Dec 20

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

PHILIPPINE CORN PRODUCTS, INC. (LU DO & LU YM CORPORATION),
Petitioner,

- versus - C.T.A. CASE NO. 340

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

Dec. 20, 1957

D E C I S I O N

This is an appeal from the decision of respondent Collector of Internal Revenue dated November 26, 1956, denying petitioner's claim for the refund of the sum of ₱13,654.92 representing compensating tax on empty cotton bags imported by petitioner.

The following facts have been established: Petitioner is a domestic corporation engaged in the manufacture, distribution and sale of corn starch, gluten feed and corn oil. Upon prior application, its business of manufacturing corn starch was recognized as a new and necessary industry under the provisions of Republic Act No. 35, as amended by Republic Act No. 901, and accordingly petitioner was granted, by the Secretary of Finance, exemption, among others, from the following internal revenue taxes:

" x x x x x

"2. The percentage tax on the sales of manufactured products in respect to which exemption is granted, and on raw materials and supplies to be used exclusively in the manufacture of such products;

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> "3. The compensating tax on machinery and equipment to be exclusively used in the new and necessary industry;
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> " x x x x x "
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> (Annex A, Petition for Review; see also Exhibit "F", petitioner, p. 33 CTA rec.)

However, the approval of petitioner's application for tax exemption was made subject to the condition "that the only raw material to be imported is sulphur (80 kilos of sulphur for every 30 metric ton of processed corn) and that this raw material will be procured locally as soon as similar article of domestic origin or manufacture shall become available." (Exh. 2, resp. p. 24 BIR rec.; p. 33, CTA rec.). The period of said exemption shall retroact to October 1, 1952, the date of the filing of the application.

Between January 1954 and April 1955, petitioner imported from the United States a total of 212 bales or 211,187 pieces of empty corn starch bags which were subsequently used in packing corn starch manufactured by petitioner. Upon clearance of said importation thru the customhouse, petitioner paid to the Bureau of Customs by way of deposit, in conformity with customs laws, the corresponding 7% sales or compensating tax in the total amount of ₱13,654.92.

Subsequently, on September 5, 1955, petitioner requested respondent to refund the amount collected and paid as sales or compensating tax on the empty corn starch bags. This request was denied by respondent in a letter, dated November 26, 1956, on the ground "that cotton starch bags, which are available locally, are

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not specifically covered in the letter of the Honorable, the Secretary of Finance, dated July 9, 1953, granting exemption from the payment of internal revenue taxes x x x" (Exhs. H and 4, p. 35, CTA rec.). Upon receipt of this letter of denial on December 6, 1956, petitioner filed his "Appeal & Petition for Review" with this Court on January 5, 1957 which was amended on April 13, 1957.

The issues raised by the parties in their pleadings boil down to the following:

> 1. Whether or not this Court has jurisdiction over the instant appeal;
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> 2. Whether or not petitioner is exempt from the payment of compensating tax on the empty cotton bags in question.

Respondent's proposition that this Court has no jurisdiction over the instant appeal is premised upon the following pretensions, to wit: (1) the decision of the Secretary of Finance limiting the scope of the tax exemption granted to petitioner is the decision under review, respondent's decision denying refund of the tax in question being merely ancillary thereto; (2) in the final analysis, it is the Secretary of Finance who decides whether or not a tax collected from a grantee of exemption under Republic Acts Nos. 35 and 901 is refundable; and (3) Republic Act No. 1125 does not confer upon the Court of Tax Appeals jurisdiction to review the ruling or decision of the Secretary of Finance on matters pertaining to the administration and enforcement of Republic Acts Nos. 35 and 901.

The arguments that what is herein appealed is the decision of the Secretary of Finance cannot be sustained. What is appealed to us is the decision of respondent Collector of Internal Revenue (Exhs. H and 4), denying petitioner's claim for refund of the sum of ₱13,654.92 paid as compensating tax on the empty cotton starch bags in question. The appeal and amended petition for review clearly and concretely points to this conclusion. It recites, among others, the facts relating to the payment of the compensating tax, the filing with respondent of the claim for the refund of the amount paid as compensating tax, and the denial by respondent of said claim. Finally, it contains a prayer" that the decision rendered by the respondent in this case be reviewed and that a judgment be rendered ordering the respondent to pay and deliver to the petitioner the amount of ₱13,654.92 representing the total amount of compensating tax x x x".

The fact that respondent's decision denied the claim for refund on the ground that cotton starch bags are not specifically covered in the letter of the Secretary of Finance, granting tax exemption to petitioner did not destroy the identity of said decision. It did not thereby convert respondent's decision into a decision of the Secretary of Finance. In a case, similarly situated and involving the same issue as the one at bar, we held:

"The first question that we are called upon to decide, as raised by counsel for the respondent Collector of Internal Revenue by way of special defense in his answer to the amended petition for review, is whether or not this court has jurisdiction to entertain this appeal considering that in deciding the tax issue we would necessarily have to delve into the validity of the decision of the Secretary of Finance limiting the exemption of petitioner as a new and necessary industry to certain internal revenue taxes only and not all taxes. Respondent's counsel contends that under section 7 of Republic Act No. 1125, this Court has jurisdiction to review by appeal only decisions of the Commissioner of Customs, Collector of Internal Revenue and the Provincial and City Boards of Assessment Appeals. We are of the opinion that this Court has jurisdiction to entertain the instant appeal because what has actually been appealed to us is not a decision of the Secretary of Finance but the decision of the respondent Collector of Internal Revenue of October 31, 1952, demanding from petitioner the payment of ad valorem tax, occupation fee, surcharge and compromise in the total amount of ₱5,008.33. Moreover, the fact that the respondent Collector of Internal Revenue has chosen to enforce strictly the terms of the grant of tax exemption to petitioner as conferred by the Secretary of Finance, only goes to show his implied adoption of such limited grant as his own. In the grant, the Secretary of Finance did not include <u>ad valorem</u> taxes covered by the exemption. Thus, we could say, therefore, that what has been appealed to us in the present case is the decision of the respondent Collector of Internal Revenue applying strictly the terms of the grant of tax exemption to petitioner as conferred by the Secretary of Finance and the assessment under sections 241 and 243 of the National Internal Revenue Code by the respondent of the taxes in question against the petitioner, in conformity with the limited grant of tax exemption conferred upon the latter. Should we decide, therefore, as in fact we shall decide hereunder, the validity of the limited grant of tax exemption conferred by the Secretary of Finance to the petitioner, we do so as an incident to the principal issue submitted before us in this appeal which is the validity of the assessment against the petitioner in the amount of ₱5,008.33." (Marble Corporation of the Philippines v. Collector of Internal Revenue, B.T.A. Case No. 126, December 17, 1954.)

Respondent's second argument that in the final analysis, it is the Secretary of Finance who decides whether or not a tax collected under Republic Acts Nos. 35 and 901 is refundable is, we believe, without merit. Republic Acts Nos. 35 and 901, upon which petitioner claims exemption from the payment of compensating tax, do not lodge, expressly or impliedly, in the Secretary of Finance the power or authority to determine whether or not a tax collected under said acts is refundable. Consequently, such power or authority still remains with the Collector of Internal Revenue in accordance with the provisions of the general law which reads as follows and we quote:

"Sec. 306. Recovery of tax erroneously or illegally collected.--No suit or proceeding shall be maintained in any court for the recovery of any national internal-revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty."

"Sec. 309. Authority of Collector to make compromises and to refund taxes.--The Collector of Internal Revenue may compromise any civil or other case arising under this Code or other law or part of law administered by the Bureau of Internal Revenue, may credit or refund taxes erroneously or illegally re-

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> ceived, or penalties imposed without authority, and may remit before payment any tax that appears to be unjustly assessed or excessive.
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> "He shall refund the value of internal revenue stamps when the same are returned in good condition by the purchaser, and may, in his discretion, redeem or exchange unused stamps that have been rendered unfit for use, and may refund their value upon proof of destruction.
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> "The authority of the Collector of Internal Revenue to credit or refund taxes or penalties under this section can only be exercised if the claim for credit or refund is made in writing and filed with him within two years after the payment of the tax or penalty."

Having ruled that what is appealed to us is the decision of respondent, we do not find it necessary to deliberate on respondent's third pretension.

At this juncture, we make mention of an argument raised by respondent at the eleventh hour and for the first time in his "Supplemental memorandum and rejoinder to petitioner's reply memorandum" to the effect that petitioner's action was not instituted within two years from the payment thereof. In connection with this argument, we are asked to consider the certificate and the official receipts included and appearing in the records of the Bureau of Internal Revenue (pp. 25-31) transmitted to this Court which however had not been presented as part of respondent's evidence during the trial. He argues that the payments covered by the receipts and certificate were mere deposits and could not be refunded unless first converted as payment of

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taxes and if treated as payments on the dates as indicated therein, except for the amount of ₱1,738.39 covered by Official Receipt No. O-551110-1, dated April 15, 1955, the rest of the amount sought to be refunded is barred by the two-year period prescribed by the aforecited section 306.

It is indeed quite unfortunate that this question was raised by respondent's counsel rather belatedly, after he had rested his case without presentation of the receipts and certificate as part of his evidence. However, granting arguendo that all these may be admitted in evidence, we find respondents argument not well-founded.

It should be noted that the receipts and certificates themselves state that the amounts involved were received in deposit for sales and/or compensating taxes on the shipments involved. This is so, because of the peculiarities of customs law and procedure. Thus the amounts so received by customs officials in connection with importations do not become payments until after the posting or publication of the final liquidation of the import entries in relation thereto. (See Customs Administrative Order No. 362; Caltex (Philippines) Inc. vs. Commissioner, C.T.A. No. 190, September 30, 1957.) Such dates of final postings of import entries could easily have occurred very much later than April 15, 1955. Inasmuch as it is within the power of respondent or the government to show, by the records of the Commissioner of Customs and the latter's subordinate (as Deputies of respondent under Section 6 of the Revenue Code), when such postings or publications of the final liquidations were effected, the former's failure to present such material evidence constrains us to find that petitioner's action was instituted within the two-year period referred to in sections 306 of the Tax Code. Considering further that the instant appeal was filed within the thirty-day period prescribed by section 11, Republic Act No. 1125, we consequently find and so hold that this Court has jurisdiction to decide the above-entitled case on its merits.

We shall now proceed to determine whether or not the empty cotton bags in question are exempt from the payment of compensating tax under Republic Act No. 35, as revised by Republic Act No. 901. The statutory provisions under which petitioner was granted tax exemption by the Secretary of Finance are quoted 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 dates 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."

<u>Republic Act No. 901</u>

> "Section 1. Any person, partnership, company, or corporation who or which, sub-

> sequent to the approval of this Act, 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."

Briefly, petitioner contends that the imported empty cotton bags, which admittedly are used in packing the manufactured corn starch, constitute equipment or supplies essentially needed in the new and necessary industry of manufacturing, packing, distributing and selling corn starch; that without them it would be impractical to distribute and sell its manufactured corn starch; and that they are indispensable in the operation and maintenance of its new and necessary industry. Consequently, it is urged that said bags should be exempt from the payment of compensating tax under the tax exemption grant (Exhibit F). Upon the other hand, respondent maintains that the empty cotton bags are not so exempt because they are not raw materials within the purview of the tax exemption granted by the Secretary of Finance. It is further urged that neither are they machinery nor equipment that go into the manufacture of the finished produce of corn starch.

The exemption granted to petitioner in pursuance of the provisions of Republic Acts Nos. 35 and 901 refers to taxes in respect to the manufacture of corn starch, corn gluten feed, and corn oil (Exh. F, p. 33 CTA rec.). The word "manufacture" is not a technical word; it should be understood in its common or ordinary meaning (Eternit Corporation v. Collector of Internal Revenue, C.T.A.

Case No. 201, December 15, 1956; see also Sharpe v. Hasey, 114 N.W. 1118, 1119, 134 Wis. 618). In the Eternit Corporation case, supra, we reproduced the various definitions of the word "manufacture" as interpreted and understood in its common or ordinary signification. We quote them hereunder again:

> "To make or fabricate raw materials by hand, art, or machinery and work into forms convenient for use; and when used as a noun, anything made from raw materials by hand, or by machinery, or by art." (Bouvier's Law Dictionary, 3rd Rev., Vol. II, p. 2086, citing People v. Wemple, 61 Hun N.Y. Supp. 711.)

> "'Manufacture' is process or operation of making wares or any material products by hand, by machinery, or by other agency; often carried on systematically with division of labor and with the use of machinery." (Iden v. Bureau of Revenue, 89 P. 2d 519, 521, 43 N.M. 205; cited in 26 Words & Phrases 611.)

> "x x x The word 'manufacture' means the making of anything by hand or artifiee, or the process of making anything by art of reducing materials into a form fit for use, by the by the hand or by machinery, or the production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations whether by hand labor or by machinery." (Curry v. Alabama Power Co., 8 So. 2d 521, 526, 243 Ala. 53; cited in 26 Words & Phrases p. 614.)

> "'Manufacture' is the production of articles for use from raw or prepared materials, by giving to these matters new forms, qualities, properties, or combinations, whether by hand labor or by machinery; also anything made for use from raw or prepared materials." (26 Words & Phrases, p. 622.)

> "The elemental meaning of the term 'to manufacture' is 'to make' (etymologically, to make by hand) — to make and produce something as a new construction out of existing materials ... In other words, the process

of manufacture brings about the production of some new article by application of skill and labor to the original substance or material out of which such new product emerges. If, however, there is merely a superficial change in the original materials or substances, and no substantial and well-signalized transformation in form, qualities, and adaptability in use, quite different from the originals, it cannot properly and with reason be held that a new article or object has emerged — a new production been created." (Com. v. Weland Packing Co. (1928) 292 Pa. 447, 141, A. 148.)

We shall limit ourselves to the manufacture by petitioner of corn starch. This manufacture involves a process of turning out corn starch from whatever raw materials is used by petitioner to produce the finished product of starch. But, as popularly understood, the manufacture of corn starch does not end with the production of the starch in its bare powdery form. By popular understanding, its manufacture extends to and includes the wrapping packages for packing of the powdered starch in such a manner that the same may be readily sold and bought in wholesale or retail. It is not sold and bought in its bare powdered form, but is so dealt with in bags, packages or other containers. While by this observation, we do not mean to imply, much less intimate, that ordinarily the manufacturing of an article is not distinguishable and separate from its sale, yet, it must be conceded that sale is incidental to manufacture (see Eternit Corporation v. Collector of Internal Revenue, C.T.A. Case No. 201, December 15, 1956). A manufacturer produces to sell.

Consequently, he must prepare and produce his articles in the manner and form in which they are readily, commonly and conveniently sold in the market. The packing of the corn starch in cotton bags or any other convenient container is in respect to and related to the manufacture of corn starch. To rule otherwise would frustrate the beneficient purpose of Republic Acts Nos. 35 and 901 to exempt from all taxes a new and necessary industry. It must be remembered that Republic Acts Nos. 35 and 901 exempt any person, partnership, company, or corporation engaged in a new and necessary industry from the payment of all taxes directly payable by such person, partnership, company or corporation in respect to said industry.

With respect to respondent's contention that the imported empty cotton bags are not exempt from compensating tax because they are not included in the grant of tax exemption (Exhibit F) suffice it to say that the Secretary of Finance cannot limit the operation of Republic Acts Nos. 35 and 901. The Secretary of Finance cannot validly limit the exemption only to compensating tax usually imposed on machinery and equipment exclusively used in the new and necessary industry. We reiterate that the authority conferred upon the Secretary of Finance under Section 11 of Republic Act No. 901 is limited to the classification as to which of the several industries or commercial ventures an applicant may have would be granted the privilege of tax exemption as a new and necessary industry (Marble Corporation of the Philippines v. Collector of Internal Revenue, supra).

Having ruled that the packing of corn starch is in respect to and related to the manufacture thereof, it follows that the importations of empty cotton bags in question are exempt from compensating and/or sales tax. Consequently, the compensating or sales tax paid thereon should be refunded.

WHEREFORE, the respondent Collector of Internal Revenue is hereby ordered to pay and deliver to petitioner Philippine Corn Products, Inc. (Lu Do & Lu Ym Corporation) the sum of ₱13,654.92 representing compensating tax collected on the 212 bales of empty cotton bags. Without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, December 20, 1957.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

(Note: Decision affirmed, GR No. L-13701.)

Associate Judge ROMAN M. UMALI
concurs and dissents in a
separate opinion.

PHILIPPINE CORN PRODUCTS, CO. (Lu Do & & Lu Ym Corporation),
Petitioner,

- versus - C.T.A. CASE NO. 340

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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CONCURRING AND DISSENTING OPINION

I concur in the opinion of my colleagues that this Court has jurisdiction over this case. It involves a claim for refund of an internal revenue tax which was denied by the Collector of Internal Revenue, pursuant to Sections 306 and 309 of the National Internal Revenue Code. This Court has been conferred exclusive appellate jurisdiction to review by appeal decisions of the Collector of Internal Revenue in cases involving refunds of internal revenue taxes. (Section 7, Rep. Act No. 1125.) The compensating tax sought to be refunded here is an internal revenue tax.

I also concur in the opinion that the herein appeal was filed within the statutory period provided in Section 11 of Republic Act No. 1125. On this point, I wish to quote from the majority opinion with which I am in complete agreement:

> "Considering further that the instant appeal was filed within the thirty day period prescribed by section 11, Republic Act No. 1125, we consequently find and so hold that this Court has jurisdiction to decide the above-entitled case on its merits."

I make particular mention of the above-quoted portion of the majority opinion for I am happy to note that my colleagues have apparently relaxed the rule enunciated in their opinion in Paracale-Gumaus Consolidated Mining Co. v. Blaquera, C.T.A. No. 211, August 22, 1956. I expressed the same view now held by my esteemed colleagues in my dissenting opinion in said case. (See also my dissenting opinion in Manila Electric Co. v. Collector of Internal Revenue, C.T.A. No. 365, July 31, 1957, citing the case of Johnston Lumber Co. v. Court of Tax Appeals, G.R. No. L-9292, April 23, 1957.)

However, I cannot accept the proposition advanced by my colleagues that internal revenue taxes collected by customs officers are governed, in regard to the date of payment, by Customs Laws and regulations. I believe that the time of payment of national internal revenue taxes are governed exclusively by the National Internal Revenue Code and the regulations promulgated in accordance therewith. There is nothing in the Revenue Code or in any revenue regulations providing that the time of payment of internal revenue taxes collected by customs officers, as deputies of the Collector of Internal Revenue, shall be governed by Customs Laws and regulations.

Finally, I dissent from the majority opinion holding that the compensating tax in question is refundable. Because of pressure of time, I shall state

my position very

my position very briefly.[1]

Petitioner has been granted the privilege of tax exemption under Republic Act No. 35, as amended and extended by Republic Act No. 901, as a new and necessary industry. The grant of exemption is subject, among others, to the following conditions:

> "Referring to your application of September 30, 1952 for tax exemption under the provisions of Republic Act No. 35, I have the honor to advise that in view of the favorable recommendations of the Secretary of Commerce and Industry and the Administrator of Economic Coordination, the same is hereby approved in respect to the manufacture of corn starch, corn gluten feed, and corn oil. It is understood that the only raw material to be imported is sulphur (80 kilos of sulphur for every 30 metric ton of processed corn) and that this raw material will be procured locally as soon as similar article of domestic origin or manufacture shall have become available." (Letter of Secretary of Finance to petitioner dated June 9, 1953: Exh. 2: underscoring supplied.)

The exemption from taxation of petitioner was granted in view of the favorable recommendations of the Secretary of Commerce and Industry and the Administrator of Economic Coordination, presumably after a thorough investigation of the needs and requirements of the business. When, therefore, the Secretary of Finance issued the certificate of exemption on June 9, 1953, he must have ascertained and established the fact that all the raw materials, except sulphur, needed in the manufacture of corn starch, corn gluten feed, and corn oil were all available locally at

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[1] Sec. 13, Rep. Act No. 1125, requires that cases be decided within 30 days after submission thereof for decision, which obviously is too short specially in highly controversial cases.

reasonable prices. Petitioner must have accepted the conditions imposed for its exemption with full knowledge of this fact, otherwisd it should have requested reconsideration of said conditions.

Notwithstanding the limitation imposed with respect to the importation of raw materials, except sulphur, and the acceptance thereof by petitioner, it imported, from January, 1954 to April, 1955, 212 bales or 211,187 pieces of empty corn starch bags which were used by it in the manufacture of corn starch. This is clearly a violation of its permit to operate as a new and necessary industry, and petitioner must pay the corresponding tax on such importation. If, as now alleged, corn starch bags are available locally only at prices 30% over the price of imported bags and for this reason petitioner cannot operate its business successfully, the remedy is not by importing in violation of the terms of the grant of exemption but by seeking a modification thereof.

It is contended that the Secretary of Finance has no power to limit importation of raw materials needed by new and necessary industries. I believe that Section 11 of Republic Act No. 901 gives the Secretary of Finance ample power to determine what equipment and raw materials may be imported free of tax by new and necessary industries. Said section provides:

> "Sec. 11. The Secretary of Finance shall promulgate the necessary rules and regulations for the proper enforcement and to carry out the intents and purposes of this Act, and shall determine the scope and extent of the privileges granted hereunder." (Underscoring supplied.)

It is the view of my colleagues that the power of the Secretary of Finance under Section 11 of Republic Act No. 901 "is limited to the classification as to which of the several industries or commercial ventures an applicant may have would be granted the privilege of tax exemption as a new and necessary industry." I do not think this conclusion is justified by the wording of said section. The power of the Secretary of Finance to which my colleagues refer may be found in the other sections of the Act (see Secs. 1, 2, 3, 5 and 6) and not in Section 11. The power to determine the scope and extent of the privileges granted under said Act which a new and necessary industry may enjoy after it has been granted tax exemption is totally different from the power to determine what kind or class of industries are new and necessary and are entitled to exemption.

I, therefore, vote to affirm the decision appealed from.

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ROMAN M. UMALI
Associate Judge