REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NATIONAL DENTAL SUPPLY
INCORPORATED,
Petitioner,

- versus -

C.T.A. CASE NO. 2826

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

6/30/80

DECISION

This is an appeal interposed by petitioner from the decision of respondent Commissioner of Customs, in Customs Case No. 76-25 (Manila Protest No. 9930), dated July 14, 1976, denying the former's claim for refund in the total amount of ₱11,056.13, as alleged excess duties and taxes paid in connection with the petitioner's importation of Multivest Investment, Dental Floss, Tru-Pour Flask bases and TruPour Flask Collars from the United States, computed (p. 1, Customs Rec.) as follows:

COMPUTATION OF EXCESS DUTIES AND SALES TAXES PAID CONSTITUTING THE TOTAL AMOUNT OF THIS CLAIM

Articles	Dutiable Value	Duty Collected	Rate	Duty Claimed	Rate
3600 (medium cans-5 lbs.) MULTIVEST INVESTMENT	30,589.64	15,294.82	(50%)	6,117.93	(20%)
550 rolls (150 yds.) in dispenser Nylon DENTAL FLOSS, WAXED	3,757.99	1,127.41	(30%)	365.81	(10%)
6 pkgs. (6) Dentsply TruPour FLASK: Bases only, assorted	220.73	154.51	(70%)	22.07	(10%)
3 pkgs. (25) Dentsply TruPour FLASK: Collars only	176.06	123.24	(70%)	17.61	(10%)
		₱16,699.98		₱6,533.42	
		6,533.42			
		₱10,166.56	EXCESS DUTY PAID		
	including 25% mark-up	₱12,708.20			
	7% AST	889.57	EXCESS SALES TAX PAID		

THEREFORE:	Excess Duty Paid:	₱10,166.56	
	Excess S. Tax Paid:	889.57	
		₱11,056.13	TOTAL AMOUNT REFUNDABLE ON THIS CLAIM

There exists in this case no dispute as to the facts.

As gathered from the aforesaid decision of respondent Commissioner of Customs dated July 14, 1976 (pp. 26-27, Customs Rec.) the facts are as follows:

> "Records show that a shipment of dental supplies consisting of 3600 (medium cans - 5 lbs.) Multivest Investment, 550 rolls (150 yds.) in dispenser Nylon Dental Floss, Waxed, 6 pkgs. TruPour Flask, bases only, assorted, and 3 pkgs. TruPour Flask, Collars arrived from Philadelphia, U.S.A. at this Port on October 12, 1975 ex SS 'Philippine Rizal', Reg. No. 2035, covered by Bill of Lading No. 4 and consigned to National Dental Supply, Inc., herein importer-protestant; that said shipment was declared under Entry No. 98518-75; that upon appraisal, multivest was reclassified from T.H. No. 68.07 at 20% ad val. to T.H. No. 38.19-B at 50% ad val.; dental floss from T.H. No. 90.17 at 10% ad val. tp T.H. No. 39.02-B at 50% ad val. and trupour flasks, base and collar, from T.H. No. 90.17 at 10% ad val. to T.H. No. 39.07 at 70% ad val., thereby resulting to discrepancies in the amounts of ₱10,166.56 and ₱889.57, or a total of ₱11,056.13 in the form of customs duty and advance sales tax, respectively; these assessment and payment were contested by the herein protestant claiming that duty and tax should have been based on the headings providing lower rate of duty and the corresponding Protest was filed on November 15, 1975 claiming refund of the alleged excess payment by reason thereof."

This decision having affirmed _in toto_ the prior decision of the Collector of Customs, petitioner, on August 13, 1976, appealed to this Court.

During the hearing of this case, respondent did not question the arithmetical computation of petitioner in its claim for refund in the total amount of ₱11,056.13.

The only issue is whether or not the total amount of ₱11,056.13 allegedly claimed by petitioner as over paid duties and advance sales tax on the importations of articles consisting of Multivest Investment, Dental Floss

Waxed, TruPour Flask Base and TruPour Flask Collars, are justified and legal, and, therefore, refundable.

As regards the classification of the item or article multivest, we find the stand of petitioner that it is classifiable under T.H. No. 68.07 at 20% ad val. well taken. This issue has already been passed upon by us in the case of National Dental Supply, Inc. vs. The Commissioner of Customs C.T.A. Case No. 2757, May 16, 1979, wherein this Court held thus:

> "The records show that Multivest is a reddish powder, consisting of 90% quartz and cristobalite, and 10% binders, magnesium oxide and acid phosphate, which if mixed in precise proportion with water, turns into a plastic mass which hardens in a few minutes. It contains no gypsum nor any derivatives. Therefore it contains no plasters. The principal use of the article in question is to make high-heat resisting and insulating molds into which molten chrome cobalt metal may be cast. Subsidiary uses are for making crucibles, masonry for furnaces, and other purposes where heat resisting and insulating material is required. (pp. 107-108, CTA records.)"
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> "It seems clear, therefore, that Multivest is a mixture of mineral materials that are by themselves heat-insulating. It is a heat-insulating mineral material, not by mere accident, but by design, and its precise function is to store heat. Only a heat-insulating material can perform this function. Since it is the general use to which articles are generally adapted and for which they are generally used which determines their character within the meaning of the tariff laws (La Compañia General de Tabacos de Filipinas vs. United States, 8 Phil. 438), there seems to be no doubt that Multivest should fall under Tariff Heading 68.07 at 20% ad valorem."

As regards the item Dental Floss (Nylon), petitioner claimed that it should be classified under Tariff Heading No. 90.17 at 10% ad valorem instead of Tariff Heading No. 39.02-B at 50% ad valorem as claimed by respondent. The issue in the classification of this item has already been settled by this Court in the aforecited case of

National Dental Supply, Inc. vs. The Commissioner of Customs, supra, wherein this Court again held:

> "This article is a thread-like material of several extra-fine nylon strands, apparently not twisted along its axis, but waxed to form a thread-like appearance. It is "spooled" to a length of 150 yards, such that the beginning of the composite strand could be pulled out of the center of an imaginary spool. The article is encased in a cylindrical glass container with a metal cover, the center of which has a hole through which the thread comes through. Outside and near the periphery, one point of the cover is indented outward to serve as a cutter. The article is commonly known as "dental floss." (p. 110, CTA records.)"
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> "Dental floss is used to remove foreign matter from proximal surfaces of the teeth. It works into the crevice between the tooth and gingiva to remove oral debris and interrupt plaque formation. Dental Floss may be used also to detect overchanging fillings and in some cases incipient tooth decay. And because of its "waxed" quality it may be used as a vehicle for cleaning and polishing compounds, even flourides, to reach interproximal and slightly beyond the gingival margins. Its secondary function, because of its relative strength and the convenience of its presence in a dental office, is for suturing as imitation catgut. The literature recommends sterilization before use as a suture. (pp. 110-111, CTA records.)"
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> "As correctly pointed out by respondent, an instrument is a tool, utensil or implement. As such it is capable of being reused over and over for the same purpose without being consumed or becoming useless. However, subject imitation catgut is consumed or discarded after each use and, therefore, has the nature of "supplies" and not that of an instrument. In other words, it is not an instrument, not even a dental instrument, which can be classified under Tariff Heading 90.17 as claimed by petitioner."
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> "Under Tariff Heading 51.02, under which respondent classified the subject nylon imitation catgut or Dental Floss, imitation catgut made from yarn of man-made fibers covered therein consists of highly twisted yarn with a heavy dressing to increase its strength and render it waterproof and sometimes translucent. It is sometimes dyed. Imitation catgut remains in this heading irrespective of its cross-sectional dimensions. (Explanatory Notes to the Brussels Nomenclature quoted in Tejam, Commentaries on the Revised Tariff and Customs Code of the Philippines, Vol. 11, 1973 Edition, p. 901)"

"All these products are generally in long lengths, but remain classified here even if cut into short lengths and whether or not put up for retail sale. They are used according to their different characteristics in the manufacture of, among others, brushes and surgical sutures. (Explanatory Notes to the Brussels Nomenclature quoted in Tejam, Ibid.)"

"The Dental Floss in question was imported in 300 100-gram jars but not certified to be sterile. According to note 3(a) to Chapter 30, Tariff and Customs Code, nylon imitation catgut for suturing when sterile is covered by Tariff Heading 30.05. This material is, however, usually put up in anti-septic solutions or in sealed sterile container, unlike the subject Dental Floss which is spooled and encased in a cylindrical glass container with a metal cover, with a hole through which the thread comes through and not certified to be sterile. And the Brussels Explanatory Notes to Tariff Paragraph 30.05 state that this heading excludes non-sterile suture materials, which materials according to their nature fall within Schedule XI. (p. 572, Tejam, Ibid) As stated above, according to the Explanatory Notes to the Brussels Nomenclature, non-sterile nylon imitation catgut for suturing is classified under Tariff Heading 51.02 at 30% ad valorem which covers, among others, imitation catgut of man-made fiber materials."

"There would seem to be no doubt, therefore, that the correct classification of Nylon Imitation Catgut for Suturing and Debris Removing (Dental Floss) is Tariff Heading 51.02 at 30% ad valorem.)

Accordingly, the claim of petitioner that the dental floss is classifiable under Tariff Heading No. 90.17 at 10% ad valorem not well taken, it is hereby denied.

As regards the imported items TruPour Flasks Base and TruPour Flask Collar, respondent, with respect to these two items contends that they should be classified under Tariff Heading No. 39.07 at 70% ad valorem, instead of Tariff Heading No. 90.17, at 10% ad valorem, as claimed by petitioner, because the said items are plastic materials, and under Chapter 90 Note 1(e) of the Tariff and Customs Code, as amended, plastic materials, falls under the classification of Tariff Heading No. 39.07 at 70% ad valorem. On the other hand, petitioner claims that for respondent to classify TruPour Flask

Base and Collar under Tariff Heading 39.07 simply because it is made of plastic is erroneous, since Tariff Heading 39.07 is a general provision which may only be invoked if the article is not specifically covered in any heading of the nomenclature. This article being a dental appliance used as a tool in molding dentures, by specific design and function, petitioner concludes that the correct classification would be under Tariff Heading 90.17 at 10% ad valorem.

We find petitioner's stand, with respect to the TruPour Flasks Base and TruPour Flasks Collar, well taken. Tariff Heading No. 90.17, at 10% ad valorem of the Tariff and Customs Code provides as follows:

> "90.17 Medical, dental, surgical and veterinary instruments and appliances (including electro-medical apparatus and ophthalmic instruments) . . . . ad val. 10%"

Under the aforesaid Tariff Heading No. 90.17, Montano A. Tejam, in his "Commentaries on the Revised Tariff and Customs Code," Vol. III, pp. 1868-1869, 1973 Ed., stated as follows:

> "This heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives, etc.), either to make a diagnosis, or to prevent or treat an illness, or to operate, etc., i.e., generally speaking, to carry out some treatment on the patient. Instruments and appliances for anatomical or autoptic work, dissection, etc., are also included, as are, under certain conditions, instruments and appliances for dental laboratories (see (H) below). The instruments falling within the heading may be made of any material (including precious metals)."

Although the aforesaid flask and trupour bases are made of plastic, it could not be denied that these items are dental appliances and/or instruments intended to be used for dental molding processes or obtain certain objectives in dental medicine. (pp. 7 & 14. t.s.n. Oct. 4, 1979) This fact is supported by the Brochure which says in effect that trupour flask, collar and base are instruments or appliances used in the exercise of professional practice and the actual use of said items are clearly illustrated in pictures 1 to 12 of the said brochure. (see Exh. "J"; see also pp. 12-13, t.s.n., Oct. 4, 1979.)

The very fact that these items (trupour flask, base and collar) are made of plastic materials will not justify respondent in classifying them under Tariff Heading No. 39.07 at 70% ad valorem because this tariff heading refers only to those articles which may not be classified under a specific tariff heading. The Explanatory Notes to the Brussels Nomenclature as commented by Montano Tejam, clearly illustrates that said items or articles are dental instruments or appliances which are used exclusively for the purpose of denture molding procedure as illustrated in the said picture of the brochure. These items (TruPour Flask, Base and Collar) therefore, having the appellation or designation as instruments or appliances for dental processes, we are convinced to so hold that the same should be classified under heading 90.17 at 10% ad valorem.

However, as regards the portion corresponding to the advance sales tax claimed by petitioner to be refunded in the amount of ₱889.57, we are contrained to deny the refund of the aforesaid advance sales tax in view of the fact that nothing in the records show that petitioner had filed its written claim for refund with the

Commissioner of Internal Revenue and that the latter was not made a party to this case. (Wise and Company vs. Commissioner of Customs, CTA. Case No. 2717, Dec. 29, 1977.) And, in a subsequent resolution in the said case of Wise and Company vs. Commissioner of Customs, C.T.A. Case No. 2717, dated January 15, 1979, upon a motion for reconsideration, this Court ruled as follows:

> "We disagree with the arguments presented by petitioner. The thinking of this Court in this matter is otherwise. In the case of Bell Hobart Manufacturing Incorporated vs. Commissioner of Customs (CTA Cases Nos. 2750, 2751, 2752 and 2753) the consolidated decision of which was promulgated on March 10, 1978, this Court, in not granting the claim for refund of petitioner insofar as the advance sales taxes are concerned and then affirming the decision in this case, has rendered the following ruling:
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>> x x x. We note however, that insofar as the claims for refund of the taxes (advance sales tax)[are concerned (sic)] in the amount of ₱3,522.00, ₱1,444.00, ₱1,449.00 and ₱1,224.00 are concerned, the Commissioner of Internal Revenue had not been impleaded in these judicial suits for recovery of an internal revenue tax erroneously or illegally collected so that this Court did not acquire jurisdiction over him. (Section 306, National Internal Revenue Code). As held by this court in the recent cases of Wise and Company, Inc., vs. Rolando G. Geotina, <u>supra</u>; NCR Corporation (Philippines) vs. Commissioner of Customs, <u>supra</u>, the Court of Tax Appeals has no jurisdiction as petitioner failed to file the claim for refund in writing with the Commissioner of Internal Revenue in accordance with Section 309 of the National Internal Revenue Code, and <u>that said Commissioner of Internal Revenue has not been made a party respondent</u>. (Luna vs. Commissioner of Customs, CTA Case No. 1947, November 29, 1968; Philippine Wallboard Corp. vs. Commissioner of Customs, CTA. Case No. 2136, September 30, 1972; Proctor and Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2155, Resolution dated April 15, 1971; Ace Publications, Inc. vs. The Commissioner of Customs and Collector of Customs, L-18808, May 29, 1964, 11 SCRA 147; Tagum Electric Company, Inc., vs. Commissioner of Customs, CTA Case No. 2749, Resolution dated September 13, 1976.)

"We reiterate our position that the Court of Tax Appeals did not acquire jurisdiction as petitioner failed to file the claim for refund of the advance sales tax in writing with the Commissioner of Internal Revenue in accordance with Section 306 of the National Internal Revenue Code, and that the said Commissioner of Internal Revenue has not been made a party respondent. (Luna vs. Commissioner of Customs, CTA Case No. 1947, November 29, 1968; Philippine Wallboard Corp. vs. Commissioner of Customs, CTA Case No. 2136 September 30, 1972; Proctor and Gamble Philippine Manufacturing Corporation vs. Commissioner of Customs, CTA Case No. 2155, Resolution dated April 15, 1971, Ace Publications, Inc. vs. The Commissioner of Customs and Collector of Customs, L-18808, May 29, 1964, 11 SCRA 147; Tagum Electric Company, Inc., vs. Commissioner of Customs, CTA Case No. 2749, Resolution dated September 13, 1976.)

"Again, in Bell Hobart Manufacturing Incorporated vs. Commissioner of Customs (CTA Case Nos. 2750, 2751, 2752 and 2753) <u>supra</u>, we have explained thus-

> We are not unaware of the provisions of the second paragraph of Section 1708 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, that "if as a result of the refund of customs duties there would necessarily result a corresponding refund of internal revenue taxes on the same importation, the collector shall likewise certify the same to the Commissioner who shall cause the said excess taxes to be paid, refunded or tax credited in favor of the importer, with advice to the Commissioner of Internal Revenue." However, under the fundamental rule of statutory construction that all statutes relating to the same subject are to be construed with reference to each other so that effect may be given to all the provisions of each (Madrigal vs. Rafferty, 38 Phil. 414; 51 Am. Jur. 363), the afore-quoted provisions of law should be interpreted in connection with Section 306 of the National Internal Revenue Code. The Commissioner of Internal Revenue being a person who is bound by the judgment to be rendered in a judicial suit for the recovery of any national internal revenue tax alleged to have been erroneously or illegally assessed or collected, he is a party necessary to a complete determination and settlement of the questions involved therein.

"The interpretation that the Commissioner of Internal Revenue has no more power to determine the legality of a claim for refund of internal revenue taxes such as sales tax and compensating tax on imported articles, and thus claims for refund of said taxes which should be filed with the Commissioner of Internal Revenue as required under Sections 306 and 309 of the Internal Revenue Code are no longer necessary is not justified. The law is not clear enough to support such a conclusion. Such argument and construction would mean an implied partial repeal or amendment of Sections 306 and 309 of the National Internal Revenue Code and will certainly affect the procedure for appeal provided for in Rep. Act No. 1125. This is not the correct interpretation because, as stated earlier, Section 1708 of the Tariff and Customs Code is ambiguous and not clear to this effect. Repeal by implication is not favored unless it is manifest that the legislature so intended it. (Commissioner of Customs vs. Esso Standard Eastern, Inc., 66 SCRA 113.) And statutes must be construed so as to harmonize all apparent conflicts and give effect to all provisions whenever possible. (Lechoco vs. Civil Aeronautics Board, 43 SCRA 670; The Philippine American Management Employees Association, 49 SCRA 194; Jalandoni vs. Endaya, 55 SCRA 261.)"

On appeal of our decision and resolution by petitioner Wise and Company in the aforecited case, the Supreme Court, in a minute resolution in GR. L-51242 denied the appeal on March 7, 1980.

WHEREFORE, respondent Commissioner of Customs is hereby ordered to refund petitioner, National Dental Supply, Inc., the amount of ₱9,414.96 which corresponds only to the excess duties paid on its imported articles.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, June 30, 1980

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge