customs from the reports of the Revenue Attache, Commercial Attache or other Philippine diplomatic officers at the country of exportation. To the extent that the Bureau of Customs adhered literally to the provisions of the law applicable, its valuation cannot be assailed as erroneous.

In the case of Bell Hobart Manufacturing Incorporated vs. Commissioner of Customs, CTA Cases Nos. 2750, 2751, 2752 & 2753, March 10, 1978, wherein the issue for resolution involves the determination of the correct dutiable value of an imported article as prescribed in Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, this Court made the following observation:

> 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 shipment 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 displomatic 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.

From the foregoing pronouncement of this Court, the Commissioner of Customs should disregard the value declared in the commercial or consular invoice when it is shown that he entertains a reasonable doubt as to the correctness of the value declared therein or in the entry; that the correct dutiable value of the imported article has been ascertained by him from the reports of the Revenue Attache or Commercial Attache or other Philippine diplomatic officers, as well as from other data or information available to the Bureau of Customs; and that the said value has been established and published by the Bureau of Customs from time to time. Where, as here, there is fidelity to the requirements of the legal provisions applicable, there is no basis for the assertion that the valuation of the Bureau of Customs of the articles in question is illegal and baseless.

In any case, the act here of petitioner in requesting the Bureau of Customs for value and classification information before filing the import entry, and in declaring in the entry, under oath, that the true and correct home consumption values of Jeltrate and Lucitone per unit are \$19.20 and \$97.50, respectively, which values are the established and published values furnished to it, and applied, by the Bureau of Customs, bars or estopps petitioner from claiming that the correct home consumption values are those stated in the commercial and consular invoices. The settled doctrine states that:

> x x x, the import entry in this case wherein the itemization of the subject articles and the pricing thereof per piece or unit had been set forth and declared (Exh. A), and which is supported by a writ-

ten declaration of petitioner, under oath, that it is true and correct (p. 15, Customs rec.), should be conclusive and binding on petitioner.

> When an import entry has been made, it is conclusive on the importer as to the contents and declared value of the goods, x x x. (21 AM JUR, 2d. Sec. 75, p. 814.) (IMM Brake Clutch Mfg., Inc. vs. Commissioner of Customs, CTA Case No. 2800, January 22, 1979.)

Accordingly, since the correct home consumption values of the subject articles (Jeltrate and Lucitone) are \$19.20 and \$97.50 per unit, respectively, the claim for refund of petitioner has no proper and legal basis.

WHEREFORE, the decision appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, June 29, 1979.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge