REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MEGA GENERAL MERCHANDISING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 3078

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

5/21/89

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D E C I S I O N

This is an appeal from the letter-rulings of the respondent Commissioner of Internal Revenue of January 28, 1977 and February 15, 1980, ordering petitioner to pay deficiency specific tax of Two Hundred Seventy Five Thousand Six Hundred Fifty Two Pesos (₱275,652.00) on its importation of crude paraffin wax on June 21 and August 17, 1977, respectively.

Sometime on June 21, and August 17, 1977 (pp. 195-196, BIR Rec.), petitioner imported crude paraffin wax consisting of a total of 1,214,400 kilograms. Relying on the ruling of the Commissioner of Internal Revenue dated May 14, 1975, which states to the effect that under Section 142(i) of the National Internal Revenue Code, as amended by PD 392, imported crude paraffin wax, which is used as raw materials in the manufacture of candles, wax paper, matches, crayons, drugs, ointment, etc. is not subject to specific tax but only to advance sales tax under Section 186 (Exhs. C, C-1, C-2, pp. 73-75 CTA rec.). Petitioner, accordingly, paid advance sales tax in the sum of ₱149,388. However, the Commissioner of Internal Revenue has previously required the payment on this importation specific tax of ₱321,436.79 which petitioner actually paid and which petitioner requested to be refunded or credited by respondent Commissioner of Internal Revenue in its letter of November 27, 1975. (p. 138, BIR rec.).

In a ruling of January 28, 1977, respondent held petitioner liable for specific tax of ₱321,436.79 and denied the latter's claim for the refund or tax credit of the alleged overpaid specific tax of ₱321,436.79. (p. 146, BIR rec.).

In a letter dated January 11, 1978, respondent Commissioner of Internal Revenue, acting on the request for reconsideration, approved the claim for tax credit of petitioner's overpaid specific tax, which, in effect, held that petitioner is not liable for specific tax on its imported crude paraffin wax. (p. 210, BIR rec; Exhs. E and E-1, p. 77 CTA rec.).

In view of the other conflicting ruling of January 28, 1977 (Exh. D. p. 76, CTA rec.) which ruled and held petitioner liable for specific tax on the imported crude paraffin wax, as against that ruling of January 28, 1977 aforesaid, having its position on the fact that under the ruling of the BIR of May 14, 1975, stated earlier, interpreting the provisions of Section 142(i), as amended by PD 392, of the Tax Code, and which remained unchanged ever since, petitioner on May 4, 1978 requested for reconsideration praying that it shall be held not liable for specific tax on said importation. (p. 209-214, BIR rec.)

We hereby quote at length BIR ruling of May 14, 1975 for more in depth analysis of the same.

> This refers to your letter dated April 22, 1975 requesting clarification as to whether imported crude paraffin wax is subject to specific tax under Section 142(i) of the Tax Code, as amended by Presidential Decree No. 392, or to the 7% sales tax under Section 186 of the same Code.
>
> It is your opinion that crude paraffin wax, a raw material used in the manufacture of candles, wax paper, matches, crayons, etc. is not subject to specific tax under Section 142(i) of the Tax Code, as amended, on the ground that what are subject to tax under said section are refined and manufactured mineral oils and motor fuels.
>
> In reply, I have the honor to inform you as follows:
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> Section 142(i) of the Tax Code, as amended by Presidential Decree No. 392, provides as follows:
>
>> "Sec. 142. Specific tax on manufactured oils and other fuels.- On refined and manufactured mineral

oils and motor fuels, there shall be collected the following:

"i) Greases, waxes and petrolatum, per kilogram, thirty-five centavos."

The title of Presidential Decree No. 392 runs as follows: INCREASING THE SPECIFIC TAX ON KEROSENE, LUBRICATING OIL, GASOLINE, BUNKER FUEL OIL AND DIESEL FUEL OIL AND IMPOSING SPECIFIC TAX ON OTHER REFINED AND MANUFACTURED MINERAL OILS BY AMENDING SECTIONS 142, 144 AND 145 OF THE NATIONAL INTERNAL REVENUE CODE AS AMENDED.

Among the statements in the declaration of policy of Presidential Decree No. 392, are the following:

"WHEREAS, in order to improve and simplify tax administration, it is desirable to adopt a uniform tax treatment for all refined and manufactured petroleum products;

WHEREAS, the increase in tax on motor fuels and oil is consistent with the present policy to conserve fuel."

In determining whether imported crude paraffin wax is subject to specific tax or to the sales tax, it is important to know the nature, characteristic and uses of paraffin wax.

"Paraffin, a colorless or white, waxlike substance, a solid at ordinary temperatures, which is odorless and tasteless and slightly greasy to touch. It is obtained from certain types of paraffin-base petroleum oils, such as Pennsylvania crudes (not from asphaltic oils, as produced in Mexico and California), and sometimes from shale oil. Crude petroleum oils is subject to a process of fractional distillation, by which gasoline, kerosine, gas oils, paraffin distillate, and lubricating oils are successively obtained. The paraffin wax is separated from the paraffin distillate and from the gas oil and lubricating oils, which also contain paraffin, by a process of chilling, followed by filtration. When the paraffin-containing oil is refrigerated, the wax crystallizes out. If a solvent such as methyl ethyl ketone, which is a good solvent for oil and a poor one for wax, is added to the paraffin-bearing oil, the separation is facilitated. The paraffin is further refined by recrystallization from solvent.

"One of the outstanding physical characteristics of paraffin is its resistance to water and water vapor. More than half the paraffin produced is used as a coating for paper (milk cartons, frozen food containers). Paraffin has important uses in the manufacture of drugs and cosmetics (lipstick, ointments) and candles. It is also used for electrical insulation.

"x x x. The chlorination of paraffin is used to produce methyl chloride, a refrigerant and solvent, ethyl chloride for tetraethyl lead manufacture, and chlorinated paraffin waxes for use as high-pressure lubricants. x x x." (Vol. 21, pages 274d - 274e, Encyclopedia Americana)

On the other hand, wax is defined, viz:

"Wax - any of a number of natural or synthetic substances that are oily, greasy, insoluble in water, and very sensitive to changes in temperature. Waxes differ widely in chemical composition. Some waxes are esters of high-molecular-weight fatty acids. An ester is one of the products of a reaction between an acid and alcohol. These waxes may be animal, vegetable, or mineral

> in origin. Some waxes obtained from petroleum and therefore are hydrocarbon.
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> "The petroleum waxes are produced mainly from petroleum lubricating oils in a process called dewaxing. Petroleum waxes, microcrystallin waxes, and petrolatum." (Vol. 19, pages 351-352, Merit Students Encyclopedia, 1974 Edition).
>
> "Microcrystallin waxes, which are closely related chemically to paraffin but have higher melting points, are obtained from residual oils from the distillation of crude petroleum oil." (Vol. 21, p. 274e, Encyclopedia Americana).

> From the title of the law and the declaration of policy as hereinabove quoted, and considering the nature, characteristic and uses of paraffin waxes as stated above, it is the opinion of this Office as it hereby holds that only waxes which are used as high-pressure lubricants and micro-crystallin waxes are subject to the specific tax prescribed in Section 142(i) of the Tax Code, as amended by PD 392. Accordingly, imported crude paraffin waxes which are used as raw materials in the manufacture of candles, wax paper, matches, crayons, drugs, ointments, etc. are subject to the 7% advance sales tax, the tax to be based on the landed cost thereof plus 24% mark-up pursuant to Section 183(b) in relation to Section 186, both of the Tax Code.

On May 8, 1978, respondent Commissioner of Internal Revenue found, after investigation, that based on the importation of crude paraffin wax on June 21 and August 17, 1977, petitioner was held liable for deficiency specific tax of ₱275,652.00. (p.176, BIR rec.).

The above letter was subsequently followed by another letter of respondent Commissioner of Internal Revenue dated February 15, 1980, replying to the petitioner's request for reconsideration, which maintained the liability of petitioner for specific tax on the imported crude paraffin wax (pp. 217 - 218, BIR rec.), which is quoted below:

> With reference to your request for reconsideration of our decision demanding payment from your client, MEGA GENERAL MERCHANDISING CORPORATION the sum of ₱275,652.00 as deficiency specific tax on imported crude paraffin wax which arrived in Manila on June 21 and August 17, 1977, I have the honor to inform you that x x x this Office finds no justifiable reason to modify or alter its previous ruling on the matter.
>
> Section 142(i) of the Tax Code, as amended by Presidential Decree No. 392, which is the law pertinent to the case provides as follows:
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> > Sec. 142.- Specific tax on manufactured oils and other fuels.- On refined and manufactured mineral oils and motor fuel, there shall be collected the following:
> >
> > x x x x x x x x x
> >
> > (i) Greases, waxes and petrolatum, per kilogram, thirty-five centavos.
>
> The said provision of the law does not distinguish the kind of wax that is subject to the specific tax. Our earlier ruling dated May 14, 1975, holding that crude paraffin wax is subject to the advance sales tax is, therefore, superseded by the recent ruling dated January 28, 1977.

> As it appears that the importations in question arrived in Manila and the tax paid thereon after the effectivity of our ruling of January 28, 1977, the assessment of ₱275,652.00 was, therefore, correctly issued against your client.

Hence, this appeal.

From the facts of this case, the issues boil down to the following

1. May specific tax be imposed on the importation of crude paraffin wax? and
2. May the ruling of theCommissioner of Internal Revenue of January 28, 1977 be made to apply on the importation of crude paraffin wax or shall it be the ruling of May 14, 1975 which previously held petitioner not liable for specific tax on such importation?

The foregoing issues raised being very closely interrelated, we shall discuss these jointly and at length.

It will be starkly noted that in a ruling of respondent Commissioner of Internal Revenue dated January 11, 1978 (p. 204, BIR rec.), the request for reconsideration of petitioner of the ruling holding it liable for specific tax and for the tax credit of the sum of ₱321,436.79 paid as specific tax was granted by the Commissioner of Internal Revenue. In effect, this ruling overrules that of January 28, 1977 holding petitioner liable for specific tax on its importations of crude paraffin wax. The ruling of January 11, 1978, having overruled that of January 28, 1977, the importations of crude paraffin wax made on June 21 and August

17, 1977, ostensibly became once more subject to the ruling of May 14, 1975 which held such importation of crude paraffin wax as not liable to specific tax under the provisions of Section 142(i) of the National Internal Revenue Code, as amended by PD 392. In other words, there was no other ruling which is prior to or was made to apply to the importations of petitioner of crude paraffin wax on June 21 and August 17, 1977, except only that ruling of the Commissioner of Internal Revenue of May 14, 1975 which applied Section 142(i), as amended by PD 392, of the National Internal Revenue Code, which took effect on February 18, 1974, and that this provision of Section 142(i), as amended, has remained unchanged since then. It is clearly and legally justified to conclude that this ruling of the Commissioner of Internal Revenue of May 14, 1975 shall prospectively apply in favor of the importations of crude paraffin wax on June 21 and August 17, 1977 in question. This is the ruling which assured the taxpayer, Mega General Merchandising Corporation, that for its importations of crude paraffin wax, it shall only be liable to 7% advance sales tax and no more. To make petitioner liable for specific tax after it had made the importations would surely prejudice petitioner as it would be subject to a tax liability of which the Bureau of Internal

Revenue has not made it fully aware. As a result, the rulings of May 8, 1978 and February 15, 1980 having been issued long after the importations on June 21 and August 17, 1977 in question cannot be applied with legal effect in this case because to do so will violate the prohibition against retroactive application of the rulings of executive bodies. Rulings or circulars promulgated by the Commissioner of Internal Revenue, such as the rulings of January 28, 1977 and those of May 8, 1978 and February 15, 1980, can not have any retroactive application, where to do so, as it did in the case at bar, would prejudice the taxpayer. (ABS-CBN Broadcasting Corp. vs. Court of Tax Appeals & Com. of Internal Revenue, G.R. L-52306, October 23, 1981.) Also, the re-enactment of Section 142(i) of the National Internal Revenue Code, as amended by PD 392, which provision of law has substantially remained unchanged, is a clear indication that Congress had adopted its prior executive construction and which means that imported crude paraffin wax is not subject to specific tax thereunder pursuant to the BIR ruling dated May 14, 1975. (Alexander Howden & Co, Ltd, vs. Coll. of Int. Rev., 13 SCRA 601.)

Consequently, we are of the opinion and so hold that the rulings of the Commissioner of Internal Revenue of May 8, 1978 and February 15, 1980 cannot be made to apply retroactively so as to subject the imported crude paraffin wax of petitioner to specific tax in the sum of ₱275,652.00, plus increments thereto.

WHEREFORE, the decision of the Commissioner of Internal Revenue appealed from is hereby reversed. Petitioner is not liable for specific tax on its importations of crude paraffin wax in the sum of ₱275,652.00 imposed against petitioner, but only subject to the 7% advance sales tax which petitioner had already paid. Accordingly, respondent is hereby ordered to refund or credit petitioner specific tax it paid in the sum of ₱275,652.00. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila. May 21, 1984.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge