REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LOVSTED & CO., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

C.T.A. CASES NOS. 3417, 3480, 3484, 3512, 3525, 3565, 3584, 3633 & 3670

D E C I S I O N

The above-captioned cases involving the same parties with identical issues on question of the refund of alleged overpaid advance sales taxes on importations are consolidated and jointly submitted for decision.

The material facts are found accordingly.

Petitioner corporation organized and existing under Philippine laws had a number of importations consisting of refrigeration equipment and parts for resale. In addition to the other import liabilities, these shipments were subjected to the payment of 25% advance sales tax inclusive of the corresponding 50% mark-up pursuant to Section 196(i) and (m) in relation to Section 193(b), all of the Tax Code, in effecting withdrawal thereof from Customs' custody. The full payment nevertheless, petitioner took exception by asserting that the rate of only 10% advance sales tax inclusive of the 25% mark-up prescribed in Section 199 in relation with Section 193(b), both of the Tax Code of 1977 should have been levied. Claims for the refund of the alleged excess payments of percentage taxes were accordingly filed but the resolution thereof by the respondent Commissioner of Internal Revenue remains pending to date. Hence the filing of these petitions for review in accordance with the provision of Section 292 of the Tax Code, encapsulated as follows:

<u>CTA CASE NO. 3417</u>

One box - Turbo ice-maker
C & F Value $17,955.00
Vessel: "Arnold Maersk"
Registry No. 1973 with Entry No. 95333
₱27,679.00 - additional advance sales tax allegedly paid

<u>CTA CASE NO. 3480</u>

12 cartons - Commercial refrigerating equipment
C & F Value $11,072.00
Vessel: "Anna Maersk"
Registry No. MIT-90 with Entry No. 007960
₱27,679.00 - additional advance sales tax allegedly paid

CTA CASE NO. 3484

30 packages - Commercial type refrigeration equipment
C & F Value $27,615.00
Vessel: "Oriental Executive"
Registry No. 1074 with Entry No. 44907
₱64,033.00 - additional advance sales tax
allegedly paid

CTA CASE NO. 3512

25 cases - Industrial refrigeration machine and parts
F O B Value GBP 966.34
Vessel: "Hongkong Express"
Registry No. 1479 with Entry No. 66931
₱70,308.00 - additional advance sales tax
allegedly paid

CTA CASE NO. 3525

9 crates - Condensing unit refrigerating equipment
C & F Value $19,989.78
Vessel: "Wiser Express"
Registry No. 1649 with Entry No. 71326
₱49,130.00 - additional advance sales tax
allegedly paid

CTA CASE NO. 3565

1 box - Industrial automatic ice plant
C & F Value $17,142.00
Vessel: "Arild Maersk"
Registry No. MIP-275 with Entry No. 021406
₱42,537.00 - additional advance sales tax
allegedly paid

CTA CASE NO. 3584

2 boxes - Automatic ice plant
C & F Value $22,356.00
Vessel: "Anna Maersk"
Registry No. 8 with Entry No. 003225
₱52,360.00 - additional advance sales tax
allegedly paid

CTA CASE NO. 3633

2 crates - Industrial refrigeration spare parts
C & F Value $16,665.00
Vessel: "Alva Maersk"
Registry No. NIP-47 with Entry No. 05979
₱43,774.00 - additional advance sales tax allegedly paid

CTA CASE NO. 3670

3 cartons - Refrigerating equipment parts
F A S Value $495.00
Vessel: "Arild Maersk"
Registry No. TABAC-143 with Entry No. 71326
₱1,324.00 - additional advance sales tax allegedly paid

In assailing the assessment and payment of the additional advance sales taxes on the entered shipments of refrigeration equipment and parts, petitioner contends that the articles are of the industrial or commercial type and not among those enumerated in Sections 194, 195, 196, 197, 198 and 201 of the Tax Code, as amended, hence, classifiable as "other articles" under Section 199 of the same Code and subject to only 10% advance sales tax, inclusive of 25% mark-up, which reads:

> Sec. 199(a). Percentage tax on sales of other articles. - There shall be levied, assessed and collected once only on every

> original sale, barter, exchange, and similar transaction either for nominal or valuable consideration, intended to transfer ownership of, or title to, the articles not covered in Sections 194, 195, 196, 197, 198 and 201, a tax equivalent to ten per centum (10%) of the gross selling price or gross value in money of the articles sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer: x x x.

Petitioner further stresses that, "assuming, arguendo, that the imported articles are analogous or similar to food and beverage storage cabinets mentioned in paragraph (i), Section 196, Tax Code of 1977, the law further mandates that an enumeration or listing of analogous or similar to 'those enumerated above' must first be recommended by the Commissioner of Internal Revenue to the Secretary of Finance for determination or approval, which was not done in the case at bar. It says:

> 'Similar or analogous articles to those enumerated above as determined by the Minister of Finance upon recommendation of the Commissioner of Internal Revenue based on the inherent essentiality of the product.' (Sec. 196(m) underscoring supplied."

The respondent Commissioner of Internal Revenue did impose the percentage taxes at the rate prescribed in Section 196 in relation with Section 193(b), of the Tax Code of 1977, infra, based on the findings that the imported refrigeration equipment are actually coolers/refrigerators to be used for storing and cooling food. In other words, they are similar or analogous to food and beverage storage cabinets operated by electricity. So that while subject importations are not among those enumerated in Section 196(i) of the Tax Code, they are similar or analogous to the articles enumerated therein, which are subject to advance sales tax at the rate of 25% inclusive of the 50% mark-up.

Section 196 insofar as pertinent provides:

> Sec. 196. Percentage tax on sales of semi-essential articles. - There shall be levied, assessed and collected 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 twenty-five per centum of the gross selling price or gross value in money of the articles sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer:
>
> x x x x x x x x x

> (i) Beverage coolers, ice cream cabinets, water coolers, food and beverage storage cabinets, ice-making machines, and mild cooler cabinets, each having or being primarily designated for use with a mechanical refrigerating unit operated by electricity, gas, kerosene, or other means;
>
> x x x   x x x   x x x
>
> (m) Similar or analogous articles to those enumerated above as determined by the Ministry of Finance upon recommendation of the Commissioner of Internal Revenue based on the inherent essentiality of the product.

An earlier ruling in a similar case involving refrigeration show cases is of no different mold of what appears posited in the instant case, to wit:

> "Par. (i), Sec. 196 of the Tax Code, as amended by P.D. 1358, classifies, among others, 'food and beverage storage cabinets', <u>inclusive of 'any material, part</u> or accessory' thereof; or any articles similar or analogous thereto under par. (m) of said section, as 'semi-essential' articles taxable at the rate of 25%.
>
> The term 'cabinet' is defined as 'a chamber having temperature and humidity controls' (Webster's 7th New Collegiate Dictionary, p. 115) whereas, the word 'cooler' means 'one that cools; x x x refrigerator' (Webster's supra, p. 183). Consequently, viewed against the above-quoted definitions, the imported electrical refrigeration equipment in question is similar or analogous to 'food and beverage cabinets' within the context of par. (i) of Section 196 of the Tax Code, as amended.

> It should be noted that one of the salient features of the amendments to the Tax Code brought about by P.D. 1358, is the inclusion of the phrase 'similar or analogous article' in the provisions dealing on classification of articles subject to the different rates of sales taxes. As such, the enumeration therefore of articles under Sec. 196 is not exclusive in nature considering par. (m) thereof, which authorizes the Commissioner of Internal Revenue to classify a particular product based on the inherent essentiality of said product, as 'similar or analogous' to articles mentioned in the said provision." (BIR Ruling, March 29, 1979, pp. 68-69, BIR rec.)

All told, the material facts are relatively simple and so are the issues under resolve but the parties seem trying to get the better of each other over by a quibble as to what rate of percentage taxes applies to the subject importations.

It may suffice to state that the imported articles for resale in the Philippines are subject to the percentage taxes mandated under Section 193(b) of the Tax Code, viz.:

> Sec. 193. Payment of percentage taxes. - (a) In general. x x x
>
> (b) Sales tax on imported articles. - When the articles are imported, the percentage taxes established in Sections 194, 195, 196, 197, 198, 199 and 201 of this Code shall be paid in advance by the importer, in accordance with

> the regulations promulgated by the Minister of Finance and prior to the release of such articles from the Bureau of Customs' custody, based on the home consumption value or price (excluding internal revenue excise taxes) thereof, x x x plus one hundred per centum of such total value in the case of articles enumerated in Section 194 and 195, fifty per centum in the case of articles under Section 196 and 197 and twenty-five per centum in the case of articles under 198, 199 and 201. xxx

In the cases at bar We find nothing ambiguous nor obscure in the language of Section 196(i) and (m), supra, taken in relation with Section 193(b), above, insofar as the same are brought to bear upon the subject importations. By design and purpose the imported refrigeration equipment can readily slip into that warm legal cubby-hole of articles deemed "similar or analogous" to those enumerated in Section 196(i), so to speak. As such the rate of 25% advance sales tax inclusive of the 50% mark-up tacked to the articles in Section 196(i) finds imposition on the importations. What argues strongly for the amount of levy appears well contemplated in Section 196(m) subjecting the same rate of percentage tax on "similar or analogous articles to those enumerated above as determined by the Minister of Finance upon recommendation of the Commissioner of Internal Revenue based on the inherent essentiality of the product."

Even more significant is the fact that the amendment by P.D. 1358 incorporating the provision on "similar or analogous articles", now Section 196(m) of the Tax Code is not a legal legerdemain ascribed as a mere quirky insight of the drafter but a well crafted and coherent choice extending the coverage of the tax imposition over such other class of articles with attributes closely hewed to those specified under the various classifications in Section 196, supra. The pellucidity of the intendment requires no further exegesis. The provision is a revenue measure rather than a tool of limitation and curtailment. As earlier pointed out "As such, the enumeration therefore of articles under Section 196 is not exclusive in nature considering that paragraph (m) thereof, which authorizes the Commissioner of Internal Revenue to classify a particular product based on the inherent essentiality of said product, as 'similar or analogous' to articles mentioned in said provision." The ruling lends settling eloquence to the precise issue in the case at bar.

Again, even if We were to entertain petitioner's proposition that the listing of articles analogous and similar to "those enumerated above" must first be recommended by the Commissioner of Internal Revenue to the Secretary of Finance for determination and approval, such elenchus will not necessarily yield the desired result. It does not need to be, as "The authority of the Minister of Finance to determine articles similar or analogous to those subject to a rate of sales tax under certain category enumerated in Sections 194, 196 and 197 of this Code shall be without prejudice to the power of the Commissioner of Internal Revenue to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including rulings on the classification of articles for sales tax and similar purposes." (Sec. 326, Tax Code)

So it appears and We so hold that the respondent Commissioner of Internal Revenue fared consistent with the mandate of the law in the assessment and collection of the rightful percentage taxes due on the petitioner's entered importations.

WHEREFORE, petitions are hereby dismissed with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, October 30, 1987.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

(On leave)
CONSTANTE C. ROAQUIN
Associate Judge