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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THOMAS S. TAYENGCO AND
ERLINDA G. TAYENGCO,
Petitioner,

- versus -

C.T.A. CASE NO. 5279

LIWAYWAY VINZONS CHATO,
COMMISSIONER OF INTERNAL
REVENUE, GUILLERMO PARAYNO,
COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:
OCT 02 1997

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DECISION

The singular issue posed in this case is whether petitioners' importation of a 1989 model Chevy Blazer vehicle falls under the classification of an automobile or a truck. Such a determination bears importance when we take into account that an automobile is subject to an ad valorem tax under Section 149 of the National Internal Revenue Code (Tax Code, for brevity). If it is a truck, then no ad valorem tax is due and petitioners are entitled to the refund being claimed by them in the total amount of ₱405,619.47.

The facts are as hereunder stated.

On November 23, 1993, petitioners, as balikbayans, brought home the aforesaid vehicle from the United States under a no-dollar importation and was declared under Customs Informal Entry No. 86516-93.

Soon after, on December 17, 1993, a joint inspection was conducted on the vehicle by the Bureau of Internal Revenue (BIR), Bureau of Customs (BOC), Bureau of Import Services (BIS) of the Department of Trade and Industry and the Land Transportation Office (LTO) with the finding, among others, that the vehicle has an engine displacement of 5,700 cc (Annex "B" of Petition).

On January 14, 1994, petitioners sent a letter to the BIR requesting for a legal opinion on the status of the vehicle after information has come to their attention that ad valorem tax has been recommended to be assessed on it (Exh. "G"). Apparently, it has been categorized as an automobile. Petitioner's insisted that it is of cargo type and as proof, they enclosed copies of some of the pages of the owner's manual showing the body type and visual description of the vehicle (ibid.).

A month later, on February 15, 1994, petitioners paid under protest the customs duties and the VAT and excise taxes imposed on the vehicle totalling P539,427.00 (Exhs. "A" and "B"). This action of the petitioners was impelled by their desire to protect the vehicle from further deterioration.

Subsequently, on February 22, 1994, petitioner Thomas S. Tayengco wrote and requested the BIR for a refund of the ad valorem tax collected on the vehicle amounting to P371,818.00 (Exh. "L"), which he claimed was illegally imposed. The BIR, however, referred said letter to the BOC, which in turn, refused to act on it, believing that the case should be properly addressed by the BIR and on whose decision the BOC will base its action on the request for refund.

On August 18, 1995, petitioners filed the instant petition for review alleging that the BIR has not acted on their case despite the near expiry of the prescriptive period of two years from date of payment of the tax as provided under Section 230 of the Tax Code.

At bar, petitioners contended, citing BIR Ruling No. 075-89, dated April 14, 1989, that 'an automobile may be safely defined as a four-wheeled motor vehicle (other than trucks and jeeps as defined by R.A. 4136) xxx' (Petition, p. 4); and that unless R.A. 4136 is amended, trucks shall always be outside the definition of automobiles (ibid.).

Petitioners also emphasized that under BIR Memorandum No. EO-90-000-00-377-93, dated September 20, 1993, "the previous criteria (seating capacity) in the categorization of utility vehicles were virtually abandoned in favor of engine displacements." Pursuant thereto, a vehicle is considered an automobile, "if the year model is from 1988 to 1992 and the engine displacement is between 2,000 cc to 4,500 cc." (Emphasis supplied). They, thus, assert that their vehicle was erroneously classified as automobile, it being a vehicle with an engine displacement of 5,700 cc.

In further support of their stance, petitioners cited two precedent cases involving importation of Chevy Blazer of more or less similar vehicular description during the year 1990 which were not subjected to ad valorem tax (Exhs. "I", "I-1" and "I-2"). They submit that the same rule of law should be applied to the instant case.

In their answer to the foregoing allegations of the petitioners, respondents' only raised as special and affirmative defenses certain presumptions and generally accepted principles of taxation without, however, fully explaining the specific reasons for their denial of petitioners' allegations.

Records show that herein parties submitted their respective memorandum as required by the Court. Petitioners merely reiterated their position. On the other hand, respondents added a novel argument by stating, thus:

> "... A reading of E.O. 90-000-00 377-93 would clearly show that in order to be outside the coverage of the ad valorem tax there must be compliance both with respect to year model of the vehicle as well as the engine

> displacement." (Memorandum for the Respondents, p. 3; underscoring supplied)

Finding petitioners' vehicle to be a 1989 model and within the coverage of the years involved in the abovesaid BIR ruling, respondents conclude that said vehicle is covered by such ruling.

After a careful study of the attending circumstances, the provisions of law and regulations in point and the applicable jurisprudence, We find the arguments of the petitioners partly impressed with merit.

It is the observation of this Court that herein parties seem to have ultimately zeroed in on the provision of BIR Ruling No. 377-93 in trying to justify their respective positions. Petitioners hold on to the view that their vehicle is exempted from the ad valorem tax because the engine displacement thereof is 5,700 cc or above the prescribed range of 2,000 cc to 4,500 cc for an automobile. Respondent, however, would asseverate that in order to be excluded from being considered an automobile, the vehicle must not be embraced under any of the two conditions set by the said ruling which are the following: the year model of the automobile must be from 1988 to 1992 and the engine displacement be between 2,000 cc to 4,500 cc. Petitioners' vehicle being a 1989 model, ergo, it is not excluded from ad valorem tax.

Readily, We find petitioners argument to be precise and in accord with the unmistakable intent of the abovesaid BIR Ruling. Respondents' contention appears to be untenable and quite illogical. The subject ruling uses the conjunctive word "and", supra, in indicating the twin requirements of year model and engine displacement. There is no doubt in our mind that a failure to meet any one of the criteria would result in being excluded therefrom.

At this stage, however, We are not inclined to grant the petition based on the foregoing BIR ruling in view of a patent defect we discern from its application.

A painstaking review of Section 149 of the Tax Code would reveal that the criteria adopted in BIR Ruling No. 377-93 and other rulings covering the same subject are in direct contrast to the specific language and intent of said section which states, thus:

> **Sec. 149. *Automobiles.*** - There shall be levied, assessed and collected an ad valorem tax on automobiles based on the manufacturer's or importer's selling price net of excise and value-added tax, in accordance with the following schedule:

Engine displacement (in cc)

Gasoline	Diesel	Tax Rate
up to 1600	up to 1800	15%
1601 to 2000	1801 to 2300	35%
2001 to 2700	2301 to 3000	50%
2701 or Over	3001 or over	100%

> Provided, That in the case of imported automobiles not for sale, the tax imposed herein shall be based on the total value used by the Bureau of Customs in determining tariff and customs duties, including customs duty and all other charges, plus (10%) of the total thereof. (As amended by E.O. No. 273)

It is manifest from the abovequoted section of law that an automobile subject to ad valorem tax may have an engine displacement of 2701 cc or over for gasoline or 3001 cc or over for diesel, without any particular limit on engine displacement. And yet, BIR Ruling No. 377-93, which was issued in conformity with Finance Department Order No. 34-93, implementing E.O. 90 series of 1993, chose to ignore the plain import of said section by putting a maximum limit on the engine displacement of what is to be considered an automobile. Parenthetically, be it noted that a similar situation is obtaining on the minimum engine displacement of an automobile as provided in said section in relation to the same ruling.

There is thus an obvious conflict between the provisions of the abovecited BIR ruling and Section 149 of the Tax Code. Verily, We will have to follow the law instead of relying on a mere ruling which is interpretative in nature and susceptible of errors. At the moment, however, We are proscribed from making any categorical pronouncement on the validity or propriety of said ruling in view of the fact that its legal status has not been assailed in the case at bar.

In lieu thereof, We firmly believe that the crystal clear provisions of Republic Act No. 4136, otherwise known as the Land Transportation and Traffic Code provides the key to the present controversy. Section 3(b) of Article II thereof pertinently states, thus:

> (b) xxx
>
> Motor vehicles with changed or rebuilt bodies, such as jeepneys, jitneys or station wagons, using a chassis of the usual pneumatic-tire passenger automobile type, shall also be classified as passenger automobile, if their net allowable carrying capacity, as determined by the Commissioner of Land Transportation, does not exceed nine passengers and if they are not used primarily for carrying freight or merchandise.
>
> The distinction between "passenger truck" and "passenger automobile" shall be that of common usage. xxx" (underscoring supplied)

From the above, a passenger automobile is classified as such if its net allowable carrying capacity does not exceed nine passengers and its common usage is not primarily for carrying freight or merchandise.

We are thus confronted with the question: does petitioners' vehicle fit into the preceding criteria? We rule in the negative. Petitioners' vehicle is without any incertitude a passenger truck. Notwithstanding the fact that petitioners' vehicle has been classified by the joint inspection team of the BOC, BIR, BIS and LTO as a five seater vehicle (Annex "B" of Petition), and therefore, has a net carrying capacity of less than nine passengers, its common usage, however, is not in conformity with the criteria of a passenger automobile because it is designed primarily for carrying freight or merchandise.

In their letter of request, dated January 14, 1994 (Exh. "G"), petitioners had informed the BIR that they had used the vehicle as a cargo vehicle in the U.S. and that they intend to continue the same usage in the mountains of Benguet Province. This Court is inclined to give weight and credence to petitioners' statements. Indeed, evidence shows that the subject vehicle is classified as a truck under the official used car guide of the National Automobile Dealers Association, a U.S. publication (Exh. "H"). The guide is used by members of the said association in the pursuit of their occupation as automobile dealers, and as such, is admissible in evidence as proof of the truth of petitioners averment that their vehicle is a truck (Section 45, Rule 130, Revised Rule of Court). Most importantly, the photographs of the vehicle (Exhs. "J" to "J-5") which are offered to describe its visual looks and kind convincingly show that said vehicle is definitely a truck. As viewed by us, the vehicle is a two-door single cab type and can only accommodate in its seats two to three persons, not five seats as found out by the inspection team, inclusive of the driver. The rest of the back of the vehicle is open and bare, unless covered with a detachable camper shell, and without additional seats and usable only for carrying freight or merchandise. As to their probative value, the photographs constitute real evidence (Section 1, Rule 130, Revised Rules of Court) and therefore are most convincing and satisfactory class of proof (20 Am. Jur. 600 as cited in Compendium on Evidence, 3rd Ed. by Sibal and Salazar, Jr.).

In conclusion, We find petitioners' vehicle to be a truck and not an automobile, hence, not subject to the ad valorem tax as provided under Section 149 of the Tax Code.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Respondent Commissioner of Customs is ordered to **REFUND** the amount of ₱405,619.47 in the name of the petitioners. No costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals