REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

POLYPHOSPHATES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3199

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

1/3/83

D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs dated December 12, 1980, affirming that of the Collector of Customs of the Port of Batangas dated April 3, 1979 dismissing petitioner's Protest No. 35-78.

The facts are not in dispute. It appears that petitioner is a domestic corporation with principal office at 851 Pasay Road, Makati, Metro Manila. It imported 3,545.953 metric tons of Phosphoric Acid in bulk from Los Angeles, California, U.S.A. which arrived on June 13, 1978 at the Port of Batangas on board the vessel M/T "Stolt Tenacity". Petitioner's surveyor, the Worldwide Marine & Cargo Corporation, however, reported that the quantity of phosphoric acid discharged from the said vessel to petitioner's shore storage tank was 3,236.721 metric tons only, which was less by 309.232 metric tons than that shown in the vessel's manifest.

The home consumption value (HCV) of said importation which was declared by petitioner and as appearing in the bill of lading, commercial, and consular invoices is US $302.55 per metric ton. The Collector of Customs however assessed the subject importation based on the HCV $382.84, pursuant to Customs Import Valuation and Classification Circular (CIVCC) No. 270-76 dated July 1, 1976, instead of the home consumption value of US $302.55 at the time of the arrival of said shipment, based on the 3,545.953 metric tons as shown in the vessel's manifest instead of the quantity actually received by petitioner.

Consequently, on July 27, 1978, petitioner filed with said Collector of Customs a protest (Protest No. 35-78) disputing the assessment and collection of the total amount of ₱2,390,253.00 as duties, taxes and other charges on the said shipment computed on the basis of US $382.84 per metric ton and 3,545.953 metric ton per manifest. It claimed that the dutiable value of its shipment should have been based on the home consumption value of US $302.55 per metric ton as declared in all its importation papers and on 3,236.721 metric tons only as that was what was actually discharged from the vessel to petitioner's shore storage tanks, and, hence, entitled to a refund of an alleged excess payment of ₱663,564.00.

On April 3, 1979, the Collector of Customs of the Port of Batangas rendered a decision upholding the correctness of the assessment and collection of duties, taxes and other charges on petitioner's shipment amounting to ₱2,390,253.00.

On appeal, the respondent Commissioner of Customs rendered a decision on December 12, 1980, affirming that of the Collector of Customs of the Port of Batangas. Hence, this present recourse to this Court.

The issues posed before us to be resolved are, to wit:

> (1) Whether the correct basis of the dutiable value of petitioner's shipment should be the home consumption value as published in CIVCC No. 270-76 dated July 1, 1976 in accordance with Section 201 of the Tariff and Customs Code of the Philippines or the home consumption value as stated in the bill of lading, commercial and consular invoices; and
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> (2) Whether the correct basis of the customs duties, charges and taxes on aforestated shipment is the quantity, as indicated in the vessel's manifest, or quantity actually discharged from the carrying vessel to petitioner's shore storage tank; and consequently,

> (3) Whether or not petitioner is entitled to the refund of the additional customs duties and taxes in the sum of ₱663,564.00 it allegedly paid on the subject importation.

With respect to the first issue, petitioner claims that there exist no doubt that the value of petitioner's shipment is that reflected in the bill of lading, commercial and consular invoices; hence, the basis for determining the dutiable value of its shipment should be on the home consumption value of US $302.55 per metric ton as reflected in all its importation papers, the bill of lading, consular and commercial invoices, pursuant to Section 201 of the Tariff and Customs Code.

We find the contention without merit. Section 201 of the Tariff and Customs Code reads as follows:

> "Section 201. <u>Basis of Dutiable Value</u>.- 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 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 exist 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 date thus gathered, the Commissioner of Customs shall ascertain and establish the home consumption values of articles exported to the Philippine 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."

From the aforequoted provision of Section 201 of the Tariff and Customs Code, it is clear 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 provision states that where there exist a reasonable doubt as to the correctness of the value or price declared in the entry papers, 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 the articles exported to the Philippines and shall publish such lists of values from time to time. (National Dental Supply, Inc. vs. The Commissioner of Customs, CTA Case No. 2816, June 29, 1979, certiorari denied in G.R. No. 51236, dated January 18, 1980; Procter and Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2788, February 27, 1981.)

While the rule prescribed by the law is that the home consumption value of an imported article shall be that value or price declared in the commercial, consular, trade or sales invoice, the same should not be applied in the case where the correctness of such value or price declared in the invoice is vitiated by reasonable doubt. 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. (National Dental Supply, supra.)

In other words, the primary dutiable value of an imported article is its home consumption value as declared in the importation papers. However, when a reasonable doubt exists as to its declared value, the basis should be the home consumption value as published by the Commissioner of Customs.

In the instant case, the actual home consumption value of the subject article of US $302.55 per metric ton as reflected in the consular and commercial invoices and presented by petitioner is much lower than its published home consumption value of US $382.24 under Customs Import Valuation and Classification Circular (CIVCC) No. 270-76. A reasonable doubt, therefore, exists as to the true home consumption value or the price of the aforesaid imported goods. Hence, the basis of the dutiable value of the imported goods should be the published home consumption value under said CIVCC No. 270-76 pursuant to the afore-quoted paragraph of Section 201 of the Tariff and Customs Code.

The law is clear and specific. It merely calls for application as thus worded. Needless to say, that if Customs authorities were always bound by the invoice value, it is evident that they would be, to a considerable extent, at the mercy of foreign merchants and importers. (Lim Quim vs. Coll. of Customs, 23 Phil., 509 /1912/; The Coca-Cola Export Corporation vs. The Commissioner of Internal Revenue and Collector of Customs, Manila, L-23604, March 15, 1974, 56 SCRA 5.)

Besides, the value of imported articles as fixed by the Customs authorities in the discharge of their function of assessing and collecting the lawful revenues justly due on imported articles and confirmed by the Customs Commissioner is presumed to be correct and therefore conclusive in the absence of fraud or illegallity or of an affirmative showing by the protesting importer that the customs authorities in fixing or assessing the value of the importation proceeded upon a wrong principle and contrary to law. The burden thus rests upon the importer disputing the customs valuation not only to prove the contrary and overcome the presumption of correctness of the valuation but also to show that the figures declared by him are in fact true and correct. (Coca-Cola Export Corporation vs. Commissioner of Internal Revenue and Collector of Customs, supra.)

With respect to the second issue, petitioner contends that the assessment of the Customs duties, taxes and charges, on petitioner's shipment based on the quantity of 3,545.953 metric tons as declared in the vessel's manifest is erroneous. It claims that the basis of assessment should have been on the quantity of 3,236.721 metric tons alleged to be actually discharged from the carrying vessel and received by it pursuant to Section 1701 of the Tariff and Customs Code which provides that "duties will be assessed on the actual quantity imported, as shown by the return of weighers, gaugers, measurers, examiners, or appraisers, as the case may be."

We find this contention untenable. The surveyor's report submitted by petitioner to the Collector of Customs is self-serving to say the least. The veracity of said report is placed under serious doubt on the ground that this was never officially brought to the attention of the proper authorities in the Bureau of Customs. The report of Customs Examiner Oscar Boongaling show that he made his first findings on June 13, 1978 and on that same date Reynaldo M. Alejandro, registered marine and cargo surveyor of Worldwide Marine and Cargo Survey Corporation, was there present he having been hired by petitioner to survey its cargo. Reynaldo M. Alejandro performed his task until June 16, 1978, on which date Customs Examiner Boongaling made his final findings of the weight of the articles which was 3,545.918 M/T, as indicated by instrument reading after sounding. It is quite unbelievable therefore that surveyor Reynaldo Alejandro had failed to contest or at least informed Customs Examiner Boongaling about the discrepancy in his findings. (memo. to Collector, Port of Batangas dated March 28, 1979, pp. 43-44, BIR rec.)

In matter of abatement of taxes and duties, it is incumbent upon petitioner to show proof satisfactory to the Collector that the deficiency occurred before arrival of the shipment in the Philippines before abatement and/or refund of the customs duties and charges may be granted. The records show that petitioner's surveyor was already aware that there was an alleged deficiency in their shipment as early as June 16, 1978, the date of the final discharge of its shipment. On this date, the surveyor should have brought such deficiency to the attention of the Customs Examiner so that the latter, after convincing proof, could have certified such deficiency to the Collector as required under Section 1703 of the Tariff and Customs Code. In the instant case, neither the report of the appraiser, nor the Customs Examiner on the shipment in question shows that the quantity discharged from the vessel to petitioner s shore tank is less than 3,545.953 metric ton as declared in the vessel's manifest. (p. 42, Customs rec.) Moreover, petitioner had failed to request the pertinent amendment of the manifest and related documents as a condition for its entitlement to a refund pursuant to the above-stated Section of the Tariff and Customs Code, which textually reads as follows:

> "Sec. 1703. Abatement or Refund for deficiency in Contents of Packages. - If, upon opening any of part of the contents thereof, as called for by the invoice shall be found to exist, such deficiency shall be certified under penalties of falsification or perjury, to the Collector or Appraiser; and upon the production of proof satisfactory to the Collector showing that the shortage occurred before the arrival of the article in the Philippines, the proper abatement or refund of the duty shall be made. (As amended by P.D. No. 34.)"

With respect to the third issue, we will no longer discuss it, it having become moot and academic.

WHEREFORE, finding no merit in the appeal, the appealed decision is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, January 3, 1983.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge