REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

VISAYAN TRANSPORTATION COMPANY, INCORPORATED,
Petitioner,

versus

C.T.A. CASE NO. 2055

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - x

D E C I S I O N

This is a petition seeking refund of compensating tax in the amount of ₱1,101.00 paid by petitioner on the importation of two (2) pieces of Airflex Clutch Glands No. 3327445, Model: 6-278-A, pursuant to Section 190(d) of the National Internal Revenue Code.

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with office address at No. 1 P. Zamora St., Cebu City, engaged in the business of transporting passengers and cargo by sea.

On October 23, 1967, petitioner purchased from J. L. Direclex, San Francisco, California, U.S.A. two (2) pieces of Airflex Clutch Glands No. 3327445, Model: 6-278-A. On November 21, 1967, before the articles arrived in the Philippines, petitioner, through its manager, Josefa D. Lim, wrote a notarized letter to the Regional Director of the Bureau of Internal Revenue in Cebu City, requesting exemption

67

from the payment of compensating tax on said articles alleging that the same would be used as replacement for old and worn-out clutch of M/V "Governor Smith" which is owned and operated by it in its shipping business. In fact, the articles were later used as such replacement. On November 25, 1967, the articles arrived in the Philippines on board the M/V "Philippine Corregidor", Voy. No. 20-W. On December 1, 1967, the respondent, through the Collector of Customs of Cebu City, assessed and collected ₱1,101.00 as compensating tax. On May 12, 1969, petitioner filed a claim for refund of the aforesaid amount under Section 190(d) of the Revenue Code. On November 25, 1969, no action having been taken by respondent on the claim, petitioner interposed the present appeal because the 2-year period for the recovery of tax erroneously or illegally collected was soon to expire.

The foregoing facts are borne out by the evidence. As a matter of fact, the record shows that after the filing of this case, the BIR Regional Office in Cebu investigated the claim in question and on July 14, 1970, Examiner Milagros Abrea recommended its approval. And while petitioner presented evidence in support of its claim during the hearing of this case respondent did not present any. In

68

answer to petitioner's memorandum, respondent merely submitted a manifestation that he was leaving this case to the sound discretion of the Court.

The claim for refund in question is justified by Section 190(d) of the Revenue Code, the pertinent portion of which reads as follows:

> SEC. 190. Compensating tax.— On the commodities, goods, wares or merchandise purchased or received by persons residing or doing business in the Philippines, there shall be paid a compensating tax on the total value thereof, including freight, postage, insurance, commission and similar charges, equivalent to the percentage taxes imposed under this Title on original transactions effected by merchants, importers, or manufacturers, such tax to be paid before the withdrawal or removal of said commodities, goods, wares or merchandise from the customhouse or the post office, except as follows:
>
> x x x x x
>
> (d) Articles to be used by the importer himself as passenger and/or cargo vessel whether coastwise or oceangoing, including engines and spare parts of said vessel;

WHEREFORE, respondent is hereby ordered to refund the sum of ₱1,101.00 to petitioner without pronouncement as to costs.

SO ORDERED.

Quezon City, September 9, 1972.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge

69