

INTERNATIONAL BUSINESS MACHINE CORPORATION OF THE PHILIPPINES (FORMERLY WATSON BUSINESS MACHINES CORPORATION OF THE PHILIPPINES) PLAINTIFF AND APPELLANT, VS. COLLECTOR OF INTERN...

G.R. No. L-6732. March 06, 1956

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This appeal is taken from a decision of the Court of First Instance of Manila denying recovery of P1,267.75 paid as compensating tax on the value of business machines imported into the Philippines by the appellant International Business Machines Corporation from July 1, 1939 up to, and including March 31, 1941, and then rented (not sold) to its customers.

The facts, as stipulated, are:

"During the period from July 1, 1939 up to and including March 31, 1941, the period embraced in the complaint, the plaintiff-appellant had engaged in the business of selling machine cards and leasing business machines. The machine cards were sold and the business machine leased' to the customers of plaintiff-appellant. The sales tax of 3½ percent, which was the rate in force during the period in question, was paid on the sales of machine cards. Defendant-appellee demanded and collected from plaintiff-appellant, and the latter paid, the amount of P1,267.75 representing the alleged compensating¹ tax on the business machines brought by plaintiff-appellant into the Philippines and used as above stated.

Of the sum of P1,267.75, the amount of P828.10 was the compensating tax on machines imported by plaintiff from July 1, 1939 to October 15, 1940, inclusive, and the balance of P439.65 was the compensating tax on the machines imported by plaintiff-appellant during the period from October 16, 1940 up to March 31, 1941.

Appellant filed a claim with the appellee in the total amount of P1,267.75 within the period of 2 years from the date of payment thereof, and the latter denied said claim." (Brief for Appellant, pp. 2-3.)

The gist of appellant's position is that the compensating taxes collected during the Commonwealth under the original sec. 190 of the National Internal Revenue Code, before the same was approved by the President of the United States, were in fact a tax on imports, and could not become law without the Presidential approval, provided in section 2(a), paragraph 9, of the Philippine Independence Act (Act of Congress of March 24 1934), reproduced in section 1(a) of the Ordinance appended to the Commonwealth Constitution.

The text of section 190 aforesaid, before its amendment by Commonwealth Act No. 503, is as follows:

"Sec. 190. Compensating tax.—All persons purchasing or receiving from without the Philippines any commodities, goods, wares, or merchandise, excepting those subject to specific taxes under Title IV of this Code, shall pay on the total value thereof at the time they are received by such persons, including freight, postage, insurance, commission, and all similar charges, a compensating tax equivalent to the percentage tax imposed under this Title on original transactions effected by merchants, importers, or manufacturers, such tax

to be paid upon the withdrawal or removal of said commodities, goods, wares, or merchandise from the customhouse or the post office: Provided, however, That merchants, importers, and manufacturers, who are subject to tax under sections 184, 185, 186, 187 and 189 of this Title shall not be required to pay .the tax herein Imposed where the articles purchased or received by them from without the Philippines are to be resold, bartered, or exchanged, or used in connection with their business." (National Internal Revenue Code) (Brief for Appellant, pp. 3-4.)

We agree with the decision of the Court below that the compensating tax thus imposed is not a tax on the importation of goods. This is evident from the proviso that imported merchandise which is to be disposed or in transactions subject to sales tax under sections 184, 185, 186, 187 and 189 of the Internal Revenue Code, is expressly exempted from the compensating tax. This feature shows that it is not the act of importation that is taxed under section 190, but the use of imported goods not subjected to a sale tax; otherwise the compensating tax would have been levied on all imported goods regardless of any subsequent tax that might accrue. Moreover, the compensating tax accrues whether or not the imported goods are subject to pay customs duties.

That the compensating tax was expressly designed as a substitute to make up or compensate for the revenue lost to the government .through the avoidance of sales taxes by means of direct purchases abroad is shown by the report of the Tax Commission that prepared the Internal Revenue Code.

"3. Compensating tax imposed.—Avoidance of sales tax is to be prevented- by imposing a compensating tax of 1½ per cent on all persons other than merchants, manufacturers etc., who receive goods directly from abroad.

It is proposed to levy upon all persons who purchase or receive directly from abroad commodities goods, wares and merchandise; except those subject to specific taxes under the propose plan, a tax equivalent to the percentage tax imposed on original sales, barter, or exchanges of similar articles effected by merchants, importers, or manufacturers. The tax will be based on the total value of the articles at the time they are received, including freight, postage, insurance, commission and all other charges, and it will be paid before the articles are actually removed from the customhouse or post-office. . However, merchants, importers, and manufacturers will not be required to pay this tax where the articles purchased or received by them from without the Philippines are intended for resale, barter, or exchange, or for use in connection¹ with their business and are actually disposed of so used. Furthermore, the tax will not be assessed or collected on any single shipment consigned to any one person when the total value of the shipment does not exceed P100.

The purpose of this proposal is to place persons purchasing goods from dealers doing business in the Philippines in equal footing, for tax purposes, with those who purchase goods directly from without the Philippines. Under the present law, the former bear the burden of the local sales tax because, 'it is shift them as part of the selling' price demanded by the local merchant while the latter do not. The proposed tax will do away with this inequity and render justice to merchants and firms of all nationalities "who are in legitimate business here, paying taxes and giving employment to a large number of people." (Report of the Tax Commission of the Philippines, Vol. I, pp. 74-75.) (Brief for Appellee, pp. 4-6.)

It is argued for appellant that the compensating tax is imposed on imported merchandise irrespective of uses to which it is to be subsequently devoted, and that such feature makes it an import tax. The premise is incorrect: for, as previously observed, if the goods are actually sold within the Philippines, they are exempt from the compensating tax. The latter thus becomes a tax on use of goods other than the sale thereof.

Calling it an import tax will not make it one. As noted by the U. S. Supreme Court in *Henneford vs. Silas Mason Co.*, 300 U. S. 577, 81 L. Ed., 814, on pages 820-821, a proposal of a similar tax imposed by the state of Washington-

"Catchwords and labels, such as the words 'protective tariff' are subject to the dangers that lurk in metaphors and symbols, and must be watched with circumspection lest they put us off, our guard. A tariff, whether

protective or for revenue, burdens the .very act of importation, and if laid by a state upon its commerce with another is equally unlawful whether protection or revenue is the motive back ol it. But a tax upon use, or, what is equivalent for present' purposes, a tax upon property after importation is over, 'is not a clog upon the process of importation at all, any more than a tax upon the income or profits of a business."

Not being an import tax, we hold the compensating tax under section 190 of the Internal Revenue Code to have been validly imposed by the Commonwealth without the previous approval of the President of the United States.

The decision appealed from is affirmed. Costs against appellant. So ordered.

Parás, C. J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Endeiicia, JJ., concur.

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