

“I. FACTS

“100 forty foot refrigerated containers, equipped with refrigeration units, were constructed in Japan by S--- C---, Inc. Because of differences in the voltage systems involved in the anticipated use of the containers, it became necessary to equip each unit with a transformer manufactured in Belgium. The containers, without the transformers, were shipped from Japan to San Francisco loaded with dry cargo, moving as instruments of international traffic. On arrival in San Francisco, the containers were unloaded on A--- P--- L--- Pier XX; the transformers were then imported from Germany, traveling under S--- C---’s instruments of international traffic, and were placed in the custody of the U. S. Customs in the foreign trade zone. Thereafter, under supervision of the U. S. Customs, the transformers were delivered to APL Pier XX and installed in the containers. The containers were then loaded with a foreign cargo, loaded on ships of A--- P--- L---, lessee of the containers, and proceeded to a foreign destination under A--- P--- L---’ instrument of international traffic.”

The subsequent use of the containers was wholly in foreign commerce.

The taxpayer’s contention that the goods constitute exempt exports is premised primarily upon the argument that the federal customs regulations precluded use of the property in domestic commerce. It is also contended that the property literally comes with the exclusion provided by Revenue and Taxation Code section 6009.1. However, it is conceded that the containers were functionally used in California in foreign commerce.

Analysis and Conclusions

It is our conclusion that the use tax applies to the purchase of the transformers. The constitutional exemption for goods shipped into this country is limited to imports (Brown v. Maryland, 25 U. S. 441). The constitutional exemption ceases to be applicable when the goods are committed to the use for which they were imported (Youngstown Sheet & Tube v. Bowers, 358 U. S. 534.)

In this petitioned matter, the property imported, the transformers, ceased to be imports at the time they were removed from the shipping containers for affixation to the containers. This was a purely local activity to which the use tax is applicable (Southern Pacific v. Gallagher, 306 U. S. 167; American Airlines v. State Board of Equalization, 216 Cal.App.2d 180).

The exclusion from use tax provided by Revenue and Taxation Code section 6009.1 for property affixed to other property is limited to property transported outside this state for use solely outside this state. The exclusion is not applicable here for the reason that the property was used here in a revenue producing operation prior to the time it left the state. This provision was not intended to provide an exclusion on the basis that the property was thereafter used here in a manner that would qualify for the exemption, since it is not this use to which the exclusion is being applied.

In order to qualify for exclusion, the subsequent functional use of the property must be solely outside California (see discussion in American Airlines v. State Board of Equalization, supra). Stated another way, the use tax exclusion does not provide a blanket exemption for property installed in this state for use on instrumentalities of foreign commerce.

Since the property was installed in this state and not entitled to the exclusion provided by section 6009.1, the use tax is applicable.

Recommendation

It is recommended that the taxes be redetermined without adjustment.

W. E. Burkett, Hearing Officer

12-17-75
Date

Reviewed for Audit:

Principal Tax Auditor

12-23-75
Date