WISE & COMPANY, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2717

ROLANDO G. GEOTINA,
COMMISSIONER OF CUSTOMS,
Respondent.

12/29/77

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D E C I S I O N

This is an appeal from the decision of the Commissioner of Customs dated June 13, 1975, affirming that of the Collector of Customs dated October 30, 1974, dismissing Manila Protests Nos. 9418, 9419 and 9441 filed by petitioner against the assessment for additional customs duties and advance sales taxes based upon the CIF purchase price of the imported titanium dioxide covered by Import Entries Nos. 54941-74 (p. 76, Folder II, Customs Rec.), 68391-74 (p. 23, Folder II, Customs Rec.), and 82428-74 (p. 37, Folder II, Customs Rec.).

This case was submitted by the parties for decision by this Court based upon the pleadings and the Customs records.

Petitioner is a corporation organized and existing under the laws of the Philippines. It is engaged in the importation and sale of general classes of merchandise, among which is titanium dioxide, a product manufactured in England.

It appears from the said pleadings and records that petitioner imported said titanium dioxide, a product of British Titan Product Co., Ltd., located in Billingham, England, in three shipments, covered by the aforesaid import entries, as follows:

1) 10 pallets containing 10,000 kilos paper bags of titanium dioxide;

2) 25 pallets containing 25,000 kilos paper bags of titanium dioxide; and

3) 10 pallets containing 10,000 kilos paper bags of titanium dioxide

which arrived at the Port of Manila on June 9, July 22, and September 8, 1974, on board the SS "Philippine Corregidor," SS "Benvennoch," and SS "Bellerophon," respectively. As shown in the upper portion of their respective covering consular invoices, the titanium dioxide, covered by import entry No. 54941-74, had a "Home Consumption Value" of 279 English Pounds per 1000 kilos thereof (p. 74, Folder II, Customs Rec.); that which was covered by import entry No. 68394-74 had a "Home Consumption Value" of 275 and 279 English Pounds per 1000 kilos (p. 26, Folder II, Customs Rec.); and that which was covered by import entry No. 89423-74 had a

"Home Consumption Value" of 297 English Pounds per 1000 kilos (p. 34, Folder II, Customs Rec.) Notwithstanding the indicated "Home Consumption Value" in the consular invoices, the appraiser of respondent had assessed the imported titanium dioxide for additional customs duties and taxes upon an "established home consumption value on the basis of the purchase price" or upon the CIF purchase price or "current wholesale export value" thereof, arriving at the amounts of ₱14,393.00 and ₱52,131.00 in customs duties and advance sales tax, respectively, itemized as follows:

Entry No. 54941-74:

Customs Duty	₱13,235.00
Advance Sales Tax	1,158.00
Total	₱14,393.00

(p. 13, CTA Rec.)

Entry No. 68391-74:

Customs Duty	₱47,964.00
Advance Sales Tax	4,167.00
Total	₱52,131.00

(p. 6, Folder II, Customs Rec.)

With respect to import entry No. 82428-74, the titanium dioxide was assessed for additional customs duty and advance sales tax in the total sum of ₱19,[illegible]4.00, but for lack of any record before us, this amount has not been itemized to show what of this said amount corresponds to the customs duty and the sum that pertains to the advance sales tax.

The aforesaid assessed amounts of ₱14,393.00, ₱52,131.00, and ₱19,684.00 as customs duties and advance sales taxes were paid by petitioner under Official Receipts Nos. 40845, 40832, and 318216 dated August 27, 1974, August 27, 1974, and September 17, 1974, respectively. (See Petitioner's Protests Nos. 9418, 9419, and 9441, pp. 12, 9, & 16, respectively, of Folder I, Customs Rec.).

Petitioner protested the appraisals or assessments made by the customs appraiser contending that the basis of the home consumption value of the titanium dioxide should have been that which were indicated in the consular invoices and authenticated by the Philippine Consul in the place of importation, or in England, on the grounds (1) that the "home consumption value," and not the CIF purchase price of the said merchandise is the dutiable value provided under Section 201 of the Tariff and Customs Code, as amended; and (2) that the use by the appraiser of the CIF purchase prices of said merchandise as basis for computing the customs duties and advance sales taxes on the imported merchandise is null and void. (See protests-letters of petitioner filed respectively on September 5, 1974 /Mla. Protest No. 9418 (Entry 54941-74), p. 12, Folder I, Customs Rec./; September 5, 1974 (Mla

/Fla. Protest No. 9419 (Entry No. 68391), p. 9, Folder I, Customs Rec./; and September 26, 1974 /Fla. Protest No. 9441 (Entry 82428, p. 16, Folder I, Customs Rec./. However, with respect to the importation of the titanium dioxide on board the SS "Bellerophon" on September 8, 1974, petitioner had declared the "purchase price (CIF value)" in import entry No. 82428-74, as the dutiable value of said titanium dioxide, instead of the home consumption value thereof which was 297 English Pounds per 1000 kilos appearing on the top most portion of the consular invoice. (p. 34, Folder II, Customs Rec.) Petitioner explained that it had declared the CIF (cost, insurance, and freight) purchase price of said titanium dioxide as the dutiable value in the latter entry, and not the actual home consumption value of 297 English Pounds per 1000 kilos, in order to avoid the possible imposition upon it by respondent's appraiser of a surcharge inasmuch as in the case of the previous shipments, which were also protested as aforesaid, and which were not yet heard at that time, the appraiser took the purchase price or cost, insurance, freight (CIF) of said titanium dioxide as basis for the assessment and collection of the duty notwithstanding that it was, and it still is of its view that the dutiable value thereof should be the home consumption value under Section 201 of the Tariff and Customs Code, as amended, and as shown in the covering consular invoice. (See Manila Protest No. 9441, p. 16, Folder I, Customs Rec.)

On October 30, 1974, the aforestated protests were adjudicated by the Collector of Customs holding that the aforesaid "shipments (of titanium dioxide) were assessed by the Bureau of Customs at the established home consumption value on the basis of the purchase price of the subject shipments contrary to the allegations and arguments of herein protestant (petitioner) that the basis of the HCV (Home Consumption Value) should have been that as provided for in the consular invoices duly authenticated by the Philippine Consul" and (1) that his "office finds no sufficient justification to disturb the appraisement made by the appraiser" and (2) that the "protestant (petitioner herein) failed to realize that value changes from time to time depending on economic factors and is compiled by appraisers and that what was imposed hereon was the established home consumption value of the articles" and accordingly dismissed the protests for lack of merit. (Decision, Collector of Customs, dated October 30, 1974, pp. 22-23, Folder I, Customs Rec.)

On November 20, 1974, petitioner appealed to the Commissioner of Customs (pp. 30-31, Folder I, Customs Rec.) on the following grounds:

1) The herein protest has never been subject to a hearing as provided by Section 2312 of Customs Law.

2) The decision of the Collector of Customs dated November 6, 1974 states that "the subject shipment was assessed by the Bureau of Customs at the established home consumption value on the basis of the purchase price of subject shipment." We take the term established value to mean such value as the ones published in Customs Valuation Circulars and as contemplated in the third paragraph of Sec. 201 of the Tariff Law. However, a diligent search among the various Customs Valuation Circulars by the protestant has failed to show that there is such a circular with established home consumption value on the purchase price of the subject shipment.

3) The dutiable value based on the purchase price is a null and void appraisement for the reason that the second paragraph of Sec. 201 clearly stipulates that it is the home consumption value or price declared in the commercial invoice, consular invoice, trade or sales invoice that must govern the basis for dutiable value.

4) The purchase price as the term implies refers to the price at the time the goods were bought by the Philippine importer from the exporter in England. It is not by any means equivalent to the home consumption value or price which is the value of the goods for home consumption in England.

5) Finally, it may not be amiss to call attention to the notation on the consular invoices accompanying the shipments which states that "Comparison of UK export prices is no longer relevant. Home price levels are restricted by UK Government legalisation whereas Philippine purchase price reflect current world price levels." (Emphasis supplied.) In plain language, the notation simply means

> that the UK home price levels are controlled by the Government much in the same way prices are controlled in the Philippines to protect the consumers, but the purchase is not controlled and, therefore, may soar to any height, to benefit the producers. This accounts for the discrepancy between the home consumption price of the commodity when sold in England and the purchase price of the said commodity when sold abroad.

On June 13, 1975, the Commissioner of Customs rendered a decision affirming that of the Collector of Customs and stating, in part, as follows:

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> After a careful study of the records of the case, this Office concludes that the contention of the protestant is not well taken. To insist that the appraiser is duty bound to rely on the value of the shipments appearing on the consular invoice as the basis in determining the home consumption value of the articles, is in contravention of the applicable provisions of the Code more specifically Section 1405 which states:
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> > Sec. 1405. Proceedings and Report of Appraisers.- Appraisers shall, by all reasonable ways and means, ascertain, estimate and determine the value of price of the articles as required by law, any invoice or affidavit thereto or statement of cost, or of production to the contrary notwithstanding, x x x. (Underscoring supplied).
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> The Supreme Court, applying this provision of the Code, aptly states:
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> > If the customs authority were bound by the invoice value, it is evident that they would be, to a considerable extent, at the mercy of foreign merchants and importers x x. (The Coca-Cola Export Corporation vs. The Commissioner of Internal Revenue and the Collector of Customs, Manila, G.R. No. 123604, March 15, 1974).

The issues in this case are:

(1) Whether or not the "home consumption value" provided for in Section 201 of the Tariff and Customs Code of the Philippines, as amended, should be construed to mean that value of the imported titanium dioxide indicated in the consular invoices, or the CIF purchase value thereof, which should be the basis of the *ad valorem* duty; and

(2) Whether or not petitioner is entitled to claim for the refund of the additional customs duties and advance sales taxes it had paid on the imported titanium dioxide.

With reference to the first issue, petitioner contends that under Section 201 of the Tariff and Customs Code of the Philippines, as amended, the dutiable value for purposes of the customs duty should be the home consumption value of the imported titanium dioxide and not the CIF purchase value. The home consumption value referred to by petitioner is that value duly certified to as such in the consular invoices as the home consumption value by the Philippine Consul in the place where the imported articles were imported, and not the CIF purchase value of price thereof which includes, aside from the cost or purchase price of the merchandise, the insurance and the freight thereof incurred in bringing said merchandise to the

Philippines. Petitioner, furthermore, claims that there was no published value of the titanium dioxide as required by Section 201 of the Tariff and Customs Code, as amended.

Without directly meeting the claim of petitioner that there was no published value of the articles in question, respondent, on the other hand, insists that the proper dutiable values of the titanium dioxide should be their CIF values, or the "Wholesale Export Value" thereof, which were also stated in the consular invoices, and which were more reflective of the true home consumption values thereof, rather than the specifically stated "Home Consumption Value" in the invoices. Respondent also asserts that the appraisal made was authorized or sanctioned by law, citing the case of Lim Quim vs. Collector of Customs, 23 Phil. 509, wherein the Supreme Court stated, in effect, that customs authorities were not bound by the invoice values of the imported articles; that if customs authorities were bound by the invoices, they would be at the mercy of merchants and importers; and that the very purpose of the appraisers is to prevent fraud upon customs and protect the revenues of the Government.

We agree with petitioner that the dutiable value of the titanium dioxide, upon which the assessment of the customs duties in this case must be based, should be the home consumption value as defined in Section 201 of the Tariff and Customs Code, as amended by P.D. 34, effective on November 27, 1972, which provides as follows:

> 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 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/or packings of any kind and all other costs, charges and expenses incident to placing the article in a condition ready for shipment to the Philippines, plus ten (10) per cent of such home consumption value or price.
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> 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 Attache or Commercial Attache (Foreign Trade Promotion Attache), 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 values from time to time.

> When the dutiable value provided for in the preceding paragraphs cannot be ascertained for failure of the importer to produce the documents mentioned in the second paragraph, or where there exists a reasonable doubt as to dutiable value of the imported article declared in the entry, it shall be the domestic wholesale selling price of such or similar article in Manila or other principal markets in the Philippines on the date the duty becomes payable on the article under appraisement, in the usual wholesale quantities and in the ordinary course of trade, minus -
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> (a) Twenty (20) per cent thereof for expenses and profits; and
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> (b) Duties and taxes paid thereon. (Underlining supplied)

The above cited law is applicable as it covers the titanium dioxide imported in the year 1974, and not Section 201, before its amendment, which provides as follows:

> SEC. 201. Basis of Dutiable Value.- Whenever an imported article is subject to an *ad valorem* rate of duty, the duty shall be assessed upon the market value or price at which, at the time of exportation, the same, like or similar article is freely offered for sale in the principal markets of the exporting country for exportation to the Philippines, in the usual wholesale quantities and in the ordinary course of trade (excluding internal excise taxes to be remitted or rebated), plus ordinary expenses prior and incidental to the lading of such article on board the vessel or aircraft at the port of export (including taxes or duties, if any) and freight paid as well as insurance premium paid covering the transportation of such article to the port of entry in the Philippines.
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> When the value of the article cannot be ascertained in accordance with the preceding paragraph, the value shall be the domestic wholesale market value or selling price of

> the same, like or similar imported article in the principal market of the Philippines on the date of exportation of the article under appraisement, in the usual wholesale quantities and in the ordinary course of trade, minus the import duty and other taxes as well as a commission not exceeding six <u>per centum</u> if any has been paid or contracted to be paid on goods secured otherwise than by purchase, and profits not to exceed eight <u>per centum</u> and a reasonable allowance for general expenses not to exceed eight <u>per centum</u> on purchased goods, and all other expenses incidental to the delivery from the port of importation to the principal market in the Philippines. (Underlining supplied)

effective before November 27, 1972, or prior to its amendment by P.D. 34 aforesaid. Before the amendment of Section 201, the dutiable value of imported articles is their "market value or price" at which the imported articles are freely offered for sale in the principal markets of the exporting country for export to the Philippines in the usual wholesale quantities and in the ordinary course of trade (excluding internal excise taxes), <u>plus</u> ordinary expenses prior and incidental to the lading of such article on board the vessel or aircraft at the port of export (including taxes or duties, if any), and freight as well as the insurance premium paid covering the articles' transportation to the Philippines. In other words, before the amendment of Section 201 by P.D. 34, the dutiable value of an imported article is its (1) cost plus (2) insurance and (3) freight. This was otherwise known as the CIF value or price. But the CIF value or price is no longer the basis of the dutiable value under Section 201 of the Tariff and Customs Code, as amended by P.D. 34.

// The applicable law, Section 201, as amended by P.D. No. 34, states quite clearly that the dutiable value should be the home consumption value, and for purposes of customs duties, it is the home consumption value that is indicated in the consular, commercial, trade, or sales invoices. The law had literally defined the home consumption value as that price of the articles bought and sold freely in the wholesale quantities in the ordinary course of trade in the principal market of the country from where the merchandise is exported to the Philippines, less internal excise taxes paid thereon, but including the value of all containers, coverings and/or packings of any kind and all other costs, charges and expenses incident to placing the article in a condition ready for shipment to the Philippines, plus ten (10) per cent of such home consumption value. Applying the above law in this case, there is a concrete showing, as can be seen from the records and particularly the consular invoices, that the home consumption values of the titanium dioxide were those values certified as such by the Export Clerk of the British Titan

Products Co. Ltd. and subscribed before the Philippine Consul R. Ch. Rabe (pp. 20, 34, 74, Folder II, Customs Rec.) in the port of origin of the titanium dioxide which is in England. The correctness of the home consumption values appearing in the consular invoices of the imported titanium dioxide were later on, or on March 12, 1975, or after the appraisal of the shipments were made, corroborated by the affidavits of Thomas George Sinclair, Joint Secretary of the British Titan Products Co. Ltd., the manufacturer and supplier of titanium dioxide, wherein he stated under oath that the home consumption values of the imported titanium dioxide specifically declared in the consular invoices were correct. (pp. 17-18, CTA Rec.; pp. 20-21, CTA Rec.) Sinclair, in another affidavit, equally declared that the home consumption values of the titanium dioxide reflected in a price list attached to his affidavit were the true and correct home consumption values thereof effective between the periods from March 18, 1974 and July 30, 1974, which were the periods at which the importations in question (pp. 40-43, CTA Rec.) were made, or near the dates of said importation. These declarations made in these affidavits have, to our minds, the badges of truth inasmuch as Sinclair was at the time of their execution the Secretary of the manufacturer and seller of the titanium dioxide and can be presumed to know personally the market conditions obtaining in England and, of course, the home consumption values of the titanium dioxide, or the value at which it was sold or offered for sale freely in the usual wholesale quantities in the ordinary course of trade in the principal markets in England. It is obvious that these affidavits can be taken into account by virtue of the stipulation entered into by the parties to submit this case for decision based on the pleadings and records. (U.S. v. Metro Goldwyn-Mayer Corp. 19 CCPA 119, TD 45247; p. 416 Vol. 2, Customs Law Digest.) It is to be noted that these affidavits were made part of the pleadings and records of this case.

The respondent was not able to contradict the home consumption values reflected in the consular invoices, affidavits and price lists, except only to make a general assertion that petitioner has not overcome the presumption of correctness of the appraisal made by respondent's appraiser or has shown that the customs authorities proceeded upon a wrong principle in fixing or assessing the dutiable value of importations, or to show that the figures (perhaps referring to the CIF value) are not true and correct. (See Memorandum for the Respondent, pp. 46, 47-48, CTA Rec.) Moreover, respondent had relied strongly, in support of his stand, upon the case of Lim Quim vs. Collector, op. cit., in which the Supreme Court applied Rule 13(a), Tariff Law of 1909 (Public Laws, Vol. 7, pp. 367-371) which provides as follows:

> RULE 13(a). When an imported merchandise is subject to an *ad valorem* duty the duty shall be assessed upon the actual market value or wholesale price of such merchandise as bought and sold in usual wholesale price of such merchandise, as bought and sold in usual wholesale quantities, at the time of exportation to the Philippine Islands, in the principal markets of the country from where imported, and in the condition in which such merchandise is there bought and sold for exportation to the Philippine Islands, or consigned to the Philippine Islands for sale including the value of all customs, cases, crates, boxes, packs, and coverings of any kind, and all other costs, charges, and expenses incident to placing the merchandise in question, packed ready for shipment to the Philippines.

Rule 13(a), Tariff Law of 1909, applied is the forerunner of Section 201 of the Tariff and Customs Code, as amended, but which latter law is now textually different from the former. The Supreme Court had laid down in that case of Lim Quim, based on said Rule 13(a), Tariff Law of 1909, the general rule that the value of merchandise fixed by the appraiser and affirmed by the Collector of Customs is conclusive, except upon an affirmative showing that the appraiser in assessing the value had (1) proceeded upon a wrong principle and (2) is contrary to law. The case of Lim Quim is inapplicable because the law involved therein is very different from Section 201 of the Tariff and Customs Code, as amended, since the 2nd paragraph of the latter, which defines the home consumption value, and which should be the basis for the imposition of additional customs duty in this case, is absent from the former. The 2nd paragraph of Section 201 as amended, is hereby quoted for emphasis.

> 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 Attache or Commercial Attache (Foreign Trade Promotion Attache), 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.

my Analyzing the 2nd paragraph of Section 201 of the Tariff and Customs Code, which is that particular portion of the law applicable to this case, it provides that the home consumption value is that value which is found or reflected, among others, in the "consular invoice." It is also stated in said Section 201 that where there exists a reasonable doubt as to the correctness of the home consumption value or price of the imported article declared in the entry as borne by the consular, commercial, trade or sales invoices, the dutiable value shall be ascertained from the reports of the Revenue Attache or Commercial Attache, Foreign Trade Promotion Attache or other Philippine diplomatic officers, and that from out of these reports (or data), the home consumption values of articles imported shall be ascertained and published. The finding of fact made by the Supreme Court, in the said cited case of Lim Quim, to the effect that the consular certificate presented therein was merely a notarial act, and that the consul did not make any declaration as to the value of the merchandise is different from the factual situation in this case. In the first place, the Philippine Consul R. Ch. Rabe in this case did not merely perform a notarial act by the simple expedient of subscribing upon oath the declaration made by the Export Clerk of the manufacturer of titanium dioxide regarding the home consumption values of said titanium dioxide in English Pounds, but he had also officially certified, as shown at the back of the consular invoices in question, that "after proper verification, the invoice value as well as the export values stated on this invoice and statements above x x x are correct to the best of my knowledge and belief." (See back of consular invoices, at pp. 20, 34, and 74, Folder II, Customs Rec.) In the second place, while it may be admitted that the appraisement made under Rule 13(a) of the Tariff Law of 1909 in the cited case of Lim Quim is based upon the actual market value or wholesale price of the imported article, which may perhaps be the same as that provided in the first paragraph of Section 201 of the Tariff and Customs Code, as amended, it did not, however, contain the 2nd paragraph of the latter, which states in part that the "home consumption value or price x x x shall be the value or price declared in the consular, commercial, trade or sales invoices," and that in the case of reasonable doubt as to the home consumption value or price declared in the importation, it shall be ascertained from the reports of the revenue or commercial attaches (Foreign Trade Promotion Attache) and other Philippine diplomatic officers and from such information available to the Bureau of Customs. It was not shown here that there was a doubt as to the home consumption value placed in the consular invoices. Furthermore, the home consumption value has not been ascertained from the reports of the attaches and other Philippine diplomatic officers and published lists of the home consumption value of said titanium dioxide.

Thirdly and finally, while it can be noted that there is the general principle that the assessments of values by appraisers or official acts of customs officers are presumed to be correct (US v. Glendinning, McLeish & Co. Inc. 12 Cu App. 222 TD 40229, aff'g Circ. Resp. 33510, p. 449, Vol. 2, Customs Law Digest; US v. Frank Lambert, 2 Cu App 239, TD 31973, Rev'g Abs 21027, TD 29690) this principle can, however, be overcome even by an affidavit which will show a value which is different from what was determined or placed by the appraisers. (Melba B. Rodriguez, 23 CCR 296, RD 7752, Rev'g 19 CCR 268, RD 7405, cited at p. 422, Vol. 2, Customs Law Digest.) Moreover, an invoice, which is unimpeached and undiscredited, can not only be prima facie evidence of the value of the goods wherein it was declared, but is moreover controlling in the absence of proof to the contrary (Carey & Skinner Inc. v. US 16 CCR 361 RD 6779, p. 478 Vol. 2, Customs Law Digest) and that the price paid for merchandise that is imported, as shown by the invoice, is evidence of the market value thereof. (US v. Sabin, 12 Cu App. 520, TD 40731, reh den. 13 Cur App 161, TD 41023, p. 483, Vol. 2, Customs Law Digest.) //

It is a rule that in weighing the evidence of the parties, the presumption of correctness which attaches to the findings of the Collector of Customs or Commissioner of Customs can not have any evidentiary value and can not be weighed against the evidence that may have been presented by the party-importer which challenged the correctness of such finding. (SS Kreage v. US 25 CCR 89, CD 1269; Morse Bros. (Inc.) v. US 13 Cu App 553, TD 41432; US v. Hudson Forwarding & Shipping Co. 18 CCPA 258, TD 44427, aff'g TD 42759). Where, as here, affidavits were submitted, without any objection on the part of the Government, (see US v. Baldwin Universal Co. 18 CCPA 394, TD 44641, Rev'g and remanding TD 4412, p. 604, Vol. 2, Customs Law Digest); A J Brasher Co., Inc. (The Darby Co.) v. US Reap. Dec 3285, 65 TD 1677, 1678) to succinctly prove or show the home consumption value of merchandise to the Court, as well as the price lists, these records constitute competent and relevant evidence of the home consumption values of the imported articles.

It must be noted that petitioner had, as aforesaid, presented affidavits confirming the fact that the home consumption values of the imported titanium dioxide were truly those found in the consular invoices in the price lists, and those reflected in the entry papers. However, respondent never presented any evidence against the above affidavits and price lists which reflect the home consumption values of said titanium dioxide products. The presumption of the correctness of the valuation of the imported articles not being evidential and it having been overcome by the evidence or the records of this case, or the evidence of petitioner not having been <u>prima facie</u> rebutted by respondent, therefore, the burden to show the correctness of his assessment or appraisal uncompromisingly shifted to the respondent. Where the government counsel saw fit, as in this case, to rely solely upon the presumption of correctness of the finding of value by appraiser, and did not take the natural steps to introduce competent and credible evidence in support of the correctness of the appraiser's finding of value, it is fatal, for, in the absence of that countervailing evidence presented by respondent or the government, the importer-petitioner becomes obviously entitled to a decision in its favor. (SS Kresge v. US, <u>op. cit.</u>; Morse Bros. (Inc.) v. US, 13 Cust. App C. 553, 562, TD 41432, <u>cited</u> in U.S. v. Marshall Field & Co. TD 44761, 59 TD 774; U.S. v. Wanamaker, 14 CA Cust. App C. 285, TD 41888, cited in Gallaghan & Ascher, Inc. v. US, Reap Dec. 73536, 67 TD 1365). Moreover, in the absence of evidence or record establishing the statutory dutiable value, it is that value as invoiced and declared in the import entry that will be considered for purpose of imposing the ad valorem duty under the rule that an invoice, unimpeached and undiscredited is not only prima facie evidence of what it declares but is controlling in the absence of proof to the contrary. (Carey & Skiner, Inc. v. US 16 CCS 361, RD 6279, p. 617, Vol. 2, Customs Law Digest.)

The case of Coca-Cola Export Corp. (G.R. L-23604, March 15, 1974) is inapplicable because the factual setting thereof is equally different from the case at bar. In that case the issue in question involves the liability or non-liability of petitioner for advance sales tax of the imported coca-cola concentrate under Section 186 of the National Internal Revenue Code, and the basis for the imposition of such tax being the "import invoice value," of the article. The issue, therefore, raised therein involves the interpretation of the term "import invoice value" as provided in said Section 186 of the Tax Code, a law and taxable base different entirely from the case at bar. In said Coca-Cola Export Corp. case, the "import invoice value" was not the value found in the bill of lading but the landed cost thereof, which includes not only the cost of acquisition, but also the freight, postage, insurance, commission, customs duty, and all similar charges. (BIR Ruling, March 16, 1951).

In the case at bar, the issue in question pertains to the determination of the "home consumption value" of the imported article as provided in Section 201 of the Tariff and Customs Code, as amended. The issue in this case is definitely different from the issue raised in the Coca-Cola Export Corp. The law involved are equally different. As there was no evidence presented by respondent, or no records to show that the home consumption value indicated in the consular invoices were erroneous, or that the home consumption value or the price at which the titanium dioxide were sold or offered for sale freely in the usual wholesale quantities in the ordinary course of trade in the principal market in England from where it was exported to the Philippines (Section 201 of the Tariff and Customs Code, as amended; Customs Tariff Circular No. 141-74, dated September 11, 1974), the home consumption value stated in the consular invoices and confirmed in the affidavits submitted by petitioner must be sustained. Based upon the foregoing, we are of the opinion and so hold that the home consumption values of the titanium dioxide are those reflected in the three (3) consular invoices, in the price lists, and in the two (2) import entries cited heretofore.

Consequently, and insofar as the claim for refund of the advance sales taxes in the amounts of ₱1,158.00 and ₱4,167.00 for the first two importations of 10,000 and 25,000 kilos of titanium dioxide over which this Court has no jurisdiction as petitioner failed to claim for their refund in writing with the Commissioner of Internal Revenue in accordance with Section 309 of the National Internal Revenue Code, and that said Commissioner of Internal Revenue has not been made a party respondent in this case, the instant appeal of petitioner is dismissed. (Luna vs. Comm. of Customs, CTA No. 1947, Nov. 29, 1958; Phil. Wallboard Corp. vs. Comm. of Customs, CTA No. 2136, Sept. 30, 1972; Procter & Gamble PMC vs. Comm. of Customs, CTA Case No. 2155, Resolution, April 15, 1971; Ace Publications, Inc. vs. The Comm. of Customs and Coll. of Customs, G.R. No. L-18803, May 29, 1964; Tagum Electric Company, Inc. vs. Comm. of Customs, CTA Case No. 2749, Resolution, Sept. 13, 1976). However, with respect to the amounts paid by petitioner as customs duties in the amounts of ₱13,235.00 and ₱47,964.00 for the first two importations covered by Import Entries Nos. 54941-74 and 68391-74, the claim for their refund being in order and in accordance with law, are, therefore, refundable to petitioner.

With respect to the third importation of titanium dioxide, covered by Import Entry No. 82428-74, which petitioner declared for customs duties and tax purposes based upon the purchase price (CIF value), instead of its home consumption value as shown in the aforesaid covering consular invoice, which was so declared in order to avoid the possibility of its being subject to surcharge, it is the principle of law that where an importer declares a value in its entry for purposes of customs duties which is erroneous, it can still protest and later on show that what is declared was not the true and correct dutiable value by competent and relevant evidence, and it is not under estoppel in showing the true and correct dutiable value thereof, or in any way prevented from disproving the correctness of the dutiable value by showing, as it was done in this case, that the CIF value it entered as basis for the determination of the customs duty and taxes is not truly and factually the home consumption value thereof. (Wo Kee & Co. v. US, 21 CCPA 366, TD 46890 aff'g Abs 22618; p. 410, Sec. 2.1, Vol. 2, Customs Law Digest; Mercantil Distribuidora, SA v. US 33 CCR 158, CD 1648; p. 410, Vol. 2, Customs Law Digest.) Inasmuch as the dutiable values or the true home consumption values of the titanium dioxide were shown in the consular invoices and the price lists, the home consumption value of the said titanium dioxide prevails over the CIF value declared by petitioner in its aforesaid Import Entry No. 82428-74. Accordingly, and as stated heretofore, in the absence of contrary evidence presented by respondent to show that the home consumption values are not those found in the consular invoices and price lists for purposes of imposing the customs duties, the home consumption values found in said consular invoices and price lists shall be the basis of the dutiable values of the titanium dioxide. However, with respect to the said Import Entry No. 82428-74, and in order that petitioner be entitled to the refund of the additional customs duty, out of the sum of ₱19,674.00, it paid on the imported titanium dioxide, this claim for refund of duties and taxes being derogatory to the taxing power of the state, it is incumbent upon it to prove the exact amount of customs duty to be refundable to it. Note that in this importation the customs duties and revenue taxes paid thereon in the total sum of ₱19,674.00 were neither itemized by petitioner nor by respondent. The records, therefore, do not disclose exactly how much of the ₱19,674.00 represents the customs duties to be refunded. Having failed to show the exact amount of customs duties refundable from out of the sum of ₱19,674.00 paid, it is not entitled to the refund of the customs duty thereon. And with regards to that part of said amount of ₱19,674.00 which corresponds to the advance sales tax paid, this Court has heretofore said that it had no jurisdiction for the same grounds that the petitioner had failed to file a written claim for refund thereof with the Commissioner of Internal Revenue and that the latter has not been made a party to this case.

WHEREFORE, the decision appealed from is hereby modified. Respondent Commissioner of Customs is hereby ordered to refund to petitioner Wise & Company, Inc. the sum of ₱13,235.00 and ₱47,964.00, or the total sum of ₱61,199.00, as overpaid customs duty on Import Entries Nos. 54941-74 and 68391-74.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, December 29, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge