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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NESTLE PHILIPPINES, INC.,
(formerly FILIPRO, INC.),
Petitioner,

- versus -

C.T.A. CASE NO. 4114

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

1/3/94

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D E C I S I O N

This case involves petitioner's claim for refund of overpaid Advance Sales Taxes on various importation of milk powder for the year 1984 amounting to ₱4,564,179.30.

The pertinent provision of the Tariff and Customs Code on the dutiable value of articles imported is Section 201, to wit:

> "SEC. 201. ***Basis of Dutiable Value.*** - The dutiable value of an imported article subject to an ad valorem rate of duty shall be based on the home consumption value or price (excluding internal excise taxes) of same, like or similar articles, as bought and sold or offered for sale freely in the usual wholesale quantities in the ordinary course of trade, in the

> principal markets of the country from where exported on the date of the exportation to the Philippines, or where there is none on such date, then on the home consumption value or price nearest to the date of exportation including the value of all containers, coverings and expenses incident to placing the article in a condition ready for shipment to the Philippines, plus (10) *per cent* of such home consumption value or price.
>
> The home consumption value or price under this section shall be the value or price declared in the consular, commercial, trade or sales invoice. Where there exists a reasonable doubt as to the value or price of the imported article declared in the entry, the correct dutiable value of the article shall be ascertained from the reports of the Revenue Attaché or Commercial Attaché (Foreign Trade Promotion Attaché), pursuant to Republic Act Numbered Fifty-four hundred and sixty-six or other Philippine diplomatic officers and from such other information that may be available to the Bureau of Customs.
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> From the data thus gathered, the Commissioner of Customs shall ascertain and establish the home consumption values of articles exported to the Philippines and shall publish such lists of value from time to time.
>
> x x x."

Petitioner is a domestic corporation engaged in the manufacture, distribution and sale of milk products in the Philippines.

The records disclose that from August to November 1984, petitioner imported various milk powder consisting of Canadian spray process skim milk powder from Canada, Australian Skim milk powder high-heat from Australia, anhydrous milkfat powder from France and Belgium, sweet buttermilk powder from

France, sodium caseinate powder from New Zealand and Holland, calcium caseinate spray dried powder from Holland, all to be used as raw materials in the manufacture of milk products. Upon their arrival, the imported milk powder were declared under Import Entry Nos. 20647, 21361, 21844, 22516, 22907, 21694, 46217, 46218, 46988, 52043, 45764, 48367, 51183, 45763, 45799 and 52540. The corresponding customs duties and advance sales taxes were collected and paid by petitioner on the basis of the published home consumption value as indicated in the Bureau of Customs Revision Orders.

On October 14, 1986, petitioner filed a claim for refund with the Bureau of Internal Revenue amounting to P4,564,179.30, representing alleged overpaid advance sales taxes covering said importation. Petitioner alleged that the overpayment arose from an erroneous declaration of the home consumption value at the time of importation based on the published value appearing in the Revision Orders. Petitioner maintains that the correct basis should be the home consumption value appearing in the commercial invoice. The erroneous declaration rendered the base for computing the 10% Advance Sales Taxes overstated thereby resulting to an overpayment thereof in the total amount of ₱4,564,179.30. In the same manner, the customs or import duties were allegedly erroneously assessed and collected in the sum of ₱5,008,025.00 for which petitioner filed the corresponding protests with the Commissioner of Customs. Up to the present time, both the Commissioner of Internal and the

Commissioner of Customs have not acted on the claims for refund filed by petitioner.

Hence, a petition for review was filed with this Court on October 15, 1986 regarding petitioner's claim for refund of alleged overpaid advance sales taxes subject matter of this case. With respect to the claim for refund of alleged overpaid customs or import duties petitioner filed a separate petition for review on August 2, 1990 docketed as C.T.A. Case No. 4478.

For simplicity We have grouped the importations made by petitioner according to the items of milk products imported, their corresponding import entry, the home consumption value (HCV) as compared to the published value per the Bureau of Customs Revision Orders (used in computing the Advance Sales Taxes paid) and their quantity in terms of weight by kilogram or metric ton.

CANADIAN SPRAY PROCESS SKIM MILK:
(from Canada)

Import Entry No.	HCV/Invoice	Published Value Revision Order No. 8-84 dated August 1, 1984	Weight	Advance Sales Tax Paid
20647	US$667.00/MT	US$993.00/MT	1,113 MT	₱3,657,418.00
21361	US$667.00/MT	US$993.00/MT	530 MT	1,742,574.00
21844	US$667.00/MT	US$993.00/MT	530 MT	1,742,574.00
22516	US$667.00/MT	US$993.00/MT	344.5 MT	1,130,861.00
22907	US$662.00/MT	US$993.00/MT	495 MT	1,630,618.00

AUSTRALIAN SKIM MILK POWDER HIGH-HEAT:
(from Australia)

Import Entry No.	HCV/Invoice	Published Value Revision Order No. 9-84 dated September, 1984	Weight	Advance Sales Tax Paid
21694	US$705.101/MT	US$817.077/MT	255 MT	₱ 688,665.00

ANHYDROUS MILKFAT:
(from *France and Belgium)

Import Entry No.	HCV/Invoice	Published Value Revision Order No. 5-84 dated May 1, 1984	Weight	Advance Sales Tax Paid
46217	*US$1,563.25/MT	US$2,000.00/MT	210 MT	₱1,322,239.00
46218	US$1,432.97/MT	US$1,693.00/MT	225.15 MT	1,287,120.00
46988	US$1,432.97/MT	US$1,693.00/MT	193.13 MT	1,128,397.00
52043	US$1,451.07/MT	US$1,693.00/MT	210.14 MT	1,331,827.00

BUTTERMILK POWDER:
(from France)

Import Entry No.	HCV/Invoice	Published Value Revision Order No. 5-84 dated May 1, 1984	Weight	Advance Sales Tax Paid
45764	US$696.53/MT	US$1,039.91/MT	306 MT	₱ 953,390.00

SWEET BUTTERMILK POWDER:
(from France)

Import Entry No.	HCV/Invoice	Published Value Revision Order No. 10-84 dated October 1, 1984	Weight	Advance Sales Tax Paid
48367	US$689.13/MT	US$1,039.91/MT	102 MT	353,099.00
51183	US$689.13/MT	US$1,039.91/MT	34 MT	117,620.00

SODIUM CASEINATE:
(from *New Zealand and Holland)

Import Entry No.	HCV/Invoice	Published Value Revision Order No. 6-84 dated June 1, 1984	Quantity Weight	Advance Sales Tax Paid
45763	*US$2,255.13/MT	US$3,375.00/MT	50 bags	₱ 11,778.00
45799	US$1,432.97/MT	US$3,396.54/MT	8,025 kg.	90,414.00

CALCIUM CASEINATE:
(from Holland)

Import Entry No.	HCV/Invoice	Published Value Revision Order No. 5-84 dated May 1, 1984	Quantity Weight	Advance Sales Tax Paid
52540	US$2.521/kg.	US$3.29/kg.	24,075 kg.	₱ 287,941.00

In answer to the petition, respondent alleged that the advance sales taxes paid on the subject importation are presumed to have been collected in accordance with law. The burden is on the petitioner to show that said taxes were erroneously collected. Claims for refund are in the nature of a tax exemption. Therefore, failure on the part of petitioner to sustain the burden of proof would be fatal to the action for refund.

The issue posed is whether or not petitioner is entitled to its claim for refund of alleged overpaid advance sales taxes.

The law controlling in computing the dutiable value of imported goods is Section 201 of the Tariff and Customs Code. The rule as elucidated in the case of **Acting Commissioner of Customs v. Wise & Company, Inc., and Honorable Court of Tax Appeals, G.R. No. 47890, October 16, 1992, 214 SCRA 597,** is clear on this point:

> "The law is clear and mandatory. The dutiable value of an imported article subject to an ad valorem rate of duty is based on its home consumption value or price as freely offered for sale in wholesale quantities in the ordinary course of trade in the principal markets of the country from where exported on the date of exportation to the Philippines. That home consumption value or price is the value or price declared in the consular, commercial, trade or sales invoice.
>
> But where there is a reasonable doubt as to the value of the imported article declared in the entry, the correct dutiable value is to be ascertained from the reports of the Revenue Attache or Commercial Attache and from such other information that may be available to the Bureau of Customs. The Commissioner of Customs is required,

> however, to publish from time to time the lists of the home consumption values." **(Commissioner of Customs v. Court of Tax Appeals and Lovsted & Company, Inc., G.R. Nos. L-72069 and 72070, May 21, 1988, 161 SCRA 376.)**

"The dutiable value of an imported article subject to an ad valorem rate of duty is based on either (a) its home consumption value, which is the value or price declared in the consular, commercial, trade or sales invoice, or (b) price as freely offered for sale in wholesale quantities in the ordinary course of trade in the principal markets of the country from where exported on the date of exportation to the Philippines." **(The Commissioner of Customs v. Court of Tax Appeals and Bell Robart Manufacturing, Inc., G.R. Nos. L-48144-47, June 28, 1988, 162 SCRA 731.)**

It must be noted that as a rule the value of imported article should be the home consumption value appearing in the commercial or sales invoice. The home consumption value is defined by Section 201 of the Tariff and Customs Code, as the "price of the same, like or similar articles as bought and sold or offered for sale freely in the usual wholesale quantities in the oridinary course of trade, in the principal markets of the country from where exported on the date of exportation to the Philippines x x x" **(Commissioner of Customs v. Hon. Court of Tax Appeals and NCR Corporation (Philippines), G.R. No. 48027, March 11, 1991, 195 SCRA 12.)** The exception is "where there is a reasonable doubt as to the value of the imported article declared in the entry, the correct dutiable value is to be ascertained from the reports of the Revenue Attache or Commercial Attache and from such other information that may be available to the Bureau of Customs."

In this case, the bases used for computing the customs duties and advance sales tax were the published values appearing in the Revision Orders issued by the Bureau of Customs from May to October 1984. The 16 importations made by petitioner were from the period August to November 1984. A close scrutiny of the Revision Orders will show that the published values used were a few months earlier (one to four months) than the date of exportation appearing in the Bill of Lading or Invoice. This does not exactly tally with the date of exportation to the Philippines. It is only where there is no price freely offered for sale on the date of exportation will the home consumption value or price nearest to the date of exportation be used. Here, the price on the date of exportation can easily be ascertained in the invoice and the bill of lading.

Emphasis should also be pointed on the fact that some of the Revision Orders were later changed to conform to the home consumption value as declared in the invoice. A good example is Revision Order No. 5-84, May 1, 1984, with a published value of US$1,693.00/MT of Anhydrous Milkfat from Belgium was subsequently changed to Revision Order No. 1-85, January 1, 1985, with a published value of US$1,458.97/MT of Anhydrous Milkfat which is quite near the home consumption value of US$1,432.97/MT of Anhydrous Milkfat imported on August 28, 1984. Another is Revision Order No. 10-84, October 1, 1984, with a published value of US$1,039.91/MT of Sweet Buttermilk from France was later changed on December 3, 1984 to Revision Order No. 12, with a published value of US$689.13/MT similar to the HCV of sweet buttermilk on the date of importation on September 26, 1984. This only proves to show that Revision Order Nos. 5-84 and 10-84 were later changed to conform to the HCV as declared in the Invoice of petitioner.

Petitioner formally offered in evidence documents, showing that the home consumption value in the invoice is the correct dutiable value of the articles imported and that no reasonable doubt existed in order for respondent to adopt the published value, namely: the commercial invoices, Bills of Lading, the Protests filed with the Bureau of Customs, and the computations of the correct Advance Sales Taxes prepared by petitioner's brokerage.

Respondent did not object to the admission of petitioner's exhibits except for their purpose. When it was respondent's turn to present her evidence, her counsel instead submitted the case for decision. Respondent did not controvert the evidence presented by petitioner. Respondent may thus be considered as not questioning seriously petitioner's entitlement to the refund claimed especially when petitioner was able to substantiate its claim. As the records will show, petitioner has substantially proven a valid claim for refund of overpaid advance sales taxes. However, the Court after examining all of petitioner's exhibits found that it is only entitled to the amount of P4,489,661.94, computed as follows:

Import Entry No.	Advance Sales Tax Paid	Advance Sales Taxes Should Be	Amount Refundable
20647	₱ 3,657,418.00	₱ 2,508,695.28	₱ 1,148,722.72
21361	1,742,574.00	1,200,289.60	542,284.40
21844	1,742,574.00	1,200,289.60	542,284.40
22516	1,130,861.00	775,712.71	355,148.29
22907	1,630,618.00	1,131,981.05	498,636.95
21694	688,665.00	598,260.51	90,404.49
46217	1,322,239.00	1,049,524.01	272,714.99
46218	1,287,120.00	1,113,038.93	174,081.07
46988	1,128,397.00	975,783.60	152,613.40
52043	1,331,827.00	1,164,219.00	167,608.00
45764	953,390.00	653,959.00	299,431.00
48367	353,099.00	239,767.00	113,332.00
51183	117,620.00	79,899.00	37,721.00
45763	11,778.00	8,108.57	3,669.43
45799	90,414.00	65,522.20	24,891.80
52540	287,941.00	221,823.00	66,118.00
TOTAL AMOUNT REFUNDABLE			₱ 4,489,661.94

ACCORDINGLY, the respondent, COMMISSIONER OF INTERNAL REVENUE is hereby ordered to **REFUND** in favor of petitioner, NESTLE PHILIPPINES, INC., (formerly FILIPRO, INC.), the sum of ₱4,489,661.94, representing overpaid Advance Sales Taxes covering Import Entry Nos. 20647, 21361, 21844, 22516, 22907, 21694, 46217, 46218, 46988, 52043, 45764, 48367, 51183, 45763, 45799 and 52540 for the period August to November 1984.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, January 3, 1994.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals