m

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LUZON STEVEDORING
CORPORATION,
Petitioner,

versus

Oct. 21/68

CTA CASE NO. 1484

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal of petitioner seeking from respondent the refund of ₱33,442.13 allegedly paid as compensating tax on various importations of engines and spare parts used in the maintenance and repair of petitioner's tugboat.

Petitioner, a domestic corporation engaged in lighterage and stevedoring business, owns numerous tankers, barges and tugboats which were used in the stevedoring business (pars. 1 & 2, Petition for Review, CTA rec., p. 1; Petitioner's Memo, id., p. 94; Resp. Memo., Id. p. 94, p. 69, Aug. 14, 1967, t.s.n.). In 1961 and 1962, petitioner imported engines, spare parts and other equipment to be used in maintaining and repairing its tugboats. On account thereof, petitioner paid advance sales and compensating taxes amounting to ₱30,846.00 before the release of the imported articles from custom's custody (Exhs. A to Q, including Exh. M which does not show payment of compensating tax, CTA rec., pp. 50-66). The advance sales and compensating taxes covered by Validating Receipts Nos. 4508, 44653, 44999, 45007 and 34003 amounting to ₱19,795.00 were paid on December 31, 1961 (Exhs. A to E, CTA rec., pp. 50-54). The records show, however, that respondent has not acted on any of petitioner's claims for refund. Consequently, petitioner appealed to this Court on January 2, 1964.

The principal issues submitted to this Court for resolution are the following:

> 1. Whether or not petitioner is entitled to exemption and refund of the compensating tax paid on various importations of engines, spare parts and equipment used in the repair and maintenance of its tugboats; and
>
> 2. Whether or not petitioner's right to the refund of ₱19,795.00 as compensating tax paid by petitioner on December 31, 1961 has prescribed under Section 309 of the Revenue Code, in relation to Section 306 of the same Code.

Petitioner contends that tugboats are embraced and included in the term cargo vessel under the tax-exemption provisions of Section 190 of the Revenue Code, as amended by Republic Act No. 3176. Petitioner, therefore, concluded that the engines, spare parts and equipment imported by it and used in the repair and maintenance of its tugboats are exempt from the compensating tax. This conclusion is reinforced by the argument that, in legal contemplation, the tugboat and a barge loaded with cargoes, the former towing the latter for loading and unloading of a vessel in port, constitute a single vessel.

Respondent opposed petitioner's contention and insisted that petitioner's tugboats are not "cargo vessel" because they were used exclusively for towing cargo or passenger vessel. A tugboat according to respondent was not designed and used for carrying and transporting either persons or goods as an independent undertaking. Respondent concluded, therefore, that tugboats are neither passenger nor cargo vessel within the purview of Section 190 of the Tax Code, as amended by Republic Act No. 3176, which provides as follows:

> SEC. 190. Compensating tax. -. . . And Provided further, That the tax imposed in this section shall not apply to articles to be used by the importer himself in the manufacture or preparation of articles subject to specific tax or those for consignment abroad and are to form part thereof or to articles to be used by the importer himself as passenger and/or cargo vessel, whether coastwise or ocean going, including engines and spare parts of said vessel. . . . (Rep. Act No. 3176; underscoring supplied.)

In order that the imported engines, spare parts and equipment to be used by the importer himself as passenger and/or cargo vessel may be declared exempt from the compensating tax, it is indispensable that the requirements of the amendatory law must be complied with, namely: (1) the engines and spare parts must be used by the importer himself as a passenger and/or cargo vessel; and (2) the said passenger and/or cargo vessel must be used in coastwise or ocean-going navigation.

The question may be asked: are tugboats the equivalent of cargo vessel within the meaning and purview of the term "cargo vessel" specified in Section 190 of the Tax Code, as amended? The answer to the question posed by the contending parties will resolve the legal question here at issue.

A tugboat or a tug is defined as follows:

> A <u>tugboat</u> is a strongly built, powerful steam or power vessel, used for towing and, now, also used for attendance on vessel. (Webster New International Dictionary, 2nd ed.)

> A <u>tugboat</u> is a diesel or steam power vessel designed primarily for moving large ships to and from piers for towing barges and lighters in harbors, rivers and canals. (Encyclopedia International Grolier, Vol. 18, p. 256.)

> A <u>tug</u> is a steam vessel built for towing, synonymous with tugboat. (Bouvier's Law Dictionary.)

While lexicographers are agreed that tugboat is a vessel, they have not considered it as passenger and/or cargo vessel. The amendatory provisions of Republic Act No. 3176, supra, limits the tax exemption from the compensating tax insofar as the imported engines and spare parts are to be used by the importer himself as operator of passenger and/or cargo vessel. Consequently, where the language of the amendatory statute is clear and unambiguous, it is purposeless to resort to the rules of statutory interpretation.

> Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion to resorting to the rules of statutory interpretation, and the court has no right to look for or impose another meaning. (See 50 Am. Jur. 225, pp. 205-206.)

At any rate, even assuming that tugboats are vessels capable of transporting, by themselves, passengers and/or cargoes, still no evidence was adduced by petitioner to prove that tugboats are passenger and/or cargo vessels used in the shipping industry as an independent business. On the contrary, all the pleadings of petitioner indicate that it is engaged in business as a stevedore, that is, the work of unloading and loading of a vessel in port. And towing of barges containing cargoes is a part of petitioner's undertaking as a stevedore. Even petitioner's trade name is indicative that its sole and principal business is stevedoring and lighterage, taxed under Section 191 of the National Internal Revenue Code as a contractor, and not a person who transport passengers or freight for hire which is taxed under Section 192 of the same Code as a common carrier by water. The former is subject to the percentage tax of 3% of its gross receipts while the latter is subject to 2% only of its gross receipts. In other words, our Revenue Code distinguished a tugboat used in the stevedoring business and a passenger and/or cargo vessel used by a common carrier by water. This distinction belies the pretension of petitioner that a tugboat and a passenger and/or cargo vessel is one and the same for tax purposes.

The legislative intent in amending Section 190 of the Tax Code by Republic Act No. 3176 is to provide incentive and inducements to bolster the shipping industry and not the business of stevedoring. This intention is manifested in the sponsorship speech of Senator Gil Puyat in pushing the enactment of the bill which became Republic Act No. 3176. He said:

> "Mr. President and gentlemen of the Senate. This is a bill that seeks to give relief to the ship-

> ping industry, and seeks to exempt them from the payment of excise tax, purchase of articles to be used by the importer himself as a passenger or cargo vessel, whether coastwise or oceangoing, including engines and spare parts of said vessels. Considering that our shipping industry is one of the most basic and one of the industries which, according to our Committee on Transportation, is operating on the basis of floating coffins, there is need for giving incentives and inducements to the people in the industry to invest in any vessel or in new equipment." (Legislative Journal.)

Inasmuch as petitioner is engaged in business as a stevedore and not in the shipping industry as a common carrier by water, we cannot classify petitioner's tugboats in the same category as passenger and/or cargo vessels in order to extend to petitioner the mantle of tax immunity envisioned by the amendatory law - Republic Act No. 3176. This notwithstanding, petitioner asserted that "One underlying principle of taxation is that tax laws should be liberally construed in favor of the taxpayers and strictly construed against the taxing power. In line with this principle, the literal interpretation given by the respondent on 'cargo vessel' as used in Section 190 of the National Internal Revenue Code deserves no serious consideration" (Petitioner's Memo., CTA rec. p. 97).

The argument that tax laws should be construed liberally in favor of the taxpayers and strictly against the taxing power is not applicable to laws involving the grant of tax exemption. The grant of tax exemption is an act of legislative grace because it is in derogation of the sovereign power of the State to tax. As such, laws granting tax exemption are construed strictly against the taxpayer and liberally in favor of the taxing power (Comm. of Internal Revenue v. Guerrero et al., G.R. No. L-20942, September 22, 1967; Phil. Acetylene Co., Inc. v. Comm. of Internal Revenue, G.R. No. L-19707, August 17, 1967; Abad v. Court of Tax Appeals et al., G.R. Nos. L-20834 and L-20903, October 19, 1966; ESSO Standard Eastern Inc. v. Actg. Comm. of Customs, G.R. No. L-21841, October 28, 1966; Comm. of Internal Revenue v. Visayan Electric Co., et al., G.R. No. L-22611, May 27, 1968).

After disposing of the first issue in favor of respondent and against petitioner, it is idle and purposeless to discuss the second question at issue.

WHEREFORE, finding petitioner's various claims for refund amounting to ₱33,442.13 without sufficient legal justification, the said claims have to be, as they are hereby, denied. With costs against petitioner.

SO ORDERED.

Quezon City, October 21, 1968.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge