REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MICHAEL SHIPPING, INC.
(now amended to MICHAEL,
INC.),
Petitioner,

Dec. 14/70

- versus - C.T.A. CASE No. 1909

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

Petitioner sought the refund or tax credit of ₱7,267.00 representing compensating tax paid on several importations, inclusive of ₱401.00 paid on a second-hand television, refrigerator and electric fan that came with the importation of a second-hand tanker from Japan.

Petitioner Michael Shipping, Inc. (now Michael, Inc.) is a domestic corporation engaged in coastwise or interisland shipping. On different dates from February, 1966 to November, 1967, petitioner imported a second-hand tanker named "KYOEI MARU No. 2," complete with equipment and appurtenances, and various spare parts needed for the repair and maintenance of registered vessels which were used by it in the carriage and transportation of cargoes to the different parts of the Philippines. On the said importations, petitioner paid compensating tax amounting to

₱7,267.00, inclusive of ₱401.00 paid on a second-hand television, refrigerator and electric fan which arrived with the imported tanker.

On the basis of Section 190 of the Tax Code, as amended by Republic Act No. 3176, petitioner filed several claims for refund or tax credit with the Bureau of Internal Revenue. Thereafter, petitioner filed an action with this Court seeking the refund or tax credit of ₱7,267.00 plus interests allegedly due thereon.

The issues for resolution of this Court are:

(1) whether or not petitioner is entitled to the refund or tax credit of the compensating tax paid on the imported spare parts and the second-hand television, refrigerator and electric fan that arrived with the imported tanker; and

(2) whether or not petitioner is entitled to interests on the refundable amount claimed by it.

The legality of the refund or tax credit of the compensating tax paid on imported spare parts and materials used, or intended for use, in the repair and maintenance of petitioner's vessels was upheld by this Court in previous cases involving the same parties and identical issues. (See Michael Shipping, Inc. vs. Commissioner of Internal Revenue, C.T.A. Case Nos. 1391

& 1948, Dec. 19, 1966; and C.T.A. Case No. 1738, Aug. 31, 1968.) Consequently, we hold that the compensating tax paid by petitioner on the imported spare parts which were used in the repair and maintenance of its vessels should be refunded or tax credited to it.

On the question of the compensating tax paid on the television, refrigerator and electric fan which arrived with the imported vessel, we hold that the claim for refund is without legal basis and justification.

The claim for refund on the said semi-luxury items is anchored on the following provisions of the National Internal Revenue Code, to wit:

> SEC. 190. x x x 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 <u>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</u>. x x.

Considering that the exemption clause refers to ordinary articles to be used as a passenger and/or cargo vessel, engines and spare parts, it becomes obvious that the tax-exemption privilege is limited and confined to the ordinary articles mentioned, to the exclusion of the semi-luxury items under the "ejusdem generis" principle of interpretation. While it is not denied that the said semi-luxury articles here in question are useful to the operation of the imported tanker as a cargo vessel, yet their usefulness is not a valid justification to enlarge the meaning and scope of the exemption clause, supra, because of the well-established jurisprudence that exemption from taxation is strictly construed against the taxpayer and in favor of the taxing power. (E. Rodriguez, Inc. v. Collector of Internal Revenue, et al., G.R. No. L-23041, July 31, 1969.) Moreover, it is a general principle of interpretation that an enumeration of things exempted from tax implies the exclusion of others - expressio unius est exclusio alterius. The rule applies even though there are no negative words excluding the things not mentioned. (50 Am Jur 238-239.) We need not stretch our imagination by including the said articles within the scope of "articles used as a passenger and/or cargo vessel" because they are not ordinary articles which are indispensable in the operation of the tanker as a passenger and/or cargo vessel.

It may not be amiss to recall the purpose for which the compensating tax under Section 190 of the

Revenue Code has been enacted. The report of the Tax Commission about the compensating tax reads as follows:

> "The purpose of this proposal is to place persons purchasing goods from dealers doing business in the Philippines on an equal footing, for tax purposes, with those who purchase goods directly from without the Philippines. Under the present law, the former bear the burden of the local sales tax because it is shifted to them as part of the selling price demanded by the local merchants, while the latter do not. The proposed taxes will do away with this inequality and render justice to merchants and firms of all nationalities who are in legitimate business here, paying taxes and giving employment to a large number of people." (Report of the Tax Commission of the Philippines, Vol. I, pp. 74-75.)

To exempt petitioner from the payment of compensating tax on the imported semi-luxury items is to set aside the very purpose for which said tax was enacted. The amendatory law (Republic Act No. 3176) may be allowed to contravene or even defeat the purpose in imposing the compensating tax provided that the imported articles, engines and spare parts of vessel are clearly embraced within the exemption clause of the said amendatory law; otherwise the meaning and scope of the tax-exemption cannot be enlarged or expanded. We hold, therefore, that petitioner's claim for refund or tax credit of ₱401.00 should be, as it is hereby, denied.

The grant of interest on the refundable amount claimed by petitioner is baseless and without legal justification. It is a settled doctrine that, in the absence of arbitrariness in the collection or assessment of the tax, the Government cannot be held liable for interests in the event that it loses in a tax litigation. (See Coll. v. St. Paul's Hospital of Iloilo, G.R. No. L-12127, May 25, 1959; Coll. v. Binalbagan Estate, Inc., G.R. No. L-12752, Jan. 30, 1965.)

IN VIEW OF THE FOREGOING CONSIDERATIONS, respondent Commissioner of Internal Revenue is hereby ordered to refund or grant tax credit to petitioner the sum of ₱6,866.00 as compensating tax paid on the imported spare parts from February, 1966 to November, 1967 and the equipment and appurtenances of the imported tanker "KOYOBI MARU No. 2," except the semi-luxury articles already mentioned. Without pronouncement as to costs.

SO ORDERED.

Quezon City, December 14, 1970.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R M Umali
ROMAN M. UMALI
Presiding Judge

Ramon L Avanceña
RAMON L. AVANCEÑA
Associate Judge