INTER-ISLAND GAS SERVICE, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1881

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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DECISION

Appeal by petitioner Inter-Island Gas Service, Inc., from respondent's assessment of deficiency sales tax in the amounts of ₱11,290.08 and ₱13,654.07, inclusive of surcharge and penalties, for fiscal years 1959-1960 and 1960-1961, respectively.

None of the essential facts is in dispute, and as borne out by the records and narrated by respondent are as follows:

> Inter Island Gas Service, Inc. is a domestic corporation engaged in the manufacture of gas stoves and the sale of gas used as fuel for stoves. Investigation disclosed that said taxpayer was granted tax exemption privileges under Republic Act No. 901 in the manufacture of gas stoves. Under said exemption, subject taxpayer was exempt to the extent of 90% for the year 1959, 75% for the year 1960, and 50% for the year 1961. During the periods under review, it was also found that all imported raw materials (knock-down stove parts) were deducted from the selling price of the manufactured stoves.

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It was also ascertained in the investigation that in the computation of the total landed cost of the imported raw materials consisting of knock down stove parts, the petitioner herein claimed the theoretical amount of 100% customs duty, and not the amount of duty actually paid by it. (Exh. 1, respondent, Exh. A-3, petitioner, pp. 19-20, BIR rec.)

In view of the aforesaid findings, a letter of demand dated September 6, 1966 (Exh. 3, respondent, Exh. B, petitioner, pp. 27-28, BIR rec.) together with assessment notice (p. 26, BIR rec.) assessing upon, and demanding from the petitioner, the amounts of ₱11,290.08 and ₱13,654.07 as deficiency sales taxes for the years 1959-1960 and 1960-1961 respectively, or a total of ₱24,944.15 inclusive of surcharges and penalties was issued by respondent's Regional Director in Quezon City. In a letter dated October 6, 1966 (Exh. "C", petitioner, pp. 29-35, BIR rec.), petitioner, through its counsel, requested reconsideration of the assessment contained in respondent's letter dated September 6, 1966 on the ground among others that:

> "1. The disallowance of the cost of the stove parts and accessories is erroneous because under Sec. 185 of the Tax Code, the cost of stove parts which were taxed at 30% is properly deductible from the gross selling price of the finished articles;
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> "2. The imposition of the fraud penalty is improper because the company has not committed any act of bad faith or wilful intent to evade taxes; and
>
> "3. The assessment is illegal since the five-year prescriptive period has already prescribed".

Subsequently, in a letter dated August 2, 1967 (Exh. "D", petitioner, pp. 49-50, BIR rec.), respondent Commissioner of Internal Revenue, through the Regional Director of Revenue Region No. 6 Quezon City, wrote the former counsel of petitioner denying the request for the cancellation of the assessment and reiterated respondent's demand contained in his letter of September 6, 1966 requesting for the payment of the taxes involved in the instant case.

Subsequently, on September 1, 1967, petitioner filed its petition for review with this Honorable Court. Respondent filed his answer thereto on January 18, 1968. (Pp. 160-161, CTA records.)

The issues raised by the parties are as follows:

1. Whether or not the stove parts and accessories imported by petitioner in the manufacture of gas stoves should be subject to 7% instead of 30% advance sales tax.

2. Whether or not the imposition of the 50% surcharge as fraud penalty is justified; and

3. Whether or not the assessment in question has prescribed.

The deficiency sales tax assessment for the fiscal years 1959-1960 and 1960-1961 in the amounts of ₱11,290.08 and ₱13,654.07, respectively, was computed by respondent as follows:

1959-1960

Total taxable sales/receipts, per field audit	₱606,403.55
30% tax due thereon	38,658.23
Less: Tax already paid	32,292.47
Deficiency tax due	₱ 6,365.76
75% surcharge due thereon on the ground of fraud	4,774.32
Compromise penalty	150.00
Total amount due	₱ 11,290.08

1960-1961

Total taxable sales/receipts, per field audit	₱503,106.12
30% tax due thereon	65,655.35
Less: Tax already paide	57,938.74
Deficiency tax due	₱ 7,716.61
75% surcharge due thereon on the ground of fraud	5,787.46
Compromise penalty	150.00
Total amount due	₱ 13,654.07

The records show that the above assessment for deficiency sales tax was the result of the disallowance of the deduction claimed by petitioner for the cost of knock-down stove parts and accessories imported by it, from the gross selling price of the manufactured stoves, as deductible raw materials on the ground that, as alleged by respondent, such parts and accessories (or raw materials) are classifiable as "general utilities" subject to 7% advance sales tax under Section 186 of the National Internal Revenue Code which could not be deducted from the selling price of the finished stoves which were taxed at 30% under Section 185 of the same Code.

Parenthetically, it should be stated that the law then in force at the time this case arose (Section 184-186 of the Revenue Code) classified articles subject to the sales tax into three categories and imposed different rates of tax on each class, to wit: (a) from 50% to 100% on articles classified as luxuries (Section 184); (b) 30% on articles classified as semi-luxuries (Section 185); and (c) 7% on articles classified as ordinary (Section 186). The rates of sales tax provided in Sections 184-186 of the Revenue Code are imposed on original sales of articles by manufacturers and producers. The same rates are applicable to imported articles, pursuant to Section 183(B). However, while the sales tax imposed by Sections 184-186 is based on the "gross selling price or gross value in money of the articles so sold" by the manufacturer or producer, the advance sales tax on imported articles provided in Section 183(B) is based on the total of the landed cost of said articles plus the corresponding mark-up. (See Mayon Motors, Inc. vs. Collector of Internal Revenue, C.T.A. Case No. 413, December 27, 1958; Vicente Veloso Yap Hoe vs. Collector of Internal Revenue, C.T.A. Case No. 514, June 25, 1959.)

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In the case of a manufacturer who imports raw materials for use in the manufacture of articles for sale, he is required to pay the advance sales tax on the raw materials. However, he is permitted to deduct the total cost thereof in computing the sales tax from the gross selling price of the manufactured articles, except in case of automobiles, if such raw materials are taxable in the same section as the manufactured articles. Consequently, if the stove parts imported by petitioner are subject to the 7% advance sales tax, the landed cost could not be deducted from the gross selling price of the finished stoves for sales tax purposes because the latter are taxed at 30% under Section 185 of the Revenue Code.

The following, on a comparative basis, is the computation of the sales tax liability of petitioner as arrived at by respondent and by petitioner based on the various customs' declarations covering its importation of stove parts (Exh. "C", pp. 29-35, BIR records):

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1959-1960

Computation of Deductible Raw Materials	Per BIR	Per Company
Raw materials imported, October 1, 1959	₱121,675.87	₱121,675.87
Add: Purchases of stove parts (imported)	173,266.66	242,572.29
Total available raw materials . .	294,942.53	364,248.16
Less: Raw materials inventory - September 30, 1960 . . .	241,212.72	241,212.72
Net deductible raw materials . .	53,729.81	123,035.44
Add: 50% mark-up	26,864.91	61,517.72
Total deductible raw materials	₱ 80,594.72	₱184,553.16

Computation of Sales Tax		
Gross Sales.	₱686,998.27	₱686,998.27
Less: Deductible raw materials	80,594.72	184,553.16
Amount subject to sales tax	₱606,403.55	₱502,445.11
30% sales tax	₱181,921.06	₱150,733.53

Apportionment of Tax Under R.A. No. 901		
October 1 to December 31, 1959:		
(25% of ₱181,921.06 x 10%)	₱ 4,548.03	
(25% of ₱150,733.53 x 10%)		₱ 3,768.34
January 1 to September 30, 1960:		
(75% of ₱181,921.06 x 25%)	34,110.20	
(75% of ₱150,733.53 x 25%)		28,262.54
Tax due	38,658.23	31,030.88
Less: Amount already paid	32,292.47	32,292.47
Deficiency (overpaid) tax . .	₱ 6,365.76	(₱ 1,261.59)

1960-1961

Computation of Deductible Raw Materials	Per BIR	Per Company
Raw materials imported, October 1, 1960	₱241,212.72	₱241,212.72
Add: Purchases of stove parts	114,407.14	159,985.92
Total available raw materials	₱355,619.86	₱401,198.64
Less: Raw materials inventory - September 30, 1961	213,111.94	213,111.94
Net deductible raw materials	142,507.92	188,086.70
Add: 50% mark-up	71,253.96	94,043.35
Total deductible raw materials	₱ 213,761.88	₱282,129.35

Computation of Sales Tax

Gross Sales	₱716,868.00	₱716,868.00
Less: Deductible raw materials	213,761.88	282,129.35
Amount subject to sales tax	₱503,106.12	₱434,738.65
30% sales tax	₱150,931.84	₱130,421.59
Apportionment of Tax Under R.A. No. 901:		
October 1 to December 31, 1960:		
(26% of ₱150,931.84 x 25%)	₱ 9,810.57	
(26% of ₱130,421.47 x 25%)		₱ 8,477.40
January 1 to September 30, 1961:		
(74% of ₱150,931.84 x 25%)	55,844.78	
(74% of ₱130,421.47 x 25%)		48,255.95
Tax due	65,655.35	56,733.35
Less: Amount already paid	57,938.74	57,938.74
Deficiency (overpaid) tax	₱ 7,716.61	(₱ 1,205.39)

It will be noted from the foregoing computations that the only discrepancy between petitioner's computation and that of respondent pertains to the deductible landed cost of raw materials (stove parts and accessories) imported from abroad. Respondent considered only the landed cost pertaining to stoves and disregarded or disallowed the landed cost pertaining to the stove parts and accessories on the ground allegedly that these parts and accessories are of "general utility" and should only be subject

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to 7% instead of 30% advance sales tax. Furthermore, it appears that in determining the deductible landed cost of the stove parts and accessories, only the amount of the customs duties actually paid under Republic Act No. 901 was allowed instead of the full customs duties on which the Bureau of Customs based the computation of the 30% advance sales tax which petitioner paid for the release of the goods. (Exh. "C", pp. 29-35, BIR records)

The pertinent provisions of Section 185 of the National Internal Revenue Code, the law involved, provide as follows:

> "Sec. 185. Percentage tax on sales of sporting goods, refrigerators, and others.- There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction intended to transfer ownership of, or title to, the articles hereinbelow enumerated, a tax equivalent to thirty 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: Provided, That where the articles enumerated hereinbelow are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles: x x x
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> "(i) Electric fans and air circulators (except those specially adopted for industrial use); electric, gas or oil water heaters; electric flat irons, electric, gas or oil appliances of

> the type used for cooking, warming, or keeping warm food or beverage for consumption on the premises; electric mixers, whippers, and juicers; and household type electric vacuum cleaners; x x x
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> "Any part or accessory of the above-mentioned articles shall be taxed at the same rate as the finished articles. (As amended by sec. 2, Republic Act No. 41; sec. 2, Republic Act No. 217, sec. 2, Republic Act No. 396; sec. 2, Republic Act No. 588; sec. 3, Republic Act No. 594; sec. 7, Republic Act No. 1612.)" (Underscoring supplied)

The law seems clear and specific. It merely calls for its application as worded, leaving no room for interpretation. It commands: "Any part or accessory of the above-mentioned articles shall be taxed at the same rate as the finished articles." What shall be taxed at the same rate of 30% as the finished articles (gas stoves in this case)? It specifies: "any part or accessory" of the gas stoves, without restriction or qualification. Accordingly, as long as the raw material is a "part or accessory" of a gas stove, it should be taxed at the same rate as the gas stoves.

Here, petitioner during the periods under review imported raw materials. Knock-down stove parts, as stated by respondent in his narration of facts of this case (see also Exhibits "1" and

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"A-3", pp. 19-20, BIR records), the total cost of which petitioner deducted from the gross selling price of its manufactured gas stoves. In the importation of said knock-down stove parts, petitioner declared them as stove parts, and they were subjected to customs duties and taxes as such (stove parts), rather than as parts of general utility. Petitioner is engaged in the business of manufacturing stoves and these imported stove parts formed the component parts of its finished products which are subject to 30% sales tax.

It is well-settled that a law, free from any constitutional infirmity, must be enforced as written. The applicable provision makes clear that any part or accessory of stoves (electric, gas or oil appliances of the type used for cooking) shall be taxed at the same rate as the finished articles. If it had been the legislative intent to restrict or limit the provision of the law, the legislative body could have easily done so by adding the phrase "except part or accessory of general utility which can be used in the manufacture of other articles." We cannot ignore the principle that where the law does not distinguish, no distinction should be made. (Colgate-Palmolive Phil., Inc. vs. Gimenez, G.R. L-14787, January 28, 1961, 1 SCRA 207). To the extent that petitioner adhered to the statute, it can hardly be assailed as erroneous.

Moreover, to follow the argument of respondent that imported stove parts which are of general utility are subject to 7% advance sales tax under Section 186, instead of 30% under Section 185, would be to place in the hands of the Commissioner of Internal Revenue the power to determine which parts or accessories of manufactured articles are taxable at the same rate as the finished products and which parts and accessories are not taxable as the finished articles. For by simply alleging that certain parts or accessories can be used also in the manufacture of other products, although such parts and accessories are essential component parts of the taxpayer's finished article and had been taxed as the finished article, respondent could effectively prevent the deduction of the cost of raw materials from the taxable gross selling price. This would result in uncertainty and the possibility of the uneven application of the law. Public policy would seem to require that no room be left for the exercise of purely personal discretion in the matter of determining the deductibility of the cost of raw materials for purposes of the sales tax.

Besides, Congress in passing Republic Act No. 1612, which provided that only the cost of materials enumerated in respective Sections 184, 185 and 186 of the Code may be deducted from the gross selling price of the manufactured articles enumerated therein, with certain exceptions not material to this case, plainly stated in the explanatory note accompanying H.B. No. 5809, which became Republic Act No. 1612, that the amendments to Sections 184 and 185 were intended "to secure uniformity in the application of the provisions of Sections 184, 185 and 186 and to erase all doubts respecting the extent and scope of the deductions provided for in these three sections". The interpretation which respondent has given to Section 185 by qualifying that parts and accessories which can be used in the manufacture of other articles, are subject to 7% (advance) sales tax under Section 186 instead of 30% under Section 185, would thwart this legislative purpose.

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Accordingly, petitioner should be allowed to deduct the total cost of the imported stove parts and accessories which were essential and integral parts of its manufactured stoves from their gross selling price and which parts and accessories were taxed at 30% under Section 185 of the Code. The disallowance by respondent of the cost of the stove parts and accessories is therefore erroneous and his deficiency sales tax assessment for fiscal years 1959-1960 and 1960-1961 in the amounts of ₱11,290.08 and ₱13,654.07, respectively, against petitioner Inter Island Gas Service, Inc., cannot be sustained.

At any rate, the assessment for deficiency sales tax in this case pertains to the following fiscal years:

1. October 1, 1959 to September 30, 1960; and
2. October 1, 1960 to September 30, 1961.

It was issued on September 6, 1966 and received by petitioner on September 28, 1966. (CTA.rec., p. 128 & BIR rec., p. 30). Under the provisions of then Section 183(A) of the National Internal Revenue Code, the return for percentage taxes should be filed and the tax due thereon paid on or before the 20th day of each month.

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Section 331 of the Internal Revenue Code provides that, except as provided in Section 332 of the same Code, "internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after expiration of such period." And Section 332 provides that in "the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission."

Having arrived at the conclusion that the assessment under consideration is erroneous, the imposition of the 50% fraud penalty is therefore entirely unjustified and without basis. And there being no allegation or claim on the part of respondent that no returns were filed or the returns made by petitioner were filed beyond the period prescribed under Section 183(A) of the Code, the prescriptive period of five years provided in Section 331 should be applied.

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Counting five years back from September 28, 1966, the date would be September 28, 1961. Therefore, respondent's deficiency assessment on all percentage taxes or sales taxes paid before September 28, 1961 has already prescribed. Inasmuch as the percentage tax or sales tax for the month of September 1961 was paid on October 19, 1961 (working papers of the examiner of the Bureau of Internal Revenue, p. 15, BIR records) only that portion of the deficiency assessment pertaining to that month (September 1961) has not prescribed. But since the entire deficiency assessment under consideration is erroneous and without any basis, it necessarily follows that the portion of the deficiency assessment pertaining thereto (September 1961) is also erroneous and without any basis.

WHEREFORE, the decision appealed from should be as it is hereby reversed.

SO ORDERED.

Quezon City, February 24, 1977.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

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