MAYON MOTORS, INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 413

December 27, 1958

Aff'd in G.R. No. L-15000, 3/29/61

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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DECISION

The petitioner, a corporation engaged in the importation and sale of automobiles, has appealed from the decision of respondent holding it liable for the sums of ₱38,193.67 and ₱35,354.18, representing deficiency advance sales tax on certain automobiles imported by it from 1951 to 1953. The appeal with respect to the sum of ₱38,193.67 having been withdrawn, the only question left for our consideration relates to the legality of the assessment of ₱35,354.18.

In the answer of respondent the question was raised as regards the jurisdiction of this Court to entertain the appeal, it being alleged that the appeal was filed beyond the 30-day period prescribed in Section 11, Republic Act No. 1125. Apparently, respondent based its claim of lack of jurisdiction on the allegation in paragraph 8 of the petition for review that the decision of respondent dated April 4, 1956 was received by petitioner on April 16, 1956. This was clarified in the amended petition for review filed on March 18, 1958 wherein it is alleged that said decision was received on April 21,

1958. This fact is admitted by respondent. (See par. 4, Stipulation of Facts.) In view of this development, respondent has apparently abandoned its defense of lack of jurisdiction, his counsel having failed to make any mention thereof in their memorandum. At any rate, an examination of the records shows that the appeal was filed within the statutory period.

The facts material to the case are embodied in the stipulation of facts submitted by the parties, which is quoted below:

> "COME NOW the petitioner and the respondent, thru their respective undersigned counsels, and to this Honorable Court, respectfully submit the following stipulation of facts:
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> "1. That the petitioner imported two (2) 'Pontiac' automobiles, which arrived at the Port of Manila on board the SS "Ajax" having a total landed cost of ₱4,696.50 each and on which it paid the amounts of ₱3,493.17 and ₱3,493.18 as advance sales tax under Official Receipts Nos. 329612 and 329610, respectively, both dated October 4, 1951, the date when said cars were removed from Customs custody;
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> "2. That the petitioner also imported eleven (11) 'Pontiac' automobiles, which arrived at the Port of Manila on board the SS 'Tungus', having a total landed cost of ₱4,870.76 each, and on which the petitioner paid the total amount of ₱43,877.07 as advance sales tax under Official Receipt No. 376112 dated March 3, 1952, the date when said cars were removed from Customs custody:
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> "3. That the petitioner also imported four (4) 'Pontiac' automobiles, which arrived at the Port of Manila on board the SS 'Steel Admiral', having a total landed cost of ₱5,060.60 each, and for which the petitioner paid the total amount of ₱14,988.79 as advance sales tax under Official Receipt No. 0512295, dated September 19, 1953, the date when said cars were removed from Customs custody;

"4. That based on the aforementioned landed costs, the total amount of ₱35,353.22 was assessed against the petitioner as deficiency advance sales tax on the abovementioned seventeen (17) 'Pontiac' automobiles which were imported during the years 1951 to 1953, payment of which was demanded in respondent's letter dated April 4, 1956, which petitioner received on April 21, 1956;

"5. That the deficiency sales tax assessment mentioned in the next preceding paragraph hereof was arrived at by the respondent pursuant to his ruling and computation that with respect to the abovementioned automobiles shipped aboard the SS 'Ajax' and the aforesaid eleven (11) automobiles shipped aboard the SS 'Tungus', the applicable mark-up is 90% and the applicable rate of sales tax is 75%, while with respect to the four (4) automobiles shipped aboard the SS 'Steel Admiral', the applicable mark-up is 100% and the applicable rate of sales tax is 75%; in other words, it is the contention of the respondent that for advance sales tax purposes, the landed cost is the basis for determining the mark-up, while the total of the landed cost plus the mark-up is the basis for ascertaining the applicable rate of sales tax;

"6. That, in his letter dated April 21, 1956, which was received by the respondent on April 23, 1956, counsel for the petitioner requested for reconsideration of the assessment mentioned in the preceding paragraph 4 hereof, on the ground that, for advance sales tax purposes, the applicable rate of sales tax is determined not by the total of the landed cost plus mark-up, but by the landed cost without adding the mark-up, although the amount actually subject to tax is the total of the landed cost plus the mark-up;

"7. That, in his letter dated July 24, 1957, which was received by counsel for petitioner on August 12, 1957, the respondent denied the aforesaid request for reconsideration and reiterated his decision holding the petitioner liable for the payment of the amount of ₱35,353.22 as deficiency advance sales tax;

"8. That the parties herein hereby reserve their rights to introduce additional evidence in support of their respective contentions."

The sum of ₱35,354.18, representing deficiency advance sales tax on 17 Pontiac cars, was arrived at by respondent as follows:

1. On 2 Pontiac cars which arrived per the SS "Ajax":

Landed cost per car -------	₱ 4,696.50
Plus 50% mark-up ---------	2,348.25
Total -------------------	₱ 7,044.75
75% tax on ₱7,044.75 ------	₱ 5,283.565
Tax on the two cars -------	10,567.13
Less amount paid ----------	6,986.35
Deficiency tax -----------	₱ 3,580.78

2. On 11 Pontiac cars which arrived per the SS "Tungus":

Landed cost per car -------	₱ 4,870.76
Plus 50% mark-up ---------	2,435.38
Total -------------------	₱ 7,306.14
75% tax on ₱7,306.14 ------	₱ 5,479.61
Tax on 11 cars -----------	60,275.66
Less amount paid ----------	43,877.07
Deficiency tax -----------	₱16,398.59

3. On 4 Pontiac cars which arrived per the SS "Steel Admiral":

Landed cost per car -------	₱ 5,060.60
Plus 100% mark-up --------	5,060.60
Total -------------------	₱10,121.20
75% tax on ₱10,121.20 -----	₱ 7,590.90
Tax on 4 cars ------------	30,363.60
Less amount paid ----------	14,988.79
Deficiency tax -----------	₱15,374.81

SUMMARY

Deficiency tax on first shipment ----------	₱ 3,580.78
Deficiency tax on second shipment -------	16,398.59
Deficiency tax on third shipment ----------	15,374.81
Total deficiency tax--	₱35,354.18

(Pp. 31-32, Memorandum for Petitioner.)

On the other hand, it is contended on behalf of petitioner that, instead of a deficiency, it made an overpayment in the sum of ₱17,272.69, computed as follows:

1. On 2 Pontiac cars which arrived per the SS "Ajax":

Landed cost per car ------	₱ 4,696.50
Plus 50% mark-up ---------	2,348.25
Total --------------------	₱ 7,044.75
30% tax on ₱7,044.75 ------	₱ 2,113.43
Tax on the two cars ------	4,226.86
Less amount paid ---------	6,986.35
Overpayment --------------	₱ 2,759.49

2. On 11 Pontiac cars which arrived per the SS "Tungus":

Landed cost per car ------	₱ 4,870.76
Plus 50% mark-up ---------	2,435.38
Total --------------------	₱ 7,306.14
30% tax on ₱7,306.14 ------	₱ 2,191.84
Tax on 11 cars -----------	24,110.26
Less amount paid ---------	43,877.07
Overpayment --------------	₱19,766.81

3. On 4 Pontiac cars which arrived per the SS "Steel Admiral":

Landed cost per car ------	₱ 5,060.60
100% mark-up -------------	5,060.60
Total --------------------	₱10,121.20
50% tax on ₱10,121.20 ----	₱ 5,060.60
Tax on 4 cars ------------	₱20,242.40
Less amount paid ---------	14,988.79
Deficiency tax -----------	₱ 5,253.61

SUMMARY

Overpayment on first shipment ------------	₱ 2,759.49
Overpayment on second shipment -----------	19,766.81
Deficiency tax on third shipment -----------	(5,253.61)
Total overpayment ------	₱17,272.69

(Pp. 34-36, Memorandum for Petitioner.)

While both parties agree as to the mark-up, they disagree as to the rate of tax applicable on each shipment of cars. Respondent is of the opinion that all the 17 cars in question are taxable at the rate of 75%, while petitioner believes that the first two shipments (13 Pontiac cars) are taxable at the rate of 30% and the last shipment (consisting of 4 Pontiac cars) is taxable at the rate of 90%.

Section 183 (B) and Sections 184 and 185 of the National Internal Revenue Code govern the taxability of automobiles imported for the purpose of resale.[1] For convenience, Section 183 (B) and the pertinent portions of Sections 184 and 185 are quoted below:

> "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." (As amended by Sec. 1, Rep. Act No. 594.)

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> "Sec. 184. Percentage tax on sales of jewelry, automobiles, toilet preparations, and others. - There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction

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[1] Cars imported for use by the importers thereof are subject to the compensating tax under Sec. 190, Rev. Code. In such case, the provision in Sec. 183(B) regarding mark-ups does not apply.

for nominal or valuable considerations intended to transfer ownership of, or title to, the articles herein below enumerated a tax equivalent to fifty *per centum* of the gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer: *Provided*, That where the articles are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of the manufactured articles:

(a) Automobile chassis and bodies, the selling price of which exceeds five thousand pesos but does not exceed seven thousand pesos: *Provided*, That where the selling price of an automobile exceeds seven thousand pesos the same shall be taxed at the rate of seventy-five *per centum* of such selling price. A sale of automobile shall, for the purpose of this section, be considered to be a sale of the chassis and of the body together with parts and accessories with which the same are usually equipped; x x x ."

x x x x

"Sec. 185. *Percentage tax on sales of automobiles, sporting goods, refrigerators, and others.* - There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction intended to transfer ownership of, or title to, the articles herein below enumerated, a tax equivalent to thirty *per centum* of the gross selling price or gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer: *Provided*, That where articles are manufactured out of materials subject to tax under this section and section one hundred and eighty-six, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of the manufactured articles:

(a) Automobile chassis and bodies, the selling price of which does not exceed five thousand pesos. A sale of automobile shall, for the purposes of this section, be considered to be a sale of the chassis and of the body together with parts and accessories with which the same are usually equipped. x x x ."

For purposes of the sales tax, automobiles manufactured locally are of three classes, viz: (1) automobiles the gross selling price of which does not exceed ₱5,000.00; (2) automobiles the gross selling price of which exceeds ₱5,000.00 but does not exceed ₱7,000.00; and (3) automobiles the gross selling price of which exceeds ₱7,000.00. The first class, automobiles with a gross selling price of not exceeding ₱5,000.00, are taxable at the rate of 30% (Section 185 (a); the second class, automobiles whose gross selling price exceeds ₱5,000.00 but does not exceed ₱7,000.00, are taxable at the rate of 50% (Sec. 184 (a)); and the third class, those with a gross selling price in excess of ₱7,000.00, are taxable at the rate of 75% (Sec. 184(a)). It is obvious from this classification that the rate of tax applicable to an automobile (75%, 50% or 30%, as the case may be) is determined by the gross selling price or the taxable value of the automobile. In other words, while the percentage tax of 75%, 50% or 30%, as the case may be, is based upon the gross selling price or the taxable value of an automobile, the rate of the tax applicable is in turn determined by the gross selling price or taxable value of such automobile.

In the case of imported automobiles, Section 183 (B) provides that the percentage taxes established in Sections 184 and 185 shall be paid in advance by the importer "based on the import invoice value thereof, . . . 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 eighty-four; fifty per centum in the case of articles enumerated in section one hundred and eighty-five . . ." The evident purpose of the law is to classify imported automobiles in the same manner as those locally manufactured, the only difference being that in the case of the latter the basis of the tax or the taxable value is the gross selling price, while in the case of the former the tax is based on the import invoice value, including expenses, plus the corresponding mark-up. In other words, in the case of an imported automobile, the basis of the tax or the taxable value is the total of the import invoice value, including expenses, plus the proper mark-up (see Genato Com. Corp. v. Coll. of Int. Rev., C.T.A. No. 218, Oct. 5, 1956, affd. in G. R. No. L-11727, Sept. 29, 1958), and such taxable value in turn determines the rate of the tax.

It is the contention of petitioner that "the landed cost[1] is the basis for determining the applicable mark-up and the applicable rate of sales tax, although the tax base or the amount subject to tax is the total of the landed cost plus the mark-up." (Page 9, Memorandum for Petitioner.) Under this theory, one of the two Pontiac cars imported per the SS "Ajax" with a landed cost of ₱4,696.50 would be subject to the tax of 30%, computed as follows:

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[1] As here used, the term "landed cost" means the import invoice value, including freight, postage, insurance, commission, customs duty, and all similar charges.

Landed cost -------	₱ 4,696.50
Plus 50% mark-up ---	2,348.25
Total -------------	₱ 7,044.75
30% tax (car enumerated under Sec. 185, landed cost being less than ₱5,000) ---------	₱ 2,113.43

On the assumption that the rate of mark-up used in the computation of the tax by petitioner, as shown above, is correct, to which we do not agree as will be discussed later, the amount of the tax due is only ₱2,113.43. If the same car were locally manufactured or assembled and was sold for the same price, or at ₱7,044.75, the rate of tax applicable would be 75%, and the amount of the tax would be 75% of ₱7,044.75 or ₱5,283.56. Surely, it could not have been the intention of Congress to discriminate against locally manufactured or assembled cars in favor of imported cars. On the contrary, the manifest intention of the law is to give preferential treatment to locally manufactured articles. Accordingly, it is our opinion that, as already stated above, the rate of tax applicable to imported cars is determined not by the landed cost alone but by its taxable value, which means the landed cost plus the corresponding mark-up.

Having arrived at the conclusion that the rate of tax applicable to an imported car is determined by its taxable value (landed cost plus mark-up), we now come to the consideration of the question in regard to the determination of the rate of mark-up properly applicable to imported cars. This is necessary to determine the correctness of the assessment made by respondent. Counsel for petitioner has correctly stated the rule that, although the parties have agreed that the rate of mark-up is determined solely by the landed cost, the same is not binding on this Court it being merely a conclusion of law. (Page 9, Memorandum for Petitioner.) We have had occasion to express the same opinion in a recent case.

> "We do not think that courts are bound by the interpretation of a law given to it by the parties. The obligation of the courts is to interpret the law involved in a given case, . . . as it should be interpreted, not as the parties would want it interpreted." (Mithi ng Bayan Cooperative Marketing Association v. Araneta, C.T.A. No. 79, Oct. 8, 1958.)

We shall, therefore, proceed to consider whether or not the correct rate of mark-up has been applied in this case notwithstanding the agreement of the parties.

Section 183(B) provides for the addition to the landed cost (import invoice value plus expenses) of an automobile of 100% of "such total value"[1] in case the automobile is enumerated in Section 184 and 50% of "such total value" in case the automobile is enumerated in Section 185. What automobiles are enumerated in Section 184? In Section 185?

An article is enumerated in Section 184 if it is taxable under that section. Similarly, an article is enumerated in Section 185 if it is taxable under the same section. An article cannot be enumerated in one section and taxable under another section. As already indicated above, automobiles the gross selling price of which exceeds ₱5,000.00 are taxable under Section 184,

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1 Referring to the landed cost, or the import invoice value plus expenses.

while those whose gross selling price does not exceed ₱5,000.00 are taxable under Section 185.

In the instant case, in what section are the 17 Pontiac cars in question enumerated? Let us take the case of the lowest priced car, one of the two Pontiac cars which arrived per the SS "Ajax". It had a landed cost of ₱4,696.50. If a mark-up of 50% is added to the landed cost, the taxable value would be ₱7,044.75. (See page 10, supra.) Therefore, it would not be considered enumerated in Section 185; it would come under Section 184 and the rate of tax applicable is 75%. Since the taxable value of the car (landed cost plus the mark-up) is more than ₱7,000.00, it is enumerated in Section 184 and the rate of the mark-up properly applicable is 100%, not 50%. All the 17 Pontiac cars in question are, therefore, subject to the mark-up of 100% because all of them have a taxable value of more than ₱7,000.00. It is a mistake for respondent to consider a car as enumerated in Section 185 and yet taxable under Section 184. The law leaves no room for doubt that the rate of the mark-up applicable to an imported automobile is determined by the inquiry whether the car comes under Section 184 or under Section 185, although the amount of the mark-up, once the rate thereof has been determined, is computed on the basis of the landed cost.

Having arrived at the conclusion that all the 17 Pontiac cars in question are subject to the mark-up of 100% and the percentage tax of 75% of their landed cost plus mark-up, the deficiency tax due from petititioner is ₱58,968.43, instead of ₱35,254.18 as assessed by respondent, computed as follows:

Landed cost of the 17 Pontiac cars ----------------------	₱ 83,213.76
100% mark-up ----------------------	83,213.76
Total taxable value ----------------	₱166,427.52
75% of ₱166,427.52 ----------------	₱124,820.64
Less amount previously paid --------	65,852.21
Deficiency tax --------------------	₱ 58,968.43

FOR THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby modified, and petitioner is hereby required to pay the sum of ₱58,968.43. Consequently, the claim of petitioner for refund of the sum of ₱17,272.69 is denied. With costs against petitioner.

SO ORDERED.

Manila, December 27, 1958.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

Aff'd.-G.R. L-15000, March 29, 1961.