REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RAYMUNDO A. ARMOVIT,
Petitioner,

- versus - C.T.A. CASE NO. 4578

THE COMMISSIONER OF CUSTOMS,
Respondent.

1/21/94

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D E C I S I O N

Before this Court is a Petition filed by Raymundo A. Armovit, a lawyer by profession, assailing the ruling of herein respondent Commissioner of Customs contained in his letter of January 11, 1991, addressed to the petitioner, thereby affirming the appraisal made by the Acting Collector of Customs, MICP, relative to the assessment on a Mercedes Benz 300 SD brought into the Philippines under the "No-Dollar Used-Car Importation Scheme."

As it appears on the record, petitioner is the consignee of one 1982 model Mercedez Benz 300 SD Turbo-diesel automobile, with Engine No.

617952-12-088977 and Serial No. WB126120-12-030719 coming from his brother-donor, Dr. Herminio Armovit, which car entered the country under the "No-Dollar Used-Car Importation Rules" adopted by the Board of Investments (Annex X, Petition). Petitioner obtained a letter of authority from the Bureau of Import Services, Department of Trade and Industry, which stated in effect that said office, as required by regulations, interposes no objection to the release of said motor vehicle subject to certain conditions and exceptions as provided for in the aforesaid guidelines (Exh. A, p. 11, CTA records). Petitioner, through MOV International Forwarders, Inc., filed the corresponding Entry and Internal Revenue Declaration with the Bureau of Customs, MICP, declaring its own computation of taxes and duties in the total amount of P193,922.00 (Annexes A-1 and A-2). As propounded by the petitioner, MOV International Forwarders, Inc., his broker, used as basis in the computation of import tax and duty a publication of Maclean Hunter Market Reports, Inc., entitled "Older Car/Truck Red Book" Official Used Car Valuations for 1982-1970 Models (80th year;

January 1-March 31, 1990) [Annex A-3 and A-4, Petition]. Thus, the actual market value in 1990 of a 1982 model year Mercedes Benz 300 Turbo-diesel was pegged at a "high value" of U.S.$10,625.00.

In a letter, dated July 26, 1990, Acting District Collector of Customs Hermogenes F. Elfante at the Manila International Container Port (MICP), informed Atty. Armovit that the book value of the imported 1982 Mercedes Benz 300 SD is U.S.$36,830.00; that the total duties and taxes arrived at, per Customs computation applying existing schedules on depreciation rate on duties and taxes, is P623,639.00, and, in addition thereto, for violation of BIS pre-shipment authorization requirement under paragraph 3.2 of the guideline, the amount of P180,252.00 was imposed corresponding to a penalty of 30% of the total landed cost (Annex B-2, Petition, Exh. 4).

In his first endorsement of July 30, 1990, Acting Collector of Customs Elfante referred to Atty. Isauro C. Garcia, Deputy Commissioner of Customs, for his information the Customs Entry No. 55827 covering the importation of the 1982

Mercedes Benz 300 SD consigned to Atty. Raymundo A. Armovit. He also informed the Deputy Commissioner that the declared book value of U.S. $4,250.00 on the motor vehicle made by the petitioner was upgraded to U.S. $36,830.00 based on the U.S. Red Book used by the Bureau of Customs. Applying therefore the existing schedules on depreciation and rate of duty and tax, the total amount of P623,639.00 has been assessed. In addition to this assessment and according to CMO No. 80-89, dated September 11, 1989, the amount of P180,252.00 corresponding to a penalty of 30% of the total landed cost was imposed for violation of the BIS pre-shipment authorization requirement under paragraph 3.2 of the "Guidelines for the No-Dollar Importation of Second-Hand Motor Vehicles of Returning Residents/Immigrants/Qualified Donees." (Exh. 5, p. 17, CTA records).

On August 10, 1990, Atty. Raymundo Armovit addressed a letter to the Commissioner of Customs through Atty. Benjamin Tenorio, Acting Chief, Legal, Bureau of Customs, "appealing for the nullification" of the first Endorsement, dated 30 July 1990, coming from Collector of Customs H.F.

Elfante, MICP, in effect questioning the "basic assessment as excessive and the imposition of penalty as baseless" anchored on the following grounds:

1. the reference used in determining the value of a 1982 car is a 1989 book of value of cars, not the 1990 Red Book which enters actual market values for 1982 cars.

2. why should a 1982 model in 1990 be given its value when it was brand new in 1982 for customs-tax purposes in 1990.

3. the car value a taxpayer receives in 1990 when gifted with a 1982 car is not the car's brand new value in 1982 but its market value in 1990.

4. the computation is confiscatory and oppressive to taxpayers who are protected under the paramount rule of reasonableness of taxes.

5. the computation practically kills or runs against the policy at back of the no-dollar car importation rules.

6. discriminatory use for assessment purposes of the brand new value of undersigned's 1982 car, when in other car releases of Customs not the brand new but the 1990 actual market value of released vehicles were used [example Chevrolet Blazer T10(Van)] of the Racelis, brokered by MOV International on 9 November 1989, Entry No. 59697-89, copy attached as Annex B." (Annex C, Petition).

On September 13, 1990, Atty. Armovit followed up his previous letter to the Commissioner of Customs, this time offering to pay the assessment under question without prejudice to the final determination by competent authority of the amounts properly due under the law (Annex D, Petition). Correspondingly, under date of September 19, 1990, petitioner was issued a Certificate of Payment No. 138129 for the amount of P803,891.00 under Informal Entry No. 55827, dated July 13, 1990, and Official Receipt No. 32741283, dated September 1990, covering duties, taxes and other charges on motor vehicle Mercedes Benz 300 SD Turbo-diesel '82 (Annexes E, E-1 and E-2, Petition).

Acting on the letter of August 10, 1990 of Atty. Armovit appealing for the nullification of the assessment made by the Acting District Collector of Customs on the aforesaid vehicle, the Commissioner of Customs in his letter of January 11, 1991, informed Atty. Armovit that he sees no cogent reason to reverse the questioned appraisal based on the following grounds:

1. Customs Memorandum Order Nos. 6-73 and 40-84 provide for the basis of valuation under the "no-dollar importation scheme." Under the said regulations, uniform valuation is obtained by getting the brand new value of the vehicle from the US Red Book, Japanese Red Book and World Car Book, depending on the country of origin, duly depreciated according to year model and a deduction of 20% to arrive at the wholesale value.

2. The basis for the computation by your broker is not the official US Red Book that the Bureau is using. But as alleged, that the value is the "AS IS WHERE IS" Value for a 1982 model car, then there will be no more depreciation as it would be the home consumption value. However, the fact is, we are not using that supplemental book from the United States.

3. The comparison of a utility vehicle to a luxury car is not realistic. The two are completely different. The value used as basis for the Chevrolet Blazer ($11,588.00) is what is reflected in the US Red Book under the suggested factory price.

4. Furthermore, another factor is the conversion rate used in arriving at the appraised value, plus the simple fact that your car is with penalty.

5. Lastly, the broker's computation is not binding for custom's purposes. A broker is not capacitated to issue official appraisals of motor vehicles, as the final determination of the duties and taxes due to the government is a primary and vital function which the Bureau may not abdicate.

In the Answer filed by the respondent to the present Petition, he stated as part of his special and affirmative defenses that:

1. The lawful assessment on petitioner's motor vehicle was based on Customs Memorandum Order Nos. 6-73 and 40-84 which provide for the basis of valuation under the "no dollar importation scheme." Under the said regulations, the assessment of taxes and duties the value shall be based on the brand new value of the vehicle from the US Red Book, Japanese Red Book and World Car Book depending on the country of origin, duly depreciated according to the year model and a deduction of 20% to arrive at the wholesale value. A penalty is likewise

imposed for violation of the BIS preshipment authorization requirement under paragraph 3.2 of the guidelines.

2. The computation made by the petitioner's customs broker is erroneous as it was not based on the official U.S. Red Book that the Bureau of Customs is using.

3. A comparison made by the petitioner of a utility vehicle to a luxury car which was the subject of the present case is improper because the two vehicles are completely different.

4. Petitioner's cause of action had long prescribed citing Section 2308, 2309, 2310 and 2312 of the Tariff and Customs Code. Petitioner did not file a formal protest within fifteen (15) days after he paid the assessed duties, taxes and penalty due on his motor vehicle. In fine, the ruling/decision of the Collector becomes final and executory.

5. Petitioner failed to exhaust administrative remedies citing Section 1313 of the same Code.

6. Petitioner having failed to exhaust administrative remedies, he cannot therefore seek judicial remedies by invoking the provision of Section 2402 of the Code.

To be resolved by this Court is whether or not it validly acquired jurisdiction to render judgment on the questioned assessment and collectible obligation on the subject car importation as prayed for by the petitioner.

We find for the respondent.

The Acting District Collector of Customs, Manila International Container Port, officially communicated with the petitioner in his letter, dated July 26, 1990, informing him that the book value of the 1982 Mercedes Benz 300 SD with Chassis No. WDBCB20A6CB030719 is U.S.$36,830.00 and the total duties and taxes, applying existing schedules on depreciation and rate on duties and taxes is P623,639.00, with the following breakdown:

Duty	-	P200,047.00
AVT	-	330,462.00
VAT	-	93,130.00
		P623,639.00

In addition, the amount of P180,252.00 corresponding to a penalty of 30% of the total landed cost was imposed for violation of the BIS pre-shipment authorization requirement under paragraph 3.2 of the Guideline. This is embodied in the Letter/Indorsement of the Bureau of Import Services to the Bureau of Customs, dated July 18, 1990, and implemented under CMO No. 80-89. The total amount due is P803,891.00 as taxes, duties and penalties for the no-dollar importation.

Petitioner did not file a written protest with the Collector setting forth his objection to the ruling or decision in question, together with the reasons therefor as required by Sections 2308, 2309, 2310 and 2312 of the Tariff and Customs Code, which provide thus:

> Section 2308. ***Protest and Payment Upon Protest in Civil Matters.*** - When a ruling or decision of the Collector is made whereby liability for duties, taxes, fees or other charges are determined, except the fixing of fine in seizure cases, the party adversely affected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the government is made, or within fifteen (15) days thereafter, a written protest setting forth his objection to the ruling or decision in question, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made and the corresponding docket fee, as provided for in Section 2301.
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> Section 2309. ***Protest Exclusive Remedy in Protestable Case.*** - In all cases subject to protest, the interested party who desires to have the action of the Collector reviewed, shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him, except as to the matters collectible for manifest error in the manner prescribed in section one thousand seven hundred and seven hereof.
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> Section 2310. ***Form and Scope of Protest.*** - Every protest shall be filed in accordance with the prescribed rules and regulations promulgated under this section and shall point out the particular decision or ruling of the Collector to which exception is taken or objection made, and shall indicate with reasonable precision the particular ground or

> grounds upon which the protesting party bases his claim for relief.
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> The scope of a protest shall be limited to the subject matter of a single adjustment or other independent transaction; but any number of issues may be raised in a protest with reference to the particular item or items constituting the subject matter of the protest.
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> "Single adjustment", as hereinabove used, refers to the entire content of one liquidation, including all duties, fees, surcharges or fines incident thereto.
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> Section 2312. ***Decision of Action By Collector in Protest and Seizure Cases***. - When a protest in proper form is presented in a case where protest is required, the Collector shall issue an order for hearing within fifteen (15) days from receipt of the protest and hear the matter thus presented. Upon the termination of the hearing, the Collector of Customs, shall render a decision within thirty (30) days, and if the protest is sustained, in whole or in part, he shall make the appropriate order, the entry reliquidated if necessary.
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> In seizure cases, the Collector, after a hearing shall in writing make a declaration of forfeiture or fix the amount of the fine or take such other action as may be proper. (underscoring supplied)

On September 13, 1990, petitioner did pay, under protest, the corresponding duties and penalties assessed and was correspondingly issued a Certificate of Payment and Official Receipts (Annexes "E", "E-1" and "E-2"), but failed to formally file the required protest setting forth his reasons therefore.

As no formal protest was made before the Collector of Customs who made the ruling on the liability in accordance with the above law and prescribed rules and regulations, the action of the Collector has become final and conclusive against the petitioner. This incontrovertible fact that no protest was filed is confirmed by a certification issued by the Chief of the Legal Division, MICP, that "no protest was filed by the consignee RAYMUNDO A. ARMOVIT, relative to the shipment of one (1) unit Mercedes Benz SD Turbo, 1982 Model, 4-door, 5 cylinder, Chassis No. WDB 12612012030719." (Exh. G, p. 98, CTA records). Failure on the part of petitioner to file a formal protest as required by law was fatal to his cause. The decision of the Collector has already become <u>final</u> and <u>conclusive</u>. It had the primary and exclusive jurisdiction to rule on the tax liability and duties on the vehicle in question. It constitutes a tribunal upon which the law confers jurisdiction to hear and determine all questions touching on the assessment and further disposition on the matter (cf. Papa vs. Mago, 22 SCRA 857 1968). Having failed therefore to register his protest as required by law to take exception to the ruling made by the Collector on his liability for duties, taxes and other charges which was formally communicated to the petitioner, he lost the opportunity to contest said assessment (See Silver Swan Mfg. Co., Inc. vs. Commissioner of Customs C.T.A. Case [R...] No. 744, June 29, 1960, affd. in G.R. No. L-17435, June 29, 1963, 8 SCRA 400).

Likewise, petitioner failed to observe the principle of exhaustion of the administrative remedies provided by law. As impliedly stated in the case of Rufino Lopez and Sons, Inc. vs. Court of Tax Appeals, 100 Phil. 850 and restated in the case of Sampaguita Shoe and Slipper Factory vs. Commissioner of Customs, 102 Phil. 850, the doctrine of exhaustion of administrative remedies is a condition sine qua non before one resort to Courts because it is a sound rule for "it provides for a policy of orderly procedure which favors to preliminary administrative sifting process, and serves to prevent attempts to swamp the courts by a resort to them in the first instance."

In addition, it has been ruled by our Supreme Court in the case of Ysmael vs. Deputy Executive

Secretary, et. al., G.R. No. 79538, October 18, 1990, that: "It is an established doctrine in this jurisdiction that the decisions and orders of administrative agencies have upon their finality, the force and binding effect of a final judgment within the purview of the doctrine of res judicata. These decisions and orders are as conclusive upon the rights of the affected parties as though the same had been rendered by a court of general jurisdiction. The rule of *res judicata* thus forbids the reopening of a matter once determined by competent authority acting within their exclusive jurisdiction (also **Brilliantes vs. Castro,** 99 Phil. 497 [1956]; **Ipekdjian Merchandising Co., Inc. vs. Court of Tax Appeals,** G.R. No. L-15430, September 30, 1963, 9 SCRA 72; **San Luis vs. Court of Appeals,** G.R. No. 80160, June 26, 1989).

The act of Petitioner in raising his protest directly to the Commissioner of Customs as stated in his letter of August 10, 1990, is violative of this principle of exhaustion of Administrative remedies.

It may not be amiss to state that the grounds raised by the petitioner before this Court could have been properly ventilated in the formal protest which he should have filed before the Collector of Customs. Petitioner did not avail of its remedies under the law. This Court therefore is in no position to reopen the matter which has already been finally decided by the competent authority acting within its exclusive jurisdiction.

WHEREFORE, the petition is hereby dismissed. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, 21 January 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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