REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PROCTER & GAMBLE
PHILIPPINE MANUFACTURING
CORPORATION,
Petitioner,

Dec. 28/70

versus

CTA CASES NOS. 1740, 1831 & 1906

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

These cases refer to petitioner's claims for refund of 7% advance sales tax paid on its importations of tinplates. The periods covered by said importations and the advance sales tax paid thereon are as follows:

CTA Case No.	Period Covered	Amount
1. 1740	March 18, 1964 to Dec. 31, 1964	₱ 149,758.00
2. 1831	Feb. 25, 1965 to Dec. 31, 1965	137,053.00
3. 1906	1966	8,155.00

As these cases involve the same parties and a common issue, they were consolidated and jointly tried.

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office at San Luis, Ermita, Manila. As manufacturer of coconut cooking oil, it imported tinplates during the periods from

March 18, 1964 to December 31, 1964, February 25, 1965 to December 31, 1965 and 1966 on which it paid 7% advance sales tax in the sums of ₱149,758.00, ₱137,053.00 and ₱8,155.00, respectively, pursuant to Section 183(b), in relation to Section 186, of the Revenue Code. On the coconut cooking oil it manufactured, petitioner paid the 2% tax imposed by Section 189 of the Revenue Code.

The imported tinplates were not sold to the public but were manufactured by petitioner into tin cans and used as containers of cooking oil manufactured and sold by it.

Believing that it is exempt from the payment of advance sales tax on the imported tinplates, petitioner filed with respondent on March 1, 1966, February 22, 1967 and January 26, 1968 claims for refund of the aforesaid sums of ₱149,758.00, ₱137-053.00 and ₱8,155.00. Even before a decision could be rendered by respondent on said claims for refund, petitioner appealed to this Court in CTA Cases Nos. 1740, 1831 and 1906 seeking the refund of said amounts.

After trial, petitioner filed its memorandum on August 12, 1970; while respondent elected to submit the above cases without the benefit of a memorandum.

The sole issue presented for our resolution is one of law, i.e., whether or not the imported tinplates manufactured into and used as containers of petitioner's coconut cooking oil are subject to 7% advance sales tax under Section 183(b), in relation to Section 186, of the Revenue Code.

The resolution of the issue has been laid to rest on the sister cases entitled Procter & Gamble Philippine Manufacturing Corporation v. Commissioner of Internal Revenue, CTA Cases Nos. 1482 and 1568, July 31, 1970, which involved the same parties, pertained to the same legal issue and arose from identical factual circumstances as those in the cases at bar. In said cases, we rendered the following ruling, to wit:

> Petitioner, citing the case of Victorias Milling Co., Inc. v. Commissioner of Internal Revenue (G.R. No. L-21171, Jan. 31, 1967), contends that the imported tinplates are not subject to the 7% advance sales tax provided for under Section 183(b), in relation to Section 186, both of Revenue Code. Respondent believes other-wise.
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> Regarding the applicability of the case of Victorias Milling Co., Inc., _supra_[1] we are of the opinion that it is substantially analogous

[1]Reiterated in Victorias Milling Co. v. Commissioner, G.R. Nos. L-24765 & L-24779, Feb. 25, 1967.

to the case at bar. The only difference between the case of Victorias Milling Co., Inc. and the instant case is the kind of the raw material imported from abroad. The articles involved in the former were jute bags; in the latter, tinplates. In other respects, the facts and the legal issue involved in the two cases are the same, viz: (1) the jute bags and the tinplates were used in the manufacture of articles taxable under Section 189 of the Revenue Code; (2) the price for which the finished products (sugar and coconut cooking oil) were sold include the containers (jute bags in the case of sugar, and tin cans in the case of cooking oil); and the legal issue involved in both cases is the same, that is, whether or not the imported bags and containers are subject to advance sales tax under Section 183(b), in relation to Section 186, of the National Internal Revenue Code.

The pertinent portion of the decision of the Supreme Court in the said Victorias Milling Co., Inc. case, supra, reads:

> "The sole issue posed in the instant petition is whether or not the articles in question (imported sugar bags) are subject to advance sales tax under Section 183(b) in relation to Section 186, both of the National Internal Revenue Code.
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> "The pertinent proviso of Section 183(b) of the Tax Code reads:
>
> > '(b) Sales tax on imported articles. - When the articles are imported, the percentage taxes established in sections one hundred eighty-four, one hundred eighty-five, and one hundred eighty-six of this Code shall be paid

> in advance by the importer, in accordance with regulations promulgated by the Secretary of Finance and prior to the release of such articles from customs' custody, based on the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges, plus one hundred _per centum_ of such total value in the case of articles enumerated in section one hundred eighty-four; fifty _per centum_ of such total value in case of articles enumerated in section one hundred eighty-five; and twenty-five _per centum_ in the case of articles enumerated in section one hundred eighty-six. The tax imposed in this section shall not apply to articles to be used by the importer himself in the manufacture or preparation of articles subject to specific tax or those for consignment abroad and are to form part thereof.'

while the pertinent proviso of Section 186 of the same Code also reads:

> '_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: . . .'

"Among other arguments, the Company resists the collection of the sales tax demanded by the Revenue Commissioner on the ground that section 183(d) of the Internal Revenue Code exempts therefrom;

x x x x x

'(d) Articles subject to tax under section one hundred eighty-nine of this Code;'

and Section 189 levies upon operators of sugar centrals, like the Company herein, a tax of 2% on the money value (selling price or market value) of all sugar manufactured by them.

'SEC. 189. Percentage upon proprietors or operators of rope factories, sugar centrals, coconut oil mills, cassava mills and desiccated coconut factories. - Proprietors or operators of rope factories, sugar centrals, coconut mills, cassava and desiccated coconut factories shall pay a tax equivalent to two per centum of the value in money of all the rope, sugar, coconut oil, cassava flour

> or starch, and desiccated coconut manufactured or milled by them, including the by-products of the raw materials from which said articles are produced or manufactured, <u>such tax</u> to be <u>based</u> on the <u>actual selling price</u> or <u>market value</u> of these articles at the time they leave the factory or mill warehouse: . . .' (Emphasis supplied.)

"To this argument, the Commissioner, in turn, retorts that the 2% tax of Section 189 applies only to sugar, but does not mention the containers thereof, which should separately pay the percentage tax under sections 183(b) and 186.

"We find the stand of the Commissioner to be untenable, for it does not take into account two undeniable facts: (a) that there is no evidence to the effect that the containers or sacks are separately charged against the sugar buyers and, as a consequence, the domestic buyers of the sugar pay only one price for both sugar and container; and (b) that the buyer takes away with him the sugar and its container. On this basis, the price paid by the customer either includes both the price of the sugar and that of the container,[1] or else it represents the price of the sugar alone. If it be the first (the price paid is for both sugar and sack), then the value of the sacks is already subjected to the

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[1]The Court of Tax Appeals took judicial notice of this fact, as the practice of respondent sugar company.

> 2% tax imposed by section 189, and the sugar company has paid the same; hence, it may no longer be separately taxed (Section 188/d/, Tax Code).
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> "If, on the other hand, the price paid by the buyer is for the sugar alone, then obviously the container is merely given away _gratis_, and _not sold_. In which case, there is no sale of the container that can be subjected to the percentage sales tax."
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> In view of the foregoing, we hold that the tinplates in question are not subject to the 7% advance sales tax provided in Section 183(b), in relation to Section 186, both of the Revenue Code. x x x

We find no valid and justifiable reason to depart from the afore-quoted ruling. Consequently, we hold that petitioner is entitled to the refund of the amounts in question.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Procter & Gamble Philippine Manufacturing Corporation the sums of ₱149,758.00, ₱137,053.00 and ₱8,155.00, or a total of ₱294,966.00, as advance sales tax erroneously paid on its imported tinplates. Without pronouncement as to costs.

SO ORDERED.

Quezon City, December 28, 1970.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge