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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PAPER INDUSTRIES CORPORATION
OF THE PHILIPPINES (PICOP),
Petitioner,

- versus -

C.T.A. CASE NO. 3382

THE COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - x

10/14/83

D E C I S I O N

Petitioner seeks to vacate respondent's decision of January 24, 1980 (Customs Case No. 79-35) sustaining the Collector of Customs' of the Port of Bislig of August 8, 1979 (Bislig Protest No. 5-79) denying the refund of ₱278,201.00 representing payments for the tax liabilities on imported machinery and spare parts.

As it appears 1) petitioner corporation is a pioneer enterprise registered with the Board of Investment under Republic Act No. 5186 (Investment Incentives Act) and by virtue of Section 8(a) thereof as implemented by the NEDA Resolution No. 21 series of 1976, accorded the privilege of a 100% tax exemption on its importations of capital equipment and parts for an integrated pulp and paper mills for the years 1975 to 1978 and 75% for the years 1979 to 1980 and so on up to 1987 when the rates of exemption is reduced to 10%; 2) petitioner had imported machinery and parts which arrived on December 23 and December 31, 1978 at the Port of Bislig under the corresponding import entries Nos. 5-9, 11, 15-22, 24-28, 87, 101-102, filed in January, 1979; 3) the Collector of Customs assessed and collected the tax of 25% of the full rates due on the importation per the diminishing schedule in the resolution amounting to ₱153,110.00 and another 5% tax on the exempt portion in the sum of ₱131,843.00 pursuant to Presidential Decree No. 1395 as implemented by Finance Department Order No. 13-78, which petitioner paid under protest as formalized in Bislig Protest No. 5-79 by way of claiming a refund of taxes erroneously collected on the subject importation; 5) the protest was dismissed by the Collector of Customs and on appeal sustained by the respondent Commissioner of Customs on January 24, 1980. Hence this petition.

In the light of the circumstances briefly summarized above the case presents no dispute as to the relatively simple material facts but the parties are trying to get the better of each other over by a quibble as to the date of the accrual of the tax or the timely availment of the benefits of exemption.

By in large, petitioner contends that the assessment and imposition of 25% tax was at complete variance with the NEDA resolution considering that the importation arrived at the Port of Bislig in 1978 and therefore entitled to a 100% tax exemption. It avers that "to constitute importation it is necessary that the merchandise arrived within the jurisdictional waters of the Philippines with intent to unload." (Mariano Martin v. Insular Collector of Customs, Tariff Decision Circular 502; cited in Tejam, Commentaries on the Tariff and Customs Code, 1978 ed., p. 13).

Respondent maintains that the importations in question were subject to 25% tax pursuant to the same NEDA Resolution No. 21 on the ground that the date the Import Entries were filed and accepted was in 1979 the date the importations were deemed "entered" as provided for under Sections 205 and 206 of the Tariff and Customs Code, as amended, in part read:

> "Sec. 205. Effective Date of Rates of Import Duty. - Imported articles shall be subject to the rate or rates of import duty existing at the time of entry or withdrawal from the warehouse in the Philippines for consumption.
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> xxx xxx xxx
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> "Sec. 206. Entry or Withdrawal from the Warehouse for Consumption. - Imported articles shall be deemed 'entered' in the Philippines for consumption when the specified entry form is properly filed and accepted, together with any related documents required by the provisions of this Code and/or regulations to be filed with such form at the time of entry at the port or station by the customs official designated to receive such entry papers and any duties, taxes, fees and/or other lawful charges required to be paid at the time of making such entry or secured to be paid with Customs official designated to receive such monies, provided that the articles has previously arrived

within the limits of the port of entry.

xxx xxx xxx"

We find nothing cryptic in the language of the said provisions as to pose any ambiguity in their application. The first stamps a definite resolve as to what the imported article shall be subject which is the rate or rates of import duty existing at the time of entry or withdrawal from the warehouse for consumption. The second explicitly reckons as to when the merchandise shall be deemed "entered" with such requisitions, viz.: 1) previous arrival within the limits of the port of entry; 2) forms and documents filed and accepted by the Customs' authorities; and 3) duties, taxes and other lawful charges paid or secured to be paid. Suffice it therefore, the fact of arrival alone of the merchandise is less significant than it is made to seem. Any such posture would have stretched too far the effective range of expediency and gravely impairs the end for which the statute was intended. Relevant is the rule that "the mere possession of merchandise on board vessel in Philippine waters is not sufficient in itself to amount to the importation of the same (U.S. v. Chu Loy, 37 Phil. 510); and the use of the term "import" should rather be restricted to goods as are actually released from customs custody into the commerce of the country (May Co. v. U.S., 12 CCA, T.D. 40270).

It is not short of authority nor logic that the imported article must have to be "entered" as legally contemplated in Sections 205 and 206 of the Tariff and Customs Code, supra, for the ascertainment of the corresponding imposition or the exemption therefrom. And for more reasons, with the shipment on a tax free basis of "machinery, equipment and spare parts shipped with such machinery and equipment" tolled under such conditions: 1) are not manufactured domestically in reasonable quantity and quality at reasonable prices; 2) are directly and actually needed and will be used exclusively by the registered enterprise; 3) are covered by shipping documents in the name of the registered enterprise; and 4) have the prior approval of the Board before importation thereof (Secs. 7(d) and 8, R.A. No. 5186). No less unexpected therefore is that such importations are not impervious to the constraints requiring validating acts to firm up the eligibility for the entry thereof. In short, the mere breaking of the carrying vessel within the jurisdictional waters brooks no instant tax burden in terms of applicable specific rates of import liabilities upon which tacked the percentage of diminishing exemption until such time of the satisfaction of the legal proscriptions for valid entry. It may be necessary to repeat what so plainly apply to such cases, that -

> "It should likewise be understood that shipments of machinery and spare parts thereof and raw materials authorized to be imported under the grant that are entered or withdrawn from warehouse for consumption in accordance with Section 206 of the Tariff and Customs Code after 12:00 o'clock midnight of December 31, 1961 should be subjected to the payment of ninety (90%) per cent of the full rates of duties and internal revenue taxes in addition to the special import taxes and other charges due thereon even if such shipments are covered by authority to release in the form letter addressed to that Office which indicates that only 50% of the customs duties and internal revenue taxes in addition to the special import taxes thereon may be collected." (Letter of the Secretary of Finance to the Commissioner of Customs dated November 9, 1961).

The record makes it clear that insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar, the import entries of the subject importation were filed and accepted by the Customs authorities and the taxes paid only in January 1979 or beyond the period prescribed for the enjoyment of full tax exemption privilege. Pursuant therefore to the statute above quoted the articles in question were deemed "entered" in 1979 and accordingly entitled to a partial exemption of 75% of the full rates of duty and internal revenue tax under the diminishing schedule of the resolution. The failure of petitioner to have its goods "entered" before 1979 bars its claim for the full enjoyment of the tax privilege. The respondent's reasons for the levy of the 25% of the rightful dues seem a little more than a statement of the obvious.

We uphold.

Then again and quite evident, the tax prescribed under Presidential Decree No. 1395 for "All importations which are at present totally or partially exempt from Customs duties and internal revenue tax under the provision of any general or special law shall be subject to 5% customs duty and 5% internal revenue tax. xxx (Sec. 1)", as implemented by Finance Department Order No. 13-78, providing, insofar as pertinent, that "The customs duty and internal revenue tax imposed under the decree shall be applied to the importations entered or withdrawn for consumption on or after April 21, 1978 whether they enjoy total or partial exemption and shall be paid before release of the shipment from Customs' custody (Sec. 7)", likewise bears directly on petitioner's importation. No reason is apparent and none is vouchsafed why the payment as decreed cannot be enforced. This Court will not deem itself authorized to depart from the plain meaning of the statute so explicit in terms and so searching in extent.

So it appears and we so hold that the petition is, without merit and the same is dismissed and the refund of the amount sought denied, with costs.

SO ORDERED.

Quezon City, Metro Manila, October 14, 1983.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge