REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

COLGATE-PALMOLIVE PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF CUSTOMS,
Respondent.

CTA CASE NO. 7806

Members:

Del Rosario, *Chairperson,*
Uy, and
Mindaro-Grulla, *JJ.*

Promulgated:
JAN 26 2016 11:10 a.m.

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DECISION

DEL ROSARIO, *P.J.*:

THE CASE

This is an appeal from the decision of respondent Commissioner of Customs (COC) assessing petitioner Colgate-Palmolive Philippines, Inc. (CPPI) the amount of ₱204,170,803.00, allegedly representing deficiency duties and taxes, inclusive of penalties, covering the period from October 27, 2003 to October 26, 2006.

THE PARTIES

Petitioner CPPI is a corporation organized and existing under and by virtue of the laws of the Philippines with principal office at J.P. Rizal Avenue, Makati City.[1]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Customs.[2]

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[1] Joint Stipulation of Facts and Issues, Jointly Stipulated Facts, par. 1; Docket, p. 918.
[2] Joint Stipulation of Facts and Issues, Jointly Stipulated Facts, par. 2; Docket, p. 918.

THE FACTS

On October 26, 2006, pursuant to its power under Republic Act No. 9135, as implemented by Section IV.A.2 of Customs Administrative Order No. 4-2004, respondent issued an Audit Notification Letter No. 0610210 (ANL) to petitioner,[3] which the latter received on November 7, 2006. A pre-audit conference was conducted in the premises of petitioner.[4]

On May 8, 2007, petitioner received a Summary of Findings and Recommendation (SFR) issued by the Post-Entry Audit Group (PEAG), a body created under Executive Order No. 160 dated January 6, 2003 under the direct supervision and control of respondent, assessing petitioner of the following:

(i) ₱183,701,180.74 for deficiency duty on royalties/license fees, for the years 2004, 2005, and 2006, inclusive of two (2) times penalty; and

(ii) ₱753,137.61 for deficiency VAT on arrastre and wharfage fees, for the years 2004, 2005, and 2006, inclusive of two (2) times penalty.[5]

On June 12, 2007, petitioner objected to the aforesaid assessment in a letter addressed to Atty. Rolando Ligon, Jr., the Acting Assistant Commissioner in charge of PEAG. The letter detailed petitioner's position and legal basis in opposing the assessed deficiency duties, taxes and penalties.[6]

On June 25, 2007, the PEAG issued its Final Audit Report and Recommendations (FARR). The FARR recommended that, for the period from October 27, 2003 to October 26, 2006, petitioner should be made liable for additional assessment on customs duties and taxes, inclusive of two (2) times the penalty for revenue loss in the total amount of ₱204,170,803.00.[7]

On July 27, 2007, petitioner sent a letter to respondent detailing its position and legal basis in opposing the FARR.[8]

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[3] Joint Stipulation of Facts and Issues, Jointly Stipulated Facts, par. 3; Docket, p. 918
[4] Joint Stipulation of Facts and Issues, Jointly Stipulated Facts, par. 4; Docket, p. 918.
[5] Joint Stipulation of Facts and Issues, Jointly Stipulated Facts, par. 5; Docket, pp. 918-919.
[6] Joint Stipulation of Facts and Issues, Jointly Stipulated Facts, par. 6; Docket, p. 919.
[7] Joint Stipulation of Facts and Issues, Jointly Stipulated Facts, par. 7; Docket, p. 919.
[8] Joint Stipulation of Facts and Issues, Jointly Stipulated Facts, par. 8; Docket, p. 919.

On August 31, 2007, Atty. Rolando Ligon, Jr. indorsed and recommended the approval of the FARR to respondent.[9]

Petitioner submitted letters dated September 3, 2007 and September 11, 2007 to respondent to supplement its July 27, 2007 letter.[10]

On May 26, 2008, petitioner received a letter, dated May 5, 2008, from respondent, informing petitioner of the assessment of ₱204,170,803 as a result of the compliance audit.[11]

Aggrieved, on June 24, 2008, petitioner filed through registered mail the present Petition for Review,[12] praying for the reversal of the decision of respondent, declaring that it is not liable for any deficiency customs duties and tax, and suspending the payment of the assessed duties and penalties pending the decision of the Court.[13]

On September 23, 2008, respondent filed his Comment[14] contending that petitioner failed to exhaust administrative remedies; that petitioner is liable for deficiency customs duties and taxes on royalties paid to Colgate Palmolive Corporation (CPC); that petitioner is liable for VAT on arrastre and wharfage fees; and the penalties imposed on deficiency duties and taxes are correct.[15]In the Resolution dated November 21, 2008, the Court treated the Comment as respondent's Answer.[16]

On January 20, 2009, petitioner's Motion to Suspend Collection of Customs Taxes and Duties ancillary to its Petition for Review was granted, subject to the filing of a bond.[17] Upon petitioner's compliance therewith, the bond issued by Philippine Charter Insurance Corporation in favor of the respondent was approved in the Resolution dated April 22, 2009.[18]

During the pre-trial conference held on August 7, 2009,[19] the Court approved the parties' Joint Stipulation of Facts and Issues filed on August 6,

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[9] Joint Stipulation of Facts and Issues, Jointly Stipulated Facts, par. 9; Docket, p. 919.
[10] Joint Stipulation of Facts and Issues, Jointly Stipulated Facts, par. 10; Docket, p. 919.
[11] Joint Stipulation of Facts and Issues, Jointly Stipulated Facts, par. 11; Docket, p. 919.
[12] Docket, p. 33.
[13] Docket, p. 55.
[14] Docket, p. 628-647.
[15] Docket, p. 631-632.
[16] Docket, p. 796-797.
[17] Docket, pp. 799-801.
[18] Docket, pp. 863-864.
[19] Docket, p. 922.

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2009.[20] On August 17, 2009, the pre-trial conference was deemed terminated and the Court ordered the parties to proceed with the trial of the case.[21]

On October 14, 2009, petitioner filed a Motion to Reset Hearing and informed the Court of the possible amicable settlement of this case with respondent. The Court reset the hearings scheduled on October 15, 2009, November 12, 2009, January 12, 2010, February 2, 2010, March 11, 2010, April 29, 2010, June 10, 2010, and July 20, 2010 for the parties to submit the compromise agreement.

On December 10, 2010, the Court issued a resolution waiving the right of petitioner to present further evidence due to its failure to present the compromise agreement, or to present its case for unreasonable length of time. On May 10, 2011, petitioner's Motion for Reconsideration on the waiver of its right to present evidence was likewise denied.

Thus, Petitioner filed its Formal Offer of Documentary Evidence[22] on June 7, 2011 and Supplemental Offer of Documentary Evidence on March 2, 2012,[23] which were admitted in the Resolutions dated September 6, 2011,[24] and April 19, 2012.[25] Respondent, on the other hand, filed his Formal Offer of Evidence[26] on December 5, 2012, which the Court admitted in the Resolution dated March 22, 2013.[27]

After the filing of respondent's Formal Offer of Evidence, petitioner filed a Motion to Set Case for Presentation of Rebuttal Evidence. On June 14, 2013, the Court denied the said motion. On July 17, 2013, petitioner filed a Motion for Reconsideration which the Court in the Resolution dated October 14, 2013[28] granted and allowed petitioner to present supplemental evidence and commission an independent Certified Public Accountant (CPA).

On April 8, 2014, petitioner filed its Supplemental Formal Offer of Evidence,[29] which was admitted in the Resolution dated September 17, 2014.[30]

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[20] Docket, pp. 918-921.
[21] Docket, p. 924.
[22] Docket, p. 1073.
[23] Docket, pp. 1664-1667.
[24] Docket, pp. 1560-1561.
[25] Docket, pp. 1670-1671.
[26] Docket, pp. 3015-3028.
[27] Docket, p. 3071.
[28] Docket, pp. 3228-3232.
[29] Docket, pp. 3390-3418.
[30] Docket, pp. 3484-3489.

On September 4, 2014, respondent filed a Motion to Set Case for Hearing for the presentation of his witness, Jay N. Quinto, which the Court likewise granted in the Resolution dated September 17, 2014.[31] On March 5, 2015, respondent filed his Formal Offer of Evidence,[32] which the Court admitted in the Resolution dated April 10, 2015.[33]

With the filing of petitioner's Memorandum on June 5, 2015, and respondent's Memorandum on June 29, 2015, this case was submitted for decision on July 28, 2015.[34]

THE ISSUES

The parties stipulated on the following factual and legal issues for the resolution of the Court:

JOINTLY STIPULATED FACTUAL ISSUES

I

Whether or not the imported merchandise was manufactured under patent.

II

Whether or not royalty was involved in the production or sale of the imported merchandise.

III

Whether or not CPPI can buy the product without paying royalty fees.

JOINTLY STIPULATED LEGAL ISSUES

I

Whether or not CPPI failed to exhaust administrative remedies.

II

Whether or not CPPI is liable for customs taxes and duties on royalties paid to CPC.

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[31] *Id.*
[32] Docket, pp. 3520-3522.
[33] Docket, pp. 3534-3535.
[34] Docket, p. 3622.

III

Whether or not CPPI is liable for value added tax on arrastre and wharfage fees.

IV

Whether or not respondent may impose penalties for the alleged deficiencies.[35]

RULING OF THE COURT

Exhaustion of Administrative Remedies

Respondent argues that petitioner failed to exhaust administrative remedies as petitioner immediately appealed to respondent the initial assessment contained in the audit team's SFR without waiting the response of Assistant Commissioner Rolando T. Ligon, Jr., the former Officer-In-Charge of the PEAG; that when petitioner appealed to respondent, the audit team had yet to make a final determination of the assessment as it was only on August 31, 2007, a month after petitioner wrote respondent, when the audit team endorsed the FARR; and, that it is only when the importer's liability has been determined that a course of action can rightly be said to have arisen, which in petitioner's case became definite when respondent sent petitioner a letter on May 5, 2008 requesting remittance of the assessed amount of ₱204,170,803.00. Filing a protest in the absence of a definite determination of the final assessment is premature, and respondent could not have made any final decision on such premature protest.

Petitioner, on the other hand, counter-argues that it has exhausted every available remedy before filing the case in Court; that upon receipt of PEAG's SFR, it filed its objections in its letter dated June 12, 2007; and, that it appealed the PEAG's findings to respondent through the issuance of the FARR in its letters dated July 27, 2007, September 3, 2007 and September 11, 2007, which findings was affirmed by the respondent in the letter dated May 5, 2008. As petitioner has exhausted the administrative remedies, the Court acquired jurisdiction over the case.

The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.

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[35] Docket, pp. 920-921.

The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.[36]

Settled is the rule that observance of the mandate regarding exhaustion of administrative remedies is a sound practice and policy. It ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency, avoidance of interference with functions of the administrative agency by withholding judicial action until the administrative process had run its course, and prevention of attempts to swamp the courts by a resort to them in the first instance. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for this principle. The administrative process is intended to provide less expensive and more speedy solutions to disputes. Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts, for reasons of law, comity and convenience, will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.[37]

The doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review. Non-observance of the doctrine results in lack of a cause of action, which is one of the grounds allowed by the Rules of Court for the dismissal of the complaint.[38] The doctrine intends to preclude premature resort from a quasi-judicial administrative body to the court.[39]

In the case at bar, petitioner's immediate recourse to respondent after receipt of the FARR without waiting for the response of the PEAG's head in its protest to the SFR does not by itself constitute premature resort to the court which is proscribed under the doctrine of exhaustion of administrative

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[36] *Addition Hills Mandaluyong Civic & Social Organization, Inc. vs. Megaworld Properties & Holdings, Inc.*, G.R. No. 175039, April 18, 2012.
[37] *Carale vs. Abarintos*, G.R. No. 120704, March 3, 1997.
[38] *The Sangguniang Barangay of Barangay Don Mariano Marcos, Municipality of Bayombong Province of Nueva Viscaya represented by Barangay Kagawad Jose Cenen Santos, Mario Bacud, Walter Francisco, Rosita Sebastian, Laureta Cabauatan, Cecilia Alindayu and Mely Simangan vs. Punong Barangay Severino Martinez*, G.R. No. 170626, March 3, 2008.
[39] *Montoya vs Varilla, et al.*, G.R. No. 180146, December 18, 2008.

remedies. Considering that respondent acted upon petitioner's letters contesting the PEAG's recommendation, as in fact, he affirmed the FARR in his letter dated May 5, 2008, such action of respondent partakes the nature of a final decision that is appealable to this Court under Section 11 of Republic Act No. 1125, as amended by Section 7 of RA 9282.[40] In other words, under the circumstances, petitioner may not be considered to have violated the doctrine of exhaustion of administrative remedies. As aforestated, petitioner appealed to this Court only after receipt of the assailed decision of respondent contained in its Letter dated May 5, 2008 and received by CPPI on May 26, 2008.

Customs Duties on Royalty Payments Relating to Importation

Respondent argues that petitioner is liable for customs duties on royalties paid to CPC under Section 201 of the TCCP, as amended; that the bulk of royalties paid by petitioner was on account of its imported finished products; that the royalty payments were made as a condition of sale taking into account paragraphs 18 and 19 of the Memorandum of Agreement (MOA) of petitioner and CPC; accordingly, for petitioner to continue enjoying the privilege of using the intellectual property rights under the MOA, it has to religiously comply with the terms and conditions of the agreement particularly with respect to the payment of royalties for the use of such rights. Non-payment of the royalties constitutes a violation of the MOA and is sufficient

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[40] Republic Act No. 1125, An Act Creating the Court of Tax Appeals, as amended by RA 9282, An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of A Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amended for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes

Sec. 7 Jurisdiction. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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(4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs.

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Sec. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA *within thirty (30)* days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

cause for its termination. Once the MOA is terminated, petitioner can hardly be expected to continue importing in bulk the finished products and raw materials used to process finished goods from CPC related companies, lest it be exposed to charges of intellectual property infringement.

In support of his position that the payments are conditions of sale, respondent invokes the three-part test accordingly established by the United States Customs and Border Protection (Hasbro II ruling), which was referred to by his witness, namely:

i) Was the imported merchandise manufactured under patent?

ii) Was the royalty involved in the production or sale of the imported merchandise?

iii) Could the importer buy the product without paying the fee?

The foregoing questions are identical to the factual issues jointly stipulated upon by the parties.

On the first question, respondent claims that petitioner's imported merchandises were manufactured under patent, insofar as the patented technologies were utilized in the manufacturing process. As regards the second question, respondent claims that the MOA between petitioner and CPC establishes a clear connection between the royalties and importation. The MOA shows that the license granted to petitioner is not restricted to the manufacture of the licensed products. The MOA also authorizes petitioner to sell the licensed products in the Philippines, without distinction as to its source, whether imported or locally produced. Finally, on the third question, respondent avers that the continued existence of the MOA despite the absence of petitioner's manufacturing facility and constant importations of licensed products from suppliers related to CPC negates petitioner's claim that it can import products without paying the fee.

Petitioner, on the other hand, contends that while the imported merchandise was manufactured under patent, there was no royalty involved in the production or sale of the imported merchandise to petitioner, and the royalty payments to CPC are not a condition for the sale of the products to petitioner.

Petitioner further argues that even applying the "single transaction" criteria stated in *In Re: Estee Lauder Pty. Limited and Comptroller General* *of Customs and Anor*,[41] the royalties paid by petitioner to CPC do not form a single transaction to the importation considering that (a) the royalty payments do not relate specifically to the goods which were imported, (b) the royalties are calculated based on CPPI's sales in the Philippines and not on the sales by CPC to petitioner, (c) the MOA did not require payment of royalties on all goods imported from CPC but on goods which were sold by petitioner in the Philippines, and (d) the MOA between CPC and petitioner applied to all goods sold or manufactured in the Philippines by petitioner.

Finally, petitioner asserts that assuming arguendo the payment of royalties is a condition of sale by CPC to petitioner, respondent cannot use the aggregate amount of royalty payments as basis for the deficiency customs duties; that it has presented sufficient evidence that it is engaged in manufacturing personal care products which were sold in the Philippines together with products imported from related entities; and, that only the amount of ₱590,947,327.35, out of the total royalty payments of ₱1,249,810,687.75, corresponds to royalty payments for importation from CPC and related companies.

Section 201 of the TCCP, as amended,[42] provides:

> SEC. 201. *Basis of Dutiable Value.* - (A) *Method One. – Transaction Value.* - **The dutiable value of an imported article subject to an *ad valorem* rate of duty shall be the transaction value, which shall be the price actually paid or payable for the goods when sold for export to the Philippines, <u>adjusted by adding</u>:**
>
> (1) **The following to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods**:
>
> (a) Commissions and brokerage fees (except buying commissions);
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> (b) Cost of containers;
>
> (c) The cost of packing, whether for labour or materials;
>
> (d) The value, apportioned as appropriate, of the following goods and services: materials, components, parts and similar items incorporated in the imported goods; tools; dies; moulds and similar items used in the production of imported goods; materials consumed in the production of the imported goods; and engineering, development, artwork, design work and plans and sketches undertaken elsewhere than in the Philippines and necessary for the production of imported goods, where such goods and services are supplied directly or indirectly by the buyer free of charge or at

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[41] FCA 359 (June 28, 1991).
[42] Presidential Decree No. 1464, as amended by Republic Act No. 9135.

> a reduced cost for use in connection with the production and sale for export of the imported goods;
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> (e) **The amount of royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods to the buyer**; *(Boldfacing & underscoring supplied)*

From the foregoing provision, it is evident that in order for royalties and license fees to be added as part of the dutiable value, the following are indispensable: (1) the royalties and license fees are related to the goods being valued *(relationship)*; (2) the royalties and license fees are paid by the buyer directly or indirectly *(payment)*; and (3) the payment of royalties and license fees is a condition of sale of the goods to the buyer *(condition)*.

The aforesaid requirements are obtaining in this case. Under the MOA,[43] petitioner shall pay CPC royalty fees at the rate of five percent (5%) of the net sales of petitioner as a consideration for the use of CPC's patents and trademarks, trade names, packaging trade dress and its know-how, to wit:

> "MEMORANDUM OF AGREEMENT
>
> xxx xxx xxx
>
> NOW, THEREFORE, in consideration of the premises and of the premises by each party to the other hereafter made, the parties mutually agree as follows:
>
> xxx xxx xxx
>
> 5. **OWNER [CPC] agrees to grant USER [CPPI] the non-exclusive right to use all of its Patents and Trademarks, trade names, packaging trade dress and its Know-how in the TERRITORY. Said rights are set forth in Addendum I (Patents), Addendum II (Trademarks) and Addendum III (Know-how)** which are attached hereto and the terms and conditions set forth in said Addenda are incorporated herein.
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> xxx xxx xxx
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> 10. **In consideration of the rights hereby granted** to USER, **USER shall pay to OWNER as royalty,** exclusive of value-added tax (VAT), **Five Percent (5%) of its total Net Sales of Licensed Products.**"[44]

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[43] Exhibit I-9; Docket, p. 1337.
[44] Exhibit I-9-1; Docket, p. 1366-1367.

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"ADDENDUM I
PATENTS CONTRACT

3. OWNER hereby grants to USER the non-exclusive right **to use The Patents including the right to** make, have made, use and **sell Licensed Products**."[45]

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"ADDENDUM II
TRADEMARKS CONTRACT

2. OWNER hereby grants to USER **the right to use The Trademarks on products** manufactured, packaged, or **sold** by USER in accordance with standards specified by OWNER. USER may apply the Trademarks to such goods and use the same in selling and advertising and otherwise as approved by OWNER, including but not limited to the use thereof in conjunction with USER's corporate name."[46]

xxx xxx xxx

"ADDENDUM III
KNOW-HOW CONTRACT

2. OWNER hereby grants to USER **the right to use its Know-how** to make, have made, use **and sell the Licensed Products**."[47]
(Boldfacing & underscoring supplied)

While petitioner presented in evidence the May 17, 2007 letter of Edward J. Filusch, the Treasurer of CPC, which confirms that royalty payment to CPC is not a condition of the sale of goods to petitioner, and that petitioner may import any licensed products at any time without condition,[48] the other pieces of documentary evidence of petitioner, however, show otherwise. The MOA and its *addenda* reveal that (a) the royalty payments relate also to imported goods since the same is computed at the rate of five percent (5%) based on the net sales of the licensed products ***without distinction as to the source of the products sold whether imported or locally manufactured;*** (b) the royalties are paid by the petitioner to the seller, CPC; and (c) the payment of royalties is a condition of sale of the goods to the buyer because ***without the royalties, petitioner could not have sold the licensed products in the Philippines under the CPC trademark as the MOA provides that the agreement may be terminated once petitioner fails to pay the royalty***.[49] In

[45] Exhibit I-9-4; Docket, p. 1370.
[46] Exhibit I-9-5; Docket, p. 1404.
[47] Exhibit I-9-6; Docket, p. 1412.
[48] Exhibit P-11; Docket, p. 3409.
[49] Agreement No. 18 of the MOA provides;

fact, there is no evidence presented to establish that the imported products would have been sold separately in the Philippines under a different brand other than that of CPC. Thus, the royalties which are related to the goods being valued (and which were paid by petitioner to CPC as a condition of the sale of the imported goods) are considered part of the dutiable value subject to customs duties pursuant to Section 201 of the TCCP.

To be sure, all importations of CPPI of CPC's products covered by the MOA are subject to customs duties. The computation of the dutiable value includes the 5% of the royalty payments made by CPPI to CPC.

Royalties related to imported goods form part of the transaction value which is subject to customs duties and taxes

Respondent assessed petitioner of deficiency duties and taxes, including penalties on royalty payments, as follows:

Year	Royalty Payments	Ave. Duty	Additional Duties	Additional VAT	Penalty 2x	Total Assessment
2004	₱ 493,492,504.50		₱ 20,632,111.00	₱ 2,063,211.10	₱ 45,390,644.20	₱ 68,085,966.30
2005	421,883,661.53		22,342,225.04	2,234,222.50	49,152,895.09	73,729,342.63
2006	334,434,514.84		1,663,591.28	166,359.13	3,659,900.81	5,489,851.22
			16,700,150.51	2,004,018.06	37,408,337.14	56,112,505.72
	₱1,249,810,680.87	**5%**	**₱ 61,338,077.83**	**₱ 6,467,810.79**	**₱135,611,777.25**	**₱203,417,665.88**

In computing the deficiency custom duties and taxes in the amount of ₱203,417,665.88, respondent based his computation on the royalty payments made by petitioner to CPC in the amount of ₱1,249,810,680.87, which was derived from the 5% of the total net sales amounting to ₱24,996,213,617.40[50] of the licensed products.

"18. This agreement shall remain in force for a period of ten (10) years unless earlier terminated as of the last day of any month by at least sixty days' prior written notice by either party. Subject to the approval of the Intellectual Property Office, this agreement may be renewed under such terms and conditions as may be agreed upon by the parties. **If USER fails to pay the royalty** herein provided or to observe the standards specified by OWNER or otherwise violates the terms of this agreement in any way, **OWNER may terminate this agreement** forthwith by written notice to USER, provided, however, that OWNER may terminate this agreement forthwith if USER ceases to be controlled by OWNER.

[50] Exhibit "P-9".

Petitioner contends, however, that part of the royalty payments amounting to ₱658,863,360.40 with corresponding net sales of ₱13,177,267,208.00[51] are for locally manufactured products; thus, not subject to customs duties and taxes. In support thereof, petitioner presented various documents such as the Schedule of Royalty Payments;[52] Memorandum of Agreements between CPPI and CPC;[53] labels of locally manufactured goods;[54] Bureau of Food and Drugs Certificates of Notifications;[55] Amended Articles of Incorporation;[56] Licenses to Operate;[57] Judicial Affidavit[58] and Supplemental Sworn Statement[59] of Mr. Luis N. Tura; Sworn Statement of Mr. Edwin Ramos;[60] ICPA Report;[61] Schedule of Petitioner's Importations;[62] Import Entry and Internal Revenue Declarations, Bureau of Customs Official Receipts, Bill of Ladings and Commercial Invoices;[63] Audited Financial Statements for years ending 2003, 2004, 2005, and 2006;[64] Quarterly Value-Added Tax Returns from the 4th Quarter of 2003 to 3rd Quarter of 2006;[65] Accounting System Generated Trial Balances for the 4th Quarter of 2003 to 3rd Quarter of 2006;[66] Computation of Total Purchases-Conversion Cost;[67] Analysis of Petitioner's Total Domestic Purchases of Goods Other Than Capital Goods from October 2003 to September 2006;[68] and, Royalty Computation.[69]

The Court finds for the petitioner.

In its Quarterly VAT Returns for the fourth quarter of 2003 to the third quarter of 2006, petitioner declared the following importations of goods other

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[51] ₱658,863,360.40 ÷ 5%.
[52] Exhibit "G-1".
[53] Exhibits "I-1", "I-2", "I-3", "I-4", "I-5", "I-6", "I-7", "I-8", "I-9", "I-9-1", "I-9-2", "I-9-4", "I-9-5", "I-9-6" and "P-10", "P-10-1".
[54] Exhibits "M-1", "M-1-2", "M-2", "M-2-2", "M-3", M-3-2", "M-4", "M-4-2", "M-5", "M-5-2", "M-6", "M-6-2", "M-7", "M-7-2", "M-8", "M-8-2", "M-9", "M-9-2", "M-10", "M-10-2", "M-11", "M-11-2", "M-12", "M-12-2", "M-13", "M-13-2", "M-14", "M-14-2", "M-15", "M-15-2", "M-16", "M-16-2", "M-17", "M-17-2", "M-18", "M-18-2", "M-19", "M-19-2", "M-20" and "M-20-2".
[55] Exhibits "N-1", "N-2", "N-3", "N-4", "N-5", "N-6", "N-7", "N-8" and "N-9".
[56] Exhibits "O" to "O-1".
[57] Exhibits "Q-1", "Q-1-1", "Q-2", "Q-2-1", "R-1" and "R-1-1".
[58] Exhibit "V".
[59] Exhibit "P-15".
[60] Exhibit "P-16".
[61] Exhibit "P-1".
[62] Exhibit "P-2".
[63] Exhibits "P-3-1" to "P-3-2063".
[64] Exhibits "sub markings of P-4".
[65] Exhibits "sub markings of P-5".
[66] Exhibits "P-6-1", inclusive of sub markings.
[67] Exhibit "P-7".
[68] Exhibit "P-8".
[69] Exhibit "P-9".

than capital goods in the total amount of ₱7,929,015,520.02, broken down as follows:

Period	**Exhibit**	**Amount**
4th Quarter 2003	P-5-1	₱ 428,184,973.04
1st Quarter 2004	P-5-2	663,955,298.20
2nd Quarter 2004	P-5-3	671,555,973.50
3rd Quarter 2004	P-5-4	708,347,375.20
4th Quarter 2004	P-5-5	563,821,645.50
1st Quarter 2005	P-5-6	677,768,506.40
2nd Quarter 2005	P-5-7	837,507,800.30
3rd Quarter 2005	P-5-8	749,591,801.60
4th Quarter 2005	P-5-9	670,877,777.10
1st Quarter 2006	P-5-10	626,740,530.43
2nd Quarter 2006	P-5-11	645,242,910.17
3rd Quarter 2006	P-5-12	685,420,928.58
Total Importations per VAT Return		**₱ 7,929,015,520.02**

In addition to the importations amounting to ₱7,929,015,520.02, as reported in the VAT returns, the Court-commissioned independent CPA (ICPA), Mr. Edwin F. Ramos, included the freight charges of ₱73,502,445.00 in the computation of the total importations made for the said period, which amounted to ₱8,002,517,965.02:[70]

Total importations per VAT returns		₱ 7,929,015,520.02
Add: Freight charges *(Exhibit P-7)*		
D Cargo Expediter Corporation	₱ 2,838,284.76	
Proven Customs Brokerage Corp.	59,963,661.41	
Skyland Brokerage, Inc.	10,700,498.83	73,502,445.00
Importations		**₱ 8,002,517,965.02**

Thus, from October 2003 to September 2006, the ICPA computed and summarized the customs duties on royalties and related VAT of the imported goods purchased from Colgate entities in the amounts of ₱34,282,263.15 and ₱3,556,960.94, respectively, as shown below:[71]

Importations	₱ 8,002,517,965.02
Less importations from Non-Colgate entities	1,612,304,113.35
Importation from Colgate entities	₱ 6,390,213,851.67
Grossed up average based on cost ratio of 46%[72]	46.6%
Equivalent sales	₱ 13,712,905,261.09
Royalty rate (see *Exhibit P-9*)	5%
Tax base	₱ 685,645,263.05

70 Exhibit "P-1", pp. 11 and 13.
71 Exhibit "P-1", p. 13.
72 Exhibit 'P-1", p. 14, Table 3.

Duty rate	5%
Duties	₱ 34,282,263.15
Related VAT (10%-12%)	3,556,960.94
Total due	**₱ 37,839,224.09**

A further verification and examination of the records, however, discloses that out of the importations from non-Colgate entities in the amount of ₱1,612,304,113.35, the amount of ₱46,439,545.34[73] with no supporting documents was included. Accordingly, the importations allegedly from non-Colgate entities in the amount of ₱46,439,545.34 should be added back since the Court cannot ascertain whether such importations indeed pertain to non-Colgate entities. Thus, the related VAT is computed as follows:

	Importation from Colgate entities	**Tax base at 5%**	**Duties based on cost**	**VAT based on cost**	**VAT based on sales (Cost ratio of 46.6%)**
October 2003 – January 2006	₱4,856,451,489.64	₱242,822,574.48	₱12,141,128.72	₱1,214,112.87	₱2,605,392.42
February 2006 – September 2006	1,373,123,632.85	68,656,181.64	3,432,809.08	411,937.09	883,985.17
Difference in importations between VAT returns and Schedule	87,136,284.18	4,356,814.21	217,840.71	26,140.89	56,096.33
Total	₱6,316,711,406.67	₱315,835,570.33	₱15,791,778.52	₱1,652,190.85	₱3,545,473.92
Difference (at 12% VAT)	17,843,151.55	892,157.58	44,607.88	5,352.95	11,487.02
Total per custom duties computation (per ICPA)	**₱6,334,554,558.22**	**₱316,727,727.91**	**₱15,836,386.40**	**₱1,657,543.79**	**₱3,556,960.94**
Adjustments (per this Court):					
Add: Difference in total importations from Colgate entities computed by ICPA against actual amount used (at 12% VAT)	55,659,293.45[74]	2,782,964.67	139,148.23	16,697.79	35,832.16
Add: alleged Importations from non-Colgate entities with no supporting documents ₱46,439,545.34 (at 12% VAT)	46,439,545.34	2,321,977.27	116,098.86	13,931.86	29,896.70
Total	**₱ 6,436,653,397.01**	**₱ 321,832,669.85**	**₱ 16,091,633.49**	**₱1,688,173.44**	**₱3,622,689.80**

From the foregoing, petitioner is liable for deficiency customs duties and VAT on royalties amounting to ₱34,531,402.34 and ₱3,622,689.80, respectively, computed as follows:

Importations from Colgate entities (as computed by ICPA)	₱ 6,390,213,851.67
Add: alleged importations from Non-Colgate entities with no supporting documents	46,439,545.34
Adjusted importations from Colgate entities	₱ 6,436,653,397.01
Grossed up average based on cost ratio of 46%	46.6%
Equivalent sales	₱ 13,812,560,937.79
Royalty rate	5%
Tax base	₱ 690,628,046.89
Duty rate	5%
Duties (based on sales)	₱ 34,531,402.34
Related VAT (10%-12%)	3,622,689.80
Total due	**₱ 38,154,092.14**

[73] Exhibit "P-1", p. 6, Annex 1-as.
[74] ₱6,390,213,851.67 less ₱6,334,554,558.22.

Arrastre and Wharfage Fees Considered as "Other Charges" Subject to VAT

Respondent assessed petitioner for unpaid VAT on arrastre and wharfage fees pursuant to Section 107 of the National Internal Revenue Code (NIRC), as amended, which provides, as follows:

> "SEC. 107. Value-added Tax on Importation of Goods. —
>
> (A) In General. — There shall be levied, assessed and collected on every importation of goods a value-added tax equivalent to ten percent (10%) based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody: Provided, That where the customs duties are determined on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any: xxx"

Petitioner argues that following the rule of *ejusdem generis* the phrase *"other charges"* in Section 107 of the NIRC of 1997, as amended, must be limited to such of the same nature as customs duties and excise taxes, which are state taxes; that it should not include wharfage and arrastre fees, which are not imposed by the state but were paid for the services rendered. Respondent, however, counter-argues that the word "charges" if given their plain meaning refers to costs or amount paid or to be paid for a purchase; and, that it is clear from the language of the law that Congress intended to include other fees to be paid by the importer, such as arrastre and wharfage fees. Had congress intended to restrict the meaning of "other charges" to taxes imposed by the State, it should have stated "other taxes" or "other duties", which are much more accurate.

Petitioner further asserts that the tax imposed would amount to double taxation since petitioner would have to pay input VAT for arrastre and wharfage fees to respondent on top of its payment of wharfage fees to the Philippine Ports Authority (PPA) and arrastre fees to International Container Terminal Services, Inc. (ICTSI). Respondent, on the other hand, counter-argues that the VAT paid to PPA and ICTSI involve a different tax matter; that the VAT imposed in this case is pursuant to Section 107 of the NIRC of 1997, as amended, on the importation of goods while the VAT paid by petitioner to PPA and ICTSI is VAT on services pursuant to Section 108 of the NIRC of 1997, as amended; hence, there is no double taxation.

The Court cannot sustain petitioner's theory limiting the phrase "other charges" to mean as those of the same nature as customs duties and excise taxes. The afore-quoted Section 107 of the NIRC of 1997, as amended, is clear, plain and unequivocal in providing that VAT on importation of goods is imposed **on the total value used by the Bureau of Customs in determining tariff and customs duties, <u>plus</u> customs duties, excise taxes, if any, and <u>other charges</u>**. The elementary rule in statutory construction is that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum.* From the words of a statute there should be no departure.[75]The *verba legis* or *plain meaning rule* rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute.[76]

The Court, therefore, finds no error in respondent's imposition of VAT on arrastre and wharfage fees as these are considered *"other charges"* contemplated under Section 107 of the NIRC of 1997, as amended. Equally settled is the rule that *wharfage* is a charge against the cargo which is loaded or unloaded in the safety and security of the port.[77] *Arrastre charge,* on the other hand, is the amount which the owner, consignee, or agent of either, of merchandise or baggage, has to pay for the handling, receiving and custody of the imported or exported merchandise or the baggage of the passengers.[78]

Considering that the arrastre and wharfage fees are considered *"other charges"* included as part of the tax base of VAT on importation under Section 107 of the NIRC of 1997, as amended, the VAT imposed thereon, apart from the VAT imposed under Section 108 of the NIRC of 1997, as amended, on services rendered by PPA and ICTSI, does not constitute double taxation.

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[75] *Camp John Hay Development Corporation vs. Central Board of Assessment Appeals, represented by its Chairman Hon. Cesar S. Gutierrez, Adelina A. Tabangin, in her capacity as Chairman of the Board of Tax (Assessment) Appeals of Baguio City, and Hon. Estrella B. Tano, in her capacity as the City Assessor of the City of Baguio*, G.R. No. 169234, October 2, 2013.

[76] *Southern Cross Cement Corporation vs. The Philippine Cement Manufacturers Corp. et al.*, G.R. No. 158540, July 8, 2004 quoting *Republic vs. Court of Appeals*, G.R. Nos. 103882 & 105276, 25 November 1998, 299 SCRA 199, 270-271, J. Puno Concurring, *among others*.

[77] *Associated Sugar, Inc., et al., vs. Commissioner of Customs, et al.*, G.R. No. L-30391, November 25, 1982.

[78] Sec. 1(e), Republic Act No. 1371.

Double taxation means taxing the same property twice when it should be taxed only once; that is taxing the same person twice by the same jurisdiction for the same thing. It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as direct duplicate taxation, the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character.[79]

The subject matter of Section 107 of the NIRC of 1997, as amended, is the importation of goods, the tax base of which is the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges; in Section 108 of the NIRC of 1997, as amended,[80] the subject matter is the sale or exchange of services, including the use or lease of properties and the tax base thereof is the gross receipt derived from such sale or exchange of services. The two taxes levied under Sections 107 and 108 of the NIRC of 1997, as amended, are not imposed on the same subject matter for the same purpose.

Furthermore, petitioner is not the taxpayer of the VAT under Section 108 of the NIRC of 1997, as amended; it merely shoulders the tax burden passed-on by the seller of the service. This proceeds from the well-established principle that in indirect taxes, like VAT, the incidence of taxation falls on one person but the burden thereof can be shifted or passed on to another person.[81] The VAT under Section 107 of the NIRC of 1997, as amended, on the other hand, is imposed on petitioner for being the importer of the product as the law clearly provides that such tax is to be paid by the importer prior to the release of such goods from customs custody.[82] Evidently, there is no double taxation.

From the foregoing, petitioner is therefore liable for deficiency VAT on arrastre and wharfage for the fourth quarter of 2003 to the third quarter of 2006 in the total amount of ₱251,045.87.

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[79] *Commissioner of Internal Revenue vs. Solidbank Corporation,* G.R. No. 148191, November 25, 2003.

[80] SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. -
(A) Rate and Base of Tax. - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: xxx.
The phrase 'sale or exchange of services' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, xxx.

[81] *Asia International Auctioneers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 179115, September 26, 2012.

[82] Section 107, NIRC.

Non-imposition of Penalties for the Alleged Deficiencies

Petitioner objects to respondent's imposition of penalty which is twice the amount of the disputed duties and taxes claiming that such imposition is arbitrary and violative of its Constitutional right to due process; that it was not negligent in the payment of the correct duties as it believes that the royalty payments to CPC should not be included in the computation of the transaction value, not being a condition to the importation of goods from CPC; and, that at the time of importation, it could not compute the amount of royalty and corresponding duty as the royalty payment is based on the net sales of the licensed products in the Philippines, and there were yet no rules or regulations governing the payment of additional duties related to royalty payments after importation. The Voluntary Disclosure Program became available only in July 2007 after the PEAG issued the FARR. Since the issue is novel and there is no jurisprudence available at the time of its importation, petitioner asserts that it cannot be said to have deliberately or inadvertently failed to pay the customs duties and taxes in connection with its royalty payment to CPC.

Petitioner also contends that respondent's authority to impose administrative penalty under Section 3611 of the TCCP, as amended, cannot be arbitrarily exercised; that it did not receive during the proceeding in the administrative level a complaint from the Legal Service or from the PEAG for determination of imposable penalties on alleged failure to pay the correct customs duties as mandated by Customs Memorandum Order (CMO) Nos. 001-02 and 002-02; and, that the lack of observance of the required procedure has denied it of the opportunity to contest the findings of respondent.

Petitioner further claims that respondent himself recognized the propriety of the reduction of the administrative penalties when it agreed to a proposed settlement amount of ₱48,467,503.00, inclusive of penalty equivalent to 50% of the revenue loss of ₱32,311,669.00 or a penalty amount of ₱16,155,834; and, that if at all petitioner is found liable, it should be made to pay only the amount equivalent to 50% of the total revenue loss.

Respondent counter-argues that in the SFR and FARR of the PEAG audit team, petitioner was found to be guilty of negligence for its failure to exercise reasonable care and competence to ensure that the statement is correct. The PEAG audit team found three acts constituting negligence on the part of petitioner for the following reasons, namely: (i) petitioner did not submit a copy per import entry of the Supplemental Declaration on Value (SDV); (ii) petitioner did not disclose in the import entry that it was paying royalty to its parent company; and, (iii) petitioner's contention that the royalty payment is not a valid issue.

Respondent further argues that the parties' unfruitful negotiations for an amicable settlement, granting that it was initially signed by respondent, cannot in any manner be regarded as an admission of any reduced liability.

Imposition of penalty in an amount not more than twice of the revenue loss is authorized when the importer's failure to pay correct duties and taxes on imported goods is attended with negligence. In this regard, Section 3611 of the TCCP, as amended,[83] provides:

> "SEC. 3611. Failure to Pay Correct Duties and Taxes on Imported Goods. — Any person who, after being subjected to post-entry audit and examination as provided in Section 3515 of Part 2, Title VII hereof, is found to have incurred deficiencies in duties and taxes paid for imported goods, shall be penalized according to three (3) degrees of culpability subject to any mitigating, aggravating or extraordinary factors that are clearly established by the available evidence:
>
> (a) **Negligence — When a deficiency results from an offenders failure, through an act or acts of omission or commission, to exercise reasonable care and competence to ensure that a statement made is correct, it shall be determined to be negligent and punishable by a fine equivalent to not less than one-half (½) but not more than two (2) times the revenue loss.**
>
> (b) Gross Negligence — When a deficiency results from an act or acts of omission or commission done with actual knowledge or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligation under the statute, it shall be determined to be grossly negligent and punishable by a fine equivalent to not less than two and a half (2½) but not more than four (4) times the revenue loss.
>
> (c) Fraud — When the material false statement or act in connection with the transaction was committed or omitted knowingly, voluntarily and intentionally, as established by clear and convincing evidence, it shall be determined to be fraudulent and be punishable by a fine equivalent to not less than five (5) times but not more than eight (8) times the revenue loss and imprisonment of not less than two (2) years but not more than eight (8) years.
>
> The decision of the Commissioner of Customs, upon proper hearing, to impose penalties as prescribed in this Section may be appealed in accordance with Section 2402 hereof."

[83] Section 16 of Republic Act No. 9135, An Act Amending Certain Provisions of Presidential Decree No. 1464, Otherwise Known as The Tariff and Customs Code of the Philippines, as Amended, and for Other purposes.

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The manner and procedure by which the aforesaid penalty may be imposed is governed by Section V of Customs Memorandum Order (CMO) No. 2-2002 *vis-a-vis* Customs Memorandum Order No. 1-2002.[84]

CMO No. 1-2002 provides:

"I. **Objectives**

xxx xxx xxx

2. **To afford importers/customs brokers the opportunity to be heard and to present evidence to rebut** the foregoing administrative charges and/or **the imposition of such administrative fines and penalties.**

II. **Administrative Provisions**

1. **This Order shall cover administrative complaints** (a) against importers and customs brokers for failure to keep certain records and documents as required and as defined in the law and the existing implementing rules and regulations, or for refusal to grant free and full access to such records and documents for official audit purposes; and (b) **against importers for failure to pay the correct duties and taxes with negligence** or fraud, as uncovered during the official audit. **Complaints shall be filed under oath before a notary public or any customs officer authorized by law to administer oaths.**

xxx xxx xxx

3. **The administrative complaint shall be heard at the Legal Service** with due notice to the complainant office and the concerned respondents. The complainant office shall be represented by a prosecutor or team of prosecutors as shall be specifically designated by the Commissioner of Customs. **The administrative case shall be heard by the Director of Legal Service.**

III. Operational Provisions

xxx xxx xxx

3. **Upon receipt of the complaint, the Legal Service shall immediately send a copy of the complaint**, including attachments pertinent to the complaint, **to the importer** and/or customs broker, as the case may be, who shall be given a period of fifteen (15) days from receipt of the complaint, to answer said complaint. Upon receipt of the answer, the

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[84] VI. Appeals Provisions
The decision of the Commissioner of Customs, upon proper hearing, to impose the penalties prescribed in Section V of this Order may be appealed in accordance with Section 2402 of the TCCP. The procedure in the determination of administrative sanctions provided for in said Section V shall be governed by Customs Memorandum Order No. 1-2002. (This provision is quoted in Ajinomoto Philippines Corporation vs. Commissioner of Customs, CTA Case No. 7901, June 24, 2013).

complainant office shall be given a period of five (5) days to make an optional reply copy-furnished the respondents, after which the case shall be scheduled for hearing with notice to all concerned parties.

xxx xxx xxx

5. In lieu of formal hearing, the parties may opt for the submission of memoranda with optional time to file rebuttal and sur-rebuttal, after which the case shall be deemed submitted for resolution." (Boldfacing supplied)

The afore-quoted provisions of the Customs Memorandum Order prescribe the roadmap in the administrative imposition of fines and penalties, which gives the importers and customs brokers their day in court.[85]

As there is no showing that the above-outlined administrative procedures were duly followed and considering petitioner's vehement contention that it did not receive a complaint on the supposed determination of imposable penalties on its failure to pay the correct customs duties from the Legal Service of the BOC, the Court cannot impose said penalty for petitioner's right to due process will be violated. Truth to tell, even in the administrative proceedings, due process may not be ignored because it is not merely a statutory right but a constitutional right. Indeed, our Constitution provides that "no person shall be deprived of life, liberty, or property without due process of law", which clause epitomizes the principle of justice which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial.[86]

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, Colgate-Palmolive Philippines, Inc. is hereby **ORDERED** to **PAY** respondent Commissioner of Customs the basic deficiency duties and taxes on royalty fees, arrastre and wharfage in the amount of ₱39,373,571.93, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

	Basic Tax Due	**25% Surcharge**	**Total**
I. Deficiency Duties and Taxes on Royalties Fees			
Customs duty	₱ 34,531,402.34	₱ -	₱ 34,531,402.34
VAT on duty	3,622,689.80	905,672.45	4,528,362.25
II. Deficiency VAT on Arrastre & Wharfage			
VAT	251,045.87	62,761.47	313,807.34
Total Assessment	**₱ 38,405,138.01**	**₱ 968,433.92**	**₱ 39,373,571.93**

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[85] *Ajinomoto Philippines Corporation vs. Commissioner of Customs*, CTA Case No. 7901, June 24, 2013.

[86] *National Development Company, et al., vs. The Collector of Customs of Manila*, G.R. No. L-19180, October 31, 1963.

In addition, petitioner is liable to pay delinquency interest at the rate of twenty percent (20%) per annum on the amount due of ₱4,842,169.59,[87] computed from June 9, 2008 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusion in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

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[87] ₱4,528,362.25 plus ₱313,807.34.