REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PROCTER & GAMBLE PHILIPPINE
MANUFACTURING CORPORATION,
Petitioner, July 31/70

- versus -

C.T.A. CASES NOS.
1482 and 1568

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x- - - - - - - - - - - - - - - - -x

DECISION

This is in connection with the claims for refund of advance sales tax paid by petitioner on imported tinplates in the amounts of ₱110,978.00 (C.T.A. Case No. 1482) and ₱97,061.00 (C.T.A. Case No. 1568). These cases were jointly submitted for decision.

Petitioner Procter & Gamble Philippine Manufacturing Corporation imported tinplates from December, 1961 to May, 1963 on which it paid 7% advance sales tax in the amount of ₱110,978.00 and from February, 1963 to November, 1963, the sum of ₱52,253.00 was paid pursuant to Section 183(b) in relation to Section 186 of the National Internal Revenue Code.

The tinplates which were imported from Japan were not sold to the public; they were manufactured by petitioner into tin cans for use as containers of cooking oil manufactured and sold by it.

The 2% tax prescribed in Section 189 of the Revenue Code was paid on the coconut cooking oil manufactured by petitioner.

After paying the advance sales tax on the tinplates, and believing that it is exempt from the payment of said tax, petitioner filed with respondent on September 23, 1963 a claim for refund of ₱99,246.00, and on September 21, 1964, another claim for refund was filed for ₱52,253.00. Without waiting for a decision on its claims for refund, petitioner appealed to this Court (C.T.A. No. 1482) seeking the refund of the amount of ₱110,978.00 (instead of ₱99,246.00 administratively claimed) as advance sales tax paid on tinplates imported from December, 1961 to May, 1963. In another case (C.T.A. No. 1568), petitioner seeks the refund of ₱97,061.00 (instead of ₱52,253.00 administratively claimed) as advance sales tax on the tinplates imported from February, 1963 to November, 1963.

Respondent, as a special and affirmative defense in his answer, claims that with respect to the amount of ₱11,732.00, which is the difference between the amount originally claimed in the Bureau of Internal Revenue and the amount sought to be refunded in C.T.A. Case No. 1482, petitioner has no cause of action. With respect to the amount of ₱97,061.00, the subject matter of the claim in C.T.A. Case No. 1568, petitioner admitted that this amount should only be ₱52,253.00 (Exh.

K-20), in conformity with its claim for refund filed with the Bureau of Internal Revenue.

The main issue for adjudication is whether or not the imported tinplates manufactured into and used as containers of petitioner's coconut cooking oil are subject to 7% advance sales tax under Section 183(b) in relation to Section 186 of the National Internal Revenue Code.

Petitioner, citing the case of Victorias Milling Co., Inc. vs. Commissioner of Internal Revenue (G.R. No. L-21171, Jan. 31, 1967), contends that the imported tinplates are not subject to the 7% advance sales tax provided for under Section 183(b), in relation to Section 186, both of the Revenue Code. Respondent believes otherwise.

Regarding the applicability of the case of Victorias Milling Co., Inc., supra,[1] we are of the opinion that it is substantially analogous to the case at bar. The only difference between the case of Victorias Milling Co., Inc. and the instant case is the kind of the raw material imported from abroad. The articles involved in the former were jute bags; in the latter, tinplates. In other respects, the facts and the legal issue involved in the two cases are the same, viz:

---

[1] Reiterated in Victorias Milling Co. v. Commissioner, G.R. Nos. L-24765 & L-24779, Feb. 25, 1967.

(1) the jute bags and the tinplates were used in the manufacture of articles taxable under Section 189 of the Revenue Code; (2) the price for which the finished products (sugar and coconut cooking oil) were sold include the containers (jute bags in the case of sugar, and tin cans in the case of cooking oil); and the legal issue involved in both cases is the same, that is, whether or not the imported bags and containers are subject to advance sales tax under Section 183(b), in relation to Section 186, of the National Internal Revenue Code.

The pertinent portion of the decision of the Supreme Court in the said Victorias Milling Co., Inc. case, supra, reads:

> The sole issue posed in the instant petition is whether or not the articles in question (imported sugar bags) are subject to advance sales tax under Section 183(b) in relation to Section 186, both of the National Internal Revenue Code.
>
> The pertinent proviso of Section 183(b) of the Tax Code reads:
>
> > "(b) Sales tax on imported articles. - When the articles are imported, the percentage taxes established in sections one hundred eighty-four, one hundred eighty-five, and one hundred eighty-six of this Code shall be paid in advance by the importer, in accordance with regulations promulgated by the Secretary of Finance and prior to the release of such articles from customs' custody, based on the import in-

voice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges, plus one hundred *per centum* of such total value in the case of articles enumerated in section one hundred eighty-four; fifty *per centum* of such total value in case of articles enumerated in section one hundred eighty-five; and twenty-five *per centum* in the case of articles enumerated in section one hundred eighty-six. The tax imposed in this section shall not apply to articles to be used by the importer himself in the manufacture or preparation of articles subject to specific tax or those for consignment abroad and are to form part thereof."

while the pertinent proviso of Section 186 of the same Code also reads:

"Percentage tax on sales of other articles. - There shall be levied, assessed and collected once only on every original sale, barter, exchange, and similar transaction either for nominal or valuable considerations, intended to transfer ownership of, or title to, the articles not enumerated in sections one hundred and eighty-four and one hundred and eighty-five a tax equivalent to seven *per centum* of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer: x x x"

Among other arguments, the Company resists the collection of the sales tax demanded by the Revenue Commissioner on the ground that section 183(d) of the Internal Revenue Code exempts therefrom;

x x x x x x x x x x

"(d) Articles subject to tax under section one hundred eighty-nine of this Code;"

and Section 189 levies upon operators of sugar centrals, like the Company herein, a tax of 2% on the money value (selling price or market value) of all sugar manufactured by them.

> "Sec. 189. Percentage upon proprietors or operators of rope factories, sugar centrals, coconut oil mills, cassava mills and desiccated coconut factories. - Proprietors or operators of rope factories, sugar centrals, coconut mills, cassava and desiccated coconut factories shall pay a tax equivalent to two per centum of the value in money of all the rope, sugar, coconut oil, cassava flour or starch, and desiccated coconut manufactured or milled by them, including the by-products of the raw materials from which said articles are produced or manufactured, such tax to be based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse: x x x x." (Emphasis supplied)

To this argument, the Commissioner, in turn, retorts that the 2% tax of Section 189 applies only to sugar, but does not mention the containers thereof, which should separately pay the percentage tax under sections 183(b) and 186.

(We find the stand of the Commissioner to be untenable, for it does not take into account two undeniable facts: (a) that there is no evidence to the effect that the containers or sacks are separately charged against the sugar buyers and, as a consequence, the domestic buyers of the sugar pay only one price for both sugar and container; and (b) that the buyer takes away with him the sugar and its container. On this basis, the price paid by the customer either includes both the price of the sugar and that of the container,[1] or else it represents the price of the sugar alone. If it be the first

---

[1] The Court of Tax Appeals took judicial notice of this fact, as the practice of respondent sugar company.

> (the price paid is for both sugar and sack), then the value of the sacks is already subjected to the 2% tax imposed by section 189, and the sugar company has paid the same; hence, it may no longer be separately taxed (Section 188(d), Tax Code).
>
> If, on the other hand, the price paid by the buyer is for the sugar alone, then obviously the container is merely given away gratis, and not sold. In which case, there is no sale of the container that can be subjected to the percentage sales tax.)

In view of the foregoing, we hold that the tinplates in question are not subject to the 7% advance sales tax provided in Section 183(b), in relation to Section 186, both of the Revenue Code. (However, since petitioner had filed a claim for refund of only ₱99,246.00 with the Commissioner of Internal Revenue in C.T.A. Case No. 1482, it is not entitled to the refund of the difference amounting to ₱11,732.00 claimed in C.T.A. Case No. 1482 for failure to comply with Section 306 of the Revenue Code which provides that no judicial action for recovery of an internal revenue tax erroneously or illegally collected can be maintained until a claim for refund of such tax shall have been filed with the Commissioner of Internal Revenue.) Having filed a claim for refund of only ₱99,246.00, it is entitled to the refund only of the said amount. In addition, petitioner is equally entitled to the refund of ₱52,253.00 in C.T.A. Case No. 1568.

(It is, however, claimed by respondent that in the absence of the corresponding import entries, petitioner did not satisfactorily prove that certain importations of tinplates were made. This assertion is without merit. All steps were taken by petitioner to secure the import entries by subpoena duces tecum, but the Bureau of Customs to which the subpoena was directed failed to bring them to court because said entries could not be located. In this connection, it may be stated that secondary evidence may be presented in lieu of the original import entries upon proof of their unavailability (Sec. 4, Rule 130, Revised Rules of Court of the Philippines). On the basis of the secondary evidence consisting of petitioner's documentary exhibits, we are satisfied that the questioned importations of tinplates were in fact made. We may also add that since the fact of payment is not disputed, it follows that petitioner is entitled to the refund; more so if no importation was actually made.)

IN VIEW OF THE FOREGOING, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Procter & Gamble Philippine Manufacturing Corporation the sums of ₱99,246.00 and ₱52,253.00, as advance sales tax erroneously paid on its imported tin-plates. Without pronouncement as to costs.

SO ORDERED.

Quezon City, July 31, 1970.

ROMAN M. UMALI
Presiding Judge

I concur:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge
on leave