REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LOVSTED & CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3177

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

LOVSTED & CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3178

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

7/30/85

D E C I S I O N

Inasmuch as these two cases are appeals from a consolidated decision of respondent Commissioner of Customs in Manila Protests Nos. 9741 and 9742 and involve the same parties and raise the same issue, they are jointly submitted for decision. The facts are not disputed, the parties having submitted in each case an agreed statement of facts as follows:

CTA Case No. 3177

Stipulation of Facts

PETITIONER and RESPONDENT, by their undersigned attorneys herein respectfully stipulate on the following facts:

1. That Petitioner is a corporation duly organized and existing under the laws

of the Philippines, with principal office at c/o Smith, Bell & Co., Inc., Km. 13, Manila South Expressway, Paranaque, Metro Manila; and that respondent is the duly appointed qualified and incumbent Commissioner of Customs and may be served with Summons at the Bureau of Customs, Manila;

2. That sometime in July 1975, the S/S "Marchen Maersk", Reg. No. 1059, arrived at the Port of Manila and discharged a shipment consisting of 17 packages of refrigerating machinery parts, consigned to herein petitioner covered by Bill of Lading No. CFS-39 and declared under Entry No. 054871, consisting of fifteen (15) Model HGC 1000 compressor valued at $62.35 each as appearing in the Consular Invoice.

3. That upon appraisal of the aforementioned imported spare parts, the Collector of Customs by reason of an alleged "alert notice", increased the value of the same from $62.35 to $70.24 each resulting to an additional payment by petitioner of duties and taxes in the amount of ₱459.00 as per O.R. No. 447463, dated July 8, 1975;

4. That in a letter, dated July 22, 1975, xerox copy of which is Annex "A" of the Petition for Review and docketed as Manila Protest No. 9741, petitioner protested the additional assessment and collection of customs duties, and taxes stating, among others, that inasmuch as the questioned articles do not have yet an established and published home consumption value determined by the Commission of Customs, the same should have been assessed the customs duties and taxes based on the value appearing in the consular invoice of merchandise in accordance with paragraph 2, Section 201 of the Tariff and Customs Code as amended by Presidential Decree No. 34;

5. That on April 14, 1978, the Collector of Customs, relying solely on the values mentioned in the alleges "alert notice", rendered a decision dismissing Manila Protest No. 9741 (and 9742), notice

and copy received on May 3, 1978, by Petitioner which is Annex "B" of the Petition;

6. On May 17, 1978, petitioner appealed the aforementioned decision of respondent pursuant to Section 2313 of the Tariff and Customs Case, as amended, which appeal was docketed as Customs Code No. 79-13;

7. That on November 20, 1980, petitioner received the decision of respondent in the aforementioned Case No. 79-13, dated October 1, 1980, affirming the decision of the Collector of Customs in Manila, which is Annex "C" of the Petition;

8. That the only issue to be litigated, in the case at bar, is whether or not respondent is correct in determining the home consumption value of the goods imported based on an "alert notice" instead of that appearing in the consular invoice of merchandise.

CTA Case No. 3178

Stipulation of Facts

PETITIONER and RESPONDENT, by their undersigned attorneys, herein respectfully stipulate on the following facts:

1. That petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office at c/o Smith, Bell & Co., Inc., Km. 13, Manila South Expressway, Paranaque, Metro Manila; and that Respondent is the duly appointed qualified and incumbent Commissioner of Customs and may be served with Summons at the Bureau of Customs, Manila;

2. That a shipment of 11 cartons of Tecumseh Compressor and spare parts arrived at the Port of Manila aboard the S/S "Traviata" with Registry No. 905, covered by Bill of Lading No. 29, and declared under

accordance with paragraph 2, Section 201 of the Tariff and Customs Code as amended by Presidential Decree No. 34. Likewise, it was further stressed that the invoiced values declared were lower by 30% of the list price which regular discount is allowed by herein respondent under Customs Tariff Decision Circular No. 5-73, dated May 4, 1973.

6. That on April 14, 1978, the Collector of Customs, relying solely on the values mentioned in the alleged "alert notice", rendered a decision dismissing Manila Protest No. 9742 (and 9741), notice and copy receipt on May 3, 1978 which is Annex "B" of the Petition;

7. On May 17, 1978, petitioner appealed the aforementioned decision of respondent pursuant to Section 2313 of the Tariff and Customs Code, as amended, which appeal was docketed as Customs Case No. 79-13;

8. That on November 20, 1980, petitioner received the decision of respondent in the aforementioned Case No. 79-13, dated October 1, 1980, affirming the decision of the Collector of Customs of Manila, copy of which is Annex "C" of this Petition;

9. That the only issue to be litigated, in the case at bar, is whether or not respondent is correct in determining the home consumption value of the goods imported based on an "alert notice" instead of that appearing in the consular invoice of merchandise.

In CTA Case No. 3177, as stated by the parties in their stipulation of facts, upon appraisal of the imported spare parts consisting of 17 packages of refrigerating machinery parts involved therein, the Collector of Customs by reason of an alleged "alert notice", increased the value of the same from $62.35

Entry No. 047434 and broken down as follows:

a) Ten (10) units of Model VFTL open type compressor with flywheel and valves valued at US$198.38 each;

b) Five (5) BNK 585-10 valve assy at US$15.34 each; and

c) Five (5) BNK 512-8 shaft seal kit assy at US$14.29 each;

3. That in the appraisal to determine the Home Consumption value for duties and/or taxes purposes, the Collector of Customs by reason of an alleged "alert notice" increased the values of the aforementioned imported articles, as follows:

a) The VFTL compressors were valued at US$223.81 each instead of the duly authenticated value of US$198.83;

b) The valve assy BNK 505-10 to US$20.17 each instead of the invoiced value of US$15.35;

c) The seal kits (5) to US$19.21 each, instead of the US$14.92 invoiced value;

4. That due to the aforementioned increased appraisal, the Collector of Customs of Manila, assessed, levied and collected from petitioner additional duties and taxes, including a fine in the total amount of ₱3,570.00, as per Official Receipt No. 6915, dated July 11, 1975;

5. That in a letter, dated July 22, 1975, which is Annex "A" of the Petition for Review and docketed as Manila Protest No. 9742, herein petitioner protested the additional assessment and collection of customs duties, taxes and fine stating, among others, that inasmuch as the questioned articles do not have yet an established and published home consumption value determined by the Commissioner of Customs, the same should have been assessed the customs duties and taxes based on the value appearing in the consular invoice of merchandise in

to $70.24 each resulting to an additional payment by petitioner of duties and taxes in the amount of ₱459.00 as per Official Receipt No. 447463 dated July 8, 1975. And in CTA Case No. 3178, as again stipulated by the parties, in the appraisal to determine the home consumption value for duties and/or taxes purposes, the Collector of Customs by reason of an alleged "alert notice" increased the values of the aforementioned imported articles, as follows:

a) The VFTL compressors were valued at US$223.81 each instead of the duly authenticated value of US$198.83;

b) The valve assy BNK 505-10 to US$20.17 each instead of the invoiced value of US$15.35;

c) The seal kits (5) to US$19.21 each, instead of the US$14.92 invoiced value.

Due to the aforementioned increased appraisal, the Collector of Customs of Manila assessed, levied and collected from petitioner additional duties and taxes, including a fine in the total amount of ₱3,570.00, as per Official Receipt No. 6915 dated July 11, 1975.

The law on the determination of the basis of the dutiable value of an imported article is Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, now Section 201 of Presidential Decree No. 1464, otherwise known as the "Tariff and Customs Code of 1978". The applicable law clearly and unequivocally states that the dutiable value of an imported article subject to an ad valorem rate of duty, like the shipments in question, is based on its home consumption value or price (excluding internal excise taxes), as freely offered for sale 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, including the value of all containers, coverings and/or packings and incidental expenses to placing the article for shipment, plus ten (10) per cent of such home consumption value. And the home consumption value or price is 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 should be ascertained from the reports of the Revenue Attache or Commercial Attache, pursuant to Republic Act No. 5466 or other Philippine diplomatic officers and from such other information that may be available. The Commissioner of Customs is required however to publish from time to time the home consumption values of articles exported to the Philippines as ascertained and established from the data gathered.

Since the provision of the law applicable is clear and specific that the "home consumption value" upon which the dutiable value of an imported article should be based is the value or price declared in the consular, commercial, trade or sales invoice, the home consumption value of the refrigerating machine parts involved in CTA Case No. 3177 should therefore be at $62.35 each based on the consular invoice; and the (a) ten units of Model VFTL open type compressor with flywheel and valves should be at $198.83 each; (b) five BNK 505-10 valve assembly, at $15.34 each; and (c) five BNK 612-8 shaft seal kit assembly, at $14.92 each, covered in CTA Case No. 3178, based on the consular invoice. The law seems clear and mandatory. It merely calls for application as worded.

Given however that there existed a reasonable doubt on the part of the Bureau of Customs as to the correct values or prices of the shipments in question as declared by petitioner based on the consular invoices, was the appraisal of such importations made by the said Bureau based on an alleged "alert notice" proper? As stated earlier, the same applicable statute provides that; in such case, the correct dutiable value of the imported article shall be ascertained 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, the Commissioner of Customs shall ascertain and establish the home consumption value of the article exported to the Philippines and shall publish such list of value from time to time.

Here, in the cases at bar, the valuations of the shipments of petitioner were based on an alleged "alert notice", not on the established and published values thereof as mandated by the law applicable. As a matter of fact, the records of the cases do not show, as required by law, from what data the alleged "alert notice" was gathered, how the Commissioner of Customs ascertained and established the home consumption values of the imported articles, and where and when was such alleged "alert notice" published. Even more, no such "alert notice" or value, or evidence thereof, was presented or offered by respondent. The bare averment that the basis of the appraisal of subject shipments is an alleged "alert notice", unaccompanied by adequate evidence as to the existence of such notice, the basis of the values or prices stated therein, as well as the publication thereof, would seem to suggest that there were no established and published home consumption values determined by the Commissioner of Customs of the subject shipments as required by the law. Specially so when the parties in their stipulations of facts merely stated that the appraisal was based on an alleged "alert notice". Clearly, therefore, the basis of the appraisal of the dutiable values of petitioner's shipments was not in accordance with the provisions of Section 201 of the Tariff and Customs Code.

There being no fidelity to what are required by the legal provisions applicable, this Court could not look with approval on the appraisal by the Bureau of Customs of petitioner's importations based on an alleged "alert notice". Where, as here, there is no adherence to the language of the statute, there is no basis for the assertion that there exists a reasonable doubt as to the values or prices of the shipments in question declared in the entries. Considering the mandate of the law that the home consumption value or price shall be the value or price declared in the consular, commercial, trade or sales invoice, and the official character of these invoices, certified to as correct by the Philippine Consul at the port of origin; and there being no reasonable ground to deny to these documents the faith or credence normally due thereto, the home consumption values declared in the consular invoices of the shipments in question, should be the bases of the dutiable values of the imported articles. (Commissioner of Customs vs. Celdran, L-23425, February 26, 1968, 22 SCRA 743.) The language of the law, which expresses a definite and sensible meaning, is the safest guide as to the statutory policy, to which compliance is due. (See Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2788, February 27, 1981.)

The pronouncements in Bell Hobart Manufacturing Incorporated vs. Commissioner of Customs, CTA Cases Nos. 2750, 2751, 2752 and 2753, March 10, 1978; Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 2357, May 9, 1978; Hiap Hong Trading Co., Inc. vs. Alfredo Pio de Roda, Jr., CTA Case No. 2804, June 27, 1980, which were subsequently affirmed and reaffirmed in other cases, the latest of which is Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2788, February 27, 1981, are controlling in the cases at bar. We quote from <u>Bell Hobart</u> and <u>Procter & Gamble</u>:

> "Nonetheless, assuming <u>arguendo</u> that there exists a reasonable doubt as to the value or price of the imported trichlorocarbanilide declared in the consular, commercial and sales invoices, as well as in the entry, and the correct dutiable value of the article should be ascertained from the reports of the Revenue Attache, Commercial Attache (Foreign Trade Promotion Attache) or other Philippine diplomatic officers and from such other information that may be available to the Bureau of Customs, pursuant to Section 201 of the

> Tariff and Customs Code, as amended by Presidential Decree No. 34, as alleged by respondent, it is to be stressed that the Commissioner of Customs is required by law to publish such list of values from time to time. He does not only have to ascertain and establish the home consumption value, 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, or information 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 or information values of articles exported to the Philippines, they can properly declare the dutiable values of their shipments and thus avoid the heavy penalties imposed for misdeclaration, if not delays in the release of goods from customs custody which entail lose of time, money and energy."

Accordingly, the home consumption values or prices as bases of the dutiable values of the shipments under consideration consigned to petitioner should be the values or prices declared in the consular invoices of the subject shipments. The protests of petitioner against the assessment and collection of additional customs duty and advance sales tax on its shipments under consideration are therefore meritorious.

We note however that with regard to the claims for refund of the amounts of ₱37.00 and ₱93.00 in CTA Case No. 3177 and CTA Case No. 3178, respectively, as additional advance sales tax paid by petitioner on the appraisal of the subject shipments, the same can not be passed upon by the Court in view of the fact that nothing in the records show that petitioner had filed its written claims for refund thereof with the Commissioner of Internal Revenue within two years from dates of payment and that the latter was made a party to these cases. Further, the action for recovery must be instituted in court also within two years after payment. Without satisfying these jurisdictional requirements provided in Section 306 (now Section 292) of the National Internal Revenue Code, which in the instant cases are lacking, the same is fatal to the claims of petitioner for the refund of the overpaid advance sales tax on the importations in question. (Wise & Company vs. Commissioner of Customs, CTA Case No. 2717, December 29, 1977; see also resolution dated January 15, 1979, certiorari denied in G.R. No. L-51242, March 7, 1980; National Dental Supply Incorporated vs. Commissioner of Customs, CTA Case No. 2826, June 30, 1980; Campos Rueda Corporation vs. Commissioner of Customs, CTA Case No. 2829, July 28, 1980; Jardine Davies, Inc. vs. Commissioner of Customs, CTA Case No. 2634, October 16, 1980; Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2788, February 27, 1981, Campos Rueda Corporation vs. The Honorable Commissioner of Customs, CTA Case No. 2828, August 15, 1974, certiorari denied in G.R. L-68995, Feb. 11, 1985.) There being no controversy between the parties that the additional amounts of ₱422.00 and ₱1,060.00 in CTA Case No. 3177 and CTA Case No. 3178, respectively, assessed and collected from petitioner represent additional customs duty because of the appraisal of its shipments, only said amounts of ₱422.00 and ₱1,066.00 are refundable to petitioner. And there being no more legal basis for the imposition of the fine of ₱2,186.00 in CTA Case No. 3178, the same is also refundable to petitioner.

WHEREFORE, the decision appealed from is modified as indicated in the above opinion of the Court. Respondent Commissioner of Customs is hereby ordered to grant a tax credit to petitioner Lovsted & Co., Inc., the amounts of ₱422.00, ₱1,060.00 and ₱2,186.00. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, July 30, 1985.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge