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COURT OF TAX APPEALS
MANILA

March 11, 1963

VICTORIAS MILLING CO., INC.,
Petitioner

versus CTA CASE NO. 685

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

This is an action filed by petitioner Victorias Milling Co., Inc. for the refund of the total amount of ₱66,949.79 which was paid as compensating tax on imported ready-made sugar bags or appropriate materials for conversion into sugar bags. (Second Amended Petition for Review, pp. 193-209, CTA rec.) In his answer to the request for refund, respondent Commissioner of Internal Revenue maintains that said amount of ₱66,949.79 is not refundable and that on the contrary, the petitioner is liable for and should be ordered to pay the additional sum of ₱20,206.13 as deficiency advance sales tax on the importations in question. (Second Amended Answer, pp. 214-218, CTA rec.)

The petitioner is engaged in the business of manufacturing raw or centrifugal sugar and refined sugar, and for this purpose, owns and operates a sugar mill or central and a sugar refining factory in the Municipality of Victorias, Occidental Negros. In connection with the manufacture and sale of the sugar, the petitioner is, and has been importing ready-made sugar bags or appropriate materials for conversion into sugar bags for containers of its raw or centrifugal sugar as well as its refined sugar.

From April 29 to July 20, 1959, the petitioner paid the aggregate amount of ₱80,823.38 as compensating tax on various shipments of sugar bags and closing materials for sugar containers imported from abroad. The compensating tax on each shipment was paid under protest and at the same time, the petitioner requested the Collector of Customs of Iloilo, who collected the tax, to refund the amounts paid. The petitioner also sought a ruling from the respondent exempting said articles from the compensating tax or advance sales tax, but the latter ruled that said articles are taxable. Accordingly, the petitioner filed the instant petition for review of the ruling of the respondent and the refund of the compensating tax already paid in the total sum of ₱80,823.38 which amount was later reduced to ₱66,949.79 in petitioner's Second Amended Petition for Review, alleging therein that the Collector of Customs of Iloilo had, in effect, refunded the sum of ₱13,873.59 by applying the same in payment of the compensating tax on its importations made during the years 1960 and 1961.

The issue to be resolved in this case is whether or not the imported sugar bags and materials in question are subject to the advance "sales tax on imported articles".

We note that both the petitioner and the respondent are in agreement that the former is not subject to the compensating tax under Section 190 of the National Internal Revenue Code. This is due to the clear provisions of said section which state in part that "manufacturers, who are subject to tax under section(s) x x x one hundred eighty-nine of this Title, shall not be required to pay the tax herein imposed where such commodities, goods, wares, or merchandise purchased or received by them from without the Philippines x x x are to be used in the manufacture or preparation of articles for sale, barter, or exchange and are to form part thereof". Hence, as stated above, the question to be decided in the case at bar, has narrowed down to whether or not the petitioner is subject to the advance sales tax under Section 183(b) (Sales tax on imported articles) in relation to Section 186 (Percentage tax on sales) both of the National Internal Revenue Code.

The petitioner contends that "the Collector of Customs of Iloilo, on behalf of respondent, had erroneously and illegally collected from petitioner x x x on various shipments of containers imported from abroad exclusively for the use of sugar produced by petitioner for domestic consumption, compensating taxes in the aggregate amount of ₱80,823.38 (later reduced to only ₱66,949.79) on which protests and claims for refund were filed with the said Collector of Customs of Iloilo". (Par. 16, Second Amended Petition for Review, pp. 193-209, CTA rec.) On the other hand, the respondent maintains that "the containers in question are legally subject to tax, and x x x that the Collector of Customs of Iloilo, on behalf of the respondent, failed to collect the correct and exact amount of taxes legally due from the petitioner, the latter being liable to the advance sales tax on its importations in question and <u>not to the compensating tax</u>. In other words, there is still due from the petitioner, deficiency advance sales tax in the total amount" of ₱20,-206.13. (Par. 5, Second Amended Answer, pp. 214-218, CTA rec.)

We find the contention of the petitioner to be meritorious and in accordance with law. The advance sales tax which the respondent claims should have been collected by the Collector of Customs of Iloilo under Section 183(b) in relation to Section 186 of the Tax Code, instead of the compensating tax under Section 190 of the same Code, is essentially and fundamentally a "percentage tax on sales". It is payable in advance by the importer of articles imported for sale. The landed cost plus mark-up represent theoretically the selling price of the imported articles. (Mayon Motors, Inc. vs. Commissioner of Internal Revenue, G. R. No. L-15000, March 29, 1961.) And the payment by the importer of the advance sales tax, prior to the release of the goods from customs' custody is no longer deemed as a mere "deposit", subject to adjustment when the goods are actually sold. It is regarded as a final payment, and not subject to adjustment, irrespective of whether or not the goods are sold for more or less than the value used in the computation of the tax paid before release of the goods from customs. (Genato Commercial Corp. vs. Court of Tax Appeals, G. R. No. L-11727, Sept. 29, 1958; 55 OG 2092)

When the articles are imported for the use of the importer, and not for sale to others, the provisions of Section 190 of the Tax Code, not Sections 183(b) and 186 (or 184 and 185), shall apply. Said Section provides in part as follows:

> "Sec. 190. Compensating tax.- All persons residing or doing business in the Philippines, who purchase or receive from without the Philippines any commodities, goods, wares, or merchandise, x x x shall pay x x x a compensating tax equivalent to the percentage taxes imposed under this Title on original transactions effected by merchants, importers, or manufacturers, such tax to be paid before the withdrawal or removal of said commodities, goods, wares, or merchandise from the customhouse or the post office: x x x".

In short, the compensating tax should be collected from an importer of goods imported for the use by the importer himself, and not for the purpose of selling the same to other persons. In other words, the sales tax should be distinguished and differentiated from the compensating tax. They refer to, and affect different taxable transactions. The first is a tax on the sale of articles, whether imported or not, or the "tax on sales", and the other is the tax on the use of articles imported not for sale, or the "tax on use".

In the case at bar, the "various shipments of containers (were) imported (by the petitioner) from abroad exclusively for the use of sugar produced by petitioner". These facts are clearly stated by the petitioner in paragraph 16 of its

Second Amended Petition for Review and expressly admitted by the respondent in paragraph 5 of his Second Amended Answer, and restated by the respondent in paragraph 11 of his Second Amended Answer in alleging his counterclaim. Therefore, the petitioner, as the importer of the sugar bags in question, is not liable for the payment of any advance "sales tax on imported articles" inasmuch as the said articles were imported not for sale to other persons, but merely for the exclusive use by the petitioner.

Moreover, to hold otherwise and subject the petitioner to the "percentage tax on sales . . ." would render invalid and of no effect the provisions of Section 190 of the Tax Code which admittedly exempt the petitioner herein from the payment of the compensating tax. It should be noted that the purpose of the compensating tax is to place persons purchasing goods from dealers doing business in the Philippines on an equal footing, for tax purposes, with those who purchase goods directly from without the Philippines. (Panay Electric Co. vs. Collector of Internal Revenue, G. R. No. L-6753, July 30, 1955) In other words, the compensating tax is a sort of an equalizer, to place casual importers, who are not merchants on equal footing with established merchants who pay sales tax on articles imported by them. (Borja vs. Collector of Internal Revenue, G. R. No. L-12134, Nov. 30, 1961) In effect, the compensating tax is levied, assessed and collected to take the place of the advance sales tax on imported articles which are not for sale, but for use in the Philippines.

Furthermore, the petitioner, as the proprietor or operator of a sugar central in Victorias, Negròs Occidental, is subject to the manufacturer's or miller's percentage tax prescribed in Section 189 of the Tax Code. Consequently, the petitioner is exempt from the payment of the "percentage tax on sales" under the express provisions of Section 188(d) of the Tax Code, which read as follows:

> "Sec. 188. Transactions and persons not subject to percentage tax. In computing the tax imposed in Sections one hundred eighty-four, one hundred eighty-five, and one hundred eighty-six, transactions in the following commodities shall be excluded:
>
> x x x x x
>
> "(d) Articles subject to tax under section one hundred eighty-nine of this Code."

This Court can take judicial notice of the fact that the selling price or market value of sugar includes the value of the sugar bags because no delivery or withdrawal of sugar from the mill warehouse can be effected without said containers. Hence, the miller's percentage tax is collected, not only on the sugar itself, but also on the sugar bags or containers, and in justice to the proprietor or operator of the sugar central or factory, and in order to avoid double taxation on the same article, Congress has provided in the above quoted provisions of Section 188(d) of the Tax Code that no "percentage tax on sales" should be assessed against and collected from said proprietor or operator of the sugar central.

WHEREFORE, in view of the foregoing considerations, petitioner Victorias Milling Co., Inc. is hereby declared exempt from the payment of the advance sales tax on its importations for its own use of sugar bags or materials for conversion into containers, during the period from April 29, 1959 to July 20, 1959, and respondent Commissioner of Internal Revenue is hereby ordered to refund to the petitioner the sum of ₱66,949.79, without interest. No costs.

SO ORDERED.

Manila, Philippines, March 11, 1963.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge