REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

GENATO COMMERCIAL CORPORATION,
Petitioner,

- versus -

C.T.A.
CASE NO. 218

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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Oct. 5, 1956

D E C I S I O N

This is an appeal from the decision of the respondent Collector of Internal Revenue dated July 14, 1955 requiring petitioner herein to pay the sum of ₱4,519.53, representing deficiency sales tax assessed against the latter for the period from 1951 to 1954.

It appears from the stipulation of facts submitted by the parties that petitioner is a corporation duly organized and existing under Philippine laws engaged in the business, among others, of importing general merchandise for sale. From February, 1951 to December 31, 1954, petitioner imported various articles from abroad and paid the sales tax computed on the basis of ₱2.00 for every U.S. dollar appearing in the importer's declarations. On May 4, 1955, BIR Agents Isidro Esguerra and Cecilio Landas notified petitioner that there was still due from it deficiency advance sales tax on its importations, in view of the fact that in a ruling of the Bureau of Internal Revenue dated June 21, 1954, it was held that the charge of ₱0.015 for every U.S. dollar actually paid to the banks by the importers in the purchase of foreign exchange was part of the landed cost of imported merchandise for purposes of the advance sales tax prescribed in Section 183 (B) of the National Internal Revenue Code. On May 10, 1955, petitioner requested respondent to reconsider the latter's ruling dated June 21, 1954 regarding the collection of deficiency sales tax on the difference between the exchange rate actually paid to the bank and the flat exchange rate. This request was received by respondent on May 11, 1955. While said request for reconsideration was still pending, respondent on July 1,1955, assessed against and demanded from petitioner the sum of ₱4,519.53 as deficiency sales tax on its importations from 1951 to 1954, based on said BIR ruling dated June 21, 1954 and on the report of BIR Agents Isidro Esguerra and Cecilio Landas. Said demand was received on July 14, 1955 by petitioner, who on the same date requested a reconsideration of the aforesaid assessment reiterating the grounds and reasons it advanced in its letter of May 10, 1955. Said request was received by respondent likewise on the same date, July 14, 1955. On October 31, 1955, respondent denied the aforesaid request for reconsideration. The denial was received by the petitioner on November 11, 1955. Petitioner filed the instant petition for review on December 12, 1955.

Petitioner admits that for purposes of computing the sales tax which it paid, the basis used to determine import invoice value in Philippine pesos was the flat rate of exchange of ₱2.00 for every U.S. dollar and not the amount of ₱2.015 actually paid by it to the Philippine National Bank. There is likewise no dispute as to the mathematical correctness of the deficiency sales tax assessment against petitioner.

The issues raised in this case are as follows:

1. Whether or not the instant petition for review was filed within the 30-day period prescribed in Section 11 of Republic Act No. 1125; and

2. Whether or not the sum of ₱0.015 charged by the Philippine National Bank for every U.S. dollar remitted abroad and paid by petitioner on account of its importations forms part of the landed cost of the goods imported for purposes of the sales tax prescribed in Section 183 (B) of the Revenue Code, as amended by Republic Act No. 594.

On the first issue, we agree with petitioner that the instant petition for review was filed within the 30-day period prescribed in Section 11 of Republic Act No. 1125. As already stated, the decision of respondent which is the subject of this appeal was received by petitioner on July 14, 1955, and on that very same date respondent received the latter's request for reconsideration of the aforesaid decision. Respondent's denial of the said request for reconsideration was received by petitioner on November 11, 1955. Then, on December 12, 1955, petitioner filed the instant petition for review.

