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CALTEX (PHILIPPINES) INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 190

COMMISSIONER OF CUSTOMS,
Respondent.

Sept. 30, 1957.

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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 dated August 21, 1955, affirming <u>in toto</u> the decision of the Collector of Customs for the Port of Manila, denying petitioner's request for refund of customs duty in the total amount of ₱14,905.03 (reduced to ₱14,188.88 by agreement of the parties) paid during the periods from June 24, 1953 to May 29, 1954, of which amount, ₱9,947.76 (increased to ₱10,444.82 by agreement of the parties) was paid on imported petroleum products consisting of motor gasoline, auto diesel, kerosene and asphalt used by petitioner itself in the construction of its refinery in the municipalities of Bauan and Batangas, Province of Batangas and the balance of ₱4,957.77 (reduced to ₱3,744.06 by agreement of the parties) as customs duty paid on similar imported petroleum products which were sold by petitioner to, and used by its contractors in, the construction of its Batangas refinery.

For the sake of brevity we shall not quote hereunder in full the stipulation of facts of the parties as appearing on pages 23, 24, 57 and 58 of the record, but will make mention only of those facts which we believe are pertinent and necessary in the final determination of the case.

On June 20, 1953, the Secretary of Agriculture and Natural Resources, acting upon the favorable recommendation of the Bureau of Mines, the Office of Economic Coordination and other offices of the Philippine Government, granted to the petitioner herein upon proper application therefor, a Petroleum Refining Concession, Annex A (pp. 26 to 32 rec.) under authority of and pursuant to the provisions of Republic Act No. 387, otherwise known as the Petroleum Act, with the "non-exclusive right to establish and operate a petroleum refinery at the Municipalities of Bauan and Batangas, Province of Batangas." Immediately after obtaining the said concession which was granted for a period of 25 years, renewable for another 25 years, the petitioner in compliance with the terms and conditions of its grant, constructed a petroleum refinery in the Municipalities of Bauan and Batangas, Province of Batangas at a total cost of ₱50,786,517.97. The refinery was completed and started to operate sometime in October, 1954, using as basic material crude oil imported from abroad.

As recomputed in Annexes A and B (pp. 59-62 rec.) of the stipulation of facts, during the period from June 24, 1953 to May 29, 1954, the petitioner imported from abroad for its own use in the construction of its Batangas refinery, 1,188,186 gallons of petroleum products consisting of motor gasoline, auto diesel, kerosene and asphalt with a total F.O.B. value of ₱104,448.35 for which it paid customs duty in the total amount of ₱10,444.82. During the period from July 28, 1953 to May 29, 1954, the petitioner also imported from abroad 195,135 gallons of motor gasoline, auto diesel, diesel oil and kerosene with a total F.O.B. value of ₱37,440.54 for which it paid customs duty in the total amount of ₱3,744.06. As admitted by petitioner, this last mentioned importation was sold by it to, and was used by, the contractors who undertook the construction of petitioner's refinery in Batangas. All told, the total amount of customs duty which the petitioner seeks to be refunded in this appeal was recomputed at ₱14,188.88 and not ₱14,905.33 as originally claimed in the petition for review. As pointed out by respondent's counsel on page 9 of his memorandum, the discrepancy of ₱716.45 between the original claim for refund and what appears in the statements, Annexes A and B (pp. 59-62 rec.) as prepared by the Finance and Accounting Manager of petitioner corporation could be attributed to the fact that in the original claim for refund were included duties on importations brought in before the effective date of petitioner's concession upon which it bases its present claim for exemption.

On May 11, July 28, and September 11, 1954, respectively, the petitioner, through its Finance and Accounting Manager, filed with the Collector of Customs of Manila three claims for refund, Annex A (pp. 33-36 rec.) of the customs duties paid in the total amount of ₱14,905.33 (should be ₱14,188.88) on the ground that the importations in question were exempt from payment of the same under Article 103 of Republic Act No. 387, which requests for refund were denied by said official in a letter, Annex C (pp. 37-38 rec.) dated April 25, 1955.

On May 27, 1955, petitioner's counsel in compliance with the provisions of Section 1380 of the Revised Administrative Code, requested that the ruling of the Collector of Customs of Manila denying petitioner's claim for refund be reviewed by the respondent Commissioner of Customs. The latter, after giving the appeal due course, rendered a decision on review, Annex D (pp. 39-48 rec.) dated August 21, 1955, affirming in toto the ruling of the Collector of Customs of Manila.

From this decision, an appeal was interposed to this Court within the reglementary period of thirty days as required under Section 11 of Republic Act No. 1125.

After going over the record of this case including the exhaustive memoranda submitted by the parties, we find that the main issues involved could well be summarized and narrowed down to the following:

1. Whether or not the Petroleum Refining Concession granted to the petitioner by the Secretary of Agriculture and Natural Resources on June 20, 1953 for a period of twenty-five (25) years under authority of, and pursuant to the provisions of Republic Act No. 387, entitles the petitioner to exemption from customs duty under Article 103 of said Act on the importations made by it of petroleum products during the period from June 24, 1953 to May 29, 1954, for its own use in the construction of its Batangas refinery; and

2. Whether or not the exemption from customs duty provided in Article 103 of the aforesaid Act also covers the importations made by petitioner during the period from July 28, 1953 to May 29, 1954, of similar petroleum products which were subsequently sold to, and used by, the independent contractors who undertook the construction of petitioner's refinery.

Before proceeding to consider these two issues which go into the merits of the case, we find it necessary in the first instance to resolve a jurisdictional question which was raised by counsel for the respondent at the eleventh hour and for the first time in his "Rejoinder To Petitioner's Reply Memorandum."

Respondent's counsel contends that the petitioner herein has failed to file a seasonable and proper protest with the Collector of Customs of Manila, as required under Sections 1370 and 1372 of the Revised Administrative Code, so as to confer upon the respondent Commissioner of Customs and this Court jurisdiction to review this case on appeal.

Under Section 1372 of the Revised Administrative Code, a "protest" should point out the particular decision or ruling of the Collector to which exception is taken or objection made, and should indicate with reasonable precision the particular ground or grounds upon which the protesting party bases his claim for relief. The two objects intended to be accomplished by the required protest are to apprise the Collector of Customs of the objections entertained by the importer as regards his importation so that the error or errors committed, if any, could be rectified and also to hold the importer to the objections first made. (Behn, Meyer & Co. v. Collector of Customs, 17 Phil. 388, 403). However, this is a formal requirement which, as was held in the case just cited "is not required to be made with technical precision, but is sufficient if it shows fairly that the objection afterwards made at the trial was in the mind of the party and was brought to the knowledge of the Collector so as to secure to the Government the practical advantage which the statute was designed to secure." (Citing 170 U.S. 621, 627.)

It appears in the present case that petitioner's letters of May 11, 1954, July 28, 1954 and September 11, 1954, respectively (Annex B, pp. 33-36 rec.) although entitled "Customs Duty Refund Products Used By Refinery", substantially conform with the "protest" required under Sections 1370 and 1372 of the Revised Administrative Code. They all refer to customs duty paid by petitioner during the period from June 24, 1953 to May 29, 1954, from the payment of which petitioner claims exemption under Article 103 of Republic Act No. 387, and the Petroleum Refining Concession granted to it on June 20, 1953 under authority of said Act. These letters serve the purpose of a "protest" in that they informed and pinpointed to the Collector of Customs and the respondent Commissioner of Customs, the amount sought to be refunded and the ground or grounds relied upon, to enable the latter official to render an intelligent and just decision on the matter.

Enough be said, that the respondent Commissioner of Customs as well as the Collector of Customs of Manila gave due course to petitioner's letters of May 11, July 28, and September 11, 1954, respectively, by considering them as seasonable and proper protests and by entertaining petitioner's appeal accordingly.

We take it that the actions of these two customs officials on the matter, which carry with it the presumption of regularity, strongly indicate that any and all technical or formal objections to the protest made had been set aside inasmuch as they had been both adequately apprised of the importers objections to their actions or rulings. Our conclusion is further buttressed by the fact that the decision of the respondent Commissioner of Customs (Annex D, pp. 39-48 rec.) from which the instant appeal was taken, is entitled as follows:

> "In the matter of protest filed by Caltex (Phil.) Inc. re refund of ₱14,905.33 as customs duty on petroleum used in the construction of refinery from June 20, 1953 to June 30, 1954 - Manila Unnumbered Protest."

Respondent's counsel also claims that petitioner's letters of May 11, July 28 and September 11, 1954, respectively, were not filed within the thirty-day period prescribed by Section 1370 of the Revised Administrative Code.

It is indeed quite unfortunate that this question was raised by respondent's counsel at the last minute after he had rested his case without presenting any evidence whatsoever to support his contention. It should be noted that pursuant to Customs Administrative Order No. 362, the date of the final liquidation of the entry as posted by the customs cashier, and not the date on which the deposit of the estimated duties is made, is the date of payment for the purpose of determining the thirty-day period within which a protest may be filed. Inasmuch as it is within the disposition and power of the respondent to show, by the records in his office, when the posting or publication of the final liquidations was effected, his failure to present such material evidence constrains us to presume that petitioner's protest, as contained in its three letters, was filed within the statutory period of thirty (30) days from such posting or publication. In the absence of proof to the contrary, the presumption is that the law has been obeyed (Rule 123, Section 69 (ee), Rules of Court.)

Consequently, we believe and so hold that this Court has jurisdiction to decide the above-entitled case on its merits as we now propose to do hereunder.

As previously adverted to, on June 20, 1953, the petitioner herein was granted a Petroleum Refining Concession for a period of twenty-five (25) years, renewable for another twenty-five (25) years, by the Secretary of Agriculture and Natural Resources under authority of, and in accordance with, the provisions of Republic Act No. 387, otherwise known as the Petroleum Act.

Petitioner bases its claim for refund of the amount of ₱14,188.88 on the ground that as a petroleum concessionaire under Republic Act No. 387, it is entitled to exemption from customs duty on its importations of petroleum products made within five years following the grant under express authority of Article 103 of said Act which provides as follows:

> "Customs duties.- During the first five years following the granting of <u>any concession, the concessionaire may import free of customs duty</u>, all equipment, machinery, material, instruments, <u>supplies</u> and accessories.
>
> <u>No exemption shall be allowed on goods imported by the concessionaire for</u> his personal use or that of <u>any others; nor for sale</u> nor 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." (Underscoring supplied.)

Respondent's denial of petitioner's claim for exemption and refund of the amount in question is predicated principally on the theory that the exemption provided in the afore-quoted provision of Republic Act No. 387, applies only to exploitation and exploration concessionaires and concessionaires refining crude petroleum produced in the Philippines and not to petroleum concessionaires like the herein petitioner who simply refines crude oil imported from abroad. It is argued that although the petitioner herein was granted a Petroleum Refining Concession by the Government under Republic Act No. 387, it is not actually contributing to the development of the petroleum resources of the Philippines as is the purpose behind the enactment of the aforesaid Republic Act because the crude oil it refines is produced in Sumatra, the Middle East and other foreign countries and not in the Philippines, and, therefore, it should not be given the benefit of exemption provided in said Act. It is suggested that by exempting the petitioner herein from the impost now in question, we would not only undermine the development of the petroleum resources of the Philippines and defeat the very purpose of Republic Act No. 387, but would also deprive the Government of this much-needed revenue to which it is lawfully entitled. Respondent's counsel in his memorandum has taken pains to enumerate in detail the different kinds of petroleum concessions that may be granted under Article 10 of Republic Act No. 387, namely, Non-Exclusive Exploration Permit, Exploration Concession, Exploitation Concession, Refining Concession and Pipe Line Concession and from these, counsel would want us to draw a line of distinction by granting the benefit of exemption from customs duty only to exploration and exploitation concessionaires and concessionaires who refine locally produced crude oil on the theory that these alone are in a position to develop directly our petroleum resources. As a last and desperate recourse in order to deprive the petitioner of the benefit of exemption from payment of the impost in question, respondent's counsel would want us even to go as far as to consider petitioner's concession as a worthless scrap of paper and for the Government to disregard entirely its solemn commitments contained therein. Counsel avers that "Without the concession, petitioner concedes that it is subject to the payment of customs duties. Having demonstrated that it is in fact no concession under the petroleum law, petitioner is not entitled to any refund"(p. 10 Memorandum for the Respondent.)

It is likewise suggested by respondent's counsel that the Petroleum Refining Concession which was granted to the petitioner by the Secretary of Agriculture and Natural Resources on June 20, 1953, after mature deliberation and upon recommendation of the Bureau of Mines, the Office of Economic Coordination and other offices of the Government, and after the petitioner had spent over ₱50,000,000.00 for the construction of its Batangas refinery in compliance with the terms and conditions thereof, be revised or cancelled on the ground that the authorities concerned acted without authority and were ill-advised (p. 8, Respondent's Rejoinder to Petitioner's Reply Memorandum).

Viewed from all angles, be it from the legal, practical or moral standpoint, the position taken by Government counsel is weak and untenable with respect to the collection and refusal to refund by respondent of the amount of ₱10,444.82 representing customs duty paid by petitioner on its importations of petroleum products for its own use in the construction of its Batangas refinery.

From the legal standpoint. One will note in Article 103 of Republic Act No. 387, that the exemption from customs duty provided therein is only for a period of five years following the granting of the concession. On this score, there is no dispute between the parties that the importations now in question were made, and the customs duty subject of this appeal accrued, within the five year period prescribed in the exempting statute.

Under Article 10 of Republic Act No. 387, there are five different kinds of petroleum concessions that may be granted by the Secretary of Agriculture and Natural Resources in the exercise of his discretionary powers depending on the respective objects of the applicant, namely, (a) Non-Exclusive Exploration Permit,

(b) Exploration Concession, (c) Exploitation Concession, (d) Refining Concession, and (e) Pipe Line Concession. On June 10, 1953, the Secretary of Agriculture and Natural Resources, in the exercise of such discretionary power and upon recommendation of the Bureau of Mines, the Office of Economic Coordination and other agencies of the Philippine Government, granted to the petitioner herein upon proper application therefor a Petroleum Refining Concession for a period of twenty-five (25) years, renewable for another twenty-five years. The exempting statute states categorically that "During the first five years following the granting of any concession (obviously under Republic Act No. 387) the concessionaire may import free of customs duty, all equipment, machinery, material, instruments, supplies and accessories." The use of the all inclusive term "any" before the word "concession" can have no other connotation but that the exempting statute includes and has intended to include within its purview all the five different kinds of petroleum concessions mentioned in Article 10 of Republic Act No. 387, provided the other requisites for exempting are also present. It appearing that the Petroleum Refining Concession granted to the petitioner herein is included by express provision within the general term "Petroleum Concession," we see no valid and justifiable reason for arbitrarily and discriminately excluding it from the benefits of the exempting statute as respondent's counsel would want us to do. "Ubi lex non distinguit, nec nos distinguere debemus." The term "any" is synonymous with "either" and is given the full force of "every" or "all" without discrimination, limitation or restrictions. (pp. 54-55 Vol. 3-A Permanent Edition, Words and Phrases.)

With respect to the third and last requisite for exemption, it will be noted in Article 103 of Republic Act No. 387, that the exemption from customs duty covers only importations of "all equipment, machinery, material, instruments, supplies and accessories." We hold that the importations of petroleum products made by the petitioner for its own use in the construction of its Batangas refinery could well fall under the classification of supplies. Gasoline and oil furnished drivers in a construction job have been held to fall under the category of "supplies". (West vs. Detroit Fidelity & Surety Co., 225 N.W. 673, 678, 118 Neb. 544 cited on page 790 Vol. 40, Words and Phrases.) In an opinion rendered on June 28, 1954, by the Secretary of Justice for the Secretary of Finance, it was opined that the same petitioner herein, as a petroleum refining concessionaire under Republic Act No. 387, is exempt under Article 103 of said Act from the payment of customs duty on its importations of crude oils refined in its petroleum refinery into gasoline, kerosene, diesel and fuel oils because such crude oils can be considered as "materials" within the purview of the exempting statute.

We hold, therefore, that even by just interpreting in its strict literal sense without in the least stretching the meaning and scope of the exempting provision of Republic Act No. 387, the petitioner herein is exempt from the payment of customs duty in the amount of ₱10,444.82 on its importations of petroleum products destined for its own use in the construction of its Batangas refinery during the period from June 24, 1953 to May 29, 1954.

From the practical standpoint. Respondent's counsel maintains that although the petitioner herein was granted a Petroleum Refining Concession by the Government under Republic Act No. 387, it is not actually contributing to the development of the petroleum resources of the Philippines, as is the purpose behind the enactment of the aforesaid Act, because the crude oil it refines is produced in foreign countries and not locally. Consequently, following the intention of Congress in enacting the Petroleum Act, respondent's counsel argues that the petitioner herein should not be given the benefit of exemption from customs duty. Respondent's counsel further maintains that by exempting the petitioner herein from the impost now in question, we would not only undermine the development of the petroleum resources of the Philippines and defeat the very purpose of Republic Act No. 387, but would also deprive the Government of a much-needed revenue to which it is lawfully entitled.

We could concede that as a petroleum refining concessionaire, the petitioner herein is not contributing directly to the exploration and exploitation of our petroleum resources. We cannot admit, however, that as such concessionaire, the petitioner is undermining the development of our petroleum resources. Indirectly, the petitioner is contributing immeasurably to the exploration of our hidden and undeveloped oil resources. For one thing, the establishment of a petroleum refinery in the Philippines, like the one operated by petitioner, has given the necessary incentive to those already engaged or who intend to engage in drilling oil wells in the Philippines as the Philippine Oil Development Co. and many others. Filipino capitalists who are by nature conservative and timid, would be encouraged to invest and keep ing on investing their capital in the venture with the assurance that should they finally strike oil of commercial value, they would have ready at their disposal a well-established, locally-operated refinery costing over ₱50,000,000.00 manned by experts. For their convenience, there will be no need for them to refine their crude oils abroad nor provide for themselves a refinery that would mean a drainage of capital and several years to construct. By way of analogy, the Philippine Charity Sweepstakes Office is definitely not engaged in breeding horses. However, it cannot be denied that its creation has given much encouragement to local horse fanciers, race horse owners and horse traders to breed good stock, what with the tempting prizes that are being offered to winners in Sweepstakes races and the exorbitant price that a potential Sweepstake winner would command in the horse market. Moreover, it would be most unreasonable as respondent's counsel seems to expect, for petitioner to refine locally produced crude oil before granting it the benefit of exemption from customs duty when, as everybody knows, we have not yet discovered crude oils of commercial value in this country.

The Director of Mines who is authorized under Republic Act No. 387, to administer and enforce said law, in his letter of May 9, 1953, Exhibit B, to the Secretary of Agriculture and Natural Resources recommending the approval of petitioner's application for a Petroleum Refining Concession, made the following observations:

> "The establishment of a petroleum refinery in the Philippines will undoubtedly contribute much to the economic welfare of the nation as it will be an additional source of taxes for the Government, afford more opportunities for employment of our people, and may reduce the cost of petroleum products which are basic needs and therefore essential in the progressive industrialization of our economy. The operation of such a refinery may also induce the intensification of the search for oil in the Philippines, where oil is recognized to exist, as then there will be a refinery available to turn into manufactured products the crude petroleum that may be found and produced locally. It may also be mentioned that the investment here of ₱60,000,000 for such a refinery will constitute another evi-

> dence of the confidence of foreign investors in the soundness of the Philippine peso and the existence locally of a favorable climate for foreign investment." (Underlining ours.)

From the moral standpoint. It appears from the letter, Exhibit I-1, of the Director of Mines to the National Economic Coordinator, dated May 8, 1952, as well as the letter, Exhibit I, dated May 27, 1952, of the Acting Administrator of Economic Coordination to the petitioner, that it was actually the Government through these two officials, that prodded the petitioner to apply for a Petroleum Refining Concession under Republic Act No. 387, when the initial negotiations were being held between the representatives of petitioner corporation and the authorities concerned for the establishment of a petroleum refinery in Batangas. The petitioner in good faith followed the suggestion and after complying with all the requisites of the law, was granted the required concession by the Secretary of Agriculture and Natural Resources on June 20, 1953. After obtaining the same, the petitioner, in compliance with the terms and conditions thereof, immediately undertook the construction of its Batangas refinery which took over a year to finish at a cost of over ₱50,000,000.00. There is not the least pretense on the part of the Government that the petitioner had at anytime violated the terms and conditions of its concession. The validity of the concession and the economic advantages that the country would derive from the grant as well as the good faith of petitioner in applying for the same were never questioned by any office or agency of the Philippine Government much less by private parties. On the contrary, in an opinion rendered by the Secretary of Justice on June 28, 1954, the validity of the concession was taken for granted when said official ruled that the petitioner is entitled to exemption under Article 103 of Republic Act No. 387, from customs duty during a period of five (5) years on its importations of crude oils refined in its petroleum refinery into gasoline, kerosene, diesel, and fuel oils. The Department of Finance has likewise recognized the validity of the concession when it disapproved an ordinance enacted by the Municipal Council of Bauan, Batangas, imposing Municipal License Taxes on oil refineries similar to the one operated by petitioner within the said municipality, on the ground that the petitioner herein, as a Petroleum Refining Concessionaire under Republic Act No. 387, is entitled to exemption under Article 102 of said Act from any provincial, municipal and other local taxes or levies (see Annex D, p. 94, C.T.A. rec.). The Secretary of Agriculture and Natural Resources, after mature deliberation and upon recommendation of the Bureau of Mines and the Office of Economic Coordination, approved the application of petitioner for a Petroleum Refining Concession on June 20, 1953, without entertaining any doubts as to its legal basis and economic advantages to the country. The Director of Mines in his letter, Exhibit I-1, dated May 8, 1952, to the National Economic Coordinator, has expressly recognized the right of petitioner to exemption from customs duty under Article 103 of Republic Act No. 387 during the first five years following the granting of its refinery concession on its importations of equipments, machineries, materials, instruments, supplies and accessories. Petitioner's counsel in his memorandum has called our attention to the fact that the Cabinet in its meeting held on July 31, 1957, approved a resolution authorizing the Standard Vaccum Oil Company (STANVAC) to establish and operate in the Province of Bataan a petroleum refinery similar to the one being operated by petitioner in the Province of Batangas under the same terms and conditions and on the basis of the same facts as exist with respect to petitioner's concession.

Under the circumstances, after the different offices and agencies of the Government including the highest executive advisory body of the President, have unanimously placed their stamp of approval on the matter, it certainly does not sit well on the lips of Government counsel to suggest, as in fact it has been suggested, that for the purpose of raising revenue, legitimate or otherwise, we should consider petitioner's concession as a worthless scrap of paper and with a stroke of the pen, cancel or revise it.

Obviously, respondent's counsel has overlooked the fact that the main issue in this case is not the validity of the concession granted to the petitioner, which is fait accompli, but whether or not petitioner is entitled to exemption from customs duty on its importations of petroleum products under the provisions of the law upon which the concession was granted. Undoubtedly, it is within the prerogative and sound discretion of respondent's counsel to sustain the correctness of respondent's decision with all the ingenuity at his command on some well-founded ground or grounds, legal and/or factual, but certainly not to the extent of putting on the spot three Department Heads, the Cabinet and the Republic of the Philippines itself, with such an unholy proposition. The Government should be the first one to set a good example by living up to its solemn commitments with private parties which in the instant case is embodied in the Deed (Petroleum Refining Concession) executed on June 20, 1953, by and between the Secretary of Agriculture and Natural Resources for the Republic of the Philippines, and the petitioner corporation through its Vice-President and Managing Director and Special Representative. It seems rather presumptuous and unfair on the part of respondent's counsel, simply to gain his objective, to make the sweeping and unfounded insinuation that all the other offices and agencies of the Government who had something to do with the granting of petitioner's concession had exceeded the scope of their authority and were ill-advised and mistaken. The general rule, under the principles of Administrative Law in force in this jurisdiction, is that decisions of administrative officers are entitled to much weight and respect, except when the former have acted without or in excess of their jurisdiction, or with grave abuse of discretion. (Commissioner of Customs vs. Romeo Valencia, G.R. No. L-7470, October 31, 1956.)

In paragraph 2 of respondent's answer, he interposed the special defense that under Section 1 of Republic Act No. 901, the petitioner is not exempt from payment of the questioned impost because it is expressly provided therein that "any company or person engaged in the processing of oil, gasoline, lubricants and other similar fuels and by-products x x x shall not be exempted from all taxes under the said Act", as accorded to "new and necessary industries." Apparently, respondent's counsel has realized the futility of pressing this particular defense because it was left untouched in his memorandum. On the other hand, on page 11 of petitioner's memorandum, this particular defense was aptly discussed and shown to be devoid of merit. Since this particular question was raised in issue and was partly relied upon as the basis of the decision appealed from, we consider it as no loss of time to resolve it for the benefit of the parties.

We fully agree with petitioner's contention that Section 1 of Republic Act No. 901, has not in anyway repealed by implication the exempting provisions of Republic Act No. 387.

The exemptions provided under Republic Act No. 901, cover all taxes including customs duties, which benefit, may be enjoyed only by persons, partnerships or corporations whose business qualify under the term "new and necessary industries", as defined in said Republic Act. On the other hand, the exemption provided under Article 103 of Republic Act No. 387, refer solely to petroleum concessionaires and on customs duties alone. Consequently, following the generally accepted rule of statutory construction, we could consider Republic Act No. 901 as a general law and Republic Act No. 387 as a special law, and as such, the latter should be made to prevail over the former. (Philippine Railway Co. vs. Collector of Internal Revenue, G.R. No. L-3859, March 25, 1952; In the Matter of the Estate of Petronila Baga vs. Philippine National Bank, G.R. No. L-9695, September 10, 1956.)

Moreover, we find no incompatibility nor inconsistency between the two laws. For where on the one hand, Republic Act No. 901 prohibits the grant of total exemption from all taxes to petroleum refineries or processors, on the other, Article 103 of Republic Act No. 387, merely grants to petroleum concessionaires a partial or limited exemption covering customs duties alone. It is evident that the prohibition from the granting of total exemption from all taxes by the first law (Republic Act No. 901) does not preclude the granting of a partial or limited exemption by the second (Republic Act No. 387). Thus, we do not see any clear repugnance between the two statutes to warrant the implication that the later in time repealed the other, for repeals by implication are not favored, and one act will not be held to repeal another if the two acts are susceptible to reconciliation. (Posadas vs. National City Bank of New York, 296 U.S. 497; Manila Railroad Co. vs. Rafferty, 40 Phil. 225-230.)

We find that part of the decision of respondent with respect to his assessment and refusal to refund the amount of ₱3,744.06 paid as customs duty on imported petroleum products which were subsequently sold to, and used by, the independent contractors who undertook the construction of petitioner's refinery, to be correct and in accordance with Paragraph 2, Article 103 of Republic Act No. 387, which provides that "No exemption shall be allowed on goods imported by the concessionaire for his personal use or that of any others; nor for sale nor for re-export x x x."

In the summary, Annex B (pp. 61-62 C.T.A. rec.), of the number of gallons of motor gasoline, diesel oil and kerosene turned over to the independent contractors who undertook the construction of petitioner's refinery in Batangas during the period from July 28, 1953 to May 29, 1954, Mr. J. J. Wolahan, Manager-Finance and Accounting Officer of petitioner corporation who prepared said statement, expressly admits therein that these imported petroleum products were sold to the contractors of his company. Petitioner's counsel himself admits on pages 11 and 12 of his memorandum, that the transactions in question partook of the nature of purchase and sale. For all legal intents and purposes, the contractors who undertook to construct the refinery acted independently of the petitioner, as owner, and were neither its agents nor employees (Articles 1727-1728, Civil Code of the Philippines; Fressel vs. Mariano Uy Chaco Sons & Co., 34 Phil. 122). In short, they could be considered as third parties or the public, acquiring by purchase the imported petroleum products of petitioner. The nature of the contract as one of purchase and sale under Article 1458 of the Civil Code was in no way altered by the mere fact that the contractors were given special discount by petitioner on the petroleum products which they bought for their own use in the construction job or that the purchase price for the goods bought was not actually paid by the contractors to the petitioner because by the process of bookkeeping entries and compensation (par. 5, Article 1231 Civil Code) the amount was deducted from the price of the construction contract or that even though the customs duty in question was billed out to the contractors, it was in turn billed back to them.

With respect to the amount of ₱3,744.06, we hold, therefore, that the petitioner is not entitled to its refund under the provision of Paragraph 2, Article 103 of Republic Act No. 387, and in this respect we affirm the decision appealed from.

WHEREFORE, the decision of the respondent Commissioner of ~~C~~ustoms of August 21, 1955, appealed from, should be, as it is hereby, modified.

Respondent is hereby ordered to refund to the petitioner, Caltex (Philippines) Inc. the amount of ₱10,444.82, representing customs duty on the petroleum products imported by it during the period from June 24, 1953 to May 29, 1954, for its own use in the construction of its Batangas refinery, the collection and refusal to refund the same being in contravention of Article 103 of Republic Act No. 387, without special pronouncement as to costs.

SO ORDERED.

Manila, Philippines, September 30, 1957.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge