REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

CALTEX (PHILIPPINES) INC.,
Petitioner,

- versus - C.T.A. CASE NO. 966

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

R E S O L U T I O N

The petitioner is seeking the refund of ₱5,781.68, representing alleged overpayment of compensating tax on various items of machinery, equipment, accessories and spare parts imported by it from 1958 to 1959. The facts giving rise to the alleged overpayment are stated in the amended petition for review, as follows:

x x x

> 5. That on several occasions in 1958 and 1959, petitioner imported from abroad various items of machinery, equipment, accessories and spare parts for use in its depots or installations and in the gasoline service stations, which are described and itemized in Annex "A" attached hereto, and made an integral part of this petition;
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> 6. That the Collector of Customs of Manila levied and collected on the aforesaid importations the special import tax imposed by Republic Act No. 1394 and included said tax in the landed cost of the imported merchandise for the purpose of computing the compensating tax due thereon under Section 190 of the National Internal Revenue Code; that respondent, through the Collector of Customs of Manila, collected from petitioner the compensating tax so computed and which petitioner paid

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on the dates and under the official receipts indicated in Annex "A";

7. That the aforesaid importations by petitioner were not subject to special tax on the ground that Section 6 of Republic Act No. 1394 exempts from special import tax "machinery, equipment, accessories and spare parts for the use of industries" and petitioner is engaged in a productive enterprise in which it has employed substantial amounts of capital and labor in connection with the refining, storage, handling and distribution of petroleum products;

8. That respondent, through the Collector of Customs of Manila, erroneously included the special import tax in the landed cost of the imported merchandise for purposes of computing the compensating tax due thereon and, as a consequence, excess compensating taxes were collected thereon from petitioner in the total sum of ₱5,781.68.

9. That petitioner filed claims for refund of the excess compensating taxes paid by it in the aforesaid sum of ₱5,781.68 and, until now, respondent has failed to refund to petitioner the aforesaid amount nor has he denied said claims of petitioner;

10. That inasmuch as the two-year prescriptive period for recovery of internal revenue taxes illegally or erroneously collected as provided in Section 306 of the National Internal Revenue Code will soon expire, petitioner has filed the instant appeal while awaiting respondent's decision on its claims for refund in order to protect its interests. (Pages 40-41, C.T.A. records.)

It appears that the alleged overpayment of the compensating tax was due to the collection of the special import tax on the said importations, pursuant to Republic Act No. 1394 and the inclusion of said tax in the landed cost of the imported merchandise in the computation of the compensating tax under Section 190 of the National Internal Revenue Code. Petitioner

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claims that, as it is exempt from the special import tax, the said tax should not be included as part of the landed cost of the merchandise in computing the compensating tax. There is no question that if petitioner is exempt from the special import tax, such tax is not a part of the landed cost of the merchandise and, consequently, petitioner made an overpayment of the compensating tax on said merchandise as a result of the inclusion of the special import tax as part of the landed cost thereof.

Petitioner filed protests against the levy and collection by the Collector of Customs of Manila of the special import tax in question, but it does not appear that the question has been finally resolved by the customs authorities.

The question in regard to the exemption of petitioner from or liability for the special import tax is a matter falling within the jurisdiction of the Bureau of Customs and not of the Bureau of Internal Revenue. Until and after the question in regard to the special import tax is resolved, the legality or correctness of the compensating tax collected on said merchandise cannot be determined.

WHEREFORE, the herein petition for review is hereby dismissed without prejudice. No pronouncement as to costs.

SO ORDERED.

Manila, August 31, 1962.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

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