December 29, 1964

CALTEX (PHILIPPINES) INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1342

ACTING COMMISSIONER OF
CUSTOMS,
Respondent.

x - - - - - - - - - - - - - - x

D E C I S I O N

This is an action for refund of the sum of ₱33,766.00 allegedly as overpayment of special import tax on 32 shipments of various articles imported during the months of January to September, 1959. The decision of the Collector of Customs of Cebu denying the claim for refund having been affirmed by the respondent Commissioner of Customs on January 28, 1963, the present petition for review was consequently interposed.

This case was submitted for decision on the stipulation of facts submitted by the parties, to wit:

> "1. Petitioner is a corporation organized and existing under the laws of the Philippines, having its principal office at 540 Padre Faura Street, Ermita, Manila; respondent is the incumbent and Acting Commissioner of Customs.
>
> "2. During the months of January to September, 1959, 32 shipments of various articles imported from abroad and consigned to petitioner arrived at the port of Cebu and were duly entered and declared with the Collector of Customs of said Port. The descriptions of these articles, the names and registry number of the importing vessels, their dates of arrival, and the customs entry number of these shipments are listed in Annex 'A' of the petition for review filed by petitioner in this case on February 27, 1963, which is incorporated herein by reference.

"3. The Collector of Customs of Cebu assessed and collected on these shipments the special import tax imposed by Republic Act 1394 at the rate of 17% in the total sum of ₱75,730.00 for importations which arrived during the months of January to June, 1959 and at the rate of 15.3% in the total sum of ₱49,408.00 for importations which arrived during the months of April to September, 1959, itemized in Annex 'A'.

"4. Within the time allowed by law, petitioner filed with the Collector of Cebu separate protests against the assessment and collection of special import tax on these shipments at the rates of 17% and 15.3% on the ground that the rate fixed for 1959 in section 1 of Republic Act 1394 was 11.9%.

"5. On April 22, 1960, the Collector of Cebu rendered his decision on petitioner's 32 protests (Cebu Protests Nos. 424, 466, 467, 468, 491, 492, 493, 494, 495, 496, 497, 498, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 574, 575, 587, 588, 589, 590, 591, 592, 597, and 604) holding that the rate of special import tax that should be levied and collected on these shipments was 15.3% pursuant to Proclamation No. 601 issued by the President of the Philippines on July 14, 1959, which partly reads as follows:

> 'NOW THEREFORE, I, Carlos P. Garcia, President of the Philippines, by virtue of the powers vested in me by law and pursuant to section 2(a) of Republic Act 1394, do hereby authorize the suspension of the reduction of the rate of Special Import Tax to 11.9 per cent, applicable to all goods, articles, or products imported or brought into the Philippines, irrespective of source, during the calendar year 1959, starting from January 1.'

"6. Within the time allowed by law, petitioner appealed this decision to respondent, who affirmed it in his decision rendered on January 28, 1963 (Customs Case No. 104) and was received by petitioner on February 1, 1963.

"7. Proclamation No. 601 was published in the July 27, 1959 issue of the Official Gazette (Vol. 55, p. 5691).

> "8. The total amount of special import tax assessed and collected on petitioner's 32 shipments is ₱125,138.00" (Exhibit "A", p. 33-34 CTA Rec.)

On March 10, 1964, the parties, in open court, likewise stipulated that if the correct rate of special import tax is 11.9%, the total amount due would be ₱91,322.00, so that there would be an excess of payment in the sum of ₱33,766.00; and that if the correct rate is 15.3%, the total amount due would be ₱117,567.00, and the excess payment would be ₱7,571.00.

The only issue raised for our consideration is whether or not the rate of special import tax applicable to the importations in question is 11.9%, as claimed by the petitioner, or 15.3%, as contended by respondent.

Basically, petitioner's contention is predicated on the theory that Proclamation No. 601 of the President of the Philippines, issued on July 14, 1959, became effective only on October 8, 1959, and that it was not retroactive. Accordingly, petitioner argues, the rate of special import tax applicable to the importations in question is 11.9%, as provided for in the schedule of rates prescribed in Section 1, Republic Act No. 1394.

Contrarywise, respondent claims that Proclamation No. 601 of the President of the Philippines, retroacted to January 1, 1959.

Petitioner's contention is well taken.

Section 2 of Republic Act No. 1394, approved on August 29, 1955, provides:

> "Sec. 2, (a)Notwithstanding the provisions of section one of this Act, if as a result of application of the schedule therein, the total revenue derived from the customs duties and from the special import tax on goods, articles or products imported from the United States is less in any calendar year than the proceeds from the exchange tax imposed under Republic Act numbered six hundred and one, as amended, on such goods, articles, or products during the calendar year 1955, the President may, by proclamation, suspend the reduction of the special import tax for the next <u>succeeding calendar year</u> as prescribed in the schedule, and, in order to restore the total revenue to be collected on the importation of United States goods, articles or products to the level of the exchange tax thereon during the calendar year 1955, increase the special import tax on all goods coming from any country for such <u>succeeding calendar year</u> to any previous rate provided for in this Act which is deemed necessary to restore the said revenue to the level attained in calendar year 1955.
>
> "(b) After the President shall have made adjustments in the rate of tax for any given year in accordance with paragraph (a) of this section, the tax to be imposed in subsequent years shall be as provided for the corresponding years in the schedule in section one: Provided, That the President may impose any higher rate of tax within the schedule other than that fixed for the corresponding year in order to cover anticipated deficiency in revenue arising from the operation of this Act." (Underlining supplied)

It will be noted from the above-quoted provision that the phrase "succeeding calendar year" has been used twice in Section 1, (a), Republic Act No. 1394. This repeated use of the said phrase clearly, manifestly, and unequivocably indicates the legislative intent to limit the effectivity of a higher rate of tax imposed by the President to a future date.

The power of the President of the Philippines to suspend the operation of the special rate of import tax emanates from Republic Act No. 1394, and, therefore, the exercise of such power cannot contravene the said enabling Act in the same way that a stream cannot rise over and above its source. Proclamation No. 601, series of 1959, cannot be accorded a retroactive operation, notwithstanding a contrary provision therein. When Congress authorizes the promulgation of administrative rules and regulations to implement a legislation, all that is required is that the regulation be germane to the objects and purposes of the law and must conform to such standards as the law prescribes (People v. Exconde, G.R. No. L-9820, August 30, 1957).

Republic Act No. 1394, being a revenue legislation which imposes a duty or burden, and, therefore, a derogation of a common right, should be strictly construed (Sutherland, Statutory Construction, 3rd ed. Secs. 6206-6701). In every case of doubt, tax laws must be construed most strongly against the government and in favor of the citizen because burdens are not to be imposed beyond what the statutes expressly and clearly import (Collector of Int. Revenue v. La Tondeña Inc., G.R. No. L-10431, July 31, 1962). The question of whether a statute is retroactive or prospective in operation, is one of legislative intent (Lingayen Gulf Electric Power Co., Inc. v. Domingo, CTA Cases Nos. 581 & 1302, Sept. 15, 1964; 50 Am Jur.

Secs. 478, citing Hassett v. Welch. 303 US 303, 82 L ed 858, 58 S. Ct. 559; Shwab v. Doyle, 258 US 529, 66 L ed, 747, 42 S. Ct. 391, 26 ALR 1494). And in determining such intent, courts have evolved a strict rule of construction against retrospective operation (State ex rel. Sparks v. Ban and T. Co. 43 Nev 388, 187 P 1002, citing RCL), and indulged in the presumption that the legislature intended statutes, or amendments thereof, to operate prospectively only and not retroactively (id. Hasset v. Welch), specially where the intention to make the statube retroactive is not stated clearly, explicitly, positively, unequivocally, unmistakably and unambiguously as to preclude all questions in regard thereto (Farmers Nat. Bank & T. Co. v. Berks County Real Estate Co. 333 Pa. 390, 5A (2d) 94, 121 ALR 905). Consequently, inasmuch as Rep. Act No. 1394 cannot be given a retroactive application, neither can Proclamation No. 601, series of 1959 be given the same treatment.)

/ Proclamation No. 601, series of 1959, became effective only after fifteen (15) days from the date of its publication in the Official Gazette (People v. Bonje 49 O. G. 1875-1881; People v. Que Po Lay, G.R. No. L-6791, March 29, 1954; 50 O.G. 4850; People v. Chan Hen CA-G.R. No. 8 8888-R, July 29, 1952; Tan Lim Te v. Workmens Compensation Commission, G.R. No. L-12324, Aug. 30, 1958; People v. Uy Kimpang. CA-G.R. No. L-144117-R, Feb. 8, 1956; Section 11, Rev. Administrative Code). Since it was published in the July 27, 1959 issue of the Official Gazette, (Vol. 55, p. 5691) and was released for circulation on September 22, 1959. (Exhibit "C"), therefore, it became operative only on October 8, 1959.

The thirty two (32) shipments of various articles in question were imported during the months of January to September, 1959 (Par. 2, Stipulation of Facts; also Annex "A" Petition). Consequently, the rate of tax applicable under Section 1, Republic Act No. 1394, is 11.9%, and not 15.3%, as claimed by respondent. Petitioner is entitled to the refund of the amount of ₱33,766.00, representing tax overpayment.

PREMISES CONSIDERED, respondent is hereby ordered to refund to the petitioner the sum of ₱33,766.00, without pronouncement as to costs.

SO ORDERED.

Quezon City, December 29, 1964.

AUGUSTO M. LUCIANO
Acting Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge