REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ACOJE MINING COMPANY, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3978

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

10/31/86

D E C I S I O N

The case presents no dispute as to the simple material facts but the parties seem trying to get the better of each other over by a quibble on the sense and scope of the customs valuation as a basis for the "gross FOB value at the time of shipment" in Section 514 of the Tariff and Customs Code as amended by PD 230, infra, for purposes of the assessment of export and premium duties on the exportation of mineral products.

Petitioner a mining concern organized and existing under Philippine laws had exportations of chrome ore concentrates with the corresponding export and premium duties paid under protests, viz., on January 15, 1979, the amount of ₱318,361.38 as export duty and ₱265,485.70

as premium duty for a total of ₱583,847.08 covering a shipment of 10,000 WMT of chrome concentrates loaded on December 14, 1978 (Manila Protest No. 23-79); and, on March 9, 1979, the sum of ₱333,664.85 as export duty and ₱277,595.73 as premium duty for a total of ₱611,260.58 covering a 10,000 WMT shipment of chrome concentrates loaded on February 7, 1979 (Manila Protest No. 76-79).

Petitioner claims a refund of ₱116,271.12 and ₱265,485.70 representing alleged excess payments of export and premium duties, respectively, for a total ₱381,765.82 included in the collection of ₱583,847.08 in the first shipment, and the sums of ₱123,387.65 and ₱277,595.73 alleged excess payments of export and premium duties, respectively, for a total of ₱400,983.38 included in the collection of ₱611,260.58 in the second shipment, aggregating a grand total of ₱782,740.20 refundable amount.

The Collector of the Port of Manila after due hearing, decreed and ordered the dismissal of the protests in a decision rendered on August 7, 1984. On appeal by the petitioner, respondent the Commissioner of Customs found "no cogent reasons to disturb the decision" affirmed the same (Customs Case No. 84-41, July 25, 1985).

Hence this action.

The liabilities for the payment of export and premium duties on the exportation of chrome ore concentrates are mandated in the following:

<u>Tariff and Customs Code as amended by PD 230, July 1, 1973</u>

> "Section 514. Export Products Subject to Duty and Rates. - There shall be levied, assessed and collected a duty on the gross F.O.B. value at the time of shipment based on the prevailing rates of exchange of the following products in accordance with the following schedule:
>
> MINERAL PRODUCTS:
>
> (1) Mineral ores and concentrates:
>
> Chromites 4%
>
> xxx xxx"

<u>Executive Order No. 425, February 27, 1974</u>

> "In addition to the export duty herein referred to as a basic rate, levied under Section 514, Title III, Book I of R.A. No. 1937, as amended by P.D. No. 230, there shall be levied a premium duty on the difference between the current price as established by the Bureau of Customs and the base price of the products as established in Section II hereof in accordance with the following schedule:
>
> MINERAL PRODUCTS:
>
> (1) Metallic ores and concentrates:
>
> (c) Chromites 20%
>
> xxx xxx xxx."

Pursuant to Section 514, supra, in relation to Section 2 of PD No.230, amending the Tariff and Customs Code, re: "The Commissioner of Customs shall promulgate the rules and regulations necessary for the implementation of this Decree, subject to the approval of the Secretary (now Minister) of Finance.", the Bureau of Customs established the value of $115/DMT for chrome concentrates exported out of the country for the periods December 1 to 30, 1978 and February 1 to 28, 1979 per Customs Export Valuation Circulars Nos. 106-78 and 16-79, respectively. The National Economic Development Authority (NEDA) set $95.82/DMT as the base price of the said product for the assessment of the additional premium duty under Executive Order No. 425, supra.

By and large the petitioner holds on to the propositions that, 1) the "gross FOB value at the time of shipment" in Section 514 supra as a basis for the assessment and collection of the 4% export duty should exclusively refer to the actual selling price stipulated in the contract of sale between the petitioner and buyer, in the instant case, an entered value of $73.00/DMT vis a vis $115/DMT, the current Customs' valuation;

2) the price of $115/DMT applied by the Bureau of Customs was based on an old contract of the petitioner dated February 1977 and therefore needs adjustment to realistic levels by reason of the "greatly reduced chrome ore prices and the consequent serious predicament of the chrome industry." (Petitioner's representation with the Minister of Finance dated June 7, 1978). As a consequence, the "Bureau of Customs erroneously levied the premium duty on the difference between the old and inapplicable price of U.S. $115/DMT and the base price of US$95.82/DMT as established by the National Economic Development Authority. No such duty should have been assessed inasmuch as the price of US$73/DMT prevailing at the time the goods were shipped was less than such NEDA-established base price. This price of US$73/DMT represented the actual F.O.B. value of Acoje's chrome concentrates when they were shipped out in December 1978 and February 1979, hence, export duty should have been assessed on the basis of such price pursuant to Section 514 of the Tariff and Customs Code, as amended by PD 230, particularly Section 514 thereof.";
3) the subject Customs Circulars were promulgated and

implemented without the authority of the Minister of Finance.

The first question requires no tortured ratiocination. As against the claim of the petitioner that the "gross FOB value at the time of shipment" exclusively refers to the actual selling price agreed upon between the parties in the sales contract, i.e., $73.00/DMT (F.O.B) at the time the chrome concentrates were shipped out of the country, the respondent Commissioner of Customs aptly maintains that, "Section 514 of the Tariff and Customs Code, as amended, is clear and explicit when it provides that export duty on the gross FOB value shall be levied, assessed and collected at the time of the shipment based on the prevailing rate of exchange. Thus, the imposition of export duty on subject chromite concentrates accrue from the moment the articles are actually shipped out and or exported out of the country, not on the date the contract of sale was perfected at $73.00/DMT. Definitely, at the time of the shipment, Customs Export Valuation Circulars Nos. 106-78 and 16-79 were in effect." We do not think any different conclusion ought be reached as we find nothing cryptic in the language of Section 514, *ibid.* as to pose any ambiguity in its application.

Related with the question just discussed, petitioner's starveling agitation for infusing valid cognizance to a price of a $73.00/DMT vis a vis the Customs appraisal of $115.00/DMT as a basis for the valuation for the chrome concentrates, can hardly be a reassuring prospect that can easily be reconciled with the statutory intendment. Petitioner's own declaration of an entered price of $73/DMT as stipulated in a contract of sale is non-sequitor and brooks no instant imprimatur of acquiescense for assessment purposes, considering that "The basis in the collection and imposition of export duty and premium duty is not dependent on a contract entered into by and between private parties but rather on the mandate of the law, and in the absence of any excessiveness, harshness and absurdity in the imposition of export and premium duties, the same should be upheld." This has to be, otherwise by such an expediency the enforcement of Customs' laws can be flouted with impunity and the efficacy defused in a cul de sac of impotency, so to speak. It is hardly necessary to stress that consideration of the convenience of the petitioner, or any taxpayer for that matter, stands as an aberration from the otherwise intended imperative. Obviously, we cannot substitute and indulge in any amorphous rule as to leave solely to petitioner's own indulgence a valuation upon which to base the assessment and altogether suffer the cornerstone of effective collection to dissipate in the quicksand of self-interest.

Petitioner further nibble at faulting the valid application of the Customs' circulars sans the Ministry's approval comes as an expedient piffle. "The fact that the petitioner's earlier request on June 7, 1978 with the Minister of Finance to use $73.00/DMT as basis for the computation of customs duties and taxes was not favorably acted upon, proves that the Minister affirms that the value of $115.00/DMT stated in the CEVC's should be followed." Moreover, the records show that "despite representation by Acoje Mining Co., Inc. (petitioner) with the Ministry of Finance and other authorities that the existing export valuation were not realistic, said officials did not heed the same. This strongly indicates that the protestant (petitioner) failed to establish its cause and that the existing export valuation was in accordance with the law." We do not readily uproot such kind of issuances tinged with strong issues of public policy for speculative purposes or simply to gratify petitioner's own convenience as there is no reason apparent from the record why the subject Customs Export Valuation Circulars could be ignored.

ACCORDINGLY, we feel compelled to affirm the import and force of the respondent Commissioner of Customs' assessment and collection of the rightful dues warranting the dismissal of the instant petition with costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, October 31, 1986.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge