REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DEVELOPMENT BANK OF THE
PHILIPPINES,
Petitioner,

- versus - C.T.A. CASE NO. 4045

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

7/31/87

D E C I S I O N

The case before Us presents no dispute as to the relatively simple material facts but the parties seem trying to get the better of each other over by a quibble as to the proper import of Section 4(c), Executive Order No. 1078, dated January 10, 1986, which provides:

> "The amount of taxes due on the income of the Bank beginning with CY 1985 as well as such other taxes, duties,fees, assessments, charges and other imposts due on all transactions or operations of the Bank, is hereby appropriated under this Executive Order to be automatically applied to the payment of the subscription of the Government in the capital stock is fully paid for."

Petitioner governmental financial institution created and operated pursuant to R.A. No. 85, as amended, imported from the United States for its own use various IBM computer equipment sometime during the period from May, 1985 to January, 1986. The total amount of ₱5,562,926.00 representing the corresponding customs duties, compensating taxes and import processing fees was accordingly paid to the Bureau of Customs. Pursuant to the provision of Section 4, supra, petitioner requested the refund of such payments on February 4, 1986 but which respondent denied in a letter to petitioner on March 4, 1986.

Hence, this petition for review.

The respondent Commissioner of Customs poses the jurisdictional issue by averring that "all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations but excluding constitutional offices or agencies, arising from interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated" by the Secretary of Justice. (Section 1, PD 242.)

Furthermore, Section 3(e) of R.A. 85 (not RA 25 as mentioned by respondent) as amended, has specific reference only to the amount of taxes on the Bank's income and such other taxes due on all other transactions necessary or incidental to petitioner's banking business. The act of importation is certainly not necessary nor incidental to petitioner's banking business. And, the lone and express mention of the term "taxes" in the law without similar and express mention of the phrase "customs duties and fees" indubitably means the exclusion of the latter from the coverage of the law, reading -

> "Section 3(e). The amount of taxes due to the National Government on income beginning with the calendar year 1978 as well as taxes due on all other transactions of the Bank beginning with the calendar year 1985 is hereby appropriated under this Decree to be automatically applied to the payment of the subscribed capital stock of the government in the Bank."

As to Section 4 of Executive Order 1078, dated January 10, 1986, which was petitioner's basis for the application of its refund request, the same is only a mere executive order as against R.A. 25 (sic) as amended by P.D. 1980, the law in point and which should prevail.

We do not reach the same conclusion as the respondent Commissioner of Customs.

All that we need to state is that the administrative remedy conferred under PD 242 in no wise lessens nor muffles petitioner's right of access to a judicial determination. A perusal of Section 7 of R.A. 1125 will readily show that this Court has jurisdiction over the case at bar, as thus -

> Sec. 7. Jurisdiction.- The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
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> xxx xxx xxx
>
> (2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs laws or other law or part of law administered by the Bureau of Customs; and xxx.

The objection interposed limiting the application of the term "taxes" as to exclude from its coverage customs duties and other fee as contained in Section 3(e) of RA 85 as amended by PD 1980 need not belabored. The "taxes due on all other transactions of the Bank" could be taken in the generic sense and must apply, generally speaking, to all kinds of exaction which become public funds. Moreover, Section 4(c) of Executive Order No. 1073 restated in the clearest tenor and terms the afore-said provision of PD 1980, providing, "as well as such other taxes, duties, fees, assessments, charges and other imposts due on all transactions or operations of the Bank". And, contrary to the respondent's assertion, executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution have the force and effect of laws.

Let it suffice that in the instant case, "petitioner is not seeking exemption from customs duties and taxes due on the equipment; neither is it contesting that the equipment is subject to customs taxation. All the petitioner is requesting it (sic) that whatever customs duties and taxes may be due on the equipment should be applied to petitioner's capital instead of paying the same to the Bureau of Customs. This intent is clearly expressed by the Executive Order No. 1078." And, we find nothing ambiguous nor obscure in the language of Executive Order No. 1078 insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar. Petitioner need not pay directly to the

Bureau of Customs the customs duties, compensating tax and import processing fee, but whatever may be due on the importation, the same be applied and credited to the Government's subscription to petitioner's capital stock.

WHEREFORE, respondent is hereby ordered to refund to the petitioner the amount of ₱5,562,920.00 it paid the Bureau of Customs but such amount of import liabilities due on the importations shall be applied and credited to the payment of the subscribed capital stock of the Government in the Bank.

SO ORDERED.

Quezon City, Metro Manila, July 31, 1987.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge