REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

HON. EULOGIO RODRIGUEZ JR.,
Petitioner,

- versus -

C.T.A.
CASE NO. 282

July 31, 1957

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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

DECISION

This is an action for the refund of the sum of ₱1,072.68, representing compensating tax alleged to have been erroneously or illegally assessed and collected from petitioner in connection with the importation of a Sedan Chevrolet (Bel Air) automobile from the United States.

In 1955, the petitioner imported from the United States one Sedan Chevrolet (Bel Air) automobile, Model No. 2403 for personal use, covered by Consular Invoice No. B-99164 (Exhibit "1", Respondent) and by Informal Entry No.160897 dated April 6, 1955 (Exhibit "3", Respondent). The automobile was brought into the Philippines unboxed, as an unaccompanied baggage (Exhibit "2", Respondent) and at the time, the push button radio and antenna were already installed. This vehicle was obtained by petitioner from the Foreign Distributors Division, General Motors Corporation as per Invoice No. S-9267, dated February 21, 1955 (Exhibit "B") the details of which may be summarized as follows:

One 1955 Chevrolet Bel Air 4-door Sedan Model 2403, Body Color Black 8 cylinder (unboxed)	$1,671.30
Net Extra:	
Directional Signal, Eye Glass, brakes, extra Tires, Kilospeedometer, Power Steering, Power Glide Transmission, Low compression equipment (itemization of price omitted)	320.94
Push Button Radio and Antenna	88.05
Block Wiring Junction	2.71
	$2,083.00

Respondent, in determining the compensating tax due, treated the entire amount of $2,083.00 (including the push button radio and antenna) as cost of the car and computed the said tax as follows:

Cost	$2,083.00
Freight	458.46
Arrastre	32.50
Consular Fee	5.00
Documentary Stamp	1.50
	$2,580.46
or	₱5,160.92
Compensating tax due thereon at 50%	₱2,580.46

Petitioner, contending that the push button radio and antenna with the cost of ₱88.05 should not form part of the taxable base of the vehicle, filed on April 21, 1955 a claim for refund of the amount of ₱1,072.68. This amount represents the difference of the compensating tax already paid, and the amount that petitioner maintains to be lawfully due (₱1,507.78) had the said tax been computed at 30% of the alleged correct landed cost, after deducting the value of the auto radio and antenna which should be taxed, separately at the rate of 7%. This claim for refund was denied by the respondent, and after a request for reconsideration was likewise rejected, petitioner in due time and within the reglementary period prescribed by Republic Act No. 1125 filed this petition for review. If petitioner's contention as regards the radio is to be sustained, the refundable amount to him is ₱1,072.68.

The only issue raised is whether or not, in the computation of the compensating tax, the total landed cost of the automobile, should include the value of the push button radio and antenna.

The imposition of compensating tax is governed by section 190 of the National Internal Revenue Code which provides that -

> "All persons residing or doing business in the Philippines, who purchase or receive from without the Philippines, any commodities, goods, wares or merchandise x x x shall pay on the total value thereof at the time they are received by such persons, including freight, postage, insurance, commission and all similar charges, a compensating tax equivalent to the percentage taxes imposed under this Title on original transactions effected by merchants, importers x x x."

In accordance with the foregoing provision, the rate of the tax that may be imposed under sections 184 (a) and 185 (b) of the Tax Code would be as follows:

Automobile chassis and bodies, the selling price of which exceeds ₱5,000 but does not exceed ₱7,000 -------------------- 50%

Automobile chassis and bodies, the selling price of which does not exceed ₱5,000 ------------30%

Both sections 184 (a) and 185 (b) provide that:

> "A sale of automobile shall, x x x be considered to be a sale of the chassis and of the body together with parts and accessories with which the same are usually equipped." (Underscoring added.)

Petitioner contends: (1) that the said radio and antenna is not within the phrase "parts and accessories" of an automobile, and (2) that even if so, they are not such "parts or accessories" with which a car is "usually equipped."

Hence, petitioner maintains that the value of the radio and antenna should be excluded from the landed cost or taxable base and should instead be taxed separately under Section 186 of the Tax Code at 7%.

This case being of first impression in this jurisdiction, we therefore make reference to the corresponding tax legislation in the United States which is its model. Under both judicial precedents and administrative regulations involving the construction of the terms found in the Federal sales (excise) tax provisions (section 900, U.S. Revenue Act of 1918; section 900, U.S. Revenue Act of 1921; section 600, U.S. Revenue Act of 1924) the "parts" and "accessories" have been defined as follows:

> "The term '<u>part</u>' (is) any article designed or manufactured for the special purpose of being used as, or to replace, a <u>component part</u> of such vehicle, and which by reason of some characteristic <u>is not</u> such a commercial article as ordinarily would be <u>sold for general use</u>, but is <u>primarily adapted for use</u> as a component part of such vehicle." (Universal Battery Co. v. U.S. 281 U.S. 580, 583, 74 L. Ed 1051, 1055; Marvel Products Co. vs. U.S., 35 F 2d 979, citing art. 15, Treas. Reg. No. 47; underlining added.)

> "The term 'accessory' (is) any article designed to be <u>used in connection with such vehicle</u> to <u>add</u> to its <u>utility</u> or <u>ornamentation and</u> which is <u>primarily adapted for such use</u> whether or not essential to the operation of the vehicle." (Universal Battery Co. vs. U.S. supra; Marvel Products Co. v. U.S. 35 F 2d 979; Cuno Engineering Corp. vs. U.S. 43 F 2d 259; 262, citing Art. 16, Treas. Reg. No. 47; underscoring provided.)

These administrative and judicial constructions of the terms "parts" and "accessories" have been consistently adhered to in the United States since 1919 (Universal Battery Co. vs. U.S.; Routzahn vs. Williard Storage Battery Co., 65 F 2d 89; Cuno Engineering Corp. vs. U.S., <u>supra</u>; Marvel Products Co. vs. U.S., supra; Dalton & Balch, Inc. vs. U.S., 85 F Supp. 727; American Chain Co. vs. Hartford-Connecticut Trust Co., 11 F Supp. 770).

Applying the foregoing construction, it is evident that the push button radio and antenna in question is not a part of an automobile in that it is not a "component part" thereof and the same is not "primarily adapted for use as a component part of the vehicle for on the other hand, it is more of a "commercial article as ordinarily would be sold for general use." However, we would examine whether or not the said radio and antenna is an accessory.

An analysis of the definition given above of an "accessory" of an automobile show that the article must be (1) designed to be used in connection with such vehicle to add to its utility or ornamentation and (2) one which is primarily adapted for (such use) such utility or ornamentation. Applying these tenets to the push button radio and antenna in question, we find that the foregoing standards or requirements have not been met. The vehicle is perfect and complete in itself even without the radio. The installation of the push button radio does not add to the utility of the vehicle. The radio is not intimately connected with its safe operation and functioning elements that it becomes a component part of the machine's utility. Moreover, it is difficult to see how the said radio in any wise, would prolong the life of the car, aid in its operation or function to overcome any of the various difficulties attendant upon the car's operation. (Cuno Engineering Corp. vs. U.S., supra.) In this cited case, an automobile cigar lighter or combination lighter and ash receiver were held not to be automobile accessories. Neither may it be reasonably claimed that the radio adds to the ornamentation of the car. We believe on the other hand, that the radio is more if not solely one for the enjoyment or entertainment of the occupants of a car, or as a source of information while in the car. Indeed under property law an accessory is one which is united for the ornamentation, use or perfection of the principal (Art. 467, Civil Code) which qualities, we find absent in the case of the radio as regards the vehicle in question. In any case, the radio cannot be said to be one primarily adapted for the utility or ornamentation of the car, for the push button radio may equally be attached to a truck, a jeep, a motor cycle or may even be had in a house or other edifice, provided the necessary electric power (usually by storage battery) is provided or available.

Even if we were to assume arguendo that the push button radio is an accessory, in order that the same is to be included in the taxable base (landed cost) of the vehicle in question for purposes of determining the compensating tax, Sections 184 (a) and 185 (b) of the Tax Code provide that the accessory must be one with which the automobile is "usually equipped" upon sale. The words "usually" (adv.) signify "in the usual manner, customarily as usual; and "usual" (adj.) means "such as in common use; such as occurs in ordinary practice; or ordinary course of events; customary, ordinary, habitual, common." (Webster's International Dictionary.) It need not be extensively discussed and we believe it is of common knowledge that in the sale of automobiles (both first hand or second hand cars), it is not customary nor ordinary practice that the vehicles be provided with radios. For the same is one which is a matter of taste of the buyer. Even their installation or use in vehicles is not customary, habitual, ordinary or common.

Under Section 190 of the Tax Code, a resident is liable only for the compensating tax on the purchase of an automobile from without the Philippines and the taxable base of such tax is determined on the sale of the vehicle proper, including the cost of the automobile parts and accessories with which such vehicle is usually equipped in the ordinary course of business. Under the circumstances the push button radio and antenna in question does not form part of the taxable base of the automobile for purposes of the determination of the computation of the compensating tax on said automobile, but the same must be taxed separately.

Deducting the sum of $88.05 (₱176.10) which is cost of the push button radio and antenna (Exhibit "B"), from the total landed cost of $2,580.46 (Exhibit "A"), the result would be $2,492.41 (₱4,984.82). On this last amount we impose the 30% compensating tax pursuant to section 185 (b) in relation with section 190 of the Revenue Code resulting in a tax liability due thereon in the sum of ₱1,495.45. Adding to this the sum of ₱12.33 representing 7% compensating tax on the radio with a cost of ₱176.70 pursuant to section 186 of the Tax Code, the correct total tax due on the importation of the petitioner is ₱1,507.78. It appearing that petitioner had already paid the amount of ₱2,580.46 under Informal Entry No. 160879 (Exhibit "A"; par. 3, petition for review), he is therefore entitled to a tax refund of ₱1,072.68 representing the difference between the tax already paid and the one that is justly due.

IN VIEW OF THE FOREGOING, respondent should be as he is hereby ordered to refund to petitioner the sum of ₱1,072.68 with interest from date of payment, without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, July 31, 1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI
did not take part.