REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JOSE MA. ESPINO, as substituted by DOLORES L. J. ESPINO (widow), in her own behalf and as guardian ad Litem of the minor JOSE MA. ESPINO, JR., NORA J. ESPINO, MARY J. ESPINO, CLEMENTE J. ESPINO and EVELYN J. ESPINO,
Petitioners,

Jan. 21, 1969

versus

CTA CASE NO. 1532

ACTING COMMISSIONER OF INTERNAL REVENUE, BENJAMIN N. TABIOS,
Respondent.

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DECISION

This is an appeal from the decision of respondent denying petitioners' claim for refund of P7,891.00 representing compensating tax paid on one (1) Ford Falcon sedan and other personal and household effects brought to the Philippines from the United States in 1962.

The original petitioner was the late Jose Ma. Espino, a former Career Minister in the Department of Foreign Affairs assigned to the Philippine Embassy at Washington, D. C., U.S.A. On August 13, 1962, he retired from the government service having reached the compulsory retirement age of sixty-five years. In view of his retirement, ex-Minister Espino, together with his family, returned to the Philippines and arrived in Manila on August 30, 1962 aboard the S/S "President Roosevelt." His car, a Ford Falcon sedan, and personal and household effects were shipped to the Philippines through the M/S "Philippine President Roxas" which arrived in Manila on September 26, 1962. The Department of Foreign Affairs paid the cost of freight from Washington, D.C., to the Philippines pursuant to Republic Act 708. (See pp. 20, 23-24, BIR rec.) To effect their release from the Bureau of Customs, ex-Minister Espino paid under protest, on September 28, 1962 and October 3, 1962, the compensating tax, special import tax and wharfage fee assessed on his car and personal and household effects in the total amount of ₱8,946.00. (See Exhs. P & Q, pp. 85-86, CTA rec.)

On January 21, 1964, ex-Minister Espino wrote respondent a letter requesting the refund of overpaid compensating tax on his car and personal and household effects (see pp. 11-12, BIR rec.), which request was denied by respondent in his letter dated August 6, 1964 (pp. 23-24, BIR rec.). On September 14, 1964, the instant petition for review was filed in this Court. Subsequently, Republic Act 4642, otherwise known as the General Appropriations Act for the fiscal year 1965-1966, was passed whereupon petitioners filed a "Supplemental Petition for

Review" on May 31, 1966, basing their claim for refund of taxes paid on personal and household effects including one (1) motor car and praying for the refund of compensating tax in the total amount of ₱7,891.00 (pp. 24-27, CTA rec.) on special provision No. 18, page 398 of said General Appropriations Act which reads as follows:

> 18. The provisions of Section 6(b), Part D, Title VI, of Republic Act No. 708, as amended by Republic Act No. 4112, providing exemptions from the payment of all taxes for personal and household effects, including one motor car, are hereby made applicable to all officers and employees of the Foreign Service who returned to the Philippines in 1962 and 1963 from their posts abroad for reassignment in the Home Office or who were retired or reassigned to any other government entity, and the reimbursement to them of all taxes and customs duties is hereby authorized against any savings in appropriations of the Bureau of Customs, any provision of law to the contrary notwithstanding.

On February 20, 1966, ex-Minister Jose Ma. Espino died (p. 33, CTA rec.). A motion for the substitution of petitioner by his heirs and for the appointment of Dolores L. J. Espino as guardian ad litem for the minor heir was filed. In a resolution dated July 27, 1966, this Court granted the motion (pp. 34-35, CTA rec.).

On April 17, 1968, petitioners amended in open court their "Supplemental Petition for Review" to add ₱1,055.00, representing special import tax and wharfage fee, to the amount originally sought to be refunded, thus making a total claim for refund of ₱8,946.00 (see p. 5, t.s.n.).

The principal issues involved in this case are purely legal, to wit:

> 1. Whether or not Special Provision No. 18, page 398 of Republic Act 4642 (General Appropriations Act for FY 1965-1966), is constitutional;
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> 2. Whether or not the Commissioner of Internal Revenue is the proper party in the claim for the refund of ₱1,055.00;
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> 3. Whether or not the suit for refund was filed within the 2-year prescriptive period provided in Section 306 of the Revenue Code; and
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> 4. Whether or not the determination by respondent of the total landed cost of the imported articles is in accordance with law.

First Issue:

Respondent assails the constitutionality of Special Provision No. 18, page 398 of Republic Act 4642 (Special Provision No. 18 for short), which states -

> 18. The provisions of Section 6(b), Part D, Title VI, of Republic Act No. 708, as amended by Republic Act No. 4112, providing exemptions from the payment of all taxes for personal and household effects, including one motor car, are hereby made applicable to all officers and employees of the Foreign Service

> who returned to the Philippines in 1962 and 1963 from their posts abroad for reassignment in the Home Office or who were retired or reassigned to any other government entity, and the reimbursement to them of all taxes and customs duties is hereby authorized against any savings in appropriations of the Bureau of Customs, any provision of law to the contrary notwithstanding.

on the ground that the subject matter contained therein is not embraced in the title of the Act, which reads:

> AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES DURING THE PERIOD FROM JULY FIRST, NINETEEN HUNDRED AND SIXTY-FIVE TO JUNE THIRTIETH, NINETEEN HUNDRED AND SIXTY-SIX AND FOR OTHER PURPOSES.

in violation of the provision of Article VI, Section 21(1) of the Constitution of the Philippines, providing that -

> No bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill.

The reasons behind the above constitutional restriction on the power of Congress to legislate are lucidly explained by our Supreme Court in the following language:

> What the above provision prohibits is duplicity, that is, if its title completely fails to apprise the legislators or the public of the nature, scope and consequences of the law or its oper-

ation (I Sutherland, Statutory Construction, Sec. 1707, p. 297).
x x x

x x x x

One purpose of the constitutional directive that the subject of a bill should be embraced in its title is to apprise the legislators of the purposes, the nature and scope of its provisions, and prevent the enactment into law of matters which have not received the notice, action and study of the legislators or of the public. x x x (See Ichong, et al. v. Hernandez, et al., L-7995, May 31, 1957.

"In the construction and application of this constitutional restriction the courts have kept steadily in view the correction of the mischief against which it was aimed. The object is to prevent the practice, which was common in all legislative bodies where no such restrictions existed, of embracing in the same bill incongruous matters having no relation to each other or to the subject specified in the title, by which measures were often adopted without attracting attention. Such distinct subjects represented diverse interests, and were combined in order to unite the members of the legislature who favor either in support of all. These combinations were corruptive of the legislature and dangerous to the State. Such <u>omnibus</u> bills sometimes included more than a hundred sections on as many different subjects, with a title appropriate to the first section, 'and for other purposes.'

"The failure to indicate in the title of the bill the object intended to be accomplished by the legislation often resulted in members

> voting ignorantly for measures which they would not knowingly have approved; and not only were legislators thus misled, but the public also; so that legislative provisions were steadily pushed through in the closing hours of a session, which, having no merit to commend them, would have been made odious by popular discussion and remonstrance if their pendency had been seasonably announced. The constitutional clause under discussion is intended to correct these evils; to prevent such corrupting aggregations of incongruous measures, by confining each act to one subject or object; to prevent surprise and inadvertence by requiring that subject or object to be expressed in the title." (Central Capiz v. Ramirez, 40 Phil. 883.)

Upon the basis on the foregoing precepts, we are constrained to hold that Special Provision 18 in question is unconstitutional being incongruous in a general Appropriation Act.

The title of Republic Act 4642 (General Appropriations Act or Act for short) deals with only one object, i.e., the appropriation of money from the public treasury for the expenditure of the National Government. An "appropriation" is an authorization from the legislature to make payments out of the Treasury under specified conditions for specified purposes. (See Budget Operations Manual [1957], p. 485.) A close scrutiny of the entire provisions of the Act reveals that it alloted specified amounts of money for the operation of the three departments of the national government.

On the other hand, Special Provision 18 incorporates to the General Appropriation Act No. 4642 the provisions of Section 6(b), Part D, Title VI of Republic Act No. 708, as amended by Republic Act No. 4112 providing exemptions from the payment of all taxes to all officers and employees of the Foreign Service who return to the Philippines making same retroactive to 1962 and 1963 and authorizing the reimbursement from any savings in the appropriations of the Bureau of Customs taxes which have already been paid in said years. (Evidently, the title of the Act deals on appropriation, while Special Provision 18 principally pertains to exemption from taxation; without the tax exemption so provided, the appropriation could not have been made. The provision evokes in the mind tax exemptions and tax refunds properly found in tax laws and not in general appropriation bills. One can hardly anticipate provisions of such a nature in a law appropriating money for the operation of the government.)

True enough, the title of the General Appropriation Act in question contains the phrase "and for other purposes" but on this point suffice it to quote the following language of our Supreme Court:

> In our interpretation of said Act, the words "and for other purposes" contained in its title, must be treated as non-existent. Under

> all the authorities wherein the requirement—"That no bill shall embrace more than one subject, which subject shall be expressed in the title of the bill"—has been considered, the words "and for other purposes" when found in the title, have been held to be without force or effect whatsoever and have been altogether discarded in construing the Act.
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> Upon this point, Justice Cooley in his Constitutional Limitations, 6th ed., pp. 173-174, states as follows:
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> "One thing, however, is very plain: That the use of the words 'other purposes,' which has heretofore been so common in the title to acts, with a view to cover any and everything whether connected with the main purpose indicated by the title or not, <u>can no longer be of any avail</u> where these provisions exist. As was said by the Supreme Court of New York in a case where these words had been made use of in the title to a local bill: 'The words "for other purposes" <u>must be laid out of consideration</u>. They press nothing and amount to nothing as a compliance with this constitutional requirement. <u>Nothing which the act could not embrace without them can be brought in by their aid</u>.'" (Central Cadiz v. Ramirez, <u>supra</u>.)

<u>Second Issue</u> -

Petitioners, during the hearing of this case, amended their "Supplemental Petition for Review" so as to include ₱1,055.00, representing customs duties, i.e., special import tax (₱1,046.00) and wharfage fee (₱9.00). This amendment is not warranted. (Respondent is not the proper party with respect to customs duties and wharfage fee, the proper party being the Commissioner of Customs who has not been brought to the jurisdiction of this Court. Moreover, the Court's jurisdiction is only appellate, that is from a decision of the Commissioner of Customs (Sec. 7[27], Rep. Act 1125; see Universal Mills Corp. v. Comm. of Int. Rev., CTA Case 1815 [Reso.], Feb. 14, 1967, and cases cited therein). Inasmuch as there is as yet no such decision, we have no authority to pass upon petitioners' claim.)

Third Issue -

Respondent contends that the suit for refund has already prescribed because it was commenced only on April 17, 1968, when the Supplemental Petition for Review was amended by increasing the amount sought to be refunded from ₱7,891.00 to ₱8,946.00, or more than two years from the dates of payment.

We disagree with this contention of respondent. As far as the compensating tax is concerned, the amendment reiterates the original claim. In this respect the case is but a continuation of the original petition. With respect to the customs duties and the wharfage fee, we need not pass upon the question of prescription since we have already ruled further above that we can not entertain petitioners' claim because the

Commissioner of Customs is not a party herein and the jurisdiction of this Court is merely appellate in nature.

Fourth Issue -

As to the last issue, petitioners question the determination by respondent of the landed cost of the imported articles for purposes of computing the compensating tax on the following grounds:

> 1. That the use of the "Red Book" in the appraisal of the car and its heater is contrary to law;
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> 2. That the separate appraisal of the heater is erroneous;
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> 3. That the depreciation allowance for the car should be 40% and not 25%; and
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> 4. That the freight and handling charges paid on the imported car and personal and household effects should be excluded from their assessed value.

Respondent appraised the car at $1,974.00, the retail value found in the "Red Book". Petitioners fixed the value of the car at $1,778.92 as allegedly appearing in a commercial invoice issued by the Ford Motor Co. but the alleged commercial invoice was not presented for consideration by this Court. The burden of proof is upon petitioners to overcome the presumption of correctness attached to respondent's determination (Manila

Railroad Co. v. Coll. of Customs, 52 Phil. 950). The same holds true with respect to the heater of the car. No evidence was introduced by petitioners to show that the red book value included the heater as a part or accessory of the car and should not be appraised as a separate item.

Petitioners also contend that the depreciation allowance for the car should be 40% and not only 25% on the ground that it was already a "Two Year Old Model" at the time of its importation. On this point, Department Order No. 289 (Dept. of Finance) provides -

> 2. The actual purchase price 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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> |---|---|
> | *Current Year Models | 10% |
> | One year Old Models | 25% |
> | Two Year Old Models | 40% |
>
> x x x x
>
> *Applicable only after end of first quarter of the year. No depreciation allowed on advance year models.

(See Phil. Tax Journal, Vol. 2, p. 598.)

There is no dispute that the car in question is a Ford Falcon 1961 model. It arrived in the Philippines on September 26, 1962 and was released from the Bureau of Customs two days later upon

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payment of the taxes due thereon. At the time of its importation in 1962, the car was only a "One Year Old Model" and therefore respondent was correct in giving a depreciation allowance of only 25%, pursuant to the above department order.)

Petitioners allege that since the freight and handling charges on the imported car and personal and household effects were paid by the Department of Foreign Affairs pursuant to Title VI, Part C, Sec. 2 of Republic Act 708, otherwise known as the Foreign Service Act, which reads:

> Sec. 2. Related expenses. - Any officer or employee of the service on assignment to or from a post shall also be entitled to allowance for packing, shipment by usual means of transportation, and unpacking at destination of furniture and other household and personal effects in such amounts and within such limitations as the Secretary, with the approval of the President, may prescribe by regulations.

the same should be excluded from the appraised value of the imported articles in computing the compensating tax prescribed under Section 190 of the Revenue Code, which provides -

> 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, excepting those subject to specific taxes under Title IV of this Code, shall pay on the total value thereof at the time they are received by such

> persons, <u>including freight</u>, postage, insurance, commission and all similar charges, 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 (Underlining supplied.)

The basis of the computation of the compensating tax on the imported articles is the total value thereof at the time they are received by the importer, including freight, postage, insurance, commission and all similar charges. "Total value" is synonymous with "landed cost" which means the import invoice value of the article, including freight, postage, insurance, commissions, customs duty, and all similar charges. (See Mayon Motors, Inc. v. Actg. Comm. of Int. Rev., L-15000, March 29, 1961.)

Republic Act 708 and Section 190 of the Revenue Code, supra, do not contain any provision which would justify the exclusion of freight and handling charges on cars and personal effects of returning diplomats from the "landed cost" or "total value" thereof in determining the compensating tax. Neither do they provide for the exclusion of freight and handling charges if they are paid by the government or someone other than the importer. To sustain petitioners' theory would be to inject new matters in the law which is beyond our competence to do. We are therefore of the persuasion that irrespective of whoever pays the freight and handling charges, said expenses form part of the "landed cost" or "total value" of the imported articles for purposes of computing the compensating tax.

IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby affirmed, with costs against petitioners.

SO ORDERED.

Quezon City, January 31, 1969.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge