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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

July 15, 1964

MIGUEL FORTICH CELDRAN,
Petitioner

versus CASE NO. 1209

THE COMMISSIONER OF CUSTOMS
and THE COMMISSIONER OF
INTERNAL REVENUE,
Respondents.

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D E C I S I O N

This is an appeal filed by petitioner against respondents Commissioner of Customs and Commissioner of Internal Revenue for the refund of ₱889.52 and ₱11,295.12, alleged to have been erroneously collected from him as special import and compensating taxes on a Chevrolet "Impala" car, Model 1959, which arrived at the Port of Cebu from the United States sometime in October 1960.

The pertinent facts of the case, as stipulated by the parties, are those stated in the decision of respondent Commissioner of Customs in Customs Case No. 482 (Cebu Protest No. 982), to wit:

> "It appears that Miguel Fortich Celdran, who had stayed in the United States for about two years, imported on October 4, 1960 into the Philippines a 1959 Chevrolet Impala car which he had bought there with U. S. dollars he had saved out of his earnings as a doctor in a hospital. He presented before the Collector of Customs of Cebu an invoice (Exhibit H) and a consular invoice (Exhibit J) indicating $2,150.00 as the purchase price of the car from Byrne Bros., Inc., of White Plains, New York. The Collector of Customs exempted the car from the payment of customs duties under Section 105(1) of the Tariff and Customs

Code, as amended, but he collected thereon the special import tax in the amount of ₱889.52 and the compensating tax in the amount of ₱11,295.12.

"In arriving at these figures, the Collector of Customs disregarded the purchase price of $2,150.00 and instead appraised the car at $2,717.00 which corresponds to its red book value or the published retail factory price of the car. After deducting 25% depreciation from the red book value of $2,717.00 and deducting again 20% representing the wholesale price differential, pursuant to Circular Letter No. 2485, the Collector of Customs arrived at the amount of $1,630.20 which corresponds to the wholesale factory value. Adding $550.00 standard freight to $1,630.20 wholesale factory value, the Collector got $2,180.20. This amount, when multiplied by 4, which represented the conversion rate, resulted to ₱8,720.80 which is equivalent to the cost and freight (C & F) of the car. Multiplying ₱8,720.80 by the then existing rate of special import tax of 10.2% the Collector collected as aforesaid the amount of ₱889.52 as special import tax.

"With respect to the compensating tax, the Collector of Customs started also with the retail factory price published in the red book amounting to $2,717.00 from which was deducted 25% depreciation, thus resulting in $2,037.75, corresponding to the current taxable retail value of the car. Adding $550.00 standard freight to $2,037.75, the Collector got $2,587.75 which, when multiplied by 4 representing the conversion rate, resulted in the amount of ₱10,351.00 which is equivalent to the cost and freight (C & F) of the car in question. Adding the special import tax and other charges incident to the landing and delivery of the car to Miguel Fortich Celdran, the Collector arrived at the amount of ₱11,295.12 as the total landed cost. The rate of compensating tax is 100% so that the Collector collected the amount of ₱11,295.12 as compensating tax.

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"x x x no letter of credit was opened or used for the importation of the car in question; that the car was placed on

> board the exporting vessel on August 9 or 11, 1960 (p. 11, t.s.n.); and that the car would have been subjected to the payment of margin fee of 25% if only a letter of credit was opened and foreign exchange was actually bought for its importation. x x x "

Being dissatisfied with the decision relative to the computation of the special import tax and the compensating tax, and after filing with respondent Commissioner of Internal Revenue a claim for refund, petitioner interposed the present appeal.

The main issue before us is the legality of the special import and compensating taxes. To resolve this, however, it is necessary to pass upon the following questions:

1. Whether the conversion rate of ₱3.20 to $1.00, for purposes of assessment and collection of taxes due the petitioner's car, is legal or not;

2. Whether or not, in the assessment of the special import tax and compensating tax, the 25% margin fee, though not paid or legally imposable, is to be included as a tax base; and

3. Whether the appraisement of the taxable value of the imported car in question is legally correct or not.

In connection with the first issue, it appears from the stipulations of the parties that the conversion rate of ₱4.00 to $1.00 was adopted in computing the taxes in question. This appears to be so because the 25% margin fee (₱0.80) was added, there-by leading to the use of the straight conversion rate of ₱4.00 to $1.00. Actually, therefore, the conversion rate used in the present case is ₱3.20 to $1.00.

It is petitioner's claim that respondent Commissioner of Customs does not have authority to impose the conversion rate of ₱3.20 to $1.00 for purposes of assessment and collection of taxes on his car since the legal parity of the peso to the U. S. dollar prevailing at the time of exportation or importation was ₱2.00 to $1.00 and that only the President of the Philippines and/or Congress can legally change the same. He further alleges that the non-publication of Department Order No. 22 and Customs Memorandum Order No. 56, upon the provisions of which the conversion rate of ₱3.20 to $1.00 is based, renders the questioned orders invalid.

Petitioner is arguing on a wrong premise. It is true that only the President, upon the recommendation of the Monetary Board of the Central Bank and with the approval of Congress, has the sole power to change the par value of the peso. However, the question before us is the "exchange value" and not the "par value." The distinction between the two terms in relation to currency is a matter of economic terminology and accepted economic theory. The use by respondent Commissioner, in the computation of the taxes due from petitioner, of a rate higher than two to one ratio of the Philippine peso and the American dollar, is in consonance with the statutory authority of the Central Bank to adopt a program of gradual decontrol by introducing in the Philippine economy what is known in currency parlance and practice as "multiple currency practices." (See Republic Act No. 2609.)

The Central Bank through the technique of gradual decontrol decided on a change in the rate of exchange between the Philippine peso and the American dollar in its Circulars Nos. 105, 106 and 111, by establishing a free market rate in accordance with the operation of the supply and demand principle. This decontrol program was instituted not under Section 49 of Republic Act 265, which provides for changes in par value but under Section 1 of Republic Act 2609 in conjunction with Sections 74, 76 and 79 of the former Act.

It is not correct therefore to state that respondent did not have authority to use the conversion rate of ₱3.20 to $1.00 because the same is authorized by the Monetary Board Resolution dated April 26, 1960 implementing Circular Nos. 105 and 106. 3

With regard to petitioner's contention of non-publication of the orders in question, we believe that the requisite publication has been satisfied with the publication in the Official Gazette of Circular Nos. 105 and 106 and 111. Since Department Order No. 22 and Customs Memorandum Order No. 56 are merely administrative implementation and amplification of said circulars, the above orders, in effect, are considered to have been sufficiently publicized.

Petitioner further disputes the legality of including the 25% margin fee in the tax base for purposes of assessment and collection of taxes. He argues that the law, Republic Act No. 2609, imposes a margin fee on the sale of foreign exchange and since no such sale is involved in the instant case, the same should not be added to the tax base in computing his tax liability.

We agree with petitioner. Inasmuch as in the instant case no dollars went out of the country and the margin levy of 25% did not form part of the total value of the imported car, we find no cogent reason for adding the margin fee to the tax base.

Finally, petitioner contends that the proper basis for the computation of the special import and compensating taxes "is the actual, verified and known purchase price of the car, as set forth in the commercial invoice (Exhibit H, page 22 Customs rec.), subject to a 25% depreciation allowance and a 20% deduction to determine the wholesale price."

Respondent's evaluation of the imported car in question was made in accordance with Department Order No. 289-A (Nov. 19, 1957) which provides in part:

> "1. All cars imported for personal use, irrespective of country of origin, shall be evaluated by the appraiser either on the actual purchase price of the car when bought directly from the manufacturer or franchised dealer abroad, or if not known or questionable, the published retail factory price for the year of manufacture. x x x
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> "2. The actual purchase price of the car when bought directly from the manufacturer or franchised dealer abroad or published retail factory price, whichever is accepted by the appraiser, shall be entitled to a depreciation allowance for the applicable model year of all makes of cars, regardless of country where manufactured, in accordance with the following table:
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> x x x x
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> "4. For purposes of determining the import duty and special import tax, which was assessable on wholesale value, the current taxable wholesale value shall be ascertained by deducting the whole sale price differential of 20% from the current taxable retail value, as determined in Par. 2 above. The resultant value, plus ordinary expenses prior and incidental to loading on board the exporting vessel, export duty and taxes, if any, together with freight paid and insurance premium paid and all other charges incurred up to the Philippine port of entry, shall constitute the basis for computation of the applicable import duty and special import tax.
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> x x x x
>
> "6. The compensating tax shall be based on the current retail value, as determined in Par. 2, above, plus import duty, special import tax, freight, insurance, and all other expenses incident to importation."

It is to be noted that the imported car in question was purchased from Byrne Bros., Inc., of White Plains, New York. This company invoiced the car at $2,150.00. In view of these circumstances, we find no plausible reason for disregarding the invoice price of the car. Undoubtedly, the Byrne Bros., Inc. is a reputable car dealer. It is improbable for this company to conspire with petitioner in defrauding the Government of its lawful revenue by indicating in the car invoice a price lower than that actually paid by petitioner.

Petitioner, in his petition for review, prays for legal interest on the refundable amount that may be due to him and claims for damages, attorney's fees and costs from respondents.

It is the rule in this jurisdiction that a taxpayer is not entitled to the payment of interest on refunds if the collection was not attended with arbitrariness. (See Coll. vs. Prieto, G. R. No. L-11976, Sept. 26, 1961) In the case at bar, it was not proven that the collection was made in bad faith.

With regard the claims for damages, attorney's fees and costs, it is equally settled that respondents cannot be made liable for payments thereof (See Sison vs. Coll., CTA Case No. 337, Feb. 28, 1958; Hermenigildo Rosales vs. Coll., CTA Case No. 614, March 16, 1960; Coll. vs. Benipayo, G. R. No. L-13656, Feb. 26, 1962; Coll. vs. Convention of Phil. Baptist Churches, G. R. No. L-11897, May 19, 1961; Sec. 1, Rule 142, New Rules of Court).

WHEREFORE, the decision appealed from is modified by eliminating the 25% margin fee from the tax base of the special import and compensating taxes and taking the invoice value of $2,150.00 as the taxable value of the imported car. After recomputing the taxes in accordance with our decision, the respondent Commissioners shall refund to petitioner the resulting amounts as overpaid taxes. Without pronouncement as to costs.

SO ORDERED.

Manila, July 15, 1964.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge