REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BAY VIEW HOTEL, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 2122

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

12/19/77

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

D E C I S I O N

On May 14, 1970, petitioner Bay View Hotel, Inc., filed a petition for review with this Court, alleging, among others, that:

1. Petitioner is a corporation organized and existing under the laws of the Republic of the Philippines with principal office at the Manila Hotel, Roxas Boulevard, Manila.

2. Sometime in the later part of 1966, petitioner imported industrial refrigeration equipment for installation at Bay View Hotel and Hotel Reviera. Petitioner paid 7% compensating tax on these importations and put up a Surety Bond in the amount of ₱364,128.38 to guaranty the payment of the same amount representing the 23% difference of the 30% compensating tax on said importations in order to effect the release of the equipment from the Bureau of Customs, although respondent Commissioner of Internal Revenue states in his answer to the petition for review that the surety bond filed already expired on May 17, 1970.

On January 16, 1969, respondent assessed and demanded from petitioner the payment of the above amount of ₱364,128.38. This assessment was contested by petitioner, through its auditors, Sycip, Gorres & Velayo & Co. under its letter dated September 17, 1969.

3. On April 15, 1970, petitioner, through its auditors, Sycip, Gorres, Velayo & Co., received the decision of respondent reiterating his assessment for the above amount of ₱364,128.38.

4. The foregoing assessment is erroneous, according to petitioner, for the reason that Bay View Hotel, Inc., is only subject to and liable for the 7% compensating tax on its imported equipment and components for central air-conditioning system under Section 190 of the National Internal Revenue Code in relation to Section 186 of the same Code, and not to the 30% rate imposed under Section 185-A of the Revenue Code; although as special and affirmative defense, respondent avers that the said assessment in the amount of ₱364,128.38 as deficiency compensating tax is in accordance with law and jurisprudence.

After this case was set for trial on the merits, petitioner filed on November 12, 1973 a motion for cancellation of hearing on the ground that the issue as to the applicable rate of compensating tax on imported industrial refrigeration equipment is the same as that involved in the earlier case of

Engineering Equipment and Supply Company vs. Commissioner of Internal Revenue, CTA Case No. 681, which was then pending before, and docketed in, the Supreme Court under G.R. No. L-27044 and No. L-27452, (Later decided by the Supreme Court on June 30, 1975, 64 SCRA 580). It would, therefore, be to the best interest of the parties and save the time of the Court if the decision of the Supreme Court in the said case of Engineering Equipment and Supply Company be awaited before any action is taken in this appeal.

After the Supreme Court decided the case of Engineering Equipment and Supply Company vs. Commissioner of Internal Revenue on June 30, 1975, petitioner filed a manifestation on February 2, 1977, submitting the instant appeal for decision on the basis of the records of the Bureau of Internal Revenue of the case, particularly its contesting letter dated September 17, 1969, considering that the only issue involved is the applicable rate of compensating tax on its importations of industrial refrigeration equipment installed in its hotels; and waiving its right to present additional evidence or to submit a memorandum. Respondent, however, requested that he be allowed, and was granted, to properly mark and formally present for admission his exhibits which are part of the Bureau of Internal Revenue records. After respondent's exhibits were marked, offered and admitted by the Court, the parties submitted this case for decision.

Is petitioner subject to and liable for the 7% compensating tax on its importations of industrial refrigeration equipment for central air conditioning installed at Bay View Hotel and Hotel Reviera under Section 190 of the National Internal Revenue Code in relation to Section 186 of the same Code, or to the 30% rate imposed under Section 185-A of the Revenue Code? If petitioner is subject to 30% compensating tax under Section 190 in relation to Section 185-A of the Revenue Code, then the assessment of respondent of ₱364,123.38 as deficiency compensating tax, which represents the 23% difference of 7% compensating tax already paid by petitioner and the 30% must have to be sustained.

In the case of Engineering Equipment and Supply Company vs. Commissioner of Internal Revenue, supra, which, as stated earlier, this instant appeal was held in abeyance until the Supreme Court has promulgated its decision thereon, because the issue as to the applicable rate of compensating tax on imported industrial refrigeration equipment is the same as that involved herein, the High Court ruled that imported air conditioning units, parts or accessories for use in the construction business and which are not sold, resold, bartered or exchanged are subject to the 30% compensating tax in accordance with Section 190 of the Revenue Code in relation to Section 185(m) of the same. We quote:

> . . . . Since it has been proved to our satisfaction that Engineering imported air conditioning units, parts or accessories thereof for use in its construction business and these items were never sold, resold, bartered or exchanged, Engineering should be held liable to pay taxes prescribed under Section 190 of the Code. This compensating tax is not a tax on the importation of goods but a tax on the use of imported goods not subject to sales tax. Engineering, therefore, should be held liable to the payment of 30% compensating tax in accordance with Section 190 of the Tax Code in relation to Section 185(m) of the same, but without the 50% mark up provided in Section 183(b). (The Commissioner of Internal Revenue vs. Engineering Equipment and Supply Company, et al., G.R. No. L-27044; Engineering Equipment and Supply Company vs. The Commissioner of Internal Revenue, et al., G.R. No. L-27452, June 30, 1975.)

As explained by this Court in the case of Candyman, Incorporated, vs. Commissioner of Internal Revenue, CTA Case No. 2149, July 15, 1976, certiorari denied, G.R. No. L-45070, February 25, 1977:

> At this juncture, it should be stated that in case G.R. No. L-27044, The Commissioner of Internal Revenue v. Engineering Equipment and Supply Company, et al., and case G.R. No. L-27452, Engineering Equipment and Supply Company v. The Commissioner of Internal Revenue, et al., June 30, 1975, the Supreme Court ruled that imported air-conditioning units, parts or accessories for use in construction business which were never sold, resold, bartered or exchanged are subject to the payment of 30% compensating tax in accordance with Section 190 of the Tax Code in relation to Section 185(m) of same Code.

Republic Act No. 3029 repealed subsection (m) of the Tax Code and inserted Section 185-A. In including articles capable of being used for air-conditioning purposes as taxable therein under paragraph (c), the legal provision uses the terms "air-conditioning units" in sub-section (c) and "air-conditioners" in the title thereof. Since Section 185-A(c) of the Code is a practically a reenactment of Section 185(m) without substantial change of phraseology, the ruling of the Supreme Court in the Engineering Equipment and Supply Company case, supra, would seem to be very much applicable to the present case.

The law seems clear and specific. It thus calls for its application as worded. "Air-conditioning units" or "air-conditioners" are specifically enumerated under Section 185-A of the Tax Code as subject to 30% tax. While it is true that the imported air-conditioning unit is of the central type and, in fact, had been installed as such in the factory of petitioner for use in the business of manufacturing its products, that alone will not transform it into an industrial machinery subject to 7% compensating tax. If the intention of the Legislature in enacting said legal provision was to impose a lower rate of tax on air-conditioning units or air-conditioners for industrial use, it should have added a proviso to that effect as in the case of electric fans and air-circulators wherein there is a clause that those specifically adopted for industrial use are excepted therefrom (see Section 185(i) of the Tax Code); or in the case of phonograph records wherein those used for educational purposes are excluded therefrom (Sec. 185(g), id.); and many other similar provisions of Section 185 of the Code. The applicable provisions, viewed as a whole, make it clear that air-conditioning units or air-conditioners, being specifically enumerated under Section 185-A, are subject to the tax provided therein regardless of the purpose or utility for which they are intended.

> The conclusion reached is rendered clearer when read in the light of the other provisions of the first paragraph of Section 185-A which further provide that: "Provided, however, That where the articles hereinbelow enumerated are locally manufactured and come under the classification of non-integrated manufactured products as hereinafter defined, the tax shall be fifteen per centum: Provided, further, That where the articles hereinbelow enumerated are locally manufactured and come under the classification of integrated manufactured products as hereinafter defined, the tax shall be seven per centum: x x x". Construed together, the above provisions yield no other conclusion but that the rate of the percentage tax on the sale, exchange, or similar tfansaction intended to transfer ownership of, or title to, refrigerators, air-conditioners, beverage coolers and others does not depend on the use or purpose for which they are intended but as to whether they are locally manufactured and come under the classification of non-integrated or integrated manufactured articles.

Accordingly, petitioner Bay View Hotel, Inc., is subject to and liable for the 30% compensating tax on its importations of industrial refrigeration equipment for central air conditioning system installed at Bay View Hotel and Hotel Reviera under Section 190 in relation to Section 185-A of the National Internal Revenue Code. The assessment of respondent Commissioner of Internal Revenue demanding from petitioner the payment of the amount of ₱364,128.38 representing the 23% difference of the 7% compensating tax already paid and the 30% should, therefore, be sustained.

DECISION -
C.T.A. CASE NO. 2122

WHEREFORE, the decision appealed from is hereby affirmed and petitioner is ordered to pay respondent the sum of ₱364,128.38 within thirty (30) days after the finality of this judgment.

SO ORDERED.

Quezon City, December 19, 1977.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge