REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE GOODYEAR TIRE AND RUBBER COMPANY OF THE PHILIPPINEs, LTD.,
Petitioner,

- versus -   C.T.A. CASE NO. 2645

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

9/21/81

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D E C I S I O N

From the decision of the Commissioner of Customs dated September 30, 1976 affirming that of the Collector of Customs for the Port of Manila dated January 5, 1976 dismissing Protest Cases Nos. 8627, 8627-A, 8628 and 8628-A against alleged over-assessment and payment of customs duties and internal revenue taxes on four (4) separate shipments of synthetic rubbers and/or rubber substitutes, petitioner The Goodyear Tire and Rubber Company of the Philippines, Ltd., filed with this Court two interrelated petitions for review. CTA Case No. 2841, entitled "The Goodyear Tire & Rubber Company of the Philippines, Ltd., vs. Commissioner of Customs", which is an appeal from the assessment and collection of the additional customs duties on the four (4) rubber shipments of petitioner;

and CTA Case No. 2645, entitled "The Goodyear Tire and Rubber Company of the Philippines, Ltd. vs. Commissioner of Internal Revenue", which was filed pursuant to the then Section 306 (now Section 292) of the National Internal Revenue Code for the recovery of alleged overpaid national internal revenue taxes on the said importations of synthetic rubbers and/or rubber substitutes collected by the Commissioner of Customs as deputy and agent of respondent Commissioner of Internal Revenue for the collection of internal revenue taxes on imported articles. The instant appeal is therefore a companion case of CTA Case No. 2841, which was decided by this Court in favor of petitioner The Goodyear Tire and Rubber Company of the Philippines, Ltd., on May 22, 1978, and which decision ordering the Commissioner of Customs to refund the additional customs duties involved therein had already become final and executory on July 25, 1978.

There is no controversy as to the facts of this case. As gathered from the records of CTA Case No. 2841, particularly the records of the Bureau of Customs pertaining to these proceedings, together with the pleadings, on which the instant appeal was submitted for decision by the parties, and narrated in the decision in said CTA Case No. 2841, petitioner The Goodyear Tire and Rubber Company of the Philippines, Ltd., during the period from November 10, 1972 to December 1972, imported from Japan synthetic rubbers and rubber substitutes which were purchased from the Japan Synthetic Rubber Co., Ltd., of Japan through the latter's local agent Mitsui Co., Ltd. Upon arrival of the shipments in the Philippines, petitioner filed with the Bureau of Customs the following import entries:

a) Import Entry No. 89077-72 --179 pallets of synthetic rubber and/or rubber substitutes --

Spryic-A	176,400 kgs.	at ₱11.50/lb
Stovic	11,550 kgs.	at ₱14.00/lb

b) Import Entry No. 94204-72 -- 96 pallets of synthetic rubber and/or rubber substitutes --

Spryic-A	148,149 lbs.	at ₱11.50
Lunaric-A	30,093 lbs.	at ₱11.50
Stovic	16,204 lbs.	at ₱14.00
Chillic	27,778 lbs.	at ₱11.50

c) Import Entry No. 94216-72 -- 205 pallets of synthetic rubber and/or rubber substitutes --

Lunaric	354,169 lbs.	at ₱11.50
Chillic	71,760 lbs.	at ₱.125
Stovic	25,463 lbs.	at ₱.145
Madonic	53,148 lbs.	at ₱15.00

d) Import Entry No. 94218-72 -- 45 pallets synthetic rubber and/or rubber substitutes--

Chillic	104,167 lbs.	at ₱11.50

On the basis of the commercial and consular invoices, petitioner declared the importation values of said shipments and paid the corresponding customs duties, taxes and charges due thereon. However, upon examination of the goods in question by the customs appraiser, a higher valuation was applied based on the Customs Valuation Circular No. 38-72 dated November 20, 1972 and the Customs records, as follows:

a) Import Entry No. 94204-72

Spryic-A at ¢13.00 per lb.
Lunaric-A at ¢12.00 per lb.
Stovic at ¢16.00 per lb.
Chillic at ¢13.25 per lb.

b) Import Entry No. 94216-72

Lunaric-A at ¢.12 per lb.
Chillic at ¢.1325 per lb.
Stovic at ¢.16 per lb.
Madonic at ¢15.00 per lb.

c) Import Entry No. 94218-72

Chillic at ¢.1325 per lb.

d) Import Entry No. 89077-72

Spryic-A at ¢13.00 per lb.
Stovic at ¢16.00 per lb.

As a consequence thereto, additional customs duties and taxes in the total amount of ₱9,735.00 and ₱6,537.00, respectively, were assessed against petitioner, details of which are as follows:

	Duties	Advance Sale Taxes
a) Import Entry No. 89077-72	₱6,651.00	₱4,332.00
b) Import Entry No. 94204-72	1,373.00	922.00
c) Import Entry No. 94216-72	1,033.00	694.00
d) Import Entry No. 94218-72	878.00	589.00
	₱9,935.00	₱6,537.00

Aside from the above additional customs duties and taxes, a fine of ₱2,746.00 on the importation covered by Import Entry No. 94204-72 was slapped on petitioner. Upon receipt of the above-mentioned assessment, payment was immediately made by petitioner to the Bureau of Customs.

Subsequently, petitioner filed Protest Cases Nos. 8627, 8627-A, 8628, 8628-A with the Collector of Customs on the following grounds:

(1) That the importation in question should have been assessed on the values stated in the commercial and consular invoices and other pertinent documents as provided for under Section 201 of the Tariff and Customs Code of the Philippines, as amended;

(2) That subject importation of synthetic rubber materials manufactured by Japan Synthetic Rubber Co. while code-named "Spryic A" or "Lunaric A", "Stovic" and "Chillic" by petitioner, are, in fact, the very same synthetic rubber materials code-named

"JSR 1712H," "JSR 1502" and "JSR 1778N" on page 32 of the Customs Valuation Circular having the following home consumption values:

JSR 1712H	$.125/lb
JSR 1502	$.145/lb
JSR 1778N	$.0125/lb

(3) Insofar as the 96 pallets covered by Import Entry No. 94204-72, under Protest No. 8627, is concerned, there is no basis for the imposition of the two-time fine inasmuch as there has been no misdeclaration as contemplated under Section 2503 of the Tariff and Customs Code.

On January 5, 1976, after a series of administrative hearings, the Collector of Customs of the Port of Manila rendered a decision dismissing the protests as without merit.

Within the reglementary period, petitioner appealed said decision to respondent Commissioner of Customs, who, on September 30, 1976, affirmed the aforesaid decision of the Collector of Customs. Hence, the appeal in CTA Case No. 2841. Likewise, within the reglementary period, petitioner filed on December 13, 1974 a claim for refund with respondent Commissioner of Internal Revenue of the additional internal revenue tax, or advance sales tax, in the total amount of ₱6,537.00, paid by it on its shipments of rubber materials through a letter dated December 10, 1974. ("Annex "C", petition for review, pp. 15-18, CTA records.) Under paragraph 4 of his answer dated March 20, 1975, respondent admits the filing of this claim for refund. (pp. 27-28, CTA records.)

The parties are not in controversy on the computation of the additional internal revenue tax payable by, or amount refundable to, petitioner as the case may be.

Petitioner assails the Government's right in assessing and collecting the additional internal revenue tax or advance sales tax aforesaid. The argument advanced is that the action of the Bureau of Customs in imposing higher valuation is arbitrary, erroneous, and without basis in fact and in law. And the reasons are: (1) In accordance with and on the basis of the import documents filed with the Bureau of Customs, such as the commercial invoices and the consular invoices, petitioner declared the true and correct export values of its shipments of synthetic rubbers and rubber substitutes. (2) There is absolutely no evidence that the invoice values of the importations are not their actual import values so as to justify a disregard thereof and a resort to the published valuation of the Bureau of Customs, more specifically Customs Valuation Circular No. 38-72 dated November 20, 1972, as the basis for the import values.

Is petitioner The Goodyear Tire and Rubber Company of the Philippines, Ltd., entitled to the refund or tax credit of the additional advance sales tax in the sum of ₱6,537.00 assessed and collected by the Bureau of Customs on its importations of synthetic rubbers and rubber substitutes involved in this case?

The controlling statute is Section 183(b) of the then 1939 National Internal Revenue Code, the pertinent provisions of which read:

> Sec. 183. Payment of percentage taxes. -
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> xxx xxx xxx
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> (b) Sales tax on imported articles.- When the articles are imported, the percentage taxes established in Sections 184, 184-A, 185, 185-A, 185-B, 186 and 186-B of this Code shall be paid in advance by the importer, in accordance with the regulations promulgated by the Secretary of Finance and prior to the release of such articles from customs' custody based on the import invoice value thereof, certified to as correct under penalties of perjury by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs

> duty and all similar charges, plus
> 100% of such total value in the case of articles enumerated in Sections 184 and 184-A,
> 50% of such total value in the case of articles enumerated in Sections 185, 185-A and 185-B; and
> 25% in the case of articles enumerated in Sections 186 and 186-B. (emphasis supplied.)

xxx xxx xxx

It is quite apparent, during the time material to this case, that the advance sales tax on imported articles is based on the landed cost thereof plus the corresponding mark-up. The landed cost of an imported article is the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin, if there is any, including freight, postage, insurance, commission, customsduty, and all similar charges. (Genato Commercial Corporation vs. Court of Tax Appeals, 104 Phil. 615; Philippine American Drug vs. Collector of Internal Revenue, 106 Phil. 161; Caltex (Phil.), Inc. vs. Acting Commissioner of Customs, L-24619, February 26, 1968, 22 SCRA 779; Commissioner of Customs vs. Celdran, L-23425, February 26, 1968, 22 SCRA 742.)

In CTA Case No. 2841, The Goodyear Tire & Rubber Company of the Philippines, Ltd.vs. Commissioner of Customs, wherein the question involved was whether or not the Commissioner of Customs erred in disregarding the commercial and consular invoice values as the bases of the home consumption values of the same imported synthetic rubbers and rubber substitutes involved in the instant case for purposes of imposing the ad valorem duty under Section 201 of the Tariff and Customs Code, this Court ruled that since there was no iota of proof presented by the Bureau of Customs to overcome the prima facie correctness of the values stated in the commercial or consular invoices submitted by the same petitioner herein The Goodyear Tire and Rubber Company of the Philippines, Ltd., the said invoice values should prevail. By reason of the identical or close similarity of the laws involved and the issues litigated, CTA Case No. 2841 being the customs aspect of this case, and as a matter of fact, as stated earlier, this suit was submitted for decision by the parties on the basis of the pleadings and records of CTA Case No. 2841; hence, has controlling effects on the instant proceeding, we will quote at length from the decision.

> Petitioner has religiously complied with said requirements of law by submitting the following evidence: the commercial

and consular invoices (Exhs. A-A to A-C, pp. 307, 309, Customs record); the Central Banl Release Certificates confirming the unit price per pound as stated in the said commercial and consular invoices (Exh. A-5); the draft drawn against petitioner for subject shipment (Exh. A-M) under the appropriate letter of credit in the total amount of U.S. $25,995.86 (Exh. A-L); and the debit made by Rizal Commercial Banking Corporation for the peso equivalent of the US $25,995.86 (Exh. A-N).

Aside from these documents, to further corroborate the truthfulness and correctness of the declared values in said documents, petitioner submitted additional documents like: (1) the firm offer dated November 9, 1972 issued by Mitsui & Co., Ltd., local agent for JSRC, showing that the values of subject importation are those as declared (Exh. A-1), and (2) the certification issued by JSRC to the same effect, properly authenticated by Mr. Fortunato D. Oblena, Vice-Consul, Embassy of the Philippines, Tokyo, Japan (Exh. A-J).

As against all these overwhelmingly convincing proof, no shred of evidence whatsoever was introduced by respondent to rebut petitioner's stand. While it is true, as alleged by respondent, that the probative value of the questioned importation is _prima facie_ only, and therefore not binding upon respondent, yet in the absence of any concrete evidence to overturn said value, the Court cannot do otherwise but rely upon it. Even respondent himself believes that the values stated in the commercial and consular invoices can be the primary basis of the home consumption value and can be set aside only in case of reasonable doubt, in favor of other home consumption values, based on more reliable information, when he stated in his decision, to wit:

> x x x While the value given to said documents may be the primary basis of the home consumption value, yet on reasonable doubt, the same may be set aside in favor of

> other home consumption value especially when the latter is based on more reliable information.

A perusal of the records yields negative results as to "other more reliable information" that might have been submitted by respondent to bolster his stand. He has not submitted any revenue or commercial attache report as provided for under Republic Act 5766 to support his valuation. He even asserted that the prices of imported products are not stable and subject to change and that the values applied in the instant case are the HCV's for articles of similar nature coming from the ports of origin at the time of exportation. However, even respondent's witness, the appraiser who personally made the discrepancy report on the home consumption value, except to state that the Customs Valuation Circular No. 38-72 dated November 20, 1972 was his sole basis (T.S.N., pp. 336-337, Customs rec.). When cross-examined as to the basis of aforesaid Customs Valuation Circular, above-mentioned witness could not pinpoint any specific document but just vaguely and generally stated that it was based on previous records of shipments and importation (T.S.N., p. 336, Customs rec.). No single document was even presented to substantiate his allegation. On October 9, 1974, when cross-examined as to whether aforesaid Customs Valuation Circular No. 38-72 has been updated since November 20, 1972, aforementioned respondent's witness categorically stated that there were no other published values. He even admitted that even if prices of commodities in fact went down, the customs appraisers will still maintain their values at customs. (T.S.N., p. 335, Customs rec.)

With the testimony of the abovementioned respondent's witness, this Court believes that Customs Valuation Circular No. 38-72 cannot be taken as the sole and only reliable source of the home consumption value. Moreover, even the very Customs Valuation Circular

> No. 38-72 itself was not submitted in evidence. Respondent has not indubitably shown that there was reasonable doubt as to the values declared in the commercial and consular invoices. Neither has it submitted convincing evidence that the customs valuation was based from reports of revenue and commercial attaches, nor from any other reliable information.
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> In the absence of any iota of proof to repudiate the *prima facie* correctness of the values stated in the commercial or consular invoices submitted by petitioner, this Court finds no compelling reason to discard said values. Moreover, this very issue as to the basis of the home consumption value of an importation has already been squarely ruled upon by this Court in the recent decision in the case of Wise & Co. vs. Comm. of Customs, CTA 2717, Dec. 29, 1977. (Certiorari denied in G.R. No. L-51242, March 7, 1980.)

Considering that there is absolutely no evidence that the invoice values of the shipments in question are not their actual and true export values so as to justify a disregard thereof, and the public and official character of the consular and commercial invoices adverted to above, the Court finds no reasonable grounds to deny to these documents the faith and credence normally due thereto. (See Commissioner of Customs vs. Celdran, L-23425, February 26, 1968, 22 SCRA 742.) We therefore hold that the conclusion reached by this Court in resolving a similar issue in CTA Case No. 2841, to the effect that the *prima facie* correctness of the values stated in the commercial and consular invoices submitted by petitioner should not be disturbed, is likewise applicable to this case. Accordingly, the amount of ₱6,537.00 representing additional internal revenue tax (advance sales tax) paid by petitioner The Goodyear Tire and Rubber Company of the Philippines, Ltd., on its shipments of synthetic rubbers and rubber substitutes involved in this case is refundable to it.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a tax credit in favor of petitioner the amount of ₱6,537.00. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, September 21, 1981.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge