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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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CANDYMAN, INCORPORATED,
Petitioner,

- versus -

C.T.A. CASE NO. 2149

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

7/15/76

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D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue dated May 18, 1970, demanding from petitioner Candyman, Incorporated, the payment of the sum of P25,337.57 as deficiency compensating tax for the year 1965.

Petitioner, a domestic corporation engaged in the business of manufacturing candies and confectionaries and with business address at Malabon, Rizal, imported, in June 1965, a complete set of central type air-conditioning unit and paid the sum of P7,713.00 as 7% compensating tax. On June 13, 1967, on the theory that the imported article is subject to a compensating tax of 30% under Section 190 in relation to Section 185-A of the Tax Code, as amended, respondent Commissioner assessed petitioner deficiency compensating tax in the sum of P25,337.57.

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In a letter dated June 29, 1967, petitioner protested the assessment, but before said protest could be decided by respondent, petitioner appealed to this Court on July 14, 1967 under C.T.A. Case No. 1872. On January 20, 1970, after trial on the merits, this Court rendered a decision dismissing the appeal for lack of jurisdiction since no decision on the said protest had as yet been rendered by respondent.

In a letter dated May 18, 1970, respondent reiterated his demand for payment of the sum of P25,337.57, representing the same deficiency compensating tax, with a warning that if the same is not paid by petitioner within ten (10) days from receipt thereof, the collection of the tax would be enforced through the summary remedies provided by law. This letter was received by petitioner on June 23, 1970, and on July 3, 1970, it filed the instant appeal docketed as C.T.A. Case No. 2149. On September 18, 1970, respondent filed a motion to dismiss for lack of jurisdiction, alleging that he has not yet rendered a final decision on the protest of petitioner. On November

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28, 1970, this Court denied the said motion, holding that respondent's letter of May 18, 1970 was the final decision on petitioner's protest (or a decision on a disputed assessment).

During the pendency of this case, petitioner paid to the Bureau of Internal Revenue the amount of P15,202.54 under the following condition:

Payment under protest without prejudice to the continuation of CTA Case No. 2149. In the event that the Court decides that Candyman, Inc. shall have no liability arising from said case, the amount stated herein shall either be reimburse to Candyman, Inc. or applied against any other future taxes which may be due from said company.

Stripped of the jurisdictional question, the sole issue on the merits of this case is whether petitioner should be subject to the 30% compensating tax on the imported air-conditioning unit in question pursuant to Section 190 in relation to Section 185-A of the Tax Code, or to the 7% compensating tax pursuant to said Section 190 in relation to Section 186, of the same Code.

The parties do not quarrel that under Section 190 of the Tax Code which provides in part that

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"All persons residing or doing business in the Philippines, who purchase or receive from without the Philippines any commodities, goods, wares or merchandise, x x x shall pay on the total value thereof at the time they are received by such persons, including freight, postage, insurance, commission and all similar charges, a compensating tax equivalent to the percentage taxes imposed under this Title on original transactions effected by merchants, importers, or manufacturers, x x x" petitioner is subject to the compensating tax on the imported air-conditioning unit in question. The collision occurs at the rate of the tax. Petitioner maintains that based on the provision of Section 186 of the Code the rate to be imposed should only be 7% because said air-conditioner is used as an industrial machinery solely for the manufacture of its products. On the other hand, respondent contends that the compensating tax to be imposed should be 30% because the imported air-conditioning unit falls under Section 185-A of the Revenue Code regardless of the use or purpose for which it is intended.

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Parenthetically, it may be stated, as can be gleaned from the provisions of Section 190, that the articles subject to the compensating tax are the same articles subject to the sales tax and the advance sales tax under Sections 184 to 186 of the Revenue Code. The rates of the tax are the same, although it is based solely on the landed cost without mark-up. All other articles not enumerated in Sections 184, 185 and 185-A are considered ordinary articles which are subject to the percentage tax (compensating tax in this case) of 7% under Section 186 of the Code. Since petitioner alleges that its imported air-conditioning unit is an "industrial machinery" and industrial machinery is not expressly enumerated as taxable under Sections 184, 185 and 185-A (although air-conditioning unit is specified under Section 185-A), petitioner concludes that it is subject to the 7% compensating tax under Section 190 in relation to Section 186 of the Code.

Petitioner's theory may not be inherently untenable. Nevertheless, it must yield to the specific language of the law which is controlling.

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The first part of the first paragraph of Section 185-A reads thus: "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 hereinbelow 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: x x x " Then comes the crucial and decisive legal provision: "(c) Air-conditioning units." The accent is on the words- "Air-conditioning units" - without any exceptions or qualifications. And to stress beyond doubt that all kinds of air-conditioning system are taxable under Section 185-A, the title of the legal provision, in specifying such units, uses the all-embracing term "air-conditioners."

In this connection, it may be both relevant and interesting to give a brief history of this legal provision. That the Legislature did not at first intend to classify all kinds of air-conditioning

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units as semi-luxuries under Section 185 of the Tax Code maybe gathered from the fact that the language used was to include only "self-contained air-conditioning units and parts or accessories thereof." (Rep. Act No. 41, Sec. 2, 1946). It is not clear whether it was intended to cover only the portable, packaged unit, typified by the window air-conditioner. Later, Congress deleted the description "self-contained." (Rep. Act No. 217, Sec. 2, 1948). The reason behind the deletion of the description "self-contained" is not explained but Congress probably intended to tax as semi-luxuries under Section 185(m) all air-conditioning equipment capable of being utilized for air-conditioning purposes.

At this juncture, it should be stated, that in case G.R. No. L-27044, The Commissioner of Internal Revenue v. Engineering Equipment and Supply Company, et al., and case G.R. No. L-27452, Engineering Equipment and Supply Company v. The Commissioner of Internal Revenue, et al., June 30, 1975, the Supreme Court ruled that imported air-conditioning units, parts or accessories for use in construction

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business which were never sold, resold, bartered or exchanged are subject to the payment of 30% compensating tax in accordance with Section 190 of the Tax Code in relation to Section 185(m) of same Code.

✓ Republic Act No. 3029 repealed sub-section (m) of the Tax Code and inserted Section 185-A. ✓
In including articles capable of being used for air-conditioning purposes as taxable therein under paragraph(c), the legal provision uses the terms "air-conditioning units" in sub-section(c) and "air-conditioners" in the title thereof. Since Section 185-A(c) of the Code is a practically a reenactment of Section 185(p) without substantial change of phraseology, the ruling of the Supreme Court in the Engineering Equipment and Supply Company case, supra, would seem to be very much applicable to the present case.

The law seems clear and specific. It thus calls for its application as worded. ✓ "Air-conditioning units" or "air-conditioners" are specifically enumerated under Section 185-A of the Tax Code as subject to 30% tax. While it is true that the imported air-conditioning unit is of the central type and, in fact, had been installed as such in the factory of

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petitioner for use in the business of manufacturing its products, that alone will not transform it into an industrial machinery subject to 7% compensating tax. If the intention of the Legislature in enacting said legal provision was to impose a lower rate of tax on air-conditioning units or air-conditioners for industrial use, it should have added a proviso to that effect as in the case of electric fans and air-circulators wherein there is a clause that those specifically adopted for industrial use are excepted therefrom (see Section 185(i) of the Tax Code); or in the case of phonograph records wherein those used for educational purposes are excluded therefrom (Sec. 185(g), id.); and many other similar provisions of Section 185 of the Code. The applicable provisions, viewed as a whole, make it clear that air-conditioning units or air-conditioners, being specifically enumerated under Section 185-A, are subject to the tax provided therein regardless of the purpose or utility for which they are intended.

The conclusion reached is rendered clearer when read in the light of the other provisions of the first paragraph of Section 185-A which further

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provide that: "Provided, however, That where the articles hereinbelow enumerated are locally manufactured and come under the classification of non-integrated manufactured products as hereinafter defined, the tax shall be fifteen per centum; Provided, further, That where the articles hereinbelow enumerated are locally manufactured and come under the classification of integrated manufactured products as hereinafter defined, the tax shall be seven per centum; x x x ". Construed together, the above provisions yield no other conclusion but that the rate of the percentage tax on the sale, exchange, or similar transaction intended to transfer ownership of, or title to, refrigerators, air-conditioners, beverage coolers and others does not depend on the use or purpose for which they are intended but as to whether they are locally manufactured and come under the classification of non-integrated or integrated manufactured articles.

At any rate, as stated above, the Supreme Court has already ruled that imported air-conditioning units when not for sale, barter or exchange, as in the case of petitioner herein, are subject to the 30% compensating tax. Said the Court:

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.... Since it has been proved to our satisfaction that Engineering imported air conditioning units, parts or accessories thereof for use in its construction business and these items were never sold, resold, bartered or exchanged, Engineering should be held liable to pay taxes prescribed under Section 190 of the Code. This compensating tax is not a tax on the importation of goods but a tax on the use of imported goods not subject to sales tax. Engineering, therefore, should be held liable to the payment of 30% compensating tax in accordance with Section 190 of the Tax Code in relation to Section 185(m) of the same, but without the 50% mark up provided in Section 183(b). (The Commissioner of Internal Revenue vs. Engineering Equipment and Supply Company, et al., G.R. No. L-27044; Engineering Equipment and Supply Company vs. The Commissioner of Internal Revenue, et al., G.R. No. L-27452, June 30, 1975.)

// It is to be admitted that the case is not squarely in point because the main issue involved is the question of whether or not the taxpayer therein is a manufacturer of air-conditioning units under Section 185(m) in relation to Sections 183(b) and 194 of the National Internal Revenue Code, or a contractor under Section 191 of the same Code. Nonetheless, the conclusion reached that the taxpayer should be held liable to the payment of 30% compensating in accordance with Section 190 of the Tax Code in relation to Section 185(m) of the same Code is applicable to the instant case.

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After holding that petitioner is liable to the 30% compensating tax, we find that it still owes the government the amount of P10,135.03 computed as follows:

Deficiency compensating tax . . . P25,337.57

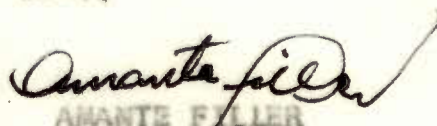
Less: the amount paid to
the BIR during the
pendency of this
case 15,202.54

Amount still due & collectible.. P10,135.03

WHEREFORE, the decision appealed from is hereby affirmed and petitioner is ordered to pay respondent the sum of P10,135.03 within thirty (30) days after the finality of this judgment. With costs.

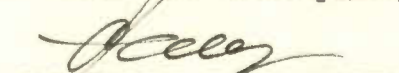
SO ORDERED.

Quezon City, July 15, 1976.


AMANTE FILLER
Associate Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
~~Presiding Judge~~
(Did not take part)


CONSTANTE C. ROAQUIN
Associate Judge