

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. MEGA GENERAL MERCHANDISING CORPORATION AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. 69136. September 30, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review of the decision of the Court of Tax Appeals, promulgated on May 21, 1984, in CTA Case No. 3078 entitled "Mega General Merchandising Corporation vs. Commissioner of Internal Revenue", holding that respondent corporation is not liable for specific tax in the sum of P275,652.00 on its importations of crude paraffin wax on June 21 and August 17, 1977 under Section 142 (i) of the Tax Code, as amended by P.D. No. 392, but to 7% advance sales tax, (now Section 197 II) in relation to Section 186 (now Section 200 of the Tax Code) and further ordering the Commissioner of Internal Revenue to refund or credit to petitioner the said assessment (Rollo, Annex "C", pp. 38-47).

The antecedent facts of this case are as follows:

Prior to the promulgation of P.D. No. 392 on February 18, 1974, all importations of paraffin wax, irrespective of kind and nature, were subject to 7% advance sales tax on landed costs plus 25% mark up pursuant to Section 183 (b) now Section 197 (II) in relation to Section 186 (now Section 200) of the Tax Code.

With the promulgation of P.D. No. 392, a new provision for the imposition of specific tax was added to Section 142 of the Tax Code, that is, sub-section (i) which reads:

"Section 142. Specific tax on manufactured Oils and other fuels. - On refined and manufactured mineral oils and other motor fuels, there shall be collected the following taxes:

xxx xxx xxx

(i) Greases, waxes and petroleum, per kilogram, thirty-five centavos; x x x."

Therefore, beginning February 18, 1974, the date of effectivity of P.D. No. 392, all importations of paraffin wax were subject to the specific tax imposed under Section 142 (i) of the Tax Code, instead of the former 7% sales tax.

Hence, respondent corporation paid the corresponding specific tax thereon in the total amount of P477,750.00 which applies to its total importation of crude paraffin on April 18, 1975, or exactly 1 year and 2 months after the effectivity of P.D. No. 392.

On April 22, 1975, the respondent corporation wrote the Commissioner of Internal Revenue for clarification as to whether imported crude paraffin wax is subject to specific tax under Section 142 (i) of the Tax Code, as amended by P.D. No. 392, or to the 7% advance sales tax.

Former Commissioner Misael P. Vera in his reply to said query dated May 14, 1975 ruled that only wax used as high-pressure lubricant and micro-crystallin is subject to specific tax; that paraffin which was used as raw material

in the manufacture of candles, wax paper, matches, crayons, drugs, ointments, etc., is subject to the 7% advance sales tax, the tax to be based on the landed cost thereof, plus 25% mark-up.

Due to Commissioner Vera's ruling of May 14, 1975, several importers including respondent corporation filed several claims for tax refund or tax credit of specific tax paid by them on importation of crude paraffin wax.

Considering that respondent corporation had paid the amount of P477,750.00 as specific tax pursuant to Section 142 (i) of the Tax Code on its importation of crude paraffin wax on April 18, 1975 (an amount bigger than the 7% advance sales tax prescribed under Section 183 (b) (now Section 197 II) in relation to Section 186 (now Sec. 200 of the Tax Code) respondent corporation in a letter, dated November 27, 1975, requested for a refund or tax credit of the amount of P321,436.79 representing the difference between the amount paid as specific tax and the 7% advance sales tax.

Since the law (Section 142 (i) of the Tax Code, amended by P.D. No. 392) does not make any distinction as to the kind of wax subject to specific tax, then Acting Commissioner of Internal Revenue Efren I. Plana, on January 28, 1977 denied respondent Corporation's claim for refund or tax credit of the amount of P321,436.79. On this ruling, respondent corporation filed a request for reconsideration. This was denied by petitioner.

During the pendency of respondent corporation's request for reconsideration, an investigation was conducted by the Bureau of Internal Revenue in connection with the importations of wax and petroleum that arrived in the country on or subsequent to the date of the ruling of January 28, 1977 and it was ascertained that respondent Corporation owes the government specific tax for importation of 1,214,400 kilograms of paraffin wax on June 21, 1977 and August 17, 1977 which gave rise to the letter of assessment dated May 8, 1978 for P275,652.00 re the subject matter of this case.

Prior, however, to the issuance of the said letter assessment of May 8, 1978, petitioner in a letter dated January 11, 1978, granted respondent corporation's claim for refund or tax credit of the amount of P321,436.79 since the importation which had arrived in Manila on April 18, 1975 was covered by the ruling of May 14, 1975 (before its revocation by the ruling of January 28, 1977).

Respondent corporation protested the tax assessment of May 8, 1978 in the amount of P275,652.00 in a letter dated June 5, 1978 alleging that crude paraffin wax is subject to 7% advance sales tax pursuant to petitioner's ruling of May 14, 1975. The protest was denied by petitioner in a letter dated February 15, 1980.

During the pendency of the request of respondent corporation for reconsideration, it appealed to respondent Court of Tax Appeals (Annex "A", Rollo, pp. 26-35) and petitioner filed his answer on September 10, 1980 (Annex "B", Rollo, pp. 36-47).

On May 21, 1984, respondent Court of Tax Appeals rendered its decision, the dispositive portion of which reads as follows:

"WHEREFORE, the decision of the Commissioner of Internal Revenue appealed from is hereby reversed. Petitioner is not liable for specifix tax on its importation of crude paraffin wax in the sum of P275,652.00 imposed against petitioner, but only subject to the 7% advance sales tax which petitioner had already paid. Accordingly, respondent is hereby ordered to refund or credit petitioner specific tax it paid in the sum of P275,652.00. Without pronouncement as to costs.

"SO ORDERED."

(p. 9, Decision; p. 46, Rollo)

This was later amended to read:

"WHEREFORE, the decision of the Commissioner of Internal Revenue appealed from is hereby reversed. Petitioner is not liable for specific tax on its importation of crude paraffin wax in the sum of P275,652.00 imposed against petitioner but only subject to the 7% advance sales tax which petitioner had already paid. Without pronouncement as to costs."

"SO ORDERED."

Hence, this petition filed on January 15, 1984 (Rollo, pp. 8-24).

The sole issue raised by petitioner is whether or not respondent corporation's importation of crude paraffin wax on June 21 and August 17, 1977 are subject to specific tax under Section 142 (i) of the Tax Code, as amended by P.D. No. 392, promulgated on February 18, 1974.

Petitioner contends that the controlling interpretation is that given by Commissioner Plana and not that of Commissioner Vera.

Petitioner further argues that respondent corporation's request for refund of the amount of P321,436.79 was granted in the letter of petitioner dated January 11, 1978 because the importation of private respondent was made on April 18, 1975 wherein petitioner made clear that all importation of crude paraffin wax only after the ruling of January 28, 1977, is subject to specific tax prescribed in Section 142 (i) of the Tax Code as amended by P.D. No. 392.

Moreover, the importation which gave rise to the assessment in the amount of P275,652.00 subject of this case, was made on June 27, 1977 and August 17, 1977 and that the petitioner's ruling of January 28, 1977 was not revoked or overruled by his letter of January 11, 1978 granting respondent corporation's request for refund of the amount of P321,436.79.

Petitioner's contention is completely meritorious.

The Court of Tax Appeals' decision aptly stated:

"It will be starkly noted that in a ruling of respondent Commissioner of Internal Revenue dated January 11, 1978 (p. 204, BIR Rec.), the request for reconsideration of petitioner of the ruling holding it liable for specific tax and for the tax credit of the sum of P321,436.79 paid as specific tax was granted by the Commissioner of Internal Revenue. In effect, this ruling overrules that of January 28, 1977 holding petitioner liable for specific tax on its importations of crude paraffin wax. The ruling of January 11, 1978 having overruled that of January 28, 1977, the importations of crude paraffin made on June 21 and August 17, 1977 ostensibly became once more subject to the ruling of May 14, 1975 which held such importation of crude paraffin wax as not liable to specific tax under the provisions of Section 142 (i) of the National Internal Revenue Code, as amended by PD 392. In other words, there was no other ruling which is prior to or was made to apply to the importations of petitioner of crude paraffin wax on June 21 and August 17, 1977, except only that ruling of the Commissioner of Internal Revenue of May 14, 1975 which applied Section 142 (i), as amended by PD 392, of the National Revenue Code, which took effect on February 18, 1974, and that this provision of Section 142 (i), as amended, has remained unchanged since then. It is clearly and legally justified to conclude that this ruling of the Commissioner of Internal Revenue of May 14, 1975 shall prospectively apply in favor of the importations of crude paraffin wax on June 21 and August 17, 1977 in question. This is the ruling which assured the taxpayer, Mega General Merchandising Corporation, that for its importations of crude paraffin wax, it shall only be liable to 7% advance sales tax and no more. To make petitioner liable for specific tax after it has made the importations, would surely prejudice petitioner as it would be subject to a tax liability of which the Bureau of Internal Revenue has not made it fully aware. As a result, the rulings of May 8, 1978 and February 15, 1980 having been issued long after the importations on June 21 and August 17, 1977 in question cannot be applied with legal effect in this case because to do so will violate the prohibition against retroactive application of the

rulings of executive bodies. Rulings or circulars promulgated by the Commissioner of Internal Revenue, such as the rulings of January 28, 1977 and those of May 8, 1978 and February 15, 1980, can not have any retroactive application, where to do so, as it did in the case at bar, would prejudice the taxpayer. (ABS-CBN Broadcasting Corp. vs. Court of Tax Appeals & Com. of Int. Revenue, G.R. No. L-52306, October 23, 1981). Also, the re-enactment of Section 142 (i) of the National Internal Revenue Code, as amended by PD 392, which provision of law has substantially remained unchanged is a clear indication that Congress has adopted its prior executive construction and which means that imported crude paraffin wax is not subject to specific tax thereunder pursuant to the BIR ruling dated May 14, 1975. (Alexander Howden & Co., Ltd. vs. Coll. of Int. Rev., 13 SCRA 601)." (pp. 11-13, Petition; pp. 18-20, Rollo)

Contrary to the Court of Tax Appeals' ruling, We believe that the letter of Commissioner Plana dated January 11, 1978 did not in any way revoke his ruling dated January 28, 1977 which ruling applied the specific tax to wax (without distinction). The reason he removed in 1978 private respondent's liability for the specific tax was NOT (as erroneously pointed out by the Court of Tax Appeals) because he wanted to revoke, expressly or implicitly, his ruling of January 28, 1977 but because the P321,436.79 tax referred to importation BEFORE January 28, 1977 and hence still covered by the ruling of Commissioner Vera, and not by the January 28, 1977 ruling of Commissioner Plana.

PREMISES CONSIDERED, the decision of the Court of Tax Appeals is hereby REVERSED and SET ASIDE, and the private respondent is ordered to pay the tax as assessed by the Commissioner of internal Revenue, together with interest. No costs.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

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