We have consistently held that a motion or request for reconsideration suspends the running of the period within which to appeal and resumes to run again upon receipt by petitioner of the denial of said request. (La Fondeña, Inc. v. Collector of Internal Revenue, C.T.A. Case No. 99, March 15, 1956; Tomas S. Quirino v. Collector, C.T.A. No. 86, June 26, 1956; American Rubber Co. v. Collector, C.T.A. No. 164, Aug. 25, 1956; Antonio G. Guerrero v. Collector, C.T.A. No. 285, Oct. 5, 1956.) In the present case, the period to appeal could not have commenced on June 14, 1955, because on that very same date the running of the period was suspended by petitioner's motion for reconsideration. The counting of the period should, therefore, start from the date the suspension was terminated, that is, on November 11, 1955, when petitioner received respondent's denial of his request for reconsideration. The 30-day period from November 11, 1955 expired on December 11, 1955. However, December 11, 1955 being a Sunday, the period should be deemed terminated on the following day which is neither a Sunday nor a legal holiday (Rule 28, Rules of Court), which in this case is Monday, December 12, 1955. Since the petition for review was filed on said date, we are of the opinion that the same was timely filed.

With respect to the second issue relating to the legality of the deficiency sales tax assessed on the difference between the value in Philippine currency (₱2.015) actually paid for every U.S. dollar and the legal rate of exchange (₱2.00), petitioner assails the validity of the assessment on the following grounds:

> 1. Under the rule of ejusdem generis, the difference of ₱.015 paid by the petitioner to the bank in the purchase of foreign exchange does not fall within the phrase "all similar charges," which follows the particular words, "freight postage, insurance, commission, customs duty," under paragraph B, Section 183, of the National Internal Revenue Code, as amended by Republic Act No. 594. As such, it is not part of the landed cost;
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> 2. Under Section 183 (B) of the Code, as amended by Republic Act No. 594, payment of the advance sales tax prior to the release of the articles from customs' custody, as called for therein, is considered final, and no credit, refund or adjustment of the tax paid is allowed;
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> 3. Granting, arguendo, that the difference of ₱.015 is a rightful inclusion to cost, it is adequately covered by the corresponding mark-ups, ranging from 25% to 100%, prescribed by Section 183 (B) of the National Internal Revenue Code, as amended by Republic Act No. 594; and
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> 4. The alleged deficiency sales tax assessed is both untimely and oppressive, as it seeks to collect more taxes for transactions long closed in petitioner's books and the goods on which the tax is imposed have all been either sold out or thrown away due to spoilage.

When the National Internal Revenue Code was enacted in 1939, the sales tax on articles imported from abroad and sold in the Philippines was based on the gross selling price of such articles. (Sections 184-186.) In 1948, Congress enacted Republic Act No. 253 by providing for payment of advance sales tax on imported articles, subject to adjustment when the articles were actually sold. This provision was contained in Section 183 (B) of the Revenue Code, reading as follows:

"(B). Advance payment of sales tax on imported and locally produced and manufactured articles.- In the case of imported articles, the percentage taxes established in sections one hundred eighty-four, one hundred eighty-five, and one hundred eighty-six of this Code shall be paid in advance by the importer, in accordance with regulations promulgated by the Secretary of Finance and prior to the release of such articles from customs' custody, based on the total value thereof at the time they are received by the importer, including freight, postage, insurance, commission, customs duty, and all similar charges. In the case of locally produced or manufactured articles, the percentage taxes established in the said sections shall likewise be paid in advance on the total value thereof prior to removal from the producer's or manufacturer's warehouse. The amount so paid in advance in accordance with this subsection shall be credited against the percentage taxes due on the sales by the taxpayer for each calendar quarter."

Pursuant to Republic Act No. 253, Revenue Regulations No. V-3, dated June 16, 1948, was promulgated by the Secretary of Finance, Sections 2 and 5 of which are quoted below:

"Section 2. Payment of sales tax on imported, manufactured and locally produced articles.- (A) Imported articles. - In the case of imported articles, the percentage taxes established in sections 184, 185, and 186 of the National Internal Revenue Code shall be paid in advance by the importer prior to the release of such articles from customs' custody. The percentage taxes shall be based on the total value of the imported articles at the time they are received by the importer, including freight, postage, insurance, commission, customs' duty and all similar charges. (Sec. 183 (B), National Internal Revenue Code, as amended by section 1, Republic Act No. 253.) Where a shipment of goods consists of articles taxable under different rates, the expenses, such as freight and insurance, shall be apportioned according to the value of the articles.

"The percentage taxes above-mentioned shall be paid in advance to the Commissioner of Customs in Manila, or to the Collector of Customs of the port of entry where the goods are to be unloaded.

"The Collector of Internal Revenue is hereby authorized to detail in the Bureau of Customs officers and employees of the Bureau of Internal Revenue for the purpose of cooperating with the Commissioner of Customs and his subordinates in the enforcement of the provisions of these regulations.

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"Section 5. Quarterly return and payment of sales tax.- It shall be the duty of every importer, manufacturer or producer, within twenty days after the end of every calendar quarter, to make a true and complete return of the amount of the gross sales during the preceding calendar quarter and pay the tax due thereon. (Section 183 (A), National Internal Revenue Code, as amended by Rep. Act No. 253.) The amount paid in advance by importers, manufacturers and producers shall be credited against the percentage taxes due on their sales for each calendar quarter. (Sec. 183. id.)

"Where an importer, manufacturer or producer retires from business, it shall be his duty to notify the nearest internal-revenue officer thereof within ten days after closing his business and file his return or declaration and pay the tax due thereon."

In 1951, Congress amended Section 183 (B) of the Revenue Code by changing altogether the basis of the sales tax on imported articles. As amended by Republic Act No. 594, Section 183 (B) reads as follows:

"Sec. 183 (B). Sales tax on imported articles.- When the articles are imported, the percentage taxes established in sections one hundred eighty-four, one hundred eighty-five, and one hundred eighty-six of this Code shall be paid in advance by the importer, in accordance with regulations promulgated by the Secretary of Finance and prior to the release of such articles from customs' custody, based on the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges, plus one hundred per centum of such total value in the case of articles enumerated in section one hundred and eighty-four; fifty per centum in the case of articles enumerated in section one hundred and eighty-five; and twenty-five per centum in the case of articles enumerated in section one hundred and eighty-six. 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."

Before the effectivity of Republic Act No. 594, the sales tax on imported articles was based on the actual selling price thereof pursuant to Sections 184-186 of the National Internal Revenue Code, but the importer was required to pay an advance sales tax "based on the total value thereof at the time they are received by the importer, including freight, postage, insurance, commission, customs duty, and all similar charges," in accordance with Section 183 (B) as amended by Republic Act No. 253. The advance sales tax paid was considered merely as a deposit which was subsequently credited against the sales tax on the selling price when the goods were actually sold. With the enactment of Republic Act No. 594, the basis of the sales tax on imported articles as provided in Sections 184-186 was completely altered. The sales tax under the new law is no longer based on the actual selling price of imported articles but "on the import invoice value thereof, x x x including freight, postage, insurance, commission, customs duty, and all similar charges, plus one hundred per centum of such total value in the case of articles enumerated in section one hundred and eighty-four; fifty per centum in the case of articles enumerated in section one hundred and eighty-five; and twenty-five per centum in the case of articles enumerated in section one hundred and eighty-six."

It will be observed that the basis of the advance sales tax as provided in Republic Act No. 253 has also been made the basis of the sales tax on imported articles provided in Republic Act No. 594 with the addition of the mark-ups of 100%, 50%, or 25%, as the case may be. The sales tax on imported articles is, therefore, to be computed on the total of the following:

> (1) The import invoice value of the imported goods;
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> (2) The cost of freight, postage, insurance, commission, customs duty, and all similar charges; and
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> (3) The mark-ups (100%, 50% or 25%, depending on the class of imported articles.).

The main issue is whether or not the sum of ₱.015 paid by petitioner to the Philippine National Bank for every U.S. dollar remitted abroad in payment for goods imported by the former is part of the taxable value of such goods. Respondent claims that it comes under the term "all similar charges" which follows the enumeration "freight, postage, insurance, commission, customs duty." On the other hand, petitioner believes that the said bank charge is not of the same class as freight, postage, insurance, commission and customs duty, and, therefore, under the rule of ejusdem generis, it should be excluded.

The rule of ejusdem generis "accomplishes the purpose of giving effect to both the particular and the general words, by treating the particular words as indicating the class, and the general words as extending the provisions to everything embraced in that particular class, though not specifically named by the particular words." (Francisco, Statutory Construction, p. 157, quoting Sutherland, 3rd ed., pp. 395-400.)

The term "similar charges" follows the enumeration of the particular words "freight, postage, insurance, commission, customs duty." Interpreting and applying the meaning of the particular words above-enumerated, not in their individual intendment, but taken in relation to the whole provision, and bearing in mind the object and purpose of Congress in enacting said provision, it is apparent that they all refer to specific "charges" which an importer has to pay to complete his importation. In other words, they belong to that class of charges or expenses necessarily incurred by the importer to secure the release of goods imported from customs custody. Under the rule of ejusdem generis, therefore, any "charge" properly belonging to that particular class of "necessary expenses incurred by the importer in order to complete his importation" falls within the purview of the term "all similar charges" as contemplated by Section 183 (8) of the Revenue Code, as amended by Republic Act No. 594.

In the case at bar, there is no dispute that the difference of ₱0.015 is a premium or "charge" paid by the importer to the bank for the purchase of foreign exchange with which to pay his importations. The question has arisen, however, whether such "charge" is made before or after importation. But when is an importation deemed complete? Section 1248 of the Revised Administrative Code provides that importation is deemed complete only when "the duties due upon the merchandise have been paid or secured to be paid at a port of entry and the legal permit for withdrawal shall have been granted, or, in case said merchandise is free of duty, until it has legally left the jurisdiction of the customs." In other words, importation is not complete unless and until all necessary "charges" have been paid or secured to be paid in order to entitle the release of the goods or merchandise from customs' custody. In this connection, even "port charges" become necessary expenses to complete importation.

> "x x x la importacion no termina sino 'cuando los derechos que gravan las mercancias han sido satisfechos o asegurados en un puerto habilitado y concedido el permiso legal de salida, y en el caso de estar las mercancias exentas de derechos, cuando estas hayan salido legalmente de la jurisdiccion de la aduana' (Go Cheng Tee v. Meer, G.R. No. L-2825). Corren a cuenta, por tanto, del importador los gastos indispensables desde el 'pier' hasta la entrega de la mercancia, como los 'port charges'". (Macondray & Co., Inc. v. Meer, G.R. No. L-2624, September 29, 1951.)

Petitioner maintains that the difference of ₱0.015 charged by the bank for the purchase of foreign exchange with which to pay importations is an expense incurred by the importer after importation has been completed. We do not subscribe to this theory. The facts of importation do not bear this out. Ordinarily, when the importer orders goods from abroad the usual and accepted procedure in the business world is for the importer to open a letter of credit with a local bank so that payment for said importation may be remitted to the exporter. And when payment is transmitted, the bank charges the sum of ₱0.015 for every dollar transmitted in payment for the imported goods. Hence, this premium charged by the bank, together with freight, postage, insurance, commission and customs duty, forms part of the necessary expenses incurred by the importer for his importation.

In other words, all these charges fall within the same classification of "expenses incurred to complete importation", that is to say, they are part of the actual cost of importation.

> "'Cost price' is a relative term, necessarily depending for its meaning on the situation of the parties and the circumstances under which used. Thus, the 'cost price' to the importer is one thing, to the jobber another, to a retailer another, and to the purchaser from a retailer still another. It is said to be what is actually paid or promised to be paid for an article. As applied to a retail stock of goods, it usually has reference to the cost at wholesale." ("Words & Phrases" permanent ed. Vol. 9, p. 796 citing: Sylvester v. Ammons, 101 NW 782, 785, 126 Iowa, 140; underscoring supplied.)

Furthermore, granting that the sum of ₱.015 charged by the banks for every U.S. dollar remitted abroad does not, under the rule of ejusdem generis, come under the category of "similar charges", the evidence of record has clearly established the fact that when petitioner herein paid the invoice value of the goods imported by it, the amount it actually paid for each U.S. dollar was ₱2.015 and not ₱2.00. Therefore, the import invoice value of imported goods which must be considered in determining the sales tax under Section 183 (B) is not ₱2.00 for every U.S. dollar but ₱2.015.

Petitioner, in support of its second argument that the payment of the sales tax prior to the release from customs' custody of imported goods should be considered final, and no credit, refund, or adjustment of the tax paid should be allowed, quotes a portion of the decision of this Court in the case of Candido Montales v. Collec-

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ter of Internal Revenue, B.T.A. No. 183, promulgated September 13, 1954, and General Circular No. V-106, dated February 19, 1951, of the Bureau of Internal Revenue. Petitioner has obviously misunderstood the opinion of the Court in the aforesaid Montales case and General Circular No. V-106. The pertinent portion of General Circular No. V-106, cited by petitioner reads as follows:

> "It is significant to note that, before the amendment, the advance sales tax paid on imported articles by the importer was considered only as a deposit which was to be subsequently credited against the sales tax due from him for each calendar quarter. Under the amendment, the payment of the advance sales tax on imported articles by the importer thereof is final and shall be accounted for as internal revenue collection, without the benefit of tax credit or adjustment, irrespective of whether the imported articles are sold below or above the landed cost plus the mark-ups established by law. The importer need not also file a quarterly return."

An analytical and unbiased study of the aforesaid decision and circular will show that "the finality of payment of the advance sales tax", referred to in both instances, simply means that under the present law, Section 183 (B) of the Revenue Code, as amended by Republic Act No. 594, payment by the importer of the sales tax prior to the release of the goods from customs' custody is no longer deemed as a mere "deposit", subject to adjustment when the goods are actually sold, as was true before Republic Act No. 594 took effect. It is regarded as a final payment, and not subject to adjustment, irrespective of whether or not the goods are sold for more or less than the value used in the computation of the tax paid before release of the goods from customs. Finality of payment does not mean that even if there was error or mistake in the amount of the tax paid by the importer the Government can not collect the deficiency, or if there was overpayment no refund can be made. In enacting Republic Act No. 594 amending Section 183 (B) of the Revenue Code, Congress is presumed not to have intended such an absurd result.

"Granting for the sake of argument", according to petitioner, "that the difference of P0.015 paid by the petitioner in the purchase of foreign exchange is a rightful inclusion to cost, it is submitted that the same is adequately covered by the mark-up of twenty-five (25%) per cent — the one applicable in the instant case at bar — prescribed by Section 186, in relation to Section 183 (B)." If the said amount is part of the cost or invoice value of imported goods, the conclusion is inescapable that it is part of the taxable value and may not be deducted therefrom in determining the amount of the tax. The law clearly provides that the tax on imported goods shall be based upon the import invoice value thereof, including freight, postage, insurance, commission, customs duty, and all similar charges, plus the mark-ups established therein.

Finally, it is argued that the "alleged deficiency sales tax assessed is both untimely and oppressive, as it seeks to collect more taxes for transactions long closed in petitioner's books and the goods on which the tax is imposed have all been either sold out or thrown away due to spoilage." The facts that the transactions on which the tax, or deficiency tax, has been assessed had long been closed, and that it is not possible to collect the same from the customers, do not render the tax or deficiency tax "untimely and oppressive" so as to relieve the taxpayer from the obligation of paying it. To admit the validity of petitioner's argument would be to undermine our entire tax structure.

FOR THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, October 5, 1956.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge