REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

INDUSTRIAL TEXTILES MANUFACTURING
COMPANY OF THE PHILIPPINES,
Plaintiff,

June 10, 1956

- versus -

MANILA CIVIL
CASE NO. 22613

COLLECTOR OF INTERNAL REVENUE,
Defendant.

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

DECISION

Plaintiff is seeking to recover from defendant Collector of Internal Revenue the sum of ₱13,195.76 paid by it on April 22, 1952, as compensating tax on 50,000 bags of cement imported by it. It is alleged that said cement was used by plaintiff "in the construction of its factory, office buildings and other structures and installations;" that said factory, buildings, structures and installations were "exclusively used by plaintiff in the manufacture of jute bags;" that the manufacture of jute bags by plaintiff is a new and necessary industry; and that plaintiff's application for exemption from all internal revenue taxes under Republic Act No. 35 was duly approved by the Secretary of Finance in his letter dated March 26, 1952, and therefore, the collection by defendant of the compensating tax on said cement is illegal.

Upon denial by defendant of plaintiff's claim for refund, the latter appealed to the then Board of Tax Appeals created by Executive Order No. 401-A, series of 1951. The stand of plaintiff was sustained and the Board ordered defendant to refund the said sum of ₱13,195.76.

From the decision of the Board, defendant appealed to the Supreme Court in G. R. No. L-6668, but the appeal was dismissed on March 13, 1954, pursuant to the decision in University of Sto. Tomas v. Board of Tax Appeals, G. R. No. L-5701, June 23, 1953. After the enactment of Republic Act No. 1125, creating the Court of Tax Appeals, defendant sought to have the case reinstated in the Supreme Court in order that it could be decided on the merits by said Court, pursuant to Section 21 of said Act. The motion for reinstatement was denied by the Supreme Court. A subsequent motion for reconsideration was likewise denied.

Upon dismissal of the case by the Supreme Court on March 13, 1954, plaintiff sought to have the sum of ₱13,195.76 refunded, but this was again denied by defendant. As the said amount was paid on April 22, 1952, and as the period of two years was about to expire, plaintiff instituted the present action in the Court of First Instance of Manila on April 22, 1954. The case was subsequently remanded to this Court under Section 22 of Republic Act No. 1125.

The question in regard to the exemption of plaintiff from the compensating tax on the 50,000 bags of cement involved in this case was thoroughly discussed in the decision of the Board of Tax Appeals in B. T. A. Case No. 115, March 24, 1953, which we quote:

"The petitioner submits that inasmuch as the Secretary of Finance has granted the petitioner a certificate of tax exemption, the cement it imported should not be subject to compensating tax, it being admitted that the cement was used exclusively by the petitioner in the construction of its buildings, clinics, offices and pavements. The respondent contends that the tax exemption granted the petitioner is limited to compensating tax on goods or materials germane to and exclusively used directly in the manufacture of bags; cement is not germane to and exclusively used in the new industry. But the petitioner questions the authority of the Secretary of Finance to limit the exemption granted on certain specific taxes only, when Republic Act No. 35 grants said official the only discretion to determine w what are new and necessary industries. We have read Republic Act No. 35 and the Executive Order Nos. 431, 433 and 474 and the Department Order No. 185, implementing said law, and we cannot find a provision which categorically authorizes the Secretary of Finance to limit the internal revenue taxes, which new and necessary industries are entitled to exemption. The law provides that new and necessary industries are entitled to exemption from 'all internal revenue taxes directly payable by such persons in respect to said industry.' There are only two limitations which the Secretary of Finance may impose in granting the certificate of exemption, namely: (1) that the taxes are directly payable by the new and necessary industry and (2) that articles imported by it are to be used exclusively in the new industry either in the construction of its machineries, buildings and appurtenances thereto or in the manufacture of its finished products. The compensating tax on the imported cement in this case is paid directly by the petitioner and it was not used for other purposes than the construction of its buildings, offices, clinics and pavements. To allow the Secretary of Finance to limit the taxes which new and necessary industries are entitled to exemption especially with respect to compensating tax on imported materials germane to and exclusively used in the manufacture of finished products, will be stretching the law too much. It will be contrary to the spirit of the law, in helping new and necessary industries to weather the financial troubles which they may be exposed to in the formative years of their existence."

We agree with the Board of Tax Appeals that plaintiff is exempt from the compensating tax on the said 50,000 bags of cement in view of the express provisions of Republic Act No. 35. We could have stopped here and ordered defendant to refund the amount demanded by plaintiff, but there is another important question which can not be overlooked in the final consideration of this case.

The decision of defendant denying the claim for refund was appealed by plaintiff to the Board of Tax Appeals on January 15, 1953. Section 8 of Executive Order No. 401-A creating the Board vests in said Board "exclusive jurisdiction to hear and decide administratively x x x (1) All appeals from decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, etc." Section 20 of the same Executive order provides that a party adversely affected by any decision of the Board may appeal therefrom to the Supreme Court. In University of Sto. Tomas v. Board of Tax Appeals, supra, the Supreme Court declared invalid that portion of Executive order No. 401-A which deprived the Courts of First Instance of the jurisdiction conferred upon them by Section 306 of the National Internal Revenue Code (referring to actions for recovery of internal revenue taxes erroneously or illegally collected), "but is valid with regard to the rest of its provisions in so far as they affect the organization and administrative functions of the Board of Tax Appeals."

The effect of the Supreme Court decision in the case of the University of Sto. Tomas was to make the decisions of the Board final and unappealable. Where the decision of the Board was adverse to a taxpayer, the latter could institute judicial proceedings in accordance with Section 306 of the Revenue Code. However, where the decision was adverse to the Collector of Internal Revenue, as in this case, the Collector had no other recourse but to abide by the decision, inasmuch as Executive Order No. 401-A expressly provides that the Board had exclusive jurisdiction to hear and decide administratively all appeals from decisions of the Collector. That the Board was later abolished and Executive Order No. 401-A repealed does not affect the validity and conclusiveness of the decisions of the Board during its existence.

Of course, there were certain decisions of the Board which were appealed to the Supreme Court and which were considered by that Court on the merits. But these cases were among those pending in said Court on the date of approval of Republic Act No. 1125 on June 16, 1954, and were considered on the merits by the Supreme Court by virtue of Section 21 of said Act, which states:

> "Provided, however, That all cases heretofore decided by the said Board of Tax Appeals and thence appealed to the Supreme Court pursuant to Executive Order Numbered Four hundred one-A shall be decided by the Supreme Court on the merits to all intents and purposes as if said Executive Order had been duly enacted by the Congress x x x."

It was precisely on the basis of said provision of Republic Act No. 1125 that defendant sought to have the case reinstated in the Supreme Court but the petition was denied, the decision dismissing the case having become final. (See page 3, Memorandum for the Respondent, April 28, 1956.)

FOR THE FOREGOING CONSIDERATIONS, we are of the opinion (1) that the decision of the Board of Tax Appeals exempting plaintiff from the compensating tax on the 50,000 bags of cement in question is in accordance with Republic Act No. 35, and, therefore, the collection of ₱13,195.76 by defendant from plaintiff is illegal; and (2) that even granting that the decision of the Board of Tax Appeals ordering defendant to refund the said amount is erroneous, the same has become final and unappealable and defendant is without authority to withhold such refund.

Defendant is, therefore, hereby ordered to refund to plaintiff the sum of ₱13,195.76, without pronouncement as to costs.

SO ORDERED.

Manila, June 10, 1956.

R. C. M. Umali
ROMAN M. UMALI
Associate Judge

I CONCUR:

Eugenio M. Luciano
EUGENIO M. LUCIANO
Associate Judge

Presiding Judge Mariano Neble did not take part.