REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

PHILIPPINE ACETYLENE COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 1147

THE COMMISSIONER OF CUSTOMS,
Respondent.

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# D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Customs affirming that of the Collector of Customs of Manila denying petitioner's claim for refund of the special import tax which was paid under protest in connection with the importation of one custom-built liquefied petroleum gas tank.

The facts of the case are stated in the memorandum of counsel for respondent, from which we quote:

> Petitioner, a duly organized and existing corporation under the laws of the Philippines, is engaged in the manufacture of oxygen, acetylene and nitrogen. And as a separate venture, petitioner is also engaged in the packaging and distribution of liquefied petroleum gas in cylinders and skid tanks.
>
> On or about October 1, 1957, petitioner imported from the United States one custom-built liquefied petroleum gas tank which arrived at the Port of Manila on board the S/S "Pleasantville" with Registry No. 1356, entered and declared for purposes of tax assessment in Formal Import Entry No. 94060, series of 1957. Among the imposts levied upon the subject tank was a Special Import Tax in the amount of ₱3,683.00 which was collected and paid for by the petitioner under protest the refund of which is now the subject matter of the case at bar.

The questions presented for resolution by the parties are:

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(1) Whether or not petitioner is engaged in an industry in connection with its business of packaging and selling liquefied petroleum gas; and

(2) Whether or not the custom-built liquefied petroleum gas tank in question is an equipment, which is exempt from the special import tax if imported for use of industries.

Section 6 of Republic Act No. 1394 exempts from the special import tax "machinery, equipment, accessories and spare parts, for the use of industries." Petitioner contends that it is engaged in an industry. On the other hand, respondent believes that it is not so engaged; hence, it is not entitled to exemption from the special import tax on the importation of the aforesaid custom-built liquefied petroleum gas tank.

Respondent contends that petitioner is not engaged in an industry because it is not a manufacturer of liquefied petroleum gas; it is merely packaging liquefied petroleum gas purchased by it for the purpose of sale. In other words, it is merely a dealer. Respondent would limit the meaning of "industry" to the business of manufacturing.

The term "industry" has been defined as any department or branch of art, occupation or business conducted as a means of livelihood or for profit; especially one which employs much labor and capital and is a distinct branch of trade. (Black's Law Dictionary.) The Secretary of Finance has interpreted "industry" as including any <u>productive</u> enterprise which employs relatively large amounts of capital and/or labor. (1st Indorsement of the Sec. of Finance to the Commissioner of Customs, Nov. 19, 1956, cited on page 5 of the Memorandum for Respondent.)

What is meant by "productive enterprise"? The word "productive" has been defined as follows:

> 1. Having quality or power of producing; bringing forth, or able to bring forth, esp. in abundance; generative; creative; fertile; as, productive soil, races, or imaginations.
>
> 2. Effective in bringing forth or forward; originative; causative.
>
> 3. Yielding or furnishing results, profits, or benefits; as productive enterprises or legislation.
>
> 4. Econ. a. Effecting, or contributing to effect, production. b. Yielding, or devoted to the production of, a net return of wealth; - used with widely different meanings by different authors according to their different economic theories as to what kinds of labor or expenditure will contribute such an increment to the world's wealth as will support like production or expenditure in an endless series of cycles and yield a net result. Thus the mercantilists called productive any labor or expenditure that increased the stock of precious metals of a nation; the physiocrats called agricultural labor alone productive; Adam Smith extended productive to include the labor of agriculture, manufacturing, and commerce, and now many forms of labor and expenditure contributing only indirectly or remotely to the world's wealth, as by increasing the mental efficiency of some classes of laborers, are included as productive. (Webster's New International Dictionary, Second Edition, Unabridged.)

And an enterprise means an undertaking or a venture.

Tested by the foregoing definitions, we think that the term "industry" as used in Section 6 of Republic Act No. 1394 is not limited to manufacturers. A person engaged in commerce or trade employing much labor and capital is engaged in industry because the enterprise is productive of results, profits or benefits. Petitioner, employing much labor and capital, is engaged in packaging liquefied petroleum gas purchased by it and selling the same. It is, therefore, engaged in industry within the meaning of Section 6 of Republic Act No. 1394.

The second issue involves the question whether the custom-built liquefied petroleum gas tank imported by petitioner is an equipment. This question was not passed upon either in the decision of the Collector of Customs or in that of the Commissioner of Customs. Neither has the memorandum of the Solicitor General discussed the issue. Nevertheless, we shall pass upon the issue as raised by the parties.

The term "equipment" in industry has been defined as the physical facilities available for production, including buildings, machineries, tools, etc. It does not include materials used in the packing or preparation for the market of the finished products and are sold with the finished articles. (Lu Do & Lu Ym Corporation v. Central Bank of the Phil., G. R. Nos. L-13033 & L-13701, May 31, 1960.) We think that the said custom-built liquefied petroleum gas t ank which is used by petitioner in the operation of its industry is an "equipment."

IN VIEW OF THE FOREGOING, the decision appealed from is hereby reversed, and respondent is ordered to refund to petitioner the sum of ₱3,683.00. Without pronouncement as to costs.

SO ORDERED.

Manila, December 26, 1963.

R M Umali
ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge