

**P. M. P. NAVIGATION COMPANY, PLAINTIFF AND APPELLANT, VS.
BIBIANO L. MEER, ET AL., DEFENDANTS AND APPELLEES.**

G.R. No. L-4621. March 24, 1952

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal by the plaintiff from a judgment of the Court of First Instance of Manila absolving the defendant Collector of Internal Revenue from the complaint. in which the plaintiff seeks the refund of the sum of P3,484 paid under protest as compensating: tax on an army launch salvaged by the plaintiff, two LCT vessels and one Chevrolet truck purchased by it from the Foreign Liquidation Commission, and one jeep purchased by it from the United States Commercial Company, all in the year 1946.

As correctly recommended by the Solicitor General, the appellant is entitled to its claim for refund of the amount paid as compensating tax on the three vessels, in view of Republic Act No. 361, which took effect on June 9, 1949, exempting from the compensating tax vessels, their equipment and/or appurtenances purchased or received from without the Philippines on or before the effectivity of said Act.

The only question that presents itself is whether the appellant, in purchasing in the Philippines the Chevrolet truck from the Foreign Liquidation Commission und the jeep from tlie United States Commercial Company, instrumentalities of the United States Government, was an importer within the meaning of section 190 of Commonwealth Act No. 466 which provides as follows:

"All persons residing or doing business in the Philippines, who purchase or receive 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 transaction 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, or 189 of this Title shall not be required to pay the tax herein imposed where such commodities, goods, wares, or merchandise purchased or received by them from without the Philippines are to be sold, resold, bartered, or exchanged or where the same are to be used in the manufacture or preparation of articles for sale, barter, or exchange and are to form part thereof: And provided, further, That the tax imposed in this section shall not apply to articles to be used by the importer himself in the manufacture or preparation of articles subject to specific tax, or those for consignment abroad and are to form part thereof. If any article withdrawn from the customhouse or the post office without payment of the compensating tax is subsequently used by the importer for other purposes, corresponding entry should be made in the books of accounts, if any are kept, or a written notice thereof sent to the Collector of Internal Revenue and payment of the corresponding compensating tax made within thirty days from the date of such entry or notice and if the tax be increased by twenty-flve per centum, the increment to be a part of the tax.

"The tax herein imposed shall not be assessed or collected on any single shipment consign to any single person

when the total value of such shipment does not exceed one hundred pesos. Goods brought by resident returning from abroad, the value of which does not exceed five hundred pesos, are exempt from this tax."

In the case of *Go Cheng Tee vs. Meer*[1] 47 Off. Gaz. Supplement No. 12, p. 269, we ruled that Go Cheng Tee, who purchased certain commodities from the Foreign Liquidation Commission, was an importer:

"La palabra importacion no se debe entenderse en su acepci6n ordinaria, sino en el sentido en que lo emplea la ley del Fisco: elCodigo Administrativo Revisado. El ejercito americano trajo a Filipinas tales efectos y despues los vendio al demandante; pero la importacion no termino con la entrega al demandante por la 'Foreign Liquidation Commission' de dichos efectos sino hasta cuando. se hubiese pagado el impuesto correspondiente. No estaba obligado el ejercito americano a pagar ningun impuesto por ellos porque los habia traído como municiones de guerra y boca, y no para fines de comercio. Mientras estaban bajo el control del ejercito y para uso militar, los efectos no debían pagar ningun impuesto al Gobierno do Filipinas. Pero inmediatamente despues de tranferidos al demandante para fines comerciales, desde ese momento nació el derecho del gobierno de gravar sobre ellos el impuesto correspondiente, y mientras no lo pague el demandante no termina la importacion. Por eso el demandante que negocio con ellos es el importador bajo los terminos precisos de la ley."

This doctrine was reaffirmed in the later case of *Saura Import & Export Co., Inc. vs. Meer*[2] (L-2927, February 28, 1951), in which we added that the United States enjoyed in the Philippines a privilege akin to extra-territoriality:

"By political relationship between the two countries and by reason of war—which was, at least technically, still in progress—the United States Government on that date enjoyed jurisdictional rights over certain areas of the Philippine territory and over military goods brought here and intended for the United States Army. While on any bases or installations within the Philippines those goods were, in contemplation of law, on foreign soil. The result was that when plaintiff, after acquiring title to such goods, brought them outside of those bases or depots, there was importation in the ordinary sense, let alone in the sense envisaged in section 1248 of the Revised Administrative Code."

Wherefore, the appealed judgment is affirmed with respect to the tax paid on the Chevrolet truck and the jeep, but reversed with respect to the three vessels, and the defendant-appellee is hereby ordered to refund to the plaintiff-appellant the tax paid on said vessels. So ordered without costs.

Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

[1] 87 Phil., 18.

[2] 88 Phil., 199.

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