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PHILIPPINE ACETYLENE CO., INC.
Petitioner

versus

July 25/66

CTA CASE NO. 1491

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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DECISION

This is an appeal lodged by petitioner company for the refund of sales tax in the aggregate amount of ₱328.02 which it paid under protest on different dates.

Petitioner is a domestic corporation engaged in the manufacture and sale of oxygen and acetylene gases. During the period from January to December 1962 petitioner sold to the National Power Corporation oxygen and acetylene gases on which it paid ₱328.02 as sales tax.

On February 11, 1963, petitioner requested refund of above-mentioned amount on the theory that the National Power Corporation is exempt from all taxes under Republic Act No. 358, as amended. Up to the filing of the instant petition for review on February 12, 1964, however, petitioner's request for refund had not been decided by respondent.

The only issue in the instant case is whether or not the Philippine Acetylene Co. Inc. is exempt from the payment of sales tax on its sales of oxygen and acetylene gases to the National Power Corporation under Republic Act 358, as amended by Republic Act No. 987.

The pertinent provision of law relied upon by petitioner states:

> "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."

In similar cases involving the same parties, this Court has consistently resolved the question in the negative.

> "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.'
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> "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." (See Philippine Acetylene Company v. The Comm. of Int. Rev. CTA Case No. 898, March 2, 1962; Philippine Acetylene Co. v. The Comm. of Int. Rev. CTA Cases Nos. 931 & 1019, Oct. 12, 1965.)

Furthermore, granting that the payment of the sales tax on sales by petitioner to the National Power Corporation of oxygen and acetylene gases is illegal, the proper party entitled to the refund is the National Power Corporation because the tax was shifted to the latter. Paragraph 7 of the petition for review reads as follows:

> "7. In all its sales of oxygen and acetylene gases to the National Power Corporation herein involved, petitioner has always shifted the burden of taxation to the purchaser such that the sales tax of seven (7%) per centum assessed upon the sale under Section 186 of the Tax Code has been included in the gross selling price thereof; however, Republic Act No. 358, as amended by Republic Act No. 987, provides as follows:
>
> > '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.'"

It has been held that where the tax was shifted by the seller to the buyer, and subsequently the tax paid was found to have been erroneously or illegally collected, the party entitled to the refund is the

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buyer. (Phil. Mfg. Co. v. Meer, 76 Phil. 436; American Rubber Co. v. Coll. of Int. Rev., C.T.A. Nos. 356, 440 & 632, Feb. 27, 1962.) Therefore, petitioner has no cause of action to institute the instant appeal.

WHEREFORE, the herein appeal is hereby dismissed, with costs against petitioner.

SO ORDERED.

Quezon City, July 25, 1966.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge