REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ESSO STANDARD EASTERN,
INC. (Formerly Standard-
Vacuum Refining Corp.
/Phil./),
Petitioner,

versus CTA CASE NO. 1661

THE COMMISSIONER OF
CUSTOMS,
Respondent.

Sept. 30/67

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D E C I S I O N

This is an appeal from a decision of the respondent Commissioner of Customs affirming the decision of the Collector of Customs, Airport Customshouse, in Airport Protests Nos. 10, 11, 12, 15, 16 and 17, holding the petitioner liable for the special import tax in the total sum of ₱775.62 on certain articles imported by it and covered by Informal Entries Nos. 837601, 838203, 838202, 839772, 840195 and 840437.

The following are the pertinent facts stipulated and submitted by the parties:

1. That petitioner is a corporation duly organized and existing under the laws of the Philippines with principal office located at 1071 United Nations Avenue, Manila, while the respondent is the Commissioner of Customs with offices at the Customs Building, Port Area, Manila, duly vested with authority to act as such for

the government of the Republic of the Philippines;

2. That petitioner is the holder of Refining Concession No. 2 issued by the Honorable, The Secretary of Agriculture and Natural Resources, on December 9, 1957, a copy of which appears on pages 1 to 6 of the Bureau of Customs Records and is operating a petroleum refinery in the Municipality of Limay, Province of Bataan;

3. That under Article 103 of Republic Act No. 387 otherwise known as the Petroleum Act of 1949, which reads as follows:

> "Art. 103. Customs Duties. -During the first five years following the granting of any concession, the concessionaire may import free of customs duty, all equipment, machinery, material, instruments, supplies and accessories.
>
> "No exemption shall be allowed on goods imported by the concessionaire for his personal use or that of any others; nor for sale or for re-export; and if any goods on which exemption has been allowed be thus used or disposed of, the concessionaire is obliged to make a report to the Secretary of Agriculture and Natural Resources to that effect and to pay such import duty as is due."

the petitioner is exempt from the payment of customs duty on importations of equipment, machinery, material, instruments, supplies and accessories during the first five years following the granting of any concession;

4. That on June 2, 1961, a shipment consisting of one (1) carton of scientific instruments consigned to petitioner with C & F value of $163.59 arrived at the Manila International Airport via PAA plane under Air Way Bill No. 096477; petitioner was assessed the special import tax and it paid under protest the sum of ₱31.98 under Informal Entry Receipt No. 837601 which bears the notation "RA 387 free" appearing on page 23 of the Bureau of Customs Records; and said protest was docketed as Airport Protest No. 10 appearing on pages 20-21 of the Bureau of Customs Records;

5. That on June 9, 1961 a shipment consisting of one (1) Carton of Recorder Parts consigned to petitioner with C & F value of $221.56 arrived at the Manila International Airport via BOAC plane under Air Way Bill No. 1496682; petitioner was assessed the special import tax and it paid under protest the sum of ₱43.82 under Informal Entry Receipt No. 838203 which bears the notation "RA 387 free" appearing on page 13 of the Bureau of Customs Records; and said protest was docketed as Airport Protest No. 11 appearing on pages 15-16 of the Bureau of Customs Records;

6. That on June 11, 1961, a shipment consisting of one (1) carton of valves consigned to petitioner with C & F value of $310.58 arrived at the Manila International Airport via NWA plane under Air Way Bill No. 208851; petitioner was assessed special import tax and it paid under protest the sum of ₱60.72 under Informal Entry Receipt No. 838202 which bears the notation "RA 387 free" appearing on page 14 of the Bureau of Customs Records; and said protest was docketed as

Airport Protest No. 12 appearing on pages 17-18 of the Bureau of Customs Records;

7. That on May 22, 1961, a shipment consisting of one (1) box of parts for Conversion Boilers and Auxiliary Equipment consigned to petitioner with C & F value of $2,389.69 arrived at the Manila International Airport via PAA plane under Air Way Bill No. 08280; petitioner was assessed the special import tax and it paid under protest the sum of ₱467.00 under Informal Entry Receipt No. 839772 which bears the notation "RA 387 free" appearing on page 19 of the Bureau of Customs Records; and said protest was docketed as Airport Protest No. 15 appearing on pages 11-12 of the Bureau of Customs Records;

8. That on July 3, 1961 a shipment consisting of one (1) carton of X-ray films consigned to petitioner with C & F value of $132.80 arrived at the Manila International Airport via BOAC plane under Air Way Bill No. 2207437; petitioner was assessed the special import tax and it paid under protest the sum of ₱26.00 under Informal Entry Receipt No. 840195 which bears the notation "RA 387 free" appearing on page 24 of the Bureau of Customs Records; and said protest was docketed as Airport Protest No. 16 appearing on pages 9-10 of the Bureau of Customs Records;

9. That on July 7, 1961, a shipment consisting of one (1) carton of recorder parts consigned to petitioner with C & F value of $750.39 arrived at the Manila International Airport via NWA plane under Air Way Bill No. 28587; petitioner was assessed the special import tax and it paid under protest the sum of ₱147.00 under Informal Entry Receipt

No. 840437 which bears the notation "RA 387 free" appearing on page 26 of the Bureau of Customs Records; and said protest was docketed as Airport Protest No. 17 appearing on pages 7-8 of the Bureau of Customs Records;

10. That Airport Protests Nos. 10, 11, 12, 15, 16 and 17, which involved the same issue - whether or not petitioner is subject to special import tax provided in Republic Act No. 1394 - were heard jointly on August 2 and 4, 1961;

11. That the Collector of Customs on February 16, 1962, rendered his decision on Airport Protests Nos. 10, 11, 12, 15, 16 and 17, the dispositive portion of which reads:

> "WHEREFORE, pursuant to section 2312 of Republic Act No. 1937, it is hereby ordered and decreed that the herein protests covered by Airport Protests Nos. 10, 11, 12, 15, 16 and 17 be, as they are hereby dismissed.
>
> "The Chief, Aircraft Security Unit, shall return a copy of this decision showing the action taken thereon.
>
> "SO ORDERED."

a copy of which appears on pages 83-89 of the Bureau of Customs Records;

12. That on March 1, 1962, petitioner filed its Notice of Appeal with Commissioner of Customs which was docketed as Case No. 705 appearing on page 91 of the Bureau of Customs Records;

13. That petitioner on June 11, 1964 filed a Supplemental Memorandum dated June 5, 1964 citing

the following assignments of Errors:

> "I. The Collector of Customs erred in assuming that protestant is claiming exemption under Republic Act No. 1394 which was repealed by Republic Act No. 2352.
>
> "II. The Collector of Customs erred in stating that neither R.A. No. 1394 nor R.A. 2352 designates the special import tax as customs duty nor treats the same as a duty.
>
> "III. The Collector of Customs erred in stating that Article 103 of R.A. No. 386 does not apply to the case at bar."

a copy of which appears on pages 110-120 of the Bureau of Customs Records;

14. That the Commissioner of Customs on March 19, 1965 rendered his decision on Customs Case No. 705 (Airport Protests Nos. 10, 11, 12, 15, 16 and 17) affirming the decision of the Collector of Customs dated February 16, 1962, dispositive portion of which reads as follows:

> "WHEREFORE, the decision appealed from is hereby affirmed.
>
> "SO ORDERED."

a copy of which appears on pages 121-126 of the Bureau of Customs Records;

15. That on July 2, 1965, petitioner filed with the respondent Commissioner of Customs its Motion

for Reconsideration and with the Honorable Court the instant Petition for Review;

16. That the parties stipulate their willingless to submit the resolution of the issues on the basis of their Stipulation of Facts, the customs record and their respective memorandum.

Under Article 103 of Republic Act No. 387, otherwise known as the Petroleum Act of 1949, the petitioner is exempt from the payment of customs duties on importations of equipment, machinery-material, instruments, supplies and accessories during the first five years following the grant of its petroleum refining concession on December 9, 1957. The only point of controversy is whether or not the exemption of the petitioner from "customs duties" should be deemed to include the "special import tax" imposed by Republic Act No. 1394, otherwise known as the Special Import Tax Law.

Section 1 of Republic Act No. 1394 provides in part as follows:

> Section 1. Except as herein otherwise provided, there shall be levied, collected and paid as special import tax on all goods, articles or products imported or brought into the Philippines, irrespective of source, during the period and in accordance with the rates provided for in the following schedule:

x x x

Customs duties are taxes levied upon goods and merchandise imported or exported (Marriott v. Brune, 9 How [U. S.] 619, 632, 13 L. ed. 282). The terms "duties" and "imposts" indicate a particular kind of tax, being commonly applied to levies made by a government on the importation or exportation of commodities in or out of the country (Flint v. Stone Tracy Co., 220 U. S. 107). A tax may be defined to be a word of general import including almost every species of imposition on persons or property, for supplying the public treasury as tolls, tribute, subsidy, excise, imposts, or customs (Mays v. City of Cincinnatti, 1 Ohio 268). Any payment exacted by the State or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where the special benefits derived from their performance is merged in the general benefit, is a tax (State ex rel. Fargo v. Wetz., 40 ND 299, 5 ALR 731). Merchandise imported in the Philippines from foreign countries is subject to two taxes, namely: customs and internal revenue (Luzon Brokerage v. Posadas, 51 Phil. 305, 308). It is thus evident that taxes include customs duties (See B.T.A. Case No. 184, Philippines Air Lines v. Commissioner of Customs, Sept. 10, 1954).

But, the terms "customs duties" and "tax" may be used in two senses, specially in this case where the term used by the law is "special import tax" - in the extended sense and in the limited sense. In its most extended sense, the word "tax" may include all contributions imposed by the government of whatsoever kind or description, including customs duties and imposts (U. S. v. Fifty-Nine, 39 N. 401). The term "duties" has been said to be applied, in its most restricted meaning, to customs, and in that sense to be nearly the synonym of "imposts." (Pacific Ins. Co. v. Zoule, Cal., 7 Wall. 433, 19 L. ed. 95.) As to whether the extended or restricted construction should be adopted depends upon the language of the law and the intention behind its passage (See U. S. v. Fifty-Nine, supra). Conformably thereto, we are adopting this same indicia in order to arrive at the proper meaning of the phrase "special import tax" as used in Republic Act No. 1394.

The language of Republic Act No. 1394 seems to leave no room for doubt that the law intends that the phrase "special import tax" is taken to include customs duties. Section 1 of Republic Act

No. 1394 provides that "there shall be levied, collected and paid as special import tax on all goods, articles or products imported or brought into the Philippines, irrespective of source, x x x." And Section 4 of the same Act states that the "special import tax shall be paid by the importer to the Bureau of Customs in accordance with regulations to be promulgated by the Department of Finance and prior to the release of the imported goods, articles or products from customs custody." If we are to adhere, as we should, to the plain and obvious meaning of words in consonance with settled rules of interpretation, it seems clear that the special import tax is an impost or a charge on the importation or bringing into the Philippines of all goods, articles or products subject thereto, for the phrase "import tax on all goods, articles or products imported or brought into the Philippines" in explicit and unambiguous terms simply mean customs duties. It is hardly necessary to add that "customs duties are simply taxes assessed on merchandise imported from or exported to, a foreign country" (25 C.J.S. 140). And being a charge upon importation, the special import tax is essentially a customs duty, or at least partake of the character thereof (10 Words and Phrases, 744), because the legislature must be presumed to know the meaning of words, to have used the words advisedly and to have expressed its intent by the use of such words as are found in the statute (50 Am. Jur. 212).

This conclusion is bolstered by the fact that, just like customs duties, (a) the special import tax is to be paid by the importer of the goods, articles or products; (b) it is payable to the Bureau of Customs in accordance with the regulations of the Department of Finance; and (c) payment is to be made prior to release of the imported goods, articles or products from customs custody (See Sec. 4, supra). That the tax imposed by Republic Act No. 1394 is designated as a "special import tax" does not make it less a tax on imported articles or customs duty.

Even more, a further examination of the other provisions of Republic Act No. 1394 confirms the view that the "special import tax" provided for therein is inherently a tax on importation and hence is a customs duty. The basis for computing the special import tax, which is prescribed under Section 3 of the said Act is as follows:

> SEC. 3. The value for assessment of the special import tax on goods, articles, or products shall be the price at which, at the time of exportation, those goods, articles or products or one of the same

> kind is offered for sale in the exporting country, in the usual wholesale quantities and in the ordinary course of trade excluding internal excise taxes to be remitted or rebated, plus ordinary expenses prior and incidental to the lading of such goods, articles or products on board the vessel at the port of export including taxes or duties, if any, and ordinary freight as well as ordinary insurance covering the transportation of such goods, articles or products to the port of entry.

This is the same as the basis for computing the amount of customs duty on importations, as provided in Section 201 of the Tariff and Customs Code, which reads:

> SEC. 201. Basis of Dutiable Value.—Whenever an imported article is subject to an *ad valorem* rate of duty, the duty shall be assessed upon the market value or price at which, at the time of exportation, the same, like or similar article is freely offered for sale in the principal markets of the exporting country for exportation to the Philippines, in the usual wholesale quantities and in the ordinary course of trade (excluding internal excise taxes to be remitted or rebated), plus ordinary expenses prior and incidental to the lading of such article on board the vessel or aircraft at the port of export (including taxes or duties, if any) and freight paid as well as insurance premium paid covering the transportation of such article to the port of entry in the Philippines.

This similarity in phraseology in both laws can not lightly be disregarded for it is a well-settled principle in statutory construction that two statutes with a parallel scope, purpose and terminology should, each in its own field, have a like interpretation, unless in particular instances there is something peculiar in the question under consideration (50 Am. Jur. 343). The intention of the legislature to place the special import tax as similar to or the same with customs duty is therefore made more evident when it copied almost verbatim from Section 201 of the Tariff and Customs Code the provisions of Section 3 of Republic Act No. 1394.

Likewise, the historical background of the term "customs duty" as used in Article 103 of the Petroleum Act of 1949 is another index that the special import tax as used in the Special Import Tax Law is essentially a customs duty. The terms "duty" and "customs duty" used in the Laurel-Langley Agreement were also used in the Executive Agreement of 1946, entered into between the governments of the Philippines and the United States pursuant to the Philippine Trade Act of 1946. The Executive Agreement of 1946 as modified by the Laurel-Langley Agreement contemplated two concepts of "customs duty." Sections 4 and 5 of Article I thereof define the term "customs duty" or "duty" in a broad sense as to include "taxes, fees, charges, or exactions imposed on or in connection with importation x x x." This definition is carried over in the Laurel-Langley Agreement (See Secs. 4 and 5 of Article I thereof). The only difference between the definitions under the two agreements is that in the former Agreement (1946) there is the phrase "but does not include internal taxes or ordinary customs duty."

The other concept of "customs duty" used in both agreements is narrower in scope and specifically designated as "ordinary customs duty" (See Paragraph /d/ of the Protocol to the Agreement of 1946). It will be noted that when the Agreements intended to convey the narrower concept of "duty", the term used is "ordinary customs duty" (See Pars. /1/ and /2/ of Article I of both Agreements). When they intend to convey the broader concept, the two Agreements used the term "customs duty" or "duty" (See Pars. /3/ and /4/ of Article I of both Agreements). When Republic Act No. 387, otherwise known as the Petroleum Act of 1949, was enacted on June 18, 1949, the two concepts of "customs duty" discussed above were therefore well known to Congress. Consequently, when Article 103 of the Petroleum Act used the term "customs duty" it is evident that the law intended to include within its broad sweep the special import tax, because if Congress had in mind the narrower concept of customs duty it could have used the term "ordinary customs duty." It is already an established rule of statutory construction that in the enactment of a statute, earlier acts on the same subject are generally presumed to have been in the knowledge and view of the legislature which is regarded as having adopted the new statute in the light thereof and with reference thereto. A comparison of the prior law with the present is therefore considered helpful in the determination of the true intent of the legislature (50 Am. Jur. 354-356).

We are not unaware of the basic principle that exemptions from taxation are never presumed and should be expressed in explicit and unambiguous terms. But after an examination of the provisions of the law involved and the purpose behind its passage, we have reached the conclusion that the intention of Congress seems clear that the petitioner's exemption from the payment of customs duties on its importations of equipment, machinery-material, instruments, supplies and accessories during the first five years following the grant of its petroleum refining concession includes the special import tax payable under Republic Act No. 1394. In approving Republic Act No. 387, otherwise known as the Petroleum Act of 1949, Congress took the view, as expressed in the title of the law, that the exploration, development, exploitation and utilization of the petroleum resources of the Philippines should be promoted and their conservation encouraged. Since the exploration and development of petroleum resources involve not only a tremendous amount of investment but also great risks, the Government deemed it fit to give petroleum concessionaires exemption from the payment of customs duties on importations of equipment, machinery-material, instruments, supplies and accessories during the first five years in order to give them a chance to start and establish themselves. At any rate, if they should turn out to be profitable, the Government will ultimately collect its taxes. Consequently, if the spirit of the law is to be followed and its intention fulfilled, the term "customs duty" found in Article 103 of Republic Act No. 387 should be given its broad meaning so as to include the special import tax for it is only by such an interpretation that the object of the law can be accomplished.

WHEREFORE, the judgment appealed from is hereby reversed, and respondent is ordered to refund to petitioner the sum of ₱775.62. Without costs.

SO ORDERED.

Quezon City, September 30, 1967.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge