February

Republic of the Philippines
COURT OF TAX APPEALS
Manila

MANILA ELECTRIC COMPANY,
Petitioner,

August 24, 1964

- versus - C.T.A. CASE NO. 1343

ACTING COMMISSIONER OF
CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from the decision of the respondent Commissioner of Customs holding the petitioner liable for the payment of the special import tax on a shipment of 105 drums and 4 pails of insulating oil, imported sometime in 1957, for use in petitioner's oil circuit breakers, and denying the refund of the sum of ₱995.00 as special import tax paid thereon, pursuant to Republic Act No. 1394.

In this appeal, petitioner claims that it is exempt from the special import tax not only by virtue of Section 6 of Republic Act No. 1394, which exempts from said tax equipment and spare parts for use in industries, but also under Paragraph 9, Part Two, of its franchise, which expressly exempts its insulators from all taxes of whatever kind and nature.

Paragraph 9, Part Two, of petitioner's franchise, provides:

> Par. 9. The grantee shall be liable to pay the same taxes upon its real estate, buildings, plant (not including poles, wires, transformers, and insulators), machinery and personal property as other persons are or may be hereafter required by law to pay. In consideration of Part Two of the fran-

> chise herein granted, to wit, the right to build and maintain in the City of Manila and its suburbs a plant for the conveying and furnishing of electric current for light, heat, and power, and to charge for the same, the grantee shall pay to the City of Manila two and one-half per centum of the gross earnings received from the business under this franchise in the city and its suburbs: Provided, That two and one-half per centum of the gross earnings received from the business of the line to Malabon shall be paid to the Province of Rizal. Said percentage shall be due and payable at the times stated in paragraph nineteen of Part One hereof, and after an audit, like that provided in paragraph twenty of Part One hereof, and shall be in lieu of all taxes and assessments of whatsoever nature, and by whatsoever authority upon the privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted.

The above-quoted provision of petitioner's franchise exempts it from all taxes of whatever nature, and by whatever authority, with respect to its insulators in consideration for the payment of the percentage tax on its gross earnings. Does the insulating oil in question come within the meaning of the term "insulator"?

An insulator is defined as a nonconducting substance or body. (Webster's International Dictionary.) The nature and purposes of insulating oils are described as follows:

> "Insulating oils are mineral oils of high di-electrics strength and high flash point employed in circuit breakers, switches, transformers and other electric apparatus. An oil with a flash point of 285° F and fire point of 310° F is considered safe. A clean, well-refined oil will have a minimum di-electric strength of 22,000 volts, but the presence of as low as 0.01% water will reduce the dielectric strength drastically. The insulating oils, there-

fore, cannot be stored for long periods because of the danger of absorbing moisture. Impurities such as acids or alkalies also detract from the strength of the oil. Since insulating oils are used for cooling as well as for insulating, the viscosity should be low enough for free circulation, and they should not gum. (Materials Handbook by George J. Brady, 8th Edition 1956, pp. 421-423).

"The common types of circuit breakers achieve their fast operation by rapid mechanical separation of contacts under oil in an enclosing tank. It is neither possible nor desirable to interrupt the current instantaneously. As the contacts are separated, an electric arc is drawn between them, which vaporizes a small amount of the surrounding oil. The vaporizing of the oil produces high pressure in the enclosing structure surrounding the contacts which use the pressure to drive quantities of unvaporized oil into the arc path. In the process moving electrons, which are the main elements of the electric current in the arc, become attached to the particles of gas (vaporized oil), and their mobility is so restricted that, when the current passes through zero, it does not start again. Other types of circuit breakers, start again. Other types of circuit breakers, more common in Europe than in the United States, utilizes compressed air or even steam. In the more common U.S. oil circuit breakers, the oil is contained in large metal tanks, and a substantial volume is required to maintain insulation between the contacts inside the tank and the tank itself. In other designs, the container is made of insulating material enclosed in a porcelain housing, so that a smaller volume of oil is necessary." (P. 296, Vol. 8, Encyclopedia Britannica, 1958 Edition; underscoring supplied). (See pp. 3-4, Decision of Respondent, dated Feb. 4, 1963.)

There is no question that insulating oils of the type imported by petitioner are "used for cooling as well as for insulating," and when used in oil circuit breakers, they are "required to maintain insulation between the contacts inside the tank and the tank itself." It follows that the said insulating oils are insulators which are exempt from all taxes pursuant to petitioner's franchise, which exemption includes immunity from the payment of the special import tax levied by virtue of Republic Act No. 1394.]

Having reached the conclusion that petitioner is exempt under its franchise from the special import tax on its importation of insulating oil, we find it unnecessary to pass upon the issue whether or not insulating oil is "equipment" or "spare parts" within the meaning of Section 6 of Republic Act No. 1394.

The decision appealed from not being in accordance with law, the same is hereby reversed. Respondent is ordered to refund to petitioner the sum of ₱995.00 within thirty days from the date this decision becomes final, without pronouncement as to costs.

SO ORDERED.

Manila, August 24, 1964.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge