

OPINIONS OF THE SECRETARY OF JUSTICE

OPINION NO. 152

(On the question as to whether crude oils which will be imported by Caltex (Philippines), Inc., in accordance with the terms of the petroleum refining concession granted to it by the Government of the Philippines on June 20, 1953, under the Petroleum Act of 1949 (Rep. Act No. 387) may be imported free of customs duty under Article 103 of the Petroleum Act.)

2nd Indorsement
June 28, 1954

Respectfully returned to the Honorable, the Secretary of Finance, thru the Honorable, the Executive Secretary, Office of the President, Malacañang, Manila.

This is in connection with the imposition of customs duties on the crude oils which will be imported by Caltex (Philippines), Incorporated, in accordance with the terms of the petroleum refining concession granted to it by the Government of the Philippines on June 20, 1953, under the Petroleum Act of 1949 (Republic Act No. 387). The crude oils to be imported will not be sold as such but will be refined in the petroleum refinery of said company into gasoline, kerosene, diesel, and fuel oils.

Opinion is requested on whether said crude oils may be imported free of customs duty under Article 103 of the Petroleum Act which provides:

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

"No exemption shall be allowed on goods imported by the concessionaire for his personal use or that of any others; nor for sale or for re-export; x x x."

The Philippine Tariff Act of 1909, as amended by Republic Act No. 571, however, imposes customs duties on "mineral oils, crude or refined" [Sec. 8, subsection 22 (a)].

The above-mentioned Tariff Act is a law of general application enacted to raise revenues for the government, and the provision thereof imposing customs duties on mineral oils is a broad provision covering importations of mineral oils in general. On the other hand, the Petroleum Act deals with a special subject, and Article 103 thereof is a special provision limited to importations by petroleum concessionaires.

It is a settled rule of statutory construction that a special or specific provision prevails over a general or broad provision and that the latter operates only upon such cases as are not included in the former. In other words, the special or specific act and the general or broad law stand together, the one as the law of a particular case and the other as the general rule. Thus, the special or specific provision is often referred to as an exception to the general or broad provision (50 Am. Jur. 562-563). Therefore, Article 103 of the Petroleum Act may be considered applicable to importations by petroleum concessionaires, as an exception to the above-mentioned provision of the Philippine Tariff Act.

The next question, then, is, are crude oil materials within the purview of said provision of the Petroleum Act?

The word "material" refers to the substance matter which enters into the making of the finished product. Thus, it has been held that the word "material" as used in a tax statute relating to spirituous liquors means the raw or original material from which the liquor is produced. (U.S. v. Teebrook, Fed. Cas. 33; Pendleton v. Franklin, 7 NY 108). Crude oil has been defined by the Petroleum Act as "oil in its natural state before the same has been refined or otherwise treated, but excluding water and foreign substances". [Art. 2(b)]. Crude oil is therefore the substance matter or raw material from which petroleum is refined. And a

refining concession grants to the concessionaire the right to manufacture or refine petroleum or to extract its derivatives (Art. 10(d) R.A. 387). It follows that crude oil is a "material" which the refining concessionaire must have to use in the exercise of the right granted to it under a refining concession. It is, therefore, within the scope of the first paragraph of the above-quoted Article 103.

And such crude oils are not such goods as are mentioned in the second paragraph of the same article. For it is obvious that the crude oils in question are not being imported for the personal use of the concessionaire or of other persons. Moreover, while it is true that after such crude oils will have been refined, the finished product will ultimately be sold, it is also true that the phrase "nor for sale or for export" refers to imported articles to be sold or re-exported in the same condition in which they were imported.

The undersigned is therefore of the opinion that the crude oils which will be imported by the Caltex (Philippines), Incorporated, and which will be used as materials in its petroleum refinery may enter free of customs duty within the first five years following the grant of its concession.

(SGD.) PEDRO TUASON
Secretary of Justice

OPINION NO. 129

(On the question as to whether or not the action taken by the Export Control Committee in disapproving applications to export rice bran abroad allegedly upon the recommendation of the Director of Animal Industry is legal.)

The Executive Officer
Export Control Committee
Office of the President
Malacañang, Manila

S i r :

This is in reply to your request for opinion as to the legality of the action taken by the Export Control Committee in disapproving applications to export rice bran abroad allegedly upon the recommendation of the Director of Animal Industry.

The Export Control Law (Republic Act No. 613, as revived and amended by Republic Act No. 824) makes it unlawful for any person, association or corporation to export or re-export to any point outside the Philippines machineries and their spare parts, scrap metals, medicines, foodstuffs, abaca seedlings, gasoline, oil, lubricants and military equipment or supplies suitable for military use without a permit from the President (Section 1). It authorizes the President of the Philippines to control, curtail, regulate and/or prohibit the exportation or re-exportation of such materials, goods and things above enumerated and to issue rules and regulations as may be necessary to carry out the provisions of the statute (Section 3).

Executive Order No. 453, series of 1951, as amended by Executive Order No. 482, same series, and revived by Executive Order No. 526, series of 1952, issued by the President pursuant to the power conferred upon him by Section 3 of the Export Control Law, lists under separate categories the different articles absolutely banned from exportation or re-exportation and those which may be exported or re-exported under certain conditions (Annexes A, B and C, Ex. Order No. 453, as amended). Commodities not listed are not governed by the said Executive Order (Section 11).

I have carefully examined the articles and commodities listed in Annexes A, B, and C to Executive Order No. 453, as amended, and rice bran is not one of them. This being so, and since commo-

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