

CALTEX (PHILIPPINES) INC., PETITIONER, VS. ACTING COMMISSIONER OF CUSTOMS, RESPONDENT.

G.R. No. L-24619. February 26, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Pursuant to Department of Finance Order No. 22 dated May 19, 1960 (effective April 25, 1960), the Bureau of Customs, in converting the value of importations from dollars to pesos, added to the peso value the 25% margin fee imposed by Republic Act 2609, for purposes of determining the customs duties and special import tax due on said shipments.

Alleged in this case are two causes of action:

First Cause of Action

Caltex (Philippines) Inc. (hereinafter called Caltex for short) imported crude oil through the port of Batangas during the period from November 14, 1960 to April 12, 1961. For the various shipments of crude oil Caltex paid to the Bureau of Customs the sums of P1,231,081.00 and P2,235,788.00 as customs duty and special import tax, respectively. Without the margin fee being added to the peso value of the crude oil, Caltex would have been liable only for P995,897.00 as customs duty and P1,809,911.00 as special import tax.

Second Cause of Action

From August 27, 1960 to April 22, 1961 Caltex received 14 shipments of various articles entered through the port of Davao. For the shipments it paid to the Bureau of Customs P18,897.33 in customs duty, and P24,556.82 in special import tax. Sans the margin fee, the customs duty and special import tax would have been only P15,193.13 and P19,784.77, respectively.

Contending, in both Instances, that the 25% margin should not be considered in converting the value of the importations from dollars to pesos for purposes of imposing customs duty and special import tax due thereon, Caltex filed formal protests with the Collectors of Customs of Davao and Batangas, and claimed the difference in the total amount of P669,537.25. Both Collectors denied the protests. Appeals to the Commissioner of Customs proved futile, hence Caltex went to the Court of Tax Appeals, which court rendered the following judgment on May 25, 1965:

"WHEREFORE, judgment is hereby rendered dismissing the petition for review, with costs against the petitioner."

Caltex timely appealed to this Court from said judgment, raising the issue of whether or not the Bureau of Customs correctly added the margin fee of 25% to the peso value of the importations for purposes of determining the customs duty and special import tax due thereon. Stated differently, the question is, should the tax base of the customs duty and special import tax include the 25% margin fee?

Caltex supports the negative for two reasons, namely, (1) that the 25% margin is not among the items enumerated in Section 201 of the Tariff and Customs Code and Section 3 of Republic Act 1394 which constitute the value of imported articles for purposes of imposing the customs duty and special import tax; and (2) that the margin fee is not a part of the conversion rate of our currency.

The Commissioner of Customs admits that the margin fee does not constitute a part of the value of the importations in question as provided for in Section 201 of the Tariff and Customs Code and Section 3 of Republic Act 1394, but maintains, sustained by the Court of Tax Appeals, that it (margin fee) is part of the rate of exchange.

The view of the Commissioner of Customs and the Court of Tax Appeals that the margin fee is part of the rate of exchange must be sustained.

Section 204 of the Tariff and Customs Code provides that for the assessment and collection of import duty upon imported articles and for other purposes, the value and prices thereof quoted in foreign currency shall be converted into the currency of the Philippines at the current rate of exchange or value specified or published, from time to time, by the Central Bank of the Philippines. The phrases "current rate of exchange" and "value specified or published, from time to time, by the Central Bank" do not necessarily mean the par value of the peso as fixed by Section 1 of the Coinage Act of March 2, 1903 of the United States Congress. They mean the value of the peso as fixed by the Central Bank regardless of the par value of the peso under the Coinage Act of 1903.

At the time the Coinage Act was enacted - March 2, 1903 - the value of a particular gold currency was principally determined by, and dependent upon, its gold point content. No direct control was exercised by governments over exchange rates: But as foreign exchange transactions progressed through the years the different trading countries gradually became less dependent upon the "gold point" system and shifted to "controlled" exchange rates which is an intermediate classification unfixed by gold points but controlled to some extent by government action.[1] Control by government action of the exchange rate was the motivating factor when our own Congress provided for a built-in authority in Section 74 of Republic Act 265 to the Central Bank to establish a uniform margin on foreign exchange.

A margin levy on foreign exchange is a form of exchange control or restriction designed to discourage imports and encourage exports, and ultimately "curtail any excessive demand upon the international reserve"[2] in order to stabilize the currency. Originally adopted to cope with balance of payment pressures, exchange restrictions have come to serve various purposes, such as limiting non-essential imports, protecting domestic industry - and when combined with the use of multiple currency rates - providing a source of revenue to the government, and are in many developing countries regarded as a more or less inevitable concomitant of their economic development programs.[3] The different measures of exchange control or restriction cover different phases of foreign exchange transactions, i.e., in quantitative restriction, the control is on the amount of foreign exchange allowable. In the case of the margin levy, the immediate impact is on the rate of foreign exchange; in fact, its main function is to control the exchange rate without changing the par value of the peso as fixed in the Bretton Woods Agreement Act. For a member nation is not supposed to alter its exchange rate (at par value) to correct a merely temporary disequilibrium in its balance of payments.[4] By its nature, the margin levy is part of the rate of exchange as fixed by the government.

The legality of the imposition of the margin levy in relation to the so-called Bretton Woods Agreement Act and the Central Bank Act has been sustained by Us in *Chamber of Agriculture and Natural Resources of the Philippines vs. Central Bank*, L-23244, June 30, 1965. The argument therefore that its imposition insofar as it would affect the rate of exchange of our currency has no legal effect is of no moment. It is reassuring to note that

as a matter of policy, the International Monetary Fund has not outlawed the adoption of exchange restrictions but recognized that the elimination of such restrictions will take some time.[5] Moreover, the goal in imposing the margin levy - to stabilize our currency - is the very same objective being undertaken by the International Monetary Fund as provided for by Article IV, Section 4(a) of the Articles of Agreement of the International Monetary Fund. The margin levy, as contemplated by the following provision in Section 1 of Republic Act 2609:

"In implementing the provisions of this Act, along with other monetary, credit and fiscal measures to stabilize the economy, the monetary authorities shall take steps for the adoption of a four-year program of gradual decontrol."

is not permanent and will eventually be done away with as soon as fundamental disequilibrium in the monetary position of the country is corrected.

As to the contention that the margin levy is a tax on the purchase of foreign exchange and hence should not form part of the exchange rate, suffice it to state that We have already held the contrary for the reason that a tax is levied to provide revenue for government operations, while the proceeds of the margin fee are applied to strengthen our country's international reserves.[6]

With respect to the special import tax, Republic Act 1394 does not specify the rate of exchange to be used in its determination. It is observed however that Section 3 of Republic Act 1394 which provides for the tax base upon which it could be computed is similar to Section 201 of the Tariff and Customs Code which provides for the tax base upon which customs duties are imposed, and that both provisions have the same source - Rule 13(a) of the Philippine Tariff Act of 1909. Both provisions are in pari materia and should therefore be construed and applied similarly, in the sense that for purposes of reckoning the special import tax due on the imported articles in question, the value of said articles expressed in foreign currency should be converted at the current rate of exchange which includes the margin levy of 25%.

WHEREFORE, the judgment appealed from is affirmed. With costs against petitioner.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Bach, ECONOMICS, 3rd Ed., Prentice Hall, p. 706.

[2] See Section 1, R.A. 2609.

[3] See INTERNATIONAL MONETARY FUND, Fourth Annual Report on Exchange Restrictions, pp. 2 to 10, cited in UNITED NATIONS (REPORT OF THE SECRETARY GENERAL, The International Flow of Private Capital, 1946-1952, p. 52).

[4] Chandler, THE ECONOMICS OF MONEY AND BANKING, Harper & Brothers, p. 426.

[5] Id., p. 430.

[6] Chamber of Agriculture & Natural Resources of the Philippines v. Central Bank, L-23244, June 30, 1965.

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