REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

VICTORIAS MILLING CO., INC.,
Petitioner,

- Versus - CTA CASE NO. 1884

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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Dec. 28/77

DECISION

The Petitioner sought the refund of ₱27,344.00 as compensating taxes paid on imported steel plates, angles, and bars from October to December, 1965 which were used in the construction of its barges.

The facts of this case under the parties' "Partial Joint Stipulation of Facts" submitted to this Court on January 16, 1971 are as follows:

> 1. That petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, while respondent is the duly appointed and incumbent Commissioner of Internal Revenue;
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> 2. That petitioner is engaged in, among other businesses, the operation of a mill for the manufacture and sale of refined sugar, and pursuant to its business, it owns and maintains barges which are cargo vessels used in transporting refined sugar, mill materials, supplies and other articles within Philippine waters;
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> 3. That sometime in October and December 1965, petitioner imported steel plates, angles and bars and paid the compensating taxes computed and collected by respondent's deputy in the Bureau of Customs, the details of said importations and payments are as follows:

Customs Import Entry No.	Official Receipt	Date	Amount
73789	094959	October 8, 1965	₱ 108.00
74296	094960	October 8, 1965	1,176.00
77086	095042	October 8, 1965	21,834.00
77085	111541	October 29, 1965	3,106.00
99192	132077	October 16, 1965	1,120.00
Total - - - - - - - - - - - - - -			₱27,344.00

4. That the imported articles referred to in the preceding paragraph were actually used by the petitioner in the construction of three 750 ton barges which are being used exclusively in transporting its milled sugar within the Philippines;

5. That in a letter dated November 11, 1966 (pp. 27-28, BIR rec.), petitioner claimed for the refund of the amount of ₱27,344.00 paid as compensating taxes on its imported articles mentioned in paragraph 3 above, pursuant to Section 190 of the National Internal Revenue Code, as amended by Republic Acts Nos. 3176 and 4103;

6. That in a letter dated June 2, 1967 (p. 34, BIR rec.), petitioner thru counsel, reiterated its claim for refund of the amount of ₱27,344.00 pursuant to B.I.R. Ruling No. 62-0055 and to the decision of this Honorable Court in "Michael Shipping, Inc. vs. Commissioner of Internal Revenue", C.T.A. Cases Nos. 1391 and 1648, jointly decided on December 19, 1966;

7. That without respondent's decision on said claim for refund of petitioner, petitioner filed a petition for review with this Honorable Court on September 12, 1967 to avoid the lapse of the two-year period prescribed by Section 306 of the Tax Code; respondent filed his answer to the said petition for review on December 27, 1967;

8. That in a letter-decision dated June 18, 1969 (p. 52, BIR rec.), respondent denied petitioner's aforementioned claim for refund;

9. That the only issue in this case is whether or not the importations made by petitioner mentioned in paragraphs 3 and 4 of this stipulation is exempt from compensating tax provided in Section 190 of the Tax Code, as amended by Republic Acts No. 3176 and 4103;

10. That the parties reserve their rights to introduce at the trial such other evidences as they may deem necessary to support their re-

spective sides of the case. (pp. 36-37, CTA rec.)

The legal issue submitted to the Court for resolution is whether or not the importations made by petitioner are exempt from the compensating tax imposed by Section 190 of the Revenue Code, as amended by Republic Acts Nos. 3176 and 4103, the pertinent portions of which read as follows:

> SEC. 190. Compensating Tax.- On the commodities, goods, wares or merchandise purchased or received by persons residing or doing business in the Philippines, there shall be paid a compensating tax on the total value thereof, including freight, postage, insurance, commission and similar charges, 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, except as follows:
>
> x x x x
>
> (d) Articles to be used by the importer himself as a passenger and/or cargo vessel whether coastwise or ocean-going, including engines and spare parts of said vessel;

Respondent contends that petitioner is not exempt from compensating tax because in enacting Republic Act No. 3176, which amended Section 190 of the Revenue Code, Congress intended to exempt only those persons and entities engaged in the shipping industry. Inasmuch as petitioner is not engaged in coastwise or ocean-going shipping industry, respondent denied petitioner's claim for tax exemption.

Petitioner, however, contends otherwise by claiming that the "importer" referred to in Section 190 (d) of the Revenue Code is not limited in scope so as to cover only those persons engaged in the shipping industry, but the term "importer" includes all importers regardless of the business in which they are engaged, provided that the imported articles are used in cargo vessel for coastwise shipping.

It is a familiar rule of statutory construction that terms or words of a statute should be interpreted in their ordinary acceptation; and they should be given significance and meaning commonly attributed to them. Like any other rule, however, it is not without exceptions or limitations. Courts may not always look to the mere letter of the law for its understanding or application because, it often happens, the true intention of the lawmaking body may not be expressed by the language employed in a statute if given its literal meaning. To carry out the clear legislative intention, which is the very core or object of the rules of interpretation and construction, departure must be made from the rule of literal interpretation of the language used in the law. In short, we must consider the legislative intent in passing a law and disregard the literal import of the words used therein. (See 50 Am Jur 232-236.)

Section 190, as amended by Republic Act No. 3176, provides that "articles to be used by the importer himself as a passenger and/or cargo vessel whether coastwise or ocean-going, including engines and spare parts of said vessel" are exempt from the compensating tax. A literal interpretation thereof means that the imported articles used by a cargo vessel engaged in coastwise or ocean-going shipping, whether for hire or not, are exempt from the compensating tax. The intention of Congress, however, in enacting Republic Act No. 3176, _supra_, is explained in the sponsorship speech of Senator Gil Puyat,[1] as follows:

> Mr. President and gentlemen of the Senate. This is a bill that seeks _to give relief to the shipping industry_, and seeks to exempt them from the payment of excise tax, purchase of articles to be used by the importer himself as a passenger or cargo vessel, whether coastwise or ocean-going, including engines and spare parts of said vessels. Considering that our _shipping industry_ is one of the most basic and one of the industries which, according to our Committee on Transportation, is operating on the basis of floating coffins, there is need for giving incentives and inducements to the people in the industry to invest in any vessel or new equipment. (Legislative Journal) (Emphasis supplied)

The legislative intent, as explained by Senator Puyat, is to give relief to the shipping industry. In consonance with the purpose and objective of the law, we held that "_the legislative intent in amending Section 190 of the Tax Code by Republic Act No. 3176 is to provide incentives and inducements to bolster the shipping industry_ x x x."[2] Consequently, this

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[1] See Michael Shipping, Inc. vs. Comm. of Int. Rev., CTA Cases Nos. 1391 & 164[illegible], Dec. 19, 1966; Luzon Stevedoring Corp. vs. Comm. of Int. Rev., CTA Case No. 1484, Oct. 21, 1968.

[2] Luzon Stevedoring Corp. vs. Comm. of Int. Rev., _supra_.

Court is duly bound to apply and carry out the legislative purpose by holding that the word "importer" referred to in the disputed law means any person who is regularly or habitually engaged in the "shipping industry" as a distinct branch of trade.

It may be asked: What is meant by "shipping industry"? Is petitioner engaged in the "shipping industry"?

Lexicographers define "shipping" as an act or business of one who ships goods (Webster's International Dictionary, Second Edition, Unabridged, p. 2316), while "industry" means any <u>department or branch of art, occupation, or business</u>; esp., <u>one which employs much labor and capital and is a distinct branch of trade</u>; as, the sugar industry. (<u>Ibid.</u>, p. 1271.) The term "shipping business" in its broadest sense means any and every kind of business relating to ships, and may include shipbuilding. DeWolf vs. Crandall, N.Y. 1 Sweeny, 556, 566. (39 Words & Phrases 272.) From the foregoing definitions, it is clear that the term "shipping industry" appropriately refers to the business or occupation of shipping with the employment of much labor and capital as a distinct branch of trade.

Petitioner claims that it is partly engaged in the shipping industry because its articles of incorporation provide, among others, as follows:

(3) To purchase, acquire, hold, sell, lease, exchange, mortgage and otherwise deal in and with real and personal property, and to purchase, lease construct or acquire interests in buildings, storehouses, roads, docks, piers, water works, and irrigation systems, and works of all kinds; <u>and, as well in furtherance of and conjunction with the general business of the Company, to acquire, lease or contruct, operate and dispose of railroads, steamships and other vessels, and other transportation facilities, for the moving of its property, supplies and produce, and incidental thereto and in connection therewith, for the carriage of freight and passengers for hire between any and all places whatsoever, within and without the Philippine Republic</u>, subject to such limitation as may be established by law;

x x x x

(6) To carry on a general agency, investment and brokerage business; to act as financial or commercial agent or factor of, or to undertake the general management for any person, partnership, corporation or association in carrying on the business of any nature; to act as agent or broker for insurance companies in soliciting and receiving applications for fire, casualty, plate glasses, automobiles, trucks and other motor vehicles, boiler, elevator, accident, health, burglary, marine, credit and life insurance, and all other kinds of insurance and to conduct a general insurance agency and insurance brokerage business; <u>to act as ship agents and ship brokers for vessels of Philippine or foreign registry, whether engaged in coastwise or foreign trade, owned by any person, firm or corporation; to act as managers of shipping property, contractors for freight and/or passengers</u>, forwarding agents, warehousemen and general traders; x x x
(Exhs. A-1-a & A-1-b, p. 44, CTA rec.; emphasis supplied.)

Paragraph (3), <u>supra</u>, shows that petitioner's authority to construct and operate vessels are but incidental activities which it may undertake "in furtherance of and <u>in conjunction with the general business of the Company</u>."

The main and principal business of petitioner is the manufacture and sale of refined sugar. The acquisition, operation and maintenance of barges is, therefore, only incidental to its main business. The operation of petitioner's barges is limited to the transportation of its sugar within the country. It is clear, therefore, that petitioner's barges were not utilized as a "common carrier" of passenger or cargo for hire but they were employed by petitioner exclusively for its sugar business. Consequently, petitioner is not a common carrier by water and, therefore, its activity is not a shipping business and/or industry taxable under Section 192 of the Tax Code.

The exemption from the compensating tax of imported articles as well as engine and spare parts used in the shipping industry was intended to give relief to the said industry as a taxable business; otherwise, the tax exemption will go beyond the intendment of the law.

The trade name of the petitioner is Victorias Milling Co., Inc. Its principal business is the milling of sugar taxable under Section 189 of the National Internal Revenue Code. There is nothing in its articles of incorporation which indicate that petitioner will engage in the transportation of passenger and freight as a distinct branch of trade or business taxable under Section 192 of the Revenue Code as a common carrier by water. Petitioner, however, claims that, under its articles of incorporation aforesaid, it can act as ship agent, broker, manager of shipping properties, and contractor for freight and/or passenger. (Exh. A-1-b, _supra._) While petitioner is authorized to engage in certain activities connected with the shipping industry, there is no showing that petitioner is actually engaged in the said activities as a distinct taxable business because its barges were not used in carrying passengers and/or cargo as an industry separate from its main business. The law does not grant tax exemption to persons or entities unless they are actually engaged in a taxable shipping business; otherwise we would be unreasonably expanding the rule on statutory exemption in derogation of the taxing power of the State. Moreover, it is a settled doctrine in this jurisdiction that tax exemption should be construed _strictissimi juris_ against the taxpayer and liberally in favor of the taxing authority; and that tax exemption will not be granted to a taxpayer unless the tax exemption law is clear and unequivocal and it was the intention of the legislative body to do so. (Comm. of Customs vs. Philippine Acetylene Co., G.R. No. L-22443, May 29, 1971; Comm. of Int. Rev. v. Visayan Electric Co., 23 SCRA 715; Philippine Acetylene Co., Inc. v. Comm. of Int. Rev., 20 SCRA

1056; Esso Standard Eastern, Inc. v. Comm. of Customs, 18 SCRA 488; E. Rodriguez, Inc. v. Collector, et al. G.R. No. L-23041, July 31, 1969.)

WHEREFORE, finding that petitioner's claim for the refund of ₱27,344.00 as compensating tax is not well founded, the same has to be, as it is hereby, denied, with costs against petitioner.

SO ORDERED.

Quezon City, December 28, 1971.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

We concur:

R. M. Umali
ROMAN M. UMALI
Presiding Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge