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Nov. 27, 1959

MULLER & PHIPPS (MANILA), LTD.,
Petitioner,

- versus -

C.T.A.
CASE NO. 212

november 27

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

DECISION

This is an appeal from a decision of the respondent Collector (now Commissioner) of Internal Revenue, denying the request of the petitioner, Muller & Phipps (Manila), Ltd., for the refund of the amounts of ₱241.62; ₱447.26; ₱3,457.26 and ₱307.11 or a total of ₱4,453.25, paid as advance sales tax on its importations of raw materials consisting of 4,038.812 kilograms of calcium carbonate; 1,995.796 kilograms of powered soap; and, 10,024.844 kilograms of kolynos essence from the Home Products International Limited in New York, U.S.A. and intended for use by the petitioner in its local manufacture of kolynos toothpaste.

As agreed upon by the parties in their "Stipulation of Facts" (pp. 109-113, CTA rec.), these raw materials upon which the respondent assessed and collected the advance sales tax now the subject of review, formed part of several importations effected by the petitioner from the Home Products International Limited in New York, U.S.A., during the period from September 7, 1951 to January 22, 1952, inclusive; that these imported raw materials which were intended by the petitioner for use as ingredients in its local manufacture of kolynos toothpaste were not actually used because of its inability to procure from abroad other materials necessary for the manufacture of said raw materials into finished product; and, that in view of the existing law prohibiting the sale or barter of said raw materials locally and in order to avoid their total loss by deterioration, the petitioner was compelled to re-export and return the same in their original state to its supplier, the Home Products International Limited in New York, U.S.A., with the approval of the Export Division of the Exchange Control Department of the Central Bank.

The only issue to be decided in this appeal is a question of law, i.e., whether or not the petitioner is entitled to the refund of the advance sales tax paid on the re-exported raw materials which it was not able to use locally for the purpose intended through no fault of its own.

Considering the undisputed fact of the instant case as stated above, and applying the ruling of the Supreme Court in a substantially similar case entitled Asiatic Petroleum Co. vs. Posadas, 52 Phil. 728, we believe and so hold that the taxpayer herein is entitled to the refund of the sum of ₱4,453.25 now in question, representing advance sales tax collected on the above-described importations of raw materials for the local manufacture of kolynos toothpaste.

The plaintiff, in the case of Asiatic Petroleum Co., vs. Posadas, supra, was engaged in the business of importing and selling petroleum and petroleum products. It was customary, when such products were imported, to place them in bonded tanks, and the Collector of Customs, as the agent of the then Collector of Internal Revenue, from time to time and upon application and payment of the internal revenue tax provided by law, issued his permit for the withdrawal of the amount of such products upon which the tax had been paid, and the same was then at the convenience of the plaintiff, placed in its supply tanks, from which deliveries were made to its customers. It appears that on one occasion, after the withdrawal from customs custody of its importation and the corresponding specific tax paid thereon, the kerosene imported was discovered to be discolored and unfit for use or market in the Philippines. Hence, with the approval of the Collector of Customs, the plaintiff re-exported the said discolored kerosene for further refining, and the plaintiff subsequently filed its claim for refund of the specific tax paid on the re-exported kerosene. In view of the refusal by the Collector of Internal Revenue to refund the specific tax collected, the plaintiff filed an action in the Court of First Instance of Manila. On appeal, the Supreme Court affirmed the decision of the lower court ordering the Collector of Internal Revenue to refund the specific tax collected on the re-exported kerosene.

In the said Asiatic Petroleum Company case, supra, the Supreme Court agreed with the contention of the taxpayer therein, that the specific tax should be collected only upon those things which are sold or consumed locally, and that the specific tax and the sales tax are "essentially the same tax" and are intended for the same purpose, that is, a tax on "'things for domestic sales or consumption,' otherwise why should the Legislature have exempted those things covered by the specific tax from the provisions of the law covering tax on sales?"

If the specific tax collected on imported articles which are shipped out of the Philippines should be refunded as held in the Asiatic Petroleum Company case cited above, with more reason, the Government should return to the taxpayer, the advance sales tax collected on imported articles which are re-exported, as in the case at bar. To use Justice Charles A. Johns language in the Asiatic Petroleum Company case, supra, "equity and good conscience will not permit" the denial of the taxpayer's right of recovery. The advance sales tax is a tax on sales of imported articles collected in advance. Without a sale, barter, exchange, or similar transaction intended to transfer ownership of, or title to the articles imported, no sales tax can be imposed and collected for there is no taxable transaction to justify the tax. In short, there is nothing to tax.

Moreover, to rule otherwise and deny the claim for refund of the petitioner under the present circumstances, let alone grounds of equity and good conscience, we would in effect be penalizing it after it had shown its utmost good faith and readiness to abide religiously with our laws. Good faith and strict observance of our laws should be encouraged and not discouraged. We note that the re-exported raw materials of the petitioner are locally marketable, and considering the import restrictions, the petitioner could have boldly scoffed at the law and surreptitiously sold the said raw materials at exorbitant prices in the local black market, as some importers have done and are still doing, instead of re-exporting the same to prevent its deterioration and complete loss which is the only legal and practical alternative left to it under the circumstances.

WHEREFORE, in view of the foregoing considerations, the respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Muller & Phipps (Manila), Ltd., the sum of ₱4,453.25 representing erroneously paid advance sales tax on raw materials imported for the local manufacture of kolynos toothpaste, but which were later shipped out of the Philippines in their original condition and returned to the supplier of the said raw materials in New York, U.S.A., for lack of other necessary materials to manufacture the same into kolynos toothpaste. Without pronouncement as to costs.

SO ORDERED.

Manila, November 27, 1959.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge