650 Phil. 143

SECOND DIVISION

[G.R. No. 183868, November 22, 2010]

COMMISSIONER OF CUSTOMS, PETITIONER, VS. MARINA SALES, INC., RESPONDENT.

D E C I S I O N

MENDOZA, J.:

In this petition for review on *certiorari*[1] under Rule 45, the Commissioner of Customs *(Commissioner),* represented by the Office of the Solicitor General *(OSG),* assails the April 11, 2008 Resolution[2] of the Court of Tax Appeals En Banc (*CTA-En Banc*), in C.T.A. E.B. No. 333, dismissing his petition for review for his failure to file a motion for reconsideration before the Court of Tax Appeals Division *(CTA-Division)*.

Respondent Marina Sales, Inc. *(Marina)* is engaged in the manufacture of Sunquick juice concentrates. It was appointed by CO-RO Food A/S of Denmark, maker of Sunquick Juice Concentrates, to be its manufacturing arm in the Philippines. As such, Marina usually imports raw materials into the country for the purpose. In the past, the Bureau of Customs *(BOC)* assessed said type of importations under Tariff Heading H.S. 2106.90 10 with a 1% import duty rate.[3]

On March 6, 2003, Marina's importation, labeled as Import Entry No. C-33771-03, arrived at the Manila International Container Port *(MICP)* on board the vessel APL Iris V-111. Said Import Entry No. C-33771-03 consisted of a 1' x 20' container STC with a total of 80 drums: (a) 56 drums of 225 kilograms Sunquick Orange Concentrate; and (b) 24 drums of 225 kilograms of Sunquick Lemon Concentrate.[4] It was supported by the following documents: (a) Bill of Lading No. APLU 800452452 dated February 2, 2003;[5] and (b) CO-RO Food A/S of Denmark Invoice No. 1619409 dated January 27, 2003.[6]

Marina computed and paid the duties under Tariff Harmonized System Heading H.S. 2106.90 10 at 1% import duty rate.

This time, however, the BOC examiners contested the tariff classification of Marina's Import Entry No. C-33771-03 under Tariff Heading H.S. 2106.90 10. The BOC examiners recommended to the Collector of Customs, acting as Chairman of the Valuation and Classification Review Committee *(VCRC)* of the BOC, to reclassify Marina's importation as Tariff Heading H.S. 2106.90 50 (covering composite concentrates for simple dilution with water to make beverages) with a corresponding 7% import duty rate.

The withheld importation being necessary to its business operations, Marina requested the District Collector of the BOC to release Import Entry No. C-33771-03 under its Tentative Release System.[7] Marina undertook to pay the reclassified rate

of duty should it be finally determined that such reclassification was correct. The District Collector granted the request.

On April 15, 2003, the VCRC directed Marina to appear in a deliberation on May 15, 2003 and to explain why its shipment under Import Entry No. C-33771-03 should not be classified under Tariff Heading H.S. 2106.90 50 with import duty rate of 7%. [8]

On May 15, 2003, Marina, through its Product Manager Rowena T. Solidum and Customs Broker Juvenal A. Llaneza, attended the VCRC deliberation and submitted its explanation,[9] dated May 13, 2003, along with samples of the importation under Import Entry No. C-33771-03.

On May 21, 2003, another importation of Marina arrived at the MICP designated as Import Entry No. C-67560-03. It consisted of another 1' x 20' container STC with a total of 80 drums: (a) 55 drums of 225 kilograms of Sunquick Orange Concentrate; (b) 1 drum of 225 kilograms of Sunquick Tropical Fruit Concentrate; (c) 17 drums of 225 kilograms of Sunquick Lemon Concentrate; (d) 3 drums of 225 kilograms of Sunquick Ice Lemon Concentrate; and (e) 4 drums of 225 kilograms Sunquick Peach Orange Concentrate. The said importation was accompanied by the following documents: (a) Bill of Lading No. KKLUCPH060291 dated April 17, 2003;[10] and (b) CO-RO Foods A/S Denmark Invoice No. 1619746 dated April 15, 2003.[11]

Again, the BOC examiners disputed the tariff classification of Import Entry No. C-67560-03 and recommended to the VCRC that the importation be classified at Tariff Heading H.S. 2106.90 50 with the corresponding 7% duty rate.

In order for Import Entry No. C-67560-03 to be released, Marina once again signed an undertaking under the Tentative Release System.[12]

In a letter dated July 7, 2003, the VCRC scheduled another deliberation requiring Marina to explain why Import Entry No. C-67560-03 should not be classified under Tariff Heading H.S. 2106.90 50 at the import duty rate of 7%.[13]

On July 17, 2003, Marina again attended the VCRC deliberation and submitted its explanation[14] dated July 17, 2003 together with samples in support of its claim that the imported goods under Import Entry No. C-67560-03 should not be reclassified under Tariff Heading H.S. 2106.90 50.

Thereafter, the classification cases for Import Entry No. C-33771-03 and Import Entry No. C-67560-03 were consolidated.

On September 11, 2003, as reflected in its 1st Indorsement, the VCRC reclassified Import Entry No. C-33771-03 and Import Entry No. C-67560-03 under Tariff Heading H.S. 2106.90 50 at 7% import duty rate.[15]

On October 7, 2003, Marina appealed before the Commissioner challenging VCRC's reclassification.[16]

In its 1st Indorsement of November 13, 2003,[17] the VCRC modified its earlier

ruling and classified Marina's Import Entry No. C-33771-03 and Import Entry No. C-67560-03 under Tariff Heading H.S. 2009 19 00 at 7% duty rate, H.S. 2009.80 00 at 7% duty rate and H.S. 2009.90 00 at 10% duty rate.

Apparently not in conformity, Marina interposed a petition for review before the CTA on February 3, 2004, which was docketed as CTA Case No. 6859.

On October 31, 2007, the CTA Second Division ruled in favor of Marina[18] holding that its classification under Tariff Heading H.S. 2106.90 10 was the most appropriate and descriptive of the disputed importations.[19] It opined that Marina's importations were raw materials used for the manufacture of its Sunquick products, not ready-to-drink juice concentrates as argued by the Commissioner.[20] Thus, the decretal portion of the CTA - Second Division reads:

> WHEREFORE, finding merit in petitioner's Petition for Review, the same is hereby GRANTED. Accordingly, the Resolution/Decision dated November 13, 2003 of the Valuation and Classification Review Committee of the Bureau of Customs is hereby SET ASIDE and petitioner's importation covered by Import Entry Nos. C-33771-03 and C-67560-03 are reclassified under Tariff Harmonized System Heading H.S. 2106.90 10 with an import duty rate of 1%.
>
> SO ORDERED.

The Commissioner disagreed and elevated the case to the CTA-En Banc *via* a petition for review.[21]

In its Resolution of April 11, 2008, the CTA En Banc dismissed the petition. The pertinent portions of the decision including the *fallo* read:

> A careful scrutiny of the record of this case showed that petitioner failed to file before the Second Division the required Motion for Reconsideration before elevating his case to the CTA En Banc.
>
> Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals provided for the following rule, to wit:
>
> RULE 8
> PROCEDURE IN CIVIL CASES
>
> SECTION 1. Review of Cases in the Court en banc.- In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division **must** be preceded by the filing of a timely **motion for reconsideration** or new trial with the Division.

In statutory construction, the use of the word "must" indicates that the requirement is mandatory. Furthermore, the word "must" connote an imperative act or operates to simply impose a duty which may be enforced. It is true the word "must" is sometimes construed as "may" - permissive - but this is only when the context requires it. Where the context plainly shows the provision to be mandatory, the word "must" is a command and cannot be construed as permissive, but must be given the signification which it imparts.

It is worthy to note that the Supreme Court ruled that a Motion for Reconsideration is mandatory as a precondition to the filing of a Petition for Review under Rule 43 of the Rules of Court.

WHEREFORE, applying by analogy the above ruling of the Supreme Court and taking into consideration the mandatory provision provided by Section 1 of Rule 8 of the Revised Rules of the Court of Tax Appeals and considering further that petitioner did not file a Motion for Reconsideration with the Second Division before elevating the case to the Court En Banc, which eventually deprived the Second Division of an opportunity to amend, modify, reverse or correct its mistake or error, if there be, petitioner's Petition for Review is hereby DISMISSED.

SO ORDERED.[22]

The Commissioner sought reconsideration of the disputed decision, but the CTA En Banc issued a denial in its July 14, 2008 Resolution.[23]

Hence, this petition.

In his Memorandum,[24] the Commissioner submits the following issues for resolution:

A.

WHETHER THE DISMISSAL BY THE COURT OF TAX APPEALS' EN BANC OF PETITIONER'S PETITION BASED ON MERE TECHNICALITY WILL RESULT IN INJUSTICE AND UNFAIRNESS TO PETITIONER.

B.

WHETHER THE CHALLENGED DECISION OF THE COURT OF TAX APPEALS' SECOND DIVISION HOLDING THAT RESPONDENT'S IMPORTATION ARE COVERED BY IMPORT ENTRY NOS. C-33771-03 AND C-67560-03 ARE CLASSIFIED UNDER TARIFF HARMONIZED SYSTEM HEADING H.S. 2106.90 10 WITH AN IMPORT DUTY RATE OF ONE PERCENT (1%) IS NOT CORRECT.[25]

The Commissioner argues that the dismissal of his petition before the CTA-En Banc is inconsistent with the principle of the liberal application of the rules of procedure.[26] He points out that due to the dismissal of the petition, the government would only be collecting 1% import duty rate from Marina instead of 7%.[27] This, if sanctioned, would result in grave injustice and unfairness to the government.[28]

The Commissioner also contends that the testimony of Marina's expert witness, Aurora Kimura, pertaining to Sunquick Lemon compound shows that it could be classified as "heavy syrup"[29] falling under the category of H.S. 2190.90 50 with a 7% import duty rate.[30]

The Court finds no merit in the petition.

On the procedure, the Court agrees with the CTA En Banc that the Commissioner failed to comply with the mandatory provisions of Rule 8, Section 1 of the Revised Rules of the Court of Tax Appeals[31] requiring that "the petition for review of a decision or resolution of the Court in Division **must** be preceded by the filing of a timely motion for reconsideration or new trial with the Division." The word "must" clearly indicates the mandatory -- not merely directory -- nature of a requirement."[32]

The rules are clear. Before the CTA En Banc could take cognizance of the petition for review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned CTA division. Procedural rules are not to be trifled with or be excused simply because their non-compliance may have resulted in prejudicing a party's substantive rights.[33] Rules are meant to be followed. They may be relaxed only for very exigent and persuasive reasons to relieve a litigant of an injustice not commensurate to his careless non-observance of the prescribed rules.[34]

At any rate, even if the Court accords liberality, the position of the Commissioner has no merit. After examining the records of the case, the Court is of the view that the import duty rate of 1%, as determined by the CTA Second Division, is correct.

The table shows the different classification of Tariff import duties relevant to the case at bar:

TARIFF HEADING	IMPORT DUTY RATE	COVERAGE
H.S. 2106.90 10	1%	Covers flavouring materials, nes., of kind used in food and drink industries; other food preparations to be used as raw material in preparing composite concentrates for making beverages
H.S. 2106.90 50	7%	Covers composite concentrate for simple dilution with water to make beverages