

THE COMMISSIONER OF CUSTOMS, PETITIONER, VS. CALTEX (PHILIPPINES) INC., ET AL., RESPONDENTS.

G. R. No. 13067. December 29, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On June 20, 1953, Caltex (Philippines) Inc. was granted by the Secretary of Agriculture and Natural Resources a petroleum refining concession with the right to establish and operate a petroleum refinery in the municipalities of Bauan and Batangas, province of Batangas. The concession contains the following proviso: "the Government hereby also grants all the rights of a Petroleum Refining Concession and the Concessionaire hereby accepts all the obligations of said Petroleum Refining Concession in accordance with the provisions of Republic Act No. 387 as approved 18 June 1949, the provisions of which are made a part of this Deed of Concession." The corporation constructed a petroleum refinery in the municipality of Bauan, Batangas, which was completed and commenced operation sometime in October, 1954, using as basic material crude oil imported from abroad.

On May 11, July 28, and September 11, 1954, the corporation filed with the Collector of Customs a claim for refund of the amounts of P9,924.31j P3,679.78 and P1,300.24, representing customs duties paid on imported petroleum products consumed in connection with its refinery project at Bauan, Batangas, during the period from June 20, 1953 to March 15, 1954; from April 1, 1954 to June 30, 1954, and from March 1, 1954 to March 31, 1954, respectively, on the ground that the same were exempt from customs duties under Article 103 of Republic Act No. 387. On April 25, 1955, the Collector of Customs denied said claim for refund and, on appeal, the Commissioner of Customs affirmed the ruling on August 21, 1955. On September 30, 1955, the corporation filed a petition for review with the Court of Tax Appeals which, after hearing, rendered decision the dispositive part of which reads:

"Wherefore, the decision of the respondent Commissioner of Customs of August 21, 1955, appealed from, should be, as it is hereby modified.

"Respondent is hereby ordered to refund to the petitioner, Caltex (Philippines) Inc. the amount of P10,444.82, representing" customs duty on the petroleum products imported by it during the period from June 24, 1953 to May 29, 1954, for its own use in the construction of its Batangas refinery, the collection and refusal to refund the same being in contravention of Article 103 of Republic Act No. 387, without special pronouncement as to costs."

The Commissioner of Customs interposed the present petition for review.

Respondent company claims exemption from payment of customs duties on its importation of petroleum products consumed by it during the construction of its refinery under Article 103 of Republic Act No. 387, which provides:

"ART. 103. Customs duties.—During the first five years following the granting of any concession, the concessionaire may import free of customs duty, all equipment, machinery, material, instruments, supplies and accessories.

"No exemption shall be allowed on goods imported by the concessionaire for his personal use or that of any others; nor for sale or for re-export and if any goods on which exemption has been allowed be thus used or disposed of, the concessionaire is obliged to make a report to the Secretary of Agriculture and Natural Resources to that effect and to pay such import duty as is due."

It would appear that under the above provision any concessionaire may (import free of customs duty "all equipment, machinery, material, instruments, supplies and accessories" during the first five years following the granting of the concession. Here it cannot be disputed that the petroleum products imported by respondent for its use during the construction of the refinery such as gasoline and oil furnished its drivers during the construction job come within the import of the words material or supplies, for it has been held that gasoline and oil used by drivers in a construction job fall under the category of supplies (*West vs. Detroit Fidelity and Surety Co.*, 225 N. W. 673, 678, 118 Neb. 544 cited on page 790 Vol. 40, Words and Phrases). To the same effect is the opinion rendered by the Secretary of Justice on June 28, 1954 upon the request of respondent who held that its importation of crude oil for the use of its refinery can be considered as "materials" within the purview of the exemption statute. It is, therefore, clear that by express provision of the law the petroleum products imported by respondent for the use of its cars during the construction of its refinery are exempt from the customs duties imposed by petitioner.

It is, however, contended that, regardless of the above interpretation, the exemption clause contained in the law cannot apply to the herein corporation for the reason that the refinery of the latter is being operated on imported crude petroleum and not on crude petroleum produced in the Philippines, contrary, it is claimed, to the very objective of Republic Act No. 387 which is to promote and encourage the exploration, development, production and utilization of the petroleum resources of the Philippines, as much as possible, by private enterprises looking toward the establishment of a wholly integrated domestic industry with an equitable division of benefits between such private enterprise and the Government, giving likewise a share of such benefits to the private land owners." And to strengthen his argument, petitioner adds the following comment:

"It cannot be denied that refining concessionaires cannot help in the utilization of our petroleum resources unless they refine locally produced crude petroleum products. To exempt respondent Caltex (Philippines) Inc. from payment of customs duties on its importation of equipment, machinery, material, instruments, supplies, and accessories will not only result in the loss of revenues to the government, but will also defeat the purpose of the law to develop, exploit and utilize the petroleum resources of the Philippines." In other words, the claim of petitioner is that since respondent does not use in its refinery locally produced crude petroleum but it operates on imported crude petroleum products, it cannot claim the benefit of exemption granted by Republic Act 387.

Many reasons may be advanced to show that such is not the real intent of the law in granting exemption to petroleum concessionaires in the Philippines. To begin with, we may cite the provision of Article 79 of said Act which requires any established refinery "to refine crude petroleum produced in the Philippines in preference over any imported crude petroleum", which means that imported crude petroleum may be allowed as long as no crude petroleum is produced in the Philippines, and here it is admitted that there is no commercial production of crude petroleum in the Philippines such that respondent might be compelled for sometime to operate on imported petroleum. In the second place, in the concession granted to respondent, there is a proviso to the effect that the concessionaire shall not be required against its will to refine crude petroleum from foreign sources, which can only mean that it may also make use of petroleum from foreign sources if it so desires. In the third place, when the Petroleum Act was passed and the concession granted to respondent under its provision, it was well known that there was then no Philippine crude petroleum available for the use of any refinery in the Philippines which makes it obvious that Congress could not have intended that before the exemption may be extended to a concessionaire the latter should only refine crude petroleum produced in the Philippines, for that would defeat the very objective

of the Act. From the practical and legal point of view, therefore, the interpretation that petitioner desires to give now to the law, in an effort to justify its denial of the claim for exemption by respondent is unfair and cannot be sustained.

But petitioner insists that to allow the operation of oil refineries in the Philippines on imported crude oil products would be contrary to the real objective of the Act which is to promote and encourage the exploration, development, production and utilization of the petroleum resources of the Philippines, and so that should not be countenanced. Again, this contention is untenable, for it overlooks the fact that with the establishment here of oil refineries those interested in oil exploration and venture would receive greater impetus and encouragement because of the thought that if they strike oil of commercial value they would have an already established refinery that would be ready to absorb all the crude petroleum they may produce out of their exploratory efforts. They would know then that in that eventuality they would not need to establish their own refinery, which requires a huge capital, to process their own produced raw material. In this respect, we cannot but take notice of the following interesting observation of the Court of Tax Appeals, which we quote with approval:

"We could concede that as a petroleum refining concessionaire, the petitioner herein is not contributing directly to the exploration and exploitation of our petroleum resources. We cannot admit, however, that as such concessionaire, the petitioner is undermining the development of our petroleum resources. Indirectly, the petitioner is contributing immeasurably to the exploration of our hidden and undeveloped oil resources. For one thing, the establishment of a petroleum refinery in the Philippines, like the one operated by petitioner, has given the necessary incentive to those already engaged or who intend to engage in drilling oil wells in the Philippines as the Philippine Oil Development Co. and many others. Filipino capitalists who are by nature conservative and timid, would be encouraged to invest and keep on investing their capital in the venture with the assurance that should, they finally strike oil of commercial value, they would have ready at their disposal a well- established, locally operated refinery costing over P50,000,000.00 manned by experts. For their convenience, there will be no need for them to refine their crude oils abroad nor provide for themselves a refinery that would mean a drainage of capital and several years to construct. By way of analogy, the Philippine Charity Sweepstakes Office is definitely not engaged in breeding horses. However, it cannot be denied that its creation has given much encouragement to local horse fanciers, race horse owners and horse traders to breed good stock, what with the tempting prizes that are being offered to winners in Sweepstakes races and the exorbitant price that a potential Sweepstakes winner could command in the horse market. Moreover, it would be most unreasonable as respondent's counsel seems to expect, for petitioner to refine locally produced crude oil before granting it the benefit of exemption from customs duty when, as everybody knows, we have not yet discovered crude oils of commercial value in this country.

"The Director of Mines who is authorized under Republic Act No. 387, to administer and enforce said law, in his letter of May 9, 1953, Exhibit B, to the Secretary of Agriculture and Natural Resources recommending the approval of petitioner's application for a Petroleum Refining Concession, made the following observations:

"The establishment of a petroleum refinery in the Philippines will undoubtedly contribute much to the economic welfare of the nation as it will be an additional source of taxes for the Government afford more opportunities for employment of our people, and may reduce the cost of petroleum products which are basic needs and therefore essential in the progressive industrialization of our economy. The operation of such a refinery may also induce the intensification of the search for oil in the Philippines, where oil is recognized to exist, as then there will be a refinery available to turn into manufactured products the crude petroleum that may be found and produced locally. It may also be mentioned that the investment here of P60,000,000 for such a refinery will constitute another evidence of the confidence of foreign investors in the soundness of the Philippine peso and the existence locally of a favorable climate for foreign investments."

Note this observation of the Director of Mines: "The operation of such a refinery may also induce the

intensification of the search for oil in the Philippines, where oil is recognized to exist, as then there will be a refinery available to turn into manufactured products the crude petroleum that may be found and produced locally." No greater encouragement can be found to bolster up the exploration and development of the petroleum resources of the Philippines than this comment of our technical authority on the matter.

It is finally contended that Republic Act No. 901 which grants general tax exemption to new and necessary industries has the effect of impliedly repealing Section 103 of the Petroleum Act insofar as new industries are concerned and since the refinery established by respondent may be considered a new industry, it may not now claim the exemption in question. To meet this point, suffice it to state that Section 1 of Republic Act No. 901 expressly provides that "the tax exemption provided for in this Act shall not include any company or person engaged in the processing of oil, gasoline, lubricants and other similar fuels and by-products", which shows that respondent's refinery cannot be considered a new industry under said Act. In fact, respondent never requested any exemption from taxation under Republic Act No. 901, nor has it claimed to be a new and necessary industry within its scope.

We find, therefore, untenable the errors attributed by petitioner to the Court of Tax Appeals.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Padilla, Montemayor, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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