REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NUTRITIONAL PRODUCTS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2845

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

5/29/87

D E C I S I O N

This case comes on a question of the proper classification of the shipments of bottle seals made of aluminum membrane foils with backing discs, covered by Import Entries Nos. 83045-70, 021601-70, 09807-70, 11164-70, 12694-71, 76142-71, 60449-72, 26527-72, 85031-72, 43065-72, 15770-72, 54930-72 and 89827-72, entered at the Port of Manila during the period of 1970 through 1972 by the petitioner domestic corporation.

The corresponding duties and advance sales tax due thereon were assessed and collected as the shipments were then classified under Tariff Heading No. 83.13-B of the Tariff and Customs Code, to wit:

T.H. 83.13 - Stoppers, crown corks, bottle caps, capsules, bung covers, seals and plombs, case corner protectors and other packing accessories, of base metal:

A. Crown caps .... kg. ₱1.20 and ad val. 70%

B. Other .... ad val. 20%
(Underscoring supplied)

Pursuant to a subsequent ruling of the Department of Finance dated May 20, 1975, the subject shipments became a fresh dispute with the government advocating reclassification, initially dwelling on Tariff Heading 76.04-B but settling conveniently for Tariff Heading 48.15-B at 100% ad valorem duty of the Tariff and Customs Code, as amended by Presidential Decree No. 34, reading as follows:

T.H. 48.15 - Other paper and paperboard, cut to size or shape:

A. Paper

1. Filter paper ...... ad val. 30%

2. Cigarette paper of 15 cm. or less in width but not cut to cigarette size .... ad val. 50%

3. Other .... ad val. 100%

B. Paperboard .... ad val. 100%

C. Cellulose wadding ... ad val. 30%
(Underscoring supplied)

As a consequence of the higher dutiable category proposed for the article in question, deficiency assessments were issued by the Collector of Customs (Manila) under thirteen (13) letters of demand all dated August 7, 1975 against the petitioner for the payment of additional duties and advance sales tax including surcharges aggregating a sum of ₱7,539,455.00, summarized as follows:

	Additional Duties and Advance Sales Tax	Surcharges on Duties and Advance Sales Tax	Total
Sub-totals:			
Duty	₱1,229,676.00	₱6,148,380.00	
Advance sales tax	107,598.00	53,801.00	
TOTAL	₱1,337,274.00	₱6,202,181.00	₱7,539,455.00

It may suffice to state that the petitioner duly contested the demands under letter dated August 15, 1975; that notwithstanding the administrative hearing conducted on August 29, 1975 and September 3, 1975 for purposes of the protest, the Collector or Customs reiterated the demands for the payment of additional duties and advance sales tax including an additional 10%

thereof on December 23, 1975; and, that on appeal, the Commissioner of Customs sustained the Collector's decision, directing "that a reiterating demand-letter for collection of subject deficiencies be made against the Nutritional Products, Inc. (petitioner)", under 1st Indorsement dated October 14, 1976.

Hence this recourse for a review.

In assailing the assessment for the additional duties and advance sales tax and surcharges on the previously entered shipments of bottle or jar seal made of aluminum membrane foil with backing disc, petitioner contends that -

> 1. Nutritional Products, Inc.'s (petitioner) importations in question were properly liquidated and taxed under Section 83.13-B of the Tariff Code, prior to its amendment by Presidential Decree No. 34.
>
> 2. The liquidations of the import entries subject of reinvestigation attained finality and are now binding on all persons.
>
> 3. The established classification, interpretation and practice relative to the importations at issue cannot be changed without a published decision, and such change should have no adverse retroactive effect upon Nutritional Products, Inc.

4. Granting, without admitting, the existence of legal and factual bases for the imposition of additional duties and advance sales tax, there is no justification in law and in equity for the imposition of surcharges of five (5) times the alleged short duties and 50% of the alleged deficiency sales tax.

By and large, respondent Commissioner of Customs in invoking the re-liquidation and taking the re-classification of subject shipments maintains that -

> The assessments against petitioner as contained in the letters of demand of the Collector of Customs of Manila in the total sum of ₱7,539,455.00, involving thirteen (13) import entries, are based on legal grounds, particularly, the provisions of Sections 1602 (Tentative Liquidation) and 1603 (Finality of Liquidation) in relation to Section 2503 (Failure to pay liquidated charges) of the Tariff and Customs Code, as amended, the subject import entries covering the importations in question being merely tentative in nature; and
>
> The Department of Finance ruling (decision), which was the consequence of the investigation conducted by the Finance-NBI-BIR Team, in classifying aforesaid shipments of aluminum membrane foils (disc) of petitioner under Tariff Heading No. 48.15-B at 100% ad valorem duty, is proper, valid and legal.

The record raises the basic issue as to whether petitioner's importations subject of the letters of demand were properly assessed and liquidated under the dutiable category of Tariff Heading No. 83.13-B at 20% ad valorem duty, or whether they fall under Tariff Heading No. 48.15-B at 100% ad valorem as amended by P.D. 34. The legality of 1) re-liquidation, 2) imposition of surcharges, and 3) additional ten percent (10%) of the amount demanded, comes as subsidiary questions.

As it appears the argument for the re-classification of the importations at bar urged in the Department of Finance ruling may be wrapped up this wise:

> "Finally, it was found out that, upon actual examination of the NESCAFE bottle, the same is sealed with aluminum foil only. The paperboard, which is supposed to back up or reinforce the aluminum foil is actually stuck to the inner side of the bottle cap, probably for esthetic and hygienic reason, as the bottle cap actually looks better and cleaner with the paperboard stuck to the inner side thereof. One thing is certain and beyond doubt. The paper board forms part of the bottle cap. It is not used to back up or reinforce the aluminum foil xxx."

Respondent thus posits an unvarying impression that because the membrane aluminum foil is on the bottle while the paperboard is on the plastic cover or cap they should be treated independently and taxed separately. The paperboard should be subject to the 100% ad valorem duty under Tariff Heading 48.15-B, supra.

Turning to the merchandise in issue, the testimony of record shows that the bottle or jar seal is made up of several components: 1) cardboard, 2) layer of micro-crystalline wax, 3) aluminum varnished foil, 4) polyethylene film, and 5) parchment; perform such essential functions, viz: the micro-crystalline acts as a joint between the cardboard and the varnished aluminum, otherwise they will not stick together; the polyethylene film is just to protect the painting where to print the trade mark on the aluminum foil; then, the parchment will make contact between the jar or the lips of the container and the jar seal. (pp. 53-55, t.s.n., November 28, 1977; please see also Exhibits D, D-1, D-3, D-4).

The testimony further reveals that it is essential that the seal consisting of the membrane foil and the backing disc must be a single unit, and no portion thereof must be separated or detached from the time it is inserted in the cap to the time the cap is screwed on the jar by the capping machine. During the storage and up to the time the consumer punctures the aluminum foil, both the cardboard backing and the foil function to seal the jar. The paperboard backing does not lose its character as a seal, even after its separation from the foil when the cap is unscrewed, with the foil now sticking (glued) to the lip of the jar and the disc now inside the cap. For aside from the backing disc's function of sealing the jar evenly and uniformly with the gluing of the aluminum foil membrane to the jar's lip by absorbing the torque applied during the capping process (p. 63, t.s.n., September 3, 1975, Customs hearing; now p. 373, Exhibit "A") the said backing disc also serves a secondary purpose. It (backing disc now in the plastic cap) assures that after opening the jar and during the normal consumption period of its contents, the product would last and could be used up to the last particle, without the contents caking along the side of the jar and becoming useless. Thus the jar should be kept tightly closed, according to the instructions of the label. (p. 64, t.s.n., September 3, 1975, Customs hearing; p. 372, Exhibit "A"). Even after puncturing of the aluminum foil membrane of the jar seal, the backing portion still serves as a seal. (Petitioner's brief).

Aside from testimonial evidence, ample documentary evidence was introduced to show that the jar seals in question must be imported as a unit and that the principal components (aluminum foil and backing disc) must always stick flush together and must not curl or be jarred loose prior to the screwing on by the capping machine. (Exhibits "15", "16" and "17", Customs hearing, p. 442, 443 and 444, of Exhibit "A"). To our minds it would be unfair and incongruous to have the elements taxed separately as paperboard and aluminum foil considering that the seal can only be utilized and has to be imported as a unit. Moreover, respondent has not presented any evidence of the relevance and competence required to bash that patina of legitimacy over petitioner's assertion. Accordingly we feel compelled to affirm the import and force of the specific purpose and function of the subject article in the context of T.H. 83-13-B, supra, which may not be suffered to petrify in futility.

On a related aspect, it may well to add that before the letter of the Department of Finance requesting the Commissioner of Customs to change the classification of the (NESCAFE) seals from Heading 83.13-B to, initially, Heading 76.04-B, and subsequently, to Heading 48.15-B, an issue arose as to the proper classification thereof. It appears that the release of one shipment was withheld by the Bureau of Customs pending confirmation from the Central Bank of the commodity classification of the said item. The Central Bank wrote the petitioner's bank certifying that the said importation did not fall under Commodity Code No. UP 684-02.09 ("Aluminum foil, unmounted, without paper backing") and instead ruled that "the aluminum foil cut to shape "(round or disc shape), of 8 mm. in diameter, laminated with a film on one side and backed with paperboard of the same shape and size, which is used as a seal or top cover for coffee bottles "to protect the coffee from getting moisture as well as to retain the aroma and flavor of the product" should be properly classified under Code NEP 699-29.16 -

"stoppers, bottle caps (screw-type, excluding crown caps for softdrink and beverage bottles), capsules and other packing accessories, of base metals (excluding vial caps)". The ruling comports with the categorization which petitioner has itself given to its importation under T.H. 83.13-B, supra.

We therefore conclude, and that is what we need decide rendering unnecessary the resolution of the subsidiary issues presented that the subject importations of bottle or jar seals were properly classified and taxed under Tariff Heading 83.13-B of the Tariff and Customs Code.

WHEREFORE, finding the petition well taken, the same is granted and the assessments against petitioner are hereby set aside and cancelled. No pronouncement as to cost.

SO ORDERED.

Quezon City, Metro Manila, May 29, 1987.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge