REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

JOSE ZAMORA (Golden Taxicab),
Petitioner,

- versus -

C.T.A. CASE NO. 731

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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DECISION

This is an appeal from respondent's assessment against petitioner in the amount of ₱23,104.00 as deficiency compensating tax.

The records show that petitioner Jose Zamora, owner and operator of the Golden Taxicab, imported fifteen (15) units of Ford Consul Sedan in completely knocked down parts for his company's use.

The importation was released from customs' custody upon payment by petitioner of 7% compensating tax and the filing of Capitol Insurance and Surety Co., Inc. Bond No. G-14676, dated May 12, 1958, to guarantee the payment of deficiency tax in case the shipment is subject to 50% compensating tax (See Exhibits "4" & "G", p. 12 BIR rec.).

On July 1, 1958, the Acting Commissioner of Internal Revenue wrote a letter to petitioner, informing the latter that the rate which should be imposed upon his importation was 50% and requesting the settlement of deficiency tax on the shipment in question in the amount as may be computed by the Bureau of Customs (See Exhibit "1", p. 6 BIR rec.).

On August 6, 1958, petitioner, through counsel, requested the reconsideration thereof, and prayed to be relieved from the payment of the deficiency compensating tax (See Exhibits "2" & "D", pp. 7-9 BIR rec.), which request and prayer were denied by respondent in his letter dated April 27, 1959 (See Exhibits "E" & "3", pp. 13-14 BIR rec.).

On January 7, 1960, petitioner filed his appeal. Respondent, on February 2, 1960, moved to dismiss the appeal on the ground that this Court has no jurisdiction to take cognizance of the case. This motion to dismiss was, however, denied by this Court in a majority resolution dated July 16, 1960 and the appeal was given due course. On February 15, 1961, while it was pending before this Court, respondent sent a letter of demand to petitioner, assessing and demanding the payment of ₱23,104.00 as deficiency compensating tax (See Exhibits "F" & "F-1" pp. 47-48 CTA rec.).

The only issue to be resolved by this Court is the proper rate of compensating tax to be imposed on petitioner's importation.

It is petitioner's contention that the proper rate of tax is 7% and not 50% of the selling price or gross value of the 15 units of Ford Consul Sedan (CKD), as claimed by respondent.

Sections 184 and 186 of the Revenue Code provide:

"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: x x x.

"(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 x x x."

"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 x x x."

There is no question that petitioner made the importation of 15 units of Ford Consul Sedan (CKD) for his own use and not for resale to the general public. Hence, he is liable for the payment of compensating tax imposed by Section 190 of the Revenue Code.

The question is, what tax applies? Is it the tax imposed by Section 184 or by Section 186?

After a careful study of the question at issue, we have arrived at the conclusion that importations of assembled automobiles for resale as well as importations by importer-end-users, who are not car assemblers or manufacturers, of chassis and bodies ready for mounting are subject to a tax equivalent to fifty (50) *per centum* of the landed cost plus mark-up, or of the landed cost without mark-up, as the case may be (Secs. 183[B] & 190, in relation to Sec. 184, Revenue Code), while parts or accessories of automobiles imported as completely knocked down parts for assembly by car assemblers and manufacturers are subject to a tax equivalent to seven (7) *per centum* of the gross value in money of said articles (Sec. 186).

This finds support in an opinion of the Secretary of Justice, in which we fully concur.

> "The Bureau of Internal Revenue holds the view that the reduced 7% sales tax rate may be availed of only by car assemblers and manufacturers who import parts and accessories for the purpose of assembling cars and that where the said parts and accessories are imported by one who is not an assembler or manufacturer the tax that should be paid is the usual rate of 50%, but where the importer is also the end-user, as in the instant case, the tax due is the compensating and not the advance sales tax. On the other hand, the Muñoz (Hi) Motors, Ins., asserts that the importation in question should be entitled to the reduced tax rate of 7% on the ground that it comes within the purview of the underscored proviso of section 184(a) there being an importation of completely knocked-down parts intended for the assembly of automobiles.
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> "After an examination of the above-quoted provisions, we have come to the conclusion that the view of the Bureau of Internal Revenue is the correct one. According to the first paragraph of section 184 'such tax to /shall/ be paid by the manufacturer or producer". Hence, the reduced tax payable pursuant to the proviso under consideration of paragraph (a) of the same section should be deemed to have been provided for the benefit of the said 'manufacturer or producer'.
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> "This view finds ample support in the conference report, quoted below, of the committee which prepared House Bill No. 5809 (now Republic Act No. 1612):
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>> "'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 the 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 assembling 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. 365; Underscoring supplied.)"

"It is quite evident that it was the legislative purpose to do away with the practice then prevalent in taxing twice locally assembled cars. A tax was collected initially on the spare parts and accessories, and another on the assembled car when it was sold. Pursuant to the amendment, the tax paid on the spare parts and accessories would be 'deductible when these parts are assembled into finished cars'. End-users who are not car assemblers or manufacturers do not fall within the purview of this amendment since they would be required to pay only the tax assessable on the CKD parts and accessories.

"Besides, the interpretation urged by the Muñoz (Hi) Motors, Inc., would result in gross inequality in the taxation of the same article. A car locally manufactured from spare parts and accessories imported by one who is not an assembler or manufacturer, would be subject only to the 7% tax and no more. On the other hand, if the spare parts were imported by an assembler or manufacturer, besides being subject to the 7% tax, the difference in value between the spare parts and the finished product would still be subject to the regular rate of tax, 50% or more, as the case may be. This is a situation which could not have been within the legislative contemplation. Furthermore, this would indirectly open the door to circumvention of the law by the simple expedient of making

> it appear that the end-user, and not the assembler or manufacturer, is the importer of the spare parts and accessories.
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> "It is stated that during the era of import and exchange controls the Central Bank limited the importation of CKD units to car assemblers and did not allow their importation by ordinary importers and end-users. (See letter of Muñoz (Hi) Motors, Inc. to the BIR, dated July 18, 1962.) This bolsters the conclusion that the reduced tax rate of 7% may be availed of only by importers who are car assemblers or manufacturers. Republic Act No. 1612 was passed during this time of controls and statutes should be construed in the light of contemporary events existing at the time of their passage and not in the light of subsequent events. (See 82 CJS 739-743; 50 Am. Jur. 276-277.)" (Opinion No. 44, s. 1963)

In the light of the above findings, we are of the opinion that petitioner's importation of the 15 units of Ford Consul Sedan (CKD) is subject to the 50% compensating tax.

WHEREFORE, petitioner Jose Zamora is hereby ordered to pay the amount of ₱23,103.85 as deficiency compensating tax. Without pronouncement as to costs.

SO ORDERED.

March 21, 1964.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge