

TAXATION

DEMOSTHENES B. GADIOMA *

This is a continuation of the Survey made by the same author of the 1970 decisions of the Supreme Court involving Taxation and necessarily follows the same arrangement. It will be observed that the 1971 cases merely shore up the doctrines established in earlier ones, none of which have been overruled. In appropriate instances, pertinent decisions of the Court of Tax Appeals will be mentioned.

I. GENERAL PRINCIPLES

Double taxation

In the case of *Laoag Producers' Cooperative Marketing Association, Inc. v. Mun. of Laoag*,¹ the Supreme Court once again rejected the argument that "double taxation" rendered an ordinance null and void. In that case, the Municipality of Laoag imposed a tax or "inspection fee" of ₱0.005 (later raised to ₱0.01) for "every kilo of Virginia leaf tobacco, garlic and onion on wholesale dealers and vendors". Plaintiff paid under protest, but asked for refund on the ground, among others, that the tax was invalid. It constituted double taxation, according to the taxpayer, because it was already paying the same amount to the Bureau of Internal Revenue for every kilo of Virginia leaf tobacco transported out of the municipality. Said the Court:

"The fact that appellant is doubly taxed in that it pays the BIR ½ centavo for every kilo of tobacco that it transports from the municipality and that the municipality also imposes a like amount . . . for the same quantity of tobacco upon appellant is *not inherently obnoxious for the impositions are made by different government entities.*"² (Underscoring supplied.)

Exemption-strict construction

Another principle invoked anew to sustain the validity of a tax is the well established canon that exemption statutes are interpreted *strictissimi juris* against the taxpayer. To avail himself of exemption, the taxpayer must show a specific provision granting him the benefit, otherwise his claim will be denied. This was illustrated in the case of *Com. of Internal Revenue v. Phil.*

* *Professorial Lecturer*, College of Law, University of the Philippines.

¹ G.R. No. 274918, February 24, 1971, 37 SCRA 594 (1971).

² Citing *Punsalan v. Municipal Board of Manila*, 95 Phil. 46 (1954); *Commissioner v. Lednicky*, G.R. Nos. 18169, 18262 & 21434, July 31, 1964, 11 SCRA 603 (1964).

*Acetylene Co.*³ That case was concerned with the interpretation of Sec. 6, Republic Act 1394, granting exemption of certain importations, as follows:

"Sec. 6. The tax provided for in section one of this Act shall not be imposed against the importation into the Philippines of machinery and/or raw materials to be used by new and necessary industries as determined in accordance with R.A. 901; . . . machinery, equipment, accessories and spare parts, for the use of industries, x x x miners, mining enterprises, planters and farmers; x x x"

Respondent imported a specialized container to hold liquefied petroleum gas purchased from the Batangas plant of Caltex and transported to respondent's factory in Manila. Before the gas was sold to consumers, it was pumped into small cylinders from the imported container. On the theory that the container was imported for use in industry, the Tax Court ordered the refund of the amount paid as special import tax. The government appealed to the Supreme Court on the theory that (1) respondent was engaged in mere packaging and such activity was not "industry" as the term is used in Sec. 6, Republic Act 1394, (2) as drafted, Sec. 6 was vague and it should be interpreted strictly against exemption.

The Supreme Court agreed with these propositions. There was vagueness as to whether or not Congress used "industries" in Sec. 6, Republic Act 1394, in its broadest sense, as was the opinion of the Tax Court. According to the Tax Court, respondent was engaged in industry because the term was used in Sec. 6 in its ordinary and general definition,

"which is any enterprise employing relatively large amounts of capital and or labor."

Since respondent employed considerable labor and capital in packaging liquefied petroleum gas purchased from Caltex and sold by it for profit, it was engaged in industry and came under the benefit of Sec. 6, according to the Tax Court.

In disagreeing, the Supreme Court observed that Sec. 6 consisted of two parts. One part referred to new and necessary industries as determined under Republic Act 901, and a second part grouped "industries" with the terms "miners, mining enterprises, planters and farmers." It was noted that these were all productive activities as contrasted with the mere packaging engaged in by respondent. Applying the principle of strict construction of exemptions, the Court held that respondent was not engaged in "industry" and was not qualified for the exemption under Section 6, Republic Act 1394. Held: Tax Court reversed. Said the Court:

"The phrasing of Sec. 6, Republic Act 1394, to be sure, is rather vague and infelicitous, particularly in the repetition of the word 'indus-

³ G.R. No. 22443, May 29, 1971, 39 SCRA 70 (1971).

tries'. It is such lack of precision in the law that gives rise to litigious controversies concerning its proper application. One of the established rules of statutory construction, however, is that tax exemptions are held strictly against the taxpayer, and if not expressly mentioned in the law must be within its purview by clear legislative intent. In the present case the construction adhered to by the respondents in reference to the scope of the term "industries" as employed for the second time in section 6, Republic Act 1394 is contrary to such rule".⁴

The Court also recalled an earlier case⁵ where it held that exemption in connection with the processing of gasoline and the manufacture of lubricating oil did not extend to pump parts imported by the processor and leased to gasoline stations for use in servicing cars of customers. The Court there voer-ruled the argument that marketing is corollary to or incidental to industrial operations of the processor.

II. INCOME TAXATION

Capital expenditures

In order to determine taxable profits, the Tax Code allows the seller to deduct basis or cost, as adjusted. The resulting gross income is then reduced by applicable deductions under section 30, Tax Code, to arrive at the "net income" defined in section 28 thereof. Distinction must be made between business expenses which are deductible under section 30(a) in the year when incurred and capital expenses which are not so deductible. The latter, however, may form part of the adjusted basis which is deductible from the selling price of the property sold.

In the case of *Com. v. Soriano y Cia.*,⁶ taxpayer owned a lot in Intramuros, Manila, on which it planned to build. In 1960, it entered into a pile-driving contract and engaged the services of an architect to draw up the plans, both of which were done in that year. Later in the same year, however, taxpayer sold the lot because it decided to build in Makati. In filing its income tax return for 1960, it did not include the pile driving fee and architect's fee as part of the adjusted basis of the property sold, for the bills were received only in 1961 when they were paid. It subsequently amended its income tax return and claimed for refund of the excess income tax paid.

The BIR objected. It took the position that the fees were business expenses deductible under section 30(e), Tax Code, in 1961, the year when paid, and cannot affect the year of the sale, 1960. On the other hand, taxpayer maintained that the fees were capital expenditures that benefited and increased the value of the property sold. They should therefore form part of the adjusted cost or basis, deductible from the selling price in 1960.

⁴ *Ibid.*, at 74.

⁵ *Esso Standard Eastern, Inc. v. Acting Commissioner of Customs*, G.R. No. 21841, October 28, 1966, 18 SCRA 488 (1966).

⁶ G.R. No. 24893, March 16, 1971, 38 SCRA 67 (1971).

In agreeing with the taxpayer, the Supreme Court said:

" the sole issue to be resolved in this appeal is whether or not, in determining the income tax due from the taxpayer⁷ (it) is entitled to deduct, as part of the cost, from the gross selling price, the sum of ₱49,329.55 paid as service fee for pile-driving, and the additional sum of ₱11,000 as architect's fee.

"In connection with the above issue, the following facts are relevant and of decisive importance:

"1) The pile-driving contract was entered into and the services of Architect Zaragoza were engaged in the year 1960. The pile-driving was actually done, and the plans for the proposed office building were made in the same year (1960).

"2) The pile-driving services as well as the architect's services benefited and increased the value of the property.

"The logical conclusion that one may draw from the above facts is that the expenses in question constitute capital expenditures which the owner or taxpayer was entitled to consider as part of the cost of its property in determining the amount of the profit it had realized in the sale thereof to J. M. Tuazon & Co. That payment of these questioned items was made only in 1961 does not alter the fact that the contracts from which the obligation to pay arose were entered into in 1960 and the services contracted for were rendered in the same year. The obligation to pay said services, therefore, clearly dated back in 1960."

The Court then went on to recall its previous decisions on the nature of capital expenditures. It said:

"We have held heretofore that expenditures for replacements, alterations, improvements or additions which either prolong the life of the property or increase the value are capital in nature (*Alhambra Cigar, etc. v. Coll, etc.* G.R. L-12026 and L-12131, May 29, 1959) and having arrived at the conclusion that the expenditures referred to above increased the value of the property, the same must be considered as capital expenditures that formed part of the cost of the taxpayer's Intramuros property".⁷

Interest on deficiency or delinquency

The settled rule as to when interest and surcharge on late payment of tax should start is—

a) for tax years assessed before the enactment of R.A. 2343, effective June 30, 1959, they should be imposed according to section 51(e) Tax Code, before its amendment, notwithstanding that the assessment is modified by the Tax Court after June 30, 1959;⁸

⁷ *Ibid.* at 70.

⁸ *Republic v. Lim Tian Teng Sons & Co., Inc.*, G.R. No. 21731, March 31, 1966, 16 SCRA 584, 595 (1966); *Commissioner v. Limpan Investment Corp.*, G.R. Nos. 28571 & 28644, July 31, 1970, 34 SCRA 148 (1970); *Republic v. Ker & Co., Ltd.*, G.R. No. 21609, September 29, 1966, 18 SCRA 207, 219 (1966); *Republic v. Razon*, G.R. No. 17462, May 29, 1967, 20 SCRA 234 (1967).

b) for tax years before Republic Act 2343 but assessed only thereafter, section 51(e) as amended by Republic Act 2343 applies; tax years after Republic Act 2343 are indisputably governed by Republic Act 2343.⁹

Section 51(e), before its amendment by Republic Act 2343 provided:

“(e) *Surcharge and interest in case of delinquency.*—To any sum or sums due and unpaid after the dates prescribed in subsections (b), (e) and (d) for the payment of the same, there shall be added the sum of 5% on the amount of the tax unpaid and interest at the rate of one *per centum* a month upon said tax from the date the same became due, except the estates of insane, deceased or insolvent persons.”

Under the old law, the date the income tax became due was May 15 for calendar year taxpayers and the 15th of the fifth month after the close of the fiscal year for fiscal year taxpayers. Deficiency taxes became due and payable on the date fixed in the assessment notice and demand. It is to be observed that there was no provision for imposition of the deficiency interest under the old law.

Republic Act No. 2343 imposed deficiency interest for the first time at the rate of $\frac{1}{2}\%$ a month from the date the tax became due, but not to exceed 18%. It also changed the due date to April 15 for calendar year taxpayers and the 15th day of the fourth month following the close of the fiscal year for fiscal year taxpayers. Unlike the old law, Republic Act 2343, imposed the 1% interest for late payment plus 5% surcharge, not from the tax due date, but from the date, but from the date of the deficiency assessment and demand, if the latter is not paid within 30 days of the date thereon. The 1% monthly interest shall not exceed 36%, unlike under the old law when it ceased only upon full payment of the tax.

In the 1971 case of *Commissioner of Internal Revenue v. Connell Bros. Company (Phil.)*¹⁰, the deficiency tax for 1954 was modified downwards by the Court of Tax Appeals but the 1955 deficiency tax was not changed. These deficiencies became respectively due and payable on August 2, 1956 and August 20, 1957. The Court of Tax Appeals applied the beneficial provisions of Republic Act No. 2343, namely, payment of the $\frac{1}{2}\%$ month deficiency interest, but not to exceed 18%; payment of 1% monthly interest, not to exceed 36%, and the 5% surcharge, if taxpayer failed to pay the tax within 30 days from the date the Tax Court decision became final and executory.

Not satisfied, the government appealed the matter of the interest and surcharge to the Supreme Court. After discussing the foregoing distinctions between section 51(e) under the old law and after its amendment by Re-

⁹ *Central Azucarera Don Pedro v. Court of Tax Appeals*, G.R. Nos. 23236 & 23254, May 31, 1967, 20 SCRA 344, 352-353 (1967); *Republic v. Heras*, G.R. No. 26742, April 30, 1970, 32 SCRA 507, 513 (1970).

¹⁰ G.R. Nos. 27752-53, August 30, 1971, 40 SCRA 416 (1971).

public Act No. 2343 and observing that the cited decisions already clarified the law on interest and surcharge upon late payment of tax, the Supreme Court modified the decision of the lower court. It ordered that the 1% monthly interest and 5% surcharge should start not from the date the lower court's decision became final and executory, but from the dates the taxes became due and payable on August 2, 1957 for the 1954 tax and August 20, 1957 for the 1955 tax.

III. PERCENTAGE AND OTHER BUSINESS TAXES

Exemption of agricultural products

Agricultural products sold by the producer are exempt from the sales tax imposed under section 186, Tax Code. Section 188(b) Tax Code, provides:

Section 188. *Transactions and persons not subject to percentage tax.*— In computing the tax imposed in sections 184, 185, and 186, transactions in the following commodities shall be excluded:

x x x x x x

(b) Agricultural products and the ordinary salt whether in their original form or not when sold, bartered, or exchanged in this country by the producer or owner of the land where produced, as well as all kinds of fish and its by-products when sold, bartered or exchanged by the fisherman or fishing operator whether in their original state or not.

The phrase "whether in their original form or not" has always been in the provision since 1939 when the Tax Code was first enacted, but was deleted by Republic Act 1612 on August 24, 1956 and restored by Republic Act 1856 on June 22, 1957.

Controversies with the BIR arose because of the rather broad language of the term "manufacturer" found in section 194(x) as follows:

Section 194(x) "Manufacturer" includes every person who by physical or chemical process alters the exterior texture or form or inner substance of any raw material or manufactured or partially manufactured product in such manner as to prepare it for a special use or uses to which it could not have been put in its original condition, or who by any such process alters the quality of any such raw material or manufactured or partially manufactured product so as to reduce it to marketable shape or prepare it for any of the uses of industry, or who by any such process combines any such raw material or manufactured or partially manufactured products with other materials or products of the same or of different kinds and in such manner that the finished product of such process of manufacture can put to a special use or uses to which such raw material or manufactured or partially manufactured products in their original condition could not have been put in its original condition, or who by any such manufactured or partially manufactured products, or combines the same to produce such finished products for the purpose of their sale or distribution to others and not for his own use or consumption.

The BIR took the position that once acts of processing or manufacturing as defined above intervened, the sale by the producer became immediately subject to the sales tax and removed from the exemption under section 188(b). The Supreme Court has clarified the issue on this matter in the pineapple and rubber products cases, and established the following rules:

1) During the interregnum between August 24, 1956 and June 22, 1957, any act of processing or manufacturing as defined in section 194(x), Tax Code, rendered the sale of agricultural products taxable;¹¹

2) During all other periods, acts of processing to preserve the products, even when made by large-scale agricultural producers, do not take away the exemption.¹²

The American rubber cases cited above involved identical facts as the 1971 case subject of this survey.¹³ In fact, the Supreme Court in this case merely reproduced its findings and rulings in the earlier cases.

Rubber juice or liquid latex as tapped from the trees, spoil and acquire an obnoxious smell after two hours, thus eliminating it from the market. To avoid this, the producer adds ammonia which prevents deterioration for about a month. Taking into account the great distances to the rubber processing centers in Japan, the United States and Europe, the manufacturer-producer; American Rubber Co., adds acetic acid to hasten coagulation and to retain the color. Besides the longer preservative effect of acetic acid, coagulation overcomes the disadvantages of shipping in liquid form. It is these processes of preservation and coagulation that the BIR invoked as acts of "manufacturing" under section 194 that would render the exemption under section 188(b) not applicable to the sales in question. As noted above, this proposition was rejected by the Supreme Court in the cases cited in this language:

"The first issue, in our opinion, is governed by the principles laid down by this Court in *Philippine Packing Corporation vs. Collector of Internal Revenue*, 100 Phil. 545 et seq. We there ruled that the exemption from sales tax established in section 188(b) of the Internal Revenue Tax Code in favor of sales of agricultural products, whether in their original form or not, made by the producer or owner of the land where produced is not taken away merely because the produce undergoes processing at the hand of said producer or owner for the purpose of working his product into a more convenient and valuable form suited to meet the demand of an expanded market; that the exemption was not designed in favor of the small agricultural producer, already exempted by the subsequent paragraphs of the same section 188, but that said exemption is not incompa-

¹¹ *Philippine Packing Corp. v. Collector of Internal Revenue*, G.R. No. 9040, December 26, 1926, 53 O.G. 8093 (Nov., 1957).

¹² *Commissioner v. American Rubber Co.*, G.R. Nos. 19667, 19801-03, November 29, 1966, 18 SCRA 842 (1966).

¹³ *American Rubber Co. v. Commissioner*, G.R. Nos. 20772 & 20852, May 31, 1971, 39 SCRA 163 (1971).

tible with large scale agricultural production that incidentally required resort to preservative processes designed to increase or prolong marketability of the product.”¹⁴

The 1971 case under review was decided according to the above doctrine.

Commercial broker—contract of sale vs. agency to sell

The question of whether a distributor is an independent merchant and therefore not subject to the commercial broker's tax or is a mere broker has been decided in 1970 in the case of *Comm. v. Constantino*.¹⁵ Citing that case in *Ker & Co., v. Lingad*¹⁶, J. Fernando said:

“The decisive test, as therein set forth, is the retention of the ownership of the goods delivered to the possession of the dealer, like herein petitioner, for resale to customers, the price and terms remaining subject to the control of the firm consigning such goods.” (p. 525.)

In the *Ker case*, as in *Constantino*, the Supreme Court meticulously reviewed the contract of distributorship between the supplier, U.S. Rubber International, and the petitioner. The highest court adopted *en toto* the findings of fact made by the Tax Court, as follows:

“That the petitioner Ker & Co., Ltd. is, by contractual stipulation, an agent of U.S. Rubber International is borne out by the fact that petitioner can dispose of the products of the Company only to certain persons or entities within stipulated limits, unless excepted by the contract or by the Rubber Company (Par. 2); that it merely receives, accepts and/or holds upon consignment the products, which remain properties of the latter company (Par. 8); that every effort shall be made by petitioner to promote in every way the sale of the products (Par. 3); that sales made by petitioner are subject to approval by the Company (Par. 12); that on dates determined by the rubber company, petitioner shall render a detailed report showing sales during the month (Par. 14); that the rubber company, shall invoice the sales as of the dates of inventory and sales report (Par. 14); that the Rubber Company agrees to keep the consigned goods fully insured under insurance policies payable to it in case of loss (Par. 15); that upon request of the Rubber Company at any time, petitioner shall render an inventory of the existing stock which may be checked by an authorized representative of the former (Par. 15); and that upon termination or cancellation of the Agreement, all goods held on consignment shall be held by petitioner for the account of the Rubber Company until their disposition is provided for by the latter (Par. 19). All these circumstances are irreconcilably antagonistic to the idea of an independent merchant.”¹⁷

The foregoing approval of the decision of the lower Court is also a reiteration of the doctrine that findings of fact made by the lower courts

¹⁴ *Idem.*, pp. 849-850, reproduced verbatim in G.R. Nos. 20772 & 20852, May 31, 1971, 39 SCRA 163 (1971) at 170.

¹⁵ G.R. No. 25926, February 27, 1970, 31 SCRA 779 (1970).

¹⁶ G.R. No. 20871, April 30, 1971, 38 SCRA 524 (1971).

¹⁷ *Ibid.* at 528-529.

will not generally be disturbed if substantially supported by the evidence. Particularly so in the case of the Court of Tax Appeals which is a special court dealing with matters involving taxation. Said the Court:

"Nor is it to be lost sight of that on a matter left to the discretion of the Court of Tax Appeals which had developed an expertise in view of its function being limited solely to the interpretation of revenue laws, this Court is not prepared to substitute its own judgment unless a grave abuse of discretion is manifest. It would be to frustrate the objective for which administrative tribunals are created if the judiciary, absent such a showing, is to ignore their appraisal on a matter that forms the staple of their specialized competence."¹⁸

Contractor's tax-independent contractor

Among the techniques of collection resorted to by Bureau of Internal Revenue to embellish its efficiency report to the nation is to broaden as widely as possible the meaning of general phrases found in the taxing provisions of the Tax Code. One of these phrases is the term "other independent contractor" found at the end of the enumeration of taxable contractors in section 191 imposing the 3% gross receipts tax.

In the case of *Com. of Internal Revenue v. Stock Transfer Service, Inc.*¹⁹, the Commissioner of Internal Revenue issued deficiency assessment against the petitioner and demanded payment of the contractor's tax. Taxpayer of course resisted, claiming that it was not engaged in the kind of contracting business taxed in section 191 of the Tax Code, under the principle of *ejusdem generis*.

Petitioner proved the kind of service performed for its clients. Principally, its function is to relieve its client corporations of the duty to keep transfer books where every transfer of the client's certificate of stock is recorded. It cancels old certificates of stock and issues new ones, examines the genuineness of the signature of the endorser and sees that the stock issue never exceeds stock subscription outstanding. Petitioner also sends out dividends and notices of meetings to the registered shareholders. Its operation is closely supervised by the SEC which requires it to employ a certified public accountant.

On the other hand, the BIR maintained that the phrase "independent contractor" covered all persons "whose activity consists essentially of the sale of all kinds of services . . . regardless as to whether or not the performance of which calls for the exercise or use of the mental or physical or manual faculties of its employee or employees".²⁰

The lower court invoked the canon of *ejusdem generis* in upholding the position of the taxpayer. It said:

¹⁸ *Ibid.* at 531-532.

¹⁹ G.R. No. 34582, denying cert. of CTA Case No. 2003, July 29, 1971.

²⁰ BIR Memorandum reproduced in decision in CTA Case No. 2003, July 29, 1971.

"The argument that the addition of 'other independent contractors' in the list of business taxable under section 191 was intended to tax any and all independent contractors is not justified by the wording of the law. It will be noted that the term 'other independent contractors' was added to the list of taxable businesses under section 191 of the Revenue Code by section 11 of Republic Act 1612, which became effective on August 24, 1956. Said amendatory Act added the following businesses to those previously taxable under section 191, along with 'other independent contractors': xxxx If, as alleged, Congress intended to tax all independent contractors irrespective of the nature or kind of the business engaged in, there was absolutely no need for the addition of the twelve businesses mentioned above. That Congress saw fit to add particular kinds of businesses to the taxable list along with 'other independent contractors' is an eloquent proof that it was intended to limit the application of the general words to businesses of the same kind and category as those enumerated.

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"We may also add that if, as alleged, any person performing service for another as an independent contractor is taxable, then a surgeon who performs a surgical operation on a patient would be taxable. The same rule would apply to a dentist who extracts decayed teeth from a patient; or to a lawyer who prepares a deed of sale or any similar instrument for his client; or to a priest or minister who celebrates mass for the dead. There can be no question that these persons may be regarded as independent contractors in the broad sense, and should be subject to the contractor's tax, if respondent is to be believed. That such a result is not in keeping with the legislative purpose is too apparent to require further elucidation."²¹

IV. FRANCHISE TAX

"In lieu of" clause

Found in almost every franchise granted by the legislation to utilities is the formula phrase "in lieu of", providing in effect that the payment of the franchise tax rate provided in the grant, is "in lieu" of all and any tax of whatever description that may be imposed by the national, provincial or local government upon the enumerated properties of the grantee. In the case of *Visayan Electric Co. v. Com.*,²² this phrase was not included in the formula granting the franchise and imposing the tax rate of 2% of gross receipts. Subsequently, the Congress amended section 259 of the Tax Code imposing a uniform franchise tax of 5% of gross receipts. What was the effect of the higher rate? Did not the statute violate the non-impairment of the obligation of contract provided by the Constitution?

In earlier cases, the Supreme Court applied the higher rate in section 259, Tax Code, where the state reserved its right to repeal, alter, amend or modify the franchise. In the *Visayan Electric* case, where the stock phrase "in lieu of" was not included, the Court did not find any difficulty in applying the higher rate in section 259, Tax Code. It said:

²¹ Decision, CTA Case No. 2003, July 29, 1971.

²² G.R. No. 218322, May 29, 1971, 39 SCRA 43 (1971).

"Petitioner's franchise does not, as the franchises involved in *Hoa Hin*²³ and *Lealda*²⁴ did not, contain any provision to the effect that the payment of the franchise tax therein prescribed shall be 'in lieu of all taxes of every name and nature—municipal, provincial or central—upon its capital stock, franchise, right of way, earnings, and all other property owned or operated by the grantee under this concession or franchise'. The absence of such provision clearly indicates—as we held in the two cases mentioned heretofore—that petitioner's franchise is not a bar to the imposition of a higher rate of franchise tax. Accordingly, section 259 of the Tax Code which applies to franchises existing at the time of its enactment as well as to future franchises, should apply to petitioner herein."²⁵

In another case, the court gave this phrase the widest scope so far decided in this jurisdiction, so as to protect the grantee from payment of the compensating tax (and customs duties) demanding upon its importations.²⁶ In that case, the Philippine Air Lines was granted a franchise to transport by air passengers and cargo.²⁷ It was required to pay a franchise tax in lieu of all taxes of whatever description that may be imposed by the national, provincial and local governments. Section 13 of Act 4271, as amended, provides:

"Section 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the National Government during the life of this franchise a tax of 2% of the gross revenue or gross earning derived by the grantee from its operations under this franchise. Such tax shall be due and payable quarterly and shall be *in lieu of all taxes of any kind, nature or description, levied, established or collected by any municipal, provincial or National authority x x x. The grantee shall per the tax on its real property in conformity with existing laws.*" (Underscoring supplied.)

In December, 1965 and January and April, 1966, PAL imported air conditioners, dental equipment and typewriters, all for its use in the operation of its franchised business. The air-conditioners were installed in the passenger lounge and warehouses where delicate engine parts were housed because factory specifications required maintenance of dust-free atmosphere at low temperature. The dental equipments were used in its dental section to met the statute requiring employers to provide medical and dental services to employees. The typewriters were of course used in the offices of PAL.

The BIR objected to the claim for refund of the compensating taxes paid on these imports on the ground that they were not indispensable to the operation of an airline, that exemptions should be interpreted strictly

²³ G.R. Nos. 9616 & 11783, May 25, 1959.

²⁴ *Lealda Electric Co., Inc. v. Commissioner*, G.R. No. 16428, April 30, 1963, 7 SCRA 928 (1963).

²⁵ *Supra*, note 22.

²⁶ *Commissioner v. Phil. Airlines*, G.R. No. 33309, May 22, 1971, denying cert. of CTA Case No. 1943, August 22, 1970.

²⁷ Act No. 4271 (1935), as amended by Rep. Act No. 2360 (1959).

against the importer and that the "in lieu" of clause as earlier held by the Supreme Court, did not include protection against payment of the compensating tax.²⁸

The Court of Tax Appeals upheld the refund claim for PAL, stating as follows:

"the phrase 'in lieu of all taxes of any kind, nature or description' has been generally considered as a commutation tax, that is, it is a combination of two or more taxes as an excise or franchise tax, payment of which would give rise to privilege exemption from all other taxes. (Philippine Air Lines, Inc. v. Comm. of Internal Revenue, CTA Case No. 45, Feb. 8, 1956, citing Corpus Juris 216).....

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"It is plain from a perusal of petitioner's exemption that same is a general exemption covering all payments which might be denominated as taxes. The only tax to which it is subject is the real property tax which is expressly stated as an exception to the general exemption. Needless to say, the compensating tax must of necessity be deemed included in the exemption. We are not at liberty to include in this exception taxes other than those provided by the law."

The Court then proceeded to distinguish the instant case from the *Borja* case, invoked by the respondent, and concluded:

"It will be noted that in contrast to section 10 of Act 3636 (governing the *Borja* case), section 13 of Republic Act 2360 (PAL franchise) does not stipulate that petitioner 'shall pay the same taxes as are now or may hereafter be required by law from other individuals, x x x except property tax declared exempt in this section as stipulated in the former. Its commutation tax is expressed in general and all encompassing terms, simply stating that it is 'in lieu of all taxes of any kind, nature or description, levied, established, or collected by any municipal, provincial or national authority x x x'. It has no specific recital of the kinds of taxes that it covers or for which it stands as in the case of section 10 of Act 3636. And, it expressly provides for only one tax, payable by the petitioner, to wit., the land tax. From all these it is hardly necessary to say that the *Borja* case is not in point. Were we to exclude compensating tax from the exemption, we would then be adding the same to the clearly expressed exception, which is, the land tax".

The court then similarly dismissed the reliance of the respondent on the *Panay* case, for the franchise in both *Borja* and *Panay* are fundamentally the same. In closing, the Court said:

"Respondent further contends that at the very most the exemption should be applicable only to imported articles, materials or equipment that are indispensable and necessary and not merely incidental or con-

²⁸ Memorandum of CIR, CTA No. 1943, entitled *Phil. Airlines v. Commissioner*, *supra*, note 26, citing *Panay Electric Co. v. Collector of Internal Revenue*, 97 Phil. 979 (1955); *Borja v. Collector of Internal Revenue*, G.R. No. 12134, November 30, 1961, 3 SCRA 590, 594 (1961).

venient to the operation of air transportation business of the petitioner. In distinguishing what is necessary and what is incidental, respondent divides the activities of petitioner in distinct parts, classifies the particular activity of air transportation as distinct from other necessary supporting activities, and declares it as the only operation that is covered by the exemption. Articles, materials or equipment used in this particular activity are covered by the exemption, so respondent's thesis goes. Thus, a refrigeration unit used to preserve food that will be served during the flight . . . and an airconditioner used in a warehouse for aircraft spare parts that require a certain level of temperature for their preservation . . . are covered by the exemption because they are allegedly necessary for the operation of the air transportation business of the petitioner. But if these appliances are used in the general office of the petitioner, they are not tax exempt, not being used directly for the transportation activities of petitioner.

"We cannot quite agree with respondent's concept of what is necessary in the operation of petitioner's air transportation business for the purpose of tax exemption of petitioner. To our mind, articles, materials and equipment need not be necessary for the purely flying activities of petitioner to deserve the exemption; it is enough that they are used in the mass of activities involved in petitioner's operating transportation business. The fallacy of respondent's pretension is that it considers the particular activity of flying as separable from management and ground support operations, forgetting that one is the complement of the other. Petitioner cannot operate transportation business without an office and ground officers and employees to manage and direct operations. And, petitioner needs facilities besides. Typewriters are necessary in petitioner's office, in any office of comparable size for that matter. The dental equipment are necessary under Republic Act 1094. Since petitioner has to meet competition, it has to provide for comfortable appointments for passengers for better chances of survival. If maximum efficiency from employees and officers is attained with air-conditioners, these appliances may well be considered necessary, particularly considering modern business management trend.

"Respondent's interpretation of the scope of petitioner's tax exemption is not in accord with the doctrines pertinent to the point. When property is exempt from taxation, it is almost universally held that the exemption covers only so much as are necessary to the operation of the business and the accomplishment of its purposes. But in order that property may come within the scope of the exemption, it need not be necessary, in the sense of indispensable, to the carrying of the business; it is enough if it is obviously appropriate and convenient."²⁹

By refusing to review the case, the Supreme Court in effect approved the foregoing as the prevailing doctrine for the guidance of everybody in this jurisdiction.

V. ESTATE AND INHERITANCE TAXES

Reciprocity clause

Section 122, Tax Code, provides that intangible personal property of a decedent who was not a resident of the Philippines is exempt from the

²⁹ *Ibid.*

estate and inheritance taxes if the country of his nationality extended the same benefit to a Filipino non-resident in that country. Did this reciprocal exemption include situations where the foreign country did not impose any inheritance tax or did it cover only those countries which imposed this tax but expressly exempted intangible personal property of a non-resident whose country or nationality extended such reciprocal exemption? In the case of *Collector of Internal Revenue v. Campos Rueda*,³⁰ the Supreme Court held that the Philippine estate of a non-resident alien was exempted from the estate and inheritance taxes his country did not impose similar taxes on intangible personal property.

In that case, a Spanish national residing in Tangier, Morocco, died there in January, 1955, possessed of intangible property in the Philippines. Against the death taxes assessed by the Commissioner of Internal Revenue, the administrator here invoked the reciprocal exemption granted by section 122, Tax Code, which provides:

“ . . . That no tax shall be collected under this Title in respect of intangible personal property (a) if the decedent at the time of his death was a resident of a foreign country which at the time of his death did not impose a transfer tax or death tax of any character in respect of intangible personal property owned by citizens of the Philippines not residing in that foreign country.”

The two points to be determined are (a) factual—what did the laws of Tangier provide, and (b) legal—what is the meaning of the terms “foreign country” in section 122? Is it limited to territories possessed of independent international personality? The administrator introduced the laws of Tangier, Morocco and the Supreme Court was satisfied that they did not impose any transfer or death taxes on “movable properties, corporeal or incorporeal, including furniture and personal effects, as well as securities, bonds, shares.” Hence, Tangier law satisfied the reciprocal requirement of section 122, Tax Code. On the second point, the Supreme Court followed its earlier rulings to the effect that section 122 does not require possession of international personality. Thus, it mentioned the *De Lara* case³¹ where it was held that California fell within the exemption granted by section 122. Even before the *De Lara* case, the Supreme Court already held that Liechtenstein, hardly an international personality in the traditional sense, also fell under the exempt category.³²

VI. MUNICIPAL TAXATION

Extent under Republic Act 2264

The decisions on the extent of the power of cities and municipalities to tax under Republic Act 2264 firmly establish the rule that such a power

³⁰ G.R. No. 13250, October 29, 1971, 42 SCRA 23 (1971).

³¹ *Collector of Internal Revenue v. De Lara*, 102 Phil. 813 (1958).

³² *Kiene v. Collector of Internal Revenue*, 97 Phil. 352 (1955).

is as plenary as can be, subject only to the limitation that the tax must be for a public purpose and that it is not unjust, excessive or oppressive. Of course, the tax must not be one of those prohibited by it.³³

The Supreme Court gave nourishment to this rule in the case of *Laoag Producers' Cooperative Marketing Assn., Inc. v. Mun. of Laoag*.³⁴ In that case, the municipality imposed a tax or inspection fee of ½ centavo (later increased to one centavo) per kilo of Virginia leaf tobacco, garlic and onion on all wholesale dealers and vendors and required them to make a written report of the number of kilos sold and purchased by them. Penalties were provided for violations thereof.

The ordinance was challenged as invalid because it imposed an export tax in violation of section 2287, Revised Administrative Code, it gave rise to double taxation (already discussed), as regulatory fee, it was excessive, and the ordinance was ambiguous for it imposed what could be either a tax or a license fee. These were dismissed by the Supreme Court as untenable, as follows:

“ The prohibition against the imposition by municipal councils of a tax in any form whatever upon goods or merchandise carried into the municipality, or out of the same, and any attempt to impose an import or export tax upon such goods, under Section 2287 of the Revised Administrative Code, is no longer in force, as having been impliedly repealed by the Local Autonomy Act³⁵ The record does not show any basis that the amount of one centavo required to be paid by the later ordinance is unjust or excessive. That the ordinances are ambiguous in that they may be interpreted as revenue-raising moment or are police-power measures is of no moment because Republic Act 2264 ‘confers upon all chartered cities, municipalities and municipal districts the general power to levy not only *taxes* but also municipal *license taxes* subject to specified exemptions, as well as service fees’. (*Nin Bay Mining Co. v. Mun. of Roxas, supra.*)”³⁶

Sales tax—municipality barred

Notwithstanding the foregoing, the Supreme Court struck down the tax because it is one of those which Republic Act 2264 prohibits municipalities and municipal districts from imposing. Section 2, Republic Act 2264 limits the power to tax given to municipalities and municipal districts as follows:

³³ C.N. Hodges v. Municipal Board of City of Iloilo, G.R. No. 18276, January 12, 1967, 19 SCRA 28 (1967); Ormoc Sugar Co., Inc. v. Municipal Board of Ormoc City, G.R. No. 24322, July 31, 1967, 20 SCRA 739 (1967); Municipality of Jose Panganiban v. Shell Co. of the Phil. Ltd., G.R. No. 18349, July 30, 1966, 17 SCRA 778 (1966), citing Shell Co. v. Sipocot, G.R. No. 12680, March 20, 1959, 105 Phil. 1263 (unreported).

³⁴ *Supra*, note 1.

³⁵ Citing *Nin Bay Mining Co. v. Municipality of Roxas*, G.R. No. 20125, July 20, 1965, 14 SCRA 660 (1965).

³⁶ *Idem.*, 596-597.

"Provided, That municipalities and municipal districts shall, in no case, impose any percentage tax on sales or other taxes in any form based thereon. . . ."

In finding that the ordinance imposed a tax on sales, the Court said:

"By the terms of the ordinance, a wholesaler or vendor is required to report in writing the number of kilos sold and purchased by him within the first ten (10) days of each succeeding month. Undoubtedly, this provision serves as the basis upon which the volume of sale is determined from month to month. The 'municipal tax or inspection fee' is, in turn, imposed 'on every kilo of Virginia leaf tobacco, garlic and onion on all wholesale dealers and vendors' so that what is taxed is precisely the volume of sales: or, as appellees admit in their brief on page 6, the volume of trade or output of said dealer of leaf tobacco, garlic and onion. 'The tax is, therefore, a tax on sales, or one based thereon.'³⁷ For a dealer is not one who buys to keep or makes to sell, but one who buys to sell again³⁸ the ordinances tax his sale when he sells again, and he cannot, by its very nature, carry on his business unless he sells what he has bought."

Subsequent conversion to city

While section 2, Republic Act 2264 prohibits municipalities and municipal districts from imposing a percentage tax on sales or any other tax based thereon, cities are not similarly prohibited. What happens then if the prohibited tax was imposed by municipality which later became a city?

This issue was raised squarely in the case now discussed, for Laoag was subsequently converted into a city. The Court held that the fact of Laoag's later becoming a city did not serve to save the ordinance. Said the Court:

"But appellees argue that even if the 'municipal tax or inspection fees as provided for in the ordinances, is a tax on sales, which is not allowed to be imposed by municipalities and municipal districts but which is allowed to be imposed by cities, that prohibition does not apply to appellee as it is now a city. The argument is unavailing because the legality of an ordinance is dependent upon the power that the municipal corporation had at the time of the enactment of the ordinance³⁹, so that if the questioned ordinances were invalid when enacted by Laoag as a municipality, they did not become valid when it became a city."

In these situations, therefore, it is advisable and more practical for the council of the new city to immediately re-pass the ordinance enacted by the old

³⁷ *CF. Marinduque Iron Mines Agents, Inc. v. Municipality of Hinabangan, Samar*, G.R. No. 18924, June 30, 1964, 11 SCRA 416 (1964).

³⁸ Citing *Ah Nam v. City of Manila*, 109 Phil. 808 (1960), citing *Norries v. Commissioner*, 27 Pa. 494; *Commissioner v. Campbell*, 33 Pa. 385; *BOUVIER'S LAW DICTIONARY*.

³⁹ Citing *City of Naga v. Court of Appeals*, G.R. No. 24954, August 14, 1968, 24 SCRA 594 (1968).

municipality, even during the pendency of a case challenging the validity of the municipal ordinance, instead of waiting for the final outcome of the challenge. Then the revenue will not suffer if the municipal tax is not sustained by the courts.

VII. TARIFF AND CUSTOMS

Seizure proceedings — procedure — jurisdiction

Pursuant to the Tariff and Customs Code, imports to the Philippines come under the exclusive and absolute possession, custody, control and disposition of the Bureau of Customs, particularly under sections 1201, 1202, 1204 and 1206. If under its authority, the Bureau of Customs, through its agency, the Customs Arrastre Service, stores imported goods in a bonded warehouse, licensed to operate as such, and the Bureau of Customs somehow declares the imports as abandoned and sells same at public auction, the importer would not have a cause of action to proceed against the warehouse operator. This is what the Supreme Court held in the case of *Ramcar v. Sumadchat*.⁴⁰ In similar cases, it would be advisable for the importer to first impugn the acts of the Bureau of Customs in declaring the importation as abandoned.

The exclusive jurisdiction of the Bureau of Customs in seizure and forfeiture proceedings means that not even the Court of First Instance, a court of general jurisdiction, can interfere. This is the doctrine enunciated by the Supreme Court in the 1966 case of *Pacis v. Averia*.⁴¹ In that case, the Supreme Court also outlined the procedural remedies of an importer or owner whose goods are declared by the Collector of Customs as subject to seizure and forfeiture. He must appeal the decision of the Supreme Court, Collector of Customs to the Commissioner of Customs whose decision is in turn appealable to the Court of Tax Appeals. It was held there that the original jurisdiction placed in the Courts of First Instance by the Judiciary Act of 1948, as amended, over all cases involving more than ten thousand pesos was deemed impliedly amended by Republic Act 1937, the Tariff and Customs Code. This later enactment vested in the Collector authority to hear and decide cases of seizure and forfeiture and defined the procedure therefor, a power construed as exclusive in him and removed from the CFI.

The Court again applied the above doctrine in two cases decided in 1971. In *Ponce Enrile v. Vinuya*⁴², a Cadillac car was declared seized and forfeited by the Collector of Customs upon petition of the Anti-Smuggling Action Center (ASAC), for nonpayment of taxes and duties. Before the

⁴⁰ *Ramcar, Inc. v. Sumadchat*, G.R. No. 27693, January 29, 1971, 37 SCRA 112 (1971).

⁴¹ G.R. No. 22526, November 29, 1966, 18 SCRA 907 (1966). See also *De Joya v. David*, G.R. No. 23504, December 29, 1967, 21 SCRA 1493 (1967); *Papa v. Mago*, G.R. No. 27360, February 28, 1968, 22 SCRA 857 (1968).

⁴² G.R. No. 29043, January 30, 1971, 37 SCRA 381 (1971).

Collector could conduct the hearing, the owner went to the Court of First Instance for *replevin*. The CFI judge issued an *ex parte* order directing the sheriff to take possession of the car and requiring the Commissioner of Customs and the ASAC to answer the complaint for *replevin*. These respondents moved to dismiss, were denied, hence they went to the Supreme Court.

As stated above, the highest court, citing the *Averia* case, held that in these kinds of cases, the jurisdiction of the Collector of Customs is exclusive and under Republic Act 1937, the CFI ceased to have jurisdiction over them. The Supreme Court therefore prohibited the CFI from interfering with the proceedings before the Collector of Customs via the complaint for *replevin*. Any defenses possessed by owner of the car should be invoked in the proceedings before the Collector, whose decision is appealable to the Commissioner of Customs, then to the Court of Tax Appeals and eventually to the Supreme Court. The alleged illegality of the warrant of seizure and forfeiture did not deprive the Collector of his jurisdiction.

Said the Court on this point:

“ . . . Even if it be assumed that in the exercise of such exclusive competence a taint of illegality may be correctly imputed, the most that can be said is that under certain circumstances the grave abuse of discretion conferred may oust it of such jurisdiction. It does not mean however that correspondingly a court of first instance is vested with competence when clearly in the light of the above decisions the law has not seen fit to do so. . . .⁴³

The second 1971 case is that of *Lopez v. Com. of Customs*.⁴⁴ That case involved a fishing vessel secured by the owner from the Reparations Commission. The owner in turn leased it for one voyage (allegedly) to another who employed it for smuggling, not for fishing. For this reason, it was seized by the Collector of Customs of Davao who instituted seizure and forfeiture proceedings, pending which, the owner filed with the CFI of Manila a case against the Com. of Customs, NBI and their agents for mandamus and prohibition, and praying that the seizure be declared unlawful, illegal and null and void. The CFI judge issued a restraining or *status quo* order. In due course, however, the CFI dismissed the complaint and denied the writ requested by Lopez. Hence he appealed to the Supreme Court.

As stated above, the Supreme Court followed and applied the *Averia* case, and held that the CFI, under Republic Act 1937, ceased to have jurisdiction over all cases of seizure and forfeiture and that it was the Bureau of Customs which had exclusive jurisdiction.

⁴³ *Ibid.* at 389.

⁴⁴ G.R. No. 28235, January 30, 1971, 37 SCRA 327 (1971).

Release under bond not granted—prejudicial question

Geotina v. Broadway & Co., Hongkong,⁴⁵ further illustrates the jealousy with which the Supreme Court protects the power of the Bureau of Customs over importations declared seized and forfeited. In that case, the importer brought here bales of human hair declared as "dried fruits". The Collector of Customs seized the goods under section 2530, par. (m)(4) of the Tariff and Customs Code, providing as follows:

"Section 2530. *Property subject to forfeiture under tariff and customs laws.*—Any vessel or aircraft, cargo, articles and other subjects shall, under the following conditions, be subject to forfeiture:

X X X X

(m) Any article sought to be imported or exported:

* * * * *

(4) On the strength of a false invoice or other document executed by the owner, importer, exporter or consignee concerning the importation or exportation of such article."

