REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TELEFUNKEN SEMICONDUCTOR PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 3416

12/28/88

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

This is a claim for refund or tax credit in the amount of P2,482,042.35 representing alleged erroneous payment of 3% contractor's tax covering the fourth quarter of fiscal year 1979 to the third quarter of fiscal year 1981 filed simultaneously on January 20, 1982 before this Court and with respondent Commissioner of Internal Revenue.

It appears that on January 25, 1982, the chief of the appellate division of respondent's bureau referred petitioner's claim to the Makati Revenue District Office for investigation and submission of report on the matter. And on the petition for review filed with this Court, respondent filed on April 6, 1982 an answer alleging, among others, as special and affirmative defenses that petitioner's claim for refund or tax credit is being investigated, taxes are presumed to have been collected in accordance with law, the burden of proof in action for refund is upon petitioner, and claims for refund are strictly construed against claimants.

The background facts are not disputed. As narrated by respondent:

Petitioner is a domestic corporation registered with the Board of Investments (BOI) as an export-producer on a preferred pioneer status under Republic Act 6135 (Exhibit "I").

From October 1979 to September 1981, the period herein involved, petitioner produced semi-conductor devices amounting to P92,843,774.00 which were entirely sold to foreign markets. (Rev. Examiner's report dated October 29, 1984, p. 710, B.I.R. record).

On the said exportation, it filed percentage tax returns declaring a total of P2,482,042.35 as contractor's tax (Exhibits "A" to "H-1", inclusive), which were paid and verified to have been received by the government. (pp. 728-729, B.I.R. record)

In a letter dated January 19, 1982 (filed on January 20, 1982 with the Appellate Division of the Bureau of Internal Revenue, pp. 613-614, B.I.R. record), it alleged that the payment of contractor's tax of P2,482,042.35 was erroneous and requested for the refund or tax credit thereof. Said petitioner contended that under the provisions of Section 7 of R.A. 6135 in relation to Section 8(a) of R.A. 5186, otherwise known as the Investment Act, petitioner during the period in question was exempt, except income tax, from the payment of all national internal revenue taxes.

The sole question presented for resolution by the parties is whether or not petitioner, a semiconductor firm with Board of Investments registration under Republic Act No. 6135 as pioneer export producer, is subject to the 3% contractor's tax.

The controlling statute is Section 205(16) of the 1977 National Internal Revenue Code, formerly

Section 191(16), the pertinent portion of which reads:

> *"Sec. 205. Contractors, proprietors or operators of dockyards and others*
>
> *A contractor's tax of three percent of gross receipts is hereby imposed on the following:*
>
> *xxx xxx xxx*
>
> *(16) Business agents and other independent contractors, including private detective or watchman agencies, except gross receipts of a pioneer enterprise registered with the Board of Investments under Republic Act No. 5186." (As amended by P.D. No. 1457, June 11, 1978)". (Underscoring ours)*

Respondent thus argues that the applicable law speaks of firms registered under Republic Act No. 5186; perforce, the privilege of tax exemption cannot be made to apply to firms registered under Republic Act No. 6135 such as petitioner herein.

It is true that the exemption from the contractor's tax under Section 206(16), supra, covers only the gross receipts of pioneer enterprises registered with the Board of Investments under Republic Act No. 5186. No mention is made of the gross receipts of pioneer enterprises registered under Republic Act No. 6135 under which petitioner is registered. However, under Section 7 of Republic

Act No. 6135 it is provided that registered export producers in a pioneer status are entitled to the incentives provided in Section 8(a) of Republic Act No. 5186. To quote the pertinent provision of Section 7 of Republic Act No. 6135:

> SEC. 7. Incentives to registered export producers. - *Registered export producers unless they already enjoy the same privileges under other laws shall be entitled to the incentives set forth in paragraphs* (h), (i) *and* (j) *of Section 7 of Republic Act Numbered Fifty-one hundred eighty-six, known as the Investment Incentives Act; and registered export producers that are pioneer enterprises shall be entitled also to the incentives set forth in paragraphs* (a), (b) *and* (c) *of section 8 of the said Act. In addition to the said incentives, and in lieu of other incentives provided in Section 7 and in Section 9 of that Act, registered export produces shall be entitled to benefits and incentives as enumerated hereunder:*
>
> *xxx xxx xxx*

And under paragraph (a) of Section 8 of Republic Act No. 5186, pioneer enterprises, like petitioner herein, are exempt from all taxes under the National Internal Revenue Code, except income tax on a graduated basis. Thus:

> SEC. 8. Incentives to a Pioneer Enterprise. - *In addition to the incentives provided in the preceding section, pioneer enterprises shall be granted the following incentives benefits:*

> *(a)* Tax Exemptions. - *Exemption from all taxes under the National Internal Revenue Code, except income tax, to the following extent:*
>
> *(1) One hundred per cent up to December 31, 1972;*
> *(2) Seventy-five per cent up to December 31, 1975;*
> *(3) Fifty per cent up to December 31, 1977;*
> *(4) Twenty per cent up to December 31, 1979;*
> *(5) Ten per cent up to December 31, 1981.*
>
> *xxx xxx xxx*

The law seems clear and specific. It merely calls for application as thus worded. There is no room for interpretation. Construed together, the above-quoted provisions of law yield no other conclusion but that gross receipts of a pioneer enterprise registered with the Board of Investments under Republic Act No. 6135, as petitioner herein, are exempt from the contractor's tax, which is a tax under the National Internal Revenue, and admittedly not an income tax. It is well-settled that a statute, free from any constitutional infirmity, must be enforced as written.

The conclusion reached is in accordance with the policy of the State, as declared in Section 2 of Republic Act No. 6135, "to actively encourage, *promote, and diversify exports of services and of manufactures utilizing domestic raw materials to the fullest extent possible, and to develop new markets for Philippine products, in order to attain a rising level of production and employment, increase foreign exchange earnings, hasten the economic development of the nation, and assure that the benefits of development accrue to the Filipino people." Unquestionably, if the spirit of the law is to be followed and its intention fulfilled, gross receipts of pioneer enterprises registered with the Board of Investments under Republic Act No. 6135 are exempt from the contractor's tax under the applicable National Internal Revenue Code in the same manner that gross receipts of registered pioneer enterprises under Republic Act No. 5186 are exempted by the same code. To rule otherwise would be to incur in self-contradiction.*

As a matter of fact, respondent Commissioner of Internal Revenue in his ruling of February 4, 1974 in favor of the Asian Transmission Corporation held that both a registered export producer on a pioneer status under Republic Act No. 6135 and a pioneer industry under Republic Act No. 5186 are entitled to *the same tax exemption benefits under the Tax Code. To quote:*

> *This refers to your letters dated November 29 and December 19, 1973 requesting a ruling as to whether your contractors namely, C. E. Construction Corporation and Marsteel Corporation are exempt from the payment of the 3% contractor's tax prescribed under Section 191(16) of the Tax Code. It appears that your application for registration as export producer under Republic Act No. 6135 has been approved by the Board of Investments on January 8, 1974 on a pioneer status.*
>
> *In reply, I have the honor to inform you that under the last paragraph of Section 191(16) of the Tax Code, "gross receipts x x x from a pioneer industry registered with the Board of Investments under the provisions of Republic Act Numbered Five Thousand One Hundred and eighty-six", are exempt from the contractor's tax. It is clear that the intention of the law is to relieve the pioneer industry from ultimately shouldering the contractor's tax which could be passed on to it legally by its contractor.*
>
> *Pursuant to Section 7 of Republic Act No. 6135, that corporation as a registered export producer on a pioneer status is entitled to the same tax incentives granted to a pioneer industry set forth in Section 8(a) of Republic Act No. 5186. Under this latter provision, a pioneer industry is exempt from all taxes under the National Internal Revenue Code, except income tax. In other words, both a registered export producer on a pioneer status under Republic Act No. 6135 and a pioneer industry under Republic Act No.*

> *5186 are entitled to the same tax exemption benefits under the Tax Code. Such being the case, like the latter, the former should not also shoulder the contractor's tax which could be passed on it legally by its contractor.*
>
> *In view thereof, the gross receipts derived by C. E. Construction Corporation and Marsteel Corporation from the construction of your transmission plant in Canlubang, Laguna, are exempt from the 3% contractor's tax.*

Since there is no showing that respondent Commissioner has revoked, modified or reversed this ruling of February 4, 1974, or denied petitioner's claim for refund/tax credit of P2,482,042.35 involved in this case on the ground that the exemption from contractor's tax under Section 205(16) of the applicable National Internal Revenue Code covers only firms registered under Republic Act No. 5186, and the privilege cannot be made to apply to those registered under Republic Act No. 6135, like petitioner herein, the very logical view is that the Bureau of Internal Revenue adheres to its ruling that registered pioneer enterprises under Republic Act No. 6135 are exempt from the contractor's tax in the same manner as those registered under Republic Act No. 5186. Respondent has not even alleged in his answer to the petition *for review filed in this case the defense that since Section 205(16) of the applicable Tax Code mentions firms registered under Republic Act No. 5186, the privilege of tax exemption cannot be made to apply to enterprises registered under Republic Act No. 6135 such as petitioner herein. While such argument was averred in respondent's memorandum, and on the assumption that it may be considered as revocation of the February 4, 1974 ruling as far as this case is concerned, Section 327 (now Section 278) of the National Internal Revenue Code expressly provides that any revocation, modification or reversal of any rulings or circulars promulgated by the Commissioner of Internal Revenue cannot be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayer, except in three cases which admittedly are not applicable to petitioner.*

We see no significance therefore in the contention of respondent that it was only upon the advent of Executive Order No. 815 promulgated on June 26, 1982, entitled "To Safeguard and Promote the Development of the Philippine Semiconductor Electronics Industry", when semiconductor *electronics firms with registration under Republic Act No. 6135 were extended the privilege of exemption from contractor's tax. The peremptory requirements of state policy that would stress the urgency to actively encourage, promote and diversify exports to the fullest extent possible in order to attain production and employment, increase foreign exchange and hasten the economic development of the nation as declared in Section 2 of Republic Act No. 6135, quoted above, would require for the full and unconditional compliance with the language of Section 7 of said Republic Act No. 6135,* supra. *The rule is well established that the terms of the statute provide the safest guide as to the statutory policy, to which obedience is due and from which deviation is not allowable.* (**Padilla vs. City of Pasay**, L-24039, June 29, 1962, 23 SCRA 1349; **Commissioner of Customs vs. Court of Tax Appeals**, L-48144-47, June 28, 1988.) *As aptly stated by petitioner, the issuance of Executive Order No. 815 dated June 26, 1982 is a recognition of our government's concern for the growth and development of our export industry.*

WHEREFORE, finding the claim of petitioner Telefunken Semiconductor (Philippines), Inc., well taken the refund/tax credit of the amount sought is hereby granted. No costs.

SO ORDERED.

Quezon City, Metro Manila, December 28, 1988.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals