REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

VICTORIAS MILLING CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2037

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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D E C I S I O N

There having been no decision rendered by respondent Commissioner of Internal Revenue on the claim for the refund of compensating tax paid on the imported steel plates in the amount of ₱2,347.00, petitioner had brought to this Court this judicial claim for refund.

Petitioner is a corporation duly organized and existing under the laws of the Philippines. It owned and maintained tugboats and barges which were actually used in its business of operating a mill for the manufacture and sale of refined sugar. On October 16, 1967, petitioner imported 90 pieces of ship steel plates from abroad on which it paid on December 8, 1967 compensating tax in the amount of ₱2,347.00 covered by Official Receipt No. 8239008. These steel plates were used in the repair and maintenance of its tugboats and barges.

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On January 2, 1968, petitioner filed a claim for refund of the compensating tax with the Collector of Customs of Iloilo. It was alleged therein that it is exempt from payment of compensating tax under Section 190 (d) of the National Internal Revenue Code, as amended by Republic Act No. 4103 on the ground that the said steel plates were actually used by it in the repair and maintenance of its tugboats and barges. The decision of the Commissioner of Internal Revenue on its claim for refund not forthcoming, it brought this claim for refund to this Court for adjudication.

The legal issues submitted to the Court for decision are as follows:

> (1) Whether or not the importation of 90 pieces of ship steel plates used in the repair and maintenance of its tugboats and barges are exempt from compensating tax imposed under Section 190 (d) of the Revenue Code, as amended by Republic Act No. 4103; and in the affirmative
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> (2) Whether or not petitioner is entitled to legal rate of interest on the refundable amount.

Anent the first issue, the law involved is Section 190 (d) of the National Internal Revenue Code, as amended by Republic Act No. 4103, pertinent portions of which provide 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:
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> x x x x
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> (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; (Underscoring supplied.)

In applying the above provision of law, in the case of Victorias Milling Co., Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 1884, promulgated on December 28, 1971,[1] which involves the same parties and under substantially the same issues and facts as in the case at bar, this Court had the occasion to hold against petitioner to the effect that its imported steel plates, angles and bars are not exempt thereunder. In that case, it was ruled that only those articles used by the importer as a passenger and/or cargo vessel whether coastwise or ocean-going, including engines and spare parts of said vessels are exempt under the law; that the exemption provided therein was

[1] Cert. Denied in Victorias Milling Co., Inc. vs. Comm. of Int. Rev., G.R. No. L-34984, May 22, 1972.

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intended to give incentives and provide inducements to bolster the shipping industry; that petitioner was not engaged in the shipping industry as a main and principal business; and that the construction, operation and maintenance of its vessels (tugboats and barges) is only incidental to its main and principal business, which is in fact the manufacture and sale of refined sugar. This Court, speaking through then Associate Judge, now Presiding Judge Estanislao R. Alvarez, in a thoroughly discussed decision in the aforecited case, said and we quote:

> 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.
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> 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.
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> 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

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[1] See Michael Shipping, Inc. vs. Comm. of Int. Rev., CTA Case Nos. 1391 & 1648, Dec. 19, 1966; Luzon Stevedoring Corp. vs. Comm. of Int. Rev., CTA Case No. 1484, Oct. 21, 1968.

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> 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 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 department or branch of art, occupation, or business; esp., one which employs much labor and capital and is a distinct branch of trade; as, the sugar industry. (*Ibid*., 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. Grandall, 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

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

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; and, as well in furtherance of and conjunction with the general business of the Company, to acquire, lease or construct, 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, subject to such limitation as may be established by law;
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> x x x x
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> (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 business; to act as ship agents and ship brokers for vessels of Philippine or foreign registry, whether engaged in coastwise or foreign trade, owned by

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> any person, firm or corporation; to act as managers of shipping property, contractors for freight and/or passengers, forwarding agents, warehousemen and general traders; x x x (Exhs. A-1-a & A-1-b, p. 44, CTA rec.; emphasis supplied.)

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

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> 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. vs. Visayan Electric Co., 23 SCRA 715; Philippine Acetylene Co., Inc. vs. Comm. of Int. Rev., 20 SCRA 1056; Esso Standard Eastern, Inc. vs. Comm. of Customs, 18 SCRA 488; E. Rodriguez, Inc. vs. Collector, et. al. G.R. No. L-23041, July 31, 1969.)

We obviously see no plausible ground to change our decision in the abovecited case. We, therefore, equally hold that petitioner in this case is not exempt from the payment of compensating tax under said Section 190 (d) of the National Internal Revenue Code, as amended, on its importation of steel plates equally used in the repair and maintenance of its tugboats and barges.

Having reached the conclusion that petitioner is not exempt from compensating tax, the determination of the second issue is unnecessary for being moot and academic.

WHEREFORE, finding petitioner's claim for refund of the amount of ₱2,347.00 paid as compensating tax not being meritorious, the same should be, as it is hereby, DENIED. With costs against petitioner.

SO ORDERED.

Quezon City, September 22, 1976.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Presiding Judge

AMANTE FILLER
Associate Judge