REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WATSON INDUSTRIAL SALES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4454

COMMISSIONER OF CUSTOMS,
Respondent.

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7/20

D E C I S I O N

Petitioner Watson Industrial Sales Incorporated seeks the refund of allegedly excess payments of taxes and duties made on the importation of polypropylene synthetic resins. At issue here is the application of the third country valuation as basis for the determination of the dutiable value of the subject shipments.

Petitioner imported 18 x 20' containers (251 MT) and 7 x 20' containers (97 MT) of polypropylene synthetic resins in granule form. The shipments arrived at the Manila International Container Port on March 18, 1989, aboard the vessel S/S NADEZHDS OBUKHOVA from Czechoslovakia. [Admitted in the Answer, par. 2, p. 21, Rollo.] Import Entry and Internal Revenue Declaration No. 14710 (with respect to the 97 MT shipment) [Exh. "B", p. 33, Customs record] and Import Entry and Internal Revenue Declaration No. 14711 (251 MT shipment) [Exh. "G", p. 10, Customs record] covering the importations showed the Home Consumption Value (HCV) of the shipments at US$230.00/MT.

The imported goods were forwarded to the Office of the Commissioner of Customs for clearance. The clearance was granted with the condition that additional duties and taxes amounting to P130,840.00 for the 251 MT shipment and P50,564.00 for the 97 MT shipment be paid. The additional duties and taxes were based on a third country valuation of the shipments, i.e. Hungary, at US$474.00/MT summarized as follows: [Exhs. "L", p. 67, Rollo, and "M", p. 68, Rollo.]

	As Found (US$474/MT)	As Declared (US$230/MT)	Difference
97 MT Shipment			
Customs Duty	291,000.00	291,000.00	-
Tax - VAT	165,696.00	115,132.00	50,564.00
I P F	250.00	250.00	-
	P 456,946.00	P 406,382.00	P 50,564.00
251 MT Shipment			
Customs Duty	753,000.00	753,000.00	-
Tax - VAT	428,501.00	297,661.00	130,840.00
I P F	250.00	250.00	-
	P1,181,751.00	P1,050,911.00	P130,840.00
T o t a l			P181,404.00

Petitioner paid on April 3, 1989 said additional duties and taxes under protest. [Exhs. "F", p. 50, Customs record; and "K", p. 30, Customs record.] It questions the Commissioner's decision to use Hungary's HCV, at US$474.00/MT, as the basis for requiring petitioner to pay additional taxes and duties, instead of US$230.00/MT, the value in Czechoslovakia, the country of exportation. Petitioner insists that the disputed assessment is arbitrary and contrary to respondent's published valuation of the subject items originating from Czechoslovakia.

Acting on petitioner's protest in MICP Protest Case No. 085-89 and 085-A-89, the District Collector of Customs of the Manila International Container Port decreed, on December 11, 1989, the refund of additional payments made by petitioner. On automatic review, the respondent Commissioner reversed the Collector's decision on January 26, 1990. Petitioner's motion for reconsideration filed on February 20, 1990 was denied by the Commissioner in an Order dated April 4, 1990 and received by petitioner April 19, 1990. [Admitted in the Answer, par. 4, p. 22, Rollo.] On May 15, 1990, petitioner filed herein petition for review.

The dutiable value of the imported article is based on the published HCV of the port of origin or country of exportation. The only issue to be resolved, in this case, is the determination of the country of exportation. Is it Hungary or Czechoslovakia? The answer to this question will determine the base of the dutiable value of the imported polypropylene synthetic resins. If its Hungary, the base would be US$474.00/MT as stressed by respondent. But if its Czechoslovakia, then the base should be US$230.00/MT as pointed out by petitioner.

Section 201 of the Tariff and Customs Code, as amended, provides "that the dutiable value of an imported article subject to an ad valorem rate of duty is based on its <u>home consumption value</u> or price as freely offered for sale in wholesale quantities in the ordinary course of trade in the principal markets <u>of the country from where exported</u> on the date of exportation to the Philippines. That home consumption value or price is the value or price declared in the consular, commercial, trade or sales invoice." [**Commissioner of Customs v. Court of Tax Appeals**, 161 SCRA 376; **Commissioner of Customs v. Hon. Court of Tax Appeals and NCR Corporation (Philippines)**, G.R. No. L-48027, March 11, 1991.]

Customs Memorandum Order No. 32-87, dated July 20, 1987, listed the items included in determining the dutiable value of imported articles. The dutiable value of an imported article shall be the sum of the following items, to wit:

> "1. Cost - The cost or domestic wholesale value (excluding internal excise taxes) as bought and sold or offered for sale freely in the ordinary course of trade, in the principal markets of the country of exportation on the date of exportation to the Philippines or where there is none on such date, on the date nearest to the date of exportation. In case such value cannot be ascertained or where there exists a reasonable doubt as to the fairness thereof, it shall be ascertained in the following order of preferences: (Underling Ours.)
>
> a. The domestic wholesale value (fair value) of the articles in the principal markets of the country of manufacture or origin;
>
> b. The domestic wholesale value (fair value) in the principal market of a third country with the same stage of economic development as the country of eof exportation, as listed in Annex "A" hereof;
>
> The above mentioned values shall be ascertained by the Commissioner of Customs from the report of the Revenue or Commercial Attaches or other Philippine Diplomatic Officers or Customs Attaches and from such information as may be available to the Bureau of Customs.

c. Where the domestic wholesale value cannot be ascertained as stated in the preceding paragraphs, the value to be used shall be the domestic wholesale selling price of such or similar article in the principal markets of the Philippines on the date the duty becomes payable on the articles under appraisemment and in the ordinary course of trade, minus not more than twenty five percent (25%) thereof for expenses and profits, and duties and taxes paid thereon.

2. Freight and Other Charge and Fees

x x x x x x x x x.

3. Insurance

x x x x x x x x x."

It is clear from the abovequoted provision that the dutiable value of imported articles shall be the sum of the domestic value obtaining in the country of exportation, freight and insurance charges. In case the domestic value can not be ascertained and where there exists reasonable doubt as to its fairness, the value obtaining in a third country with the same stage of economic development as the country of exportation shall be used.

A review of the Customs records shows that the respondent Commissioner established the port of exportation to be Hamburg, Germany. He based this finding on the entries in the Bills of Lading [p. 22

and p. 42, Customs record] which show Hamburg as the port of loading. According to respondent, the port of loading shall be considered to be the port of exportation unless the contrary is proven. The Commissioner also took note that the words "Hamburg, Czech." appearing in box no. 9 with printed words "PORT/COUNTRY OF EXPORTATION" in the Import Entry Forms, are erroneous. He concluded that in case there is conflict between the Bill of Lading which is prepared by the shipping agency and the Import Entry which is prepared by the consignee the former must necessarily prevail.

Having established Germany to be the country of exportation, the respondent Commissioner, adopting the third country valuation, used US$474.00/MT, the unit HCV obtaining in Hungary [Annex "A", Petition; p. 5, Rollo], a country with the same stage of economic development as Germany [Annex "A" to Customs Memorandum Order No. 32-87], as his base for computing the dutiable value of the subject imported polypropylene resins.

We do not agree with respondent Commissioner of Customs. The published HCV (US$230.00/MT) in Czechoslovakia should prevail.

A reading of the Bills of Lading does not show the country of exportation but the port of loading.

The claim of respondent that the Bills of Lading show the country of exportation to be Hamburg is therefor not correct. What the Bills of Lading say is that the "Port of Loading" was Hamburg. Said documents never mentioned the country of exportation. Furthermore, nothing in the Bills of Lading or in the records indicates that the articles were products of Germany or that they were imported from another country into Germany and forming a part of the mass of products therein and afterwards exported to the Philippines.

As regards the words "Hamburg, Czech." appearing in box no. 9 of the Import Entry Forms, the same are not erroneous and should not cause doubt in the mind of the respondent as to the origin of the goods. The printed words in box no. 9 shows "PORT/COUNTRY OF EXPORTATION". Therefore, the words "Hamburg/Czech." indicates Hamburg as the port of loading and Czechoslovakia as the country of exportation. Note that box no. 10, in the same Import Entry Form, has printed words "COUNTRY OF ORIGIN" and under it was written Czechoslovakia as the country of origin. As pointed out by petitioner, Czechoslovakia is a landlocked country. Goods exported from that country must be transhipped overland to a seaport and then loaded to a ship.

The record and the evidence presented by petitioner clearly show that the goods originated from Czechoslovakia; transhipped overland to Hamburg, Germany; and loaded on a ship in Hamburg for exportation to the Philippines. The evidence:

a) Letters of Credits 89-0136 [Exhs. "I" and "I-1", p. 66, Rollo] and 89-0180 [Exhs. "D" and "D-1", p. 65, Rollo] opened by petitioner, covering the subject articles, in favor of Petrimex Foreign Trade Co., Ltd., of Bratislava, Czechoslovakia;

b) Central Bank Release Certificates Nos. BR 89-1428 [Exhs. "E" and "E-1", p. 47, Customs record] and BR 89-1429 [Exh. "J", p. 27, Customs record] showing "Petrimex" as the supplier and "Bratislava" as the country of origin;

c) Commercial invoices covering the shipments [Exhs. "C"; "C-1" and "C-2", p. 38, Customs record; Exhs. "H"; "H-5" and "H-6", p. 19, Customs record] showing the names Petrimex Foreign Trade Co., Ltd., and the correspondent bank in Bratislava and the cost of inland freight paid.

What now is the dutiable value of the imported articles?

To reiterate: CMO Order No. 32-87 provides that the cost component of the dutiable value of the imported article shall be the domestic wholesale value of the articles in the country of exportation. Resort to a third country valuation can only be made once such value (i.e., the value in the country of exportation) can not be ascertained or where there exists reasonable doubt as to the fairness thereof.

Following the law, the value that should be used, in the instant case, is the HCV in Czechoslovakia, the country of exportation, which is US$230.00/MT. In fact, respondent admitted in his Answer that the "shipments arrived in Manila International Container Port on board the vessel S/S NADEZHDS OBUKHOVA" from Czekoslovakia (sic)." [Answer, par. 2, p. 21, Rollo]. Customs records show that US$230.00/MT was the published unit value for polyporpylene resins in granule form from Czechoslovakia. It has also been established that the Philippine consulate officers in Vienna and Berlin supplied a value information on said articles from said country at US$230.00/MT. [Exh. "3-B", p. 79, Customs record.]

From the foregoing, it is clear that the decision of respondent, to use US$474.00/MT, the alleged HCV in Hamburg, Germany, instead of US$230.00/MT, the HCV of Czechoslovakia, the country of exportation, is therefore erroneous.

With respect to petitioner's prayer for interest, the same may be awarded only if the collection of the tax is attended with arbitrariness. Arbitrariness presupposes inexcusable or obstinate disregard of legal provisions. [**Victorias Milling Co., Inc. v. Commissioner of Internal Revenue, et. al.**, 19 SCRA 430.] In this case, respondent's reversal of the Collector's decision is not by itself arbitrary. His finding that Hamburg, Germany is the country to be reckoned with as the country of exportation is not per se inexcusable. A mistake in appreciation of the evidence on record is not per se arbitrary. Thus, the Court cannot award interest in favor of petitioner.

WHEREFORE, the petition for review is hereby GRANTED and judgment is hereby rendered reversing the decision of respondent dated January 26, 1990. Respondent, Commissioner of Customs, is ordered to REFUND in favor of petitioner, Watson Industrial Sales, Inc., the amounts of P50,564.00 (under Entry No. 14710) and P130,840.00 (under Entry No. 14711) or a total of P181,404.00. No pronouncement as to interest.

Without costs.

SO ORDERED.

Quezon City, Metro Manila, July 20, 1992.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

STELLA DADIVAS-FARRALES
Acting Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals