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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MICHAEL SHIPPING, INC.,
Petitioner,

-versus-

C.T.A. CASES NOS. 1391 & 1648 (not appealed)

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

Dec. 19, 1966

D E C I S I O N

These two cases involve two separate actions for refund and/or tax credit in the sums of ₱5,675.00 and ₱9,197.00, respectively, or an aggregate amount of ₱14,872.00, representing alleged erroneous payment of compensating tax on imported spare parts or materials used in the repair and maintenance of petitioner's vessels. The two cases were tried and submitted jointly for decision.

Petitioner, a domestic corporation duly organized in accordance with law, is engaged in coastwise or interisland shipping with principal office at Martires St., Cebu City. It operates 23 duly registered and licensed vessels composed of LCTs, lighters, tankers and launches (Exhs. "Y" & "3", p. 49, BIR record, CTA Case No. 1648; p. 43, t.s.n.). Said vessels were used not only for the transportation of oil or petroleum products, but also for carriage to different places in the Philippines of all kinds of cargo, in bulk or otherwise.

During the years 1960, 1961, 1962 and up to March 14, 1963, petitioner imported various spare parts and materials for the repair and maintenance of its vessels, on which compensating tax in the amount of ₱5,675.00 was paid, and which is the subject of a claim for refund and/or tax credit in CTA Case No. 1391. From May 13, 1963 to April 28, 1965, petitioner also paid compensating tax on similar importations in the sum of ₱9,197.00 which is litigated in CTA Case No. 1648.

The fact of payment of said compensating tax on the dates and in the amounts appearing in Annex A, CTA Case No. 1391, and Annex A, CTA Case No. 1648, is not disputed.

Claims for refund and/or tax credit of said payments on the ground of tax exemption under Section 190 of the Tax Code, as amended by Rep. Act No. 3176, were duly filed with respondent, but they were denied by the latter on the theory that petitioner is not entitled to tax exemption. With respect to the amounts of ₱447.00 and ₱715.00 in CTA Case No. 1648, respondent further contends that petitioner's right to claim for refund and/or tax credit is already barred by laches.

The only issue raised by the parties is whether or not petitioner is entitled to the tax refund and/or tax credit of the amounts paid as compensating tax.

Petitioner contends that under Section 190 of the

Tax Code, as amended by Republic Act No. 3176, it is entitled to tax exemption from payment of compensating tax on the imported spare parts and materials used in the repair and maintenance of its vessels. Respondent, however, claims otherwise.

Respondent's contention is not well taken. Section 190 of the National Internal Revenue Code, as amended by Republic Act No. 3176, states:

> "SEC. 190. Compensating tax.- All persons residing or doing business in the Philippines, who purchase or receive from without the Philippines any commodities, goods, wares or merchandise, excepting those subject to specific taxes under Title IV of this Code, shall pay on the total value thereof at the time they are received by such persons, including freight, postage, insurance, commission and all similar charges, a compensating tax equivalent to the percentage taxes imposed under this Title on original transactions effected by merchants, importers, or manufacturers, such tax to be paid before the withdrawal or removal of said commodities, goods, wares, or merchandise from the customhouse, or the post office: x x x And provided, further, That 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 or to articles to be used by the importer himself as a passenger and/or cargo vessel, whether coastwise or oceangoing, including engines and spare parts of said vessel. x x x." (As amended by Com. Act No. 503; Rep. Acts Nos. 48, 253, 361, 1511, 1612, 2362 & 3176).

The intention of Congress in enacting Republic Act No. 3176, amending Section 190 of the National

Internal Revenue Code, so as to exempt from compensating tax any "passenger and/or cargo vessel, whether coastwise or oceangoing, including engines and spare parts of said vessel," is explained in the sponsorship speech of Senator Puyat, as follows:

> "Mr. President and gentlemen of the Senate. This is a bill that seeks to give relief to the shipping industry, and seeks to exempt them from the payment of excise tax, purchase of articles to be used by the importer himself as a passenger or cargo vessel, whether coastwise or oceangoing, including engines and spare parts of said vessels. Considering that our shipping industry is one of the most basic and one of the industries which, according to our Committee on Transportation, is operating on the basis of floating coffins, there is need for giving incentives and inducements to the people in the industry to invest in any vessel or in new equipment." (Legislative Journal)

It would not be in keeping with the congressional intent to limit the exemption provision of Republic Act No. 3176 to engines and spare parts of imported vessels to the exclusion of similar equipment which are imported separate and apart from the vessel itself. To construe the law in the manner respondent suggests, would kill the very incentive the law purports to create and grant. For, after acquiring vessels, shipowners or operators would be discouraged from procuring new engines and spare parts to repair or replace those worn out by use. This would result in the operation of unseaworthy vessels or floating coffins.]

Respondent's contention that the right to the refund and/or tax credit of the amounts of ₱447.00 and ₱715.00, in CTA Case No. 1648, is already barred by prescription under Section 306 of the Tax Code is well taken. It appears that said amounts were paid on May 13, 1963, under Official Receipt No. 55845-4 and May 21, 1963, under Official Receipt No. 557038-4 (Exhs. "L" & "M") and the petition for review in CTA Case No. 1648 was filed on June 14, 1965. Obviously, from the dates of payment to the filing of said petition, the two-year prescriptive period had already expired, and therefore the right to the refund and/or tax credit is already barred.] (See Poco v. Posadas, 64 Phil. 640; Bermejo v. Coll. of Int. Revenue, 87 Phil. 96; P. J. Kiener Co. Ltd. v. David, G.R. No. L-5163, April 22, 1953; Johnston Lumber Co., Inc. v. Court of Tax Appeals, et al., G. R. No. L-9292, April 23, 1957; Coll. of Int. Revenue v. Binalbagan Estate, Inc., G.R. No. L-12752, Jan. 30, 1965.)

Accordingly, in CTA Case No. 1391, petitioner is entitled to a tax credit in the sum of ₱5,675.00, representing compensating tax erroneously paid from August 14, 1961 to March 14, 1963 (see Annex A, CTA Case No. 1391); and in CTA Case No. 1648, to a tax credit in the sum of ₱8,035.00 representing compensating tax erroneously paid from December 12, 1963 to April 28, 1965.

PREMISES CONSIDERED, respondent is hereby ordered to grant petitioner, in CTA Case No. 1391, a tax credit in the amount of ₱5,675.00; and in CTA Case No. 1648, a tax credit in the sum of ₱8,035.00. Without costs.

SO ORDERED.

Quezon City, December 19, 1966.

R. M. Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge