REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

MARINA SALES, INC., Petitioner,	**C.T.A. CASE NO. 6859**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF CUSTOMS and BUREAU OF CUSTOMS, Respondents.	**Promulgated:** OCT 31 2007

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DECISION

UY, J.:

Before Us is a Petition for Review filed by petitioner Marina Sales, Inc. against respondents Commissioner of Customs and Bureau of Customs, assailing Resolution/Decision dated November 13, 2003 rendered by the Valuation and Classification Review Committee (VCRC) of the respondent Bureau of Customs (which corrected the earlier Resolution/Decision dated September 11, 2003), which reclassified petitioner's articles of importation covered under Import Entry Nos. C-33771-03 and C-67560-03, as falling under a different Tariff Harmonized System Heading with a higher rate of duty.

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The assailed Resolution/Decision dated November 13, 2003 referred to as the 1st Indorsement of Atty. Reynaldo S. Nicolas, Chairman of Valuation & Classification Review Committee cited the Sub-Group observations and findings as follows:

"**SUB-GROUP OBSERVATIONS**:

1. As per import documents such as the bill of lading, commercial invoice, the packing list and the IEIRD, the subject articles are specifically described as Sunquick Orange, Lemon and other Concentrate while the submitted Product Specification/Date Sheet has the name of products as Orange compound No. 03-4777 and lemon compound No. 03-4733, Tropical Compound No. 03-4705, Ice Tea Lemon Compound 03-4330, Peach and Orange Compound 03-4753, both non-alcoholic composite concentrate for making beverages. Both are used or applied for the manufacture of Sunquick Orange, lemon and other drink concentrate according to the following recipe:

   Compound – 40%
   Sugar Water
   Citric Acid and others – 60%

   The compositions/ingredients of Tropical compound are as follows:

   water, sugar fruit juices (concentrated pineapple, orange and passion fruit juices and mango banana and apricot puree), flavouring with casein, citric acid, stabilizer, preservatives, vit. C, colours.

   The composition/ingredients of Ice Tea Lemon Compound: sugar, water, tea extract, lemon juice from concentrate citric acid, preservatives, flavouring, vit. C.

   The composition/ingredients for Peach and Orange Compound : water, sugar concentrated peach and orange juice, flavourings with casein, citric acid, stabilizer, preservatives, vit. C, colours.

2. As per samples submitted these are labeled as orange concentrate 40/60 03-4777 and lemon concentrate 40/60 03-4743, non-alcoholic composite concentrate for making beverage.

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3. The importer in his position paper stated that the articles based on the nature, character and use are best expressed by the description where it is specifically provided for concentrate natural juice 2106.90 10.

4. The importer failed to submit the required document to substantiate the percentage content of the fruit juices in the compound as per labeled 40/60.

5. There was a similar importation under Entry No. C-111712-02 consigned to Marsman Drysdale which was classified under H.S. 2009.00 11 at 7% (orange juice concentrate) with VCRC Resolution dated January 29, 2003.

SUB GROUP FINDINGS:

1. The subject articles having been described as Sunquick Orange concentrate, Lemon concentrate and other Tropical Fruit Concentrate, in the import documents and labeled as such per samples with additional 40/60, non alcoholic composite concentrate for making beverage, while in the Product Specification described as Orange compound, lemon compound and other compound with different compositions or ingredients therein are not classifiable under heading 21.06 which covers food preparations not elsewhere specified or included particularly HS Subheading 2106.90 10 which covers, flavouring materials, n.e.s. of the kind used in the food and drink industries; other food preparations as raw materials in preparing composite concentrate for making beverage.

2. Based on the submitted samples these are labelled as orange and lemon concentrate, therefore the subject importations should not be classified under H.S. 2106.90 10 but under HS 2009, as fruit juices (including grapefruit must) and vegetables juices, unfermented and not containing added sugar or other sweetening matter.

   The pertinent explanatory notes to this heading provides that the fruit and vegetable juices of this heading are generally, obtained by pressing fresh, healthy and ripe fruits or vegetables. This maybe done (as in citrus fruits) by means of mechanical extractor operating on the same principle as the household lemon squeezer or by pressing which may or may not be preceded either by crushing or grinding.

   The liquid thus obtained are generally submitted etc. As a result of these various treatments the fruit or vegetable juices may consist of clear, unfermented liquids. Certain

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juices however on particular those obtained from pulpy fruits such as (apricots, peaches, tomatoes) still contain part of the pulp in finely divided form either in suspension or as a deposit.

The juices of this heading may be concentrated (whether of not frozen) or in the form of crystals, or in powder. Provided, they retain their original character, the fruit or vegetables juices of this heading may contain substances of the kinds listed below-whether these results from the manufacturing process of have been added separately .

1. Sugar
2. Other sweetening agents natural or synthetic
3. Product added to preserve the juice or prevent fermentation
4. Standardizing agent (e.g. citric acid) and product to restore constituents destroyed or damaged during manufacturing process (vitamins, colouring matter) or to fix the flavours.

3. There is no doubt that the subject articles are to be used as raw materials and/or ingredients for the manufacture of beverage. However, these are not covered under H.S. Code 2106, per E-Notes rather it should be covered under HS Code 2009 which specifically covers fruit juices including concentrate with added substances which results in the manufacturing process or have been added separately per E-Notes to this heading of which the subject articles contained these substances per Product Specification Sheet submitted. In classifying imported articles, the basic rules of classification in sequential order should be followed under Section 103 of the TCCP as amended. In this particular case Rule I principles shall be applied. Rule I provides that the Titles, Sections, Chapters, Sub-Chapters are provided for ease of reference only; for legal purposes classification shall be determined according to the terms of the headings and any relative sections or chapter notes, provided such headings or notes do not otherwise require according to the provisions of Rule 2, 3, 4, 5, D 6 thereof. Further, it is also in relation to principle of Rule 3 (a) the heading which provides the most specific description (orange and lemon concentrate) shall be preferred to heading providing a more general description.

In view of the above-findings, the subject articles are classified as follows:

1. Orange Concentrate – H.S. 2009.19 00 – 7%

2. Lemon Concentrate – H.S. 2009.80 00 - 7%
3. Tropical Fruit : Ice Tea Lemon and Peach and Orange Concentrate (Mixtures o f Juices) – H.S. 2009.90 00 – 10%

RESOLUTION: To apply sub-group recommendation which is to reclassify the articles as follows:

1. Orange Concentrate – H.S. 2009. 19 00 – 7%
2. Lemon Concentrate – H.S. 2009. 80 00 – 7%
3. Tropical Fruit: Ice[d] Tea Lemon and Peach and Orange Concentrate (Mixtures of Juices) – H.S. 2009.90 00 – 10%

VCRC's decision however, is appealable to the Commissioner of Customs by submitting a notice of appeal to VCRC Chairman within 15 days from receipt thereof pursuant to CMO 37-2001 dated December 7, 2001. The Appeal may be given due course subject to the condition that the importer will undergo a voluntary post entry audit as provided for in Section IV C of CAO 5-2001.

Importer may now withdraw covering manager's checks subject to payment of any deficiency in duties and taxes due based on the foregoing resolution."[1]

THE FACTS

As admitted by the parties in their Joint Stipulation of Facts and Issues[2] and as borne by the records of the case, the facts are as follows:

Petitioner, Marina Sales, Inc., is a corporation duly organized and existing under Philippine laws, with principal office at No. 17 Brixton St., Barrio Kapitolyo, Pasig City, Metro Manila. It is engaged in the manufacture of Sunquick Juice concentrates and has been importing raw materials for the manufacture of the same.

On the other hand, respondents Commissioner of Customs and Bureau of Customs are the government official and agency, respectively, charged with the duty of assessing and collecting duties and taxes on importations into

[1] Exhibit "A"; Docket, pp. 32-34.
[2] Joint Stipulation of Facts and Issues; Docket, pp. 187-196.

the Philippines. They may be served with pleadings, notices, orders and other processes of this Court at the Bureau of Customs, Port Area, Manila.

On March 6, 2003, petitioner's importation, under Import Entry No. C-33771-03, arrived at the Philippine port on board the vessel APL Iris V-111, placed in a 1 x 20' container STC, with a total of 80 drums of juice concentrates under the following details:

Import Entry No. C-33771-03

Date of Importation	March 6, 2003
Vessel:	APL Iris V-111
Documents:	Bill of Lading No. APLU 800452452 dated February 2, 2003[3] CO-RO Food A/S Denmark Invoice No. 169409 dated January 27, 2003[4] Packing List to Invoice No. 1619409[5]
Articles:	80 drums of juice concentrates, consisting of: 56 drums of 225 kilograms of Sunquick Orange Concentrate; and 24 drums of 225 kilograms Sunquick Lemon Concentrate

For this shipment, petitioner computed and paid its payable duties under the Tariff Harmonized System Heading HS 2106.90 10, described as "Flavouring materials, n.e.s. of the kind used in the food and drink industries; other food preparations to be used as raw materials in preparing composite concentrate for making beverages", with an import duty rate of one percent (1%). However, the examiners of respondent Bureau of Customs contested petitioner's tariff classification under the Tariff Harmonized System Heading H.S. 2106.90 10, and, recommended to the Collector of Customs, as

[3] Exhibit "C"; Docket, p. 283.
[4] Exhibit "D"; Docket, p. 284.
[5] Exhibit "E"; Docket, p. 285.

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Chairman of the Valuation and Classification Review Committee (VCRC) of the Bureau of Customs, that the importation be reclassified to the Tariff Harmonized System Heading H.S. 2106.90 50, described as "composite concentrate for simple dilution with water to make beverages", with a corresponding duty rate of seven percent (7%).

Consequently, petitioner requested the District Collector of respondent Bureau of Customs to release the subject articles of importation with Import Entry No. C-33771-03 under the Tentative Release System, and made an undertaking that it will pay the reclassified rate of duties should it be determined with finality that such reclassification is warranted. Accordingly, the District Collector granted petitioner's request.

On April 15, 2003, Deputy Collector for Assessment Gracia Z. Caringal sent a Letter[6] to petitioner directing the latter to explain during the VCRC deliberation on May 15, 2003 why its shipment under Import Entry No. C-33771-03 should not be classified under the Tariff Harmonized System Heading 2106.90 50 at the duty rate of 7%.

On May 15, 2003, petitioner, through its Product Manager Rowena T. Solidum, and Customs Broker Juvenal A. Llaneza, attended the VCRC deliberation and submitted its written explanation dated May 13, 2003[7] addressed to Ms. Gracia Z. Caringal, Deputy Collector for Assessment, Bureau of Customs, Manila International Container Port, together with the samples of the articles of importation under Import Entry No. C-33771-03. Meanwhile, on May 21, 2003, petitioner's second importation of raw materials

[6] Exhibit "G"; Docket p. 287.
[7] Exhibit "H"; Docket, pp. 288-296.

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under Import Entry No. C-67560-03 arrived at the Manila port, with the following details:

Import Entry No. C-67660-03

Vessel:	S/S Hanjin Vienna/Mathi Bhum V-51E
Documents:	Bill of Lading No. KKLUCPH060291 dated 17 April 2003[8] CO-RO Food Invoice No. 1619746 dated April 15, 2003[9]
Articles:	80 drums of juice concentrates, consisting of: 55 drums of 225 kilograms Sunquick Orange Concentrate; 1 drum of 225 Sunquick Tropical Fruit Concentrate; 17 drums of 225 kilograms Sunquick Lemon Concentrate; 3 drums of 225 kilograms Sunquick Ice Lemon Concentrate; and 4 drums of 225 kilograms Sunquick Peach Orange Concentrate

Similarly, the examiners of respondent Bureau of Customs contested the tariff classification of Import Entry No. C-67560-03 and recommended to the Collector of Customs, as Chairman of the VCRC, that the said importation be reclassified to fall under Tariff Harmonized System Heading H.S. 2106.90 50 with a corresponding duty rate of 7%. Likewise, Import Entry No. C-67560-03 was released under the Tentative Release System with petitioner assuming the same undertaking.

A deliberation as regards the same issues was again scheduled by the VCRC on July 17, 2003. After petitioner submitted its written explanation dated July 17, 2003 also addressed to Ms. Gracia Z. Caringal, pertaining to

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[8] Exhibit "I"; Docket, p. 297.
[9] Exhibit "J"; Docket, p. 298.

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the second importation, together with its samples, in support of its claim that the imported goods under Import Entry No. C-67560-03 should not be reclassified under Tariff Heading H.S. 2106.90 50, the reclassification of Import Entry Nos. C-33771-03 and C-67560-03 were eventually consolidated. Subsequently, Atty. Felix A. Bartolome, Chairman of the VCRC of respondent Bureau of Customs, rendered a Resolution/Decision through a 1st Indorsement dated September 11, 2003[10] reclassifying petitioner's importation covered by Import Entry Nos. C-33771-03 and C-67560-03 of Orange Concentrate and Lemon Concentrate as falling under the Tariff Harmonized System Heading H.S. 2009.19 00 and H.S. 2009.80 00, respectively, both with an import duty rate of 7%.

On October 7, 2003, petitioner filed its appeal[11] with respondent Commissioner of Customs for the reconsideration of the VCRC's 1st Indorsement/Committee Resolution dated September 11, 2003 and paid the requisite protest/appeal fee.

Consequently, on November 13, 2003, the VCRC rendered the assailed *Resolution/Decision* (1st Indoresement)[12] modifying the 1st Indorsement/Committee Resolution dated September 11, 2003, effectively reclassifying petitioner's articles of importation covered by Import Entry Nos. C-33771-03 and C-67560-03 to fall under the Tariff Harmonized System Heading H.S. 2009.19 00, H.S. 2009.80 00, and HS 2009.90 00 with the corresponding import duty rates of 7%, 7%, and 10%, respectively.

[10] Exhibit "N"; Docket, pp. 308-310.
[11] Exhibit "O"; Docket, pp. 311-312.
[12] Supra.

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On December 5, 2003, the Office of the Commissioner of Customs received the assailed Resolution/Decision dated November 13, 2003, as evidenced by a Memorandum[13] dated December 1, 2003 issued by the Chairman of the VCRC regarding the appeal filed by petitioner thereon. Respondent Commissioner had thirty (30) days from receipt of the records on December 5, 2003, or until January 4, 2004 to render a decision, but respondent did not render a decision thereon within the said period.

Thus, the Resolution/Decision (1st Indorsement) dated November 13, 2003 is deemed upheld by respondent Commissioner of Customs. In view thereof, petitioner was constrained to file the instant petition for review before this Court on February 3, 2004 seeking a reversal of the November 13, 2003 Resolution/Decision.

THE ISSUES

The issues for this Court's consideration, as jointly stipulated by the parties, are as follows:

1. Whether or not respondent Commissioner of Customs committed reversible error in upholding the Resolution/Decision dated November 13, 2003 of the VCRC of respondent Bureau of Customs;

2. Whether or not petitioner's Import Entry Nos. C-33771-03 and C-67560-03 properly fall within the classification under Tariff Heading H.S. 2106.90 10 – i.e., "flavouring materials, n.e.s., of the kind used in the food and drink industries; other food preparations to be used as raw materials in preparing composite concentrates for making beverages" – with an imposable duty rate 1%;

3. Whether or not petitioner's Import Entry Nos. C-33771-03 and C-67560-03 can be classified under Tariff Heading H.S. 2009.19 00, H.S. 2009.80 00 and H.S. 2009.90 00, pertaining to "fruit juices", as held by the respondents in

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[13] Exhibit "B"; Docket, pp. 35-37.

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the assailed *Resolution/Decision* dated 13 November 2003;

4. Whether or not petitioner's Import Entry Nos. C-33771-03 and C-67560-03 can be classified under Tariff Heading H.S. 2106.90 50, pertaining to "composite concentrates for simple dilution with water to make beverages", as held by the VCRC of respondent Bureau of Customs in the *Resolution/Decision* dated 11 September 2003; and

5. Whether or not respondents violated petitioner's right to due process when respondents classified petitioner's Import Entry Nos. C-33771-03 and C-67560-03 under Tariff Heading H.S. 2009.19 00, H.S. 2009.80 00 and H.S. 2009.90 00 in the assailed *Resolution/Decision* dated 13 November 2003.

It appearing that the foregoing issues are interrelated, these will be discussed jointly for convenience and brevity.

THE COURT'S RULING

The Court finds the petition meritorious.

Petitioner's subject importations were classified under the *Harmonized Commodity Description and Coding System,* or simply *Harmonized System*, which is an international product nomenclature based on the Customs Cooperation Council Nomenclature (CCCN) and the Standard International Trade Classification (SITC) Revision 2. The CCCN was the product nomenclature authored by the then Customs Cooperation Council (CCC) now known as World Customs Organization (WCO), while SITC Revision 2, drafted by the United Nations (UN) is used in trade statistics.[14]

The *Harmonized System* is aimed at effecting uniformity in the classification of imported goods and the standardization of commercial

[14] Nague, *Handbook on the Tariff and Customs Code of the Philippines, as amended, and the Customs Brokers Act of 2004 (R.A. 9280) and its Implementing Rules and Regulations*, 1st ed., p. 83.

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documents, thereby enhancing customs administration. It is used as an international language and code for customs purposes. The Philippines adopts this system to keep abreast of the latest internationally-accepted nomenclature in goods classifications, which is the basis of conduct for trade between the Philippines and the rest of the world.[15]

Some of the salient features of the *Harmonized System* are as follows: it is a complete product classification system; designed as a "core" system, so that countries adopting it could make further subdivisions according to their tariff and statistical needs; it consists of 5,000 article descriptions which appear as headings and subheadings; arranged into 97 chapters and grouped into 21 sections; it contains the General Rules for the Interpretation of the System, Section and Chapter Notes, including Subheading Notes and a List of headings arranged in systematic order (i.e. degree of processing) and, where appropriate, subdivided into subheadings.

The General Rules are provided to ensure that a given product is always classified in one and the same heading (and subheading), to the exclusion of any others which might appear to merit consideration. The Section and Chapter Notes (including Subheading Notes) form an integral part of the *Harmonized System* and have the same legal force as the General Rules.[16] Thus, the classification of goods and interpretation of the system should be based on the General Rules for the Interpretation of the System as reflected under Sections 103 and 104 of the Tariff and Customs Code of the Philippines (TCCP), Volume 1.

[15] Philippine Tariff Commission, *A Primer On New Developments In Trade and Tariff Policy*, August 2003 ed., pp. 115-116.
[16] Ibid.

Petitioner's subject importations covered under Import Entry Nos. C-33771-03 and C-67560-03, consist of the following articles: Sunquick Orange Concentrate; Sunquick Lemon Concentrate; Sunquick Tropical Fruit Concentrate; Sunquick Ice Lemon Concentrate; and Sunquick Peach Orange Concentrate, which are used by petitioner as one of its raw materials to manufacture its product, Sunquick Juice Concentrate drinks. According to petitioner, its past importations have always been classified under the Tariff Harmonized System Heading H.S. 2106.90 10[17] with an import duty of one (1%) percent.

The dispute in this case arose when the examiners of respondent Bureau of Customs contested petitioner's classification of its importations under Tariff Heading H.S. 2106.90 10, as well as the payment of import duties based thereon, and recommended to reclassify the articles as follows: "Orange Concentrate – H.S. 2009.19 00 – 7%; Lemon Concentrate – H.S. 2009.80 00 – 7%" under the Resolution/Decision dated September 11, 2003 *(1st Indorsement)*, and subsequently modified on November 13, 2003 to fall under the Tariff Harmonized System Heading H.S. 2009.19 00 – 7% for Orange Concentrate; H.S. 2009.80 00 – 7% for Lemon Concentrate; and H.S. 2009.90 00 – 10% for Tropical Fruit: Ice Tea Lemon and Peach and Orange Concentrate (Mixtures of Juices). As no decision was rendered by respondent Commissioner of Customs within the reglementary period which ended on January 4, 2004, petitioner filed the instant Petition for Review

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[17] Classified under Chapter 21 of the Tariff and Customs Code of the Philippines under the heading "Miscellaneous Edible Preparations" and described as "Flavouring materials, n.e.s. of the kind used in the food and drink industries; other food preparations to be used as raw materials in preparing composite concentrate for making beverages".

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centered on the proper classification of petitioner's subject importations with the additional assertion that petitioner was denied of its right to procedural due process to assail the said reclassifications.

As mentioned earlier, the General Rules for the interpretation of the *Harmonized System* were provided to ensure that a given product is always classified in one and the same heading or subheading, to the exclusion of others which might appear to merit consideration.[18] Section 103 of the TCCP, Volume 1, provides the General Rules for the Interpretation of the *Harmonized System* and the list of headings and the legal Notes, respectively, to wit:

> "SECTION 103. *General Rules for the Interpretation of the Harmonized System.* - Classification of goods in the Nomenclature shall be governed by the following principles:
>
> 1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.
>
> 2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.
>
> (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods

[18] Nague, *Handbook on the Tariff and Customs Code of the Philippines, as amended, and the Customs Brokers Act of 2004 (R.A. 9280) and its Implementing Rules and Regulations*, 1st ed., p. 84, citing *Tariff Commission, A Primer on New Developments in Trade and Tariff Policy*, August 2003 ed.

consisting of more than one material or substance shall be according to the principles of Rule

3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to therein:

xxx xxx xxx

6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of the Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires."

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In applying the foregoing rules to the instant petition, We look at the competing headings pertaining to petitioner's classification of the subject importations and to respondent's reclassifications thereof, to wit:

Petitioner's classification and duty rate:

H.S. 2106.90 10 – 1% -	covers flavoring materials, nes., of kind used in food and drink industries, other food preparations to be used as raw materials in preparing composite concentrates for making beverages.

Respondent's reclassifications and duty rates:

H.S. 2106.90 50–7% -	covers composite concentrate for simple dilution with water to make beverages.
H.S. 2009.19 00–7% -	covers orange juice, not frozen.
H.S. 2009.80 00–7% -	covers juice of any other single fruit or vegetable.
H.S. 2009.90 10–10% -	covers mixtures of juices.

Based on Section 103(3) of the TCCP, when for any reason, as in the instant case, goods are prima facie classifiable under two or more headings, said subsection provides three (3) methods of classifying goods. The methods operate in the order in which they are set out. In the order of priority, Sec. 103 (3)(a) requires that goods should be first classified under the heading which provides the most specific description.

Looking now at the descriptions of the goods or items classified under the herein competing headings, this Court finds that petitioner's classification under Tariff Heading H.S. 2106.90 10 is the most specific and apt in describing the subject importations, i.e., - flavoring materials, nes., of kind used in food and drink industries, other food preparations to be used as raw material in preparing composite concentrates for making beverages. In fact, We find respondent's arguments that the subject importations can be simply

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diluted with water and, thus, should be classified under Tariff Harmonized System Headings H.S. 2009.19 00, H.S. 2009.80 00, and H.S. 2009.90 00, untenable.

As explained in the Notes for said headings:[19]

> "The fruit and vegetable juices of this heading are generally obtained by pressing fresh, healthy and ripe fruit or vegetables. This may be done (as in the case of citrus fruits) by means of mechanical 'extractors' operating on the same principle as the household lemon-squeezer, or by pressing which may or may not be preceded either by crushing or grinding (for apples in particular) or by treatment with cold or hot water or with steam (e.g. tomatoes, blackcurrants and certain vegetables such as carrots and celery).
>
> The liquids thus obtained are then generally submitted to the following processes:
>
> (a) **Clarification**, to separate the juice from most of the solids, by means of clarifying substances (gelatin, albumin, infusorial earth, etc.) or of enzymes, or by centrifuging.
> (b) **Filtration**, often by means of filter plates faced with kieselguhr, asbestos, cellulose, etc.
> (c) **De-aeration**, to eliminate oxygen which would spoil the colour and flavour.
> (d) **Homogenisation**, in the case of certain juices obtained from very fleshy fruits (tomatoes, peaches, etc.).
> (e) **Sterilisation**, to prevent fermentation. Various methods may be employed, for example, pasteurization (prolonged or 'flash'), electric sterilization in machines fitted with electrodes, sterilization by filtration, preservation under pressure using carbon dioxide, refrigeration, chemical sterilization or ion exchangers.
>
> As a result of these various treatments the fruits or vegetable juices may consist of clear, unfermented liquids. Certain juices, however (in particular those obtained from pulpy fruits such as apricots, peaches and tomatoes) still contain part of the pulp in finely divided form, either in suspension or as a deposit.
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> xxx xxx xxx

[19] Section IV, Chapter 20 of the Explanatory Notes.

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The juices of this heading may be **concentrated** (whether or not frozen) or in the form of **crystals or powder** provided, in the latter case, that or soluble in water. Such products are usually obtained by processes involving either heat (whether or not in a vacuum) or cold (lyophilisation).

Provided they retain their original character, the fruit or vegetable juices of this heading may contain substances of the kinds listed below, whether these result from the manufacturing process or have been added separately:

(1) Sugar.
(2) Other sweetening agents, natural or synthetic, ...
(3) Products added to preserve the juice or to prevent fermentation (e.g. sulphur dioxide, carbon dioxide, enzymes).
(4) Standardising agents (e.g. citric acide, tartaric acid) and products added to restore constituents destroyed or damaged during the manufacturing process (e.g., vitamins, colouring matter), or to 'fix' the flavour (e.g., sorbitol added to powdered or crystalline citrus fruit juices). However, the **heading excludes fruit juices in which one of the constituents (citric acide, essential oil extracted from the fruit, etc.) has been added in such quantity that the balance of the different constituents as found in the natural juice is clearly upset; in such case the product has lost its original character.**" *(Emphasis and underscoring supplied)*

Verily, to fall under the assailed Tariff Harmonized System Headings, petitioner's articles of importation, as fruit juice/mixtures, **should not have lost its original character, in spite of the addition of certain "standardizing agents/constituents"**. Contrary thereto, We find the subject importations categorized as "non-alcoholic composite concentrates" to have apparently lost their original character due to the addition of ingredients in such quantity that the concentrated fruit juice mixture only comprises a small percentage of the entire compound.

This was clearly explained by the VCRC in its subsequent Resolution/Decision ("1st Indorsement") issued on February 17, 2005

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pertaining to subsequent similar importations of petitioner, effectively correcting its findings in the assailed Resolution/Decision dated November 13, 2003 concerning the same party-importer, issues and articles of importation, to wit:

> "**SUB-GROUP OBSERVATION/FINDINGS:**
>
> The classification issue was divided into two regime. The era under the old Harmonized Commodity Description and Coding System, while the other is the latest revised edition, the Asean Harmonized Tariff Nomenclature.
>
> **The previous committee resolution was promulgated technically not on the merit of the case but failure on the part of the importer to submit their position paper/arguments within the prescriptive period given by the committee.**
>
> Importer submitted samples of subject shipment for laboratory analysis to Philippine customs Laboratory to validate the veracity of product information given by the supplier and to determine the correct tariff classification.
>
> xxx xxx xxx
>
> Based on the report of the Laboratory Analysis, compound is made up to water 57.9%, Invert Sugar 34.34%, Citric Acid 2.94%, Vitamin C (Ascorbic Acide) 105 mg.
>
> Since the item is compound which is composed of water, sugar, concentrated juice, flavourings, citric acid, stabilizer, preservatives, vitamins C and colouring to produce beverage ready to drink. **<u>Consequently the concentrated citrus juice has lost its original character due to the fact that it comprises only 12% of the total compound.</u>**
>
> Items (fruit juices) classifiable under HS 2009 are fruit juices generally obtained by pressing fresh, healthy and ripe fruit. Per item 4 of the Explanatory Notes to the Harmonized Commodity Description and Coding System apparently subject article has lost its original character as concentrated fruit juice drink to the compounding ingredients which reduces the fruit juice to 12% of the total compound.
>
> In view of the foregoing subject article is classifiable under tariff heading H.S. 2106.90 10 at 1% for entries filed under the old

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regime. For those filed under the new regime tariff heading AHTN 2106.90 51 at 1% where the item are specifically provided.

RESOLUTION: To apply sub-group recommendation which is to adopt **H.S. 2106.90 10 at 1% for entries filed under the old regime** and for those **filed under the new regime, AHTN 2106.90 51 at 1%** where the item are specifically provided."[20] (*Emphasis and underscoring supplied*)

Evidently, the VCRC admits that the previous committee resolution/decision was promulgated technically not on the merit of the case but merely due to the failure of the petitioner-importer to submit their position paper/arguments within the prescriptive period given by the committee. And the subsequent submission by petitioner of samples of the shipment similar to subject importations for laboratory analysis to Philippine Customs Laboratory where the product information of said samples were verified and validated led to the finding that said importations (concentrated citrus juices), consisting of water, sugar, concentrated juice, flavourings, citric acid, stabilizer, preservatives, vitamins C and colouring to produce beverage ready to drink, have lost its original character due to the fact that it comprises only 12% of the total compound. Thus, the VCRC resolved to apply the sub-group recommendation by adopting the classification of said importations under H.S. 2106.90 10 at 1% duty (filed under the old regime similar to subject importations).

Although the subsequent findings of the VCRC contained in its Resolution/Decision (*1st Indorsement*) dated February 17, 2005 as regards the

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[20] Exhibit "Q", Ist Indorsement dated February 17, 2005 rendered by Atty. Felipe A. Bartolome, CESO V, Chairman, Valuation & Classification Review Committee pertaining to petitioners similar importations of Sunquick Orange, Mandarin, Tropical, Lemon, Peach, Orange, Red Orange Compound; Docket, pp. 318-320.

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reclassification of petitioner's articles of importation were made in a separate administrative proceeding, the same is accorded respect and recognition by this Court. The principle that the contemporaneous construction of a statute by the executive officers of the government, whose duty it is to execute it, is entitled to great respect, and should ordinarily control the construction of the statute by the courts.[21]

It is a well-settled that findings of administrative agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but even finality and they may be disturbed or set aside by the judicial department only if there is a clear error of law, or abuse of power, or lack of jurisdiction, or grave abuse of discretion.[22]

Moreover, the Court favorably considered the following evidence submitted by petitioner in support of its petition:

(a) Petitioner's letters of explanation dated May 13, 2003[23] and July 17, 2003[24] to VCRC explaining that subject articles of importation are food preparations to be used as raw material in preparing composite concentrates for making beverages; that the specification of Sunquick concentrates clearly indicates that the said concentrates are mixture of water, sugar and fruit juice; and that at this stage, the balance of the natural constituents has been upset as the addition of stabilizers, flavorings and colorings, making it clear that the concentrates are no longer a juice;

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[21] Philippine Association of Free Labor Union [PAFLU] vs. Bureau of Labor Relations, 72 SCRA 396 (1976).
[22] Sesbreno vs. Ala, 208 SCRA 359 (1992); Peralta vs. Civil Service Commission, 212 SCRA 425 (1992); Villanueva, Sr. vs. Leogardo, Jr., 215 SCRA 835 (1992).
[23] Supra.
[24] Exhibit "M"; Docket, pp. 301-307.

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(b) Report of Analysis issued by Aurora V. Kimura, Head of the Organic Chemistry Laboratory, Industrial Technology Development Institute of the Department of Science and Technology, per the request of Philippine Customs Laboratory, [25] explaining that the compound submitted for analysis fell under the category of heavy syrup and, thus, too sweet for someone to drink[26] and showing the following findings with respect to Sunquick Lemon Compound No. 03-4743 as follows: Water - 57.90 % w/w; Sugar - 34.36 % w/w; Citric Acid - 2.94 % w/w; Vitamin C (Ascorbic Acid), mg/100g – 105;

(c) Product specifications issued by CO-RO Food A/S, Denmark[27] showing the ingredients of subject imported articles as consisting of water, sugar, concentrated citrus juice, flavourings with casein, acidity regulator, stabilizers, preservatives, vitamin C and colours;

(d) Letter of a certain Helen Nielsen, Documentation Department of CO-RO Food A/S, Denmark, addressed to The Customs Department (of the Philippines) stating that the compound which petitioner is importing cannot be categorized as a concentrate that can be diluted in water and ready to be consumed by the general public. Attached to said letter is a description on the product specification;[28] and

(e) Flow chart of its manufacturing process and a detailed explanation of the same[29] as testified upon by petitioner's witness Rebecca Maronilla during the hearing held on February 7, 2005. [30] We quote petitioner's

[25] Exhibit "R"; Docket, pp. 315-317.
[26]TSN, April 6, 2005 hearing.
[27] Attached to Exhibits "H" and "M" as appendix B; Docket, pp. 291-296 and 305-307.
[28] Attached to Exhibit "M"; Docket pp. 304-307.
[29] Attached to Exhibits "H" and "M" as appendix A; Docket, pp. 225- 227.
[30] TSN, February 7, 2005 hearing, pp. 17-22.

narration of its manufacturing process of the imported liquid raw materials, to wit:

"I. SUGAR SYRUP PREPARATION IN BOILING TANK

- Measure pure water in 900 liter sugar boiling vessel
- Start the stirrer and steam heat. When the temperature reaches 95 C, add citric acid
- Stop stirrer when citric acid is dissolved, and wait until the small airbubbles have disappeared, then start the stirrer again.
- Add the sugar in smaller portions to get a good dispersion, and maintain the temperature between 90 – 95 C during the whole sequence.
- When the temperature reaches 98 C, add the citric acid solution and continue stirring and heating to 108 C.
- Stop the stirrer and remove the foam after 10 minutes
- Take the sugar test
- Immediately the solution is pumped to the 1500 liter capacity mixing tank through the heat exchanger
- The temperature of the solution as it goes through the heat exchanger must be checked to cool the solution down to 40 C.
- Total time for sugar syrup preparation is approximately one hour and 40 minutes.

II. IN MIXING TANK

- When the sugar syrup is in the mixing tank, start the stirrer.
- Pump the compound (liquid raw material which should have been stored at 15 C) into the mixing tank where the sugar syrup is.
- Mix the sugar solution and compound for 10 minutes
- Make a citric acid solution with water at 40 C
- Still with the stirrer running, add the citric acid solution though the compound pump.
- The citric acid solution has to be pressed out of the pipe with water. When the water reaches the mixing tank, the stream is turned to the floor.
- Make the ascorbic acid solution with 45 C water and add to mixing tank.
- Continue mixing for 10 minutes
- The mixture should have a finished temperature of 34 C.
- Take out about 40 kg Sunquick for vitamin mixture.
- Add the Sun Quick-vitamin dispersion into the concentrate. (pls refer to item III)

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- Take sugar, citric acid and dilution tests to determine compliance with the standards set by the principal, CO-RO Foods A/S of Denmark
  - Take sugar test using a retractor meter
  - Take citric acid test by weighing the citric acid content in grams and kilograms
  - Take dilution test using a beaker

III. VITAMIN DISPERSION

- Measure water
- Add Dry Vitamin A to the water while stirring
- Add Dry Vitamin E to the water while stirring
- Continue stirring for 30 minutes, no lumps must be lest
- Add sugar and stir for 15 minutes
- The vitamin dispersion is poured slowly into the 40 kg Sunquick which has been cooled down to 25 C.
- Continue stirring until totally mixes.

TOTAL PROCESS TAKES APPROXIMATELY 2 HOURS AND 40 MINUTES.

The batch is now ready for bottling. The concentrate should be further cooled down to 21 C for bottling. The bottling process is VACUUM filling."[31]

Clearly from the foregoing manufacturing process, petitioner's subject importations are not ready to drink concentrates, but serve as raw materials to produce petitioner's Sunquick products. This procedure was observed by the Court's Executive Clerk of Court II, Atty. Jesus P. Inocando, Jr., who commissioned by the Court to conduct an ocular inspection of petitioner's manufacturing plant in Taguig, Manila on March 10, 2005, wherein he reported that:

"On our ocular inspection of the manufacturing plant of petitioner, Ms. Solidum and Mr. Domingo showed us the sample of the imported compounds (raw materials), showed to us the step by step manufacturing process of petitioner and even showed us the bottling and packaging of the finished product.

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[31] Docket, pp. 226-227.

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> Per observation of the undersigned, the imported compounds (raw materials) are very sticky, the plant is clean and that the personnel of petitioner in the plant strictly followed the manufacturing process as presented in Annex A and Annex B of this report.
>
> Upon questioning by the counsel for respondent, Mr. Domingo said that while the imported compounds (raw materials) can be mixed with water and maybe drinkable, he is not sure if the same is suitable for human consumption. None of us dared to taste the sample of imported compounds (raw materials) diluted in water. The imported compounds (raw materials) mixed with water produces bubbles on top of the mixture, not like the one that has gone through the manufacturing process. xxx"[32]

Lastly, We look into petitioner's claim that it was denied procedural due process. After careful consideration of the circumstances that transpired in the instant case, We find no merit in petitioner's claim.

It cannot be overly emphasized that petitioner was given an opportunity to appeal the November 13, 2003 Resolution/Decision as well as the previous September 11, 2003 Resolution/Decision *(1st Indorsement)* of the VCRC. In fact, when the September 11, 2003 *(1st Indorsement)* Committee Resolution was issued reclassifying petitioner's articles of importations to fall under the Tariff Harmonized System Headings H.S. 2009.19 00 and H.S. 2009.80 00, petitioner filed an appeal[33] to the Commissioner of Customs seeking the reconsideration of the VCRC's aforementioned findings. Petitioner is thus estopped from raising the alleged denial of due process when in fact, it was not denied the opportunity to contest the assailed November 13, 2003 Resolution/Decision or even the September 11, 2003 *(1st Indorsement)* Committee Resolution.

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[32] Commissioner's Report; docket, pp. 245-246.
[33] Exhibit "O".

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Due process as a constitutional precept does not always and in all situations, require a trial-type proceeding. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[34]

WHEREFORE, finding merit in petitioner's Petition for Review, the same is hereby **GRANTED**. Accordingly, the *Resolution/Decision* dated November 13, 2003 of the Valuation and Classification Review Committee of the Bureau of Customs is hereby **SET ASIDE** and petitioner's importation covered by Import Entry Nos. C-33771-03 and C-67560-03 are reclassified under Tariff Harmonized System Heading H.S. 2106.90 10 with an import duty rate of 1%.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[34] Mutuc vs. Court of Appeals, 190 SCRA 43 (1990), citing the cases of Zaldivar vs. Gonzales, 166 SCRA 316 (1988), Tajonera vs. Lamaroza, 110 SCRA 438 (1981), and Yap Say vs. IAC, 159 SCRA 325 (1988).

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ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

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