

COMMISSIONER OF CUSTOMS, PETITIONER, VS. COURT OF TAX APPEALS AND LOVSTED & COMPANY, INC., RESPONDENTS.

G.R. No. 72069. May 21, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is an appeal from the joint decision of the Court of Tax Appeals in CTA Cases Nos. 3177 and 3178,[1] which were appeals from the consolidated Decision of the Commissioner of Customs of Manila in Manila Protest Cases Nos. 9741 and 9742, involving the same parties and raising the same issues.

The parties had submitted an agreed Statement of Facts in each case as follows:

CTA Case No. 3177

Lovsted & Co., Inc. vs. Commissioner of Customs

STIPULATION OF FACTS

'PETITIONER and RESPONDENT, by their undersigned attorneys herein respectfully stipulate on the following facts:

xxx xxx xxx

- That sometime in July, 1975, the S/S 'Marchen Maersk,' Reg. No. 1069, arrived at the Port of Manila and discharged a shipment consisting of 17 packages of refrigerating machinery parts, consigned to herein petitioner covered by Bill of Lading No. CFS-39 and declared under Entry No. 054871, consisting of fifteen (15) Model HGC 1000 compressors valued at \$62.35 each as appearing in the Consular Invoice.

- That upon appraisal of the aforementioned imported spare parts, the Collector of Customs by reason of an alleged 'alert notice,' increased the value of the same from \$62.35 to \$70.24 each resulting to an additional payment by petitioner of duties and taxes in the amount of P459.00 as per O.R. No. 447463, dated July 8, 1975:

- That in a letter dated July 22, 1975. xerox copy of which is Annex 'A' of the Petition for Review and docketed as Manila Protest No. 9741. petitioner protested the additional assessment and collection of customs duties and taxes, stating, among others. that inasmuch as the questioned articles do not have yet an established and published home consumption value determined by the Commissioner of Customs, the same should have been assessed the customs duties and taxes based on the value appearing in the consular invoice of merchandise in accordance with paragraph 2, Section 201 of the Tariff and Customs Code as amended by Presidential Decree No. 34;

- That on April 14, 1978. the Collector of Customs, relying solely on the values mentioned in the alleged 'alert notice.' rendered a decision dismissing Manila Protest No. 9741 (and 9742). notice and copy received on May 3, 1978. by petitioner which is Annex "B" of the Petition;

- On May 17, 1978, petitioner appealed the aforementioned decision of respondent pursuant to Section 2313 of

the Tariff and Customs Code, as amended, which appeal was docketed as Customs Code No. 79-13;

- That on November 20, 1980, petitioner received the decision of respondent in the aforementioned Case No. 79-13, dated October 1, 1980, affirming the decision of the Collector of Customs in Manila, which is Annex "C of the Petition;

- That the only issue to be litigated, in the case at bar, is whether or not respondent is correct in determining the home consumption value of the goods imported based on an 'alert notice' instead of that appearing in the consular invoice of merchandise."

CTA CASE NO. 3178

Lovsted & Co., Inc. vs. Commissioner of Customs

STIPULATION OF FACTS

"PETITIONER and RESPONDENT, by their undersigned attorneys, herein respectfully stipulate on the following facts:

xxx xxx xxx

- That a shipment of 11 cartons of Tecumseh Compressor and spare parts arrived at the Port of Manila aboard the S/S 'Traviata' with Registry No. 905, covered by Bill of Lading No. 29, and declared under Entry No. 047434 and broken down as follows:

a) Ten (10) units of Model YFTL open type compressor with flywheel and valves valued at US \$198.83 each;

b) Five (5) BNK 585-10 valve assy at US \$15.34 each; and

c) Five (5) BNK 512-8 shaft seal kit assy at US \$14.92 each;

- That in the appraisal to determine the Home Consumption value for duties and/or taxes purposes, the Collector of Customs by reason of an alleged 'alert notice' increased the values of the aforementioned imported articles, as follows:

a) The YFTL compressors were valued at US \$223.81 each instead of the duly authenticated value of US \$198.83;

b) The valve assy BNK 505-10 to US \$20.17 each instead of the invoiced value of US \$15.35;

c) The seal kits (5) to US \$19.21 each, instead of the US \$14.92 invoiced value;

- That due to the aforementioned increased appraisal, the Collector of Customs of Manila, assessed, levied and collected from petitioner additional duties and taxes, including a fine in the total amount of P3,570.00, as per Official Receipt No. 6915, dated July 11, 1975;

- That in a letter, dated July 22, 1975, which is Annex 'A' of the Petition for Review and docketed as Manila Protest No. 9742, herein petitioner protested the additional assessment and collection of customs duties, taxes and fine, stating, among others, that inasmuch as the questioned articles do not have yet an established and published home consumption value determined by the Commissioner of Customs, the same should have been assessed the customs duties and taxes based on the value appearing in the consular invoice of merchandise in

accordance with paragraph 2. Section 201 of the Tariff and Customs Code as amended by Presidential Decree No. 34. Likewise, it was further stressed that the invoiced values declared were lower by 30% of the list price which regular discount is allowed by herein respondent under Customs Tariff Decision Circular No. 5- 73. dated May 4. 1973:

- That on April 14. 1978. the Collector of Customs, relying solely on the values mentioned in the alleged 'alert notice.' rendered a decision dismissing Manila Protest No. 9742 (and 9741). notice and copy receipt on Ma;1 3. 1978 which is Annex 'B' of the Petition:
- On May 17. 1978. petitioner appealed the aforementioned decision of respondent pursuant to Section 2313 of the Tariff and Customs Code, as amended, which appeal was docketed as Customs Case No. 79-13;
- That on November 20, 1980. petitioner received the decision of respondent in the aforementioned Case No. 79-13, dated October 1,1980, affirming the decision of the Collector of Customs of Manila, copy of which is Annex "C of the Petition;
- That the only issue to be litigated, in the case at bar. is whether or not respondent is correct in determining the home consumption value of the goods imported based on an 'alert notice' instead of that appearing in the consular invoice of merchandise." (pp. 10-14. Rollo)

As stipulated upon by the parties in CTA Case No. 3177, the Collector of Customs had increased the dutiable value of the refrigerating machinery spare parts imported by private respondent based on an alleged "alert notice." Similarly, in CTA Case No. 3177, the same official determined the home consumption value for duties and/or taxes on various imported articles based on an "alert notice" rather than on the values declared in consular invoices, resulting in the payment by private respondent of additional duties and taxes.

The issue for determination is the propriety of the appraisal of the importations made by private respondent based on "alert notices" rather than on the values declared in consular invoices.

The applicable legal provision 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." It reads:

"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 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, 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 value from time to time.

xxx xxx xxx"

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.

In these cases Respondent Company quoted the prices of the imported merchandise in the corresponding Import Entries as declared in the consular invoices. Reasonable doubt regarding the declarations was not established to have existed such that recourse to reports from commercial attaches or other information became necessary. The requirement of publication of the lists of dutiable values of imported articles from time to time was neither complied with. The Bureau of Customs made reappraisals based on "Alert Notices" received from Foreign Trade Promotion Attaches abroad, which, however, were not disclosed to Respondent Company nor exhibited to respondent Court. Thus, respondent Court was prompted to conclude:

"xxx As a matter of fact, the records of the cases do not show, as required by law, from what data the alleged 'alert notice' was gathered, how the Commissioner of Customs ascertained and established the home consumption values of the imported articles, and where and when was such alleged 'alert notice' published. Even more, no such 'alert notice' or value, or evidence thereof, was presented or offered by respondent. The bare averment that the basis of the appraisal of subject shipments is an alleged 'alert notice,' unaccompanied by adequate evidence as to the existence of such notice, the basis of the values or prices stated therein, as well as the publication thereof, would seem to suggest that there were no established and published home consumption values determined by the Commissioner of Customs of the subject shipments as required by the law.xxx"

It is thus apparent that the appraisal made by the Bureau of Customs of the dutiable values of Respondent Company's imported shipments was not in accordance with the provisions of Section 201 of the Tariff and Customs Code, but was made arbitrarily without the requisite publications.

We reproduce hereunder what we had stated in Commissioner of Customs vs. Court of Tax Appeals. G.R. No. 70648, July 31, 1987, involving a similar set of facts and findings and identical "Alert Notices:"

"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.[2] 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.³ 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, we affirm the judgment appealed from and deny the Petition for Review on Certiorari. No costs.

SO ORDERED.

Yap, C.J., Paras, Padilla, and Sarmiento, JJ., concur.

[1] Penned by Judge Amante Filler and concurred in by Judges Constante C. Roaquin and Alex Z. Reyes.

[2] '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.

xxx xxx xxx

[3] Air Manila, Inc. vs. Balatlat L-29064. April 29. 1971. 38 SCRA 489-90."

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