L18.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA ELECTRIC COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 2551

COMMISSIONER OF CUSTOMS,
Respondent.

x - - - - - - - - - - - - x 10/28/76

D E C I S I O N

Petitioner has appealed from respondent's decision affirming that of the Collector of Customs of the Port of Manila, denying petitioner's claim for the refund of ₱23,116.00, representing customs duties paid on the importation of fourteen (14) boxes current outdoor transformers, 34.5 KV insulation class, which arrived on December 21, 1972.

The facts of the case are not disputed. On December 21, 1972, the said imported current outdoor transformers arrived at the Port of Manila from Oakland, California, U.S.A. aboard the vessel S/S "American Astronaut," covered by Bill of Lading No. 4801.(See Exh. "I", p. 123, Customs rec; Exh. "L", p. 137, Customs rec.) Upon arrival of the aforesaid transformers, the same were entered and declared under Import Entry No. 00467, Series of 1973. (Exh. "H", p. 120, Customs rec.)

On February 20, 1973, petitioner filed a formal protest with the Collector of Customs, claiming the refund of ₱23,116.00 as customs duties paid on the ground that the imported transformers are exempt from taxation under paragraph 9, Part Two, of petitioner's franchise (Ord. No. 44 of the City of Manila, implementing Act No. 484) which provides:

> "PARAGRAPH 9. The grantee shall be liable to pay the same taxes upon its real estate, buildings, plant (not including poles, wires, transformers, and insulators), machinery, and personal property as other persons are or may be hereafter required by law to pay. In consideration of Part Two of the franchise herein granted, to wit, the right to build and maintain in the City of Manila and its suburbs a plant for the conveying and furnishing of electric current for light, heat and power, and to charge for the same, the grantee shall pay to the City of Manila two and one-half per centum of the gross earnings received from its business under this franchise in the city and suburbs; PROVIDED, That two and one-half per centum of the gross earnings received from the business of the line to Malabon shall be paid to the Province of Rizal. Said percentage shall be due and payable at the times stated in paragraph twenty of Part One hereof, and shall be lieu of all taxes and assessments of whatever nature, and by whatsoever authority upon the privileges, earnings, income,

franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted." Par. 6, Petition, admitted in Par. 1, Answer, pp. 2 and 19 CTA rec.; Exh. "A", pp. 10-12, Customs rec.)

On June 21, 1973, after the administrative hearing, the Collector of Customs of Manila rendered a decision denying petitioner's protest (Exh. "N", pp. 164-168, Customs rec.) and on appeal by petitioner, said decision was affirmed by the respondent Commissioner of Customs in his decision of August 28, 1973. (Exh. "P", p. 176-179, Customs rec.; "Annex C", Petition.) Hence, this appeal.

The only issue for resolution is whether or not petitioner is exempt from the payment of customs duties on the imported fourteen (14) boxes of transformers.

It has already been held that the tax-exemption granted to petitioner under paragraph 9, Part Two, of petitioner's franchise, _supra_, refers only to exemption from the payment of property or direct taxes and not from indirect or excise taxes. The provision in said franchise imposing upon petitioner the payment of the percentage tax imposed in lieu of "all taxes and assessments of whatsoever nature and by whatsoever authority" cannot be said to have granted it exemption from payment of compensating tax. This was decided by the Supreme Court in the case of Manila Electric Company vs. Misael P. Vera, G.R. L-23847, and Manila Electric Company vs. Benjamin Tabios, G.R. L-23847, Oct. 25, 1975, 67 SCRA 351-366, wherein it was held:

> Second, and this is the controlling reason for the denial of petitioner's claim in these cases, We do not see in paragraph 9 of its petitioner's franchise, on the assumption that it does exist as worded, what may be considered as "plain and unambiguous terms" declaring petitioner MERALCO exempt from paying a compensating tax on its imports of poles, wires, transformers, and insulators. What MERALCO really wants us to do, but which We cannot under the principles enumerated earlier, is to infer and imply that there is such an exemption from the following phrase: " . . . . the grantee shall pay to the City of Manila five per centum of the gross earnings received from its business . . and shall be in lieu of all taxes and assessments of whatsoever nature, and by whatsoever authority upon the privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted."
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> Note that what the above provision exempts petitioner from, is the payment of property tax on its poles, wires, transformers, and insulators; it does not exempt it from payment of taxes like the one in question

which, by mere necessity or consequence alone, fall upon property. The first sentence of paragraph 9 of petitioner's franchise expressly states that the grantee like any other taxpayer shall pay taxes upon its real estate, buildings, plant (not including poles, wires, transformers, and insulators), machinery, and personal property. These are direct taxes imposed upon the thing or property itself. Thus, while the grantee is to pay tax on its plant, its poles, wires, transformers, and insulators are forming part of the plant or installation (significantly the enumeration is in parenthesis and follows the word "plant") are exempt and as such are not to be included in the assessment of the property tax to be paid.

The ending clause of paragraph 9 providing in effect that the percentage tax imposed upon petitioner shall be in lieu of "all taxes and assessments of whatsoever nature and by whatsoever authority" cannot be said to have granted it exemption from payment of compensating tax. The phrase "all taxes and assessments of whatsoever nature and by whatsoever authority" is not so broad and sweeping, as petitioner would have Us think, as to include the tax in question because there is an immediately succeeding phrase which limits the scope of exemption to taxes and assessments "Upon the privileges earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee." The last clause of paragraph 9 merely reaffirms, with regards to poles, wires, transformers, and insulators, what has been expressed in the first sentence of the same paragraph namely, exemption of petitioner from payment of property tax. It is a principle of statutory construction that general terms may be restricted by specific words, with the result that the general language will be limited by the specific language which indicates the statute's object and purpose. (Statutory Construction by Crawford, 1940 ed. p. 324-325).

3. It is a well-settled rule or principle in taxation that a compensating tax is not a property tax but is an excise tax.[5] Generally stated, an excise tax is one that is imposed on the performance of an act, the engaging in an occupation, or the enjoyment of a privilege.[6] A tax levied upon property because of its ownership is a direct tax, whereas one levied upon property because of its use is an excise duty. (Manufacturer's Trust Co. vs. United States, CT. Cl., 32 F. Supp. 289, 296). Thus, where a tax which is not on the property as such, is upon certain kinds of property, having reference to their origin and their intended use, that is an excise tax. (State v. Wynne, 133 S.W. 2d 951, 956, 957, 133 Tex. 622).

The compensating tax being imposed upon petitioner herein, MERALCO, is an impost on its use of imported articles and is not in the nature of a direct tax on the articles themselves, the latter tax falling within the exemption. Thus, in International Business Machine Corp. vs. Collector of Internal Revenue, 1956, 98 Phil. Reports 595, 593, which involved the collection of compensating tax from the plaintiff-petitioner on business machines imported by it, this Court stated in unequivocal terms that "it is not the act of importation that is taxed under section 190, but the use of

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5 129 A.L.R. p. 223, 230; 103 A.L.R. 93; Henneford v. Silas Mason Co., 81 L Ed 814; Connecticut Light and Power Co. v. Walsh, 1 A.L.R. 2d 453; Watson Industries v. Shaw, 69 SE 2d 505, 510; Northern P.R. Co. v. Henneford / 1939; BC7, 15 F Supp. 302.

6 State vs. Brown, 148 N.E. 95, 112 Ohio St., 590; Buckstaff Bath House Co. vs. Mckinley, 127 S.W. 2d 802, 806, 198 Ark. 91; State v. Fields, Ohio App., 35 N.E. 2d 744, 747.

imported goods not subjected to a sales tax" because "the compensating tax was expressly designed as a substitute to make up or compensate for the revenue lost to the government through the avoidance of sales taxes by means of direct purchases abroad.

It is true that upon the collection of a compensating tax on petitioner's poles, wires, transformers, and insulators purchased from abroad, the tax falls on the goods themselves; this fact leads petitioner to claim that what is being imposed upon it is a property tax. But petitioner loses sight of the principle that "every excise necessarily must finally fall upon and be paid by property, and so may be indirectly a tax upon property; but if it is really imposed upon the performance of an act, the enjoyment of a privilege, or the engaging in an occupation, it will be considered an excise."(51 Am. Jur. Id, Taxation, Sec. 34, emphasis supplied) And so, to reiterate, what is being taxed here is the use of goods purchased from out of the country, and the imposition is in the nature of an excise tax.

It is to be noted that a customs duty like a compensating tax, imposed on imported articles, is considered an indirect tax. Thus Mr. Cooley said:

> "x x x Suffice it to state in this connection, that from an economic viewpoint, direct taxes include those assessed upon the property, person, business, income, etc. of those who are to pay them, while indirect taxes are levied upon commodities before this reach the consumer, and are paid by those upon whom they untimately fall, not as taxes, but as part of the market price of the commodities. From a legal viewpoint, however, direct taxes include all capitation taxes and all on property, an also income taxes at least as to most sources of income, while indirect taxes are confined to excise including customs duties." (1, Cooley Taxation, pp. 141-142.)

> " x x x The term is seldom used in connection with state taxes. In Federal Constitution, impost are classified together with 'duties' and 'excise' as in direct taxes, as opposed to taxes on property or capitation taxes." (1 Cooley Taxation p. 75.)

Consequently, following the rationale of the foregoing decision of the Supreme Court involving the same petitioner, we find the same reasoning of the Supreme Ccurt squarely applicable to the case at bar.

WHEREFORE, the decision of the respondent Commissioner of Customs appealed from is hereby affirmed. With costs against petitioner.

SO ORDERED.

Quezon City, October 28, 1976.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Presiding Judge

WE CONCUR:

Amante Filler
AMANTE FILLER
Associate Judge

CONSTANTE C. ROAQUIN
Associate Judge