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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

VICTORIAS MILLING CO., INC.,
Petitioner,

-versus-

C.T.A. CASE No. 1106

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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June 21, 1965

DECISION

This is in connection with the petitioner's claim for refund of compensating tax paid on its various importations of sugar bags and materials for sugar bags in the total amount of ₱158,269.61.

Petitioner is a domestic corporation engaged in the manufacture and sale of raw or centrifugal and refined sugar and for this purpose owns and operates a sugar mill or central in the municipality of Victorias, Occidental Negros, and a sugar refining factory in the same municipality. It imports ready-made sugar bags or materials for conversion into sugar bags for its manufactured sugar.

Previous to March 3, 1959, respondent had exempted petitioner's importations of sugar bags or materials for conversion into sugar bags from the payment of advance sales tax and compensating tax. (See BIR Ruling 105.012, July 1, 1948, par. 4, "Petition for Review" and "Authority to Release Imported Goods", pp. 11-21, CTA rec.) In a ruling dated March 3, 1959 (Exh. 3, p. 29, CTA rec.), the respondent Commissioner of Internal Revenue held that imported jute bags used as containers of sugar sold locally are subject to the payment of advance sales tax. Requests for reconsideration of the ruling were made, but to no avail. (Exh. 5, pp. 32-33, CTA rec.)

From September 7, 1959 to August 26, 1960, inclusive, petitioner paid to respondent, through the Collector of Customs of Iloilo, compensating tax on importations of sugar bags and materials for sugar bags used as containers of the sugar manufactured by it. (Par. 6, "Petition for Review".) Protests and claims for refund of the tax paid had been duly filed, but respondent has not acted on them up to the present. (Pars. 7 & 9, "Petition for Review"; par. 6, "Answer".) Hence, the present petition for refund of the total sum of ₱153,269.61, with interest at the legal rate from October 4, 1960, plus the costs of suit. Respondent filed his answer setting up a counterclaim in the sum of ₱49,459.21, as deficiency advance sales tax and surcharge.

The principal issue to be resolved is whether or not petitioner is liable for the advance sales tax on the importations in question under Section 183(b) in relation to Section 186 of the Revenue Code.

In a prior case, Victorias Milling Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 685, March 11, 1963, involving the same question, we ruled adversely against respondent. We quote:

> "We note that both the petitioner and the respondent are in agreement that the former is not subject to the compensating tax under Section 190 of the National Internal Revenue Code. This is due to the clear provisions of said section which state in part that 'manufacturers, who are subject to tax under section(s) x x x one hundred eighty-nine of this Title, shall not be required to pay the tax herein imposed where such commodities, goods, wares, or merchandise purchased or received by them from without the Philippines x x x are to be used in the manufacture or preparation of articles for sale, barter, or exchange and are to form part thereof'. Hence, as stated above, the question to be decided in the case at bar, has narrowed down to whether or not the petitioner is subject to the advance sales tax under Section 183(b) (Sales tax on imported articles) in relation to Section 186 (Percentage tax on sales) both of the National Internal Revenue Code.
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> "The petitioner contends that 'the Collector of Customs of Iloilo, on behalf of respondent, had erroneously and illegally collected from petitioner x x x on various shipments of containers imported from abroad exclusively for the use of sugar produced by petitioner for domestic consumption, compensating taxes in the aggregate amount of ₱80,823.38 (later reduced to only ₱66,949.79) on which protests and claims for refund were filed with the said Collector of Customs of Iloilo'. (Par. 16, Second

Amended Petition for Review, pp. 193-209, CTA rec.) On the other hand, the respondent maintains that 'the containers in question are legally subject to tax, and x x x that the Collector of Customs of Iloilo, on behalf of the respondent, failed to collect the correct and exact amount of taxes legally due from the petitioner, the latter being liable to the advance sales tax on its importations in question and not to the compensating tax. In other words, there is still due from the petitioner, deficiency advance sales tax in the total amount' of ₱20,206.13. (Par. 5, Second Amended Answer, pp. 214-218, CTA rec.)

"We find the contention of the petitioner to be meritorious and in accordance with law. The advance sales tax which the respondent claims should have been collected by the Collector of Customs of Iloilo under Section 183(b) in relation to Section 186 of the Tax Code, instead of the compensating tax under Section 190 of the same Code, is essentially and fundamentally a 'percentage tax on sales'. It is payable in advance by the importer of articles imported for sale. The landed cost plus mark-up represent theoretically the selling price of the imported articles. (Mayon Motors, Inc. vs. Commissioner of Internal Revenue, G.R. No. L-15000, March 29, 1961.) And the payment by the importer of the advance sales tax, prior to the release of the goods from customs' custody is no longer deemed as a mere 'deposit', subject to adjustment when the goods are actually sold. It is regarded as a final payment, and not subject to adjustment, irrespective of whether or not the goods are sold for more or less than the value used in the computation of the tax paid before release of the goods from customs.

(Tenato Commercial Corp. vs. Court of Tax Appeals, G.R. No. L-11727, Sept. 29, 1958; 55 OG 2092)

"When the articles are imported for the use of the importer, and not for sale to others, the provisions of Section 190 of the Tax Code, not Sections 183(b) and 186 (or 184 and 185), shall apply. Said Section provides in part as follows:

> 'Sec. 190. Compensating Tax.- All persons residing or doing business in the Philippines, who purchase or receive from without the Philippines any commodities, goods, wares, or merchandise, x x x shall pay x x x a compensating tax 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: x x x'.

"In short, the compensating tax should be collected from an importer of goods imported for the use by the importer himself, and not for the purpose of selling the same to other persons. In other words, the sales tax should be distinguished and differentiated from the compensating tax. They refer to, and affect different taxable transactions. The first is a tax on the sale of articles, whether imported or not, or the 'tax on sales', and the other is the tax on the use of articles imported not for sale, or the 'tax on use'.

"In the case at bar, the 'various shipments of containers (were) imported (by the petitioner) from abroad exclusively for the use of sugar produced by petitioner'. These facts are clearly stated by the petitioner in paragraph 16 of its Second Amended Petition for Review and expressly admitted by the respondent in paragraph 5 of his Second Amended Answer, and restated by the respondent in paragraph 11 of his Second Amended Answer in alleging his counterclaim. Therefore, the petitioner, as the importer of the sugar bags in question, is not liable for the payment of any advance 'sales tax on imported articles' inasmuch as the said articles were imported not for sale to other persons, but merely for the exclusive use by the petitioner.

"Moreover, to hold otherwise and subject the petitioner to the 'percentage tax on sales . . .' would render invalid and of no effect the provisions of Section 190 of the Tax Code which admittedly exempt the petitioner herein from the payment of the compensating tax. It should be noted that the purpose of the compensating tax is to place persons purchasing goods from dealers doing business in the Philippines on an equal footing, for tax purposes, with those who purchase goods directly from without the Philippines. (Panay Electric Co. vs. Collector of Internal Revenue, G.R. No. L-6753, July 30, 1955) In other words, the compensating tax is a sort of an equalizer, to place casual importers, who are not merchants on equal footing with established merchants who pay sales tax on articles imported by them. (Borja vs. Collector of Internal Revenue, G.R. No. L-12134, Nov. 30, 1961) In effect, the compensating tax is levied, assessed and collected to take the place of the advance sales tax on imported articles which are not for sale, but for use in the Philippines.

"Furthermore, the petitioner, as the proprietor or operator of a sugar central in Victorias, Negros accidental, is subject to the manufacturer's or miller's percentage tax prescribed in section 189 of the Tax Code. Consequently, the petitioner is exempt from the payment of the 'percentage tax on sales' under the express provisions of section 188(d) of the Tax Code, which read as follows:

> 'Sec. 188. Transactions and persons not subject to percentage tax. In computing the tax imposed in Sections one hundred eighty-four, one hundred eighty-five, and one hundred eighty-six, transactions in the following commodities shall be excluded:
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> x x x x
>
> '(d) Articles subject to tax under section one hundred eighty-nine of this Code.'"

We find no valid reason to deviate from the aforementioned ruling.

Having ruled that the importations of sugar bags or materials for conversion into sugar bags in question are not subject to advance sales tax, the respondent's counterclaim for ₱49,459.21, as deficiency advance sales tax, must necessarily fail.

Petitioner also prayed for the award of interest on the refundable amount and for costs of suit. However, the petitioner failed to press in its memorandum its claims for the payment of interest and costs, and we consider this failure as an abandonment of these claims. Nevertheless, interest is not recoverable if the collection is not attended with arbitrariness as in the instant case. (Gibbs v. Coll., L-14166 & L-14320, April 28, 1962; Comm. v. Asturias Sugar Central, Inc., L-15013, Dec. 28, 1961; Coll. v. Prieto, et al., (Reso.), L-11976, Sept. 26, 1961.) And the Government cannot be held liable for costs. (Coll. v. Convention of Philippine Baptist Churches, et al., L-11807, May 19, 1961.)

WHEREFORE, petitioner Victorias Milling Co., Inc. not being liable for the payment of the advance sales tax on its importations of sugar bags or materials for conversion into containers during the period from September 7, 1959 to August 26, 1960, respondent Commissioner of Internal Revenue is ordered to refund to petitioner the sum of ₱158,269.61. Without special pronouncement as to costs.

SO ORDERED.

Quezon City, June 21, 1965.

ROMAN M. UMALI
Associate Judge

I CONCUR:

TEOFILO D. REYES, Sr.
Presiding Judge