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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

February 11, 1960

STANDARD-VACUUM REFINING
CORPORATION (PHILIPPINES),
Petitioner,

- versus - C.T.A. CASE NO. 588

COMMISSIONER OF CUSTOMS,
Respondent.

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DECISION

This is an appeal interposed by the petitioner Standard-Vacuum Refining Corporation (Philippines), hereinafter to be referred to as STANVAC for short, from a decision (Annex H - Stipulation, p. 111 CTA rec.) dated October 14, 1958, of the Commissioner of Customs affirming *in toto* the decision (Annex F - Stipulation, p. 109 CTA rec.) dated October 7, 1958, of the Collector of Customs for the Port of Manila denying petitioner's request for exemption from customs duties amounting to ₱1,403.00 under Article 103 of Republic Act No. 387 (Petroleum Act of 1949) on its importation covered by Customs Entry No. 072753, Series of 1958 consisting of 625 packages of prefabricated steel frames, bolts and nuts which were intended for, and actually used in, the construction of its warehouses within the premises of its oil refinery located in Limay, Bataan.

On December 9, 1957, the petitioner herein, STANVAC, a domestic corporation, was granted by the Secretary of Agriculture and Natural Resources, under authority of Republic Act No. 387, otherwise known as the "Petroleum Act of 1949" a petroleum refining concession (Annex A - Stipulation, pp. 99-104 CTA rec.) with the non-exclusive right to establish and operate a petroleum refinery in the Municipality of Limay, Province of Bataan, for a period of twenty-five (25) years, renewable for another twenty-five (25) years. One of the conditions of the deed of concession (p. 100 CTA rec.) was for the petitioner to begin the construction of its petroleum refinery not later than one year from the date of execution thereof. In compliance thereto, the petitioner imported from Singapore under Customs Entry No. 072753, Series of 1958, for the exclusive use in the construction and/or operation of its refinery in Limay, Bataan, the following construction materials which arrived in Manila on August 22, 1958 on board the vessel "Le Maire":

622 pieces Fabricated Steel Frame
1 case Spares, Bolts & Nuts
1 case Spares, Bolts & Nuts
1 case Spares, Bolts & Nuts

625 packages

(See par. 4, Joint Partial Stipulation of Facts, pp. 95-111 CTA rec.)

The respondent tried to collect customs duty amounting to ₱1,403.00 on the said importation to which the petitioner objected claiming exemption therefrom under Article 103 of Republic Act No. 387, which provides as follows:

"Art. 103. Customs duties. - During the first five years following the granting of any concession, the concessionaire may import free of customs duty, all equipment, machinery, material, instruments, supplies and accessories.

"No exemption shall be allowed on goods imported by the concessionaire for his personal use or that of any others; nor for sale or re-export; and if any goods on which exemption has been allowed be thus used or disposed of, the concessionaire is obliged to make a report to the Secretary of Agriculture and Natural Resources to that effect and to pay such import duty as is due."

The respondent does not dispute the fact that the claim for exemption is being invoked by the petitioner within the five (5) year period fixed by law; that the imported articles could well be classified as construction materials or supplies as enumerated in the exempting statute; and, that the same were intended for, and actually used in, the construction and/or operation of petitioner's petroleum refinery in Limay, Bataan.

It is quite unfortunate that we have to decide this case without benefit of respondent's memorandum (see Motion, p. 192 CTA rec.) inspite of the fact that his counsel had previously requested and was granted a total of sixty (60) days within which to file the same. Respondent's memorandum could have clarified and pointed to the Court the real issue or issues in the case and would have made it easier for us to decide all the questions involved without having to search in the records for the factual and/or legal reason or reasons why the respondent had refused to entertain petitioner's request for exemption under Article 103 of Republic Act No. 387. Presumably, respondent's counsel must have realized the futility of resisting the present appeal in the face of the recent decision of the Supreme Court in G. R. No. L-13067 entitled "Caltex (Philippines) Inc. vs. Commissioner of Customs", promulgated on December 29, 1959, involving analogous facts and questions of law.

In said case, the petitioner Caltex (Philippines) Inc., which was granted by the Secretary of Agriculture and Natural Resources on June 20, 1953, a similar petroleum concession with the same terms and conditions as the one granted to the herein petitioner on December 9, 1957, was declared exempt by the Supreme Court from the payment of customs duty on its importation of petroleum products consumed in connection with its refinery project at Bauan, Batangas under Article 103 of Republic Act No. 387, the exemption having been invoked by Caltex (Philippines) Inc. within five (5) years from the date of the granting of the concession and the petroleum products have been found to fall under the category of <u>supplies</u> used in the construction of petitioner's refinery.

And on the question as to whether or not Article 103 of Republic Act No.387 was repealed or modified by Republic Act No. 901, which seems to be the main if not the only line of defense of respondent in the present case as could be gathered from his answer (pp. 71-78 CTA rec.), the Supreme Court in the Caltex case, <u>supra</u>, held the following:

> "It is finally contended that Republic Act No. 901, which grants general tax exemption to new and necessary industries has the effect of impliedly repealing Section 103 of the Petroleum Act insofar as new industries are concerned

and since the refinery established by respondent may be considered a new industry, it may not now claim the exemption in question. To meet this point, suffice it to state that Section 1 of Republic Act No. 901 expressly provides that 'the tax exemption provided for in this Act shall not include any company or person engaged in the processing of oil, gasoline, lubricants and other similar fuels and by-products', which shows that respondent's refinery cannot be considered a new industry under said Act. In fact, respondent never requested any exemption from taxation under Republic Act No. 901, nor has it claimed to be a new and necessary industry within its scope.

"We find, therefore, untenable the errors attributed by petitioner to the Court of Tax Appeals."

WHEREFORE, following the decision of the Supreme Court in the Caltex case (G.R. No. L-13067, promulgated on December 29, 1959), the decision appealed from is hereby reversed and the petitioner STANVAC is hereby declared exempt from the payment of customs duty in the amount of ₱1,403.00 on the shipment covered by Customs Entry No. 072753, Series of 1958, and the demand of the respondent Commissioner of Customs for the payment of said amount is cancelled and withdrawn.

The bond filed by the petitioner on November 29, 1958 (pp. 85-88 CTA rec.) in the sum of ₱1,500.00 with the Capital Insurance & Surety Co., Inc., as Surety, is hereby cancelled. Without pronouncement as to costs.

SO ORDERED.

Manila, February 11, 1960.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge