

COMMISSIONER OF CUSTOMS, PETITIONER, VS. HON. COURT OF TAX APPEALS AND NCR CORPORATION (PHILIPPINES), RESPONDENTS.

G.R. No. L-48027. March 11, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

The issue in the instant petition for review is: what is the basis for determining the dutiable value of imported commodities? Is it the declared value as shown in the consular invoice or the published home consumption value in the Customs Valuation Circular of the Bureau of Customs?

The facts are simple and undisputed.

Sometime in 1973, private respondent NCR Corporation (Philippines) imported from NCR Corporation (Japan) ten (10) cases of adding machines.[1] It paid thereon customs duty and advance sales tax in the total amount of P16,742.00 based on the declared value of the adding machines of \$62.34 per unit as shown in the corresponding consular and commercial invoices.

A reassessment was however made by the Customs Appraiser upon discovery during the processing of private respondent's entry papers that the home consumption value (HCV) of the merch-andise was listed as \$77.55 per unit in the Customs Valuation Circular (CVC) No. 32-72 dated November 20, 1972 of the Bureau of Customs. Based on the published HCV, private respondent was required to pay the additional sums of P2,670.00 as customs duty, P1,296.00 as advance sales tax plus surcharge, or the total amount of P9,306.00. This it did on April 13, 1973.

Feeling aggrieved, private respondent filed before the Collector of Customs a written protest against the collection of the additional customs duty, advance sales tax and surcharge, but to no avail.[2] Its recourse to the Commissioner of Customs fared no better, as the latter affirmed the decision of the Collector of Customs that the reassessment was proper, being in accordance with the HCV appearing in CVC No. 32-72.[3]

On appeal, respondent Court of Tax Appeals (CTA) found merit in private respondent's contention that the dutiable value of its importation is that declared in the consular invoice and not the HCV contained in CVC NO. 32-72. Notwithstanding, the CTA allowed private respondent the refund only of the additional customs duty of P2,670.00. Refund of the additional advance sales tax, was denied for failure of private respondent to file a claim for refund thereof with the Commissioner of Internal Revenue, who was also not made a party to the case. Refund of the surcharge was likewise denied for failure of private respondent to establish its amount.[4]

The Commissioner of Customs is now before us in this petition for review on a lone assignment of error:

THE COURT OF TAX APPEALS ERRED IN HOLDING THAT THE DECLARED VALUE AS SHOWN IN THE CONSULAR INVOICE SHOULD BE THE BASIS OF THE DUTIABLE VALUE OF THE SHIPMENT IN QUESTION AND NOT THE PUBLISHED HCV (HOME CONSUMPTION VALUE) OF

PETITIONER AS INDICATED IN CUSTOMS VALUATION CIRCULAR NO. 32-72.

Section 201 of the Tariff and Customs Code, as amended,[5] the law applicable to the controversy at bar, sets forth the basis of dutiable value 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.

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 and 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 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 (the) dutiable value of the imported article declared in the entry, it shall be the domestic whole-sale 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, on 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.

Elaborating on said Section 201, we said in *Commissioner of Customs vs. Court of Tax Appeals*[6] that "(t)he 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," we qualified, "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."

In the case at bar, the Court of Tax Appeals gave conclusive weight to the value declared in private respondent's consular invoice on the ground that no reasonable doubt existed as to its veracity, thereby precluding the determination of the dutiable value by any other means. We are unable to agree.

The marked difference between the declared value of \$62.34 a unit and the listed HCV of \$77.55 is, to our mind, sufficient to engender in a reasonable and prudent man a doubt as to the veracity of the former price. More so, if

we consider that there were 120 units involved in this case, which would bring the difference between the invoice price and the listed HCV to a total of \$1,825.20.

That these adding machines were obtained from NCR Corporation (Japan), a sister company of private respondent, which significantly, is the exclusive distributor of said machines in the Philippines likewise constitutes sufficient ground for questioning the correctness of the value declared in the consular invoice. In its protest to the Collector of Customs and its subsequent appeal to the Commissioner of Customs, private respondent sought to justify the value of the shipment appearing in the consular invoice with the assertion that it is the "sole and exclusive distributor of this line of merchandise in the Philippines.[7]

The contention is self-defeating because it tends to bolter rather than defeat the conclusion reached by the Customs Appraiser that the price declared in the consular invoice is a special price accorded by a company to a sister company and/or a sole and exclusive distributor. Such special price cannot be considered the home consumption value, which is defined by Section 210 of the Tariff and Customs Code, as the "price of the 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 x x x." It was therefore no error for the Customs Appraiser to disregard said declared value and to use instead the published HVC as the true and correct price of the imported articles "as is normally arrived at in a transaction between seller and buyer in the open market." [8]

In the same case of Coca-Cola Export Corporation vs. The Commissioner of Internal Revenue,[9] we re-affirmed the well-established rule

"x x x that the value of merchandise fixed by the appraiser and affirmed by the Collector of Customs is conclusive in the absence of an affirmative showing that the appraiser, in assessing the value, proceeded upon a wrong principle and contrary to law, and that if the customs authorities 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. The purpose of Congress in providing for appraisers was to prevent fraud upon the customs, and thus protect the revenues of the Government."

"The Court has likewise consistently held as a necessary corollary that the value of imported articles as fixed by the customs authorities in the discharge of their function of assessing and collecting the lawful revenues justly on imported articles and confirmed by the customs commissioner and/or respondent revenue commissioner x x x that such valuation is presumed to be correct and therefore conclusive in the absence of fraud or illegality or of an affirmative showing by the protesting importer that the customs authorities in fixing or assessing the value of the importation proceeded upon a wrong principle and contrary to law.

"The burden thus rests upon the importer disputing the customs valuation not only to prove the contrary and overcome the presumption of correctness of the valuation but also to show that the figures declared by him are in fact true and correct. As restated by the Court in a 1960 case, 'the determination of the tax deficiency by the Government has prima facie validity and the burden rests upon the taxpayer to overcome this presumption and to show to the satisfaction of the Tax Court that the determination was not correct.'"

A higher assessment on its imported goods having been made, it became incumbent upon private respondent to show that the value declared in its consular invoice was the true and correct home consumption value thereof. It cannot simply rely on the consular invoice, precisely because a question on the veracity of the figure contained therein had been raised by the re-assessment made by the Customs Appraiser, which re-assessment was affirmed by the Collector and Commissioner of Customs. Private respondent could have easily obtained a certification or affidavit from its sister company that the price declared in the consular invoice is the price customarily given to customers in open market transactions. As private respondent failed to discharge this onus, it was clear error on

the part of the Tax Court to accord full faith and credit to the consular invoice in question.

WHEREFORE, the decision of the Court of Tax Appeals dated February 28, 1978 subject of the instant petition for review is hereby REVERSED and SET ASIDE. The decision of petitioner Com-missioner of Customs, affirming the decision of the Collector of Customs, is hereby REINSTATED. This decision is immediately executory. Costs against private respondent.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Davide, Jr., JJ., concur.

[1] 120 units of Model NCR 14-4-09-1.

[2] The protest docketed as Manila Protest No. 8786 was decided on October 8, 1973, per Augusto T. Africa, Collector of Customs, Port of Manila. (Annex "B", Petition, pp. 56-57, Rollo)

[3] Decision dated March 18, 1974 in Customs Case No. 73-149, per Rolando G. Geotina, Acting Commissioner of Customs. (Annex "D", Petition, pp. 59-62, Rollo)

[4] Decision dated February 28, 1978 in CTA Case No. 2599, penned by Associate Judge Constante G. Roaquin and concurred in by then Acting Presiding Judge Amante Filler. (Annex "A", Petition, pp. 40-55, Rollo)

[5] Now Section 201 of P.D. No. 1464, known as the "Tariff and Customs Code of 1978".

[6] G.R. Nos. 72069 & 72070, May 21, 1988, 161 SCRA 376, 381.

[7] pp. 57 & 60, Rollo.

[8] The Coca-Cola Export Corporation vs. the Commissioner of Internal Revenue, G.R. No. L-23604, March 15, 1974, 56 SCRA 5.

[9] Ibid.

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