

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LA PERLA CIGAR AND CIGARETTE FACTORY, INC.,
DEFENDANT-APPELLANT.**

G.R. No. L-19880. August 15, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal by defendant La Perla Cigar and Cigarette Factory, Inc. from a decision of the Court of First Instance of Manila, sentencing said defendant to pay to plaintiff Republic of the Philippines the following amounts, with legal interest from the dates following each, apart from the costs:

P9,309.05

January 14, 1957

5,138.25

March 14, 1957

345.51

April 8, 1957

3,060.34

April 23, 1957

3,427.56

May 6, 1957

2,913.73

May 13, 1957

3,425.18

August 20, 1957

5, 140.31

May 13, 1957

Total - P32,759.93

P7,825.16

January 15, 1957

19,148.91

January 7, 1957

6,051.01

January 13, 1957

16,755.24

May 6, 1957

14,432.51

May 4, 1957

3,997.54

May 13, 1957

1,676.95

June 22, 1957

12,204.76

July 10, 1957

9,013.79

Sept. 3, 1957

9,091.72

Sept. 3, 1957

Total - P100,197.59

Defendant is a domestic corporation engaged in the manufacture of cigars and cigarettes. During the years 1954 to 1955, it imported therefor tobacco flavors the special excise tax on which aggregated P32,759.93. Defendant filed applications for exemption therefrom, which were approved by the Office of the Exchange Tax Administration of the Central Bank of the Philippines, but, disallowed by the Auditor thereof, who, accordingly, demanded payment of said sum.

Prior thereto, or during the years 1953 to 1954, defendant had, also, imported several quantities of similar tobacco flavors, for which it had paid the aggregate sum of P100,197.59, as special excise tax, which was later refunded upon defendant's applications for exemption, approved by said Office of the Exchange Tax Administration and the Assistant Auditor of the Bank. Acting, however, in compliance with an order of the Auditor General, dated December 8, 1955, pursuant to Section 657 of the Revised Administrative Code, the Auditor of the Central Bank proceeded to review all previous refunds of exchange taxes, and found, inter alia, that said sum of P100,197.59 had been erroneously and illegally refunded. Accordingly, on December 3, 1957, the Auditor General demanded payment of said sum of P100,197.59; but, to no avail. Hence, on September 21, 1959, plaintiff commenced the present action, in the Court of First Instance of Manila, to recover not only the latter amount, but, also, the sum of

P32,759.93 allegedly due for the tobacco flavors imported from 1954 to 1955.

After appropriate proceedings, said court rendered judgment for the plaintiff, upon the ground that, although exempt from the payment of the special excise tax, under our ruling in *Colgate-Palmolive Phil. Inc. vs. Jimenez*,^[1] defendant can no longer contest plaintiff's right to collect said sums of P32,759.93 and P100,197.59 as special excise taxes, it having failed to appeal from the action of the Auditor General incorporated into his demand letter of December 3, 1957.

Defendant assails the appealed decision upon the ground that said letter of the Auditor General does not partake of the nature of a decision, because the same did not settle any particular claim and had been written in consequence of a policy calling for the revision or review of all previous refunds of exchange taxes. Consequently, appellant argues, an appeal from said action of the Auditor General could not have been properly taken, pursuant to the view expressed in *Cheng Ban Yek Co. vs. Auditor General*.^[2] Regardless, however, of the applicability of the doctrine therein laid down to the case at bar, we are of the opinion and so hold that the decision appealed from should be affirmed.

Indeed, Republic Act No. 601 imposed "a special excise tax of 17%" on the value in Philippine peso of foreign exchange sold and/or authorized to be sold by the Central Bank of the Philippines or any of its agents.^[3] Section 2 of House Bill No. 1513, which upon approval became said Republic Act No. 601, exempted "rice, flour, canned milk, cattle and beef, canned fish, fertilizer, drugs, medicines and medical supplies" from said tax. Several amendments - among which was the insertion of the terms "stabilizer and flavors" - were introduced in Congress. As finally approved, said Section 2, reads:

"The tax collected under the preceding section on foreign exchange used for the payment of the cost, transportation and/or other charges incident to importation into the Philippines of rice, flour, canned milk, cattle and beef, canned fish, soya beans, butterfat, chocolate, malt syrup, tapioca, stabilizer and flavors, vitamin concentrate, fertilizer, poultry feed; textbooks, reference books, and supplementary readers approved by the Board on Textbooks and/or established public or private educational institutions; newsprint imported by or for publishers for use in the publication of books, pamphlets, magazines and newspapers; book paper, book cloth, chip board imported for the printing of supplementary readers (approved by the Board on Textbooks) to be supplied to the Government under contracts perfected before the approval of this Act, the quantity thereof to be certified by the Director of Printing; anesthetics, anti-biotics, vitamins, hormones, X-ray films, laboratory reagents, biologicals, dental supplies, and pharmaceutical drugs necessary for compounding medicines; medical and hospital supplies listed in the appendix to this Act, in quantities to be certified by the Director of Hospitals as actually needed by the hospitals applying therefor; drugs and medicines listed in the said appendix; and such other drugs and medicines as may be certified by the Secretary of Health from time to time to promote and protect the health of the people of the Philippines shall be refunded to any importer making application therefor, upon satisfactory proof of actual importation under the rules and regulations to be promulgated pursuant to section seven hereof. "

Thus, the exempted articles are grouped therein as follows:

- (a) "rice, flour, canned milk, cattle beef, canned fish, soya beans, butterfat, chocolate, malt syrup, tapioca, stabilizer and flavors, vitamin concentrate, fertilizer, poultry feeds;"
- (b) "textbooks, reference books, and supplementary readers approved by the Board on Textbooks and/or established public or private educational institutions;"
- (c) "newsprint imported by or for publishers for use in the publication of books, pamphlets, magazines and newspapers;"

- (d) "book paper, book cloth, chip board imported for the print-ing of supplementary readers (approved by the Board on Textbooks) to be supplied to the Government under contracts perfected before the approval of this Act, the quantity thereof to be certified by the Director of Printing;"
- (e) "anesthetics, antibiotics, vitamins, hormones, x-ray films, laboratory reagents, biologicals, dental supplies and pharmaceutical drugs necessary for compounding medicines;"
- (f) "medical and hospital supplies listed in the appendix to this Act in quantities to be certified by the Director of Hospitals as ac-tually needed by the hospitals applying therefor;"
- (g) "drugs and medicines listed in said appendix;" and
- (h) "such other drugs and medicines as may be certified by the Secretary of Health from time to time to promote and protect the health of the people of the Philippines."

By reason of their nature, the exempted objects belong to the following general categories, namely: (1) food or goods used for the production of food; (2) drugs or medicines; (3) medical and hospital supplies; (4) books and materials for the printing of books for schools; and (5) newsprint for the publication of reading materials. It seems so clear that the exempted "stabilizer and flavors", do not constitute, by themselves, a class distinct, separate and independent from that of the other exempted articles, but refer to "stabilizer and flavors" for food. Hence, said term was inserted among the goods belonging to this category.

Indeed, commenting on said House Bill No. 1513, Congressman Allas, Chairman of the Committee on Ways and Means, said, on the floor of the House of Representatives:

"While worker's cost of living may rise a little, the people most affected are the consumers of large quantities of imported articles (in case of visible payments, and the people who travel or have families living abroad, or for any reason have to make foreign remittances. The rich and the middle class will bear proportionately more of the burden of the tax than the poor, inasmuch as the latter group consume mostly articles of local production. Furthermore, the exemption of a few food articles, such as flour, canned milk and fish, and of fertilizers, cattle and beef, has removed from the operations of the exchange tax, a large portion of the imported articles commonly consumed among the poor and the lower middle class, as well as articles needed to increase agricultural production. (Congressional Records, House of Representatives, Volume I, No. 8, January 17, 1951).

In answer to a question, propounded by Congressman Villarin, on the purpose of the exemptions, Congressman Alls explained:

"The reason is very simple. The articles contained in Section 2 are the bulk of the articles consumed by the lowest class of our people and in order to make this tax reasonable, a great portion of the goods needed by the poor will not be burdened by the tax – we exempt them from the operation of this Act." (Id.)

The proceedings in the Senate reveal the same trend of thought We quote from the journal of said chamber:

"MANIFESTACIONES DEL SEN. TIRONA

"EL SENADOR TIRONA: x x x Este Proyecto de Ley que se somete a la consideracion del Senado no puede causar ningun perjuicio a los intereses del prelatoriado. Precisamente, por este motivo, el Comite de Hacienda ha hilado muy delegado en la deliberacion sobre las exenciones que se han some-dito a la consideration del Comite; practicamente, el Proyecto excluye de sus efectos toda importacion de alimentos de primera necesidad, como la leche y otros productos comestibles que vienen del es-trangero, para proteger precisamente el interes de las masas." (Diario No. 29, March 2, 1951, Senate Journal)

"ENMIENDA RODRIGUEZ

"SENATOR RODRIGUEZ: For an amendment, Mr. President. On Page 1, Sec 2, line 13, after the word 'fertilizer' insert the following: 'SOYA BEANS, BUTTERFAT, CHOCOLATE, MALT SY-RUP, TAPIOCA, STABILIZER AND FLAVORS, VITAMIN CONCENTRATE.'

"SENATOR TIRONA: Mr. President, taking into consideration that these articles are really needed especially by those people who need more vitality, the Committee accepts the amendment.

"THE PRESIDENT: Is there any objection? (Silence). The chair hears none. The amendment is approved." (Diario No. 33, Pages 24-25, March 8, 1951)

"SENATOR TIRONA: x x x That, Mr. President, is the very reason why the Committee on Finance, composed of members of different parties whose zeal and interest for the welfare of the masses cannot be put into doubt because their past and present record of public and loyal service to our people had almost unanimously endorsed this bill although introducing certain amendments which if in one hand reduce the expected yield are considered however as reasonable because for them the foremost and most important thing to be considered is the welfare of the masses x x x.

"SENATOR OSIAS: I am sensible, Mr. President, that in the bill under consideration, the Senate Finance Committee in its wisdom introduced certain exemptions on matters affecting food, the drugs and the medicines so necessary for public welfare. Naturally these and similar provisions make the measure less objection-able." (Senate Journal, March 7, 1951)

Thus, "food, drugs and medicine" summed up the exemptions from the viewpoint of the lawmakers, with the particularity that by "food" they meant what is necessary to nourish the body and the mind of the people, including, not only children in schools, but, also, the masses in general.

In fact, with the exception of food or goods used for the production of food, all other exempted goods are subject to qualifications. Thus: (a) the drugs and medicines must be either listed in the appendix to the Act, or necessary for compounding medicines or "certified by the Secretary of Health x x to promote and protect the health of the people;" b) the medical and hospital supplies must be listed in said appendix and "certified by the Director of Hospitals as actually needed by the hospitals applying therefor;" (c) the books must be "textbooks, reference books and supplementary readers approved by the Board on Textbooks and/or established public or private educational institutions," and the materials for the printing of school books are limited to "book paper, book cloth, chip board imported for the printing of supplementary readers (ap-proved by the Board on Textbooks) to be supplied to the Government under contracts perfected before the approval "of R.A. No. 601; and (d) the materials for the publication of reading matters in gene-ral must be "newsprint imported by or for publishers."

Upon the other hand, if appellant's pretense were accepted, tobacco flavors and stabilizers would be exempted without any qualification whatsoever, thereby placing said goods on a better and more privileged category than "medicines and drugs", medical and hospital supplies, books for educational institutions and materials for newspapers and magazines. Manifestly, the language of the law and its spirit, as reflected by the circumstances surrounding its en-actment and the deliberations on the floor of Congress, reject such view.

WHEREFORE, the decision appealed from is hereby af-firmed, with costs against defendant La Perla Cigar and Cigarette Factory, Inc., and insofar as inconsistent with this opinion, our ruling in the Colgate-Palmolive case should be deemed modified.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] G.R. No. L-14787, January 28, 1961, in which Irish Mosh extract, sodium saccharine, precipitate calcium carbonate and dicalcium phosphate for use as stabilizer and for flavouring of dental cream was held to be exempted from the excise tax.

[2] G.R. No. L-18354, decided on December 29, 1962.

[3] Section 1.

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