Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

LMG CHEMICALS CORPORATION,
Petitioner,

- versus -

SECRETARY OF FINANCE represented by Undersecretary Ma. Gracia M. Pulido-Tan and COMMISSIONER OF CUSTOMS represented by District Collector Napoleon L. Morales,
Respondents.

C.T.A. CASE NO. 6860

Members:

CASTAÑEDA, JR., *Chairman*
UY, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
SEP 15 2005

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This case seeks the refund or credit of the alleged over-appraised and overpaid import duty in the amount of **EIGHTY FOUR THOUSAND THREE HUNDRED FIFTY SEVEN PESOS (P84,357.00)** paid under protest by the petitioner covering its importation of 800 metric tons of aluminum hydroxide which arrived on July 9, 2002 and the reversal of the 7th Indorsement issued on August 7, 2003 by the Secretary of

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Finance.

THE FACTS

The facts as borne by the records of this case are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal business address at Chemphil Building, 851 A. Arnaiz Avenue, Legaspi Village, Makati City. It is engaged in the business of manufacturing sulfuric acid (technical grade and chemically pure varieties), oleum and sulfur flakes using imported aluminum hydroxide as raw material (*pars. 1 & 2, Joint Stipulation of Facts & Issues).*

Respondents, Secretary of Finance and Commissioner of Customs, are duly appointed government officials holding their respective offices at the Department of Finance Building, Roxas Boulevard corner Vito Cruz Street, Manila, and the Bureau of Customs, Port Area, Manila.

On June 7, 2001, petitioner opened with the Land Bank of the Philippines an Irrevocable Letter of Credit under Document Credit No. DC201238/F in favor of Sinochem Hebei Import and Export Corporation located in Tianjin, China *(par. 3, Joint Stipulation of Facts & Issues*). The said letter of credit was intended for the payment of the importation of 800 metric tons (MT) of aluminum hydroxide from China, in the total amount of United States Dollars One Hundred Thirty Two Thousand Eight Hundred (US$132,800.00), including ocean freight.

On the same date, petitioner executed a duly sworn Import Entry Declaration and deposited with the Land Bank of the Philippines the amount of Two Hundred Two Thousand One Hundred Seventy Eight Pesos (P202,178.00) representing payment of the import duty, computed as follows:

CFR	US$ 132,800.00
Insurance	664.00
Dutiable Taxes	133,464.00
Exchange Rate	50.495
	P 6,739,264.68
Rate of Import Duty	3%
Import Duty	P 202,178.00

(pars. 4 & 5, Joint Stipulation of Facts & Issues; par 2.3, Petition for Review)

On June 19, 2001, Sinochem Hebei Import and Export Corporation issued Commercial Invoice Number 012570010B in the name of petitioner for the shipment of the 800 MT of aluminum hydroxide totaling United States Dollars One Hundred Thirty Two Thousand Eight Hundred (US$132,800.00), inclusive of ocean freight. A Purchase Contract for the same was subsequently executed by the parties on June 27, 2001 *(par. 6, Joint of Facts & Issues).*

On July 9, 2001, the shipment of the 800 metric tons of aluminum hydroxide consigned to petitioner and covered under Import Entry No. C-46382-01 *(Annex "F", Petition for Review)* arrived from Tianjin, China at the Port of Manila, on board S/S Tian Jing Quan as evidenced by Bill of Lading No. TUA-11. On the same date, petitioner paid the amount of Seven Hundred Fifty Two Thousand Four Hundred Seventy Eight Pesos (P752,478.00), in addition to the previously paid import duties and taxes of P202,178.00, representing additional import duties, value-added taxes and IPF, computed based on the product's declared customs value of United States Dollars One Hundred Forty Nine and 96/100 (US$149.96), detailed hereunder:

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FOB Value	US$ 119,974.40	
Ocean Freight	12,825.60	
Insurance	599.87	
Dutiable Value	133,399.87	
Exchange Rate	P 52.965	
	P 7,065,524.11	
Import Duty	3%	P 211,966.00
Value-Added Tax	(P 7,416,899.05 x 10%)	741,690.00
IPF		1,000.00
		P 964,656.00
Less: Previous Payment		202,178.00
Additional Payment		**P 752,478.00**

However, upon the re-appraisal made by the assigned customs appraiser, the established or transaction value considered for the computation of import duties and taxes of the subject aluminum hudroxide imported was United States Dollars Two Hundred Sixteen (US$216.00) per metric ton, thus, resulting to the assessment of P1,329,341.00, computed as follows:

FOB Value	US$173,064.13	
Ocean Freight	12,825.60	
Insurance	599.87	
Dutiable Value	US$186,489.60	
Exchange Rate	P 52.965	
	P9,877,421.66	
Import Duty	3%	P 296,323.00
Value-Added Tax	(P 10,320,183.27 x 10%)	1,032,018.01
IPF		1,000.00
TOTAL		**P1,329,341.00**

On July 19, 2001, petitioner paid under protest the additional duties based on the re-appraisal assessment in the total amount of Three Hundred Seventy Four Thousand Six Hundred Eighty Five Pesos (P374,685.00), representing the difference between the computations based on US$216.00 per metric ton per re-appraisal and

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US$149.96 per metric ton per actual invoice amount. On the same date, petitioner filed its letter-protest to the subject assessment with a request for updating of the customs value based on the latter amount.

In relation to the protest filed by petitioner, Revision Order No. 9-2001 was issued by the Customs Valuation Team thereby setting the valuation of imported aluminum hydroxide from China, effective as of June 2001 ranging from One Hundred Forty Nine and 97/100 (US$149.97) to One Hundred Fifty Five and 50/100 (US$155.50) United States Dollars, F.O.B..

On September 4, 2002, the 1st Indorsement and Decision granting the claim for refund of petitioner in the amounts of P374,684.00 and P93,672.00 as additional duties and taxes, respectively, was issued by District Collector Atty. Reynaldo S. Nicolas, which decision was subsequently affirmed and recommended for approval by the Commissioner of Customs in his 6th Indorsement to the Secretary of Finance dated July 2, 2003. Below is the dispositive portion of the said Decision:

> *"WHEREBY, pursuant to the authority vested in me by law, it is hereby ordered and decreed that Entry Nos. C46382 and C46386, both series of 2001, be reliquidated based on the transaction value under RO 9-2001 and that the additional duties and taxes paid totaling to PHP374,684.00 and PHP93,672.00 respectively, be REFUNDED, after final liquidation, to the above-name Protestants in the form of tax credit, subject to the automatic review of the entire records of these cases by the Commissioner of Customs pursuant to Section 2315 of the Tariff and Customs Code, as amended.*
>
> *Let copies of this Decision be furnished all parties and offices concerned for their information and guidance.*
>
> *SO ORDERED."*

Finally, on January 8, 2004, petitioner received from the District Collector of the Bureau of Customs, Napoleon L. Morales, a copy of the 7th Indorsement dated August 7,

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2003, issued by the Undersecretary of then Secretary of Finance, Ma. Gracia M. Pulido-Tan. This Indorsement reversed the 6th Indorsement of the Commissioner of Customs recommending approval of the Decision of the District Collector of Customs, the dispositive portion of which is quoted below for easy reference:

> *In light of the foregoing, we cannot therefore affirm the Decision dated 04 September 2002 of the District Collector of Customs, Port of Manila. Consequently, we cannot accede to the request of the Commissioner of Customs recommending approval thereof under its 6th Indorsement dated July 2, 2003, which was received by the Department of Finance on July 10, 2003.*
>
> *Please be guided accordingly.*

Consequently, petitioner filed this instant Petition for Review on February 6, 2004. Respondent, on the other hand, filed a Motion to Dismiss instead of an Answer which this Court denied for lack of merit in a Resolution dated July 16, 2004.

