NORBERTO J. QUISUMBING,
Petitioner,

- versus - C.T.A. CASE NO. 2843

THE COMMISSIONER OF CUSTOMS,
Respondent.
x - - - - - - - - - - - - - - x

12/23/81

D E C I S I O N

Petitioner Norberto J. Quisumbing has appealed from the decision of respondent Commissioner of Customs dated October 18, 1976, affirming the decision of the Collector of Customs of Manila dismissing for lack of merit Manila Protest No. 8670.

As borne out by the pleadings and records of the Bureau of Customs pertinent to this proceeding, on the basis of which the parties submitted this case for decision, it appears that petitioner imported from Marseilles, France, two (2) complete self-propelled workshop type "froggy" with extra four SCR, twelve SC-cut, ten SON-BR, one PSM sub-painting tool assembly, which arrived at the Port of Manila on board the vessel S/S "Doña Angelina" under Registry No. 2. The said goods were duly covered by shipping documents and declared under Import Entry No. 09439-73. Petitioner was thereafter required to pay customs duties and taxes on the imported articles. Under protest, petitioner paid customs duties of ₱30,050.00 and internal revenue tax (compensating tax) of ₱21,389.00 which together with wharfage of ₱32.00 amounted to ₱51,471.00, on the ground that said importation is exempt from the payment of duties and taxes under Republic Act No. 6135, otherwise known as the "Export Incentives Act of 1970", and under Section 190 of the then in force National Internal Revenue Code. The payment was covered by Central Bank of the Philippines Official Receipt No. 01128 dated February 20, 1973. The protest was docketed as Manila Protest No. 8670.

After due hearing, the Collector of Customs of Manila, in a decision dated September 1, 1975, dismissed petitioner's protest for lack of merit.

Petitioner seasonably appealed the Collector's decision to the Commissioner of Customs. In a decision dated October 18, 1976, respondent Commissioner of Customs affirmed the decision of the Collector of Customs. Hence, this appeal.

The parties are not in dispute on the computation of the customs duties and internal revenue tax paid by, or the amount refundable to, petitioner as the case may be.

The lone question tendered for resolution in this appeal is whether petitioner is entitled to the refund of the customs duties and internal revenue tax paid on the importation involved herein.

Petitioner assails the Government's right to impose the customs duties and compensating tax aforesaid. Argument advanced is that such imported self-propelled workshop type "froggy" is used in the under-water brushing of hulls of ocean-going vessels. The equipment therefore furnishes "service export activity" under the Export Incentives Act or "used by the importer himself in the manufacture or preparation of articles for export" under Section 190(c) of the then in force National Internal Revenue Code. Hence, exempt from the payment of duties and taxes. Respondent however found no merit in petitioner's contention.

The controlling statute is Section 7(c) of Republic Act No. 6135, otherwise known as the Export Incentives Act, the pertinent portion of which reads:

"SEC. 7. x x x

(c) Tax exemption on imported capital equipment.- Within five years from registration of the export producer, importations of machinery and equipment and spare parts shipped with such machinery and equipment shall not be subject to tariff duties and compensating tax: Provided, That, (1) said machinery, equipment and immediate component spare parts are not manufactured domestically in commercial quantity and quality or sold at reasonable prices; (2) are directly and actually needed and will be used by the registered export producer in the manufacture, processing, handling and storage of its export products; (3) are covered by shipping documents in the name of the registered export producer to whom the shipment will be delivered direct by customs authorities; (4) the prior approval of the Board was obtained by the registered export producer before placing the order for the importation of such machinery, equipment and immediate component spare parts; and (5) the registered export producer chooses not to avail of the privileges granted by Republic Act Numbered Thirty-one hundred twenty-seven, as amended. x x x."

From the foregoing provision of law, it seems clear beyond doubt that to be entitled to the tax exemption on imported capital equipment, a registered export producer has to comply with certain requirements which include, among others, the prior approval of the Board of Investments before the order for the importation of such equipment is placed by the export producer, and the same is not manufactured locally in commercial quantity or quality or sold at reasonable prices.

In the case at bar, nothing in the records shows or speaks of the approval by the Board of Investments of the order for the importation of the equipment in question, much less compliance with the provision of the law as to the non-availability domestically of such machinery in commercial quantity or quality, or registration of petitioner as an export producer with the Board of Investments. Consequently, petitioner is not entitled to exemption.

And with regard to the claim for refund of the compensating tax, we note that the same cannot be passed upon by this Court for the reason that petitioner has not filed a written claim for refund thereof with the Commissioner of Internal Revenue, and neither was the latter impleaded as a party respondent in this case. Without satisfying these jurisdictional requirements, petitioner's claim for refund of the compensating tax is fatally defective. (See Luna v. Commissioner of Customs, CTA Case No. 1947, November 29, 1968; Philippine Wallboard Corp. v. Commissioner of Customs, CTA Case No. 2136, September 30, 1972; Tagum Electric Co. v. Commissioner of Customs, CTA Case /Resolution/ No. 2155, September 13, 1976;

Wise & Company v. Commissioner of Customs, CTA Case No. 2717, December 29, 1977, see also resolution dated January 15, 1979, certiorari denied in G.R. No. L-51242, March 7, 1980; National Dental Supply Incorporated v. Commissioner of Customs, CTA Case No. 2826, June 30, 1980.)

It bears emphasis that he who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. Tax exemptions are strictly construed against the taxpayer, they being highly disfavored and may almost be said "to be odious to the law." He who claims an exemption must be able to point to some positive provision of law creating the right; it cannot be allowed to exist upon a mere vague implication or inference. (Asiatic Petroleum vs. Llanes, 49 Phil. 466, 471; Union Garment Co., Inc. vs. Court of Tax Appeals, L-16809, January 31, 1962, 4 SCRA 304; Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, L-19707, August 17, 1967, 20 SCRA 1056; Republic Flour Mills, Inc. vs. Commissioner of Internal Revenue, L-25602, February 18, 1970, 31 SCRA 520; Commissioner of Customs vs. Philippine Acetylene Co. & Court of Tax Appeals, L-22443, May 29, 1971, 39 SCRA 71; Davao Light and Power Co., Inc. vs. Commissioner of Customs, L-28902, March 29, 1972, 44 SCRA 122.) The right of taxation will not be held to have been surrendered unless the intention to surrender is manifested by words too plain to be mistaken (Ohio Life Insurance & Trust Co. vs. Debolt, 60 Howard, 416), for the state cannot strip itself of the most essential power of taxation by doubtful words; it cannot, by ambiguous language, be deprived of this highest attribute of sovereignty. (Erie Railway Co. vs. Commonwealth of Pennsylvania, 21 Wallace, 492, 499). So, when exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim (Farrington vs. Tennessee & County of Shelby, 95 U.S. 679, 686). (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466, 471; Manila Electric Company vs. Commissioner of Internal Revenue, L-29987 & 23844, October 22, 1975, 67 SCRA 351.)

As stressed by the Supreme Court in Acting Commissioner of Customs vs. Manila Electric Company and Court of Tax Appeals, L-23632, June 30, 1977, 77 SCRA 469, said Court is committed to the principle that an exemption from taxation must be justified by words too clear to be misread. As set forth in Commissioner of Internal Revenue vs. Guerrero, L-20812, September 22, 1967, 21 SCRA 180: "From 1906, in Catholic Church v. Hastings to 1966, in Esso Standard Eastern, Inc. v. Acting Commissioner of Customs, it has been the constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed *strictissimi juris*." (Catholic Church vs. Hastings, 5 Phil. 701; Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, L-21841, October 28, 1966, 18 SCRA 488. The opinion also cited Government vs. Monte de Piedad, 35 Phil. 42; Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466; House vs. Posadas, 53 Phil. 318; Phil. Tel. and Tel. Co. vs. Collector, 58 Phil. 639; Greenfield vs. Meer, 77 Phil. 394; Collector of Internal Revenue vs. Manila Jocky Club, 98 Phil. 670; Phil. Guaranty Co., Inc. vs. Commissioner, L-22074, September 6, 1965, 15 SCRA 1; Abad vs. Court of Tax Appeals, L-20834, October 19, 1966, 18 SCRA 374.)

IN VIEW OF THE FOREGOING, the decision

appealed from is hereby affirmed. With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, December 23, 1981.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge