REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ATLAS CONSOLIDATED MINING
AND DEVELOPMENT CORP.,
Petitioner,

- versus - CASE NO. 1161

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from a decision of the Acting Commissioner of Customs dated December 15, 1961, denying petitioner's request for refund or tax credit of the total amount of ₱414.16 allegedly overpaid as customs duties, special import tax and compensating tax on certain importation as a result of the inclusion of the margin fee of 25% in the tax-base.

The facts are as stated in the decision appealed from and are as follows:

> "This is an appeal from the decision of the Collector of Customs of Cebu who had denied the protests filed by Atlas Consolidated Mining and Development Corporation against the inclusion of the 25% margin in the tax-base in computing the customs duties, special import tax and compensating tax.
>
> "The facts are not disputed that the appellant herein imported from New York six (6) boxes of tractor parts valued at $1651.13. The shipment arrived on July 12, 1960 on board the M/V 'Dona Alicia'. It was declared in Cebu Customs Entry No. 2122-C. The appellant corporation paid ₱233.00 as customs duties, ₱474.00 as special import tax and ₱381.00 as compensating tax, as evidenced by Official Receipt No. 157461 dated July 26, 1960. As a result of the inclusion of the 25% margin, the importer-appellant allegedly paid an excess

amount of ₱46.91 as customs duty, ₱95.05 as special import tax and ₱9.93 as compensating tax, or a total amount of ₱151.89 which is sought to be refunded.

"There arrived from New York on the same date and on board the same vessel a shipment of five (5) boxes of diesel engine parts valued at $2436.93 consigned to the same corporation. The shipment was declared in Cebu Customs Entry No. 2114-C. The appellant corporation paid for this shipment ₱402.00 as customs duty, ₱819.00 as special import tax and ₱659.00 as compensating tax, as evidenced by Cebu Official Receipt No. 507314 dated July 18, 1960. As a result of the inclusion of the 25% margin in the computation of the aforesaid duties and taxes on this shipment the importer-appellant allegedly paid an excess amount of ₱80.98 as customs duty, ₱164.13 as special import tax and ₱17.16 as compensating tax, or a total amount of ₱262.27 which is sought to be refunded."

The only issue involved is whether or not the 25% margin fee imposed under Republic Act No. 2609 should form part of the tax-base in the computation of the corresponding customs duties, special import tax, and compensating tax on the two shipments of tractor and diesel spare parts in question.

Petitioner contends that the inclusion of the 25% margin fee as part of the tax-base is illegal because Department Circular No. 22, promulgated by the Secretary of Finance, in relation to Central Bank Circular No. 105, is null and void for being in contravention of Section 79-(B) of the Revised Administrative Code. Furthermore, it is contended by the petitioner that the promulgation of said Department Circular No. 22 has the effect of in-

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creasing or inflating the tax-base formulated in Section 204, in relation to Section 201 of Republic Act No. 1937. In other words, it is the position of petitioner that the enumeration contained in Section 201 of Republic Act No. 1937, which compose the tax (dollar) base, is exclusive and that any order or circular that inflates the tax-base is void.

Considering that there is no dispute as to the correctness of the computation of the amount in question (par. 5, page 2, Memorandum for Petitioner), the determination of whether or not the 25% marginal fee imposed by Republic Act No. 2609 should be included as part of the tax-base for purposes of computing the corresponding customs duties, special import tax, and compensating tax due, turns upon the validity of Department Circular No. 22. If said Department Order No. 22 is valid, the inclusion of the 25% marginal fee as part of the tax-base is legal; hence, the claim for refund cannot be sustained. Otherwise, the inclusion of said marginal fee is illegal, and the amount claimed refundable must be granted.

Petitioner's contention is untenable.

The pertinent provision of Department Order No. 22 provides in part as follows:

> "The conversion rates of foreign exchange to be used as tax-base for the computation of customs duties, internal revenue taxes and special import tax on articles imported or brought into the Philippines, referred to in Paragraph I

> (a) and (b) above, shall be the effective rates (either the preferred rate or free market rate depending on the commodity classification of the Central Bank, plus the margin. x x x (Italics supplied)

This Department Order was issued by the Secretary of Finance pursuant to the provision of Section 79-(B) of the Revised Administrative Code which empowers the department head to "promulgate all rules, regulations, orders, and circulars not contrary to law, necessary to regulate the proper working and harmonious and efficient administration of each and all of the offices and dependencies of his Department, and for the strict enforcement and proper execution of the laws relative to matters under the jurisdiction of said Department." It was issued for the purpose of implementing the execution and carrying out of the provision of Central Bank Circular No. 105, paragraph 2, which, in part, states:

> "2. Sales of exchange by the Central Bank at the official rate of ₱2.00 to $1.00 plus margin levy, shall be limited to the following transactions, and shall be subject to licensing by the Central Bank:
>
> "(a) Controlled imports (SC, DC, EP, and SEP categories under the Central Bank Commodity Classification)." (Underlining supplied)

Note that the petitioner did not question the validity of said Central Bank Circular No. 105, for this Circular has the force and effect of law (People vs. Que Po Lay, G. R. No. L-6791, March 29, 1954; Robert Janda vs. Lepanto Consolidated,

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G. R. No. L-6930, May 25, 1956; People vs. Paet, G. R. No. L-9551, November 26, 1956), and being considered part of the customs and tariff laws, must be enforced by the Bureau of Customs. (Francisco Pascual v. Commissioner of Customs, G. R. No. L-10979, June 30, 1959; Commissioner of Customs vs. Estanislao Leuterio, G. R. No. L-9142, October 17, 1959). Note also that it is not disputed that the importations in question fall under the EP Category and, therefore, are within the classification provided in paragraph 2 of said Central Bank Circular No. 105. Consequently, being merely an implementing order of said Central Bank Circular No. 105, the validity of Department Order No. 22 cannot be assailed.

Petitioner, invoking Section 204 of Republic Act No. 1937, which provides:

> "Sec. 204. Rate of Exchange. - For the assessment and collection of import duty upon imported articles and for other purposes, the value and prices thereof quoted in foreign currency shall be converted into the currency of the Philippines at the current rate of exchange or value specified or published, from time to time, by the Central Bank of the Philippines."

argues that the correct current rate of exchange to serve as the tax-base in the computation of the assessment of import duty shall be at the ratio \$1:₱2.00 and not \$1.00:₱2.50 as held by the respondent.

To accede to this argument or proposition would be to give way to illusion rather than to stark reality. For, as regards the petitioner-importer, the inescapable fact is that the true value and price of the imported articles are those appearing in the customs entries and expressed in American dollars, plus the margin fee of 25%. The 25% fee is necessarily included in the value and price of the importations because no importation payable in foreign exchange could then be effected without payment thereof.

Petitioner's interpretation of Section 204 of Republic Act No. 1937 as excluding the 25% margin fee imposed by Republic Act No. 2609 from the computation of the tax-base for purposes of computing the customs duties, special import tax, and compensating tax above mentioned, is predicated more on legal fiction and technicality rather on the actual facts. Laws must be given a reasonable and sound interpretation and construction, one that breathes the life of time, and reflects the actual circumstances and events prevailing. Judicial statesmanship cannot rest on hallowed legal fiction. It must be based on solid truth, predicated on actual events and circumstances, and must settle and decide on realities of life not legal technicalities. Accordingly, we hold that the correct tax-base for purposes of computing the customs duties, special import tax and compensating tax is the converted value of the dollar into pesos, plus the 25% margin fee imposed by Republic Act No. 2609.

FOR ALL THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby affirmed. With costs against the petitioner.

SO ORDERED.

Manila, June 4, 1962.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge