PAPER INDUSTRIES CORPORATION
OF THE PHILIPPINES (PICOP),
Petitioner,

- versus - C.T.A. CASE NO. 3372

RAMON J. FAROLAN,
Respondent.
x - - - - - - - - - - - - - - x

D E C I S I O N

Sought in this petition for review is the annulment of the decision dated June 26, 1981 of the respondent Commissioner of Customs rendered in Consolidated Customs Cases Nos. 80-32, 80-36, 80-37, 80-42, 80-43, 80-44 and 81-03 involving several protests filed by petitioner with the Collector of the Port of Bislig, which were dismissed by the latter and by the respondent Commissioner of Customs.

These protests which were filed to enforce claims for refund of alleged overpaid internal revenue taxes are nothing more than a question of whether the bases for the impositions were in accord with the pertinent provisions of Presidential Decree No. 1395, as implemented, quoted as follows:

> "Section 1. All importations which are at present totally or partially exempt from customs duties and/or internal revenue taxes under the provisions of any general or special law shall be subject to a five (5%) per cent customs duty and five (5%) per cent internal revenue tax, subject to the same limitations and conditions prescribed under such law, if any.
>
> "In case of importations enjoying partial exemption, the said duty and tax shall be imposed on the exempt portion, in addition to the duty and tax on the taxable portion.
>
> "The duty and tax imposed herein shall be computed in accordance with the applicable provisions of the Tariff and Customs Code of the Philippines, as amended, and the National Internal Revenue of 1977 as amended, respectively." (Underscoring supplied)

Implementing Department Order No. 13-78, dated June 7, 1978, to the extent applicable provides:

> "2. The five per cent customs duty shall be based on the home consumption value of the imported articles as determined under Section 201 of the Tariff and Customs Code of the Philippines, as amended, x x x.
>
> "3. The five per cent internal revenue tax shall be levied, assessed and collected in accordance with the pertinent provisions of the National Internal Revenue Code, as amended."

As it appears, petitioner, a registered pioneer enterprise under R.A. No. 5186 (Investment Incentives Act), enjoys a partial duty and tax exemption on importations to the extent of 75% for the years 1979 and 1980. Presidential Decree No. 1395, *supra*, subjected any such privileged enterprises accorded full or partial exemptions to a 5% customs duty and 5% internal revenue tax on the exempt portion. Pursuant therefor, the Collector of Customs of the Port of Bislig, Surigao del Sur, assessed and collected the additional levy on the various importations entered by petitioner during the years involved which impositions were accordingly paid. Petitioner, however, protested the payments of the 5% tax alleged to be erroneously based on the total landed cost (plus mark-up in some importations) instead of basing the computation on the exempt portion as mandated by PD 1395. (Bislig protests Nos. 14A-80, 14B-80, 15-80, 16-80, 17-80, 18-80, 19-80, 20-80, 22-80, 23-80, 24-80, 25-80, 26-80, 27-80, 29-80, 30-80 & 31-80; consolidated in Customs Cases Nos. 80-32, 80-36, 80-37, 80-41, 80-42, 80-43, 80-44 and 81-03).

The case presents no dispute as to the relatively simple material facts but the parties seem trying to get the better of each other over by a quibble on the effective tax base upon which the 5% tax under PD 1395 has to be applied.

The records show that the respondent Commissioner of Customs had the 5% internal revenue tax under PD 1395 imposed in accordance with the pertinent provision of

Section 193(b) of the Tax Code, i.e., based on the total landed cost plus mark-up, encapsulated this wise:

	Taxable Value
add:	Customs Duty
	Taxable Charges
	Landed Cost
add:	Mark up for advance sales tax not for compensating tax
	TOTAL LANDED COST

25% of Total Landed Cost at full rate of tax = Tax Due
75% of Total Landed Cost at 5% tax under PD 1395 = Tax Due

Petitioner views the exercise differently by positing the 5% tax (PD 1395) on the Tax Due of the 75% exempt portion, thus,

Total Landed Cost at full rate of Tax = Tax Due on importations
75% of tax due at 5% under PD 1395 = Tax Due

Putting aside the apparent quibble, it is hardly necessary to observe that by the terms of PD 1395, as implemented, supra, the imposition of the 5% tax on importations privileged with full or partial exemption shall be computed in accordance with the applicable provisions of the National Internal Revenue Code of 1977, as amended, hence, essentially addressed to a determination of the total landed cost. We find no threat of ambiguity from the language of the said provisions of PD 1395, as implemented, insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar. The imposition of the particular 5% tax appears compellingly explicit. The requisites for the effective implementation are of clear import and one may not be hard put to rest a choice of the basis thereof. As had happened, petitioner would have the focusing question expediently treated without first determining "how much of the total taxable value or total landed cost is exempt and how much is subject to full tax in cases where the imported enjoys partial exemption for purposes of the additional levy of 5% rate of tax under PD 1395. Thus stated and aptly so by the respondent, "From the above example, it appears that petitioner considers <u>75% of the tax due on the imported article</u> as the 'exempt portion' instead of 75% of the <u>total landed cost</u> otherwise known as the 'total taxable value' or 'taxable base'. According to this method, the remaining 25% of the '<u>tax due</u>' is the taxable portion subject to the full tax which is all the more erroneous and contrary to the provisions of PD 1395 and its implementing rules. What is contemplated under Section 1 of PD 1395 as the 'exempt portion' (insofar as petitioner's exemption is concerned) is 75% of the total landed cost or total taxable value and <u>not</u> 75% of the tax due and demandable".

Such might well be a maudlin rendition of a denouement which neither imparts plausibility nor serves much of a justification for petitioner's cause.

So it appears and we so hold that the respondent Commissioner of Customs fared consistent with the mandate of the law in the assessment and collection of the additional levy of 5% tax under PD 1395.

WHEREFORE, finding the petition to be without merit, the same is hereby dismissed with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, June 30, 1987.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge