COMPAÑIA MARITIMA,
Petitioner,

versus — CTA CASE NO. 967

COMMISSIONER OF INTERNAL REVENUE & COMMISSIONER OF CUSTOMS,
Respondents.

December 4/67

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

MARITIME COMPANY OF THE PHILIPPINES, INC.,
Petitioner,

versus — CTA CASE NO. 982

COMMISSIONER OF INTERNAL REVENUE & COMMISSIONER OF CUSTOMS,
Respondents.

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MARITIME COMPANY OF THE PHILIPPINES, INC.,
Petitioner,

versus — CTA CASE NO. 988

COMMISSIONER OF INTERNAL REVENUE & COMMISSIONER OF CUSTOMS,
Respondents.

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D E C I S I O N

The petitioners have appealed from the decisions of respondent Commissioner of Internal Revenue holding them liable for the payment of compensating tax on vessels acquired from the Reparations Commission.

In CTA Case No. 967, Compañia Maritima acquired from the Reparations Commission under a contract of conditional purchase and sale the vessel M/V Luzon for ₱4,360,979.12 on which the compensating tax of ₱306,299.00 was assessed. The first installment of the purchase price is payable within two years from the date of complete delivery of the vessel to petitioner, and the balance in ten equal yearly installments at 3% interest per annum. Until the whole purchase price is paid, title to the vessel remains with the Reparations Commission.

In CTA Case No. 982, Maritime Company of the Philippines, Inc. acquired from the Reparations Commission under a contract of conditional purchase and sale the vessel M/S Zamboanga for ₱7,180,000.00 on which the compensating tax of ₱504,065.00 was assessed. The first installment of the purchase price is payable within two years from the date of complete delivery of the vessel to petitioner, and the balance in ten equal yearly installments at 3% interest per annum. Until the whole purchase price is paid, title to the vessel remains with the Reparations Commission.

In CTA Case No. 988, Maritime Company of the Philippines, Inc. also acquired from the Reparations Commission under a contract of conditional purchase and sale the vessel M/V Manila for ₱8,032,454.44 on which the compensating tax of ₱563,862.00 was assessed. The first installment of the purchase price is payable within two years from the date of the complete delivery of the vessel to petitioner, and the balance in ten equal yearly payments at 3% interest per annum. Until the whole purchase price is paid, title to the vessel remains with the Reparations Commission.

In all these cases, petitioners contested the validity of the assessments, but respondent Commissioner of Internal Revenue refused to reconsider the same. And the Commissioner of Customs refused to release and deliver the vessels to petitioners without the compensating tax being paid first. Hence, petitioners have appealed. At the same time, petitioners asked that the vessels be delivered to them without prepayment of the compensating tax upon the filing of adequate bonds to secure payment of the tax in case they are finally held liable therefor. In separate resolutions of different dates, this Court issued writs of preliminary injunction against respondents and ordered the release of said vessels upon the filing of surety bonds to guaranty payment of the amounts assessed against petitioners.

While the cases were pending trial, Republic Act No. 3079 amending Republic Act No. 1789 was enacted. Under the latter statute, buyers of goods acquired from the Reparations Commission are exempt from the compensating tax. Section 20 thereof provides that any private party, or end-user who had previously acquired reparations goods may apply for the renovation of his utilization contract with the Reparations Commission in order to avail of any provision of the amendatory Act which is favorable to him under the new law. Accordingly, petitioners herein applied for the renovation of their conditional contracts of purchase and sale with the Reparations Commission, which applications were approved by the latter. The fact of filing and approval of the applications was alleged in the supplemental petitions, but the allegation was denied by respondents in their answers.

Thereafter, the parties separately moved for the postponement of the hearings in these cases until such time as the Supreme Court shall have decided the cases of Commissioner of Internal Revenue and Commissioner of Customs v. Botelho Shipping Corporation and General Shipping Co., Inc., G. R.

Nos. L-21633-34, which are similar to these cases. On June 29, 1967, the Supreme Court promulgated its judgment in said cases holding that a buyer of reparations goods prior to June 17, 1961, whose application for renovation of his utilization contract under Section 20 of Republic Act No. 3079 was approved by the Reparations Commission, is exempt from the payment of compensating tax. Said the Supreme Court:

> "It is true that Republic Act No. 3079 does not explicitly declare that those who purchased reparations goods prior to June 17, 1961, are exempt from the compensating tax. It does not say so, because they do not really enjoy such exemption, unless they comply with the proviso in Section 20 of said Act, by applying for the renovation of their respective utilization contracts, "in order to avail of any provision of the Amendatory Act which is more favorable" to the applicant. In other words, it is manifest, from the language of said section 20, that the same intended to give such buyers the opportunity to be treated "in like manner and to the same extent as an end-user filing his application after the approval of this Amendatory Act." Like the "most-favored-nation-clause" in international agreements, the aforementioned section 20 thus seeks, not to discriminate or to create an exemption or exception, but to abolish the discrimination, exemption or exception that would otherwise result, in favor of the end-user who bought after June 17, 1961 and against one who bought prior thereto. Indeed, it is difficult to find a

substantial justification for the distinction between the one and the other. As correctly held by the Tax Court in Philippine Ace Lines, Inc. v. Commissioner of Internal Revenue (C. T. A. Nos. 964 and 984, January 25, 1963), and reiterated in the cases under consideration:

> "x x x In providing that the favorable provision of Republic Act No. 3079 shall be available to applicants for renovation of their utilization contracts, on condition that said applicants shall voluntarily assume all the new obligations provided in the new law, the law intends to place persons who acquired reparations goods before the enactment of the amendatory Act on the same footing as those who acquire reparations goods after its enactment. This is so because of the provision that once an application for renovation of a utilization contract has been approved, the favorable provisions of said Act shall be available to the applicant 'in like manner and to the same extent, as an end-user filing his application after the approval of this amendatory Act.' To deny exemption from compensating tax to one whose utilization contract has been renovated, while granting the exemption to one who files an application for acquisition of reparations goods after the approval of the new law, would be contrary to the express mandate of the new law, that they both be subject to the same privileges in like manner and to the same extent. It would be manifest distortion of the literal meaning and purpose of the new law."

During the joint hearing on November 25, 1967, petitioners presented evidence showing that they applied for renovation of their conditional contracts of purchase and sale covering the M/V Luzon (Exh. A, CTA Case No. 967, rec., pp. 76-81), M/S Zamboanga (Exh. A, CTA Case No. 982, rec., pp. 80-85) and M/V Manila (Exh. A, CTA Case No. 988 rec., pp. 64-69) with the Reparations Commission and the applications were approved by the latter in accordance with Section 20 of Republic Act No. 3079.

WHEREFORE, the assessments for compensating tax against petitioners in the above-entitled cases should be, as they are hereby, set aside, and the surety bonds filed by petitioners are hereby cancelled. Without pronouncement as to costs.

SO ORDERED.

Quezon City, December 4, 1967.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge