OPINION NO. 1093

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

FILED

JUL 21 1971

Superior Court of the District of Columbia Tax Division

DAVID A. SWIT, Petitioner,	)	
v.	)	DOCKET NO. 2120
DISTRICT OF COLUMBIA, Respondent.	)	

OPINION

Petitioner, "with more feeling about principle, and protest against bureaucratic caprice" than concern about the amount in dispute (pet. 3), sues for refund of D. C. excise tax levied on the issuance to him of the original certificate of title to his Mercedes-Benz automobile. D. C. Code, Supp. IV (1971), secs. 40-603(j) and 40-503(i).

Petitioner paid $4,098 for, and took delivery of the car in Stuttgart, Germany on July 17, 1970, where it was registered with International Customs Licence Plates. He drove it in Europe for over 3,400 miles, then had it shipped (ocean freight) to Baltimore at a cost of $290. The Bureau of Customs officer valued the car at $2,766 on arrival, and levied the customs duty (4½%) of $124.47. Under Customs regulations, this valuation was based on "an actual examination of the individual car", although the "selling price in the country of exportation" was taken into consideration. Bureau of Customs pamphlet 0-320-304, p. 3.

On registration in D. C., petitioner's automobile was assessed at a value of $4,100, which, at the 4% rate, produced a tax of $164. He now sues for refund of $53.36 and interest--the amount of tax attributable to the difference between the

$2,756 Customs valuation and the $4,100 D. C. valuation. Pre-trial efforts by the court for settlement and informal review of valuation procedures were unavailing.

The statute. The tax is levied on "fair market value". D. C. Code 40-603(j) (supra). In arriving at fair market value, the Assessor "may require every applicant for a certificate of title to supply such information as he deems necessary as to the time of purchase, purchase price, and other information relative to the determination of the fair market value". (id.)

Departmental construction of the statute. The D. C. assessors, in practice, actually value a car brought back from a foreign country at the invoice price (here $4,096) plus freight ($290) plus Customs duty ($124.47), which would have resulted in the case at bar in a taxable valuation of $4,512.47. Department of Finance and Revenue letter of October 1, 1970 (attached to petition), Exh. 5, Tr. 11, 15, 18. No inspection of the vehicle is made. In some isolated cases, downward adjustments of 5 - 10% have been made, reflecting depreciation on cars driven abroad, but petitioner's car was valued "as if it were brand new". (Tr. 12 - 14.) The assessors use the Eastern Edition of the NADA booklet ("Blue Book") price, and through counsel, say in effect that these prices are conclusive evidence of "fair market value". (Tr. 18 - 20.) As so determined, the mean of Blue Book average wholesale price and average retail price would have produced a valuation of $4,387 in the case at bar, on which basis petitioner's car "has been placed at [$287] less than fair market value and he is not entitled to a refund." (Tr. 20.) The figures indicate that the assessor here valued the car at rounded invoice price. In this case, following departmental policy, the appraisal was made without looking

at the car or actual consideration of and specific rebuttal to petitioner's claims bearing on "fair market value". Exhs. 5 and 9.

No brief was filed for respondent, and no supporting theory of the case was advanced at trial. It would appear, however, that the only rationale for using arbitrary figures to find statutory "fair market value" is some notion of administrative convenience: the law takes no heed of trivial matters; the assessors cannot, consonant with an efficient departmental operation, waste time in particular inspections involving only $53.36 in tax. On the other hand, this concept squarely conflicts with the policy of our law to give due consideration to "small claims"; a part of the more general principle of government by [here, tax] law and not by men.

Discussion

"This case may seem at first blush too inconsequential" for painstaking consideration. Cf. Cohen v. California, ___ U.S.___ (No. 299, October term, 1970, dec'd. June 7, 1971). However, it involves general policy of the D. C. Department of Finance and Revenue, vigorously supported by the Corporation Counsel's office. (Departmental letters of October 9, 1970, October 21, 1970 and November 9, 1970; Tr. 11 - 14, 18 - 20.) That policy is in error, and should be corrected.

1. We may dispense with judicial pronouncements in this or other jurisdictions about the term "fair market value"; no case directly on point is found.

2. Petitioner's efforts in the case at bar resulted in a departmental recheck and reaffirmation of its procedures by comparison to Maryland, Virginia, the Internal Revenue Service and the Bureau of Customs. Departmental letter of November 9,

1970, Exh. 9. Maryland, however, defines "fair market va e" in the statute. It is "the certified total purchase price in the case of sales of new motor vehicles and resales of used motor vehicles by used car registered dealers"; or, for used cars not so sold, "the total purchase price or that valuation shown in a national publication of used car values adopted for use by the Department"; or, in all other cases, "that evaluation as shown in a national publication of used car values adopted for use by the Department." Md. Ann. Code, Art. 66½, Sec. 1-126; cf. 21 Md. Op. Att. Gen. 791 (1936). This prescribes by statute an automatic determination of value. The procedure in Maryland under their statute does not support the D. C. construction of D. C. Code sec. 40-603(j); on the contrary, it leans the other way--"had Congress wanted an automatic determination, it would have said so", as did the Maryland legislature.

The Virginia assessment is apparently made by commissioners of revenue under Va. Code sec. 58-864, referring to tangible personal property in general, and based on "fair market value". No interpretive material helpful on the issue at bar is found.

Valuation procedures used by the Federal authorities also operating under Congressional legislation, are deemed the most important interpretive sources in the construction of our sec. 40-603(j). They are as follows:

(a) The Internal Revenue Service, which formerly "followed the same procedures we do" (Exh. 9, supra), has reconsidered. In computing the Manufacturers Excise Tax (I.R.C. sec. 4061(a)(2)), the tax base is now the "sum of (1) the entry valuation attributed to the automobile for the purpose of imposing an import duty, (2) the import duty itself, (3) customs handling fees, (4) ocean freight, and (5) any other costs incurred in

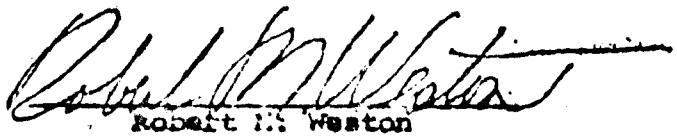
connection with importing the automobile." Rev. Rul. 69-640, 1969-2 Cum. Bull. 211, 212. Note that the prime factor is the "entry valuation"; i.e., for purposes of customs duties.

(b) The Bureau of Customs levies the duty on the basis of "export value", "United States value", or "constructed value", as elaborately defined, and applied under detailed statutory provisions. 19 U.S.C.A. secs. 1401a, 1402 and 1500. As we have seen, the valuation of foreign automobiles is based in part on "an actual examination of the individual car". The Bureau of Customs has made its determination: petitioner's car is worth $2,766.

3. This, the customs valuation, is the only solid evidence in the record as to the correct valuation of the Mercedes-Benz on its arrival here September 5, 1970. No contention is advanced by respondent that ocean freight or import duty should be added; these elements of the tax base have been waived. Decision will therefore be entered for petitioner for $53.36 and interest.

4. Our statute should be construed sensibly, as well as fairly. A point of departure in determining "fair market value" can be found in the Blue Book, the standard reference for auto valuation (Tr. 16), as well as in the customs valuation. But where value is drawn into question, the assessor must, under our statute, consider the contentions made by the applicant bearing on value before making his determination, including, where appropriate, an inspection of the car.

Decision will be entered for petitioner.



Robert M. Weston
Judge