REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

THE SOUTHERN INDUSTRIAL PROJECTS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 941

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

November 20, 1962.

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D E C I S I O N

Petitioner Southern Industrial Projects, Inc. seeks to recover from respondent Commissioner an alleged over-payment of advance sales tax on importations effected by it.

Petitioner is engaged in the manufacture of galvanized iron sheets, a new and necessary industry under the provisions of Republic Acts Nos. 35 and 901. It imported raw materials, consisting of antimony ingots, steel strapped lead ingots, cold rolled black sheets, ammonium chloride and branding ink, which arrived at the Port of Cebu in November and December 1959, and on which it paid only 10% of the customs duty in accordance with the diminishing exemption provision of Section 1 of Republic Act No. 901.

Subsequently, petitioner also paid 10% of the advance sales tax on the imported raw materials, computed, among other things, on the full customs duty, instead of on the amount actually paid by it.

On the theory that the advance sales tax should be computed, among others, on the 10% of the customs duty which it actually paid, petitioner requested respondent for the refund of the total amount of ₱5,128.44 as over-paid advance sales tax. The request for refund having been denied, the instant appeal was instituted. However, in the memorandum submitted in support of its appeal, petitioner seeks to recover only the amount of ₱646.99, the correctness of which amount is not disputed by respondent in case of a decision adverse to him. Consequently, we take it that this appeal is limited only to the recovery of ₱646.99.

The only question raised for our consideration is the interpretation of the phrase "customs duty" found in Section 183(b) of the Tax Code. The pertinent provisions of this law reads:

> "SEC. 183. x x x
>
> (b) Sales tax on imported articles.- When the articles are imported, the percentage taxes established in sections one hundred eighty-four, one hundred eighty-five, and one hundred eighty-six of this Code shall be paid in advance by the importer, in accordance with regulations promulgated by the Secretary of Finance and prior to the release of such articles from customs custody, based on the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges, plus x x x; and twenty-five per centum in the case of articles enumerated in section one hundred eighty-six. x x x"

It is suggested on behalf of the respondent that the customs duty adverted to above should be interpreted as referring to the 100% customs duty on the imported articles, whether wholly or partially paid by the importer. In other words, it is argued that for the purpose of computing the advance sales tax, the full customs duty should be included in the total landed cost of the articles plus mark-up, regardless of the amount of customs duty due and actually paid.

The suggestion is without merit. The advance sales tax is based on the import invoice value of the imported article, including expenses at the time it was received by the importer, plus mark-up. In the determination of this tax, "landed costs" has been interpreted as synonymous with the phrase "total value," which means the import invoice value of the article, including freight, postage, insurance, commission, customs duty, and all similar charges. The landed cost plus mark-up represents theoretically the selling price of the imported article (Mayon Motors, Inc. vs. Acting Commissioner of Internal Revenue, G. R. No. L-15000, March 29, 1961). Since the selling price of the imported article is determined by its landed cost or import invoice value, including expenses at the time it was received by the importer, plus mark-up, what is not related to the article as an actual expense cannot be determinative of its selling price. As a corollary, it cannot be a basis of the advance sales tax. And, if, as in the case at bar, the importer is entitled to a customs duty exemption of 90% and as a consequence thereof actually pays only 10% of the full customs duty, the latter percentage of duty should be considered in the computation of the advance sales tax.

In fine, we rule and so hold that the phrase "customs duty" found in Section 183(b) of the Tax Code should be interpreted to mean the amount of customs duty legally due and paid by the importer.

WHEREFORE, the respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Southern Industrial Projects, Inc. the sum of ₱646.99. No costs.

SO ORDERED.

Manila, November 20, 1961.

MARIANO NABLE
Presiding Judge

We concur:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge