

THE COCA-COLA EXPORT CORPORATION, PETITIONER VS. THE COMMISSIONER OF INTERNAL REVENUE, AND THE COLLECTOR OF CUSTOMS, MANILA, AS DEPUTY OF THE COMMISSIONER OF INTERNAL REVENUE, R...

G.R. No. L-23604. March 15, 1974

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court affirms the appealed decision of the Court of Tax Appeals on the strength of the established principle that the import invoice value as attested by the consular certification can in no way be deemed conclusive upon the government particularly when it is manifestly underdeclared and that it is the valuation of the importation as determined by the customs authorities in the discharge of their function of assessing and collecting the lawful revenues justly due on imported articles as confirmed by respondent commissioner of internal revenue that will prevail in the absence of an affirmative showing that in fixing or assessing the value of the importation they proceeded upon a wrong principle and contrary to law.

Petitioner Coca-Cola Export Corporation, a New York-based corporation duly licensed to do business in the Philippines, is a wholly-owned subsidiary of the Coca-Cola Company, a Delaware (U.S.) corporation mainly engaged in the manufacture and sale of Coca-Cola concentrate and flavoring syrups since 1919. Serving as a direct outlet in the sale and distribution of Coca-Cola concentrate throughout the world, petitioner supplied the demands of the exclusive bottler of Coca-Cola in the Philippines, the San Miguel Brewery, Inc. Under their agreed procedure, the Coca-Cola Company would sell and deliver to petitioner Coca-Cola Export Corporation in New York City at \$1.634 per kilo the Coca-Cola concentrate required from time to time by San Miguel; the Coca-Cola Export Corporation (New York) would then ship, invoice and sell said concentrate to its Philippine branch at the same price of \$1.634 per kilo, FOB U.S. port; and the Philippine branch would in turn sell and deliver the concentrate to San Miguel at the price stipulated in a "Bottler's Agreement" between the Coca-Cola company and the Coca-Cola Export Corporation on one hand and San Miguel on the other.

From 1951 to 1957 respondents had computed, assessed and collected the advance sales tax on the Coca-Cola concentrate received by petitioner from its main (New York) office on the basis of the product's import invoice value of \$1.634 per kilo, certified as the correct invoice value by the Philippine Consul at the port of origin.

The instant case arose out of the difference between the basis of computing the advance sales tax due on imported Coca-Cola concentrate as now adopted by respondent Collector of Customs, as agent of respondent Commissioner of Internal Revenue, from February 1957, and the previous basis used. Beginning with petitioner's importation of February 22, 1957 respondents assessed the advance sales tax not on the basis of the import invoice value as certified by the Philippine Consul at the port of origin but on the basis of the price at which petitioner sold the concentrate to San Miguel Brewery. In the particular importation subject of the instant case, petitioner— adhering to the old basis of computation —paid on March 20, 1958, the sum of P7,298.00 as advance

sales tax on 21,611.6 kilos of Coca-Cola concentrate, based on the certified import invoice value of \$1.634 per kilo plus the other items mentioned in section 183(b) of the Revenue Code, such as duty, wharfage, arrastre, brokerage, etc., to compute the landed cost. Respondent Collector of Customs, on the other hand, computed the tax on the basis of the selling price to San Miguel Brewery of \$7.70 per kilo less an allowance of \$1.00 for expenses not forming part of the landed cost and for profit of the seller, or a net of \$6.70 per kilo, as determined by him in an administrative investigation. This resulted in a deficiency of P12,529.00, which petitioner paid under protest on March 26, 1958 in order to be able to take possession of the concentrate needed by the San Miguel Brewery, Inc.

Petitioner demanded the refund of the said amount from the Commissioner of Internal Revenue, and when no seasonable action on the demand was taken, initiated the instant case in the Court of Tax Appeals on March 14, 1960, shortly before the expiration of the two-year period of limitation.[1]

The tax court thus aptly restated the issue:

"The law provides that the advance sales tax on an imported article which is taxable under section 186 of the Revenue Code is the import invoice value thereof plus expenses (freight, postage, insurance, commission, customs duty, and all similar charges) and 25% of such total value. The principal issue raised relates to the meaning of the term 'import invoice value' of an imported article. Petitioner contends that in this case the import invoice value is \$1.634 per kilo; respondent Commissioner of Internal Revenue maintains that the value that should be considered is not the import invoice value as shown in the bill of lading but \$6.70, sustaining the findings of respondent Collector of Customs of Manila."

Resolving the issue squarely, the tax court rejected petitioner's main contention that the "import invoice value" as certified by the Philippine consul at the port of origin was "conclusive upon the government" and held that "(W)e do not think that the term 'import invoice value,' as used in Section 183(b) of the Revenue Code, means any value appearing in the invoice or bill of lading covering an imported article. Such value is not conclusive upon the Government so as to preclude it from determining the advance sales tax on the basis of a different valuation if the invoice value does not reflect the correct value. The 'import invoice value' referred to in the law simply means the true and correct value of an article as agreed upon between the foreign shipper and the local buyer in an arm's length transaction. That the value of \$1.634 per kilo of Coca-Cola concentrate is not the true value thereof is apparent from the records of the case. It was sold for that price by the manufacturer to a wholly owned corporation, petitioner's New York office, and later shipped by the latter for the same price to its Philippine branch which sold the article to the San Miguel Brewery, Inc. for \$7.70. The great disparity between the landed cost of the article on the basis of the import invoice value and its actual selling price to an uncontrolled corporation shows beyond doubt that the alleged import invoice value is not the correct and true value of the article, such as the one which is normally arrived at in a transaction between seller and buyer in the open market. From whatever angle we view the case, we fail to see how the transfer of the article in question from the manufacturer to its wholly owned corporation and to its Philippine branch, under the circumstances mentioned above, could be considered at arm's length transaction."[2]

The tax court accordingly upheld as correct the action of respondent commissioner of internal revenue sustaining the customs collector's determination of the true and correct invoice value, denied petitioner's claim for refund and ordered it to pay the additional sum of P769.00 found due as deficiency advance sales tax with costs.

Even granting petitioner's contention as to the absence of an affirmative showing that the consular certification of the import invoice value was fraudulently obtained, the Court finds no merit in petitioner's contention as to the "conclusiveness" of the consular certification — since if the value in the commercial or import invoice as attested by the consular certification were to be considered conclusive upon the Philippine Government for purposes of

computing and collecting the advance sales tax under section 183(b) of the Tax Code, the Government and respondents tax officials would be left helpless in the collection of tax and customs revenue and at the mercy of importers who avail of many devices, schemes and arrangements short of outright fraud to lower and reduce the face value of such invoices and certifications (by the Philippine Consul who does not have the facilities to verify the correctness of the stated invoice prices) as against the true and actual value of the importation and thereby deprive the government of the revenue justly due it.

Where the face value of the importation as stated in the invoices is obviously not the true and correct value since it represented merely the price (of \$1.634 per kilo of Coca-Cola concentrate) at which the manufacturer sold the product to its wholly-owned subsidiary corporation, petitioner corporation, through its New York office which in turn shipped the product to its Philippine office here for the same price which then sold the product to the Coca-Cola exclusive bottler in the Philippines, the San Miguel Brewery, Inc. for a greatly disparate and much higher price of \$7.70 per kilo (including \$1.00 for expenses not forming part of the landed cost and for seller's profit), respondents were duty-bound to disregard the obviously untrue and incorrect price stated in the invoice and ascertain the correct price "as is normally arrived at in a transaction between seller and buyer in the open market" in the language of the tax court.

The tax court accordingly upheld respondent customs collector's determination in an administrative investigation as sustained by respondent internal revenue commissioner of the true and correct value of the importation at \$6.70 per kilo in this wise: "(T)he value of the imported concentrate in question at \$6.70 per kilo was used as basis in the computation and collection of the advance sales tax involved in this case upon instructions of Mr. Isidro Angangco, the Collector of Customs for the Port of Manila from 1955 to 1960. According to Mr. Angangco, it was ascertained that the invoice value of imported Coca-Cola concentrate was only \$1.634 per kilo, but he found out from the testimony of Mr. Ernest Kahn, Vice-President-Comptroller of San Miguel Brewery, Inc., in an administrative investigation, that its contract price with the petitioner in the purchase of Coca-Cola concentrate is \$7.70 per kilo. From this value of \$7.70 per kilo, the amount of \$1.00 was deducted for expenses not forming part of the landed cost and profit, thereby leaving the amount of \$6.70 per kilo. Mr. Angangco then instructed his appraisers to use this value of \$6.70 per kilo in the computation of the advance sales tax on imported Coca-Cola concentrate. Mr. Angangco also stated that no objection was interposed when he deducted \$1.00 for expenses and profit from the contract price of \$7.70 per kilo and for that reason he considered such deduction as reasonable. The aforesaid method of ascertaining the market value or the true and correct value of imported Coca-Cola concentrate is authorized and in accordance with the provisions of Section 201 of the Tariff and Customs Code. (Page 33, Memorandum for Respondent, Jan. 31, 1964.)"[3]

Respondents officials' action of determining the correct and true market value of the importation in an arm's length transaction between foreign seller and Philippine buyer who are separate and independent parties is duly authorized under sections 201 and 1404 to 1407 of the tariff and customs code, providing for ascertainment of the correct basis of the dutiable value of the importation and prescribing the duties, proceedings and report of appraisers in making a correct appraisal of imported articles.

The Court has long held consistently that "(T)he rule is well established 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 "(I)f 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."[4]

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 due on imported articles and confirmed by the customs commissioner and/or respondent internal revenue commissioner (who in this case directly confirmed the customs collector's determination since the matter involved advance sales taxes on imported articles imposed by the National Internal Revenue Code and collected by the customs collector as his agent) 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.[5]

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[6] "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."

The tax court's decision upholding the factual findings and determination by respondents customs and revenue officials will not be reviewed by this Court absent any showing of gross error or abuse on the part of the tax court.[7] Far from any such error or abuse, it has been adequately established that since petitioner's New York office sent and invoiced the Coca-Cola concentrate to its Philippine branch at the same price for which it was procured from the Coca-Cola Company as manufacturer, there was in effect no sale on the Coca-Cola concentrate between petitioner's New York office and its Philippine branch to speak of, since it involved two branches or offices of the same petitioner corporation dealing with each other; hence the invoiced price was merely a nominal price or "an intra-company transfer price" being the same price of procurement. It might be added that even if a higher price had been invoiced (which was not the case), still it would be subject nevertheless to administrative determination by the customs authorities if the quoted price were far below the true and correct price in an arm's length transaction, since petitioner company was in effect dealing with itself (between its New York office and the Philippine branch.).

No error could be imputed then against the tax court's decision under review in upholding the respondents' determination of the true and correct value of the importation and in considering the sale price by petitioner's Manila office (as a conduit of its New York office as exporter) to the exclusive bottler San Miguel Brewery, Inc. as the true and correct value of the importation, for purposes of computing and assessing the correct advance sales tax due and payable. The record amply supports this view since it shows that the importation of the Coca-Cola concentrate by petitioner's Philippine branch from its New York office was under a so-called special "Open Account" arrangement, whereby the importation was charged not against petitioner as the ostensible importer but against the import quota allocation of San Miguel Brewery, Inc. under the exchange control system then in force.

ACCORDINGLY, the appealed decision of the Court of Tax Appeals is hereby affirmed in toto, with costs against petitioner.

Makalintal, C.J., Ruiz Castro, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] The Solicitor General notes in his brief that "The main issue in the instant case is similar to those involved in twenty-two (22) other cases of the petitioner which are pending before the Court of Tax Appeals and docketed as C.T.A. Cases Nos. 631, 633, 636, 650, 651, 655, 656, 657, 741, 742, 743, 755, 765, 837, 839, 840, 854, 855, 856, 940, 949 and 1009," (at page 1), which involve petitioner's claims for refund of the aggregate amount of P272,762.54. (at page 13).

[2] Emphasis supplied.

[3] Emphasis supplied

[4] *Lim Quim vs. Collector of Customs*, 23 Phil. 509 (1912).

[5] *Te Chin Bun vs. Collector of Customs*, 32 Phil. 76 (1915), and cases cited.

[6] *Collector of Int. Revenue vs. Bohol Land Trans. Co.*, 107 Phil. 965 (1960) citing *Perez vs. CTA*, 103 Phil. 1167 (1958) and other cases; see also *Li Yao vs. Collector of Int. Rev.*, 9 SCRA 789 (1963).

[7] *Collector of Int. Rev vs. Fisher*, 1 SCRA 93 (1961) and cases cited.

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