Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

May 25, 1965

CALTEX (PHILIPPINES) INC.,
Petitioner,

-versus- C.T.A. CASE No. 1490

ACTING COMMISSIONER OF CUSTOMS,
Respondent.

x- - - - - - - - - - - - - - -x

D E C I S I O N

This is an appeal from the decisions of the respondent in Customs Case No. 605, Batangas Protest No. 3, Series of 1961, and Customs Case No. 604, Davao Protests Nos. 100, 103, 107, 112, 129, 130, 131, 133, 135 and 136, all Series of 1960, and Nos. 139, 143, 155, and 159, all Series of 1961, denying the petitioner's claim for refund of alleged excess customs duty and special import tax on imported crude oil and other articles.

This case was submitted for decision based on the following stipulation of facts, to wit:

> "1. Petitioner is a corporation organized and existing under the laws of the Philippines with principal office at 540 Padre Faura St., Ermita, Manila; respondent is the duly qualified and acting Commissioner of Customs.
>
> "2. During the period covering November 14, 1960 to April 12, 1961, 17 shipments of crude oil imported by and consigned to petitioner arrived at the Port of Batangas and the Collector of Customs of said port assessed thereon and collected from petitioner the total sums of ₱1,231,081.00 and ₱2,235,788.00 as customs duty and special import tax, respectively. These shipments are described, and the customs duty and

special import tax paid thereon are itemized, in Annex 'A' hereto attached and made an integral part of this stipulation.

"3. During the period covering August 27, 1960 to April 22, 1961, 14 shipments of various articles imported and consigned to petitioner arrived at the Port of Davao and the Collector of Customs of said port assessed thereon and collected from petitioner the total sums of ₱18,897.33 and ₱24,556.82 as customs duty and special import tax, respectively. These shipments are described, and the customs duty and special import tax paid thereon are itemized, in Annex 'A-1' hereto attached and made an integral part of this stipulation.

"4. In determining the tax base of the imported articles listed in Annexes 'A' and 'A-1' for purposes of computing the customs duty and special import tax thereon, said Collectors of Customs included the margin fee prescribed in Republic Act 2609 pursuant to Department (of Finance) Order No. 22, promulgated on May 19, 1960 but which took effect as of April 25, 1960, which provided that the conversion rates of foreign exchange to be used as tax base for the computation of customs duties, internal revenue taxes, and special import tax on articles imported and brought into the Philippines and financed through commercial letters of credit 'shall be the effective rates (either the preferred or free market rate depending on the commodity classification by the Central Bank plus the margin fee.)'

"5. Within the time allowed by law, petitioner filed with the Collectors of Customs of Batangas and Davao separate protests against the assessment and collection of the customs duty and special import tax in the total sums indicated in the preceding paragraphs 2 and 3 of this stipulation on the ground that the margin fee should be excluded from the effective or conversion rates of foreign exchange used in determining the tax base of the aforesaid imported articles.

These protests were docketed by the Collectors of Customs of Batangas and Davao as Batangas Protest Case No. 3 and Davao Protest Case No. 3, both series of 1961, respectively.

"6. On September 25, 1961, the Collectors of Customs of Batangas and Davao rendered their decisions in Batangas Protest Case No. 3 and Davao Protest Case No. 2, respectively, denying petitioner's protests, which decisions were timely appealed by petitioner to respondent and were docketed as Customs Cases Nos. 605 and 604, respectively.

"7. On November 22, 1963, respondent rendered his decisions in Customs Cases Nos. 604 and 605, affirming the aforesaid decisions of the Collectors of Customs of Batangas and Davao, copies of which were received by petitioner on January 4, 1964.

"8. If the margin fee were excluded from the effective or conversion rates of foreign exchange used in determining the tax base of the aforesaid imported articles listed in Annex 'A', the customs duty and special import tax due thereon would be ₱995,897.00 and ₱1,809,911.00, respectively, and therefore, petitioner would be entitled to a refund of the sums of ₱235,184.00 and ₱425,877.00 as excess customs duty and special import tax, respectively, as itemized and computed in Annex 'B' hereto attached and made an integral part of this stipulation.

"9. If the margin fee were excluded from the effective or conversion rates of foreign exchange used in determining the tax base of the aforesaid imported articles listed in Annex 'A-1', the customs duty and special import tax due thereon would be ₱15,193.13 and ₱19,784.77, respectively, and therefore, petitioner would be entitled to a refund of the sums of ₱3,704.20 and ₱4,772.05 as excess customs duty and special import tax, respectively, as itemized and computed in Annex 'B-1' hereto attached and made an integral part of this stipulation.

"10. The parties agree to submit this case for decision on the basis of this stipulation and the only issue to be resolved by this Honorable Court is the legal question as to whether or not the margin fee should form part of the tax-base in the computation of the corresponding customs duties and special import tax on the imported articles listed in Annexes 'A' and 'A-1'."

The only issue raised, as stipulated, is whether or not the margin fee should form part of the tax-base in the computation of the customs duties and special import tax on the imported articles in question. This issue is not of first impression. Resolving a similar question in Atlas Consolidated Mining and Development Corporation v. Commissioner of Customs, CTA Case No. 1161, June 4, 1962, this Court held:

"Petitioner contends that the inclusion of the 25% margin fee as part of the tax-base is illegal because Department Circular No. 22, promulgated by the Secretary of Finance, in relation to Central Bank Circular No. 105, is null and void for being in contravention of Section 79-(B) of the Revised Administrative Code. Furthermore, it is contended by the petitioner that the promulgation of said Department Circular No. 22 has the effect of increasing or inflating the tax-base formulated in Section 204, in relation to Section 201 of Republic Act No. 1937. In other words, it is the position of petitioner that the enumeration contained in Section 201 of Republic Act No. 1937, which compose the tax (dollar) base, is exclusive and that any order or circular that inflates the tax-base is void.

"Considering that there is no dispute as to the correctness of the computation of the amount in question (par. 5, page 2, Memorandum for Petitioner), the determination of whether or not the 25% marginal fee imposed by Republic Act No. 2609 should be included as part of the tax-base for purposes of computing the corresponding customs duties, special import tax, and compensating tax due, turns upon the validity of Department Circular No. 22. If said Department Order No. 22 is valid, the inclusion of the 25% marginal fee as part of the tax-base is legal; hence, the claim for refund cannot be sustained. Otherwise, the inclusion of said marginal fee is illegal, and the amount claimed refundable must be granted.

"Petitioner's contention is untenable.

"The pertinent provision of Department Order No. 22 provides in part as follows:

> 'The conversion rates of foreign exchange to be used as tax-base for the computation of customs duties, internal revenue taxes and special import tax on articles imported or brought into the Philippines, referred to in Paragraph I (a) and (b) above, shall be the effective rates (either the preferred rate or free market rate depending on the commodity classification of the Central Bank, *plus the margin*. x x x'(Italics supplied)

"This Department Order was issued by the Secretary of Finance pursuant to the provision of Section 79-(B) of the Revised Administrative Code which empowers the department head to 'promulgate all rules, regulations, orders, and circulars not contrary to law, necessary to regulate the proper working and harmonious and efficient administration of each and all of the offices and dependencies of his Department, and for the strict enforcement and proper execution of the laws relative to matters under the jurisdiction of said Department.' It was issued for the purpose of implementing the execution and carrying out of the provision of Central Bank Circular No. 105, paragraph 2, which, in part, states:

> '2. Sales of exchange by the Central Bank at the official rate of ₱2.00 to $1.00 <u>plus margin levy</u>, shall be limited to the following transactions, and shall be subject to licensing by the Central Bank:
>
> '(a) Controlled imports (SC, DC, EP, and SEP categories under the Central Bank Commodity Classification.' (Underlining supplied)

"Note that the petitioner did not question the validity of said Central Bank Circular No. 105, for this Circular has the force and effect of law (People vs. Que Po Lay, G.R. No. L-6791, March 29, 1954; Robert Janda vs. Lepanto Consolidated, G.R. No. L-6930, May 25, 1956; People vs. Paet, G.R. No. L-9551, November 26, 1956), and being considered part of the customs and tariff laws, must be enforced by the Bureau of Customs. (Francisco Pascual vs. Commissioner of Customs, G.R. No. L-10979, June 30, 1949; Commissioner of Customs vs. Estanislao Leuterio, G.R. No. L-9142, October 17, 1959). Note also that it is not disputed that the importations in question fall under the EP category and, therefore, are within the classification provided in paragraph 2 of said Central Bank Circular No. 105. Consequently, being merely an implementing order of said Central Bank Circular No. 105, the validity of Department Order No. 22 cannot be assailed.

"Petitioner, invoking Section 204 of Republic Act No. 1937, which provides:

> 'Sec. 204. <u>Rate of Exchange.</u> - For the assessment and collection of import duty upon imported articles and for other purposes, the value and prices thereof quoted in foreign currency shall be converted into the currency of the Philippines at the cur-

> rent rate of exchange or value specified or published, from time to time, by the Central Bank of the Philippines.'

argues that the correct current rate of exchange to serve as the tax-base in the computation of the assessment of import duty shall be at the ratio $1:₱2.00 and not $1.00:₱2.50 as held by the respondent.

"To accede to this argument or proposition would be to give way to illusion rather than to stark reality. For, as regards the petitioner-importer, the inescapable fact is that the true value and price of the imported articles are those appearing in the customs entries and expressed in American dollars, plus the margin fee of 25%. The 25% fee is necessarily included in the value and price of the importations because no importation payable in foreign exchange could then be effected without payment thereof.

"Petitioner's interpretation of Section 204 of Republic Act No. 1937 as excluding the 25% margin fee imposed by Republic Act No. 2609 from the computation of the tax-base for purposes of computing the customs duties, special import tax, and compensating tax above mentioned, is predicated more on legal fiction and technicality rather on the actual facts. Laws must be given a reasonable and sound interpretation and construction, one that breathes the life of time, and reflects the actual circumstances and events prevailing. Judicial statesmanship cannot rest on hallowed legal fiction. It must be based on solid truth, predicated on actual events and circumstances, and must settle and decide on realities of life not legal technicalities. Accordingly, we hold that the correct tax-base for purposes of computing the customs duties, special import tax and compensating tax is the converted value of the dollar into pesos, plus the 25% margin fee imposed by Republic Act No. 2609."

Finding no cogent reason justifying a departure from the above-quoted ruling, we hold that the margin fee should form part of the tax-base in computing the customs duties and special import tax in question.

WHEREFORE, judgment is hereby rendered dismissing the petition for review, with costs against the petitioner.

SO ORDERED.

Quezon City, May 25, 1965.

ROMAN M. UMALI
Associate Judge

I CONCUR:

TEOFILO D. REYES, SR.
Presiding Judge