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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

May 28, 1968

PHILIPPINE ACETYLENE COMPANY
Petitioner

versus

CTA CASE NO. 630

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent

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D E C I S I O N

Sometime in 1957, the petitioner imported from abroad one custombuilt liquefied petroleum gas tank on which the regular customs duties and compensating tax were paid. In addition to the regular customs duties, the Collector of Customs of Manila collected the sum of ₱3,683.00 as special import tax pursuant to Republic Act No. 1394 and the corresponding compensating tax on the said amount at the rate of 7% under Section 190 of the National Internal Revenue Code, as amended, in relation to Section 186 of said Code.

Contending that it is not liable for the said special import tax and the compensating tax thereon, petitioner filed a claim for refund of the special import tax with the Bureau of Customs and of the compensating tax with the Bureau of Internal Revenue. Both claims for refund were denied and the two cases were appealed to this Court. The present case involves solely the legality of the collection of the compensating tax in the sum of ₱258.00, the case relating to the special import tax having been previously decided by us in C. T. A. No. 1147, December 26, 1963, now pending appeal in the Supreme Court in G. R. No. L-22443.

Petitioner is engaged in the packaging of liquefied petroleum gas and selling the same. In packaging and selling liquefied petroleum gas, it makes use of custom-built liquefied petroleum gas tanks, which tanks are not sold with the liquefied petroleum gas.

Section 190 of the Revenue Code imposes a compensating tax on all articles imported from abroad at the rates prescribed in Sections 184, 185 and 186 of said Code, where the articles are to be used by the importer other than for sale, barter or exchange, or for use as raw materials in the manufacture of articles for sale, except articles which are by law expressly exempt from such tax. The compensating tax on an imported article is based on the total value (landed cost) thereof at the time it is received by the importer, including freight, postage, insurance, commission and all similar charges. There is no question that customs duties and other taxes imposed and collected in connection with an imported article are included in the total value or landed cost thereof. Petitioner contends, however, that while the special import tax is part of the landed cost, the same should not be included as part of the taxable value of the liquefied petroleum gas tank imported by it because it is exempt from such tax under Section 6 of Republic Act No. 1394. It is admitted on behalf of respondent that if petitioner is exempt from the special import tax, such tax is not part of the taxable value of the gas tank in question, and the compensating tax paid on said amount is refundable.

In Philippine Acetylene Company v. Commissioner of Customs, C. T. A. No. 1147, December 26, 1963, involving the legality of the special import tax of ₱3,683.00 collected on the aforesaid liquefied petroleum gas tank and on which the compensating tax of ₱258.00 involved in the instant case was also collected, this Court held that petitioner is exempt from said special import tax. To quote from said decision:

> Section 6 of Republic Act No. 1394 exempts from the special import tax "machinery, equipment, accessories and spare parts, for the use of industries." Petitioner contends that it is engaged in an industry. On the other hand, respondent believes that it is not so engaged; hence, it is not entitled to exemption from the special import tax on the importation of the aforesaid custom-built liquefied petroleum gas tank.
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> Respondent contends that petitioner is not engaged in an industry because it is not a manufacturer of liquefied petroleum gas; it is merely packaging liquefied petroleum gas purchased by it for the purpose of sale. In other

> words, it is merely a dealer. Respondent would limit the meaning of "industry" to the business of manufacturing.
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> The term "industry" has been defined as any department or branch of art, occupation or business conducted as a means of livelihood or for profit; expecially one which employs much labor and capital and is a distinct branch of trade. (Black's Law Dictionary.) The Secretary of Finance has interpreted "industry" as including any productive enterprise which employs relatively large amounts of capital and/or labor. (1st Indorsement of the Sec. of Finance to the Commissioner of Customs, Nov. 19, 1956, cited on page 5 of the Memorandum for Respondent.)
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> Tested by the foregoing definitions, we think that the term "industry" as used in Section 6 of Republic Act No. 1394 is not limited to manufacturers. A person engaged in commerce or trade employing much labor and capital is engaged in industry because the enterprise is productive of results, profits or benefits. Petitioner, employing much labor and capital, is engaged in packaging liquefied petroleum gas purchased by it and selling the same. It is, therefore, engaged in industry within the meaning of Section 6 of Republic Act No. 1394.

As petitioner is exempt from the special import tax on the gas tank in question, it follows that the collection of the compensating tax on the basis of said special import tax is not in accordance with law.

WHEREFORE, the decision appealed from is reversed, and respondent is hereby ordered to refund to petitioner the sum of ₱258.00. No costs.

SO ORDERED.

Quezon City, May 25, 1965.

ROMAN M. UMALI
Associate Judge

I CONCUR:

TEOFILO D. REYES, SR.
Presiding Judge