REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHATTRADE DEVELOPMENT
CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3038

EFREN I. PLANA,
COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

3/19/81

D E C I S I O N

Pursuant to a ruling dated September 28, 1978 of the Bureau of Internal Revenue holding, among others, that imported canned sardines and other canned food products are invariably subject to 10% advance sales tax, petitioner Chattrade Development Corporation was assessed by the Bureau of Customs deficiency advance sales tax in the amount of ₱62,031.00, representing the difference between 10% and 5% of the tax, on its importation of 7,655 cartons of Ligo canned sardines from Japan which arrived on September 8, 1978. A request for reconsideration of the ruling and withdrawal of the deficiency assessment on the ground that imported canned fish like sardines and mackerel should be subject to 5% advance sales tax pursuant to Section 193(b) in relation to Section 201 of the National Internal Revenue Code having been denied by respondent

Commissioner of Internal Revenue, petitioner appealed to this Court.

The following are the facts, which are alleged in the petition for review and admitted in the answer or supported by the evidence, that gave rise to the present controversy:

1. Petitioner is a domestic corporation organized and existing under the laws of the Philippines, with principal office at 622 Elcano, Binondo, Manila; while respondent is the incumbent Commissioner of Internal Revenue and may be served with summons at the Bureau of Internal Revenue Building, Diliman, Quezon City.

2. It is engaged principally in the importation business and secondarily in real estate.

3. On its importations of canned fish prior to April 21, 1978, petitioner was paying 5% advance sales tax plus 25% mark-up on the total landed cost thereof pursuant to Section 201 of the National Internal Revenue Code.

4. Under Presidential Decree No. 1358, which took effect on April 21, 1978, Section 201(a) was amended by providing that locally processed meat, milk, fish and other sea foods shall be subject to 1% sales tax.

5. On September 8, 1978, petitioner's imported shipment of 7,655 cartons of Ligo canned fish from Japan arrived in Manila on which it paid the amount of ₱62,030.00 as advance sales tax at the rate of 5% based on the total landed cost plus 25% mark-up, pursuant to Section 201(a) of the National Internal Revenue Code.

6. In his letter dated September 28, 1978, respondent advised the Commissioner of Customs that imported canned sardines and other canned food products are subject to the 10% advance sales tax, pursuant to Section 201(a), as amended by Presidential Decree No. 1358 which took effect on April 21, 1978.

7. On the strength of said letter of respondent, the Collector of Customs, Port of Manila, demanded from herein petitioner the payment of the sum of ₱62,031.00 as deficiency advance sales tax on the above imported shipment of 7,655 cartons of Ligo canned fish under Import Entry No. 90455-78.

8. In the letter dated March 28, 1979, counsel for petitioner requested respondent to revoke his ruling dated September 28, 1978 to the Commissioner of Customs and the withdrawal of the deficiency assessment mentioned in paragraph 7

hereof.

9. In his letter dated September 24, 1979, respondent denied the request of petitioner and insisted in the collection of 10% advance sales tax on importations of canned fish by petitioner.

10. The deficiency assessment of ₱62,031.00 represents the difference between 10% and 5% of the advance sales tax due on the shipment of 7,655 cartons of Ligo canned sardines from Japan.

11. The aforesaid decision of respondent dated September 24, 1979 was received by counsel for petitioner on October 5, 1979.

Petitioner Chattrade Development Corporation now poses a single issue before us: Whether its importation of canned fish is subject to 5% or 10% advance sales tax. Petitioner asserts that the shipment should be subject to 5% advance sales tax while respondent insists that it is liable to 10% tax.

In denying the request for reconsideration of the deficiency advance sales tax assessed against petitioner amounting to ₱62,031.00 representing the difference between 10% and 5% advance sales tax on imported canned sardines, respondent held that the articles enumerated in paragraphs (a), (c), (d) and (e) of Section 201 of the National Internal Revenue

Code, in order to be subject to the 5% percentage tax imposed therein, must be "locally" processed or manufactured. Since imported canned sardines are not locally processed or manufactured, they are subject to the 10% sales tax imposed in Section 199 of the same Code.

Petitioner, on the other hand, contends that:

(a) The 5% rate specified under Section 201 of the Code is the same rate of percentage tax (advance sales tax) on imported canned sardines. Since there is no other rate under Section 201 except 5%, and locally processed fish cannot be imported, the imported articles referred to under Section 193(b) of the same Code must be processed meat, milk, fish and other sea foods.

(b) If it was the intention to levy the 10% rate on imported fish, that should have been provided in Section 201 in the same manner that it was provided in Sections 197 and 198 of the National Internal Revenue Code.

(c) The imposition of the 5% rate on canned fish is supported by the essentiality of the commodity, whether imported or locally processed.

Broadly stated, the articles subject to the advance sales tax are the same articles subject to the sales tax enumerated in Sections 194, 195, 196, 197, 198, 199 and 201 of the National Internal Revenue Code which are imported from abroad for sale or for the use in the manufacture of articles for sale. The rates of the sales tax and the advance sales tax are basically the same. (Sec. 193(b), id.) The articles are classified into: (a) non-essential; (b) semi-essential; (c) essential; (d) agricultural products; and (e) ordinary. The articles which are classified as non-essential and taxable at the rate of 50% are enumerated under Section 194 of the National Internal Revenue Code. The rate of percentage tax of automobiles, which are also classified as non-essential and taxed under Section 195, id., is graduated depending upon the suggested retail or list price or actual retail price, whichever is higher, or upon the landed cost plus mark-up as established by Section 193(b) of the Code, if imported. Semi-essential articles are of two kinds, namely: (a) articles taxable at 25% under Section 196, id., and those taxable at the graduated rates from 10% to 25% depending on the price, if locally manufactured, and 25% under Section 197, id., when the articles are imported.

The following are classified as essential articles and are taxed at the rate of 5% under Section 201:

(a) Locally processed (by curing, canning, bottling or similar processes but excluding simple preserving processes like freezing, refrigerating, drying, salting or smoking) meat, milk, fish and other sea foods;

(b) Wheat flour;

(c) Locally manufactured medicine;

(d) Locally manufactured laundry soap and detergents;

(e) Locally manufactured writing pads, note-books and ordinary lead pencils;

(f) Poultry, swine and cattle feeds; and

(g) Cement.

Agricultural products, including ordinary salt and all kinds of fish and its by-products, whether in their original state or not, are subject to tax of 1% under Section 198 of the Code. The phrase "whether in their original state or not" means the transformation of said products by the application of simple processes to preserve or otherwise prepare said products for the market such as freezing, drying, salting, smoking or stripping. When imported, agricultural products are classified as ordinary articles and are taxable at 10% of the landed cost plus mark-up. (Sec. 198, id.)

All articles not coming under the classification of non-essential, semi-essential, essential and agricultural products as enumerated in Sections 194, 195, 196, 197, 198 and 201 are considered ordinary articles and are taxable at 10% under Section 199 of the Code. We quote the pertinent portion of Section 199:

> "SEC. 199. 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 consideration, intended to transfer ownership of, or title to, the articles not covered in Section 194, 195, 196, 197, 198 and 201, a tax equivalent to ten (10%) 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: x x x x"

As expressly stated in Section 193(b) of the National Internal Revenue Code, the advance sales tax is a sales tax on imported articles. It is a percentage tax imposed upon articles imported from abroad for the purpose of sale or for use in the manufacture of articles for sale and are subject to the sales tax. It is in lieu of the sales tax on imported articles. The main purpose of said tax is to collect the sales tax in advance of the sale, that is, before the withdrawal of the goods from the customshouse, to prevent leakage and simplify collection with least expense. (Procter & Gamble Philippine Manufacturing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 2156, April 21, 1977, citing Umali, Roman, Reviewer in Taxation, 1971 ed. p. 309.) Thus, Section 193(b) of the National Internal Revenue Code provides that "when the articles are imported, the percentage taxes established in Sections 194, 195, 196, 197, 198,199 and 201 of this Code shall be paid in advance by the importer, in accordance with the regulations promulgated by the Secretary (now Minister) of Finance and prior to the release of such articles from customs custody x x x."

Now back to the case at bar; we find no merit in petitioner's cause.

1. Petitioner's position may not be absolutely implausible but it must yield to the clear and specific language of the law which is controlling. Adverting to the terms of the statute, it is quite apparent that the taxpayer's liability to the 5% percentage tax imposed in Section 201(a) of the National Internal Revenue Code is anchored upon the condition that the "meat, milk, fish and other sea foods" must be "locally processed." The statute employs the words "locally processed" - nothing more. The language of the law leaves no room for doubt that the "meat, milk, fish and other sea foods" to be taxable at 5% must be "locally processed", by

curing, canning, bottling or similar processes, but excludes simple processes of freezing, refrigerating, drying, salting or smoking.

The law is specific and mandatory. It calls for application as thus worded. The intent of the law-making authority to be ascertained and enforced is the intent expressed in the words of the statute. If the language of the law is plain and free from ambiguity and expresses a definite and sensible meaning, it must be applied literally for that is the conclusive presumption of the meaning intended to be conveyed. (Regalado vs. Yulo, L-42935, February 15, 1935, 61 Phil. 173.) What petitioner really wants us to do, but which cannot be done without amending the law, is to delete the word "locally." It seems well-settled that a statute, free from any constitutional infirmity, must be enforced as written. To the extent that respondent adhered literally to the law applicable, it cannot therefore be assailed as erroneous.

2. Petitioner's submission that since the only rate specified in Section 201 is 5%, this should be the rate applicable to imported processed meat, milk, fish and other sea foods under Section 193(b) is positively without merit. The Court cannot overlook the specific and mandatory provision of

Section 199 of the Revenue Code that the "articles not covered in Sections 194, 195, 196, 197, 198 and 201" are subject to a percentage tax of 10%. The test of the inclusion of "meat, milk, fish and other sea food" in Section 201(a) subject to 5% percentage tax is that the article must be "locally processed"; otherwise, it will be subject to 10% tax under Section 199. It has been said that it is to be fairly and justly presumed that the law-making authority, which possesses a power so comparatively unrestrained in its force and searching in its extent as the power of taxation has so shaped the law as, without ambiguity or doubt, to bring within its provision everything it was meant should be embraced. (51 Am. Jur. 360.) Section 201(a) should not therefore be construed to include within the subject taxed any "meat, milk, fish and other sea foods" unless it is <u>locally processed</u>. Since the imported canned fish (sardines) in question are not locally processed, the shipment must necessarily be subject to the 10% percentage tax imposed in Section 199 of the Code.

3. The limitation of meat, milk, fish and other sea foods to <u>locally processed</u> under paragraph (a); medicine, laundry soap and detergents; writing pads, notebooks and ordinary lead pencils to <u>locally</u>

<u>manufactured</u> under paragraphs (c), (d) and (e); without imposing the same limitation to wheat flour, poultry, swine and cattle feeds; and cement under paragraphs (b), (f) and (g), all of Section 201, is another additional index to the sense that <u>imported</u> processed meat, milk, fish and other sea foods, including medicine, laundry soap, detergents, writing pads, notebooks and ordinary lead pencils, are <u>not</u> taxable at 5% under Section 193(b) in relation to Section 201 of the Code. This change in terminology in the law cannot lightly be disregarded. For it is a well-settled principle in statutory construction that in making material changes in the language of a statute, the law-making authority cannot be assumed to have regarded such changes as without significance but must be assumed to have had a reasonable motive. The presumption is that every change or difference in the wordings of a statute is made to effect some purpose and effect must be given to the law in a manner consistent with the language thereof. The omission of a word or words of a statute will be assumed to have been intentional, so that an omission of words implies an intended change in the meaning of the statute. (50 Am. Jur. 233.) Consequently, it can never be said that since the law limits the taxability of meat, milk, fish

and other sea foods to locally processed, imported canned fish not locally processed or manufactured are subject to 5% percentage tax imposed in Section 201 of the Revenue Code.

4. Nonetheless, we look in retrospect at the philosophy behind the limitation of the imposition of the 5% percentage tax to locally processed meat, milk, fish and other sea foods or locally manufactured medicine, laundry soap, detergents, writing pads, notebooks and ordinary lead pencils. Obviously, because of their essentiality in the day to day needs of the masses, more than wheat flour; poultry, swine, cattle feeds or cement, the law was motivated by the desire to give an impetus to the growth and development of local industries engaged in the processing or manufacture of these commodities. Taxation, aside from its basic purpose of securing revenue for the support of the Government, is often resorted to for the protection of home industries against foreign competition. In limiting the 5% percentage tax to locally processed or manufactured articles enumerated in paragraphs (a), (c), (d) and (e) of Section 201, in relation to Section 193(b), the law-making authority, in all probability, took the view that local industries engaged in the production or manufacture of these commodities must be

given a chance to grow without being hampered by the competition offered by imported articles.

We, accordingly, sustain the decision under review. Petitioner Chattrade Development Corporation is therefore ordered to pay to respondent Commissioner of Internal Revenue the amount of ₱62,031.00 as deficiency advance sales tax on its shipment of 7,655 cartons of Ligo canned sardines from Japan, plus the 25% surcharge and 14% annual interest from March 28, 1978 to its date of full payment thereof pursuant to Section 193 of the National Internal Revenue Code.

WHEREFORE, the judgment appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, March 19, 1981.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge