DEVELOPMENT BANK OF THE PHILIPPINES,
Petitioner,

- versus - C.T.A. CASE NO. 3977

THE COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - x

D E C I S I O N

This is a companion case of CTA Case No. 4045, Development Bank of the Philippines, petitioner, vs. The Commissioner of Customs, respondent, wherein this Court, in its decision dated July 31, 1987, ordered respondent Commissioner of Customs to refund to petitioner Development Bank of the Philippines the amount of ₱5,562,926.00 it paid to the Bureau of Customs but such amount of import liabilities due on the importations of various computer equipment should be applied and credited to the payment of the subscribed capital stock of the Government in the Bank.

Since there is an identity of parties, and also an identity of issues in both cases, namely, whether the Development Bank of the Philippines may be compelled to pay customs duties and taxes on its importations of computer equipment, or whether such taxes should be applied to the payment of the Government's subscription to the capital stock of the Bank as provided in petitioner's charter, CTA Case No. 3977 and No. 4045 were heard jointly.

When these cases were called for hearing on August 6, 1986, the parties submitted them for decision on the basis of the pleadings, without the filing of memorandums. As borne out by the pleadings filed in CTA Case No. 3977, it appears:

That petitioner is a government financial institution created and operating pursuant to Republic Act No. 85, as amended, with principal office at the DBP Building, Sen. Gil J. Puyat Avenue, Makati, Metro Manila;

That petitioner imported from the United States of America one (1) unit 4361 M5 Computer Equipment for its own use, which equipment arrived at the Manila International Airport on July 5, 1985;

That on August 6, 1985, prior to the determination by the MIA Collector of Customs of the customs duties and taxes due on the equipment, petitioner, through its Chairman of the Board of Governors, Mr. Cesar C. Zalamea, wrote a letter to respondent, Commissioner Ramon J. Farolan, requesting that petitioner be allowed to credit the customs duties and taxes to the payment of the Government's subscription to petitioner DBP's capital stock, instead of effecting direct payment thereof to the Bureau of Customs. In support of said request, petitioner cited P.D. 1980, promulgated on July 18, 1985, which amended Section 3(e) of the Charter of petitioner to read as follows:

> "(e) The amount of taxes due to the National Government on income beginning with the Calendar Year 1978 as well as taxes due on all other transactions of the Bank beginning with the calendar year 1985 is hereby appropriated under this Decree to be automatically applied to the payment of the subscribed capital stock of the government in the Bank." (Underscoring ours);

That in a letter dated August 12, 1985, respondent denied petitioner's request, pointing out that P.D. 1980 is limited to taxes due on income and other transactions of petitioner and, therefore, excludes customs duties which are levies on an imported article, payment of which is a requirement for the lawful withdrawal of goods from customs custody;

That on August 15, 1985, respondent received a letter, dated August 13, 1985, from Mr. Antonio V. Marquez, Customs Acting Deputy Collector for Assessment at MIA, forwarding the computation of the duties, taxes and other levies due on the importation of the aforesaid computer equipment in the total amount of ₱1,516,010.00, and requesting remittance thereof;

That on August 27, 1985, petitioner, through its Chairman, wrote another letter to respondent, requesting reconsideration of respondent's denial of petitioner's request to credit to its capital stock the duties and taxes due on the equipment, maintaining the position that the said duties and taxes are embraced by the phrase "taxes due on all other transactions" as provided for in P.D. 1980, since petitioner's importation of computer equipment is covered by the term "transactions" of the decree, and customs duties are taxes assessed on imported merchandise;

That in a letter of respondent to petitioner dated August 29, 1985, received on the same date, respondent denied petitioner's request for reconsideration, expressing the view that the phrase "taxes due on other transactions" are those due and directly payable by petitioner in connection with its banking transactions and mostly imposable under the National Internal Revenue Code, and further pointing out that the exemption of petitioner DBP from customs duties had been withdrawn;

That petitioner is likewise contesting the imposition upon it of the advance sales tax instead of the compensating tax, and contends that inasmuch as the subject equipment was imported by it for its own use and not for the purpose of sale or for use in the manufacture of articles for sale, the tax that may be imposed, in addition to the customs duties, is the compensating tax under Sec. 204 of the National Internal Revenue Code and not the advance sales tax under Sec. 193 thereof;

That in the same letter dated August 29, 1985, respondent also informed petitioner that "in view of the foregoing, we have no alternative but to take such action as the law requires under the circumstances", which petitioner construed as institution of seizure proceedings;

That in order to avoid such seizure, petitioner paid on October 15, 1985 the taxes and duties demanded, after the petition for review in this case had been filed by petitioner with this Court on September 27, 1985, praying that petitioner be made liable to pay, in addition to the customs duties, only the compensating tax under Section 204 of the applicable National Internal Revenue Code, and that the customs duties and taxes due on the one (1) unit 4361 M5 Computer Equipment which petitioner imported from abroad for its own use need not be paid by petitioner to the Bureau of Customs and that the same should instead be applied and credited to the Government's subscriptions to petitioner's capital stock pursuant to P.D. 1980.

Hence, the instant appeal.

Just like in CTA Case No. 4045, respondent Commissioner of Customs poses the jurisdictional issue by averring that "all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations but excluding constitutional offices or agencies, arising from interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated" by the Secretary of

Justice. (Section 1, P.D. 242.)

Furthermore, Section 3(e) of R.A. 85 as amended, has specific reference only to the amount of taxes on the Bank's income and such other taxes due on all other transactions necessary or incidental to petitioner's banking business. The act of importation is certainly not necessary nor incidental to petitioner's banking business. And, the lone and express mention of the term "taxes" in the law without similar and express mention of the phrase "customs duties and fees" indubitably means the exclusion of the latter from the coverage of the law, reading -

> "Section 3(e). The amount of taxes due to the National Government on income beginning with the calendar year 1978 as well as taxes due on all other transactions of the Bank beginning with the calendar year 1985 is hereby appropriated under this Decree to be automatically applied to the payment of the subscribed capital stock of the government in the Bank."

As we ruled in CTA Case No. 4045, we do not reach the same conclusion as respondent Commissioner of Customs.

All that we need to state is that the administrative remedy conferred under P.D. 242 in no wise lessens nor muffles petitioner's right of access to a judicial determination. A perusal of Section 7 of R.A. 1125 will readily show that this Court has jurisdiction over the case at bar, as thus -

> Sec. 7. Jurisdiction.- The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
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> xxx xxx xxx
>
> (2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs laws or other law or part of law administered by the Bureau of Customs; and xxx.

The objection interposed limiting the application of the term "taxes" as to exclude from its coverage customs duties and other fee as contained in Section 3(e) of R.A. 85 as amended by P.D. 1980 need not belabored. The "taxes due on all other transactions of the Bank" could be taken in the generic sense and must apply, generally speaking, to all kinds of exaction which become public funds. Moreover, Section 4(c) of Executive Order No. 1078 clarified and restated in the clearest tenor and terms the aforesaid provision of P.D. 1980, providing, "as well as such other taxes, duties, fees, assessments, charges and other imposts due on all transactions or operations of the Bank". Clarifying provisions of a statute are not uncommon. It is pretty clear that with or without such provision the term "taxes" as used in R.A. 25, as amended by P.D. 1980, includes "customs duties". And, contrary to the respondent's assertion, executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution have the force and effect of laws.

It is hardly necessary to add that the word "taxes" has usually been regarded as a word of comprehensive and broad signification. "A tax may be defined to be a word of general import including almost every species of imposition on persons or property, for supplying the public treasury, as tolls, tribute, subsidy, excise, imposts, or customs." (Mays v. City of Cincinnatti, 1 Ohio, 268). And customs duties have always been classified as taxes. "Duties or imposts are taxes levied for articles brought into the country." (Shaw v. U.S., 414 F. 469, 471). "Taxes imposed on goods after their importation into the U.S. but while they retain their distinctive character as imports are customs duties." (Faber v. U.S., 97 F 2nd, 115). In the Philippines also, the Supreme Court has expressed the same view in the case of Luzon Brokerage v. Posadas, 51 Phil. 305, 308, by holding that "merchandise imported into these Islands from foreign countries is subject to two taxes, namely: customs and internal revenue." Consequently, if the usual meaning of the word "tax" and of the term "customs duties" were to be adopted, the conclusion would be inevitable that the former includes the latter.

Let it suffice that in the instant case, petitioner is not seeking exemption from customs duties and taxes due on the equipment; neither is it contesting that the equipment is subject to customs taxation. All that petitioner is requesting is that whatever customs duties and taxes may be due on the computer equipment should be applied and credited to the Government's subscriptions to petitioner's capital instead of paying the same to the Bureau of Customs. This intent is clearly expressed in P.D. 1980. And, we find nothing ambiguous nor obscure in the language of P.D. 1980 as clarified by Executive Order No. 1078 insofar as the same is brought to bear upon the circumstances of petitioner in the case at bar. Petitioner need not pay directly to the Bureau of Customs the customs duties, compensating tax and import processing fee, but whatever may be due on the importation, the same be applied and credited to the Government's subscription to petitioner's capital stock.

Anent the imposition upon petitioner of the advance sales tax instead of the compensating tax, we agree with petitioner that inasmuch as the subject equipment was imported by it for its own use and not for the purpose of sale or for use in the manufacture of articles for sale, the tax that may be imposed, in addition to the customs duties, is the compensating tax under Section 204 of the applicable National Internal Revenue Code and not the advance sales tax under Section 193 thereof. Petitioner Development Bank of the Philippines is admittedly not engaged in the business of importing computer equipment for sale or for use in the manufacture of computers for sale. If the importation of the various computer equipment covered in CTA No. 4045 by petitioner for its own use was subjected by respondent to compensating tax, we see no reason why the computer involved in this case should be subject to advance sales tax since it is clearly for its own use.

ACCORDINGLY, respondent Commissioner of Customs is hereby ordered to refund to petitioner Development Bank of the Philippines the amount of ₱1,516,010.00 it paid the Bureau of Customs but such amount of import liabilities should be recomputed so that petitioner is liable to pay, in addition to the customs duties, the compensating tax under Section 204 of the applicable National Internal Revenue Code instead of the advance sales tax, and the recomputed amount shall be applied and credited to the payment of the subscribed capital stock of the Government in the Bank.

SO ORDERED.

Quezon City, Metro Manila, August 5, 1987.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge