

PHILIPPINE-AMERICAN DRUG COMPANY, PETITIONER, VS. COLLECTOR OF INTERNAL REVENUE AND COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. 13032. August 31, 1959

Ponente: BARRERA, J.

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BARRERA, J.:

Based on a stipulation of facts submitted by the parties, Philippine American Drug Co., petitioner, and the Collector of Internal Revenue, respondent in CTA Case No. 265 the pertinent portions of which are quoted hereunder:

"2. That during the period from February 14, 1951 to December 31, 1954, petitioner did not for purposes of computing the advance sales tax on its importations include as part of the landed cost the difference (P.015) between the amount actually paid by it to the bank on said importations computed at the rate of P2.015 for every U.S. dollar and the value of the imported goods computed at the legal rate of P2.00 for every U.S. dollar;

3. That the only question involved in this case is whether or not the difference of P0.015 represents the premium on the dollar charged by the bank and paid by the petitioner in the purchase of foreign exchange;

* * * * *

4. That in November 4, 1955, respondent demanded from petitioner (Demand No. 13756) the payment of the sum of P10,243.13 as deficiency advance sales tax, * * *;

* * * * *

9. That the only question involved in this case is whether or not the difference of P0.015, representing the premium on the dollar charged by the bank to the importer-petitioner and paid by it in the purchase of foreign exchange (U.S. dollar), should form part of the landed cost of the imported articles for purposes of computing the advance sales tax, assuming that respondent's ruling dated June 21, 1954, as quoted in the 5th paragraph hereof, was issued in accordance with law and reflects the correct interpretation thereof;

* * * * *

the Court of Tax Appeals rendered judgment in said case upholding the validity of the decision of the Collector of Internal Revenue imposing sales tax on the bank premium of P0.015 for every U.S. dollar purchased by the petitioner Philippine American Drug Co. required for its importations from February 14, 1951, to December 31, 1954, which tax, together with the surcharges thereon, amounted to P10,243.13. Hence, this appeal by the taxpayer.

In demanding collection of the disputed assessment, the respondent Collector of Internal Revenue invokes Section 183-(B), as amended, of the National Internal Revenue Code which provides:

SEC. 183. Payment of percentage taxes.—

* * * * *

(B) Sales tax on imported articles. When the articles are imported, the percentage taxes established in section 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 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 of such total value 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. * * *.

The questions presented herein actually revolve around the nature or characteristic of the above-mentioned bank premium, that is whether said bank charge falls under the category of the charges enumerated in Art. 183-(B) of the Tax Code as included in the taxable value of imported goods and, therefore, must be declared for tax purposes. This case is not one of first impression to this Court, because in our decision in the case of Genato Commercial Corporation vs. The Court of Tax Appeals, et al., 104 Phil., 615; 55 Off. Gaz. (12), 2092 the same issue was resolved, thus:

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 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 P0.015 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, class or nature as those specifically enumerated," petitioner contends that the difference of P0.015 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. In other words, the doctrine is not of universal application. Its application must yield to the manifest intent of Congress (State vs. Prather, 21 L.R.A. 23, 25).

But it is contended that, even assuming that the difference of P0.015 paid by the 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 on 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.

As an additional argument not urged in the Genato case, appellant herein cites the change in the wording of the law as an indication of the intention of Congress to limit the meaning of the phrase "all similar charges." Before Section 183-(B) of the National Internal Revenue Code was first amended by Republic Act 594 on February 16, 1951, it provided that the tax was imposed on imported articles "based on the total value thereof at the time they are received by the importer, including freight, postage, insurance, commission, customs duty, and all similar charges." Republic Act No. 594 amended the section so that the tax on imported articles shall be "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." Ascribing undue import to this amendment, counsel for appellant argues: "Though we might concede that the term 'total value' in the provision just quoted could be interpreted to include the premiums that banks charged the importers for opening letters of credit, we cannot subscribe to the proposition suggested by the Court of Tax Appeals that the term 'import invoice value', which Republic Act 594 introduced in lieu of the term 'total' value, can be so interpreted. For to admit the correctness of said proposition is to entirely render meaningless the deletion of the term 'total value' and the insertion in its stead of the term 'import invoice value' accomplished by Republic Act 594."

The inference sought to be drawn by appellant from this change in the law is unjustified. Whether we interpret the phrase "all similar charges" as component part of and therefore already included in "the total value thereof", as appellant seems to accept, or we merely add "all similar charges" as a separate item to "the import invoice value thereof", as the present law provides, the result will be the same: the tax is to be based upon the total landed cost of the imported articles, as pointed out in the Genato case.

Appellant herein further assails the legality of the assessment because, it is claimed, retroactive effect is being given to the ruling of the Collector of June 21, 1954 which is void for lack of approval by the Secretary of Finance, and is made to apply to transactions long closed in the books of the taxpayer. We find no merit in this contention. As the Court of Tax Appeals has rightly said "The validity or invalidity of the ruling of respondent of June 21, 1954 is not material to this case. What is material here is the correctness of respondent's decision of November 4, 1955, which is the decision appealed from. (See par. 3, Petition for Review.) Even if the ruling of June 21, 1954 is invalid for lack of approval of the Secretary of Finance, upon which we do not here express an opinion, it would not affect the correctness of the decision of November 4, 1955, which we have found to be in accordance with Section 183-(B) of the Revenue Code."

As to the claim that transactions long closed in the books of the taxpayer can no longer be examined for the purpose of making a reassessment, suffice it to say that the under assessment of the total landed value of the imported merchandise was brought about by the importer's failure to add to the aforesaid landed value the premium collected by the bank on foreign exchange transactions. Hence, the same remained undetected until later

when, in connection with its claim for credit for overpaid sales tax, the taxpayer's record was investigated. Moreover, even granting *arguendo* that the tax agents' inability to make the correct assessment reflected against their efficiency or ability, such fact alone does not preclude the Government from effecting a corrected assessment upon discovery of the error. As this Court has explicitly ruled:

If in assessing income tax (or other kinds of tax) upon the return of the taxpayer, an error is made with the result that the tax is under assessed, the Collector has the power to reassess and collect any additional tax upon the returns for said years, even after the death of the taxpayer. The government is not estopped by error or mistake on the part of its agents (*Pineda vs. Court of First Instance of Tayabas, et al.*, 52 Phil., 803).

This is of course understood to be without prejudice to the defense of prescription in appropriate cases.

Wherefore, the decision of the Court of Tax Appeals being in accordance with the evidence and the applicable law, the same is hereby affirmed, with costs against the appellant. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Concepcion, and Endencia, JJ., concur.

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