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COURT OF TAX APPEALS
MANILA

PHILIPPINE ACETYLENE COMPANY,
Petitioner,

- versus - March 2, 1962 C.T.A. CASE NO. 898

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - x

DECISION

This is an appeal from the decision of respondent Commissioner of Internal Revenue assessing and demanding from petitioner Philippine Acetylene Company the total amount of ₱12,910.60, as percentage sales tax and surcharge, exclusive of the amount of ₱2,080.00 as compromise penalty, pursuant to Sections 183 and 186 of the National Internal Revenue Code. The disputed sales tax assessment covers the period from June 2, 1955 to June 30, 1958. (Exh. B, pp. 99-100 CTA rec.; Exh. D, p. 104, CTA rec., also marked as Exh. 8, p. 78, BIR rec.)

The petitioner herein, Philippine Acetylene Company, is a domestic corporation organized and existing under the laws of the Philippines, engaged in the manufacture and sale of oxygen and acetylene gases. During the period from June 2, 1955 to June 30, 1958, the petitioner sold oxygen and acetylene gases to the National Power Corporation for the total sum of ₱145,866.70 which it did not declare for taxation. The petitioner also made sales of its products to the Voice of America for the amount of ₱1,683.00, which except for the sales amounting to ₱558.00, were not covered by Certificates of Tax Exemption issued by the United States Embassy.

Subsequently, these sales to the National Power Corporation and the Voice of America were investigated by the Bureau of Internal Revenue, (Exhs. 3 & 4, pp. 51-53, BIR rec.) and as a result of which, the respondent, on September 21, 1959, assessed against and demanded from the petitioner the sum of ₱12,910.60 as deficiency sales tax and surcharge, computed as follows:

Sales to National Power Corporation	₱145,866.70
Sales to Voice of America without Certificates of Tax Exemption	1,683.00
Total sales subject to tax	₱147,549.70
7% sales tax due thereon	₱ 10,328.48
Add: 25% surcharge	2,582.12
TOTAL AMOUNT DUE & COLLECTIBLE	₱ 12,910.60

The respondent further informed the petitioner that should it "desire to extrajudicially settle the penal liability arising from your aforesaid violations, you may pay the sum of ₱2,080.00 as compromise in addition to the aforesaid sum of ₱12,910.60, or a total of ₱14,990.60". (Exh. 2, pp. 62-63, BIR rec.)

On October 21, 1959, the petitioner contested the assessment and requested for its reconsideration. (Exh.

5, p. 66, BIR rec.; See also Exh. C, p. 102, CTA rec.) However, on July 13, 1960, the respondent denied the request for reconsideration with the warning that the petitioner must "pay the aforesaid sum of ₱14,990.60 within five days from your receipt hereof, in order that" the respondent "may not be constrained to enforce its collection thru the summary remedies provided for by law". (Exh. D, p. 104, CTA rec.; See also Exh. 8, p. 78, BIR rec.) Hence, the present appeal.

The issues to be decided in this case are:

1. Whether or not the Philippine Acetylene Company is exempt from the payment of sales tax on its sales of oxygen and acetylene gases to the National Power Corporation, under Republic Act No. 358, as amended by Republic Act No. 987, which exempts the latter from "all taxes"; and

2. Whether or not the Philippine Acetylene Company is exempt from the payment of the sales tax on its sales to the Voice of America.

With regard to the first issue, the petitioner contends that under the provisions of Republic Act No. 358, as amended by Republic Act No. 987, the National Power Corporation is exempt from the payment of "all taxes", and therefore, the sales of oxygen and acetylene gases to the said corporation are also exempt from the payment of sales tax.

The pertinent provision of Republic Act No. 358, as amended by Republic Act No. 987, provides as follows:

"SEC. 2. To facilitate payment of its indebtedness, the National Power Corporation shall be exempt from all taxes, except real property tax, and from all duties, fees, imposts, charges and restrictions of the Republic of the Philippines, its provinces, cities and municipalities."

We find the contention of the petitioner without merit. To our mind, under the above quoted provision of Section 2, Republic Act No. 358, the National Power Corporation is exempt from the payment of only those taxes directly payable by it. As correctly stated by the Executive Secretary in his letter dated February 26, 1955 to the General Manager of the National Power Corporation, "the exemption granted by Republic Act No. 358 applies only to direct taxes but does not extend to indirect taxes. x x x that the doctrine of tax immunity is not applicable where the tax is an indirect tax collectible from the manufacturer, producer or importer." (Exh. 1, p. 127, CTA rec.)

The case at bar involves the assessment and payment of sales tax prescribed by Section 186 of the Tax Code. It is a direct tax on sales of articles or goods "to be paid by the manufacturer or producer" — the original seller — like the petitioner herein, and not by the buyer. Therefore, petitioner Philippine Acetylene Company, the manufacturer or producer of the oxygen and acetylene gases sold to the National Power Corporation, cannot claim exemption from the payment of sales tax simply because its buyer - the National Power Corporation - is exempt from the payment of all taxes. Exemptions from taxation are highly disfavored in law and cannot be permitted to exist upon a vague implication. (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466.)

It is the universal and established rule that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be mistaken. (Government vs. Monte de Piedad, 35 Phil. 42) Exemption from taxation must be shown indubitably to exist. The presumption is always against any surrender of the taxing power. (Molina vs. Rafferty, 37 Phil. 545.) In the present case, the petitioner succeeded in showing to our satisfaction that the National Power Corporation is exempt from the payment of all taxes, except real property tax, but it failed to prove that it is exempt from the payment of the sales tax assessed on the sales of oxygen and acetylene gases to the National Power Corporation.

With regard to petitioner's sales to the Voice of America, it appears that the petitioner and the respondent are in agreement that the Voice of America is an agency of the United States Government and as such, all goods purchased locally by it directly from manufacturers or producers are exempt from the payment of the sales tax under the provisions of the agreements between the Government of the Philippines and the Government of the United States, (See Commonwealth Act No. 733) provided such purchases are supported by serially numbered Certificates of Tax Exemption issued by the vendee-agency, as required by General Circular No. V-41, dated October 16, 1947. (See pp. 3-4, Memorandum for Petitioner, pp. 134-137, CTA rec. and pp. 5-6, Memorandum for Respondent, pp. 147-152, CTA rec.; See also Exh. F, p. 129, CTA rec.; Exh. D, p. 104, CTA rec.; Exh. 4, pp. 51-52, BIR rec.)

It also appears from the memoranda of the parties and the evidence presented by the petitioner, (Exhs. E to E-20, pp. 106-126, CTA rec.) that out of the total sales of ₱1,683.00 to the Voice of America, the sales in the total amount of ₱558.00 were not covered by certificates of tax exemption. Therefore, we are of the opinion and so hold that of the sales to the Voice of America, only the sales in the said sum of ₱558.00 is subject to the 7% sales tax pursuant to General Circular No. V-41, dated October 16, 1947.

As to the compromise penalty in the amount of ₱2,080.00, it shall suffice to state that it is now settled that it is clearly illegal and unauthorized for the Commissioner of Internal Revenue to arbitrarily impose such a penalty (Collector of Internal Revenue vs. U.S.T., G. R. No. L-11274, Nov. 28, 1958; Collector of Internal Revenue vs. Bautista, G.R. No. L-12250, May 27, 1959; Collector of Internal Revenue vs. Pio Barretto Sons, Inc., G. R. No. L-11805, May 31, 1960).

In resumé, the petitioner is liable for the payment of the sum of ₱12,812.16, as sales tax on its sales of

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oxygen and acetylene gases to the National Power Corporation and the Voice of America, inclusive of the 25% surcharge for late payment, computed as follows:

Sales to National Power Corporation ------------------	₱145,866.70
Sales to Voice of America without certificates of tax exemption ----------------	558.00
Total sales subject to tax -----	₱146,424.70
7% sales tax due thereon -------	₱ 10,249.73
Add: 25% surcharge ------------	2,562.43
TOTAL AMOUNT DUE & COLLECTIBLE --------------	₱ 12,812.16

WHEREFORE, in view of the foregoing considerations, the decision appealed from is hereby modified, and petitioner Philippine Acetylene Company is hereby ordered to pay respondent Commissioner of Internal Revenue the total amount of ₱12,812.16 as sales tax and surcharge for late payment, on its sales to the National Power Corporation and the Voice of America. With costs against the petitioner.

SO ORDERED.

Manila, March 2, 1962.

AUGUSTO M. LUCIANO
Associate Judge

We concur:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge