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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HYDRO RESOURCES CONTRACTORS
CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3873

THE HON. DEPUTY MINISTER OF
FINANCE, ALFREDO PIO DE RODA,
Respondent.

5/22/87

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D E C I S I O N

This is an appeal from the decision of respondent, Deputy Minister of Finance Alfredo Pio de Roda, dated July 17, 1984 setting aside the decision of the Collector of Customs of the Port of Manila, and that of the Commissioner of Customs who shared a similar view, which held petitioner not liable for additional 3% ad valorem duty imposed and paid, on various equipment sold to it, in the amount of ₱281,591.00 and granting the refund thereof.

It appears that the National Immigration Administration (referred to hereinafter as NIA for brevity), a government owned and controlled corporation, entered into an agreement with petitioner, Hydro

Resources Contractors Corporation (HYDRO for short), for the latter to undertake its project and to finance the acquisition or importation from abroad of various equipment for the exclusive use by HYDRO in said NIA project.

Under their agreement, NIA shall supply the foreign exchange for the acquisition or importation of the equipment for use in said NIA Project, denominated as No. MPI-C-1, and that petitioner HYDRO shall later repay the costs of acquisition or importation in full from out of the proceeds of the contract, before the said ownership thereof shall be transferred to petitioner. The following equipment imported by NIA for HYDRO's use are as follows:

DESCRIPTION OF EQUIPMENT	NET BOOK VALUE
1 Tamrock Hyd. Jumbo Drill Ser. #18153	₱1,566,116.55
3 units Cat Drill Toyo TYPR 120	278,264.25
1 unit Tamrock Hyd. Drill	1,493,834.29
16 Units Air Leg Drills Toyo	12,000.92
1 unit Toyo Reinforcing Bar	2,423.21
3 units Toyo TYCD 10 CY Cralwer	265,421.35
2 units Scheele K-60 Pump	624,772.80
2 units New Reed Gun Mdl. IAS	67,349.90
1 unit Prota Tunnel Profile	43,340.26
2 units Wild Theodolite Surveying Equipment	28,545.93
1 unit Toyo Mud Sub Pump	201,108.01
2 units Aichi Skymaster Truck mounted Boom	93,622.78

2 units Grindex Sub Type Pump	₱ 140,518.35
6 units K/Worth C500 Truck Mixer	1,690,054.60
1 Unit Putamesitor	201,863.77
6 units Sullair Air Comp.	588,940.53
2 units Well Air Driven Grout	20,582.40
10 units Stancom VHF Radio Tran.	32,537.70
4 units Cummins	1,055,209.20

Petitioner HYDRO had during the period of the use of the equipment repaid the foreign exchange that was supplied by NIA in their acquisition in the amount of ₱14,537,783.63 (US $1,991,477.21) and ₱3,972,510.80 (US $544,179.56) and had paid the customs duty and compensating tax due on the above importations, respectively, as follows:

Customs Duty	₱1,214,010.00
Compensating Tax	1,019,369.63
Total	₱2,303,378.63

plus the 3% additional ad valorem duty in the sum of ₱281,591.00 (underlining supplied) paid under O.R. No. 1091617, dated April 25, 1983, as allegedly prescribed under the provisions of Executive Order No. 860, which amount of ad valorem duty was subject to a protest before the Collector of Customs for the Port of Manila aforesaid which is now the subject of the appeal and claim for judicial refund.

The sole issue in this case is whether or not petitioner is entitled to the refund of the 3% ad valorem duty in the amount of ₱281,591.00 paid by petitioner upon the sale to it by NIA of the imported equipment.

We take note that the law, Executive Order No. 860, which was the basis for the imposition of the 3% ad valorem duty upon the said importations, took effect on December 21, 1982. The importations were effected in 1978 and 1979 by NIA, were used by HYDRO in the NIA project, and were transferred to petitioner "after its use for a number of years" (Annex "A," Letter of Melanio P. Tempra, Asst. Vice-President Adm. Services, pp. 5-6, CTA rec.; underscoring ours.)

And under Section 4 of PD 882, effective on January 20, 1976, it is provided therein that the sale or transfer made of a tax exempt imported article or equipment by a government owned or controlled corporation to a taxable corporation or private person or entity, such transferee or taxable corporation, person or entity shall be considered the importer and shall bear all taxes and duties that may be due thereon, and shall be paid to the Bureau of Customs within ten days after sale or disposition said importations.

When NIA transferred the equipment in question supposedly "after its (HYDRO's) use for a number of years", it cannot be doubted that these equipment were sold and transferred presumably "several years" after the equipments' importation in 1978 and 1979. It is obvious therefore that the sale or transfer of the ownership of the equipment to petitioner HYDRO were unquestionably made after the effectivity of PD 882 on January 20, 1976, undisputably said sale or transfer thereof are governed by Section 4 of PD 882 and was correctly applied by respondent. We take particular note of the fact that we cannot pinpoint with definiteness or exactitude from the evidence, when or what years after the years 1978 and 1979 importations were the equipment sold or transferred by NIA to petitioner HYDRO so that we can determine outright whether the sale or transfers are covered by the mandatory provision of Executive Order 860 effective on December 21, 1982 imposing 3% additional *ad valorem* duty on such importations. Such that if the sale or transfer of the ownership of the equipment were effected to petitioner HYDRO *after* December 21, 1982, the effective date of Executive Order No. 860, the 3% *ad valorem* duty is imposable as said Executive Order 860 was applied prospectively and rightly. If the sale or transfer of the ownership of the equipment to HYDRO were *prior* to the effectivity of Executive Order No. 860, then said Executive Order 860 is inapplicable, and petitioner is not liable to pay the 3% *ad valorem* duty of ₱281,591.00 and is entitled to the refund thereof.

As a rule and principle, it was incumbent upon petitioner-taxpayer HYDRO to have shown that the sale or transfer of said equipment to it were made *before* December 21, 1982, when the Executive Order No. 860 was effective in order that it shall not be subject to the imposition of 3% additional *ad valorem* duty. Failing thus, its claim for refund in the amount of ₱281,591.00 unquestionably fails. It must be borne in mind that claims for refund, being in the nature of exemptions, are strictly construed against the taxpayer (Manila Electric Co. vs. Comm., 67 SCRA 351) and said taxpayer is burdened by the responsibility to show by evidence, which must be adequate, competent, clear and convincing, that it is entitled to such claim; otherwise, where a party failed to sustain the burden of proof of the refund by the lack of adequate and competent evidence, the claim for refund shall be denied him because claims for refund, like exemptions, are disfavored in law and these are derogatory to the taxing power of the State. (Caltex vs. Comm., CTA 2871, January 29, 1986; Phil. Explosive Corp. vs. Comm., CTA 3185, Sept. 26, 1986; Marubeni Corp. vs. Comm., CTA 3605, Feb. 12, 1986)

Moreover, when petitioner HYDRO paid the customs duty, compensating tax and the 3% additional ad valorem duty in the sum of ₱281,591.00 in question, all on the same day, or on April 25, 1983, we have good reason therefore to validly presume that the law, Executive Order 860, was complied with in that the 3% additional ad valorem duty was paid not later than the 10th day after the equipment were sold by NIA to petitioner. Consequently, we can rightly presume and judge that the equipment in question were sold or transferred to HYDRO on or about April 15, 1983 (which is within ten (10) days from payment of the

3% *ad valorem* duty). The sale or transfer of the equipment is, therefore, placed at a date (April 15, 1983), which is after the effectivity on December 21, 1982 of Executive Order No. 860. Consequently, petitioner HYDRO is legally subject to the additional 3% *ad valorem* duty and which was correctly and rightly paid by it to the Collector of Customs.

We are of the opinion and so hold that respondent Deputy Minister of Finance was correct in his finding, and in setting aside accordingly the decision of the Collector of Customs dated 1984, in Manila Protest No. P-1328-83 (Annex "B", Petition for Review), and denying petitioner HYDRO's claim for refund which we hereby fully sustain.

Only as a matter of observation, and without in anyway making a finding in this case, there is alleged and apparently a provision in the service contract entered into between the NIA and petitioner HYDRO wherein it was agreed between them that the former (the NIA) shall be liable for all duties, taxes due on the Government respecting the importation of the equipment that were used by the latter. (see Annex "A", SC-27(b) of Agreement, Memorandum of Petitioner, p. 68, CTA rec.). Since contracts are generally considered the law binding between the contracting parties, and petitioner having paid the additional 3% *ad valorem* duty in the sum of ₱281,591.00 on the equipment sold to it by NIA, said contract should perhaps be brought for ventilation or enforcement in an action for reimbursement of the payment of the said additional 3% *ad valorem* duty paid to the Customs against the NIA, a government corporation, which was in this case not impleaded, and where said NIA may be brought as principal party in a more proper forum.

WHEREFORE, the decision of the Deputy Minister of Finance dated July 17, 1984, denying the petitioner's claim for refund, is hereby affirmed.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, May 22, 1987.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Presiding Judge

(Dissents in a separate opinion.)
ALEX Z. REYES
Associate Judge

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DISSENTING OPINION

I find the majority's view a trifle confusing by having failed to grip with the facts obtaining in relation to the applicable laws.

By design and purpose the imported construction equipment and spare parts for petitioner corporation's (Hydro for short) exclusive use in the construction of the government's Magat River Multipurpose Project which were duly entered and withdrawn from Customs in 1978 and 1979 by the National Irrigation Administration (NIA for short), a governmental entity, were not necessarily a tax exempt undertaking.

By the terms of the Project contract between the NIA and Hydro, NIA undertakes payment of all the import duties and taxes incident to the importations deductible from the proceeds of the contract price from time to time and directly remitted to the Customs. Hydro shall repay NIA in full the value of the construction equipment out of the same proceeds before eventual transfer or taking ownership of subject construction equipment upon termination of the contract. NIA's assumed tax responsibility could be but an added cost of the contract.

As it appears NIA reneged and failed in the compliance of its tax obligations. In the meantime Hydro had fully repaid the value of the construction equipment, and, as a consequence of NIA's contractual breach, paid the compensating tax as well as the customs duties due on the 1978 and 1979 importations. But Hydro was assessed additional duties of 3% ad valorem prescribed in Executive Order 860 subsequently issued on December 21, 1982, which were paid under protest. The instant action is for the refund of such payment. The Collector of Customs, sustained by the Commissioner of Customs, acted favorably on the petitioner's claim.

Respondent Deputy Minister of Finance set aside the decision and invoked P.D. 882 (Regulating the sale and disposition of tax free importations of governmental agencies) as basis for the additional levy of 3% ad valorem duty considering that the payment of the import liabilities including the additional levy and the conveyance of the construction equipment as well came subsequent to the effectivity of the Executive Order.

Let it suffice that the procurement of the equipment, as earlier stated, was not on a tax exempt basis as the import liabilities thereon have been secured to be paid under the terms of the financial scheme in the contract. The formality of vesting of title over the equipment was not an unwarranted expectation but a matter of an implementation of a pre-existing agreement, hence, the imported articles can only be subject to the rates of import duties/taxes prevailing at the time of entry or withdrawal from customs' custody (Sec. 205, TCC) in 1978 and 1979, thus foreclosing any retroactive application of the 1982 Executive Order.

Taken in the above light, it would be unfair and incongruous to hold petitioner to an additional levy sans any statutory basis. The majority could have fumbled into a precipitate action in taking an adverse position on petitioner's right to a refund.

ALEX Z. REYES
Associate Judge