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STA. CLARA LUMBER COMPANY, INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 502

June 12, 1959

JOSE ARAÑAS, in his capacity as
Collector of Internal Revenue,
Respondent.

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D E C I S I O N

This is an action for the refund of the sum of ₱1,602.30, representing the cost of documentary stamps alleged to have been erroneously affixed on an instrument.

The facts are, as gathered from the stipulation of facts and annexes submitted by the parties, that the petitioner, which has been engaged in the business of manufacturing plywood since 1945 (Stipulation of facts, par. 3) was granted, on November 3, 1952, exemption from the payment, among others, of documentary stamp tax in respect to the manufacture of plywood in all its plants, in pursuance of Republic Act No. 35. This exemption was subsequently extended until December 31, 1958, pursuant to Republic Act No. 901 (Annex "A").

On August 2, 1956, petitioner entered into an Agreement, Annex "B", with a group of banking institutions, to wit: Bank of the Philippine Islands, Commercial Bank & Trust Company, Philippine Trust Company and Security Bank & Trust Company (Stipulation of Facts,

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par. 5), by virtue of which the banking institutions extended unto petitioner financial accomodation in the sum of ₱1,600,000.00 for the payment of machineries, equipment, accessories and structural materials needed for the establishment of a plywood factory in Kabasalan, Zamboanga del Sur (Annex "B", p. 1). As a security for the financial accommodation, petitioner constituted, in favor of the banks, real and chattel mortgages over the properties described in the annexes of the agreement (Annex "B", p. 3). By the provisions of the Agreement, petitioner undertook to defray all expenses for the preparation and registration of the mortgages, and to pay all documentary stamps required to be affixed thereto. (Annex "B", p. 4).

The Commercial Bank and Trust Company, one of the accommodating banks, after preparing the Agreement, Annex "B", for registration, paid, affixed and imprinted to the original thereof documentary stamps in the amount of ₱1,602.30 (Stipulation of Facts, par. 6). Subsequently, said bank, through its Vice-President, requested respondent to refund the amount of ₱1,602.30, alleging that its client, petitioner herein, being an exempt industry, the same was erroneously paid by them. (Stipulation of Facts, par. 7). This request was denied (Stipulation of Facts, par. 8).

On August 26, 1957, petitioner requested the refund of said amount (Stipulation of Facts, par. 9), which request was denied by respondent (Stipulation of Facts, par. 10) on the ground that the documentary

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stamp taxes in question are not directly payable by petitioner in accordance with the exemption granted by the Department of Finance (Annex "E").

On March 13, 1958, petitioner requested the Secretary of Finance that it be exempted from the payment of internal revenue documentary stamps amounting to ₱1,602.30, affixed to the Agreement, Annex "B" (Stipulation of Facts, par. 11), which request was denied on the theory that said exemption was not contemplated under the grant and that petitioner was engaged in business not covered by tax exemption (Annex "G").

Thence, on February 11, 1958, petitioner interposed the instant appeal.

From the facts thus set forth, the issues involved are as follows:

> 1. Whether or not the documentary stamp tax in question is directly payable by petitioner in respect to its industry so as to fall within the contemplation of the tax exemption granted to petitioner; and if in the negative,
>
> 2. Whether or not respondent may validly refuse to refund the sum of ₱1,602.30, representing the value of the documentary stamps imprinted in the Agreement, Annex "B".

The statutory provisions in pursuance of which petitioner was granted exemption by the Secretary of Finance are reproduced as follows:

<u>Republic Act No. 35.</u>

> "Section 1. Any person, partnership, company, or corporation who or which shall engage in a new and necessary industry shall, for a period of four years from the date of the organization of such industry, be entitled to exemption from the payment of all internal revenue taxes directly payable by such person, partnership, company, or corporation in respect to said industry."

Republic Act No. 901.

> "Section 1. Any person, partnership, company or corporation who or which, subsequent to the approval of this Act, shall engage in a new and necessary industry shall be entitled to exemption until December thirty-one, nineteen hundred and fifty-eight from payment of all taxes directly payable by such person, partnership, company or corporation in respect to said industry. x x x"

From the afore-quoted statutory provisions, it can be gathered that, for a new and necessary industry to be entitled to tax exemption, two concomitant requisites must be present: firstly, the taxes must be directly payable by the person, partnership, company or corporation engaged in the industry; and secondly, the taxes must be in respect to said industry (Eternit Corporation vs. Collector of Internal Revenue, C.T.A. Case No. 201, December 15, 1956; Marli Plywood & Veneer Corporation vs. Arañas, C.T.A. Case No. 441, December 19, 1958). We shall now proceed to determine whether or not petitioner has met these two requisites so as to entitle it to exemption from the payment of the documentary stamp tax in question.

It is contended by petitioner that, by the provisions of the Agreement, Annex "B", entered into by it and the banks, it has legally and formally assumed the payment of the documentary stamps, and therefore the same are directly payable by it. Upon the other hand, it is argued on behalf of respondent that the loan agreement transaction in question being purely a banking transaction, the documentary stamp tax thereon should be borne directly by the banks and not by the petitioner.

Section 210 of the Tax Code provides that the corresponding documentary tax upon documents, instruments and papers, and upon acceptances, assignments, sales and transfers of the obligation, right, or property incident thereto shall be paid by the person making, signing, issuing, accepting, or transferring the same. It would seem from this codal provision that where the document, instrument or paper subject to the documentary stamp tax is made and signed by two or more persons or parties, the burden of paying the tax is shouldered by said persons or parties. The provision leaves the tax to be paid indifferently by either party. This conclusion finds sustenance in the fact that a stamp tax is embraced within the purview of those taxes which are denominated indirect. One of the natural characteristics of indirect taxes is that they are susceptible of being shifted from the person upon whom in the first instance the duty of payment is laid (American Express Co. vs. Maynard ex rel Moore, 177 U.S. 404, 413-414, 44 L Ed. 823, 827). There is nothing in the provisions of Section 210 of the Tax Code which, in cases of documents, instruments or papers required to be stamped, can be construed as expressly forbidding the person upon which the stamp taxes are imposed from shifting the same by contract or by any other lawful means. In the case at bar, the banks have contractually shifted the payment of the stamp tax to petitioner, the other party in the Agreement, Annex "B".

The contractual shifting of the burden of paying the stamp tax in question does not contravene any public policy. Petitioner, having legally contracted to assume the payment of the documentary stamp tax on the Agreement, Annex "B", we believe and so hold that said tax is directly payable by it.

We shall now come to the question of whether or not the documentary stamp tax in question is in respect to petitioner's business of manufacturing plywood. With regards to this question, petitioner urges upon us that the Agreement, Annex "B", and its making are as much a part of the manufacturing process as the technology and labor involved in the manufacture of finished plywood, and thereby concludes that the documentary stamp tax thereon is in respect to its industry. Contrarily, respondent presses upon us the proposition that the agreement, being a simple banking transaction which concerns principally the raising of money or funds for expanding petitioner's business activities, is not in respect of the manufacture of plywood.

The contention of petitioner that the documentary stamp tax in question is in respect to its business of manufacturing plywood is, we believe, untenable. Petitioner has been in the business since 1945. The financial accommodation of ₱1,600,000.00 granted to it by the banks was for the payment of machineries, equipment, accessories and structural materials needed for the establishment of another plywood factory. In other words, the grant was merely for the purpose of expanding petitioner's industry. The transaction is not indispensable to the existence and operation of petitioner's industry for the reason that said industry has been existing and operating eleven years prior to the consummation of the transaction. Its relation to the industry is merely incidental. Consequently, the transaction involving the financial accommodation of ₱1,600,000.00 for the expansion of petitioner's industry, after the operation has lasted for many years, not being necessary and essential to the establishment of its industry, is not within the contemplation of the exemption privilege provided in Section 1 of Republic Act No. 35, as amended by Republic Act No. 901. We have ruled that the restrictive language of the statute evidently excludes from the tax exemption privilege activities or transactions not indispensable to the existence and operation of the industry, and it thus must render taxable those transactions which are merely related thereto incidentally or for convenience (Marli Plywood & Veneer Corporation vs. Arañas, _supra_).

Though the expansion of an already established new and necessary industry be, _arguendo_, taken as within the purview of the exempting statute, such concession does not suffice to warrant the exemption of petitioner from the payment of the documentary stamp tax in question. There is no clear and positive showing that the amount of ₱1,600,000.00 advanced by the banks was in fact expended for the machineries, equipment, accessories and structural materials of petitioner's plywood factory in Kabasalan, Zamboanga del Sur.

Finally, it is well settled that "exemptions from taxation are highly disfavored in law, and he who claims exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implication." (Collector of Internal Revenue vs. Manila Jockey Club, Inc., G. R. No. L-8755, March 23, 1956, citing Asiatic Petroleum Co. v. Llanes, 49 Phil. 466.) In the instant case, there is no clear showing that the exempting statute includes the documentary tax in question.

Having ruled that the documentary stamp tax in question is not in respect to petitioner's industry, we find it unnecessary to pass upon the second issue.

WHEREFORE, the decision of the respondent Collector of Internal Revenue denying petitioner's claim for refund should be, as it is hereby, affirmed with costs against petitioner.

SO ORDERED.

Manila, June 12, 1959.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

I reserve my vote.

ROMAN M. UMALI
Associate Judge