REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PILIPINAS NISSAN INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4638

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

3/17/92

D E C I S I O N

This is an appeal from the assessment and collection of duties and taxes on petitioner's importation of one (1) unit Nissan Model Q45 Passenger Car.

It appears that said subject motor vehicle was shipped to petitioner to be used for display at the first motor show held at the Philippine Trade Training Center on May 20 to 29, 1991 with an invoice value of Y3,450,000.00 Japanese Yen. The shipment was covered by "Clean Report of Findings" of the Societe Generale de Surveillance S.A., the entity contracted by the Philippine Government to conduct inspection of articles imported into the Philippines prior to shipment, and to report the actual price/Home Consumption Value in accordance with the criteria set forth in Paragraph 1 of

Section 201 of the Tariff and Customs Code, which was $20,014.00. Release of the vehicle without payment of duties and taxes was approved by the Department of Finance, subject to the filing of a re-export bond in the amount equivalent to 150% of the taxes and duties due (Annexes C & C-1, Petition for Review).

For purposes of the amount of re-export bond, the Bureau of Customs computed the duties and taxes due (Annex D, Petition for Review).

The Bureau of Customs released the vehicle upon filing of Entry No. 20771-90 and Ordinary Re-export Bond No. C(a) 080120 issued by the Domestic Insurance Company dated March 15, 1990 in the amount of ₱2,139,093.00 (Annexes E & F, Petition for Review).

The Asian Investment and Finance Corporation, having indicated an interest in purchasing the motor vehicle, secured the approval/clearance of the Board of Investments (Annex G, Petition for Review).

Petitioner filed a request for payment of the duties and taxes on the motor vehicle (Annexes H, H-1, and I). The District Collector of Customs accepted the recommendation for adoption (Annexes J and J-1).

Respondent cancelled the Re-export bond and allowed the payment of duties and taxes based on the invoice value, setting aside the contention that this is not a local purchase and (1) applied the exchange rate at the time of payment and (2) imposed the additional 9% ad valorem import levy. (Annex L, Petition for Review).

To avoid delay and further deterioration of the motor vehicle, petitioner paid the duties and taxes amounting to P1,601,426.00 on July 15, 1991 (Annex M, Petition for Review), while the liability of petitioner as determined by the Bureau of Customs is P1,426,062.00 (Annex D), computed as follows:

One (1) Unit Nissan Infinity
Q45 CBU (Under Re-export Bond)

JY3,450,000.00	Value
X.006668	Exchange Rate (JY-$)
US$23,004.60	
X1.02	
$23,464.69	
824.46	Freight
$24,289.15	
1,153.23	O/C
$25,443.38	
22.72	Exchange Rate ($-P)
$578,050.87	DV
50%	Duty
$289,025.44	
578,050.87	DV
700.00	Miscellaneous
$867,776.31	Landed Cost
1.1	
$954,553.94	AVT Base
1	100% Tax Rate
$954,553.94	AVT
867,776.31	Landed Cost
$1,822,330.25	VAT Base
10%	VAT Rate
$182,233.03	VAT

	Summary
Duty	P289,025
AVT	954,554
VAT	182,233
IPF	250
	P1,426,062

The issues to be decided by the court are as follows:

1. What is the exchange rate that should be applied to the imputation?

2. Is the 9% additional ad valorem duty imposable on the importation?

The vehicle as imported began and terminated in March 1990. The exchange rate which should be applied are those current at the time of importation. The exchange rate of the Japanese Yen as indicated in the Invoice (Annexes A) of JY3,450,000 should be converted to U.S. dollars at the current rate at the time of importation, or at US$0.00668 to JY1.00, as was done in the computation of duties and taxes (Annex D). Similarly, the US dollar value should have been converted to Philippine peso at the current rate of importation, or P2.72 to US$1.00 (Annex D).

In this instant case, the exchange rates that should be applied are the current exchange rates, at the time the importation was deemed terminated or upon filing of the entry (Annex E) and the acceptance of the Re-export Bond (Annex F) and Release of the motor vehicle on March 15, 1990.

The 9% additional ad valorem duty cannot be imposed as it is imposable only under Executive Order No. 443 dated January 3, 1991 which took effect on January 21, 1991. The importation of the motor vehicle began and was terminated upon the filing of the entry and acceptance of the re-export bond and release of the motor vehicle on March 15, 1990. Since these events occurred prior to the effectivity of Executive Order No. 443 on January 3, 1991, the additional 9% ad valorem duty imposed thereunder cannot be made to apply to this importation. (Hydro Resources Contractors Corp. vs. C.T.A., 192 SCRA 604, 611).

The determination by respondent that this is a local purchase is without factual or legal basis.

Respondent Commissioner of Customs, in his undated 1st Indorsement (Annex "L") set aside as without merit petitioner counsel's contention that this is not a local purchase as "the Committee considered and took legal notice of the BOI approval/clearance issued 22 March 1991, of the contemplated sale of subject article to Asian Investment and Finance Corp."

This statement, by itself, is a contradiction in terms. While it states that it is a "contemplated sale", it ruled, as without merit, the contention that this is not a case of local purchase.

As contended in the letter of petitioner's counsel dated July 3, 1991 (Annex "I"), the provisions of Section 101 of the National Internal Revenue Code (NIRC) merely creates a fiction of law for fixing tax liability. What is contemplated therein is a case of tax-free importation of goods "where such goods are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities xxx."

In this instant case, it is the importer itself which had requested for the payment of the duties, taxes and other charges assessed at the time of importation, payment of which was secured by the filing and acceptance by the Bureau of Customs of a re-export bond. There had been no subsequent sale, transfer or exchange at the time the duties, taxes and other charges were assessed and paid. Title and possession of the motor vehicle are with the importer at that time and the duties, taxes and other charges were subsequently paid by the petitioner-importer itself. The authority secured by the Asian Investments and Finance Corporation from BOI was in contemplation of the sale made after the duties, taxes and other charges had been settled in full by the importer, the petitioner herein.

The conclusion of the respondent Commissioner of Customs that at the time the duties, taxes and other charges were assessed, this was a case of local purchase is, therefore, without factual nor legal basis.

WHEREFORE, respondent Commissioner of Customs having assessed the sum of P1,426,062.00, after petitioner has paid the sum of P1,601,426.00, petitioner is legally entitled to the refund of the sum of P175,364.00.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, March 17, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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