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Zenith Radio Corporation Petitioner v. United States, No. 77-539, June 21, 1978 Supreme Court of the United States

Judicial Decisions

SUPREME COURT OF THE UNITED STATES

No. 77-539

Zenith Radio Corporation
Petitioner
v.
United States

On Writ of Certiorari to the United States Court of Customs and Patent Appeals

[June 21, 1978]

MR. JUSTICE MARSHALL delivered the opinion* of the Court.

Under § 303(a) of the Tariff Act of 1930, 46 Stat. 687, *as amended,* 19 U.S.C. § 1303(a) (Supp. V, 1975), whenever a foreign country pays a "bounty or grant" upon the exportation of a product from that country, the Secretary of the Treasury is required to levy a countervailing duty, "equal to the net amount of such bounty or grant," upon importation of the product into the United States. The issue in this case is whether Japan confers a "bounty" or "grant" on certain consumer electronic products by failing to impose a commodity tax on those products when they are exported, while imposing the tax on the products when they are sold in Japan.

I.

Under the Commodity Tax Law of Japan, Law No. 48 of 1962, see App. 44-48, a variety of consumer goods, including the electronic products at issue here, are subject to an "indirect" tax—a tax levied on the goods themselves, and computed as a percentage of the manufacturer's sales price rather than the income or wealth of the purchaser or seller. The Japanese tax applies both to products manufactured in Japan and to those imported into Japan. On goods manufactured in Japan, the tax is levied upon shipment from the factory; im-

*Editor's note: The footnotes to the opinion have been omitted.

ported products are taxed when they are withdrawn from the customs warehouse. Only goods destined for consumption in Japan are subject to the tax, however. Products shipped for export are exempt, and any tax paid upon the shipment of a product is refunded if the product is subsequently exported. Thus the tax is "remitted" on exports.

In April 1970 petitioner, an American manufacturer of consumer electronic products, filed a petition with the Commissioner of Customs, requesting assessment of countervailing duties on a number of consumer electronic products exported from Japan to this country. Petitioner alleged that Japan had bestowed a "bounty or grant" upon exportation of these products by, *inter alia,* remitting the Japanese Commodity Tax that would have been imposed had the products been sold within Japan. In January 1976, after soliciting the views of interested parties and conducting an investigation pursuant to Treasury Department regulations, *see* 19 C.F.R. § 159.47(c) (1977), the Acting Commissioner of Customs published a notice of final determination, rejecting petitioner's request. 41 Fed. Reg. 1298 (1976).

Petitioner then filed suit in the Customs Court, claiming that the Treasury Department had erred in concluding that remission of the Japanese Commodity Tax was not a bounty or grant within the purview of the countervailing duty statute. The Department defended on the ground that, since the remission of indirect taxes was "nonexcessive," the statute did not require assessment of a countervailing duty. In the Department's terminology, a remission of taxes is "nonexcessive" if it does not exceed the amount of tax paid or otherwise due; thus, for example, if a tax of $5 is levied on goods at the factory, the return of the $5 upon exportation would be "nonexcessive," whereas a payment of $8 from the government to the manufacturer upon exportation would be "excessive" by $3. The Department pointed out that the current version of § 303 is in all relevant respects unchanged from the countervailing duty statute enacted by Congress in 1897, and that the Secretary—in decisions dating back to 1898—has always taken the position that the nonexcessive remission of an indirect tax is not a bounty or grant within the meaning of the statute.

On cross-motions for summary judgments, the Customs Court ruled in favor of petitioner and ordered the Secretary to assess countervailing duties on all Japanese consumer electronic products specified in petitioner's complaint. 430 F. Supp. 242 (1977). The court acknowledged the Secretary's longstanding interpretation of the statute. It concluded, however, that this administrative practice could not be sustained in light of this Court's decision in *Downs v. United States,* 187 U.S. 496 (1903), which held that an export bounty had been conferred by a complicated Russian scheme for the regulation of sugar production and sale, involving, among other elements, remission of excise taxes in the event of exportation.

On appeal by the government, the Court of Customs and Patent Appeals, dividing 3-2, reversed the judgment of the Customs Court and remanded for entry of summary judgment in favor of the United States. 562 F.2d 1209 (1977). The majority opinion distinguished *Downs* on the ground that it did not decide the question of whether nonexcessive remission of an indirect tax, standing alone, constitutes a bounty or grant upon exportation. The court then examined the language of § 303 and the legislative history of the 1897 provision and concluded that, "in determining whether a bounty or grant has been conferred, it is the economic result of the foreign government's action which controls." 562 F.2d, at 1216. Relying primarily on the "long-continued" and "uniform" administrative practice, *id.*, at 1218-1219, 1222-1223, and secondarily on congressional "acquiescence" in this practice through repeated reenactment of the controlling statutory language, *id.*, at 1220, the court held that interpretation of "bounty or grant" so as not to include a nonexcessive remission of an indirect tax is "a lawfully permissible interpretation of § 303." 562 F.2d, at 1223.

We granted certiorari, __ U.S. __ (1978), and we now affirm.

II.

It is undisputed that the Treasury Department adopted the statutory interpretation at issue here less than a year after passage of the basic countervailing duty statute in 1897, see T.D. 19321, 1 Synopsis of [Treasury] Decisions 696 (1898), and that the Department has uniformly maintained this position for over 80 years. This longstanding and consistent administrative interpretation is entitled to considerable weight.

> When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. "To sustain [an agency's] application of [a] statutory term, we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings." *Udall v. Tallman,* 380 U.S. 1, 16 (1965), quoting *Unemployment Compensation Commission v. Aragon,* 329 U.S. 143, 153 (1946).

Moreover, an administrative "practice has peculiar weight when it involves a contemporaneous construction of a statute by the [persons] charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." *Norwegian Nitrogen Products Co. v. United States,* 288 U.S. 294, 315 (1933); *see, e.g., Power Reactor Co. v. Electricians,* 367 U.S. 396, 408 (1961).

The question is thus whether, in light of the normal aids to statutory construction, the Department's interpretation is "sufficiently reasonable" to be accepted by a reviewing court. *Train v. Natural Resources Defense Council,*

421 U.S. 60, 75 (1975). Our examination of the language, the legislative history, and the overall purpose of the 1897 provision persuades us that the Department's initial construction of the statute was far from unreasonable; and we are unable to find anything in the events subsequent to that time that convinces us that the Department was required to abandon this interpretation.

* * *

B.

Regardless of whether this legislative history absolutely compelled the Secretary to interpret "bounty or grant" so as not to encompass any nonexcessive remission of an indirect tax, there can be no doubt that such a construction was reasonable in light of the statutory purpose. *Cf. Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 374 (1973). This purpose is relatively clear from the face of the statute and is confirmed by the congressional debates: the countervailing duty was intended to offset the unfair competitive advantage that foreign producers would otherwise enjoy from export subsidies paid by their governments. *See, e.g.*, 30 CONG. REC., at 1674 (remarks by Sen. Allison), 2205 (Sen. Caffery), 2225 (Sen. Lindsay). The Treasury Department was well-positioned to establish rules of decision that would accurately carry out this purpose, particularly since it had contributed the very figures relied upon by Congress in enacting the statute. *See Zuber v. Allen*, 396 U.S. 168, 192 (1969).

In deciding in 1898 that a nonexcessive remission of indirect taxes did not result in the type of competitive advantage that Congress intended to counteract, the Department was clearly acting in accordance with the shared assumptions of the day as to the fairness and economic effect of that practice. The theory underlying the Department's position was that a foreign country's remission of indirect taxes did not constitute subsidization of that country's exports. Rather, such remission was viewed as a reasonable measure for avoiding double taxation of exports—once by the foreign country and once upon sale in this country. As explained in a recent study prepared by the Department for the Senate Committee on Finance,

> [the Department's construction was] based on the principle that, since exports are not consumed in the country of production, they should not be subject to consumption taxes in that country. The theory has been that the application of countervailing duties to the rebate of consumption [and other indirect] taxes would have the effect of double taxation of the product, since the United States would not only impose its own indirect taxes, such as Federal and state excise taxes and state and local sales taxes, but would also collect, through the use of the countervailing duty, the indirect tax imposed by the exporting country on domestically consumed goods. Executive Branch GATT Studies, Senate Committee on Finance, 93d Cong., 2d Sess., 17–18 (1974).

This intuitively appealing principle regarding double taxation had been widely

accepted both in this country and abroad for many years prior to enactment of the 1897 statute. *See, e.g.,* Act of July 4, 1789, § 3, 1 Stat. 26 (remission of import duties upon exportation of products); 4 D. Ricardo, Works and Correspondence 216–217 (P. Sraffa ed. 1951) (first published in 1822); A. Smith, An Inquiry Into the Nature and Causes of the Wealth of Nations, Book Four. ch. IV (1776).

C.

The Secretary's interpretation of the countervailing duty statute is as permissible today as it was in 1898. The statute has been re-enacted five times by Congress without any modification of the relevant language, *see number 8, supra,* and, whether or not Congress can be said to have "acquiesced" in the administrative practice, it certainly has not acted to change it. At the same time, the Secretary's position has been incorporated into the General Agreement on Tariffs and Trade (GATT), which is followed by every major trading nation in the world; foreign tax systems as well as private expectations thus have been built on the assumption that countervailing duties would not be imposed on nonexcessive remissions of indirect taxes. In light of these substantial reliance interests, the longstanding administrative construction of the statute should "not be disturbed except for cogent reasons." *McLaren v. Fleischer,* 256 U.S. 477, 481 (1921); *see Udall v. Tallman, supra,* 380 U.S., at 18.

* * *

III.

Notwithstanding all of the foregoing considerations, this would be a very different case if, as petitioner contends, the Secretary's practice were contrary to this Court's decision in *Downs v. United States, supra,* 187 U.S. 496. Upon close examination of the admittedly opaque opinion in that case, however, we do not believe that *Downs* is controlling on the question presented here.

The Russian sugar laws at issue in *Downs* were, as the Court noted, "very complicated." *Id.,* at 502. Much of the Court's opinion was devoted to an exposition of these provisions, *see id.*, at 502–512, but for present purposes only two features are relevant: (1) excise taxes imposed on sugar sales within Russia were remitted on exports; and (2) the exporter received, in addition, a certificate entitling its bearer to sell an amount of sugar in Russia, equal to the quantity exported, without paying the full excise tax otherwise due. This certificate was transferable and had a substantial market value related to the amount of tax forgiveness that it carried with it.

The Secretary, following the same interpretation of the statute that he followed here, imposed a countervailing duty based on the value of the certificates alone, and not on the excise taxes remitted on the exports themselves. Downs, the importer, sought review, claiming that the Russian system did not confer any countervailable bounty or grant within the meaning of the 1897

statute. He did not otherwise challenge the amount of the duty assessed by the Secretary.

The issue as it came before this Court, therefore, was whether a nonexcessive remission of an indirect tax, together with the granting of an additional benefit represented by the value of the certificate, constituted a "bounty or grant." Since the amount of the bounty was not in question, neither the parties nor this Court focused carefully on the distinction between remission of the excise tax and conferral of the certificate. Petitioner argues, however, that certain broad language in the Court's opinion suggests that mere remission of a tax, even if nonexcessive, must be considered a bounty or grant within the meaning of the statute. Petitioner relies in particular on the following language:

> The details of this elaborate procedure for the production, sale, taxation and exportation of Russian sugar are of much less importance than the two facts which appear clearly through this maze of regulations, *viz.*: that no sugar is permitted to be sold in Russia that does not pay an excise tax of R. 1.75 per pood, and that sugar exported pays no tax at all. . . . When a tax is imposed upon all sugar produced, but is remitted upon all sugar exported, then, by whatever process, or in whatever manner, or under whatever name it is disguised, it is a bounty upon exportation. *Id.*, at 515.

This passage is inconsistent with both preceding and subsequent language which suggests that the Court understood the "bounty" to reside in the value of the certificates. At one point the Court stated that "[t]he amount [the exporter] receives for his export certificate [on the market], say, R. 1.25, is the exact amount of the bounty he receives upon exportation. . . ." 187 U.S., at 515. And the Court in conclusion specifically endorsed the Fourth Circuit's holding to the same effect, see n. 17, *supra*:

> [T]he Circuit Court of Appeals found: "That the Russian exporter of sugar obtained from his government a certificate, solely because of such exportation, which is worth in the open market of that country from R. 1.25 to R. 1.64 per pood, or from 1.8 to 2.35 cents per pound. Therefore we hold that the government of Russia does secure to the exporter of that country, as the inevitable result of its action, a money reward or gratuity whenever he exports sugar from Russia." We all concur in this expression of opinion. 187 U.S., at 516.

Given this other language, we cannot read for its broadest implications the passage on which petitioner relies. In our view the passage does no more than establish the proposition that an *excessive* remission of taxes—there, the combination of the exemption with the certificates—is an export bounty within the meaning of the statute.

As the court below noted, "'[i]t is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used.'" 562 F.2d, at 1213, quoting *Cohens v. Virginia,* 6 Wheat. 264, 398 (1821). No one argued in *Downs* that a nonexcessive remission of taxes, standing alone, would have constituted a bounty on

exportation, and indeed that issue was not presented on the facts of the case. It must also be remembered, of course, that the Court did affirm the Secretary's decision, and that decision rested on the conclusion that a bounty had been paid only to the extent that the remission exceeded the taxes otherwise due. In light of all these circumstances, the isolated statement in *Downs* relied upon by petitioner cannot be dispositive here.

The judgment of the Court of Customs and Patent Appeals is, accordingly,

Affirmed.