REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LI SENG GIAP TRADING
CORPORATION,
Petitioner,

-versus- C.T.A. CASE No. 2040

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x- - - - - - - - - - - - - -x

D E C I S I O N

Petitioner has appealed from the decision of respondent Commissioner of Internal Revenue, dated August 18, 1969, holding it liable for deficiency advance sales tax of ₱1,167,144.26 on its 1963 importations of Mercedes Benz diesel engines, computed as follows:

	7%	100%
Total landed cost	₱243,839.85	₱ 607,102.25
Add: Mark-up	60,959.97	607,102.25
Amount subject to tax	₱304,799.82	₱1,214,204.50
Advance sales tax due thereon	₱ 21,335.99	₱1,214,204.50
Less: Advance sales tax paid	20,253.14	47,143.09
Total Amount Due & Demandable (Exh. "8", p. 70, BIR rec.)	₱ 82.85	₱1,167,061.41

Petitioner is a domestic corporation engaged in the importation of diesel engines from Germany. In 1963, petitioner imported from said country several sets of Mercedes Benz truck diesel engines and paid 7% advance sales tax of ₱20,253.14 based on the landed cost of ₱304,799.82, inclusive of 25% mark-up, thereby leaving a balance of ₱82.85

(it should be ₱1,082.85) still due the Government.

During the same year, petitioner likewise imported from the same country 130 units of Mercedes Benz diesel conversion engines type OM 636.935 for which it also paid 7% advance sales tax based on the landed cost thereof plus 25% mark-up under Section 186 of the National Internal Revenue Code, in relation to Section 183(b) of the same Code.

Petitioner was investigated by respondent's revenue examiners in connection with its 1963 importations of diesel engines to determine the deficiency advance sales tax, if any, due from it. On October 14, 1964, the said examiners recommended that a deficiency advance sales tax assessment of ₱1,167,144.26 be issued by respondent against the said petitioner because it only paid the advance sales tax at the rate of 7% based on the total landed cost of the imported diesel engines plus 25% mark-up, instead of 100% of the landed cost plus 100% mark-up. The said recommendation was approved by respondent by demanding from petitioner payment of the said deficiency advance sales tax of ₱1,167,144.26.

Petitioner disputed and assailed respondent's assessment by contending that it did not import the diesel engines in question as a producer or manufacturer of automobiles since it is engaged in trading; the said diesel engines are primarily truck conversion engines; and the said engines are not ready for vertical mounting in any Mercedes Benz car Model 180-D. On the basis of the foregoing allegations, petitioner claimed that it is only subject to 7% advance sales tax on the landed cost of the imported diesel engines plus the 25% mark-up prescribed under Sections 186 and 183(b) of the Tax Code, in relation to Republic Act No. 1188 which provides that trucks and jeeps are subject to advance sales tax imposed by Section 186 of the same Code.

The only question posed for resolution is whether the rate of advance sales tax imposable on the imported Mercedes Benz diesel engines type OM 636.935 is 100% of the gross money value thereof plus 100% mark-up, as prescribed in Sections 184(a) and 183(b) of the National Internal Revenue Code, or 7% of the said value plus 25% mark-up, as prescribed in Sections 186 and 183(b) of the same Code.

Respondent's examiners claimed that the imported diesel engines are ready for mounting for Mercedes Benz car Model 180-D. In fact, all 180-D Mercedes Benz cars running in Manila and suburbs are touring cars mounted with OM 636 diesel engines. The revenue examiners, therefore, concluded that the said engines may be mounted on trucks and jeeps but they remain as automobile engines because the criterion is not where the diesel engines are actually

250

used or mounted but the purpose for which they had been manufactured. As the Mercedes Benz car Model 180-D were sold to customers at a price of over ₱10,000.00 per unit, the automobile diesel engines in question are subject to 100% sales tax based on the landed cost thereof plus 100% mark-up prescribed by Sections 184(a) and 183(b) of the National Internal Revenue Code.

At the time material to the case at bar, the pertinent parts of Sections 184 and 186 of the Tax Code provide as follows:

> SEC. 184. Percentage tax on sales of jewelry, automobiles, toilet preparations, and others.- There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction for nominal or valuable considerations intended to transfer ownership of, or title to, the articles herein below enumerated a tax equivalent to fifty *per centum* of the gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer: *Provided*, That where the articles enumerated hereinbelow are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles:
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> (a) Automobile chassis and bodies, the selling price of which does not exceed seven thousand pesos: *Provided*, That where the selling price of an automobile exceeds seven thousand pesos but does not exceed ten thousand pesos the same shall be taxed at the rate of seventy-five *per centum* of such selling price: *And provided*, *further*, That where the selling price of an automobile exceeds ten thousand pesos the same shall be taxed at the rate of

> one hundred *per centum* of such selling price. A sale of automobile shall, for the purpose of this section, be considered to be a sale of the chassis and of the body together with parts and accessories with which the same are usually equipped: *Provided, however,* That parts and accessories of automobiles imported as replacements or as completely knocked down parts for the assembly of automobiles shall be subject to tax under section one hundred and eighty-six: *And provided, further,* That the total cost of such materials or parts on which tax has already been paid under section one hundred and eighty-six, as duly established, shall be deductible from the gross selling price or gross value in money of the assembled or manufactured articles. The term "automobile" as used herein shall not include motor vehicles classified as trucks.[1]
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> SEC. 186. *Percentage tax on sales of other articles.*- There shall be levied, assessed and collected once only on every original sale, barter, exchange, and similar transaction either for nominal or valuable considerations, intended to transfer ownership of, or title to, the articles not enumerated in sections one hundred and eighty-four and one hundred and eighty-five a tax equivalent to seven *per centum* of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer: *Provided,* That where the articles subject to tax under this section are manufactured out of materials likewise subject to tax under this section and section one hundred and eighty-nine, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles.

Under the foregoing provisions of Section 184(a) of the Tax Code, the imposition of the 100% sales tax on the imported diesel engines has no legal basis what-

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[1] (See NIRC, 1964 ed.)

soever. Even assuming arguendo that the diesel engines imported by petitioner are car engines, the worksheets of the investigating revenue examiners show that the total landed cost thereof, inclusive of the 100% mark-up, is far below ₱7,000.00 each. In fact, Supervising Revenue Examiner Benjamin Madrasto testified that the landed cost per unit of the disputed diesel engine, inclusive of 100% mark-up, is around ₱4,696.00. (T.s.n., p. 179, hearing of September 20, 1971.) This valuation, which is very much below ₱7,000.00, is supported by and reflected in the sales invoices of petitioner. (See pp. 75 to 166, CTA rec.)

Section 184(a) of the Tax Code then in force in 1963 prescribes the rates of sales tax on automobiles as follows:

SELLING PRICE	RATE OF SALES TAX
₱7,000.00 or below	50%
₱7,001.00 to ₱10,000.00	75%
₱10,001.00 up	100%

On the basis of the provisions of Section 184(a) of the Tax Code as illustrated above, respondent could only assess petitioner a deficiency sales tax of ₱559,959.16, instead of the staggering amount of ₱1,167,144.26, computed as follows:

Total landed cost	₱ 607,102.25
Add: Mark-up of 100% . . .	607,102.25
TOTAL	₱1,214,204.50
50% sales tax due thereon .	₱ 607,102.25
Less: advance sales tax paid	47,143.09
BALANCE	₱ 559,959.16

253

Bases of respondent's assessment under Section 184(a) of the Tax Code.

Respondent's assessment for deficiency advance sales tax is premised on petitioner's brochure of the OM 636 type of Mercedes Benz conversion diesel engines (Exhibit 4), the pertinent portion of which reads as follows:

> "MORE THAN 300,000 OF THESE ENGINES HAVE BEEN BUILT INTO TRUCKS, LIGHT BUSES, THE UMINOG AND ABOVE ALL THE 180-D TOURING CAR." (Underscoring supplied.)

Respondent's examiners also relied on petitioner's Sales Invoice No. 2276 dated Oct. 18, 1963 (Exh. P-25 of petitioner, CTA rec., p. 97) showing that petitioner sold for ₱4,702.50 to A. D. Santos, Inc., a taxi company, a unit of Mercedes Benz diesel engine of the OM type 636.935. Supervising Revenue Examiner Benjamin Madrasto testified that his companion, Supervising Revenue Examiner Luis Blaza, inquired from the taxi company about the diesel engine in question and he was informed that the same was used by the said company. (T.s.n., p. 146.) However, no evidence whatsoever was submitted to this Court showing that the said diesel engine was ready for mounting or that it was mounted on a taxicab owned by A. D. Santos, Inc. Neither was the Registration Certificate of the taxicab alluded to, or a certified true copy thereof, presented in evidence to prove the type and kind of the engine used and the fuel needed for its operation.

254

The only justification for the assessment of the deficiency sales tax is the allegation of respondent's examiners that the Mercedes Benz diesel engines of the OM type 636.935 were manufactured as car engines and, therefore, it is immaterial whether the same were later on mounted in trucks and jeepneys. In fact, even Mercedes Benz truck engines of the OM type 636 were included in the revenue examiners' deficiency sales tax assessment on the theory stated above. (See Exh. A, p. 31, CTA rec.)

Fallacy of respondent's theory.

Respondent's examiners took for granted that Mercedes Benz diesel engines of the type OM 636 are exclusively made for automobile engines. No evidence, however, was introduced on this point except the inference derived from petitioner's brochure which indicates that the said engines were also built for Mercedes Benz 180-D touring cars. The same brochure likewise indicates that the diesel engines in question are multi-purpose conversion engines suitable for trucks, light buses and the "uminog."

Mr. Rudolf Christian, an engineer of Germany and a qualified and veteran technician of Daimler Benz, A. G., manufacturer of the conversion diesel engines in question, testified as an expert witness that the said diesel engines have been used in lift trucks, agricultural and building machinery, excavators of all kinds, speed boats and motor launches, power supplier for cooling systems,

755

generating plants, jeepney engines, delivery panels and vans. The use of said diesel engines for rugged jeepney operations under extreme weather changes and strenuous stop-and-go traffic conditions was well publicized by the local distributor of the said diesel engines. (Exhs. S, S-1, S-2 and S-3, CTA rec., p. 169 and back thereof.)

Respondent's examiners considered the said engines without the rectangular metal framework and its body as automobile classified as a luxury item under Section 184(a) of the Tax Code. On the other hand, the articles enumerated under Sections 185 and 185(a) are classified as semi-luxury goods while those enumerated under Section 186 of the same Code are considered ordinary goods.

The sale of automobile includes the chassis and body together with parts and accessories with which the same are usually equipped. This interpretation is clear from Section 184(a) of the Tax Code which provides, among others, as follows:

> "x x x. A sale of automobile shall, for the purpose of this section, be considered to be a sale of the chassis and of the body together with parts and accessories with which the same are usually equipped: x x."

The same interpretation was given in the opinion of the Secretary of Finance regarding importations of automobile, whether already assembled or chassis and body ready for mounting. The said opinion is found in BIR General Circular No. V-208, dated May 24, 1956, the pertinent portion of which reads as follows:

"GENERAL CIRCULAR NO. V-208

"To all internal revenue officers and others concerned:

" For the information and guidance of all internal revenue officers and others concerned, there is quoted hereunder an opinion of the Secretary of Finance contained in his letter to this Office dated May 24, 1956, regarding the advance sales tax collectible on importations of automobile, whether already assembled or chassis and bodies ready for mounting under sections 184 and 186 of the National Internal Revenue Code, as follows:

'With reference to my letter to you dated February 24, 1956, regarding the advanced sales taxes which are applicable to imported automobiles, I wish to clarify and reiterate my view that importations of assembled automobiles for resale as well as importations of chassis and bodies ready for mounting, are subject to the advanced sales taxes prescribed under sections 184 and 185 of the Tax Code.

'It should be carefully noted that this refers to importations of automobiles already assembled and chassis and bodies ready for mounting. x x.

'For the purpose of this letter, chassis and bodies may be defined as follows:

'(1) Chassis as applied to a motor car means: "The rectangular metal framework, as distinguished from its body and seats, but including its accessories for propulsion, as the tanks, motor, etc., and general running gear." (Kansas City Automobile School Co. vs. Holcker Elberg Mfg. Co., No. 182 S.W. 759, 761.)

257

'(2) Body as applied to a motor car means: "The metal shell, interior trim, seats, cowl, hood, fenders, grille, doors, windows and windshield, etc."

'xx xx xx.

'Importations of automobiles, whether already assembled or chassis and bodies ready for mounting, come under sections 184 and 185. Importations of automobile parts and accessories and CKD component parts come under section 186.'"

The same view finds ample support in the conference report, quoted below, of the committee which prepared House Bill No. 5809 (now Republic Act No. 1612):

"Report consolidates into one paragraph all provisions covering tax on automobile chassis and bodies, so as to avoid confusion in the manner and rate of taxing locally-assembled cars. With that, Mr. President, there has been confusion in the manner of imposing tax on assembled cars here. The spare parts were made to pay taxes, and when assembled cars were sold, a luxury tax is imposed on the assembled cars, so that in effect, the industry is paying two kinds of taxes. With this conference report, we consolidated all these provisions, so that the tax paid on spare parts are deductible when these parts are assembled into finished cars. Otherwise, the assembly industry here would be paying two kinds of taxes, which is contrary to the basic philosophy of our taxation system; and second, with that kind of double taxation, these cars would have to be sold at exhorbitant prices. x x x." -(Senate Congressional Record, July 11, 1956, p. 305.)

It is quite evident that it was the legislative purpose to tax the chassis and body of an automobile ready for mounting under Section 184(a) of the Tax Code. In this

258

case, however, the Mercedes Benz diesel engines of the type OM 636 sold by petitioner to its customers is in the nature of a chassis without body as described in the Commercial Invoice, which reads as follows:

> Ten (10) units Mercedes Benz Diesel Engines Type OM 636, 40 HP, complete with clutch, floor shift type gear box and conversion parts, packed. (See Exh. B, CTA rec., p. 34.)

The legal requirement that the sale of the chassis and body constitutes the sale of an a utomobile is understandable. The sale of the chassis without the body is not a finished product of an automobile; otherwise, each set is useless without the other as an automobile. The chassis alone, like the Mercedes Benz diesel engine here in question, cannot be registered with the Land Transportation Commission as a car without the body of an automobile. If the same diesel engine is mounted in the body of a jeep or truck, the same will be registered either as a jeep or truck but not as an automobile. This discussion and consequent distinction between the chassis and body of a motor vehicle is deemed indispensable in overthrowing respondent's theory that the Mercedes Benz diesel engines are taxable as automobile engines because they have been exclusively manufactured for Mercedes Benz touring car 180-D. Respondent's view would run counter to the purpose and spirit of Republic Act No. 1188 which provides as follows:

759

"Sec. 1. For purposes of the imposition and collection of the sales tax, the motor vehicle technically denominated 'one-fourth ton truck, four by four' and popularly known as the jeep, is hereby classified as a truck, and every original sale, barter, exchange or similar transaction involving the transfer of ownership of, or title to, said motor vehicle shall be subject to the payment of the tax provided for in section one hundred eighty-six of the National Internal Revenue Code, as amended."

Respondent, however, pointed out in his memorandum that the decision of the Supreme Court in the case of Jose F. Zamora (Golden Taxicab) vs. The Court of Tax Appeals, et al., G. R. No. 23272, is squarely applicable to the case at bar. His quotation, found on page 17 of the said memorandum, is reproduced hereunder:

"It is argued that section 190 of the National Internal Revenue Code 'does not make a distinction between the importer who is a manufacturer or car assembler and an importer who is not a manufacturer or assembler.' However, 'parts and accessories of automobiles' are subject to the 7% rate, under section 186, by virtue only of the first proviso in subdivision (a) of section 184, which limits the application of said section 186 to 'parts and accessories of automobiles imported as replacements or as completely knocked down parts for the assembly or automobiles x x x.' Indeed, this qualification is in consonance with the spirit and letter of section 186, which provides that the rate therein fixed shall be 'paid by the manufacturer or producer.'

In other words, it is not intended for the end-user or consumer. xx xx"

"Since the petitioner is not engaged in the manufacturer or assembly of automobiles, it being a trading firm engaged in the buy-and-sell of automobile engines, the 7% rate

260

> is not applicable to the engines in question which it imported as "replacement engines." (Memo. for Respondent, CTA rec., p. 244.)

In the Zamora case, our Supreme Court ruled that parts and accessories of automobiles imported by an end-user like the Golden Taxicab are subject to the 50% advance sales tax <u>without mark-up</u>, imposed by Section 184(a) of the Tax Code. On the other hand, manufacturer or producer of automobiles are subject to the 7% sales tax prescribed by Section 186 of the same Code on similar importations.

In the case at bar, however, petitioner is neither the "end-user or consumer" nor "manufacturer or producer" of parts and accessories of automobiles. As a trader, therefore, petitioner is not within the scope of the Supreme Court ruling. Moreover, the rationale of the said ruling is not applicable to this case. The payment of the 7% advance sales tax made by petitioner herein based on the landed cost of the imported diesel engines, <u>plus 25% mark-up</u>, will not open the door for the circumvantion of the law imposing a higher rate of sales tax because, if the said engines were sold to a manufacturer or producer and converted into an automobile, the original sale thereof is subject to the higher rate of sales tax imposed by Section 184(a) of the Tax Code. If the same engines were sold to an end-user or consumer, the same cannot be classified as an automobile without body and chassis as specified by law.

This case differs from the Zamora case, supra, because the imported Ford Consul Sedan involved therein are automobiles in completely knocked down (KD) parts while the diesel engines imported by petitioner are multi-purpose conversion engines which were not ready for mounting in an automobile. Moreover, no evidence was adduced by respondent's examiners that the engines in question were parts and accessories of an automobile and they were used as such therein.

Evidence on the conversion diesel engines type OM 636.935.

After discussing the evidence and theory of respondent that the OM 636.935 type are automobile engines, we are going to evaluate the evidence of petitioner. Mr. Rudolf Christian, petitioner's expert witness, testified that the series of "OM 636" diesel engines is a mere "number or identification of the prototype." (T.s.n., p. 28, hearing of Sept. 14, 1971.) In fact, OM 636.915 engine was also used in Mercedes Benz car 170-D; OM 636.916 was used in 170-DA car; 636.918 was used in 170-DS car; 636.931 was used in 170S-D car; and OM 636.930 was used in 180-D car. In 1958 to 1960, OM 621.910 was also used in Mercedes Benz car 180-D. The foregoing data were taken by the expert witness from the Mercedes Benz Technical Data for Workshop Use in Passenger Car, 1957 and 1960 editions. (Exh. R-2, CTA rec., pp. 171-177-a.)

762

Petitioner's witness distinguished OM 636.930 diesel engines which were used with Mercedes Benz car 180-D from the OM 636.935 diesel engines here at issue. They differ in revolution, construction, camshaft, injection pump, oil pan, oil pump and in mounting the engine. While OM 636.930 engine is ready for mounting in 180-D Mercedes Benz car, OM 636.935 engine is not ready for mounting in a car without modification, alteration and additional expenses because type OM 636.935 is a multi-purpose conversion engine.

From the testimonial and documentary evidence adduced by petitioner, which were not refuted by respondent, we are constrained to hold that the Mercedes Benz diesel engines type OM 636.935 here in question are not automobile engines; they are truck or conversion engines for multiple purpose. But even assuming arguendo that the said engines are ready for mounting as automobile engines without the necessity of alteration and modification, no evidence whatsoever was presented by respondent's counsel that the same were sold for their conversion into automobile.

With respect to the deficiency sales tax of ₱82.85 (it should be ₱1,082.85), the payment of which was not disputed by petitioner, we hold petitioner liable therefor.

765

WHEREFORE, we hold petitioner subject to the 7% advance sales tax imposed under Section 186 of the Tax Code based on the landed cost of the imported Mercedes Benz conversion diesel engines type OM 636.935 plus 25% mark-up imposed by Section 183(b) of the same Code. Consequently, the decision of respondent Commissioner of Internal Revenue appealed from is reversed and his deficiency sales tax assessment against petitioner is hereby cancelled, except the amount of ₱1,082.85 still due from petitioner. Without pronouncement as to costs.

SO ORDERED.

Quezon City, April 12, 1973.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge

764