On March 15, 2005, the parties filed their Joint Stipulation of Facts and Issues with Joint Motions for Judgment on the Pleadings and Submission of Memorandum. The Court approved and granted the same on March 31, 2005 and the case was submitted for decision on August 5, 2005 after both parties have filed their memoranda within the period allowed.

THE ISSUES

The issues as stipulated by the parties are as follows:

1. Whether or not the applicable FOB price of aluminum hydroxide imported from China in June and July 2001 was US$149.97 and not US$216.00 per metric ton (MT).

2. Whether or not in admitting the issuance of R.O. No. 9-2001 which states that the transaction value ranging from US$149.97 to US$155.50 per MT of aluminum hydroxide imported from China was based on the "FOB price as of June 2001" or "FOB prices for the month of June 2001", respondents are estopped from

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imposing a higher FOB price of US$216.00 per MT of aluminum hydroxide imported from China in June and July 2001.

3. Whether or not R.O. No. 9-2001 can be given retroactive application.

4. Whether or not the FOB price range from US$149.97 to US$155.50 per MT of aluminum hydroxide stated in R.O. No. 9-2001, which was issued pursuant to Customs Memorandum Order No. 39-98 and Department of Finance Order No. 47-98 and based on the protest filed by petitioner, is applicable to the instant case.

5. Whether or not petitioner is entitled to the refund/credit of the import duty of P84,357.00 paid under protest on July 19, 2001.

THIS COURT'S RULING

Considering that the issues stipulated hinge on the issue of the correct applicability of the questioned Revision Order No. 9-2001, this Court deems it proper to discuss first the third issue.

It is petitioner's argument that Revision Order (RO) No. 9-2001 issued on September 2001 has a retroactive application based on the order's clear and unambiguous wordings, which states that "Basis: CVT DECISION on the above supplement/reference values as per the latest FOB prices for the month of June 2001." Accordingly, the CVT, or the Customs Valuation Team responsible for the revaluation of the transaction value of aluminum hyrdoxide for import tax computations, is composed of the Bureau of Customs functionaries who, by their long experience on valuation of imported products, have acquired the necessary expertise in the valuation of the same. And in this case, the testimony of the CVT's Valuation Classification Officer, Dolores Domingo, which was based on the deliberations and decisions made and arrived at by

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the team as regards the current FOB value of aluminum hydroxide, should deserve great weight.

Petitioner submits that while there is a presumption as to the prospective application of administrative issuance, nonetheless, retroactivity may be effected if the same is unequivocally and categorically provided for in the said issuance. Likewise, the retroactive application of RO No. 9-2001 may be made to apply to cure an obviously unfair and iniquitous situation. In this case, petitioner's purchase of the imported goods at the price lower than the current FOB value of US$216.00 being implemented by the Bureau of Customs, is clearly an unfair and iniquitous situation.

Moreso, RO No. 9-2001 clearly provides that the transaction value of US$149.97 to US$155.50 per MT of aluminum hydroxide is the FOB price as of June 2001.

On the other hand, respondent maintains that RO No. 9-2001 cannot be given retroactive application on the basis that taxes may be imposed retroactively by law but unless so expressed by such law, these taxes must only be imposed prospectively (*Hydro Resources vs. CA, 192 SCRA 604*) and every case of doubt in taxes must be resolved against its retroactive effect (*Commissioner of Internal Revenue vs. Marubeni Corporation, 372 SCRA 576*). And nowhere on the face of the said RO issued on September 2001 does it reveal that the same shall retroact to June 2001, as such, it cannot be made to apply retroactively.

We rule for the petitioner.

In this case, petitioner paid the estimated import duties based on the Letter of Credit value of US$132,800.00 for the shipment of 800 MT of aluminum hydroxide on

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June 7, 2001. On July 9, 2001, upon the arrival of the commodity, petitioner paid the additional import duties plus value-added taxes and import processing fee, computed based on the declared customs value of US$149.96 per MT of aluminum hydroxide. The re-appraisal of petitioner's import duties and taxes by the assigned customs appraiser based on the Valuations and Classification Review Committee (VCRC) value of US$216.00 prompted petitioner to file a protest with the said Office, seeking for the review of the VCRC established value. Thus, the issuance of the questioned Revision Order No. 9-2001.

It must be accentuated that Revision Order No. 9-2001 was issued by the Customs Valuation Team (CVT), pursuant to Department of Finance Order No. 47-98, as a response to the protest filed by the petitioner as regards its importation of the product aluminum hydroxide made in June 2001. In other words, the issuance of Revision Order No. 9-2001 is a consequence of the complaint filed by petitioner as regards the effective declared or transaction value of the commodity imported. Obviously, the date of the issuance of the Revision Order would then not be within the period of shipment or before, but rather, after. In this regard, there is no "retroactive" application to speak of. The phrase "FOB price as of June 2001" does not have the appearance of "retroactivity", for it is plain from the circumstances surrounding the issuance of RO No. 9-2001 that the same is the result of the protest filed.

Well settled is the rule that law or statute, decree, ordinance, rule or regulation cannot have a retroactive effect unless there is an express provision in them to that effect (*Benzonan vs. CA, 205 SCRA 515*). However, to have a retroactive effect or application presupposes that the said law or statute, decree, ordinance, rule or

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regulation was issued not as a reaction or response to a particular inquiry or protest, which actually happened in the case at bar. As a response to the protest filed by petitioner pursuant to the import shipment of the 800 MT of aluminum hydroxide, evidently, the period of effectivity of the questioned RO No. 9-2001 should then be made to include the date of transaction or shipment, which in this case, is June 2001. From the very title of the questioned administrative issuance, "Revision Order", it is obvious that the same was issued to revise or cure some error or mistake. In this case, the valuation of aluminum hydroxide at US$216.00 per MT was apparently an "error" which needed revision to conform to current levels of valuation.

As regards the first and fourth issues, this Court rules in the affirmative.

The questioned Revision Order issued by the Customs Valuation Team, which is composed of government officials tasked with the duty of evaluating the different valuations of commodities imported, should be given credence. It must be stressed that the updated customs valuation for aluminum hydroxide at US$149.97 to US$155.50 FOB price as of June 2001 was arrived at after deliberations and decisions made and arrived at by the officials composing the Customs Valuation Team. No other government officials are more experienced and learned in the subject of commodity valuations than those officials tasked with the duties to evaluate and examine the same. Likewise, it is basic that there is a presumption of regularity in the performance of official duties and unless contradicted by the person disputing the same by showing satisfactory proof, this presumption of regularity shall not be disturbed.

Thus, considering that the shipment in dispute was made in June and July of 2001, the updated customs valuation at US$149.97 to US$155.50 applies. As heretofore discussed, the issuance of Revision Order No. 9-2001 came as a result of the actions taken by the special body of the Bureau of Customs, the Customs Valuation Team, in view of petitioner's protest case, therefore, to rule that a decision rendered based on the said subject protest case cannot be made to apply to the same definitely defies logic.

In view of the foregoing, there is no doubt that petitioner is entitled to the refund/credit of the import duty of P84,357.00 paid under protest on July 19, 2001.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly:

1. Respondent Secretary of Finance's 7th Indorsement dated August 7, 2003 is hereby **SET ASIDE**; and
2. Respondents are **ORDERED TO REFUND OR CREDIT** to petitioner the amount of **EIGHTY FOUR THOUSAND THREE HUNDRED FIFTY SEVEN PESOS (P84,357.00)** representing petitioner's over-paid import duty paid under protest on July 19, 2001 for the shipment of 800 MT of aluminum hydroxide.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(On leave)
ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Chairman

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