

THE COMMISSIONER OF CUSTOMS, PETITIONER, VS. COURT OF TAX APPEALS AND BELL ROBERT MANUFACTURING, INC., RESPONDENTS.

G.R. Nos. L-48144-47. June 28, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is an appeal, by way of a petition for review on certiorari, from the consolidated decision, dated March 10, 1978, of the respondent Court of Tax Appeals[1] pursuant to the provisions of Section 18 of Republic Act No. 1125, as amended, in relation to Republic Act No. 5440, in four (4) tax cases.[2] The dispositive portion of the appealed decision reads:

WHEREFORE, respondent Commissioner of Customs is hereby ordered to refund to petitioner Bell Hobart Manufacturing Incorporated the sums of P10,250.00, P4,169.00, P4,185.00 and P-2,202.00 or a total of P20,806.00. Without pronouncement as to costs.[3]

The facts are succinctly stated by the respondent court as follows:

CTA Case No. 2750

(Manila Protest No. 9412)

That a shipment, consisting of 59 bundles steel wire rods, arrived at this Port from Yawata, Japan on July 16, 1974 aboard the S/S "Toma," Reg. No. 1196, covered by Bill of Lading No. YA-NA-9 and consigned to herein protestant; that the said shipment was declared under Entry No. 65858-74 at \$280.00 per metric ton, with an estimated customs duty of P-59,878.00, sales tax of P21,877.00 and wharfage fee of P801.00, or a total of P82,576.00, which amounts were paid per Bureau of Customs Order of Payment No. 348485 dated July 26, 1974 and Central Bank Official Receipt No. 312974 dated July 30, 1974 thru the Bank of America NT & SA. However, upon appraisal, the appraiser concerned appraised the said shipment at \$325.00 per metric ton; and because of this, the amounts of P-10,250.00 and P3,522.00, representing additional duty and tax, respectively, were paid as evidenced by Bureau of Customs Official Receipt No. 40522 dated August 23, 1974. These appraisal and payment were contested by the herein in porter [private respondent] claiming that the duty and tax should have been based on the declared value and the corresponding Protest was filed on September 3, 1974. for the refund of THIRTEEN THOUSAND SEVEN HUNDRED AND SEVENTY-TWO (P13,772.00) PESOS.[4]

CTA Case No. 2751

(Manila Protest No. 9411)

That a shipment, consisting of 61 bundles steel wire rods, arrived at this Port from Koji, Japan on August 9, 1974 aboard the SS "Yoryu Maru," Reg. No. 1849, covered by Bill of Lading No. YA-MA-S and consigned to herein protestant; that the said shipment was declared under Entry No. 76498-74 at \$306.00 per metric ton, with an estimated customs duty of P66,047.00 sales tax of P23,394.00 and wharfage fee of P501.00, or a total of P90,842.00, which amounts were paid per Bureau of Customs Order of Payment No. 350527 dated August

20, 1974 and Central Bank Official Receipt No. 342784 dated August 21, 1974 thru the Bank of America NT & SA. However, upon appraisal, the appraiser concerned appraised the said shipment at \$325.00 per metric ton; and because of this, the amounts of P4,169.00 and P1,444.00, representing additional duty and tax, respectively, were paid as evidenced by Bureau of Customs Official Receipt No. 40515 dated Aug. 23, 1974. These appraisal and payment were contested by the herein importer [private respondent] claiming that the duty and tax should have been based on the declared value and the corresponding Protest was filed on September 3, 1974, for the refund of FIVE THOUSAND SIX HUNDRED AND THIRTEEN (P5,613.00) PESOS.[5]

CTA CASE No. 2752

(Manila Protest No. 9448)

That a shipment, consisting of 60 bundles steel wire rods, arrived at this Port from Yawata, Japan on board the SS "Eastern Comet," Reg. No. 1535, covered by Bill of Lading No. YA-MA-11 and consigned to the herein protestant; that the said shipment was declared under Entry No. 84878-74 at \$306.35 per metric ton but was reappraised to \$325.00 per metric ton, thereby resulting to a discrepancy of P5,634.00 which was paid per Bureau of Customs Official Receipt No. 43758 dated September 25, 1974. These re-appraisal and payment were contested by the herein protestant claiming that the duty and tax should have been based on the declared value and the corresponding Protest was filed on Oct. 8, 1974 for the refund of FIVE THOUSAND SIX HUNDRED AND THIRTY-FOUR (P5,634.00) PESOS.[6]

CTA CASE No. 2753

(Manila Protest No. 9476)

That a shipment of 57 bundles "hot rolled wire rods" arrived at this Port covered by Bill of lading No. N-Ma-10 and consigned to the herein importer [private respondent]; that the said shipment was declared under Entry No. 94009-74 at P-306.35 per metric ton; that, upon appraisal, the appraiser concerned appraised the said shipment at \$325.00 per metric ton, thereby resulting in the discrepancy in the amount of P2,202.00 and P1,224.00, representing additional duty and tax, respectively, which said amounts were paid per Bureau of Customs, Official Receipt No. 1005353 dated October 18, 1974; that these appraisal and payment were contested by the herein protestant [private respondent] claiming that the duty and tax should have been based on the declared value and the corresponding Protest was filed on October 30, 1974 for the refund of the excess payment by reason thereof.[7]

The private respondent had filed protests before the Collector of Customs who dismissed the same purportedly for failure of the private respondent "to show an iota of evidence that their declared prices were the prices of the imported articles at the time of their exportation to offset the established value of wire rods which was the basis of the appraiser's action." [8] On appeal, the petitioner Commissioner of Customs affirmed the decision of the Collector. [9] The importer, herein private respondent, in turn, appealed to the Court of Tax Appeals, herein public respondent, which reversed. Hence, this petition.

The sole issue raised by the petitioner is whether or not "the declared value at the time of negotiation as shown in the consular invoices should be the basis of the dutiable value of the importations in question, and not the value prevailing in the principal market of the country from where exported, on the date of exportation to the Philippines." [10]

The law applicable is Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, now Section 201 of Presidential Decree No. 1464, known as the "Tariff and Customs Code of 1978," which provides:

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.

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.

From the data 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 declared in the entry, it shall be the domestic wholesale selling price, or such or similar article in Manila or other principal markets in the Philippines on the date the duty becomes payable on the article under appraisalment, in the usual wholesale quantities and in the ordinary course of trade, minus —

(a) Twenty (20) per cent thereof for expenses and profits; and

(b) Duties and taxes paid thereon."

The law is clear. The dutiable value of an imported article subject to an ad valorem rate of duty is based on either (a) its-home consumption value, which is the value or price declared in the consular, commercial, trade or sales invoice, or (b) 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.

As a rule, in case of 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 Philippine Revenue Attache or Commercial Attache in the country of origin and from such other information that may be available to the Bureau of Customs. This is the reason why the Commissioner of Customs is required to publish from time to time a list of the home consumption values of goods for import. In the instant cases, the petitioner disregarded the value of the shipments in question appearing in the consular invoices duly authenticated by the Philippine Consul of Kobe, Japan, as well as the value in the trade invoices. He must have presumed that since the importations were products of negotiated sale between the private respondent and the supplier, the articles were bought and sold at factory or wholesale prices, which are much lower than those in the ordinary course of buying.[11] Hence, as petitioner continued, the "unreliability and ill-effect" of basing the dutiable value of imported articles on the commercial and consular invoices, are apparent, especially at that time when prices of commodities throughout the world were continuously rising[12] Petitioner concluded that the dutiable value of imported articles as basis in the assessment and payment of customs duties and taxes should be the value prevailing in the principal market of the country from where exported on the date of exportation to the Philippines.[13]

We disagree. The petitioner's submission contravenes the clear provisions of Section 201 of the Tariff and Customs Code. On the other hand, the declaration by the respondent Court of Tax Appeals in its questioned Resolution of the meaning of the law adverted to is clear and correct:

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The law seems clear and specific. It merely calls for its application as worded. There is no room for interpretation. "The home consumption value or price under this section shall be the value or price declared in the consular, commercial, trade, or sales invoice." [14]

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Going back to the instant cases, it should be unequivocally stated, as the records will show, that there was no published value of the subject steel wire rods declared or disseminated by respondent, as required by paragraph 3 of Section 201, discussed above. Clearly, therefore, there was no reasonable doubt entertained by respondent Commissioner of Customs as to the value or price of the imported steel wire rods declared in the entries; otherwise, as mandated by the law, the correct dutiable value of the shipments in question should have been ascertained from reports of the Revenue Attache or Commercial Attache or other Philippine Diplomatic officers and from such other information that may be available to the Bureau of Customs, and from the data gathered, the Commissioner of Customs should have ascertained and established the home consumption value of the imported article. Accordingly, under the second paragraph of Section 201, supra, the home consumption value or price should be the value or price declared in the consular, commercial, trade or sales invoice. Since there is no fidelity nor compliance of what are required by the legal provisions applicable, in the absence of evidence to the contrary, there is no basis therefore for the assertion of respondent that the correct value of the imported steel wire rods is at \$325.00 per metric ton. The terms of the statute provide the safest guide as to the statutory policy, to which obedience is due and from which deviation is not allowable. (*Padilla vs. City of Pasay*, L-24039. June 29, 1962. 23 SCRA 1349). [15]

Finally, our pronouncement in *Commissioner of Customs vs. Court of Tax Appeals* [16] is apt.

While it is true that appraisers of the Bureau of Customs are given sample leeway in determining the correct customs duties under Section 1405 of the Tariff and Customs Code, [17] Section 201 of the same Code, which prescribes the criteria for the determination of the dutiable values of imported articles, has not been complied with. What is more, administrative proceedings are not exempt from the operation of due process requirement 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. [18] In this case the 'Alert Notices' on which petitioner based its re-appraisal were not disclosed during the proceedings before the Bureau of Customs nor presented in evidence before respondent Court. The re-appraisal made by petitioner, therefore, can be faulted with arbitrariness in disregard of the standard of due process to which all governmental action should conform to impress upon it the stamp of validity.

WHEREFORE, the petition is hereby DENIED and the judgment appealed from is AFFIRMED. No costs.

SO ORDERED.

Yap, C.J. (Chairman), Melencio-Herrera, Paras, and Padilla, JJ., concur.

[1] Penned by Acting Presiding Judge Amantc Filler and concurred in by Associate Judge Constante G. Roaquin.

[2] CTA Cases Nos. 2750, 2751, 2752, and 2753, entitled, "Bell Hobart Manufacturing Incorporated, petitioner versus Commissioner of Customs, respondent."

[3] Rollo, 50.

[4] Rollo, CTA Decision, 30-31.

[5] Ibid., 31-32.

[6] Id., 32.

[7] Id., 32-33.

[8] Id., Decision, Collector of Customs, 24.

[9] Id., Decision, Commissioner of Customs, 25-28.

[10] Id., Petition, 12.

[11] Id., CTA Decision, 35.

[12] Id., Petition, 17.

[13] Supra, 14.

[14] Id., CTA Decision. 39.

[15] Supra, 42-43.

[16] G.R. No. 70648. July 31. 1987.

[17] Sec. 1405. Proceedings and Report of Appraisers. — Appraisers shall, by all reasonable 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,

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[18] Air Manila, Inc. vs. Balatbat, L-29064, April 29. 1971, 38 SCRA 489- 90; this was quoted with approval in Commissioner of Customs vs. Court of Tax Appeals. G.R. Nos. 72069-70. May 21, 1988.

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