

COMMISSIONER OF CUSTOMS, PETITIONER, VS. CALTEX (PHILIPPINES) INC., AND COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-24192. May 22, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

The Commissioner of Customs seeks the review by certiorari of a decision of the Court of Tax Appeals ordering him to refund to Caltex (Philippines) Inc. the sum of P33,766.00, without pronouncement as to costs.

There is no dispute as to the facts, the same having been stipulated. During the period from January to September 1959, 32 shipments of assorted goods, consigned to Caltex, arrive at the Port of Cebu. The Collector of Customs thereof assessed and collected the special import tax prescribed in Republic Act No. 1394, at the rate of 17%, amounting to P75,730.00, on the goods imported from January to June 1959, and at the rate of 15.3%, in the total sum of P49,408.00, on the other shipments. Thus, the aggregate sum paid by Caltex amounted to P125,138.00.

In due time, it filed separate protests upon the ground that the rate fixed in Section 1 of Republic Act 1394, for the year 1959, was 11.9%. On April 22, 1960, the Collector of Customs of Cebu rendered his decision on said protests holding that the rate of special import tax applicable, pursuant to Proclamation No. 601 of the President of the Philippines, dated July 14, 1959 is 15.3%. This decision having been affirmed by the Commissioner of Customs, Caltex appealed to the Court of Tax Appeals, with the result already adverted to. Hence, the present petition for review on certiorari, filed by said Commissioner, which has been given due course.

The point in issue is the rate of the special import tax collectible on the importations under consideration. The parties agree that, if the rate applicable is 11.9%, the total amount of taxes due would be P91,322.00 and Caltex would be entitled to reimbursement in the sum of P33,766.00, whereas, if the proper rate were 15.3%, the special import tax due would aggregate P117,567.00, so that the amount refundable would be P7,571.00.

The pertinent law is admittedly Republic Act 1394, approved on August 29, 1955. Section 1 thereof prescribes a diminishing rate of special import tax on goods, articles or products imported or brought into the Philippines, ranging from 17% for 1956 to 1.7% for 1965. The rate fixed for calendar year 1959 is 11.9%. However, Section 2 of said Act provides:

"Sec. 2. (a) Notwithstanding the provisions of section one of this Act, if as a result of the application of the schedule therein, the total revenue derived from the customs duties and from the special import tax on goods, articles or products imported from the United States is less in any calendar year than the proceeds from the exchange tax imposed under Republic Act Numbered Six hundred and one, as amended, on such goods, articles or products during the calendar year 1955, the President may, by proclamation, suspend the reduction of the special import tax for the next succeeding calendar year as prescribed in the schedule, and, in order to restore the total revenue to be collected on the importation of United States goods, articles or products to the level of the exchange tax thereon during the calendar year 1955, increase the special import tax on all goods coming from any country for such succeeding calendar year to any previous rate provided for in this Act which is deemed necessary to restore the said revenue to the level attained in the calendar year 1955." (Underscoring

supplied.)

"(b) After the President shall have made adjustments in the rate of tax for any given year in accordance with paragraph (a) of this section, the tax to be imposed in subsequent years shall be as provided for the corresponding year in the schedule in section one: Provided, That the President may impose any higher rate of tax within the schedule other than that fixed for the corresponding year in order to cover anticipated deficiency in revenue arising from the operation of this Act."

Pursuant to the authority vested in him by this section on July 14, 1959, the President issued Proclamation No. 601 suspending "during the calendar year 1959, starting from January 1st," the rate of 11.9% prescribed therefor in Section 1 of Republic Act 1394, and increasing the special import tax for said year to 15.3% - which is the rate prescribed in sec. 1 of Rep. Act 1394 for the year 1957 - upon the ground that such measure was "considered necessary to restore in the calendar year 1959 x x x the total revenue to be collected on the importation of x x x goods x x x to the level of the exchange tax collected x x x during the calendar year 1955," which was P68,929,140.00, inasmuch as the total revenue from import duties and special import tax from January 1 to De-cember 31, 1958, "amounted to only P62,684,354.60," or "below the level attained in the calendar year 1955."

Despite the explicit language of said proclamation, making the increase effective "during the calendar year 1959, starting from January 1," the Tax Court ruled the same inapplicable to the importations in question for the reason that the same were made prior to the publication of said proclamation in the issue of the Official Gazette dated July 27, 1959, which was actually released to the public on September 22, 1959, and said Section 2 of Republic Act 1394 authorized the increase of the special import tax for the "succeeding calendar year," from which said Court deduced that said increase could apply only, to importations made on the 15th day after the publication of the proclamation in the Official Gazette, on October 8, 1959, or subsequently thereto.

The issue boils down to this: Does the phrase "succeeding calendar year," in section 2 refer to the year succeeding the issuance or publication of the proclamation suspending the operation of the rate set forth in section 1, or to the "calendar year" in which the total revenue derived from customs duties and special import tax is less than the proceeds from the exchange tax imposed during the year 1955. The Tax Court adopted the first alternative; but we find that the answer must be otherwise.

Pursuant to said section 2, "if as a result of ap-plication of the schedule" provided in section 1, "the total revenue derived from the customs duties and from the special import tax on goods, articles or products imported from the United States is less in any calendar year than the proceeds from the exchange tax imposed under Republic Act 601, as amended, on such goods, articles or products during the calendar year 1955" - in which Republic Act 1394 was approved - "the President may by proclamation suspend the reduction of the special import tax for the next succeeding calendar year as prescribed in the schedule" aforementioned "and in order to restore the total revenue to be collected on the importation of United States goods, articles or products to the level of the exchange tax thereon during the calendar year 1955, increase the special import tax on all goods coming from any country for such succeeding calendar year to any previous rate proved for in this Act which deemed necessary to restore the said revenue to the level attained in the calendar year 1955."

It is obvious, from the context and spirit of this provision that the expression "succeeding calendar year" refers, not to the "year" succeeding the issuance of the executive proclamation increasing the rate of special import tax, but to the "calendar year" following that in which "the total revenue derived from customs duties and from the special import tax on goods, articles or products imported from the United States is less x x x than the proceeds from the exchange tax imposed under Republic Act Numbered 601 on such goods, articles or pro-ducts during the calendar year 1955."

Indeed, the phrase "succeeding calendar year" could not refer, either to the period immediately following the issuance of said proclamation, or to the calendar year subsequent thereto, because:

1. The proclamation could not possibly be issued before the expiration of the calendar year in which a reduction of the total revenues derived from customs duties and special import taxes has taken place, because the data essential to determine the rate of increase to be ordered by the President can not be completed before the end of said year;
2. Since it would generally take some time, after the close of said "calendar year," to gather said data, the proclamation could not possibly be issued at the very first day of the "calendar year" next following;
3. Inasmuch as the proclamation would necessarily have to be issued sometime after said day, the result would be - if the view taken by the Tax Court were, accepted - that the reduction in the total revenue for the preceding year could not be offset immediately there-after, but would have to wait until, at least, one full year later, thus unduly delaying the application of remedy necessary to protect the stability of our current and national economy.

Evidently realizing that the total revenue from customs duties and the special import tax for the year 1958 was less than the proceeds from the exchange tax imposed during the year 1955, and that the President would have to exercise his authority under Section 2(a) but could not fix the rate of increase of the special import tax to be ordered by executive proclamation, after the precise amount of said total revenue shall have been determined, the Commissioner of Customs, acting pursuant to instructions from higher authorities, had ordered all collectors of customs to assess and collection beginning from January 1, 1959, the special import tax at the rate of 17%, subject to adjustment or liquidation, later on, in accordance with the rate to be fixed by said proclamation, and, upon the issuance thereof, levied and collected said tax at the rate so fixed. As a consequence all importers, including Caltex, were put on notice, since January 1, 1959, that the rate of 11.9% prescribed in section 1 of Republic Act 1394 for the special import tax during that year would be suspended and the rate thereof increased, pursuant to section 2 of said Act, although the specific rate of said increase would be fixed by proclamation to be issued by the President. In fact, Caltex has paid said tax, at the rate of 17% on each one of its importations, during the year 1959, prior to the issuance said proclamation, and, at the rate of 15.3% fixed there for its subsequent importations.

Citing *People vs. Bonje*,^[1] *People vs. Que Po Lay*,^[2] *People vs. Chan Hen*^[3] *Tan Lim Te vs. Workmen's Compensation Commission*,^[4] *People vs. Uy Kimpang*,^[5] and Section 11 of the Revised Administrative Code, the Tax Court held that Proclamation No. 601 "became effective only after fifteen (15) days" from the actual release, on September 22, 1959, of the issue of the Official Gazette of July 27, 1959, in which the proclamation was published, or "only on October 8, 1959."

Section 11 of the Revised Administrative Code does not bear out the view taken by the Tax Court. To begin with, said section refers to statutes "passed by the Congress of the Philippines." It does not apply to executive proclamations. Secondly, such statutes "take effect at the beginning of the fifteenth day after the completion of the publication of the statute in the Official Gazette," but, only, "in the absence of special provision," or, in the language of Article 2 of the Civil Code of the Philippines, "unless it is otherwise provided" in the statute or law involved. Proclamation No. 601 explicitly declares, however, that the rate of increase wherein fixed shall be in force "during the calendar year 1959, starting from January 1." Thirdly, said section 11 of the Revised Administrative Code provides, also, that for the purpose thereof, "the Gazette is conclusively presumed to be published on the date indicated therein as the date of issue." The Tax Court contravened this provision when it considered, not the date appearing in the issue of the Official Gazette in which the proclamation appeared, but the actual date of release of said issue.

Moreover, the cases cited in the decision of said Court are not in point. The *Bonje* case construed, not section 11

of the Revised Administrative Code, but a provision of Article 2 of the Civil Code of the Philippines relative to the date of effectivity thereof. The case of Que Po Lay, in turn, dwelt on the date of effectivity of Central Bank Circular No. 20, dated December 9, 1949, which was not published in the Official Gazette until November, 1951.[6] Unlike Proclamation No. 601, said circular was silent on its date of effectivity. Again, the Rules of the Workmen's Compensation Commission, which were involved in the case of Tab Lim Te,[7] explicitly provided that they shall "take effect fifteen days after its publication in the Official Gazette." Upon the other hand, in the case of Chan Hen the decision of the Court of Appeals was based upon the penal nature of the circular[8] involved therein, like that sought to be applied in the Que Po Lay case, upon which the same court relied in the case of Uy Kimpang.[9]

Particularly relevant to the question under consideration is the case of Gil Balbuna vs. The Secretary of Education.[10] One of the issues therein referred to a department order promulgating rules and regulations for the conduct of the compulsory flag ceremony in all schools as provided in Republic Act No. 1265, The petitioners in said case maintained that the department order had no binding force, because it had not been published in the Official Gazette. This Court rejected such pretense and refused to apply the rule laid down in the Que Po Lay case as affirmed in Lim Hoa Ting vs. Central Bank,[11] upon ground that the penalties provided for violations of the circulars involved in these two (2) cases constituted "the primary factor that influenced the rationale" thereof.

In effect, this Court held that the aforementioned department order had no penal character, despite the adverse consequences it may have upon those who violate the same, for which reason its publication in the Official Gazette was not essential to impart the binding force. Similarly, Proclamation No. 601 like, tax laws, in general, is not penal in nature. Indeed, a legislation merely imposing taxes, without strictly penal sanctions for violations thereof, may have a retrospective operation, without being an ex post facto law.[12] Hence:

"A statute imposing a penalty computed at a certain per cent per annum for a five-year period, upon estates of decedents for nonpayment of taxes during the lifetime of the owner, not being in punishment of crime, is not invalid as an ex post facto law in so far as the five-year period antedates the passage of the statute." [13] (Underscoring supplied)

WHEREFORE, we hold that the rate of special import tax due and collectible on the importations under consideration is 15.3%; that the amount refundable to Caltex is P7,571.00; and that the appealed decision of the Court of Tax Appeals should be as it is hereby modified accordingly, without special pronouncement as to costs.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

[1] 49 Off. Gaz, 1875-1881

[2] 94 Phil., 640.

[3] 48 Off. Gaz. 4431.

[4] 104 Phil., 522.

[5] 52 Off. Gaz. 3087.

[6] 47 Off. Gaz, 5567-5568.

[7] 53 Off. Gaz. 2112-2117.

[8] Central Bank Circular No. 21.

[9] 52 Off. Gaz. 3087.

[10] L-14283, promulgated on November 29, 1960

[11] 35 Off. Gaz. 1006.

[12] *Lorenzo vs. Posadas*, 64 Phil., 353; *Seattle vs. Kelleher*, 195 U.S. 351,360, 49 L. ed., 232, 25 Sup. Ct. Rep, 44.

[13] *Banker-Trust Co. v. Blodgett*, 260 U.S. 647, 67 ed. 139. (Italics supplied)

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