REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SHERWIN F. TIU, acting under the business name or style of WELLPLASS INTERNATIONAL SALES,
Petitioner,

- versus -

C.T.A. CASE NO. 5731

THE SECRETARY OF FINANCE
Respondent.

Promulgated:

MAR 07 2000

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DECISION

This is an appeal filed by herein Petitioner on February 10, 1999 urging Us to reverse the decision of herein Respondent Secretary of Finance, dated November 18, 1998, which, in accordance with Sections 2315 of the Tariff and Customs Code, as amended, (hereinafter referred to as "Code"), denied on automatic review the recommendation of the Commissioner of Customs for the approval of the decision of the District Collector of Customs of the Manila International Container Port ("MICP" for brevity) in Protest Case No. 286-98 allowing the refund of excess duty and tax collected by the Bureau of Customs in the amount of ₱1,430,520.00.

Petitioner is a Filipino citizen of legal age residing at 655 F. Torres St., Sta. Cruz, City of Manila. He is the single proprietor of Wellplass International Sales, a registered business name engaged in the importation of goods.

On July 24, 1998, a shipment of 12,077 cartons of "S & W" potato snacks arrived at the MICP from Taiwan. Its Clean Report of Findings[1] ("CRF" for short) by Societe Generale de Surveillance (SGS) under No. TWN310275 dated July 21, 1998, put its declared export value at US$151,579.00 way beyond its invoice value of US$29,984.00. Pursuant to Customs Memorandum Order No. 39-92, Petitioner declared said shipment under Entry No. 59781-988 and correspondingly paid *under protest* the corresponding duty and tax in the amount of ₱2,108,287.00 which was based on the declared export value.

The protest was docketed as Protest Case No. 286-98 (MICP). In his position paper thereto filed on August 5, 1998 before the Customs District Collector of MICP, Petitioner posited that the subject shipment was already the third shipment of the same item of "S & W" potato snacks which it imported from the same supplier named Kozin Industrial Corporation of Tainan City based in Taiwan. The first allegedly came in March, 1998 under CRF No. TWN301650 dated March 26, 1998, and the second, in May, 1998 under CRF No. TWN305459 dated May 12, 1998. All of the three shipments were observed to have arrived in the Philippines with barely a few months gap from each other.

Petitioner noted that the CRF declared export value of his first and second shipments *vis a vis* their respective invoice value merely indicated a uniform difference of 30% each (actually, 54%, and 29%, respectively) when compared with the third shipment

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[1] A pre-shipment inspection report issued by Societe Generale de Surveillance (SGS) on quality, quantity, price/dutiable value as well as the classification and rates under the Tariff and Customs Code of the Philippines of goods imported into Philippine customs territory in accordance with Joint Order No. 1-91, as amended, of the Department of Finance, *Bangko Sentral ng Pilipinas* and the Department of Trade and Industry.

which carried a much higher difference of 300% (423% as corrected). A table comparison of the three shipments is hereunder presented for easy reference, to wit:

SGS-CRF No.	Date	Export Value	Invoice Value	Product Origin	Exporting Country	Diff.
TWN 301650	3/26/98	US$ 23,660.00	US$15,360.00	U.S.A.	Taiwan	54%
TWN 305459	5/12/98	US$ 6,829.30	US$ 4,920.00	U.S.A.	Taiwan	29%
TWN 310275	7/21/98	US$151,579.00	US$28,984.00	U.S.A.	Taiwan	423%

Petitioner explained that the dutiable value of the subject shipment should be based on the export value of the goods as reflected in the invoice of the exporting country, i.e., Taiwan in this case, and not on the export value of the country of manufacture. (U.S.A.) because Section 201 of the Code, as amended by Republic Act No. 8181, so provides that the dutiable value of imported articles should be based on their value in "the exporting country on the date (or nearest to the date) of exportation to the Philippines".

Elucidating further on the aforementioned Section 201 of the Code, as amended, Petitioner argued that, while in exceptional circumstances, the value in the country of manufacture or origin may be applied in the event the value in the exporting country "cannot be ascertained" or there is "reasonable doubt" as to the correct dutiable value of imported goods, it cannot be gainsaid that the more recent dutiable value of his first two shipments, which arrived within a space of two to four months of the subject third shipment, readily brushed aside any reasonable doubt or uncertainty on the matter. In this regard, Petitioner was amenable to an assessment based on the declared export value indicated in the CRFs of his first two shipments, which although wrongly computed as above mentioned, allegedly carried a 30% increase from invoice value.

In resolving the protest, the concerned District Collector of Customs at MICP decided in this wise, to quote:

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

From the above factual information, it can be seen that the first two shipments before the current shipment under question there was a steady fluctuation of the prices within the range of 30% between the export value and the exporter's invoice value from 26 March 1998 to 12 May 1998 for a period of two (2) months. Suddenly, within the two (2) months period after 12 May 1998, the export value instantly experienced a 300% increase (sic). Such increase was not clarified by the SGS , but in an industrialized economy, such as Taiwan and the USA such increase of price up to 300% may not be realistic nor justified in a very stable market economy. It is beyond logic and reason. As the BOC-SGS Committee stated in Protest Case No. 104-98 involving question of CRF export value filed by Agri-Forest Corporation its Resolution dated 11 December 1997 so stated,

> "xxx The difference in Export Value with the current CRF and the cited previous CRF cannot be considered as ordinary price fluctuation as percentage difference at 88% is not normal"xxx.

The BOC-SGS Committee in the same resolution further stated:

> "xxx The normal price fluctuation according to major exporter is only 30%xxx".

Whether the basis (sic) in the export valuation is the manufacturing country which is the USA, such price increase of 300% is not countenanced by any standard of trade and commerce. CMO No. 2-96 (par. 1.1) however provided:

> "xxx the dutiable value of articles imported into the Philippines is their export value in the principal export market of the Exporting Country for exportation to the Philippines xxx".

There is no question on the determination of the export value because, the export value in Taiwan is fully determined by previous importation of the shipments to the Philippines. In this regard, we cannot point to the country of manufacture in USA in determining the export value as the export value in the exporting country has been fully determined. In keeping with the previous prices as indicated, a consistent 30% price increment over the invoice value, the striking compromise under the current shipment is likewise to apply the 30% fluctuation and increase the invoice value by 30% to arrive at the fair

and reasonable export value. To uphold the current export value of US$151,579.00 would not only be contrary to the principle of consistency and standards but also would be devoid of any legal basis whatsoever. To protect the interest of the government, however, it is the considered opinion of this Office that the 30% standard normal price fluctuation applied to the invoice value of US$28,984.00 to arrive at a new export value of US$37,679.20, would be fair and equitable to all parties.

WHEREFORE, all premises considered and by virtue of the power vested in me by law, the above Protest Case No. 286-98 is **SUSTAINED** and **AFFIRMED**, as it is hereby **SUSTAINED** and **AFFIRMED**.

Accordinly, Entry No. 59761-98 is **ORDERED** as it is hereby **ORDERED** reliquidated on the determined export value of US$37,679.20 and the excess payment of P1,430,520.00 be refunded to herein Protestant, **WELLPLASS INT'L SALES** in the form of Tax Credit.

Let this Decision be forwarded to the Commissioner of Customs for **AUTOMATIC REVIEW**.

SO ORDERED.

MICP Customhouse, Manila, October 27, 1998.

(original signed)
BUENAVENTURA C. MANIEGO
District Collector of Customs
MICP
(Docket, pp. 10-12; Italics and emphasis supplied)

The aforesaid decision was affirmed by the Commissioner of Customs. Pursuant to Section 2315 of the Code, the same was elevated to herein Respondent Secretary of Finance for automatic review. For reasons stated hereunder, Respondent Secretary of Finance reversed the decision of the District Collector of Customs as affirmed by the Commissioner of Customs, in the following manner, to wit:

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

> As protestant itself admitted, SGS can rely on values other than the country of export if there is "reasonable doubt" as to such value. R.A. 8181 requires that the product must be "freely offered." This means that transactions must be arms-length.
>
> The fact that the export price from the country of manufacture is more than five (5) times higher than the country of exportation creates substantial doubt that the invoice value in Taiwan is the real value of the potato snacks.
>
> Considering the foregoing , I believe that Protestant failed to establish any valid cause to justify the sudden drop of valuation when the products were re-exported from Taiwan.
>
> The argument that SGS has made a lower valuation in Protestant's previous importation will neither support its case. Jurisprudence is replete with the doctrine that the government cannot be put in estoppel by its acts or by its representative.
>
> In view of the foreoing, the order of the District Collector of Customs, MICP that Entry No. 59761-98 be reliquidated is hereby **REVERSED**. The Bureau is hereby directed to impose the appropriate duties on the basis of the export value of US$151,579.00 as found by the SGS, subject to the usual accounting and auditing requirements.
>
> **EDGARDO B. ESPIRITU**
> Secretary
> (Docket, p. 15)

Hence, the instant appeal. At bar, Petitioner prays for the restitution of the decision of the Commissioner of Customs. In his argumentation, he reiterates similar line of reasoning in assailing the adverse decision of the Respondent. Petitioner avers that using the export value in the country of manufacture, instead of the values in the country of exportation, as basis of dutiable value, may be contrary to law because under Section 201 of the Code, as amended, and par. 1.2.1 of Customs Administrative Order No. 2-96, the value in the country of manufacture, as an alternative to the value in the exporting country, may only be considered for assessment purposes if the latter is not ascertainable at the country of exportation or where there exists a reasonable doubt as to the fairness of such value. It is the understanding of the Petitioner that neither of the two exceptions stated obtain in the case at bar.

Moreover, Petitioner deems as not conclusive the pronouncement of the Respondent that there is substantial doubt on the invoice value merely on the observation that the export price from the country of manufacture (U.S.A.) is more than five (5) times higher than the country of exportation (Taiwan). Petitioner argues that SGS should have proven instead that the supposed export value of US$151,579.00 for the shipment in question was the "real" value in Taiwan. He believes otherwise, however, that SGS would be able to prove its case because it had already indicated in his first two shipments much lower export values in Taiwan. Likewise, he contends that because of such lower export values, it cannot rightly be said that the export value in the country of exportation (Taiwan) could not be ascertained or that there was doubt as to its fairness in order to justify the adoption of the value in the country of manufacture.

Based on the above, the common legal issue confronting Us is as follows:

> Whether or not the act of Respondent Secretary of Finance in reversing the decision of the District Collector of Customs as favorably endorsed by the Commissioner of Customs in Protest Case No. 286-98 (MICP) regarding the adoption of the export value from the country of manufacture and not from the exporting country is in accordance with Republic Act No. 8181, amending Section 201 of the Tariff and Customs Code of the Philippines.

For easy reference, the pertinent provisions of Republic Act No. 8181, amending Section 201 of the Code, approved on March 28, 1996, are hereunder reproduced accordingly, to wit:

> AN ACT CHANGING THE BASIS OF DUTIABLE VALUE OF IMPORTED ARTICLES SUBJECT TO AN *AD VALOREM* RATE OF DUTY FROM HOME CONSUMPTION VALUE (HCV) TO

TRANSACTION VALUE (TV), AMENDING FOR THE PURPOSE SECTION 201 OF TITLE II, PART I OF PRESIDENTIAL DECREE NO. 1464, OTHERWISE KNOWN AS THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES, AS AMENDED, AND FOR OTHER PURPOSES.

Section 1. Section 201 of Title II, Part 1 of the Tariff and Customs Code of the Philippines, as amended, is hereby further amended to read as follows:

Sec. 201. Basis of Dutiable Value. -

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

For purposes of the preceding paragraphs, the terms:

(1) "Reasonable doubt" shall refer to any condition that creates a probable cause to make the Commissioner of Customs believe in the inaccuracy of the invoice value of imported goods as reflected by the importer in his customs declaration, for valuation purposes. Such condition may include but is not limited to any of the following situations:

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

Sec. 2 Transitory Provisions - <u>Upon the effectivity of this Act and until such time when the Congress authorizes the shift to transaction value before January 1, 2000 as provided under Section 3 of this Act</u>, the dutiable value of an imported article subject to an ad valorem rate of duty <u>shall be based on the export value at which, at the time of exportation, the same or identical, like or similar article is freely offered for sale in the principal export markets of the exporting country for exportation to the Philippines</u>, in the usual wholesale quantities and in the ordinary course of trade (excluding internal excise taxes to be remitted or rebated) or where there is none on such date, then on the export value nearest to the date of exportation, including the value of all containers, coverings and/or packings of any kind and all other expenses, cost and charges incident to placing the article in a condition ready for shipment to the Philippines, and freight, as well as insurance premium covering the transportation of such articles to the port of entry in the Philippines.

Where the export value of the article cannot be ascertained thereat or <u>where there exists a reasonable doubt</u> as to the fairness of such value, <u>then the export value of the article for exportation to the Philippines shall be the export value of the article in the principal</u>

<u>export markets of the country of manufacture or origin, if such country is not the country of exportation</u>.

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

(Emphasis and underscoring supplied)

After a circumspect analysis of the facts, the disquisition of the parties and the provisions of law in point, We rule in favor of the Respondent.

Considering that the time of arrival of the subject shipment in the Philippines took place in 1998, the applicable law governing the present case can be found under the above quoted Section 2 (Transitory Provisions) of Republic Act No. 8181. It is clear therein that upon the effectivity of said law (published in the Official Gazette on May 20, 1996) and until such time when Congress authorizes the shift to transaction value before January 1, 2000, "the dutiable value of an imported article subject to an ad valorem rate of duty shall be based on the export value at which, at the time of exportation, the same or identical, like, or similar article is freely offered for sale in the principal export markets of the exporting country for exportation to the Philippines . . . or where there is none on such date, then on the export value nearest to the date of exportation."

It is upon these very provisions that Petitioner anchors his whole case. He either insists that the dutiable value of his goods be based on the invoice value of the exporting country (Taiwan) and not on the export value as declared in the CRF or on the dutiable value of his first two shipments which were imposed 30% more based on the invoice value. He believes that one cannot entertain any reasonable doubt or pretend that the dutiable value of the subject shipment cannot be ascertained because of the fact that his first two shipments just arrived within a few months of the subject shipment. Their dutiable value, he contends, are the nearest to the date of exportation of the shipment involved in this case, hence, to the contrary, are much ascertainable. We disagree.

As defined above, "reasonable doubt" refers to any condition that creates a probable cause to make the Commissioner of Customs believe in the inaccuracy of the invoice value of the imported goods as reflected by the importer in his customs declaration. Exercising his power of automatic review, Respondent is justified in viewing the 423% difference, as corrected, in export values stated in the invoice and the CRF as a probable cause to engender reasonable doubt on the accuracy of the correct dutiable value of Petitioner's shipment in question. Indeed, it is beyond imagination how the seller, Kozin Industrial Corporation of Tainan City in Taiwan, could sell its "S & W" potato snacks to herein Petitioner at a price 423% lower than at the price it bought the same goods from the country of manufacture (U.S.A.).

Records show that the export value indicated in the CRF, which is the price in the country of manufacture of the potato snacks in the amount of US$151,579.00 is not at all disputed by the Petitioner. What the latter merely insists is that the invoice value in Taiwan be adopted as the basis of dutiable value, whether 30% or more is added. Petitioner's deafening silence on the reason behind the wide difference in pricing arouses much interest and curiosity. Common sense dictates that it is not within the ordinary course of business to transact a deal only to be at the losing end. Easily, it can be seen that the 423% drop in pricing could not even answer for the cost of producing the potato snacks.

With reasonable doubt validly established by the Respondent. We now try to determine whether the adoption by the Respondent of the CRF value based on the country of manufacture is duly supported by law.

Under the aforequoted second paragraph of Section 2 of Republic Act No. 8181, it is crystal clear that where there exists a reasonable doubt as to the fairness of the export value of the article so imported, then the export value of the article in the principal export markets of the country of manufacture or origin should serve as the basis for the correct dutiable value.

Applying the preceding provision to the instant case, the export value of the potato snacks from the country of manufacture or origin which is the U.S.A. as sold to Taiwan should be the correct dutiable value of Petitioner's shipment in question. The country of Taiwan can be rightfully considered as a principal export market of "S & W" potato snacks on account of the two previous shipments which Petitioner bought from that country consisting of the same items likewise purchased from the U.S.A.

Reviewing thus the decision of the Respondent which reversed the favorable recommendation of the Commissioner of Customs on the decision of the District Collector of Customs over Protest Case No. 286-98 (MICP), We find no cogent reason to set aside nor modify the same as it has solid basis in fact and in law.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for **LACK OF MERIT**.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge