REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAN CARLOS MILLING CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3810

THE ACTING COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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# D E C I S I O N

This is a petition for review involving a claim for refund/tax credit of petitioner San Carlos Milling Co., Inc. in the amount of P204,649.00 representing 5% compensating tax paid by petitioner for the importation of sugar mill machinery and spare parts in 1982.

Petitioner is a domestic corporation, a sugar central engaged in manufacturing, milling, processing and refining sugar. For use in its sugar milling operations, petitioner imported one (1) set 1200 KW Niigata Stationary Diesel Generator and one (1) set additional parts covered by Everett Orient Line Bill of Lading No. Y-35-M dated December 24, 1982 *(Exh. "A")*, Commercial Invoice Nos. D222021-2 of Niigata Engineering Co., Ltd. dated December 24, 1982 *(Exhs. "B" and "B-1")*, and

CB Release Certificate No. 122677 *(Exh. "C")*. The imported machinery and additional parts arrived at the port of Manila on January 4, 1983. As a result of the importation, petitioner paid the amount of P507,539.00 evidenced by Customs Official Receipt No. 122677 *(Exh. "F")* of which P302,640.00 represented customs duty and P204,649.00 the compensating tax *(Exh. "F-1")*.

Through its letter of June 24, 1983 *(Annex "I" of the petition for review)*, received by respondent Commissioner of Internal Revenue on June 28, 1983, petitioner filed a claim for refund/tax credit of the amount of P204,649.00 on the ground that it is allegedly exempt from payment of the 5% compensating tax until June 30, 1985 by virtue of P.D. No. 791 as amended on August 13, 1980 by P.D. No. 1710. Petitioner adds that on January 22, 1983 then President Ferdinand E. Marcos, in a marginal note on the January 11, 1983 letter of Manuel H. Nieto, Jr., President of Bukidnon Sugar Milling Co., Inc. *(Exh. "I")*, approved the latter's proposition to interpret P.D. No. 1710 as granting full exemption until June 30, 1985 from special import tax, customs and tariff duties and compensating tax to all importations of plant machinery, spare parts and equipment directly and actually needed and to be used exclusively in the manufacture, milling, processing or refining of sugar.

Conscious of the rule on the prescriptive period of two years for judicial recovery of tax alleged to have been erroneously or illegally collected as provided in Sections 292 and 295 (now Secs. 204 and 230) of the National Internal Revenue Code, petitioner filed this petition on July 18, 1984.

The dominant issue involved in this case is whether petitioner is exempt from payment of the 5% compensating tax on the basis of P.D. No. 1710 which purports to amend P.D. No. 791.

It is not disputed that P.D. No. 791, effective September 3, 1975, granted exemption to sugar mills from compensating tax, among others, in respect to importation of plant machinery, spare parts, and other equipment. As stated in the decree, the exemption is until June 30, 1980. Section 1 of the decree reads:

> "SEC. 1. Any person, partnership, company or corporation who or which now engaged or shall engage in the business of manufacturing, milling, processing or refining of sugar shall be exempted from

> the payment of special import tax, compensating tax and customs and tariff duties in respect to importation of plant machinery, spare parts and other equipment effective upon approval of this Decree until June 30, 1980."

Respondent contends, however, that subject importation was made in 1982 outside the original period of the tax-free importation privilege granted under P.D. 791. And while petitioner argues that P.D. 1710, promulgated on August 13, 1980, which amended P.D. 791, restored the tax-exemption privilege accorded to importations of sugar mills machinery, spare parts and equipment, respondent insists that reliance upon P.D. 1710 is misplaced. Respondent points out that subsequent to P.D. No. 791, P.D. No. 1352 was promulgated on April 21, 1978 imposing 5% customs duty and 5% internal revenue taxes on <u>all importations presently exempt from customs duties and/or internal revenue taxes under the provisions of any general or special law</u> (emphasis supplied). The first paragraph of section 1 of the decree is pertinent. To quote:

> "Sec. 1 All importations which are presently exempt from customs duties and/or internal revenue taxes under the provisions of any general or special law shall be subject to a 5% customs duty and 5% internal revenue taxes subject to the

> same limitations and conditions prescribed under such law, if any. The duty and tax imposed herein shall be computed in accordance with the applicable provisions of the Tariff and Customs Code, as amended, and the National Internal Revenue Code of 1977, respectively."

Through the language of the abovecited paragraph, the decree appears to make a sweeping coverage for its tax impositions by adverting to all importations which are presently exempt under the provisions of any general or special law. Still, We believe that P.D. No. 1352 did not include P.D. No. 791 as among those to which it shall not apply nor among those considered repealed or amended by it. We refer to the other provisions in section 1 and section 2 of P.D. No. 1352:

> "xxx xxx xxx
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> "The customs duty and internal revenue taxes imposed under this section shall not apply to the following importations:
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> "1. Those which are exempt in pursuance of, or in compliance with international treaties or commitments such as the ADB-RP Agreement (1966); the 1947 Convention on Privileges and Immunities of the United Nations and its specialized agencies; the United States Agency for International Development-RP Agreement; the 1947 Military Bases Agreement; and other similar treaties or commitments;

"2. Those which are exempt under Section 17 of Presidential Decree No. 66;

"3. Those which are exempt under Section 12 of Presidential Decree No. 87;

"4. Those which are exempt under Section 12 of Presidential Decree No. 215;

"5. Those which are exempt under Section 1 of Presidential Decree No. 292;

"6. Those which are exempt under Section 1 of Presidential Decree No. 529;

"7. Those which are exempt under Section 15 of Presidential Decree No. 572;

"8. Those which are exempt under Section 15 of Presidential Decree No. 604;

"9. Those which are exempt under Section 15 of Presidential Decree No. 666;

"10. Those which are exempt under Section 76 of Presidential Decree No. 768;

"11. Those which are exempt under Section 76 of Presidential Decree No. 783;

"12. Those which are exempt under Section 76 of Presidential Decree No. 972;

"13. Those which are exempt under Section 18 of Republic Act No. 6234.

"SEC. 2. The pertinent pro- visions of Presidential Decree No. 218, Presidential Decree No. 269, Presidential Decree No. 348, Presidential Decree No. 413, Presidential Decree No. 440, Presidential Decree No. 535, Presidential Decree No. 538, Presidential Decree No. 634, Presidential Decree No. 681,

> Presidential Decree No. 690, Presidential Decree No. 926, Presidential Decree No. 990, Presidential Decree No. 992, Presidential Decree No. 1159, Republic Act. No. 720, Republic Act. No. 3470, Republic Act. No. 4156, Republic Act. No. 5186, Republic Act. No. 6135, Republic Act. No. 1161, Republic Act. No. 1370, Republic Act. No. 2640, Republic Act. No. 3054, Republic Act. No. 4690, Republic Act. No. 4850, Republic Act. No. 4071, Republic Act. No. 6012 are hereby repealed or amended accordingly."

On May 31, 1978, P.D. No. 1395, a decree amending P.D. No. 1352, took effect. Shortly thereafter, P.D. No. 1522 amending P.D. No. 1352, followed on June 11, 1978. No mention of P.D. No. 791 can be traced in these decrees in their enumerations of repealed or amended acts or those to which they would not apply.

The resolution of the main issue hinges therefore on whether respondent is correct when he asserts that the promulgation of P.D. No. 1352 as amended caused the repeal of P.D. No. 791. If this is so, then P.D. No. 1710 cannot extend P.D. No. 791; quite opposed to the reason and policy which the former states in its preamble.

We disagree with the assertion of respondent that P.D. No. 1352 repealed P.D. No. 791.

To our mind, P.D. No. 791 is a special law, its restrictive character further enhanced by the limitation that the exemption to be enjoyed by sugar mills shall apply only to the importation of plant machinery, spare parts and other equipment directly and actually needed and to be used in the development and operation of the sugar mill. The expansive interpretation to effect repeal of P.D. No. 791 sought by respondent to be accorded to the general provisions found in P.D. No. 1352 when the said decree subjects to tax all importations presently exempt from customs duties and/or internal revenue taxes under the provisions of any general or special law cannot be supported by this Court. Nor has it been favored in law.

It has been the constant holding in law that repeals by implication are not favored unless a manifest indication of this legislative purpose is unequivocally expressed or actually contemplated *(Villegas v. Subido, L-31711, September 30, 1971, 41 SCRA 174)*. Recently, the Supreme Court reminded that implied repeals are not casually to be assumed *(Larga v. Ranada, G.R. No. 79576, August 3, 1988)*. It has always been stressed that in case of ambiguity of the statute, legislative intent is the source of the compromise.

This Court's duty is to endeavor to reconcile the provisions to give sensible effect to both provisions *(Larga v. Ranada, supra)*. We see it then that the comprehensive language of P.D. No. 1352 as amended referring to all importations partially or totally tax exempt under any general or special law was dictated by the need to encompass the many subjects which were enumerated in the succeeding sections. Nowhere was P.D. No. 791 indicated among those repealed or amended. P.D. No. 791 relates to the specific subject matter of importation of machinery and equipment by sugar mills for their operation and development. The lack of allusion to P.D. No. 791 in the repealing clause of P.D. No. 1352 as amended reveals the intent to save the decree from repeal. *(Smith Bell & Co. v. Mun. of Zamboanga, 55 Phil. 466, 1930)*. The fact that there was enumerated repeal of certain sections of several acts evinces an intent not to repeal by implication prior special laws. *(Sutherland, Statutory Construction, Vol. 1A pp. 245-247 citing Barry v. Knight, 296 Ill App 277,15 NE 2d 999, 1938.)*

Upon the other hand, We deem that the absence of P.D. No. 791 among those mentioned as to which P.D. No. 1352 as amended shall not apply was due to the fact that the former was self-limiting, with a period of effect only until June 30, 1980. The legislature is presumed to have known of the existence of prior statutes and where the later general statute does not present an irreconcilable conflict the prior special statute will be construed as remaining in effect as a qualification to the general law *(U.S. v. Palacio, 33 Phil. 208, 1916)*. Nevertheless, even if the two acts are irreconcilable, it has been the rule that the special law controls the general law. *Generalia specialibus non derogant.* This rule is true even if the terms of the general law may be broad enough to include the matter in the special law. *(Villegas v. Subido, supra)*.

In this light, it is therefore justified to infer that P.D. No. 1710 should be construed to have dispelled all doubts as to the continued existence of P.D. No. 791 despite the enactment of P.D. No. 1352 as amended. This is as it should be for the legislature is presumed to intend to achieve a consistent body of law *(U.S. v. Palacio, supra)*. P.D. No. 1710 affirmed the existence of P.D. No. 791 by reciting the grant of exemption embodied in the latter, in the process stating the reason or occasion for the amendment, and that is, to extend the effects of P.D. No. 791 until June 30, 1985. As clearly and plainly expressed in the preamble or explanatory note (WHEREAS clause) of P.D. 1710, the purpose or motive of the decree was "to extend the exemption period for another five years". P.D. 1710 was motivated therefore by the state policy to give impetus to the continued growth and development of the sugar industry. Unquestionably, if the language P.D. 1710 is to be followed and its intention fulfilled, P.D. 791 was not repealed by P.D. 1352 so that petitioner's importation involved in this case is exempt under P.D. 791 as extended by P.D. 1710. To hold otherwise is to incur self-contradiction. And as if this is not enough, the then President of the Philippines through a marginal note in the 1983 letter of Manuel H. Nieto Jr., in effect affirmed the intent of P.D. No: 1710 to grant tax exemption to particular importations of sugar mills by approving of the request for exemption of Bukidnon Sugar Milling Co., Inc. which invoked P.D. No. 791 as amended by P.D. No. 1710.

Although We agree with respondent that Manuel H. Nieto Jr.'s letter was only speaking for and describing the circumstances of his company, it is clear to Us that in said letter the basis of his request was the interpretation of the intent of P.D. Nos. 791 and 1710 such that the content of the letter has important relevance in the instant case. Therefore, confirmation of his proposition by the then President of the Philippines can only be taken to mean that these decrees would have no other interpretation. Being thus illuminated, the argument on retroactivity by respondent is not appropriate in this case. What is apropos here and should finally seal this controversy is the certification by the then Ministry of Finance that petitioner is tax exempt from the payment of the 5% compensating tax imposed under P.D. No. 1352 as amended *(Exh. "J")*. This opinion rests on Memorandum No. 10-83 dated January 28, 1983 by the Presidential Executive Assistant, Office of the President *(Exh. "H")*, the latter itself a rightful comprehension of the essence of the aforesaid letter and marginal note. Surely, this is another instance where the opinion of an official in government charged with the duty of administering and enforcing the law deserves great weight *(Tan v. Mun. of Pagbilao, Quezon, L-14264, April 30, 1963, 7 SCRA 887)*.

WHEREFORE, the claim for refund/tax credit by petitioner San Carlos Milling Co., Inc. is hereby granted.

SO ORDERED.

Quezon City, Metro Manila, January 30, 1990.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals