

MAYON MOTORS, INC., PETITIONER, VS. ACTING COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

G.R. No. 15000. March 29, 1961

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Petitioner imported automobiles in three different shipments: one shipment covering two (2) Pontiac automobiles which arrived at the port of Manila on board the steamship "Ajax" having a total landed cost of P4,696.50 each and on which it paid the amounts of P3,493.17 and P3,493.18, respectively, as advance sales tax on October 4, 1951; another shipment covering eleven (11) Pontiac automobiles which arrived at the port of Manila on board the steamer "Tungus" having a total landed cost of P4,870.76 each and on which petitioner paid the total amount of P43,877.07 as advance sales tax on March 3, 1952; and a third shipment covering four (4) Pontiac automobiles which arrived at the port of Manila on board the steamer "Steel Admiral" having a total landed cost of P5,060.60 each and on which petitioner paid a total amount of P14,988.79 as advance sales tax on September 19, 1953.

Respondent assessed against petitioner the amount of P35,353.22 as deficiency advance sales tax on the above-mentioned seventeen, (17) automobiles payment of which was demanded on April 4, 1956. On April 21, 1956, petitioner requested for reconsideration and, this request having been denied, it recurred to the Court of Tax Appeals. After hearing, said court modified respondent's decision by requiring petitioner to pay the sum of P58,968.43, while it denied the latter's claim for refund of the amount of P17,272.60. Hence this appeal.

The issue before us hinges on the interpretation of Section 183 (B), in relation to Sections 184 and 185, of the National Internal Revenue Code, relative to the computation of the advance sales tax to be paid on the automobiles involved herein, which sections are hereunder quoted for ready reference:

"Sec. 183 (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 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. 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." (As amended by Sec. 1, Rep. Act No. 594.)

"Sec. 184. Percentage tax on sales of jewelry, automobiles, toilet preparations, and others.—There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction for nominal or valuable considerations intended to transfer ownership of, or title to, the articles herein below enumerated a tax equivalent to fifty per centum of the gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer: Provided, That where the

articles are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of the manufactured articles:

"(a) Automobile chassis and bodies, the selling price of which exceeds five thousand pesos but does not exceed seven thousand pesos: Provided, That where the selling price of an automobile exceeds seven thousand pesos the same shall be taxed at the rate of seventy-five per centum of such selling price. A sale of automobile shall, for the purpose of this section, be considered to be a sale of the chassis and of the body together with parts and accessories with which the same are usually equipped: * * *."

"Sec. 185. Percentage tax on sales of automobiles, sporting goods, refrigerators, and others.—There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction intended to transfer ownership of, or title to, the articles herein below enumerated, a tax equivalent to thirty per centum of the gross selling price or gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer: Provided, That where articles are manufactured out of materials subject to tax under this section and section one hundred and eighty-six, the total cost of such materials, as duly established shall be deductible from the gross selling price or gross value in money of the manufactured articles:

"(a) Automobile chassis and bodies, the selling price of which does not exceed five thousand pesos. A sale of automobile shall, for the purposes of this section, be considered to be a sale of the chassis and of the body together with parts and accessories with which the same are usually equipped. * * *."

It is noteworthy that in the enforcement of the above provisions regarding the determination of the advance sales tax the phrase "landed cost" and the word "markup" are commonly used. "Landed cost" is synonymous with the phrase "total value" mentioned in the law, which means the import invoice value of the article, including freight, postage, insurance, commission, customs duty, and all similar charges. The word "mark-up" refers to the 100%, 50% or 25 % of the said total value or landed cost in the case of articles enumerated in Sections 184, 185 and 186 of the Tax Code, respectively, which "mark-up" is added to such landed cost.

In holding that in the case of the 13 cars in question which have a total landed cost of less than P5,000.00 each, 100% "mark-up" should be added to the landed cost, the tax court ruled as follows:

"Section 183 (B) provides for the addition to the landed cost (import invoice value plus expenses) of an automobile of 100% of 'such total value' in case the automobile is enumerated in Section 184 and 50% of 'such total value' in case the automobile is enumerated in Section 185. "What automobiles are enumerated in Section 184? In Section 185?

"An article is enumerated in Section 184 if it is taxable under that section. Similarly, an article is enumerated in Section 185 if it is taxable under the same section. An article cannot be enumerated in one section and taxable under another section. As already indicated above, automobiles the gross selling price of which exceeds P5,000.00 are taxable under Section 184, while those whose gross selling price does not exceed P5,000.00 are taxable under Section 185.

"In the instant case, in what section are the 17 Pontiac cars in question enumerated? Let us take the case of the lowest priced car, one of the two Pontiac cars which arrived per the SS 'Ajax'. It had a landed cost of P4,696.50. If a mark-up of 50% is added to the landed cost, the taxable value would be P7,044.75. (See page 10, supra). Therefore, it would not be considered enumerated in Section 185; it would come under Section 184 and the rate of tax applicable is 75%. Since the taxable value of the car (landed cost plus the mark-up) is more than P7,000.00, it is enumerated in Section 184 and the rate of mark-up properly applicable is 100%, not 50%. All the 17 Pontiac cars in question are, therefore subject to the mark-up of 100% because all of them have a taxable value of more than P7,000.00. It is a mistake for respondent to consider a car as enumerated in Section

185 and yet taxable under Section 184. The law leaves no room for doubt that the rate of the markup applicable to an imported automobile is determined by the inquiry whether the car comes under Section 184 or under Section 185, although the amount of the mark-up, once the rate thereof has been determined, is computed on the basis of the landed cost."

The foregoing ruling is correct. In order to determine the applicable mark-up under Section 183 (B) the particular section of the law in which the automobile is enumerated should first be ascertained. If the selling price does not exceed P5,000.00, then the automobile is enumerated in section 185, and consequently taxable thereunder. If the selling price exceeds P5,000.00 then it is enumerated in Section 184 and is taxable thereunder. There can be no dispute as regards this ruling because the purpose of enumerating¹ the articles in the sections mentioned in Section 183 (B) is to tax the articles in the respective sections where they are enumerated. So that if the article is not enumerated in any of said Sections 184 and 185, it is enumerated in Section 186, and hence taxable under said Section 186.

But how shall the selling price be fixed for the purpose of determining in what section is the article enumerated? It should be borne in mind that we are here concerned with the importation of an article and the sales tax is to be paid in advance and so the only way to determine the selling price of said article is to fix the same theoretically. Since landed cost plus mark-up represent theoretically the selling price, we have to determine the particular mark-up to be added, and the Court of Tax Appeals considered 50% it being the minimum mark-up that the law fixes for an automobile. To this we agree for in selling the automobile the importer would naturally include the markup as part of the selling price. So, an automobile is taxable and hence enumerated in Section 185 if the landed cost plus mark-up does not exceed P5,000.00. It is taxable and hence enumerated in Section 184 if the landed cost plus mark-up exceeds P5,000.00. In other words, in order to know the section in which a car is enumerated the amount of landed cost plus mark-up should be ascertained.

It should be noted that the provisions of Sections 184 and 185 both enumerate automobiles as subject to sales tax. However, from these provisions it is obvious that the rate of tax to be imposed depends upon the selling price of the article and not upon the landed cost alone. Hence selling price, whether actually or theoretically, of an imported car is certainly not the same as the landed cost, and so it cannot rightly be contended that the determination of the proper mark-up should be made considering only the landed cost of the article imported.

Now, why is it that 50% mark-up is first added to the landed cost and if the total exceeds P5,000.00 a mark-up of 100%, not 50%, is to be added? This is done because we are first merely determining whether by adding 50% mark-up the landed cost plus mark-up would exceed P5,000.00 in order to know the section of the law in which the car is enumerated. Afterwards, we can determine the mark-up to be added, whether 50% or 100%.

Petitioner, however, assails the procedure adopted by the tax court by arguing that "this spiral-zigzag way of fixing the mark-ups by first adding 50% to the landed cost and after thus jacking up the value, classifying the car under Section 184, and then applying the 100% mark-up is * * * quite unwarranted." This argument is without merit. It should be noted that the law requires the determination of the section in which the imported automobiles are enumerated so as to have a basis in the application of the proper mark-up. And such determination is done by first ascertaining the amount representing the taxable value, or landed cost plus mark-up of the imported automobile.

Petitioner, in insisting in its claim that our interpretation is erroneous, invokes the statement made by Congressman Ferdinand Marcos, sponsor of House Bill No. 1451, which later became Republic Act 594, providing for Section 183 (B) of the Tax Code and amending Sections 184 and 185 of the same Code, as basis of his contention that the applicable rate of mark-up on the cars in question is only 50%. But an examination of such statement does not seem to support the contention of petitioner. Moreover, courts are not bound by a legislator's

opinion expressed in congressional debates regarding the interpretation of a particular legislation. It is deemed to be a mere personal opinion of the legislator (*Song Kit Chocolate Factory vs. Central Bank of the Philippines, et al.*, 102 Phil., 477; 54 Off. Gaz., No. 2, 615-618).

To strengthen our view that for purposes of the sales tax landed cost plus mark-up represents the selling price, a brief history of the law on the matter would be helpful.

It should be noted that upon the effectivity of Commonwealth Act 466, known as the National Internal Revenue Code on July 1, 1939, the sales tax on imported articles imposed by Sections 184, 185 and 186 were based on their original sales. In other words, the sales tax were paid only after the sale of the articles. Thereafter, Republic Act No. 253 which took effect on July 1, 1948 amended Section 183 by adding thereto a new paragraph, or Section 183 (B), providing for the first time for the payment of advance sales tax on imported and locally produced or manufactured articles. With this amendment, the system of collecting the tax was altered. The advance sales tax was collected prior to the release of the article from customs custody. Said tax was based on the total value of the articles, including expenses at the time they were received by the importer. However, the sales tax was still payable every quarter, although the advance sales tax during each quarter was deducted from the sales tax assessed on the gross sales made during each quarter. In other words, under Republic Act No. 253, the advance sales tax was considered only as a deposit which was subsequently credited to him against the sales tax due for each calendar quarter. This obviously means that the ultimate basis of the sales tax on the imported articles was the selling price thereof to the public.

Subsequently, on February 16, 1951, Republic Act No. 594 took effect, which amended Section 183 (B) of the Tax Code. This is the section now under consideration. With this amendment the payment of the advance sales tax was made final and not subject to any credit or adjustment. This confirms respondent's view that the landed cost plus mark-up represents theoretically the selling price of the imported articles.

Having reached the foregoing conclusion, we deem it unnecessary to discuss the other questions raised, in the other assignments of error of petitioner.

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

Bengzon, Acting C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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