

ACTING COMMISSIONER OF CUSTOMS, PETITIONER, VS. WISE & COMPANY, INC., AND HONORABLE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-47980. October 16, 1992

Ponente: MELO, J.

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MELO, J.:

Before Us is a petition for the review and consequent reversal of the decision of the Court of Tax Appeals dated December 29, 1977, ordering the refund to private respondent Wise & Company, Inc. of customs duties it had overpaid.

The facts are simple and undisputed.

Sometime in 1974, private respondent Wise & Company, Inc. imported titanium dioxide from British Titan Product Co. Ltd. (England) in three shipments, as follows:

- 1) 10 pallets containing 10,000 kilos paper bags of titanium dioxide (Import Entry No. 54941-74);
- 2) 25 pallets containing 25,000 kilos paper bags of titanium dioxide (Import Entry No. 68391-74); and
- 3) 10 pallets containing 10,000 kilos paper bags of titanium dioxide (Import Entry No. 82428-74).

Customs duties and advance sales tax in the amount of P14,393.00, P52,131.00 and P19,674.00 on the respective shipments were assessed by the customs appraiser according to home consumption value based on the CIF purchase price. Private respondent paid under protest the appraisal or assessment made by the customs appraiser, contending that the basis of the home consumption value (HCV) should have been that indicated in the consular invoice or invoices.

On October 30, 1974, the Collector of Customs dismissed private respondent's protest for lack of merit. A subsequent recourse to the Commissioner of Customs fared no better, as the latter official affirmed the decision of the Collector of Customs.

On appeal, respondent Court of Tax Appeals found merit in private respondent's contention that the dutiable value of its importation is that declared in the consular invoice and not according to home consumption value (HCV) based on the purchase price. The Court of Tax Appeals ordered the refund of P61,199.00 as overpaid customs duties on Import Entries Nos. 54941-74 and 68391-74. However, on Import Entry No. 82428-74, the third shipment, refund was denied by respondent court for failure of both petitioner and private respondent to itemize or show the exact amount of customs duties refundable and also for failure of private respondent to file a written claim for refund therefor with the Commissioner of Internal Revenue, who was not also made a party to the case (p. 55, Rollo).

Hence, the instant petition.

Petitioner Commissioner of Customs contends that in estimating the value or price of the shipments of titanium dioxide, the appraiser entertained doubts that the home consumption value (HCV) declared in the consular invoice reflected the true value of the articles. Consequently, the CIF purchase price of the importations was relied upon as basis for taxation inasmuch as said CIF purchase price was reflective of the true home consumption value of the articles. Petitioner further contends that in disregarding the home consumption value declared in the consular invoice, the customs appraiser only acted in accordance with Section 1405 of the Tariff and Customs Code that:

"Appraisers shall, by all reason-able ways and means, ascertain, estimate and determine the value or price of the articles as required by law, any invoice or affidavit thereto or statement of cost, or of cost of production to the contrary notwithstanding, and after revising and correcting the reports of the examiners as they may judge proper, shall report in writing on the face of the entry the value so determined irrespective of whether such value is equal, higher or lower than the invoice and/or entered value of the articles."

The issue herein involved can be reduced to the sole question of whether the appraisal on the basis of the purchase price, not the declared value indicated in the consular invoice, was proper.

Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, is the law applicable to the controversy at bar, and accordingly provides:

"SECTION 201. Basis of Dutiable Value. --The dutiable value of an im-ported 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 mar-kets of the country from where exported on the date of the exportation to the Philippines, or where there is none on such date, then on the home consumption value or price nearest to the date of exportation including the value of all containers, coverings and expenses incident to placing the article in a condition ready for shipment to the Philippines, plus (10) per cent of such home consumption value or price.

The home consumption value or price under this section shall be the value or price declared in the consular, commer-cial, 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.

From the data thus gathered, the Commissioner of Customs shall ascertain and establish the home consumption values of articles exported to the Philippines and shall publish such lists of value from time to time."

Justice Melencio-Herrera in *Commissioner of Customs vs. Court of Tax Appeals* (161 SCRA 376), had occasion to paraphrase the above section in this wise:

"The law is clear and mandatory. The dutiable value of an imported article subject to an ad valorem rate of duty is based on its home consumption value or price as freely offered for sale in wholesale quantities in the ordinary course of trade in the principal markets of the country from where exported on the date of exportation to the Philippines. That home consumption value or price is the value or price declared in the consular, commercial, trade or sales invoice.

But where there is a reasonable doubt as to the value of the imported article declared in the entry, the correct dutiable value is to be ascertained from the reports of the Revenue Attache or Commercial Attache and from such other information that may be available to the Bureau of Customs. The Commissioner of Customs is required, however, to publish from time to time the lists of the home consumption values." (p. 381)

In the case at bar, reasonable doubt was not established to have existed as to the veracity of the value or price

declared in the consular invoice, for which reason, recourse to reports from commercial attaches or other information became necessary. Unfortunately, no such recourse was done. Instead, the CIF value was unjustifiably made the basis for computing the duties to be paid. This in the face of (a) the affidavits of Thomas George Sinclair, joint secretary of the exporter company, attesting to the correctness of the home consumption value of the imported titanium dioxide declared in the consular invoice (pp. 17-18, 20-21, Original Record), and (b) the consular invoices duly certified by the Philippine Consul (pp. 20, 34, 74, Original Record). The requirement of publication of the lists of dutiable values of imported articles from time to time was neither complied with nor resorted to by the examiner (p. 36, Rollo). Withal, the appraisal made by the Bureau of Customs of the dutiable values was not made in accordance with the provisions of Section 201 of the Tariff and Customs Code, but was made arbitrarily.

Petitioner's contention that he only acted in accordance with Section 1405 of the Tariff and Customs Code in disregarding the home consumption value declared in the consular invoice is untenable. Verily, the "reasonable doubt" of the appraiser was not explained. And even if explained, recourse to CIF purchase price was not proper, for as provided in the aforementioned Section 201, if reasonable doubts are entertained concerning home consumption value, then the dutiable value of the article shall be ascertained from reports of the Revenue Attache or Commercial Attache. In the case of Commissioner of Customs vs. Court of Tax Appeals (152 SCRA 641), the appraisal was done on the basis of "alert notices" from Finance Attaches abroad, but still such recourse was not found a justifiable deviation from "the value or price declared in the consular, commercial, trade, or sales invoice", mentioned in Section 201. Declared thus this Court:

"Clearly, the dutiable value of an imported article is based on the home consumption value or price as declared in the consular, commercial, trade or sales invoice. But where there is a reasonable doubt, the correct dutiable value shall be ascertained from the reports of the Revenue Attache or Commercial Attache and from such other information that may be available to the Bureau of Customs. Also required by the statute is the publication from time to time of the lists of the home consumption values.

In the corresponding Import Entries, Respondent Company quoted the prices of the imported merchandise as declared in the consular invoices and as required by Section 201. Reasonable doubt regarding the declarations was not shown to have existed such that recourse to reports from commercial attaches or other information became necessary. Neither was there compliance with the requirement in Section 201 regarding publication of the lists of dutiable values of imported articles from time to time. The re-appraisal made by the Bureau of Customs was based on 'Alert Notices' received from Finance Attaches abroad, which, however, were not disclosed, neither to Respondent Company nor to respondent Court. As respondent Court had bewailed:

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While it is true that appraisers of the Bureau of Customs are given ample leeway in determining the correct customs duties under Section 1405 of the Tariff and Customs Code, Section 201 of the same Code, which prescribes the criteria for the determination of the dutiable value of imported articles, has not been complied with. What is more, administrative proceedings are not exempt from the operation of due process requirements one of which is that a finding by an administrative tribunal should be supported by substantial evidence presented at the hearing or at least contained in the records or disclosed to the parties affected." (pp. 645-646)

In fine, there is little that one can add to the pronouncements of respondent court, to wit:

"... 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), 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 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." (pp. 39-40, Rollo.)

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"Inasmuch as the dutiable values or the true home consumption values of the titanium dioxide were shown in the consular invoice 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." (pp. 53-54, Rollo)

WHEREFORE, the decision appealed from is hereby AFFIRMED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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