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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BATAAN REFINING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 1969

THE COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - x

11/19/79.

D E C I S I O N

At bar is a suit for recovery of alleged customs duties, wharfage dues and special import tax amounting allegedly to ₱481.00, ₱76,239.00 and ₱210,802.00, respectively, claimed to have been paid by petitioner Bataan Refining Corporation on its various importations of equipment, materials and supplies in the course of its business as operator of a petroleum refinery in Limay, Bataan.

After the issues were joined with the filing of respondent's answer, the case was set for reception of evidence but the hearings were always postponed or cancelled upon the request of counsel for petitioner on the ground, mainly, that he was in the process of preparing the proposed stipulation of facts and, moreover, there were two cases pending with the Supreme Court at the time, i.e., Commissioner of Customs vs. Esso Standard Eastern, Inc., G.R. No. L-28329, and Commissioner of

Customs vs. Esso Standard Eastern, Inc., G.R. No. L-29078, "involving an issue identical to that of the present case, the outcome of which cases will be material in the resolution of such issue." (pp. 23-24; 27-28; p. 32; 38; 41; pp. 43-44, CTA records.) However, during the hearing on December 4, 1978, on motion of petitioner's counsel, and without objection on the part of respondent's counsel, this case was submitted for decision based upon the pleadings and respective memoranda to be filed by the parties (pp. 60 & 63, CTA records), despite, or in spite of, the denial by respondent in his answer of the following averments of facts of petitioner in its petition for review for being erroneous conclusions of law and/or facts:

> 8. That the imposition of wharfage dues and special import tax on the importations specified in paragraph No. 2, and customs duties on Protest No. 1839 amounting to ₱43.00, on Protest No. 1845 amounting to ₱73.00; on Protest No. 1846 amounting to ₱229.00; on Protest No. 1849 amounting to ₱67.00; and on Protest No. 1852 amounting to ₱69.00, cannot find support in law since the petitioner is the grantee of Petroleum Refining Concession No. 2 granted on December 9, 1957 which concession incorporated therein the provisions of Republic Act 387, including Article 103 thereof, whereby the Petitioner, as a concessionaire, may import free of customs duty during the first five (5) years following the grant of its concession, that is, until December 9, 1962, all equipment, machinery, materials, instruments, supplies and accessories, used, useful or needed in connection with its Petroleum Refinery, and is thereby exempt from the payment of Special Import Tax; and that the Special Import Tax levied by Republic Act No. 1394 is customs duty within the meaning of the said Article 103 of Republic Act No. 387. Article

103 of Republic Act No. 387, reads as follows:

> "Article 103.- Customs Duties.- During the first five years following the granting of any concession, the concessionaire may import free of customs duty, all equipment, machinery, materials, instruments, supplies and accessories x x x"

9. That further the Petitioner is engaged in an industry within the meaning of Republic Act No. 1394, under Sec. 6 whereon "machinery, equipment, accessories and spareparts" are exempt from the payment of the Special Import Tax and that the aforementioned articles listed in paragraph 2 hereof, are machinery, equipment, accessories, or spareparts which are for the exclusive use of the Petitioner;

10. That the term wharfage dues is essentially included in the term customs duty as the latter term is commonly and legally accepted;

11. That even if the imposition of customs duties, wharfages dues and special import tax on the importations mentioned in paragraph 2, is in conformity with law, the amount assessed and collected is excessive because the margin fee was included as part of the tax base in the computation of the customs duty and the special import tax.

and without any stipulation of facts submitted by the parties or evidence offered by petitioner as to the truth of its own allegations.

While respondent admits under paragraph 2 of his answer that petitioner imported the following merchandise, the particulars of which are as follows:

(a) 280,762.87 net bdls. at 60% Aramco Crude Oil which arrived per the SE ESSO Alsace, declared under Entry No. N-a series of 1962 and the subject matter of Protest No. 1838;

(b) 14 Pkgs. Dye Nthel Red Oil, Air Tools and accessories and Rotary Pumps which arrived on March 15, 1961 per the SS "DENCLUCH", declared in Entry No. 24388 and which is the subject matter of Protest No. 1840;

(c) 14 Pkgs. Deck Hose, Heavy Duty Submarine Base which arrived on March 28, 1961 per the SS "MANDEVILLE", declared under Entry No. 24390 and the subject matter of Protest No. 1841;

(d) 125 Pkgs. Laboratory Apparatus, Fire Hose, Conduit Fittings, Aluminum Tubing, Catolyst, Hand Tools, which arrived on March 20, 1961 per the SS "SUSAN MAKASK", declared under Entry No. 24339 and which is the subject matter of Protest No. 1842;

(e) 4 Pkgs. Pump Parts, Laboratory Apparatus, Compressor Parts, machinery parts, which arrived on April 12, 1961 per the SS "PHIL. PRES. QUIRINO", declared under Entry No. 3301 and the subject matter of Protest No. 1843;

(f) 15 Pkgs, Steam Trap Disc, Valve, Laboratory Apparatus, Deck Hose, Pipe Fittings, Compress Parts, Machinery Parts which arrived per the SS "FERNBROOK" on April 1, 1961, declared under Entry No. 27944 and which is the subject matter of Protest No. 1844;

(g) 436 Pkgs. Film, Steel Wire, 120 Octavo, Hiliem, Electric Switchboard Parts, Steel Line and Pipe Parts which arrived on February 17, 1961 per the SS "PIONEER MILL" declared under Entry No. 19183 and subject matter of Protest No. 1845;

(h) 73 Pkgs. Motor Bearing, Oil Seals, Transmitter Parts, Safety Clothing, Laboratory Equipment, Boiled Water Compound, Grinding Wheels, and Ball Bearings which arrived on February 24, 1961 per the SS "PIONEER NEDAR", declared under Entry No. 19181 and the subject matter of Protest No. 1846;

(i) 5 Pkgs. Plumbing accessories, Petroleum Products, and Compressor Parts which arrived on April 2, 1961 per the SS LLOYD BAKKE", declared under Entry No. 33008 and subject matter of Protest No. 1847;

(j) 1 Case Pumping Unit which arrived on February 7, 1961 per the SS "BENARON", declared under Entry No. 13046 and subject matter of Protest No. 1848;

(k) 7 Pkgs. Pump Parts and accessories, Rings and Shims, and Laboratory Equipments which arrived on January 27, 1961, per the SS "KOREAN BEAR" declared under Entry No. 15340 and subject matter of Protest No. 1849;

(l) 5 Pkgs. Bearing for Lighting Mixer, Laboratory Apparatus, Band Saw Blades, Tape for Pipe Thread Tools and Voltmeter which arrived on February 13, 1961 per the SS "BONNVILLE", declared under Entry No. 15347 and subject matter of Protest No. 1850;

(m) 46 Pkgs. Penethrometer, Viscometer, Laboratory Chemicals, Argon Gas, Adopters, Hand Tools, Gas Welders, and Ball Bearings which arrived on February 28, 1961 per the SS "FERNCLIFF", declared under Entry No. 23272 and subject matter of Protest No. 1851;

(n) 16 Pkgs. Ref. Control Equipment, Electrical Equipment, Bearing, Drafting Equipment and Gasoline Additives which arrived on February 4, 1961 per the SS "PIONEER MART", declared under Entry No. 20066 and subject matter of Protest No. 1952; and lastly,

(o) 6 Pkgs. Inductors, Flexible Bronze Hose, Compressor Parts, Transformer, Electrical Saw Parts and Pump Parts which arrived on January 20, 1961 per the SS "MARIT MAERSK", declared under Entry No. 10383 and subject matter of Protest No. 1853;

respondent "specifically denies that the merchandise were imported in the course of its business for lack of knowledge or information sufficient to form a belief as to the truth thereof." (p. 18, CTA records.) And along this line, respondent alleges as special and affirmative defense that "Granting arguendo, that petitioner is a grantee of Petroleum Refinery concession, it must have proved that the materials it imported shall be used exclusively for its purpose, which it did not." (emphasis supplied; par. 7, answer, p. 19, CTA records.) As a matter of fact, Protest Nos. 1838 to 1853, inclusive, filed by petitioner Bataan Refining Corporation in the Bureau of Customs against the assessment and collection of wharfage dues, customs duty and special import tax on the importations of the articles involved in this case, were all dismissed by the Collector of Customs because: (pp. 6-7 CTA records.)

> The present protest cases have been filed on several dates within the period prescribed by law, and being proper in both form and substance, the same have been docketed as above-indicated and set for hearing. On the date of hearing as indicated in the notice of hearing, protestant did not appear for which reason the hearing was indefinitely postponed to give said protestant its day in court. Up to the present time, however, protestant has not inquired about these cases nor has manifested any desire to prosecute the same, indicating an apparent lack of interest on its part. Hence, the undersigned is constrained to consider the case closed and submitted for decision on the basis of whatever documents attached hereto.
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> In proceedings against the assessment of customs levies, the question to be decided is not whether the Collector of Customs was wrong, but whether the importer is right (Behn, Meyer & Co. vs. Collector of Customs, 26 Phil. 647) which protestant has failed to establish. Consequently, we do not find any reason for disturbing the assessment against what the present protests were filed.

It seems already well-settled that in an action for recovery of taxes alleged to have been erroneously or illegally assessed or collected, the taxpayer or petitioner has the burden of proof to show that it is entitled to the refund of the amount claimed because taxes are presumed to have been assessed or collected in accordance with law. As a matter of fact, the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue or the Commissioner of Customs is wrong but that he (taxpayer) is right. (Lino Gutierrez vs. Collector of Internal Revenue, CTA Case No. 504, January 28, 1962; See also Tan Guan vs. Court of Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903.) And if the taxpayer fails to appear and present evidence or proof in support of his allegations in his petition for review, conformably to the doctrine of the presumption in favor of the correctness of tax assessment (Inter-provincial Auto-bus Co., Inc. vs. Collector of Internal Revenue, L-6741, January 31, 1956, 98 Phil. 290; Collector of Internal Revenue vs. Bohol Land Transportation Co., L-13099 and L-13462, April 29, 1960, 107 Phil. 965), the Court of Tax Appeals will merely sustain the assessment against the taxpayer. And more so in this case when petitioner has already paid the alleged customs duties, special import tax and wharfage dues assessed against it, and this proceeding is a suit for refund of such duties, tax and dues based on petitioner's claim that it is exempt therefrom under its supposed petroleum refinery concession. (Ormoc Electric Company, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2185, October 15, 1979.)

It bears emphasis that he who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. Tax exemptions are strictly construed against the taxpayer, they being highly disfavored and may almost be said "to be odious to the law." He who claims an exemption must be able to point to some positive provision of law creating the right; it cannot be allowed to exist upon a mere vague implication or inference. (Asiatic Petroleum vs. Llanes, 49 Phil. 466, 471; Union Garment Co., Inc. vs. Court of Tax Appeals, L-16809, January 31, 1962, 4 SCRA 304; Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, L-19707, August 17, 1967, 20 SCRA 1056; Republic Flour Mills, Inc. vs. Commissioner of Internal Revenue, L-25602, February 18, 1970, 31 SCRA 520; Commissioner of Customs vs. Philippine Acetylene Co. & Court of Tax Appeals, L-22443, May 29, 1971, 39 SCRA 71; Davao Light and Power Co., Inc. vs. Commissioner of Customs, L-28902, March 29, 1972, 44 SCRA 122.) The right of taxation will not be held to have been surrendered unless the intention to surrender is manifested by words too plain to be mistaken (Ohio Life Insurance & Trust Co. vs. Debolt, 60 Howard, 416), for the state cannot strip itself of the most essential power of taxation by doubtful words; it cannot, by ambiguous language, be deprived of this highest attribute of sovereignty. (Erie Railway Co. vs. Commonwealth of Pennsylvania, 21 Wallace, 492, 499). So, when exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim (Farrington vs. Tennessee & County of Shelby, 95 U.S. 679, 686). (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466, 471; Manila Electric Company vs. Commissioner of Internal Revenue, L-29987 & L-23844, October 22, 1975, 67 SCRA 351.)

This Court can not, therefore, look with favor on petitioner's claim for exemption from customs duties, wharfage dues and special import tax, and related actions for refund, when it did not even present evidence or proof in support of its allegations of facts in its petition for review upon which it based its alleged exemption, which have been all denied by respondent in his answer; and justified its exemption by words too plain to be mistaken and too categorical to be misinterpreted. (Reagan vs. Commissioner of Internal Revenue, L-26379, December 27, 1969, 30 SCRA 968; Commissioner of Internal Revenue vs. P.J. Kiener Company, Ltd., L-24754, July 18, 1975, 65 SCRA 142; Ormoc Electric Company, Inc. vs. Commissioner of Internal Revenue, supra.) And as aptly averred by respondent in his answer as special and affirmative defense: "Granting arguendo, that petitioner is a grantee of Petroleum Refinery concession, it must have proved that the materials it imported shall be used exclusively for its purpose, which it did not." (Par. 7, Answer, pp. 18-20, CTA records.). Since Article 103 of Republic Act No. 387, otherwise known as the Petroleum Act of 1949, upon which petitioner anchors its alleged exemption, expressly provides in the second paragraph thereof that "No exemption shall be allowed on goods imported by the concessionaire for his personal use or that of any others; nor for sale or for re-export; and if any goods on which exemption has been allowed be thus used or disposed of, the concessionaire is obliged to make a report to the Secretary of Argiculture and Natural Resources to that effect and to pay such import duty as is due", the Court can not <u>presumed</u>, since no evidence or proof whatsoever was presented regarding this matter, on the <u>assumption</u> that petitioner is a grantee of petroleum refinery concession, that the imported articles the customs duties, special import tax and wharfage dues of which were allegedly paid on their importation are sought to be refunded, are equipment, machinery, materials, instruments, supplies or accessories used exclusively in the course of its business as petroleum refinery concessionaire.

As stressed by the Supreme Court in Acting Commissioner of Customs vs. Manila Electric Company and

Court of Tax Appeals, L-23632, June 30, 1977, 77 SCRA 469, this Court is committed to the principle that an exemption from taxation must be justified by words too clear to be misread. As set forth in Commissioner of Internal Revenue vs. Guerrero, L-20812, September 22, 1967, 21 SCRA 180: "From 1906, in Catholic Church v. Hastings to 1966, in Esso Standard Eastern, Inc. v. Acting Commissioner of Customs, it has been the constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed strictissimi juris." (Catholic Church vs. Hastings, 5 Phil. 701; Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, L-21841, October 28, 1966, 18 SCRA 488. The opinion also cited Government vs. Monte de Piedad, 35 Phil. 42; Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466; House vs. Posadas, 53 Phil. 338; Phil. Tel. and Tel. Co. vs. Collector, 58 Phil. 639; Greenfield vs. Meer, 77 Phil. 394; Collector of Internal Revenue vs. Manila Jocky Club, 98 Phil. 670; Phil. Guaranty Co., Inc. vs. Commissioner, L-22074, September 6, 1965, 15 SCRA 1; Abad vs. Court of Tax Appeals, L-20834, October 19, 1966, 18 SCRA 374.)

In this case, petitioner has not even shown, directly or indirectly, that it is a grantee of petroleum refinery concession and as such, may import, free of customs duty, special import tax and wharfage dues, machinery, equipment, materials, instruments, supplies and accessories used, useful or needed in its petroleum refinery business. Neither has petitioner presented proof that such articles, the customs duty, special import tax and wharfage dues of which were allegedly paid on their importations are sought to be refunded, were actually and exclusively used or needed in its business as a refinery concessionaire. And after careful examination of the records of the Bureau of Customs pertaining to this case, nowhere and in nowise can this Court find any factual or legal basis, except the bare and unsupported allegations of petitioner in its various pro-forma protests that it is a holder of petroleum refining concession and as a concessionaire may import free of customs duty, wharfage fee and special import tax during the first five (5) years following the grant of its concession all equipment, machinery, materials, instruments, supplies and accessories, used, useful or needed in connection with its petroleum refinery, on which the claim of exemption of petitioner may be anchored. Moreover, since petitioner prayed for judgment on the pleadings without offering proof as to the truth of its own allegations, and without giving respondent an opportunity to introduce evidence, petitioner must be understood to have admitted the truth of all the material and relevant allegations of respondent, and to have rested its motion for judgment on these allegations taken together with such of its own as are admitted in the pleadings. (Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et al., 76 Phil. 115.)

Petitioner Bataan Refining Corporation having failed to establish and justify in plain and unambiguous terms its claim from exemption of customs duties, special import tax and wharfage dues, the decision of respondent Commissioner of Customs dated August 26, 1968, affirming the decision of the Collector of Customs of the Port of Manila, dismissing for lack of merit Protests Nos. 1838 to 1853, inclusive, filed by it must, accordingly, be sustained.

WHEREFORE, the Petition for Review filed by Bataan Refining Corporation is hereby dismissed. With costs.

SO ORDERED.

Quezon City, Metro Manila, November 19, 1979.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

Roaquin
CONSTANTE C. ROAQUIN
Associate Judge