The importer appealed to the Court of Tax Appeals. Before trial on the merits can be held, the importer moved for the release of the goods under bond for transshipment to Bangkok. This was opposed by the Bureau of Customs as beyond the jurisdiction of the court for that would prejudice the issue on the merits. The lower court granted the motion, hence this petition for writ of certiorari to annul the lower court's resolution.

Held, certiorari granted. The Supreme Court, while agreeing that the importation was not prohibited and therefore not among those which cannot be released under bond pending the decision, nevertheless found that the release pending trial on the merits was not dictated by necessity for the goods were non-perishable in nature. Deterioration as a justification for release was therefore out of the question. But the principal reason for granting the writ of certiorari was that it prejudged the issue on the merits. The Bureau of Customs seized the cargo for violation of section 2530 governing importation. The importer on the other hand argued that the goods did not constitute importation because they were in transit, for transshipment to Bangkok. The Bureau of Customs, on the other hand, did not give any credence to the efforts of the importer to tranship, contending that it was a device to hide the illegal character of the importation. The Commissioner posed some questions that the importer refused to answer, like: why did the importer misdeclare the goods as "dried fruits", when human hair itself was not a contraband? If it was true that the consignee had the option to tranship and in fact exercised the option a day before arrival of the human hair in Manila, why did it not prosecute the petition for review instead of the consignor? According to the Supreme Court, these were fit subjects of inquiry in the trial on the merits. Yet, by releasing the goods for

⁴⁵ G.R. No. 30077, January 30, 1971, 37 SCRA 410 (1971).

transhipment to Bangkok, the lower court would have rendered the issues moot, for the goods, even if found then to be an unlawful importation subject to seizure and forfeiture, would have been beyond the control of the court. This is prejudging the case on the merits. Hence, certiorari was granted.

In the case of *Señeres v. Frias, et al.*⁴⁶, the Supreme Court dissolved resolutions of the Court of First Instance of Iloilo ordering the immediate release of the importations in question. These consisted of parts of jackpot machines declared falsely as used sheet containers and used sample wood panels. Before the Collector of Customs of Iloilo could initiate seizure and forfeiture proceedings (which he subsequently did), the importers by their respective attorneys-in-fact, and employing a common counsel, asked the Court of First Instance of Iloilo for mandamus to compel the Collector to release the importations under bond. The CFI issued the mandatory injunction and authorized the sheriff to break open the padlock of the bodega if the wharfinger and his agents refused to comply with the order. He even gave due course to the petition to declare the Collector in contempt. Hence, the Collector asked the Supreme Court for writ of certiorari to dissolve the orders and resolutions of the CFI. The Supreme Court, on the authority of earlier cases on the same subject, readily granted certiorari, stating that the respondent court clearly had no jurisdiction. The Court reiterated that it "is the settled law and jurisprudence in this jurisdiction that the customs authorities acquire exclusive jurisdiction over goods sought to be imported into the Philippines, for the purpose of enforcement of Philippine customs laws, from the moment the goods are actually under their possession and control, even if no warrant for seizure or detention thereof has previously been issued by the port collector of customs."⁴⁷ The Court again cited the case of *Pacis v. Averia*, where it was observed that the passage of the Tariff and Customs Code, Republic Act 1937, as well as the Court of Tax Appeals Act, Republic Act 1125,

"on grounds of public policy, it is more reasonable to conclude that the legislators intended to divest the Court of First Instance of the prerogative to replevin a property which is a subject of a seizure and forfeiture proceedings for violation of the Tariff and Customs Code. Otherwise, actions for forfeiture of property for violation of customs laws could easily be undermined by the simple device of replevin.

"Furthermore, section 2303 of the Tariff and Customs Code requires the Collector of Customs to give to the owner of the property sought to be forfeited written notice of the seizure and to give him the opportunity to be heard in his defense. This provision clearly indicates the intention of the law to confine in the Bureau of Customs the determination of all questions affecting the disposal of property proceeded against in a seizure and forfeiture case. The judicial recourse of the property owner is not in

⁴⁶ G.R. Nos. 32921-40, June 10, 1971, 39 SCRA 533 (1971).

⁴⁷ *Ibid.* at 541.

*the Court of First Instance but in the Court of Tax Appeals, and only after exhaling administrative remedies in the Bureau of Customs.*⁴⁸

The Court further remarked that in *Commissioner of Customs v. Cloribel*⁴⁹

“respondent judge’s fallacious concepts that his court may assume and exercise jurisdiction in mandamus cases involving the exercise of its ‘interpretative power’ over disputed provisions of the Tariff and Customs Code were long laid to rest. The Court, in no uncertain terms, there pointed out that in cases of illegal importation, as is the case at bar, the Commissioner of Customs must first review the collector’s ruling and ‘by a formal decision’ rule on the legality of the importation. It is only after a decision adverse to the importer is rendered that the importer may then ‘summon the aid of the corresponding court’. But such disposition of the customs commissioner, the Court stressed, ‘will not come under the court of first instance on appeal. Such appeal shall be addressed to the court of tax appeals. Because, at bottom, the problem is: Was the importation authorized by law?’⁵⁰

In an earlier case decided March 1971, the Supreme Court upheld the refusal of the Court of First Instance to take cognizance of a petition for mandamus to release a vessel seized by the collector of customs used in smuggling. In the case of *Luna v. Pacis*⁵¹, the collector initiated forfeiture proceedings against a vessel apprehended for smuggling and rendered a decision forfeiting it in favor of the government. The owner did not appeal to the Commissioner of Customs. Instead she resorted to filing a petition for mandamus for its release upon her payment of its appraised value and with the Court of First Instance moving for preliminary mandatory injunction. In due time, the CFI dismissed the petition after earlier denying the motion for mandatory injunction. It based its decision to dismiss on the ground of want of jurisdiction. Hence, this appeal to the Supreme Court. Held: affirmed. The Supreme Court not only cited with approval the cases of *Millares* and *David*⁵² relied on by the CFI but enumerated numerous cases thereafter consistently reiterating the rule that the Tax Court was given by Republic Act 1125 exclusive jurisdiction to review on appeal decisions of the Commissioner of Customs involving “seizure, detention or release of property affected . . . or other matters arising under the customs law or other law administered by the Bureau of Customs.” The Supreme Court then outlined for us what the appellant-owner of the vessel should have done.

“What appellant should have done was to appeal to the Commissioner of Customs from the decision of the Collector of Customs denying her offer to redeem the vessel in question, and, in the event of an adverse

⁴⁸ *Ibid.* at 543.

⁴⁹ G.R. No. 20266, January 31, 1967, 19 SCRA 234 (1967).

⁵⁰ *Ibid.* at 544.

⁵¹ G.R. No. 24237, March 31, 1971, 38 SCRA 189 (1971).

⁵² *Millarez v. Amparo*, G.R. Nos. 8351, 8364 & 8365, June 30, 1955.

decision by the Commissioner of Customs, to appeal to the Court of Tax Appeals; and she still had a recourse of appeal to this Court in case of an adverse decision by the Court of Tax Appeals.”⁵³

Prohibited importation—apples—cannot be released under bond

The case of *Geotina v. CTA and Unitrade*⁵⁴ recapitulates the law on prohibited importations and the power of the Bureau of Customs to prevent their importation. Section 102, Tariff and Customs Code, enumerates the articles importation of which into the Philippines is prohibited. Subsection (k) thereof provides:

“(k) All other articles the importation of which is prohibited by law.” (Underscoring supplied.)

Section 1207, Tariff and Customs Code recites the power of the Collector of Customs over prohibited importations, as follows:

“Section 1207. *Jurisdiction of Collector over articles of prohibited importation*—Where articles are of prohibited importation or subject to importation only upon conditions prescribed by law, it shall be the duty of the Collector to exercise such jurisdiction in respect thereto as will prevent importation or otherwise secure compliance with all legal requirements.”

What does the phrase “prohibited importation” mean? Is it limited to those the importation of which is absolutely prohibited, like explosives and drugs? This is answered by the Supreme Court in the cited case, reminding again that the matter has been previously answered many times in earlier cases.

The *Unitrade* case, involved the importation of 37,042 cartons of apples. It will be recalled that upon the institution of the floating rate on February 21, 1970, the Central Bank issued Central Bank Circulars Nos. 289, 294 and 295, which, among other things, prohibited the importation of luxuries, like apples, without release certificates. These were issued to regulate as much as possible the use of dollars in order to preserve our perilously low foreign exchange reserves. On the theory that the apples became prohibited importation for violating the said Central Bank circulars, and therefore fell under section 102(k), the Collector exercised his power under section 1207 and refused to have them unloaded from the vessel, much less to have them released to the importer under bond. The importer appealed to the Commissioner who sustained his subordinate, hence, it elevated the matter to the Court of Tax Appeals. Pending decision on the merits, the Tax Court refused to allow release of the apples under bond for that would constitute prejudging the case. However, it allowed the transfer of the apples to an appropriate customs bonded warehouse to prevent deterioration and spoilage, considering the perishable nature of the apples.

⁵³ *Supra*, note 51.

⁵⁴ G.R. No. 33500, August 30, 1971, 40 SCRA 362 (1971).

After trial, the Court of Tax Appeals held that the apples were not absolutely prohibited and did not fall under section 102, but because of importer's failure to secure Central Bank release certificates, the apples may be subject to seizure and forfeiture under section 2301. In the meantime, the court ordered release under bond to secure payment of the appraised value in case they are finally declared forfeited to the government.

The Commissioner of Customs appealed to the Supreme Court on the ground that the Tax Court had no jurisdiction for what was appealed to it was an interlocutory order—refusal to release under bond pending the seizure proceedings. The Supreme Court upheld the jurisdiction of the lower court. What was appealed was not merely an interlocutory order but the decision declaring the apples to be prohibited importation. This was a final decision, brought to the Tax Court under section 7, Republic Act 1125, and applied in the *Señeres* case. Nonetheless, the highest court found that the Tax Court, in ordering the release of the apples under bond, and thereby overturning the decision of the Collector, acted in excess of its jurisdiction. In arriving at this conclusion, the Supreme Court dealt with the core of the issue—what articles are prohibited importation under section 102, Tariff and Customs Code?

The lower court did not consider apples as prohibited importation because, in its view, they are not absolutely prohibited. Therefore, it allowed their release under bond pending the outcome of the seizure proceedings.

The Supreme Court, however, found that apples are articles of prohibited importation and therefore cannot be released under bond. It said:

“The tax court thus failed to take note that articles of prohibited importation under section 102 are of two categories, viz, those which are absolutely prohibited or more commonly known as contraband, such as explosives or prohibited drugs, and other articles which are considered qualifiedly prohibited referring to those which may be imported subject to certain restrictions or limitations. But . . . the legal effects of an authorized importation of qualifiedly prohibited articles are the same as those of an importation of contraband: ‘an article imported or attempted to be imported in violation of regulations of the Central Bank is considered an article of prohibited importation and is subject to forfeiture in like manner as an article the importation of which is absolutely prohibited under section 102 of the Tariff and Customs Code’⁵⁵

The Court reviewed earlier decisions where it held that “prohibited importation” includes articles imported in violation of Central Bank requirements and not only those specifically prohibited under section 102. Thus in *Pascual v. Commissioner of Customs*,⁵⁶ it upheld the forfeiture of an importation made without Central Bank release certificates thus violating Central

⁵⁵ Citing, UMALI, REVIEWER ON TAXATION 441 (1971 ed.)

⁵⁶ *Pascual v. Commissioner of Customs*, 106 Phil. 488 (1959).

Bank Circulars No. 45 and No. 44 and thereby falling under the class of "merchandise of prohibited importation" or merchandise "the importation of which is effected contrary to law" that the Commissioner of Customs may seize and order forfeited."⁵⁷ In another 1959 case, *Tang Tek v. Comm. of Customs*⁵⁸ the Supreme Court, in answering the contention that "merchandise of prohibited exportation" as used in section 1363(f), Revised Administrative Code (now section 2530(f), Tariff and Customs Code refers exclusively to those prohibited in section 3, Philippine Tariff Act of 1909, such as firearms, explosives, obscene and subversive articles, gambling outfits, falsely marked gold and silver articles, adulterated foods, lottery tickets, opium and opium pipes, stated:

" to our mind, the term 'merchandise of prohibited exportation' used in the code is broad enough to embrace not only those already declared prohibited at the time of its adoption but also goods, commodities or articles that may be the subject of activities undertaken in violation of subsequent laws. Considering that the Central Bank circulars issued for the implementation of the law authorizing their issuance although by themselves are not statutes, have the force and effect of law (*People v. Que Po Lay*, 94 Phil. 640; 50 OG (10) p. 4580), the carrying out of transactions or undertakings without complying with the requirements of Circular Nos. 20, 21 and 42 makes these undertakings illegal. And as a natural consequence thereof, the articles involved in such unauthorized ventures become prohibited and, therefore, subject to forfeiture under section 1363(f) of the Revised Administrative Code."

The Supreme Court also mentioned *Sare v. Comm. of Customs*^{58a} where it said:

" it is now well settled that goods imported without the release certificates required in Circulars Nos. 44 and 45 are 'merchandise of prohibited importation' as this expression is used in said section No. 1363(f)".⁵⁹

Among the points mentioned by the lower court in holding that importation of apples is not absolutely prohibited is Executive Order No. 282, Jan. 4, 1971, which increased the tariff duty on apples. The Supreme Court answered by saying that this fact

"does not serve in law to bring down the barrier against the importation of fresh apples as 'no-dollar' import under Circular No. 295. It is obvious that the increased tariff duty thereby imposed on fresh apples would be applicable and collectible only on lawful and valid importations thereof duly made in accordance with law, more specifically after full compliance with Central Bank requirements"⁶⁰

⁵⁷ *Ibid.* at 1047.

⁵⁸ *Tong Tek v. Commissioner*, 105 Phil. 1071, 1076-77 (1959).

^{58a} G.R. No. 22988, June 30, 1969, 28 SCRA 715 (1969), citing many other cases.

⁵⁹ Referring to the REVISED ADMINISTRATIVE CODE now superseded by the identical provisions of section 2530 of the TARIFF & CUSTOMS CODE.

⁶⁰ *Unitrade Case, idem.* at 380.

Finally, the Supreme Court discoursed on the two-fold functions of the Bureau of Customs, assessment and collection of lawful revenues from imports, plus other dues, fees, charges, fines and penalties; and the prevention and suppression of smuggling and other frauds upon customs. Where the importation consists of prohibited articles, section 1207 of the Tariff and Customs Code imposes upon the Collector the duty to prevent the importation, while section 2301 orders that they shall not be released under bond. These clearly indicate the fallacy of the view that it is to the interest of the Government to release under bond perishables imported in violation of law. The Government expects on revenue from these banned articles which are not allowed to be imported. To allow them to be released under bond, on the pretext that the interest of the government revenue will be secured, would render nugatory the prohibition, especially because the banned items are mostly luxuries commanding sky-high profits to the smuggler who would thereby have the greatest motive to wreak havoc upon the currency by purchasing dollars at the highest black market rates to purchase and import luxuries. He risks nothing, for if he is not caught, then the venture is a complete success. If caught, he can just have the goods released under bond and still realize sizeable profits.

On this policy reason, the Supreme Court annulled and set aside the decision of the lower court and sustained that of the Collector of Customs who refused to release the apples for being merchandise of prohibited importation.

Court of Appeals—jurisdiction—exhaustion of administrative—remedies

At this point it can be stated with authority that the Court of Tax Appeals can only entertain appeals from decisions of the Commissioner of Customs. Lacking this decision, the Court of Tax Appeals does not have jurisdiction. This has been the rule promulgated by the Supreme Court in numerous decisions, the latest being the 1971 case of *Allied Brokerage Corp. v. Comm. of Customs*.⁶¹

Briefly, the petitioner, a customs broker, made numerous payments in the past to the Customs Arrastre Service, without any written protest. Subsequently, it filed claims with the Commissioner of Customs for refund of alleged excess payments, who denied it. Petitioner therefore went to the Court of Tax Appeals which also denied the claim, thus:

"It appears that petitioner did not file any protest with the Collector of Customs at the time of collection of the charges, but instead filed its claim for refund directly with the Commissioner of Customs . . . Under the aforequoted provisions of law (Secs. 2308, 2309 and 2313, Tariff and Customs Code) and the cases cited above, the filing a written protest with the proper Collector of Customs within the statutory period is mandatory and a condition precedent for the recovery of customs duties, fees and

⁶¹ G.R. No. 27641, August 31, 1971, 40 SCRA 555 (1971).

other charges allegedly erroneously or illegally collected and non-compliance therewith bars and is fatal to the action.”⁶²

The Supreme Court affirmed, recalling again the various administrative steps that the aggrieved importer must take under the law. Thus—

“ The Tariff and Customs Code has indicated in a manner definite and certain how a challenged actuation of a collector of customs may be elevated to respondent Court. The party adversely affected ‘may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the government is made, or within 30 days thereafter, a written protest setting forth his objections to the ruling or decision in question, together with the reasons therefor.’⁶³ It is stressed in the next section that the interested party who desires such a review of the action taken by the Collector ‘shall make a protest, otherwise, the action of the Collector shall be final and conclusive against him,’⁶⁴ Then there is the explicit provision that such an aggrieved party in any matter presented by proest ‘may, within 15 days after notification in writing by the Collector of his action or decision, give written notice to the Collector of his desire to have the matter reviewed by the Commissioner.’⁶⁵ Time and time again this Court has stressed that where a provision of law speaks categorically the need for interpretation is obviated, no plausible pretense being entertained to justify non-compliance. All that has to be done is to apply it in every case that falls within its terms.⁶⁶ So it must be in this litigation.”⁶⁷

Exhaustion of administrative remedies set out in the statutes is jurisdictional and must be meticulously complied with if the Court of Tax Appeals must have jurisdiction. As illustrated in this case, the first step is the decision of the Collector of Customs. Without such a decision, it is futile to go immediately to the Commissioner, then to the Court of Tax Appeals. And to render a decision, the Collector must be appraised of the matter through a protest in writing.

Construction—“products of the Philippines”

The phrase “products of the Philippines” is found in section 2802 of the Tariff and Customs Code. This section imposes wharfage dues on all articles imported into the Philippines and on *products of the Philippines* exported from the Philippines, except the products mentioned. In the case of *Republic Flour Mills, Inc. v. Commissioner of Customs*,⁶⁸ petitioner manufactures flour from wheat imported from abroad. In the process, it produces bran (ipa) and pollard (darak) which it exports. Applying section

⁶² Decision of the Tax Court, reproduced in G.R. No. 27641, August 31, 1971, 40 SCRA 555, 558-9 (1971).

⁶³ TARIFF & CUSTOMS CODE, sec. 2308.

⁶⁴ *Ibid.*, sec. 2309.

⁶⁵ *Ibid.*, sec. 2313.

⁶⁶ *Cf. People v. Mapa*, G.R. No. 22301, August 30, 1967, 20 SCRA 1164 (1967).

⁶⁷ *Supra*, note 61.

⁶⁸ G.R. No. 28463, May 31, 1971, 39 SCRA 269 (1971).

2802, the Collector imposed the wharfage charge, totalling ₱7,948.00, which petitioner paid under protest.

Petitioner contested the collection on the theory that bran and pollard are waste, not products. The product from wheat, according to the petitioner, is the flour. Not being products, their exportation is exempted from the wharfage dues. The lower court found the collection to be in accordance with law and dismissed the petition.

In the Supreme Court, the sole issue is the determination of the meaning of the phrase "products of the Philippines" and whether or not it covers bran and pollard which are characterized by the petitioner to be waste. Held: against petitioner. "We find", said the Supreme Court, "to repeat, such contention unpersuasive and affirm the decision of respondent Court of Tax Appeals." Continued the Court:

" It does take a certain amount of hairsplitting to exclude from its (Section 2802) operation what petitioner calls 'waste' resulting from the production of flour processed from the wheat grain in petitioner's flour mills in the Philippines. It is always timely to remember that, as stressed by Justice Moreland: 'The first and fundamental duty of courts, in our judgment, is to apply the law. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them.'⁶⁹ The law is clear; it must be obeyed. It is as simple as that.⁷⁰

The emphasis made by the Court ultimately points to the canon that where the law is clear, interpretation and construction play no role; the law must apply with all its force and effect.

VIII. REAL PROPERTY TAX

Improvements on public lands not taxable—remedy of landowner—previous payment not required

In the earlier case of *Bislig Bay Lumber Co., Inc. v. Provincial Government of Surigao*,⁷¹ the Supreme Court enunciated the rule that improvements, like roads, built by the concessionaire of public forests, are not subject to payment of the real property tax because, being accessions to public lands, they belong to the government. In that case, the Provincial Assessor took the position that inasmuch as the road was constructed by taxpayer for its own use and benefit, it is subject to the realty tax, though built on public land. Bislig, on the other hand, claimed exemption because the road belonged to the national government by right of accession, the road cannot be removed or separated from the land and so it is part and parcel of the public land, and the road was built for the use of the public in general

⁶⁹ *Lizarraga Hnos. v. Yap Tico*, 24 Phil. 504, 513 (1913).

⁷⁰ Citing *People v. Mapa*, *supra*, note 66, and numerous other cases.

⁷¹ 100 Phil. 303 (1956).

and not exclusively for the benefit of Bislig. The Supreme Court sided with the taxpayer, because

" . . . It cannot be disputed that the ownership of the road that was constructed by the appellee belonged to the government by right of accession not only because it is inherently incorporated or attached to the timber land leased to appellee but also upon the expiration of the concession, said road would ultimately pass to the national government (Arts. 440 and 445, now Civil Code; *Tobatabo v. Molero*, 22 Phil. 418). In the second place, while the road was constructed by appellee primarily for its use and benefit, the privilege is not exclusive, for, under the lease contract . . . its use can be availed of by the employees of the government and by the public in general Since . . . the road in question cannot be considered as an improvement which belongs to appellee, although in part is for its benefit, it is clear that the same cannot be the subject of assessment within the meaning of section 2, C.A. 470."⁷²

This doctrine was reiterated in the case of *Mun. of Cotabato, et al. v. Santos, et al.*,⁷³ where it was ruled

"that the lessee who introduced improvements consisting of dikes, gates and guard-houses on swamp lands leased to him by the Bureau of Fisheries, in converting the swamps into fishponds, is exempt from payment of realty taxes on those improvements".⁷⁴

These two cases were again applied in the 1971 case of *Board of Assessment Appeals of Zamboanga del Sur v. Samar Mining Co., Inc.* In this case, the iron mining company built 42 kms. of road from its mines in the interior to its piers along the coast. The road traversed public land, 29.2 kms. of which is inalienable or indisposable and the rest timber lands which are alienable or disposable. The Provincial Assessor assessed realty tax on the road that traversed the alienable public land, under section 2, Commonwealth Act 470, as follows:

"Section 2. Incidence of real property tax.—Except in chartered cities, there shall be levied, assessed and collected, an annual *ad valorem* tax on real property including land, buildings, machinery, and other improvements not hereunder specifically exempted."

While there is no dispute that the road built is an improvement, the Court ruled for exemption of the same on the authority of the cases of *Bislig Bay and Mun. of Cotabato*, discussed above.

Jurisdiction of Tax Court—previous payment of tax

Another issue raised by the government is the jurisdiction of the Court of Tax Appeals. The appellant maintains that the lower court cannot take

⁷² *Ibid.* at 306-307.

⁷³ 105 Phil. 963 (1959).

⁷⁴ Reproduced in *Board of Assessment Appeals of Zamboanga del Sur v. Samar Mining Co., Inc.*, G.R. No. 28034, February 27, 1971, 37 SCRA 734, 740 (1971).

cognizance of the petition filed by the taxpayer because it has not previously paid the realty tax before contesting it, as is required by section 54, Commonwealth Act 470.

The Supreme Court concluded that insofar as appeals from the decision of the Board of Assessment Appeals is concerned, section 54, Commonwealth Act 470 can be considered impliedly repealed by sections 7, 11 and 21, Republic Act 1125.

Section 7 defines the exclusive jurisdiction of the Court of Tax Appeals to review decisions "of provincial or City Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law (Commonwealth Act 470), including rules and regulations relative thereto." Section 11 provides that "any person, association or corporation adversely affected by a decision or ruling of x x x any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within 30 days after receipt of such decision or ruling." And section 21 incorporates the stock provision that any "law or part of law, or any executive order, rule or regulation or part thereof, inconsistent with the provisions" of Republic Act 1125 are repealed. Examining these sections, the lower court concluded that they readily show

"the intention of Congress to lodge in the Court of Tax Appeals the exclusive appellate jurisdiction over cases involving the legality of real property tax assessment, as distinguished from cases involving the refund of real property taxes. To require the taxpayer, as contended by respondents, to pay first the disputed real property tax before he can file an appeal assailing the legality and validity of the realty tax assessment will render nugatory the appellate jurisdictional power of the Court of Tax Appeals as envisioned in section 7(3), in relation to section 11, Republic Act 1125. If we follow the contention of respondents to its logical conclusion, we cannot conceive of a case involving the legality and validity of real property tax assessment, decided by the Board of Assessment Appeals, which can be appealed to the Court of Tax Appeals. The position taken by respondents is, therefore, in conflict with the Explanatory Note contained in H. B. No. 175, submitted during the 1st Session, 3d Congress of the Republic of the Philippines, and the last paragraph of section 21 of Republic Act No. 1125."⁷⁵

The Supreme Court agreed with the above-quoted view of the lower court, and for emphasis stated:

" . . . Section 11 (R.A. 1125) *does not* require that before an appeal from the decision of the Board of Assessment Appeals can be brought to the Court of Tax Appeals it must first be shown that the party disputing

⁷⁵ Decision, CTA Case No. 1705, entitled *Samar Mining Co. v. Commissioner*, reproduced by the Supreme Court in G.R. No. 28034, February 27, 1971, 37 SCRA 734 (1971) at 742-743.

⁷⁶ *Ibid.*, at 743.

the assessment had paid under protest the realty tax assessed. In the absence of such a requirement under the law, all that is necessary for a party aggrieved by the decision of the Board of Assessment Appeals is to file his notice of appeal to the Court of Tax Appeals within 30 days after receipt of the decision of the Board of Assessment Appeal"⁷⁶

The above decision was followed in the case of *Treasurer-Assessor v. University of the Philippines*.⁷⁷

Refund of realty tax—jurisdiction of Tax Court

In the case of *City of Cabanatuan v. Gatmaitan, et al.*⁷⁸ the Supreme Court held that the Tax Court has no jurisdiction over refunds of real estate taxes already paid for its jurisdiction under section 7(3), Republic Act 1125 is confined to reviewing decisions of the Board of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law. Since the power of the Board of Assessment Appeals is confined to the determination of the reasonableness of the assessment or taxation of the property as made by the assessor, this is the only matter that can be appealed to the Court of Tax Appeals. In other words, under that case, claims for refund of realty taxes came within the jurisdiction of the Court of First Instance and not that of the Tax Court. This rule spawned certain doubts where the landowner, besides questioning the legality or reasonableness of an assessment somehow pays the realty taxes involved. Should he file a refund suit in the municipal court or Court of First Instance, depending on the amount and question the legality of the assessment there? Or should he question the assessment according to the procedures set in the Assessment Law and the Court of Tax Appeals Act, namely, appeal the assessor's decision to the Board of Assessment Appeals, which, if adverse, then appeal on time to the Tax Court? In this situation, should he file a separate suit for refund in the Court of First Instance (or municipal court), in view of the *Gatmaitan* case? These doubts have been cleared in the 1971 case of *Gonzalez v. Province of Iloilo*.⁷⁹

Gonzales and wife are landowners in Iloilo who disputed the allegedly excessive assessments of their land made by the assessor. They eventually appealed the legality of the assessment to the Tax Court. Pending hearing, however, they filed the instant suit in the CFI for refund of the amounts allegedly paid in excess. Invoking want of jurisdiction, the CFI dismissed the complaint, and the plaintiffs appealed to the Supreme Court on a question of law. The Supreme Court took the appeal as an opportunity to clarify jurisprudence on the matter of refunds of realty tax and set the following rules:

⁷⁷ G.R. No. 20550, April 30, 1971, 38 SCRA 509, 513-516 (1971).

⁷⁸ G.R. No. 19129, February 28, 1963, 7 SCRA 427 (1963).

⁷⁹ G.R. No. 24663, March 31, 1971, 38 SCRA 209 (1971).

- a) The Court of Tax Appeals has special and exclusive appellate jurisdiction over all cases where a real property assessment is disputed as unjust, erroneous and improper, illegal or void, or excessive and reasonable, although the disputed realty tax has been paid;
- b) the landowner must exhaust the administrative remedies outlined in the Assessment Law before he can appeal to the Tax Court, lest the latter would dismiss the petition for want of jurisdiction;
- c) the holding in *Gatmaitan, supra*, that the landowner if pressed for payment may pay under protest and go direct to the CFI, without following the administrative remedies outlined in the law is overruled; and
- d) the tentative test announced in *Victorias Milling Co., Inc. v. CTA*⁸⁰ for determining the proper court of jurisdiction in cases where the realty tax has been paid is modified.

These rules are culled from the following exposition made by the Supreme Court:

"After reexamination and thorough analysis and consideration of the law and precedents on the question, the Court therefore states, for the guidance of bench and bar, that the Court of Tax Appeals, to the exclusion of the courts of first instance, has special and exclusive appellate jurisdiction over all cases where a real estate assessment is disputed as unjust, erroneous and improper, illegal or void, or excessive or unreasonable, after recourse to the corresponding board of assessment appeals has failed, and even though the disputed real estate tax has been paid.

This restatement of doctrine overrules the holding in *Cabanatuan* that a taxpayer who is pressed for payment of a real estate tax under a disputed assessment and upon pain of forfeiture of its properties and pays the tax under protest, may forego the administrative remedy of appeal to the assessment appeals board and eventual appeal to the tax court, and instead directly bring an action for refund in the court of first instance on the premise which the Court now expressly rejects—that 'if the real estate tax has already been paid it is futile for a taxpayer to take the matter to the City Board of Assessment Appeals for the jurisdiction of that body is merely confined to the determination of the reasonableness of the assessment or taxation of the property and is not extended to the authority of requiring the refund of the tax unlike cases involving assessment of internal revenue taxes.'

X X X X

"The tentative test for determining the proper court of jurisdiction essayed in *Victorias* must be accordingly modified. The test therein stated was that 'where an assessment is illegal and void, the remedy of a taxpayer, who has already paid the realty tax under protest, is to sue for refund in the competent court of first instance. On the other hand, where the assessment is merely erroneous, his recourse is to file an appeal in the Provincial Board of Assessment Appeals within 60 days from receipt of the assessment,' adding the distinction that '[a]n assessment is illegal and void when the assessor has no power to act at all. It is erroneous when the assessor has the power but errs in the exercise of that power.'

⁸⁰ G.R. No. 24213, March 13, 1968, 22 SCRA 1008 (1968).'

It is difficult to find adequate support for this tentative test between illegality and error of the assessment in section 7 of Republic Act 1125 which confers exclusive appellate jurisdiction upon the tax court to review, without distinction, 'decisions of provincial or city boards of assessment appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.' Furthermore, this test could not be applied with practicality, since the property owner, in choosing the forum would have to anticipate as to what would ultimately be ruled by the Courts as to whether the assessment is illegal and void for lack of power on the part of the assessor or whether the assessor merely erred in exercising his power, besides the fact that an assessment is disputed many times for being both 'illegal and void' as well as 'erroneous', as in the case at bar.

"The Court has therefore adopted the more simple test that where an assessment is disputed for whatever ground or reason, be it that the assessment is unjust, erroneous or improper, illegal or void, or excessive or unreasonable, the action challenging the assessment, after first exhausting the administrative remedy of appeal to the assessment appeals board, and regardless of whether the corresponding real estate tax has been paid and a refund sought, pertains to the exclusive and special jurisdiction of the tax court to the exclusion of the courts of first instance. Thus, in the recently decided case of Board of Assessment Appeals of Zamboanga del Sur vs. Samar Mining Co. and Court of Tax Appeals, the Court upheld the jurisdiction of the tax court to rule upon the legality and validity of the disputed real estate assessment, rejected the contention therein that the property owner should first pay the questioned realty tax before lodging an appeal from the assessment appeals board's adverse decision to the tax court.

"Where the realty assessment alone is disputed, since the tax has not yet been paid, the tax court in its decision would rule upon the correctness and validity of the assessment. Where the tax has in addition already been paid and a refund thereof is sought, the tax court, if it rules against the correctness and validity of the assessment, would in addition order the refund of the tax paid by the property owner."

Rule (a) above was applied by the Tax Court in the case of *Treasurer-Assessor v. University of the Philippines* and approved by the Supreme Court.

University of the Philippines—exempt from realty taxes

The Philippine Legislature, by Act No. 1870, created a non-stock and non-profit educational institution known as the University of the Philippines, "to provide advanced instruction in literature, philosophy, sciences and arts, and to give professional and technical training"⁸¹, to be governed by a Board of Regents.⁸² On Feb. 8, 1930, the Legislature passed Act 3608, granting

⁸¹ Sec. 2. The purpose of said university shall be to provide advanced instruction in literature, philosophy, the sciences, and arts, and to give professional and technical training. (Act No. 1870).

⁸² *Ibid.*, sec. 4.

and ceding to the U.P. portions of the public domain not exceeding 10,000 hectares as a permanent endowment for its support and maintenance. These lands were to be administered by the Board of Regents, which cannot however cede or sell them without Congressional approval, that their income, receipts and profits shall form part of the general fund of the U.P. for the disposal of the Board of Regents to accomplish the purposes of the U.P. It was provided also that portions not developed or otherwise disposed of within ten years from transfer to the U.P. shall revert to the public domain.

Pursuant to the provisions of this Act, the U.P., in 1940, took possession of some 5,000 of public land in Basilan, now known as the U.P. Basilan Land Grant. This was converted in time to agricultural plantations for raising coffee, rubber, cacao and other crops. Adhering strictly to the conditions of Act 3608, none of the income inured to the benefit of private individuals or private institutions, but have been wholly and exclusively devoted to the purposes behind the creation of U.P.

Sometime in May 1955, the Treasurer-Assessor of Basilan attempted to include the U.P. land grant in the tax rolls and he eventually assessed and required U.P. to pay realty taxes thereon. To avoid harassments arising from enforced collection of the tax, the U.P. paid portions thereof, until it secured an opinion from the Department of Justice that it was exempt. Thereafter, it refused to pay and protested the realty tax assessments, besides asking for the refund of the amounts it had already paid. The assessor initially denied U.P.'s request for cancellation of the assessments and the refund; the U.P. appealed to the Board of Assessment Appeals which affirmed the decision of the Assessor. Finally, the U.P. seasonably raised the matter to the Court of Tax Appeals, which agreed with the position of the Secretary of Justice that the U.P. land grant was exempt from realty taxes. It therefore ordered the refund of the taxes previously paid. Hence, this appeal to the Supreme Court.

Held, affirmed. (We have referred above to the refund jurisdiction possessed by the Tax Court and the repeal by R.A. 1125 of section 54 of the Assessment Law requiring previous payment of the real property tax before its legality may be contested. We shall therefore confine this discussion to the taxability of the land grant of U.P.)

The Supreme Court premised its conclusion on the nature of the U.P. as an instrumentality of the Government of the Republic of the Philippines performing a governmental function, not proprietary functions. On this premise, the Court held that "the property it possesses and administers, through its governing body which is the Board of Regents, is the property of the government."⁸³ This was the Court's reply to the contention of the Treasurer-

⁸³ *Supra*, note 77.

Assessor that he assessed under the authority of Republic Act 104 reproduced as follows:

"Section 1.—All corporations, agencies or instrumentalities owned or controlled by the Government shall pay such duties, taxes, fees and other charges upon their transaction, business, industry, sale or income as are imposed by law upon individuals, associations or corporations engaged in any taxable business, industry or activity, except on goods or commodities imported or purchased and sold or distributed for relief purposes as may be determined by the President of the Philippines."

The Court brushed this argument aside with its observation that the section refers to agencies or instrumentalities exercising proprietary functions and engaged in business for profit, and cannot be applied to the U.P. "because this institution performs a function imposed upon it by the government in the implementation of a provision of the Constitution".⁸⁴

It is believe that the foregoing decision similarly benefits other state educational institutions now existing or to be organized in the future, for it is difficult to imagine a situation where the state establishes a university or college or school primarily for business and profit instead of carrying out the mandate of the Constitution.

IX. MISCELLANEOUS

This portion of the Survey wraps up the 1971 cases not squarely classifiable under any of the foregoing topics, yet of significance to the student of taxation as well as its practitioner.

Prescription, not seasonably invoked, is waived

The Tax Code has benevolently provided the taxpayer with the defense of prescription. Thus the Commissioner of Internal Revenue loses the right to issue deficiency tax assessments after five years from the filing of the return, absent fraud or false returns or non-filing, all with intent to evade the tax, in which case he loses the right after ten years from discovery of the particular event mentioned.⁸⁵ He is given similar periods to collect the deficiency tax assessed, reckoned from the date the assessment is issued.⁸⁶ This defense, to be of use, must however be invoked from the beginning, particularly in the Court of Tax Appeals. It cannot be invoked for the first time in the memorandum, after the trial; much less may it be invoked for the first time on appeal to the Supreme Court, otherwise it is deemed waived.⁸⁷

⁸⁴ *Ibid.*, 516-517.

⁸⁵ Secs. 331 & 332, Com. Act No. 466 (1902), as amended, otherwise known as the National Internal Revenue Code and frequently referred to in this Survey as Tax Code.

⁸⁶ *Ibid.*

⁸⁷ Rules of Court, Rule 9, sec. 2; Republic v. Mambulao Lumber Co., G.R. No. 18942, November 30, 1962, 6 SCRA 858 (1962).

This doctrine is reiterated by the Supreme Court in the 1971 case of *Visayan Electric Co., Inc. v. Commissioner of Internal Revenue*. There, the petitioner paid the franchise tax rate of 2% according to its franchise on its gross receipts from April 1, 1952 to Dec. 31, 1959. It was only on Dec. 14, 1960, that the Commissioner issued deficiency franchise tax assessment based on the higher rate of 5% under Sec. 259, Tax code. The franchise holder did not invoke the defense of prescription in the BIR during the administrative phase of the investigation, nor in the Tax Court nor in the pleadings filed in the Supreme Court. The Court tersely disposed of this defense, as follows:

"Upon the facts disclosed by the record, this (defense of prescription) point merits no extensive discussion as it appears that petitioner did not raise the defense of prescription neither in the BIR, nor in the Court of Tax Appeals, nor in the petition for review filed in this case. It is the settled law in this jurisdiction that prescription as a defense is deemed waived if not seasonably raised (Sec. 2, Rule 9, Rules of Court; *RP v. Mambulao Lumber Co. et al.*, G.R. No. 18942, November 30, 1962).⁸⁸

Prayer for general relief—its function.

Petitioner insists that the defense of prescription is deemed included in the general prayer for relief made in the petition for review in the Court of Tax Appeals. The Court similarly rejected this argument, and said:

" . . . Well known is the rule that the prayer for relief made in a pleading (complaint or petition for review) does not form part of the body thereof where the ultimate facts constituting the cause of action or defense must be set forth. The only legal effect of a prayer for general relief is to authorize the court, upon rendering judgment, to grant such relief as may be justified by the pleadings and the evidence, although such relief was not one of those specifically prayed for in the winning party's affirmative pleading."⁸⁹

Non-presentation of evidence—reversed on appeal—effect

The case of *Sison et al. v. Comm. of Internal Revenue*⁹⁰ illustrates an error of judgment that lawyers handling a case sometimes commit. It is included in this survey as a lesson not to be forgotten.

In the principal case decided earlier by the Supreme Court,⁹¹ the decision of the Tax Court upholding the defense of prescription was reversed. In the lower court, in that case, the taxpayer contested a revised deficiency income tax assessment, on the merits and on the ground that the right of the Commissioner to issue the revised assessment had prescribed. While the

⁸⁸ *Supra.*

⁸⁹ *Ibid.* at 48.

⁹⁰ G.R. No. 22480 June 30, 1971, 39 SCRA 593 (1971).

⁹¹ *Commissioner of Internal Revenue v. Sison*, G.R. No. 13739, April 30, 1963, 7 SCRA 884 (1963).

government presented evidence on the merits to prove the correctness of its assessment, the taxpayer submitted the case for decision on the issue of prescription, without presenting his evidence on the merits. This, despite the warning by the trial court that taxpayer was taking a chance. The Tax Court as mentioned above, agreed that the assessment was illegal for the right of respondent to issue it had prescribed. Not satisfied, the Commissioner of Internal Revenue appealed to the Supreme Court, which, as stated above, reversed the Tax Court holding that the amended assessment was late and not enforceable.

The Commissioner therefore went back to the lower court to ask for execution of the judgment of the Supreme Court. Likewise, the taxpayer asked the lower court to decide the case on the merits contending: "that the Supreme Court decision cannot be executed because it is interlocutory in nature and mentioned no collectible amount; and the Tax Court did not lose jurisdiction to decide the case on the merits." The lower court opted to execute the judgment of the Supreme Court, hence this appeal to the Supreme Court.

Held, resolution of the Tax Court affirmed.

Said the Court:

"Insofar as the decision referred to disposed of the issue of prescription by reversing the order of dismissal issued by the Court of Tax Appeals, it was obviously final in character. It left no other substantial matter unresolved.

But appellants argue that upon the remanding of the case below, the Court of Tax Appeals was bound to set the case anew for hearing, relying upon the fact that said court did not pass upon the question of correctness of the deficiency tax assessment in question when it issued the order of dismissal subsequently reversed by this Court. We also find this to be without merit.

It is not denied that in the Court of Tax Appeals appellants questioned the validity of the deficiency tax imposed upon them. During the hearing of the case the court informed the parties that 'the whole case on question of prescription and on the merits' was the subject of said hearing. The government submitted evidence to sustain the validity of the questioned deficiency tax, while appellants refrained from doing the same 'in the meantime while waiting for the resolution' of the court—presumably on the question of prescription. Thereupon one of the judges presiding the court gave appellants' counsel this warning: 'It is up to you if you want to take that chance.' (t.s.n., p. 9; C.T.A. Record p. 115). Thereafter, the court dismissed the claim of the government on the ground that it had already prescribed. It is clear from the foregoing that the 'chance' that appellants took was this: that if, on appeal, the decision of the Court of Tax Appeals was reversed—as it was in fact reversed—they would be deemed to have waived their right to present additional evidence on the question of the correctness of the deficiency tax. Stated otherwise, upon reversal, they would not be entitled to have the case set for hearing all over again in the Court of Tax Appeals in relation to the question aforesaid. This, in-

deed, must be the necessary consequence of their refusal or failure to present additional evidence during the original hearing. The practice of the courts is to try a case a whole and not piece by piece, in order to avoid unnecessary delays.

In relation to the claim that the dispositive part of our decision in G.R. L-13739 specifies no collectible amount; the following are pertinent considerations.

Section 14 of Republic Act 1125 which speaks of the 'Effect of decision that tax is barred by Statute of Limitations' provides that if the decision of the court is that the tax is barred said decision 'shall be considered as its decision that there is no deficiency in respect of such tax.' Such being the rule the contrary must likewise be true, namely: that if the decision of the court is that the tax is not barred, such decision must be understood in the sense that there is deficiency in respect of such tax. In line with this, when in G.R. L-13739. We overruled therein appellee's claim for damages. We did so 'not only because they took no appeal from the decision presently under review, but also because the collective' actuation is herein sustained.'

This closes the foregoing Survey of 1971 decisions of the Supreme Court on Taxation. As observed above, jurisprudence on this subject has passed infancy and is now developing into virile maturity. The courts no longer grope for a principle to arrive at a just result; pitfalls have been more clearly avoided; confusing landmarks have been stricken down as seen in the customs forfeiture and seizure cases. This healthy trend should augur well for the bench, bar, the law schools and the tax-paying public in general.