

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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REPUBLIC ACTS

REPUBLIC ACT NO. 1198

AN ACT CREATING THE OFFICE OF STATE ATTORNEYS IN THE DEPARTMENT OF JUSTICE AND DEFINING ITS POWERS AND DUTIES AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There shall be in the Department of Justice an Office of State Attorneys composed of one chief, two assistant chiefs and sixteen state attorneys whose term of office shall expire on the thirty-first day of December, nineteen hundred and fifty-seven. The Chief of the Office shall receive a salary of twelve thousand pesos *per annum*, and shall have the rank of Solicitor General. He shall be assisted by two Assistant Chief Attorneys who shall each receive a salary of nine thousand pesos *per annum* and sixteen State Attorneys who shall each receive a salary of eight thousand pesos *per annum*.

The Chief and Assistant Chiefs of the Office of State Attorneys and the sixteen State Attorneys shall be appointed by the President of the Philippines with the concurrence of the Commission on Appointments.

No one shall be appointed as Chief or Assistant Chief of the Office of State Attorneys unless he has had at least ten years of trial court practice, and as State Attorney unless he has had at least five years of trial court practice in the Philippines; and appointment may take into account equitable representation of provinces in the Office, considering for this purpose the representation of the provinces now already have in the offices of the provincial fiscals.

SEC. 2. The Chief and Assistant Chiefs of the Office of State Attorneys and the State Attorneys shall have the same powers as the provincial or city fiscal as provided for by the law: *Provided*, That the State Attorney shall only assist or collaborate with the provincial fiscal or city attorney unless otherwise expressly directed and authorized by the Secretary of Justice.

In all cases involving crimes cognizable by the Court of First Instance, no complaint or information shall be filed without first giving the accused a chance to be heard in a preliminary investigation, where such accused shall be subpoenaed and appears before the investigating state attorney with the right to cross-examine the complainant and his witnesses. The preliminary investigation shall be held at the capital of the province where the crime was committed. The State Attorney shall certify under oath in the information to be filed by him that the defendant was given a chance to appear on his behalf or by counsel: *Provided, however*, That when a preliminary investigation has already been conducted by the Justice of the Peace or the Provincial or City Fiscal and where such official has found at least a *prima facie* case, the State Attorney may not conduct another preliminary investigation. To this end, the State Attorney may summon witnesses and require them to appear and testify under oath before him and/or issue *subpoena duces tecum*. The attendance of absent or recalcitrant witnesses who may be summoned or whose testimony may be required by the State Attorneys under the authority herein conferred shall be enforced by proper process upon application to the corresponding Court of First Instance. In the investigation of criminal cases, any State Attorney shall be entitled to request the assistance of any law enforcement or investigation agency of the government.

The Chief of the Office of State Attorneys and the State Attorneys shall perform such other duties as in the interest of the public service may be assigned to them from time to time by the Secretary of Justice.

SEC. 3. The Office of State Attorneys shall be provided with such subordinate personnel as may be authorized by the appropriation law.

SEC. 4. Upon the organization of the Office of State Attorneys, the Prosecution Division in the Department of Justice shall be deemed abolished and its properties, furniture, equipment and records shall be transferred to the Office of State Attorneys.

SEC. 5. There is hereby authorized to be appropriated, out

of any funds of the National Treasury not otherwise appropriated, the sum of three hundred thousand pesos for the salaries of the State Attorneys and their personnel and maintenance of the Office.

SEC. 6. This Act shall take effect upon its approval.

Approved, August 28, 1954.

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REPUBLIC ACT NO. 1080

AN ACT DECLARING THE BAR AND BOARD EXAMINATIONS AS CIVIL SERVICE EXAMINATIONS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The bar examinations and the examinations given by the various boards of examiners of the Government are declared as civil service examinations, and shall, for purposes of appointment to positions in the classified service the duties of which involve knowledge of the respective professions, except positions requiring highly specialized knowledge not covered by the ordinary board examinations, be considered as equivalent to the first grade regular examination given by the Bureau of Civil Service if the profession requires at least four years of study in college and the person has practiced his profession for at least two years, and as equivalent to the second grade regular examination if the provision requires less than four years of college study.

SEC. 2. The Commissioner of Civil Service shall be furnished by the Clerk of the Supreme Court and the Secretary of the Board of Examiners a list of the successful candidates in the respective bar or board examinations with their general averages, and preference shall be given to those obtaining the highest ratings in making appointments: *Provided*, That for those who have already passed the corresponding bar or board examinations, the eligibility shall be deemed to commence from the approval of this Act.

SEC. 3. The Commissioner of Civil Service shall promulgate the rules and regulations to implement the provisions of this Act.

SEC. 4. The benefits granted under this Act shall not prescribe, the provisions of civil service law or regulations notwithstanding.

SEC. 5. This Act shall take effect upon its approval.

Approved, June 15, 1954.

OPINION NO. 129

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dities not included in the list are not governed by the cited presidential decree (Section 11), it is believed that the exportation of rice bran may not be controlled or restricted by the Export Control Committee.

The need for the conservation of rice bran for local consumption underscored by the Director of Animal Industry as essential to the campaign for increased production of poultry and livestock does not supply legal basis for the Export Control Committee to control or restrict its exportation. Necessity does not create power. Neither does it afford legal justification for the exercise of a power vested in some other authority. The President, not the Export Control Committee, is the authority designated by statute to implement and carry out the policy expressed in the Export Control Law and the Committee, as thereby created, merely assists the President in its execution and sees to it that the rules and regulations issued thereunder are observed and carried out. If there is such an urgent need for restricting or controlling the exportation of rice bran, the remedy lies in the President who may prohibit or regulate its exportation thru the issuance of the appropriate amendatory executive order. But until then, it is my opinion that rice bran may be exported even without applying for a permit from the President.

Respectfully,

PEDRO TUASON
Secretary of Justice