

GENATO COMMERCIAL CORPORATION, PETITIONER, VS. THE COURT OF TAX APPEALS, ET AL., RESPONDENTS.

G. R. No. 11727. September 29, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for review of a decision of the Court of Tax Appeals affirming the assessment made by the Collector of Internal Revenue against petitioner in the amount of P4,519.53 for certain deficiency advance sales tax on its importations from 1951 to 1954.

Petitioner is a domestic corporation engaged in the business of importing general merchandise from abroad. From February, 1951 to December, 1954 petitioner imported merchandise from abroad and paid the advance sales taxes due thereon as provided for in Section 183 (B) of the National Internal Revenue Code. On said importations, the Collector of Internal Revenue assessed against petitioner the sum of P4,519.53 as deficiency advance sales tax on the difference of P0.15 between the bank's rate of exchange paid by petitioner and the legal rate of exchange for every U.S. dollar contending that the same comes within the phrase "all similar charges" found in said section, as amended, and demanded payment thereof. Petitioner asked for a reconsideration of the assessment made by the Collector of Internal Revenue, and when the same was denied, petitioner filed a petition for review of the ruling of said Collector.

The issue under consideration hinges on whether the difference of P0.15 paid by petitioner to a local bank in the purchase of foreign exchange for its importations comes within the phrase "all similar charges" mentioned in Section 183 (B) of the National Internal Revenue Code. The pertinent provisions of said section read:

"(B) Sales tax on imported articles.—When the articles are imported, the percentage taxes' established in sections one hundred eighty-four, one hundred eighty-five, and one hundred eighty-six of this Code shall be paid in advance by the, importer, in accordance j with regulations promulgated by the Secretary of Finance and prior to the release of such articles from customs' custody, based on the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges, plus one hundred per centum of such total value in the case of articles enumerated in section one hundred and eighty-four; fifty per centum in the case of articles enumerated in section one hundred and eighty-five; and twenty-five per centum in the case of articles enumerated in section one hundred and eighty-six. * * *"

As may be seen, an importer is required to pay in advance the necessary percentage tax on the articles imported "based on the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges." In other words, the law requires that it be included in the assessment not only the import invoice value of the merchandise, which includes freight, postage, insurance, commission, and customs duty, but all other similar charges which would necessarily increase the landed cost of the merchandise imported, which, in our opinion, should include the difference of P0.15 paid by petitioner to a local bank in the purchase of foreign exchange to carry out the

importation. Indeed, the intention of Congress in enacting the above-quoted provision is to include in the assessment all charges, whether specified or otherwise, which an importer has to pay to complete his importation.

Invoking the rule of ejusdem generis which provides that "where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, and to include only things or persons of the same kind, class or nature as those specifically enumerated,"[1] petitioner contends that the difference of P0.15 which it paid to a local bank in the purchase of foreign exchange to cover the importations in question cannot be included in the assessment for the purpose of determining the advance sales tax because they are not similar to the charges specifically enumerated in the law.

With this we disagree, for it cannot be denied that the intention of the law is to include all charges that may be paid by the importer to bring the importation into the country. In other words, all items of expense that may be incurred by the importer in bringing the importation into the country and which would necessarily increase the landed cost must be deemed included in the phrase "all similar charges" mentioned in the law. The doctrine of ejusdem generis is but a rule of construction adopted as an aid to ascertain and give effect to the legislative intent when that intent is uncertain or ambiguous, but the same should not be given such wide application that would operate to defeat the purpose of the law.[2] In other words, the doctrine is not of universal application. Its application must yield to the manifest intent of Congress (State vs. Prather, 21 LRA 23, 25).

But it is contended that, even assuming that the difference of P0.15 paid by petitioner be considered as a proper charge to be included in the assessment of the advance sales tax, still the same can no longer be included for that purpose for the same should be deemed as covered and absorbed by the corresponding mark-up prescribed by law. This contention is erroneous as being contrary to the clear import of the law. Thus, the law requires that the importer should pay the advance sales tax based on the import invoice value of the merchandise, including those charges therein enumerated, "plus one hundred per centum of such total value in the case of articles enumerated in section one hundred and eighty-four; fifty per centum in case of articles enumerated in section one hundred and eighty-five; and twenty-five per centum in the case of articles enumerated in section one hundred and eighty-six." In other words, the mark-up prescribed by law is to be considered in addition to the invoice value and all incidental expenses of importation.

There is no dispute that in the Parity Exchange Law (Republic Act No. 77) the legal rate of exchange is P2.00 for every U.S. dollar and that this rate has always been maintained by the government through various proclamations of the President of the Philippines, but the existence of such legal rate does not preclude the government from including in the landed cost the difference paid by the importer in the purchase of foreign exchange if such difference has actually been paid in carrying out the importation. The importer could have paid the legal rate in purchasing the foreign exchange but if he chooses to pay a different rate he should declare the difference for that goes to increase the cost in completing the importation.

Considering that the advance sales tax paid by the importer in carrying out the importation in question was so paid following a circular issued by the Collector of Internal Revenue dated February 19, 1951 implementing the changes introduced by Republic Act No. 594, it is contended that said payment made on the strength of the same circular should now be considered final and conclusive and, hence, it is improper for the Collector to now collect from petitioner the deficiency tax in question. And in making such advocacy, petitioner invokes the ruling of the Collector in the case of Isaac Gun Store wherein said Collector withdrew the assessment for deficiency advance sales tax he has made on the ground of "equitable estoppel."

In answering this claim of petitioner, the Court of Tax Appeals makes the following explanation, to which we

agree:

"Petitioner, in support of its second argument that the payment of the sales tax prior to the release from customs.' custody of imported goods should be considered final, and no credit, refund, or adjustment of the tax paid should be allowed, quotes a portion of the decision of this Court In the case of Candido Montales vs. Collector of Internal Revenue, B.T.A. No. 183, promulgated September 13, 1954, and General Circular No. V-106 dated February 19, 1951, of the Bureau of Internal Revenue. Petitioner has obviously misunderstood the opinion of the Court in the aforesaid Montales Case and General Circular No. V-106. The pertinent portion of General Circular No. V-106, cited by petitioner reads as follows:

'It is significant to note that, before the amendment the advance sales tax paid on imported articles by the importer was considered only as a deposit which was to be subsequently credited against the sales tax due from him for each calendar quarter. Under the amendment, the payment of the advance sales tax on imported articles by the importer thereof is final and shall be accounted for as internal revenue collection, without the benefit of tax credit or adjustment, irrespective of whether the imported articles are sold below or above the landed cost plus the mark-ups established by law. The importer need not also file a quarterly return.'

"An analytical and unbiased study of the aforesaid decision and circular will show that 'the finality of payment of the advance sales tax', referred to in both instances, simply means that under the present law, Section 183 (B) of the Revenue Code, as amended by Republic Act No. 694, payment by the importer of the sales tax prior to the release of the goods from customs' custody is no longer deemed as a mere 'deposit', subject to adjustment when the goods are actually sold, as was true before Republic Act No. 594 took effect. It is regarded as a final payment, and not subject to adjustment, irrespective of whether or not the goods are sold for more or less than the value used in the computation of the tax paid before release of the goods from customs. Finality of payment does not mean that even if there was error or mistake in the amount of the tax paid by the importer the Government can not collect the deficiency, or if there was overpayment no refund can be made. In enacting Republic Act No. 594 amending Section 183 (B) of the Revenue Code, Congress is presumed not to have intended such an absurd result."

Indeed, the view entertained by petitioner cannot be sustained for it would be tantamount to condoning a mistake or sanctioning an irregularity committed in violation of law. Moreover, even if there is such ruling or the government agents failed to use the correct conversion rate in processing the papers of petitioner in previous years, the government cannot be precluded from collecting the proper tax if it is discovered later that an error was committed. Only prescription can prevent it. The government is never estopped to collect legitimate taxes by the error committed by its agents (Pineda vs. Court of First Instance of Tayabas, 52 Phil., 803).

Wherefore, the decision appealed from is affirmed, with costs against petitioner.

Paras C. J., Bengzon, Padilla, Montemayor, Reyes, A., and Endencia, JJ., concur.

Concepcion, J., concurs in the result.

[1]25 R.C.L., 996; State vs. Collier, N.E. 2d, 77, 78; Jefferson County Fiscal Court vs. Jefferson County, 128 S.W. 2d, 230; Steinfeld vs. Jefferson County Fiscal Court, 229 S.W. 2d, 319, 320.

[2]50 Am. Jur., p. 247.

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