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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

C & A CONSTRUCTION
CO., INC.,
Petitioner,

versus — CTA CASE NO. 970

COMMISSIONER OF
INTERNAL REVENUE and
COMMISSIONER OF CUSTOMS,
Respondents.

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

EASTERN SHIPPING LINES, INC.,
Petitioner,

versus — CTA CASES NOS. 975 and 989

COMMISSIONER OF INTERNAL
REVENUE and COMMISSIONER
OF CUSTOMS,
Respondents.

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

TRANSOCEAN TRANSPORT
CORPORATION,
Petitioner,

August 10/67

versus — CTA CASE NO. 990

COMMISSIONER OF INTERNAL
REVENUE and COMMISSIONER
OF CUSTOMS,
Respondents.

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

D E C I S I O N

The petitioners have appealed from the decisions of respondent Commissioner of Internal Revenue holding them liable for the payment of compensating tax on vessels acquired from the Reparations Commission.

In CTA Case No. 970, C & A Construction Co., Inc., acquired from the Reparations Commission under a temporary contract for utilization nine (9) vessels: the "Manila Bay", "Sta. Cecilia", "Marites Asuncion", "Digna Corazon", "Cacon I", "Cacon II", "Cacon III", "Cacon IV", and "C & A", for the price of ₱2,600,000.00 on which the compensating tax of ₱240,974.00 was assessed. The purchase price is payable in ten equal yearly installments at 3% interest per annum, with the first installment payable two years after delivery of the vessels to petitioner. Until the whole purchase price is paid, title to the vessels is retained by the Reparations Commission.

In CTA Case No. 975, Eastern Shipping Lines, Inc. acquired from the Reparations Commission under a contract of conditional purchase and sale the ocean-going vessel M/X "Eastern Comet" for the price of ₱3,555,792.08 on which the compensating tax of ₱249,936.00 was assessed. The purchase price is payable in ten equal yearly installments of ₱375,162.93 with interest at 3% per annum, beginning August 31, 1962. Title to the vessel is retained by the Reparations Commission until the whole purchase price is paid.

In CTA Case No. 989, the same petitioner Eastern Shipping Lines, Inc. acquired from the

Reparations Commission under a contract for utilization the ocean-going vessel M/V "Eastern Galaxy" for ₱6,496,388.88 on which the compensating tax of ₱462,190.00 was assessed. The purchase price is also payable in ten equal yearly installments at 3% interest per annum, with the first installment payable two years after delivery of the vessel to petitioner. Until the whole purchase price is paid, title to the vessel is also retained by the Reparations Commission.

In CTA Case No. 990, Transocean Transport Corporation acquired from the Reparations Commission under a contract of conditional purchase and sale the ocean-going vessel M/V "Transocean Merchant" for ₱6,498,468.88 on which the compensating tax of ₱503,551.00 was assessed. The purchase price is payable in ten equal yearly installments of ₱685,636.94, with interest at 3% per annum, beginning August 31, 1963. Similarly, until the whole purchase price is paid, title to the vessel is retained by the Reparations Commission.

In all these cases, petitioners contested the validity of the assessments but respondent Commissioner of Internal Revenue refused to reconsider them. Accordingly, respondent Commissioner of Customs refused to release and deliver the vessels to petitioners without the compensating tax being first paid. Hence, petitioners have appealed. At the same time, petitioners asked that the vessels be delivered to them without prepayment of the compensating tax upon the filing of adequate bonds to secure payment of the tax in case they are finally held liable therefor. In separate resolutions of different dates, this Court issued writs of preliminary injunction against respondents and ordered the release of said vessels upon the filing of surety bonds to guarantee payment of the amounts assessed against petitioners.

While the cases were pending trial, Republic Act No. 3079 was enacted amending Republic Act No. 1789. Under the latter statute, buyers of goods acquired from the Reparations Commission are exempt from the compensating tax. Section 20 thereof provides that any private party or end-user who had previously acquired reparations goods may apply for the renovation of his utilization contract with the Commission in order to avail of any provision of the amendatory Act which is favorable to him under the new law. Accordingly, petitioners herein applied for the renovation of their utilization contracts with the Reparations Commission which were granted. Then they filed their respective supplemental petitions.

Subsequent to the filing of respondents' answers to the supplemental petitions, this Court, upon motion of the parties, postponed the hearing of these cases to enable the parties to submit a stipulation of facts.

Thereafter, the parties, in a joint manifestation and stipulation, agreed to hold in abeyance the proceedings in these cases until such time as the Supreme Court shall have decided the cases of Commissioner of Internal Revenue and Commissioner of Customs v. Botelho Shipping Corporation and General Shipping Co., Inc., G.R. Nos. L-21633-34, which involve the same facts and issue, and to abide by the decision in said cases.

It appears that the said case of Commissioner of Internal Revenue and Commissioner of Customs v. Botelho Shipping Corporation and General Shipping Co., Inc., G.R. Nos. L-21633-34 have already been finally decided by the Supreme Court in a decision promulgated June 29, 1967, wherein it was held that vessels acquired from the Reparations Commission prior to the approval of Republic Act No. 3079 are also exempt from the compensating tax if the purchasers applied for renovation of their utilization contracts and assumed the new obligations imposed upon said purchasers under the new law. Said the Supreme Court -

It is true that Republic Act No. 3079 does not explicitly declare that those who purchased reparations goods prior to June 17, 1961, are exempt from the compensating tax. It does not say so, because they do not really enjoy such exemption, unless they comply with the proviso in Section 20 of said Act, by applying for the renovation of their respective utilization contracts, "in order to avail of any provision of the Amendatory Act which is more favorable" to the applicant. In other words, it is manifest, from the language of said section 20, that the same intended to give such buyers the opportunity to be treated "in like manner and to the same extent as an end-user filing his application after the approval of this Amendatory Act." Like the "most-favored-nation-clause" in international agreements, the aforementioned section 20 thus seeks, not to discriminate or to create an exemption or exception, but to abolish the discrimination, exemption or exception that would otherwise result, in favor of the end-user who bought after June 17, 1961 and against one who bought prior thereto. Indeed, it is difficult to find a substantial justification for the distinction between the one and the other. As correctly held by the Tax Court in Philippine Ace Lines, Inc. v. Commissioner of Internal Revenue (C. T. A. Nos. 964 and 984, January 25, 1963), and reiterated in the cases under consideration:

> "x x x In providing that the favorable provision of Republic Act No. 3079 shall be available to applicants for renovation of their utilization contracts, on condition that said applicants shall voluntarily assume all the new obligations provided in the new law, the law intends to place persons who acquired reparations goods before the enact-

ment of the amendatory Act on the same footing as those who acquire reparations goods after its enactment. This is so because of the provision that once an application for renovation of a utilization contract has been approved, the favorable provisions of said Act shall be available to the applicant 'in like manner and to the same extent, as an end-user filing his application after the approval of this amendatory Act.' To deny exemption from compensating tax to one whose utilization contract has been renovated, while granting the exemption to one who files an application for acquisition of reparations goods after the approval of the new law, would be contrary to the express mandate of the new law, that they both be subject to the same privileges in like manner and to the same extent. It would be manifest distortion of the literal meaning and purpose of the new law."

Both parties manifested their willingness to abide by the decision of the Supreme Court in said cases of Botelho Shipping Corporation and General Shipping Co., Inc.

WHEREFORE, the assessments for compensating taxes against petitioners in the above-entitled cases should be, as they are hereby, set aside, and the surety bonds filed by petitioners are hereby cancelled. Without pronouncement as to costs.

SO ORDERED.

Quezon City, August 10, 1967.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge