Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

VI VE CHEMICAL PRODUCTS, INC.,
Petitioner,

versus

CTA CASE NO. 1800

COMMISSIONER OF CUSTOMS and the COLLECTOR OF THE PORT OF MANILA PEDRO PACIS,
Respondents.

July 31/67

x - - - - - - - - - - - - x

DECISION

On March 22, 1966, the petitioner imported from Taiwan 250 drums of glutamic acid, an article used in the manufacture of a food seasoning known as "vetsin", on which it was required to pay, as it did pay, the sum of ₱27,274.00 as customs duty. Contending that it is liable only for the amount of ₱3,519.00, and not ₱27,274.00, it filed the necessary protest and requested the refund of the difference in the sum of ₱23,656.00.

The sum of ₱27,274.00 as customs duty on 250 drums (11,340 kilos) of glutamic acid was levied and collected pursuant to Section 104, par. 29.23, of the Tariff and Customs Code, as amended by Executive Order No. 225, dated December 13, 1965, which imposes an alternate customs duty, i.e., a specific duty of ₱2.40 per kilo of glutamic acid or an *ad valorem* duty of 40%, whichever is higher.

The specific duty at the rate of ₱2.40 per kilo was applied to petitioner's importation as the same is higher than the _ad valorem_ duty of 40% . 40% of ₱35,190.00 is ₱14,076.00. Prior to the amendment of Par. 29.23 of Section 104 of the Tariff and Customs Code by Executive Order No. 225, the customs duty on glutamic acid was 10% _ad valorem_, which, if applied to petitioner's importation of glutamic acid valued at ₱35,190.00, it would be liable to pay only the sum of ₱3,519.00.

Petitioner contends that Executive Order No. 225 is invalid for failure to comply with Section 401 of the Tariff and Customs Code authorizing the President to increase or decrease tariff rates under the conditions specified therein, hence, it filed the corresponding protest with the Collector of Customs of Manila. The Collector denied the protest solely on the ground that he has no power to nullify an executive order issued by the President. On appeal to respondent Commissioner of Customs, the Collector's decision was sustained also on the same ground.

In this appeal, the sole issue relates to the legality of Executive Order No. 225. The parties submitted the case on the basis of the pleadings and the records of the Bureau of Customs and after filing their respective memorandum.

Section 401 of the Tariff and Customs Code empowers the President of the Philippines to increase or decrease tariff rates subject to the conditions enumerated therein, namely:

> "a. The President, upon investigation by the Commission and recommendation of the National Economic Council, is hereby empowered to reduce by not more than fifty per cent or to increase by not more than five times the rates of import duty expressly fixed by statute (including any necessary change in classification) when in his judgment such modification in the rates of import duty is necessary in the interest of national economy, general welfare and/or national defense.
>
> "b. Before any recommendation is submitted to the President by the Council pursuant to the provisions of this section, the Commission shall conduct an investigation in the course of which it shall hold public hearings wherein interested parties shall be afforded reasonable opportunity to be present, to produce evidence and to be heard. The Commission may also request the views and recommendations of any government office, agency or instrumentality, and such office, agency or instrumentality shall cooperate fully with the Commission.
>
> "c. The President shall have no authority to transfer articles from the duty-free list to the dutiable list nor from the dutiable list to the duty-free list of the tariff.
>
> "d. The power of the President to increase or decrease rates of import duty within the limits fixed in subsection 'a' shall include the authority to modify the form of duty. In modifying the form of duty the corresponding ad valorem or specific equivalents of the duty with respect to imports from the principal competing foreign country for the most recent representative period shall be used as basis.

> "e. The Commissioner of Customs shall regularly furnish to the Commission a copy each of all customs import entries containing every pertinent information appearing in the Collectors' liquidated duplicates, including the consular invoice and/or the commercial invoice. The Commission or its duly authorized agents shall have access to and the right to copy all the customs import entries and other documents appended thereto as finally filed in the General Auditing Office.
>
> "f. The Commission is authorized to adopt such reasonable procedure, rules and regulations as it may deem necessary to carry out the provisions of this section.
>
> "g. Any order issued by the President pursuant to the provisions of this section shall take effect thirty days after its issuance.
>
> "h. The provisions of this section shall not apply to any article the importation of which into the Philippines is or may be governed by Section 402 of this Code.
>
> "i. The authority herein granted to the President shall be exercised only when Congress is not in session."

The grounds relied upon by petitioner in assailing the legality of Executive Order No. 225 may be summarized as follows: (1) There was no prior investigation by the Tariff Commission and recommendation by the National Economic Council in regard to the increase of the customs duty on imported glutamic acid; (2) it has not been shown that the increase in the customs duty on said article is necessary in the interest of national economy, general welfare and/or national defense; and (3) the duty on said article was increased in said Executive Order by more than five times the former rate of duty (see page 2, Memorandum for Petitioner).

As to the first ground, it appears that a public hearing was conducted by the Tariff Commission before it recommended the increase in the tariff duty on glutamic acid and that the same was favorably recommended by the National Economic Council. We quote from a certificate issued by the Commissioner of the Tariff Commission:

> "This is to certify that, as per records, the public hearing on glutamic acid (Heading No. 29.23-D), with other articles, was held in this Commission on September 9, 1964, pursuant to Section 401 of the Tariff and Customs Code. Notice of said hearing was published in the Manila Times and Manila Chronicle on September 8, 1964. The report covering said article was forwarded to the National Economic Council with our letter of transmittal dated November 13, 1964." (Certification signed by Tariff Commissioner, dated March 20, 1967; page 89, Customs records.)

As to the second ground, petitioner alleges -

> "(b) That the President may only increase the existing tariff rates if such increases is for the general welfare and/or national defense. In this particular case, the general welfare or the security of the country is not involved. On the contrary, the increase in the rates of duty under this executive order was primarily designed to protect certain corpora-

> tions engaged in the manufacture of a similar products, and if not contested in the courts of justice, said corporations will perpetuate a monopoly to the detriment and prejudice of the consuming public." (Pp. 3-4, Petition for Review.)

The protection of local industries justifies the imposition of high tariff duties. (See Secs. 301, 302 and 304, Tariff and Customs Code.) Petitioner admits that the purpose behind the increase of duty on glutamic acid as provided in Executive Order No. 225 is to protect local industries engaged in the manufacture of said article. Consequently, we are of the opinion that the increase in the duty on glutamic acid by executive order is necessary in the interest of national economy and general welfare.

Finally, it is contended that under Section 401 of the Tariff & Customs Code, the President may increase the rates of customs duties by not more than five times the rates of import duties imposed by law. The specific duty of ₱2.40 per kilo of glutamic acid is more than five times the former rate of duty, hence, it is alleged that Executive Order No. 225 is invalid. The rate of duty under Executive Order No. 225, according to petitioner, is actually 7.75 times the old rate. The following shows petitioner's computation:

"(c) Under the old rates of duty, the petitioner will only pay at the rate of 10% ad valorem or ₱3,519.00 or 10% of ₱35,190.00 the C.I.F. value of the goods, computed at the rate of ₱3.91 to $1.00. This represents an increase of 7.75 times over the original rates of duty which is 10% ad valorem. Mathematically computed, the foregoing solution will show the illegal increase in the rates of duty under Executive Order No. 225:

₱27,274.00 - duty collected under Ex. Ord. No. 225
₱ 3,519.00 - duty under old rates, 10% Ad. Val.

$$\frac{₱27,274.00}{₱\ 3,519.00} = 7.75"$$

(See page 3, Petition for Review.)

On the other hand, respondent contends that the specific duty of ₱2.40 per kilo of glutamic acid is less than the maximum authorized by law. Below is the computation made by the Tariff Commission[1] when it recommended the increase in duty on glutamic acid:

Unit cost (C.I.F) per lb.	$0.47
Unit cost per kilo (2.2 lbs. per kg.)	1.034
Converted to pesos at ₱3.9125 to 1$	₱4.045

Ad valorem rate	Specific equivalent per kilo
10% (old rate)	₱0.404
5 times or 50%[2] (maximum increase)	2.020
6 times or 60%[3] (maximum rate that can be proclaimed)	2.42

---

[1] See memorandum dated March 21, 1967, page 88 Customs records.

[2] This should be 500%.

[3] This should be 600%.

It will be seen from the foregoing computation that at the time of the promulgation of Executive Order No. 225, the maximum rate of duty on glutamic acid which could be imposed by the President by virtue of Section 401 of the Tariff and Customs Code is ₱2.42 per kilo, which is more than the specific duty of ₱2.40 per kilo actually imposed by Executive Order No. 225.

The flaw in the computation of petitioner is that it is based on the value of glutamic acid imported by it in 1966. The Tariff Commission based its computation on the value of said article imported from Taiwan in 1963, there being no record of any other foreign country from which glutamic acid was imported. Petitioner claims that the year 1963 is not "the most recent representative period" within the meaning of Section 401 of the Tariff and Customs Code for the purpose of determining the maximum rate of duty which may be imposed by the President under said section. What should have been taken into account, according to petitioner, should be the value of said article in 1964 or 1965 or 1966. However, petitioner failed to produce evidence of the value of glutamic acid in 1964 and 1965. In fact, according to the Tariff Commission, there is no record of any importation of said article during those years.

The value of glutamic acid imported by petitioner in 1966 (₱3.38 per kilo) could not have been considered in the computation of the maximum increase in said duty because Executive Order No. 225 was promulgated on December 13, 1965. When the law mentions "the most recent representative period" which must be taken into account in determining the value of an imported article, it could refer only to the immediate past and present and not to the future. To sustain petitioner's contention would render compliance with the statutory requirements extremely difficult, if not impossible. It would require the Tariff Commission, the National Economic Council and the President to delve into the future, which is purely speculative. It is our considered opinion that the validity of the action of the President in the exercise of his power to increase or decrease tariff rates pursuant to Section 401 of the Tariff and Customs Code must be determined by the circumstances obtaining at the time the action is taken, or previous thereto, and not those prevailing thereafter. Tested by this rule, there can be no doubt as to the validity of Executive Order No. 225.

IN VIEW OF THE FOREGOING, we are of the opinion that Executive Order No. 225, dated December 13, 1965, which amended Par. 29.21 of Section 104 of the Tariff and Customs Code, is valid and enforceable, and accordingly, the decision appealed from denying petitioner's claim for refund of the sum of ₱23,656.00 must be, as the same is, hereby affirmed. Without pronouncement as to costs.

SO ORDERED.

Quezon City, July 31, 1967.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge