

THE COMMISSIONER OF CUSTOMS, PETITIONER, VS. PROCTER AND GAMBLE PHILIPPINE MANUFACTURING CORPORATION AND HONORABLE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. 56705. January 31, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The main issue in this appeal, by way of petition for review, is whether or not the home consumption value of a shipment subject to customs duty and taxes should be based on the value shown by the consular invoice or the value established by the Bureau of Customs based on the reports of the Revenue Attache or Commercial Attache (Bureau of Custom's RVIC No. 4-438 dated April 14, 1975 in this case) and from such other information that may be available to the Bureau of Customs.

The facts are not disputed. In April 1975, private respondent Procter and Gamble Philippine Manufacturing Corporation imported from Japan 5,000 bags of soda ash dense weighing about 200 metric tons. Said importation arrived in the port of Manila and was declared under Entry No. 33511, Series of 1975.

Private respondents' importation, per the supplier's invoice and the Consular Invoice of Merchandise covering the same, had a valuation of US\$37,606.16 or US\$188.0308 per metric ton (FOB Japan). Accordingly, private respondent paid to the Bureau of Customs the total sum of P59,753.00 in customs duty and taxes. Said payment was covered by O.R. No. 62797 dated April 10, 1975.

Before final liquidation, the Bureau of Customs reappraised private respondent's shipment and applying the Bureau of Custom's RVIC (Request for Value Importation Classification) No. 4-438 dated April 14, 1975, assessed private respondent's shipment at US\$307.00 per metric ton or a total of US\$61,400.00 for the entire shipment. Private respondent was thereafter required to pay additional duty and taxes. It paid under protest the additional customs duty and taxes in the amount of P34,680.00

On June 20, 1975, the Collector of Customs rendered a decision dismissing the protest of private respondent for lack of merit. On appeal by said respondent, the petitioner Commissioner of Customs rendered a decision on March 9, 1976, affirming the decision of the Collector of Customs of Manila.

On April 12, 1976, private respondent filed with public respondent Court of Tax Appeals a petition for review praying for the reversal of the decision of the petitioner, and that a new one be rendered ordering the refund of the sum of P34,630.00 representing the additional customs duty and taxes paid by private respondent, plus interest thereon from the date of payment on April 21, 1975 until the date of refund.

In due course, a decision was rendered by the Court of Tax Appeals on February 27, 1981 modifying the appealed decision of petitioner and ordering petitioner to refund to private respondent the amount of P18,453.00, without pronouncement as to costs.

Hence, this petition for review where the sole assigned error is that:

"The Court of Tax Appeals erred in holding that the home consumption value (HCV) of the subject importation shall be the value declared in the consular, commercial or trade invoice instead of under the RVIC No. 4380 of the Bureau of Customs." [1]

The petition is impressed with merit.

The applicable law is Section 201 of the Tariff and Customs Code 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 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 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 -

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

(b) Duties and taxes paid thereon."

From the foregoing provisions of the statute, there can be no question that as a general rule the home consumption value or price of an imported article subject to an ad valorem rate of duty shall be the value or price declared in the consular, commercial, trade or sales invoice.

However, 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 diplomatic officers and from such other information that maybe available to the Bureau of Customs.

Thus, the consular and commercial invoice can in no way be conclusive on the government. Otherwise, the government would be rendered helpless to a considerable extent in the collection of the correct amount of customs revenues. Customs officials would be left at the mercy of foreign merchants and importers who may avail of various devices, schemes and other arrangements, short of outright fraud, to lower and reduce the face value of

the articles covered by such invoices and certifications issued by consular officials who may not have the facilities to verify the correctness of the stated invoice prices as against the true and actual value of the importation.[2]

Private respondent contends that there could not have been any "reasonable doubt" about the accuracy of the value of U.S.\$188.0308 per metric ton indicated in the consular invoice covering its shipment. It cites the April 3, 1975 issue of the Japan Chemical Week which stated therein that the price of the same article (soda ash dense) in the principal markets of the country from where exported (Japan), on or about the date of exportation of private respondents' shipment, was U.S.\$137.40 per metric ton, a price which is even lower than the value declared in private respondents' consular invoice[3], which shows private respondent had no intention of lowering the value of its shipment to less than its actual consumption value to avoid the payment of the proper customs duty and taxes thereon.

Petitioner, however, argues there is reasonable doubt as to the accuracy of the value indicated in the consular invoice as (a) the April 3, 1975 issue of Japan Chemical Week is hearsay evidence; (b) That assuming the price stated therein to be correct, it is strange why private respondent failed to buy its soda ash dense at that lower price; and that (c) the great disparity between the alleged prevailing market value of soda ash dense in the principal markets as published in the April 3, 1975 issue of Japan Chemical Week and that indicated in the consular invoice clearly demonstrates the existence of reasonable doubt as to the correctness of the valuation in the consular entry.

In disputing these arguments and to establish that said issue of Japan Chemical Week is not hearsay evidence, private respondent cites sections 31 to 41 of Rule 130 of the Revised Rules of Court setting forth the exceptions to the hearsay rule, particularly Section 39 thereof which states -

"SEC. 39. Commercial lists and the like. - Evidence of statements of matters of interest to persons engaged in an occupation contained in a list, register, periodical, or other published compilation is admissible as tending to prove the truth of any relevant matter so stated if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them therein."

Since the Japan Chemical Week is of worldwide circulation, utilized and relied upon by people in the chemical industry, private respondent avers that the said publication is an exception to the hearsay rule. It asserts that petitioner failed to raise the objection that it is hearsay in the proceedings before the public respondent.

Private respondent justifies the discrepancy in the values between the Japan Chemical Week price and that reflected in the consular invoice of private respondent by stating that the Japan Chemical Week price is an average price, and that the small discrepancy of \$50.00 was because the Japan Chemical Week soda ash dense was delivered in a tank car while that of private respondent was contained in 5,000 bags.

The Court finds that such discrepancy of about \$50.00 in the price certainly buttresses the finding of petitioner that there is reasonable doubt as to the accuracy of the price stated by private respondent in its consular invoice that warrants the use of other available and more reliable sources of information to determine the home consumption value of said shipment to insure a correct assessment. It is immaterial that the amount in the consular invoice is higher than the price stated in the Japan Chemical Week issue. What the law requires is the declaration of the appropriate value of imported goods not only as the basis for imposing the correct amount of taxes out also as a means to regulate, among others, the price of commodities and to promote fair trade competition.

Moreover, Section 1405 of the Tariff and Customs Code also provides -

"Section 1405. Proceedings and Reports 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. x x x" (Underscoring

supplied.)

On the assumption that petitioner has the discretion in this case to disregard the value indicated in the consular invoice and to ascertain the correct dutiable value thereof from other sources, private respondents' thesis is that petitioner's valuation of private respondents' shipment was erroneous as it was based upon a wrong principle and was contrary to law. The attention of the Court is invited to the fact that the valuation made by petitioner was based on the so-called "established" or "information" value and not on the "published" value thereof as required by Section 201 of the Tariff and Customs Code. Invoking the quotation of public respondent of a similar case in its questioned decision which reads --

"Nonetheless, assuming arguendo that there exists a reasonable doubt as to the value or price of the imported trichlorocarbonyl chloride declared in the consular, commercial and sales invoices, as well as in the entry, and the correct dutiable value of the article should be ascertained from the reports of the Revenue Attache, Commercial Attache (Foreign Trade Promotion Attache), or other Philippine diplomatic officers and from such other information that may be available to the Bureau of Customs, pursuant to Section 201 of the Tariff and Customs Code, as amended by Presidential Decree No. 34, as alleged by respondent, it is to be stressed that the Commissioner of Customs is required by law to publish such list of values from time to time. He does not only have to ascertain and establish the home consumption value, but must also publish such lists of values from time to time.

Public policy would seem to require that importers be informed in advance of the home consumption values, or information values, of articles exported to the Philippines. This would prevent uncertainty, let alone the exercise of purely personal discretion, specially on the part of customs appraisers, in the matter of the ascertainment and determination of the price or value of imported articles. Furthermore, if importers are informed in advance of the home consumption values or information values of articles exported to the Philippines, they can properly declare the dutiable values of their shipments and thus avoid the heavy penalties imposed for misdeclaration, if not delays in the release of goods from customs custody which entail loss of time, money and energy. [Bell Hobart Manufacturing Incorporated vs. Commissioner of Customs, CTA Case No. 2750, 2751, 2752 and 2753, March 10, 1978.]" (Procter & Gamble PMC vs. Commissioner CTA Case No. 2357, "Decision", pp. 9-11, emphasis supplied).[4]

private respondent argues that since Mrs. Noemi Rebaya, Supervising Valuation and Classification Officer of the Bureau of Customs admitted that this "established" or "information" value indicated in RVIC 4-438 dated April 14, 1975 was approved by the Bureau of Customs only on June 20, 1975, there was no "published" value of the article when it was imported by private respondent in April 1975 so that petitioner should not have disregarded the value of U.S.\$188.0308 declared in the consular invoice.

The posture taken by private respondent is untenable. A reading of Section 201 of the Tariff and Customs Code aforecited shows that where "there exists 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) x x x or other Philippine diplomatic officers and from such other information that may be available to the Bureau of Customs." This is what is called the "established" or "information" value. Such value shall be the home consumption value of the imported article which shall be the subject of customs duty and taxes.

The same article then provides:

"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." (Underscoring supplied.)

The law does not provide that it is only after the "established" or "information" value is "published" that such home consumption value maybe the basis of assessment of the customs duty and taxes. On the contrary, it is explicitly provided that upon reasonable doubt as to the accuracy of the declared value of the article in the consular or commercial invoice, the Commissioner of Customs may determine its home consumption value from other available and more reliable sources which "established" or "information" value shall then be the basis of the imposition of the customs duty and taxes. The publication of said "established" or "information" value is not a prerequisite before it may be the basis of the imposition of customs duty and taxes. Conversely, its non-publication is no obstacle to the assessment of customs duty and taxes based on such "established" or "information" value. The publication is intended as a guide in the assessment of future shipment of similar articles. While such published value of an imported article is reliable, nevertheless, in the absence of the same, the Commissioner of Customs may establish said value from other sources as above provided by law.

In the present case, RVIC -4-438[5] fixed the home consumption value of soda ash dense at U.S.\$307.00 per metric ton as a result of a careful and thorough compilation and comparison of invoices for articles of the same nature and kind exported at a particular time and place.[6] The Supervising Valuation and Classification Officer of the Bureau of Customs who passed upon said RVIC was presented and testified to this effect.

The appraisal made by the Bureau of Customs must be correct based on the presumption that official duty has been regularly performed.[7] Private respondent has not successfully discharged its burden to overturn this presumption.

WHEREFORE, the decision of public respondent Court of Tax Appeals dated February 27, 1981 is hereby REVERSED and SET ASIDE and another judgment is hereby rendered affirming in toto the decision of petitioner Commissioner of Customs dated March 9, 1976 upholding the decision of the Collector of Customs of Manila of June 20, 1975 requiring private respondent to pay the sum of P34,680.00 representing additional customs duty and taxes due for the subject importation. No pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Page 13, Rollo.

[2] The Coca-cola Export Corporation vs. The Commissioner of Internal Revenue, 56 SCRA 5 (1974).

[3] Referring to exhibits "F" to "H", pages 73-77, CTA records.

[4] Pages 107-108, Rollo.

[5] Exhibit I.

[6] TSN, March 14, 1980, pages 4 and 5; TSN, July 31, 1980, pages 3 to 6.

[7] Section 5 (m), Rule 131, Rules of Court.

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