

THE COMMISSIONER OF CUSTOMS, PETITIONER, VS. PHILIPPINE ACETYLENE COMPANY, AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-22443. May 29, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is a petition filed by the Commissioner of Customs for review of the decision of the Court of Tax Appeals in its Case No. 1147, ordering the herein petitioner to refund to the Philippine Acetylene Co., Inc. the amount of P3,683.00 which it had paid under protest as special import tax on one (1) custom-built liquefied petroleum gas tank.

The facts were stipulated by the parties as follows:

- "1. That the Philippine Acetylene Company is a corporation duly organized and existing under the laws of the Philippines;
2. That said company is engaged in the manufacture of oxygen, acetylene and nitrogen and packaging of liquefied petroleum gas in cylinders and tanks;
3. That sometime in 1957 the protestant imported from the United States one custom-built liquefied petroleum gas tank which arrived via the S/S 'PLEASANTVTLLE' under Register No. 1356, and declared in Import Entry No. 94060, series of 1957; and
4. That the amount of P3,683.00 was assessed thereon as special import tax and which (sic) was paid under protest by the importer-protestant as evidenced by Official Receipt No. 12690 dated February 25, 1958."

According to Charles L. Butler, manager of the Philippine Acetylene Co., Inc., the imported custom-built liquefied petroleum gas tank is simply a large cylinder which is used as container for liquefied petroleum gas obtained from the CALTEX Refinery in Bauan, Batangas and transported to the company's plant in Manila. The gas does not undergo any chemical change and is sold to consumers in the same state was when it was acquired from the refinery, except that before it is sold the gas is punped into smaller cylinders, which are labeled with the company's trademark "Philigas."

Under the foregoing facts the issue presented for resolution is purely one of law, namely, whether or not the Philippine Acetylene Co., Inc., insofar as its packaging operation of liquefied petroleum gas is concerned, may be considered-engaged in an industry as contemplated in Section 6 of Republic Act No. 1394 and therefore exempt from the payment of the special import tax in respect of the gas tank in question.

Section 6 of Republic Act No. 1394, insofar as it is pertinent to the issue, provides:

"Section 6. The tax provided for in section one of this Act shall not be imposed against the importation into the Philippines of machinery and/or raw materials to be used by new and necessary industries as determined in

accordance with Republic Act numbered Nine Hundred and One; x x x; machinery, equipment, accessories and spare parts, for the use of industries, miners, mining enterprises, planters and farmers; x x x"

In finding that the Philippine Acetylene Co., Inc. is engaged in industry within the meaning of the above-quoted provision, the Tax Court held that the term industry should be understood in its ordinary and general definition, which is any enterprise employing relatively large amounts of capital and/or labor. On such premise the Tax Court concluded that inasmuch as the Philippine Acetylene Co., Inc. employs considerable labor and capital in packaging liquefied petroleum gas purchased by it and selling the same for profit, it is engaged in industry and hence is exempt from the payment of the special import tax in connection with the tank used as container.

The following observations in the brief for the petitioner are apropos:

"x x x in the exempting provisions of Republic Act No. 1394, the exempted items are divided into separate and specific enumerations. The term 'industries' is used in two distinct groups. The first group of exempted industries refers exclusively to those falling under the new and necessary industries as defined in Republic Act No. 901. In the second, the term 'industries' is classed together with the terms miners, mining enterprises, planters and farmers, x x x If Congress really intended to give the term 'industries' its ordinary and general meaning and thus grant tax exemption to all ventures and trades falling under the said ordinary and general definition, it should have eliminated the words 'new and necessary industries' and 'mining enterprises' since these two ventures are already covered by the term industries' in its ordinary and general meaning. On the other hand, the fact that the language of the law specifically segregates new and necessary industries under Republic Act No. 901 among those entitled to the tax exemption, in effect, restricts the meaning and scope of the word 'industries.'"

The argument appears logical and reasonable. Since the term "industries" as used in the law for the second time is classified together with the terms "miners, mining enterprises, planters and farmers," the obvious legislative intent is to confine the meaning of the term to activities that tend to produce or create of manufacture, such as those of miners, mining enterprises, planters and farmers. The Tax Court's interpretation would lead to a patent inconsistency, in that while the first part of the law confines the exemption to new and necessary industries, another part would extend the exemption to all other industries, regardless of their nature, as long as they employ labor and capital for profit-making purposes. In granting the exemption, it would have been illogical for Congress to specify importations needed by new and necessary industries - as the term is defined by law - and in the same breath allow a similar exemption to all other industries in general.

The respondents make much of the interpretation of the term "industries" by the Secretary of Finance in his 1st Indorsement dated November 19, 1956, to wit:

"Any productive enterprise which employs relatively large amounts of capital and/or labor falls under the term 'industries' as used in Section 6 of Republic Act No. 1394."

Assuming the correctness of such interpretation, what should be noted is that it stresses the productive aspect of the enterprise. The operation for which the respondent company employs the gas tank in question does not involve manufacturing or production. It is nothing but packaging; the liquefied gas. when obtained from the refinery, has to be placed in some kind of container for transportation to Manila. When sold to consumers, it undergoes no change or transformation, but is merely placed in smaller cylinders for convenience. The process is certainly not production in any sense.

The phrasing of Section 6 of Republic Act No. 1394, to be sure, is rather vague and infelicitous, particularly in the repetition of the word "industries." It is such lack of precision in the law that gives rise to litigious controversies concerning its proper application. One of the established rules of statutory construction, however, is that tax exemptions are held strictly against the taxpayer, and if not expressly mentioned in the law must be within

its purview by clear legislative intent. In the present case the construction adhered to by the respondents in reference to the scope of the term "industries" as employed for the second time in Section 6 of Republic Act No. 1394 is contrary to such rule. For if the term were all inclusive, and meant industries in general, that is, those which involve relatively large amounts of capital and/or labor regardless of their productive or non-productive nature, there would be no point in making a separate classification with respect "new and necessary industries" for purposes of the tax exemption. We hold, therefore, that to be entitled to exemption under the second classification in the statute the industry concerned, in connection with the activity for which the importation is made, must be engaged in some productive enterprise, not in merely-packaging an already finished product to facilitate its transportation. In a comparable case this Court has held that the tax exemption in connection with the processing of gasoline and the manufacture of lubricating oil does not extend to pump parts imported by the processor and leased to gasoline stations for their use in servicing customers' vehicles, overruling the argument of the petitioner therein that the marketing of its gasoline product "is corollary to or incidental to its industrial operations." (ESSO Standard, Eastern, Inc. vs. Acting Commissioner of Customs, 18 SCRA 488).

WHEREFORE, the decision of the Court of Tax Appeals is reversed and that of the Collector of Customs of Manila and the Commissioner of Customs upheld. Costs against respondent Philippine Acetylene Co., Inc.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.

Ruiz Castro and Teehankee, JJ., took no part.

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