REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MEISHIN SHIPPING CO. LTD., TOKYO SHIPPING CO., YS NEARSEAS CO. LTD., KYOSEI STEAMSHIP CO. LTD., and SUNRITZY SHIPPING CO. LTD., represented by SORIAMONT STEAMSHIP AGENCIES, INC.,
Petitioners,

- versus - C.T.A. CASE NO. 3531

COMMISSIONER OF INTERNAL REVENUE,
Respondent. 6/29/87

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D E C I S I O N

This is a judicial claim for tax credit of alleged excess payment of income tax in the total amount of ₱54,589.38 for the year 1980 by herein petitioners, all Japanese foreign shipping corporations, and represented in the Philippines by Soriamont Steamship Agencies, Inc. based upon the provisions of the RP-Japan Tax Convention, which fixed a preferential rate of 1½% income tax due on gross earnings of these shipping companies from the carriage of goods or cargo from the Philippines.

During the hearing before Us and upon his turn to present his case, respondent did not present any countervailing evidence against petitioners, instead his counsel had firstly manifested that they were awaiting the comment of the International Tax Division of his office with respect to this claim for tax credit until finally he submitted his case for decision, without the comment which was not forthcoming.

This Court is now constrained to decide this case based solely on the evidence of petitioners presented to Us by petitioner Soriamont Steamship Corporation in behalf of petitioners, said Japanese shipping corporations.

It appears that petitioners were engaged in the business of international shipping. All these petitioners are Japanese shipping enterprises, represented here as aforesaid by the Soriamont Steamship Agencies, Inc. (hereinafter referred to as SORIAMONT for brevity), which is a domestic corporation. (Exhs. H, H-1 to H-4b; TSN, June 16, 1983, pp. 4, 5, 50-53; ibid., Nov. 22, 1983, p. 3.)

During the period from January, 1981 to June, 1981, petitioners' vessels, all foreign registries, loaded at, and transported sugar, fertilizer, copra and copper concentrate from, Philippine ports to foreign destination. (Exhs. K, K-1 to K-7, I, I-1 to I-4, J, J-1 to J-4; T.S.N., June 16, 1983, pp. 4, 10, 11, 53, 60.) These petitioners or principals were the Meishin Shipping Co. Ltd., Tokyo Shipping Co., YS Nearseas Co. Ltd., Kyosei Steamship Co. Ltd., and Sunritzy Shipping Co. (T.S.N., June 16, 1983, pp. 13-48; ibid., Nov. 22, 1983, pp. 3, 4.) They have appointed SORIAMONT to represent them with respect to the loading of cargo in the Philippines. This agency relation is embodied in various agency agreements, letters and telexes. (T.S.N., June 16, 1983, pp. 49-60; Exhs. H, H-1 to H-4b.)

Before any of petitioners' foreign vessels arrived in the Philippines to load cargo, petitioners-principals notifies SORIAMONT by telex particulars of the date of the vessel's arrival, the kind and volume of cargo to be loaded, the port of loading, the destination and many others. (T.S.N., June 16, 1983, p. 9.) On the basis of this information, SORIAMONT goes to various government agencies and offices such as the Bureau of Customs, Immigration and to secure the needed clearances therefrom. (T.S.N., June 16, 1983, pp. 9, 10.) SORIAMONT also filed, tentatively, the declaration of income and paid the estimated income tax due before the arrival of each of the vessel. (T.S.N., June 16, 1983, pp. 9, 10.) On the basis of the receipts evidencing payment of the 2½% income tax on the gross receipt to the Bureau of Internal Revenue, the various offices then granted the clearances or permits requested by SORIAMONT.

After loading the vessels of petitioners, the exact quantity of volume of the cargo and once the freightage of the vessels became known, the income tax due thereon were computed and correspondingly paid. If the initial and tentative tax payments made were however short, additional amounts of income tax due were later paid.

In the case of petitioner Meishin Shipping Co. Ltd., its vessel, the MS Princess Judy V3, which is an international carrier, actually arrived in the Philippines on March 26, 1981 (Exh. B) and loaded cargo for which it had paid previously, or tentatively on December 27, 1980, or before the vessel's arrival, a 2½% of income tax on their gross Philippine billings under Section 24(b)(2) of the Tax Code, in the sum of ₱14,790.75 (Exh. C, C-2 & C-3), and thereafter had paid an additional tax of ₱299.81 on April, 1981. (Exh. C-1, C-4 & C-5.)

Anent petitioner Tokyo Shipping Co., it paid on the gross billings of its carrier in March, 1981 a 2½% income tax in the sum of ₱6,937.50. (Exhs. D, D-1 to D-6a.)

With respect to petitioner Y.S. Nearseas Co., Ltd., its international carrier, the M.S. Pine Valley V79, arrived in the Philippines on January 3, 1981 (Exh. B) to load cargo, and it paid 2½% income tax on its gross Philippine billings tentatively, prior to its vessel's arrival, on December 20, 1980, the sum of ₱5,392.75 (Exhs. E, E-1, E-2), and in March and May, 1981, it paid an additional income tax of ₱109.31 (Exhs. E-3, E-4, E-4a) and ₱25,821.00 (Exhs. E-6 to E-10), respectively.

Coming now to the petitioner Kyosei Steamship Co., Ltd., it paid on the gross Philippine billings of its carrier, in February, 1981 a 2½% income tax in the amounts of ₱18,453.75 (Exhs. F, F-2 to F-5) and ₱374.06; in May, 1981, the 2½% income tax in the sum of ₱13,306.88 (Exhs. F-6 to F-8); in April, 1981 the 2½% income tax in the amount of ₱10,400.00 (Exhs.F-11 to F-11a) and in June, 1981, the 2½% income tax in the amount of ₱27,180.00. (Exh. F-12 to F-14b)

Finally, with respect to petitioner Sunritzy Shipping Co., Ltd., it paid on the gross Philippine billings of its carrier on June 11, 1981, the 2½% income tax in the amount of ₱13,269.13. (Exhs. G, G-1 to G-2b.)

As aforesaid, all the payments made above were computed by the accountant and who paid the taxes to the BIR on the basis of 2½% of gross freight earnings under Sec. 24(b)(2) of the Tax Code. (Exh. B; T.S.N., June 16, 1983, pp. 5-7, 10-11; T.S.N., Nov. 22, 1983, p. 4.)

On January 1, 1981, the RP-Japan tax convention became effective (Exh. L). On the basis of said convention's Section 8 (Exh. L), which provides for the payment of a preferential rate of 1½% on its gross Philippine billings of ₱5,459,027.50, and not 2½%, there was, therefore, overpayment of income tax of ₱54,589.39, and, consequently, petitioner SORIAMONT filed its claim dated July 29, 1981, for tax credit of said excess payments (Exh. A; T.S.N., June 16, 1983, pp. 6 & 7; T.S.N., Nov. 22, 1983, p. 8) in the amount of ₱54,589.38, distributed to petitioners as follows:

Meishin Shipping Co.	₱ 6,036.22
Tokyo Shipping Co.	2,831.25
YS Nearseas Co., Ltd.	12,529.22
Kyosei Steamship Co.	27,885.04
Sunritzy Shipping Co.	5,307.65
	₱54,589.38

There being no action of respondent Commissioner of Internal Revenue on the claim for refund, petitioners brought this judicial claim to this Court.

In the special and affirmative defenses of his answer to the Petition for Review (Judicial claim for refund), respondent Commissioner of Internal Revenue admitted that the total amount of ₱54,589.38, as alleged overpaid income tax sought for tax credit in petitioner SORIAMONT's letter dated July 29, 1981 was paid by petitioner, but asserted, as its only substantial defense against the claim, that since the RP-Japan Tax Treaty took effect only on January 1, 1981, it cannot be a basis for petitioners' claim for tax credit of the taxes that were accrued and paid before January 1, 1981. In his defense, respondent was perhaps referring to the prepayment of 2½% income tax made by petitioner Neishin Shipping Co. in the amount of ₱14,790.75 (Exhs. C, C-2, C-3), and the Y.S. Nearseas Co. Ltd. the amount of ₱5,392.75 (Exhs. E, E-1 & E-2) both on December 23, 1980, which were, therefore, paid prior to January 1, 1981, when the aforesaid RP-Japan Income Tax Treaty took effect.

The only pertinent issue presented for determination in this case is whether or not petitioners are entitled to the claim for tax credit in the total sum of ₱54,589.38.

Petitioners contend that under Section 8 of the RP-Japan Tax Convention, effective on January 1, 1981, which provides as follows:

Article 8

> (1) The profits of an enterprise of a Contracting State derived in the other Contracting State from the operation of ships or aircraft in international traffic may be taxed in that other Contracting State, but the tax so charged shall be 60 per cent of the tax which is chargeable under the laws of that other Contracting State in force on the date of signature of this Convention.
>
> (2) The provisions of the preceding paragraph shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Japanese international carriers shall be entitled to a preferential tax treatment of paying 60% of the tax chargeable under our Philippine laws, which is normally 2½% income tax on the gross Philippine billings on cargoes lifted from Philippine ports, or which is equal only to 1½% on such gross Philippine billings of these Japanese international carriers. To their contention of applying 1½% income tax on their gross Philippine billings, respondent does not interpose his disagreement with petitioners Japanese international carriers, except only to say, in effect, that those 2½% income tax paid by two (2) petitioners, the Meishin Shipping Co., Ltd. and the Y.S. Nearness Co., Ltd. in the amounts of ₱14,790.75 and ₱5,392.75, respectively, cannot be refunded because these were payments made prior to January 1, 1981, when the aforesaid treaty became effective.

We are in full agreement with petitioners that they are all entitled to the claim for tax credit of the total sum of ₱54,589.38, representing erroneously overpaid income taxes. The payments made by petitioners Meishin Shipping Co. and the Y.S. Nearness Co., both on December 23, 1980, were tentatively made on these dates, which liabilities for income taxes accrued actually at the dates their vessels MV Princess Judy V3 and M. Pine Valley V79 arrived in the Philippines for loading on March 26, 1981 and January 2, 1981, respectively. (Exh. S.) Since the payments of the income tax by Leinbin Shipping Co., Ltd. and Y.S. Kearsecs Co., Ltd. accrued on the said dates of arrival of said vessels to load cargo and, hence, earned income therefrom and thereafter departed to other foreign destinations, which arrival and loading were dates already after the effectivity of the RP-Japan Tax Treaty on January 1, 1981, their income tax payments made are subject to a reduced tax of 1½% or 60% of the tax which is chargeable under the law of the Philippines) and, consequently, entitled to tax credit on strength of the provisions of Section 8(1) of the said treaty.

Consequently, inasmuch as the total gross Philippine billings or gross earnings on the loading of cargo from Philippine port by petitioners for the year 1981 in question is P5,459,027.56, and the normal tax of 2½% under Section 24(b)(2) of the Tax Code was paid thereon in the total sum of P 36,474.82, which amount respondent did not dispute, but had in fact impliedly admitted by the lack of his defense thereto, applying [illegible], Article [illegible] of the [illegible] Japan Tax Treaty, the [illegible] foreign corporations, petitioners herein, are only subject to the payment of a preferential rate of 1½% of the gross billings on the cargo loaded (or 60% of the 2½% tax chargeable on the [illegible] gross billings under Philippine laws) resulting in the actual and legal [illegible] income tax in the sum of P81,8[illegible].4[illegible]. There is, therefore, an overpayment of income tax of P54,[illegible].38 on their gross Philippine billings which petitioners are entitled to tax credit, computed as follows:

2½% income tax paid	-	P136,47[illegible]
Less: 1½% income tax due	-	81,[illegible].44
Creditable overpaid income tax		P 54,[illegible].38

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant to petitioners a tax credit in the total amount of P54,[illegible], through and in the name of their representative, the [illegible] Steamship Agencies, Inc., and is hereby equally ordered to distribute the same tax credit in favor of petitioners as follows: P[illegible],030.12 to [illegible] Shipping Co., Ltd.; P2,631.25 to [illegible] Shipping Co.; P13,520.22 to [illegible] Co., Inc.;

₱27,[illegible].04 to Kyosei Steamship Co., Ltd., and 15,307.65 to Sunritzy Shipping Co., Ltd.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, June [illegible], 1987.

C[illegible]
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge