REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ELBA EXPORT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4267

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

1/15/91

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D E C I S I O N

This action involves assessments against the petitioner for deficiencies in income, withholding and business taxes for the year 1981 in the total amount of P171,318.15 covered by the respondent's letter of demand dated January 15, 1987.

The records show that petitioner had the same protested on November 27, 1987 which respondent resolved on March 20, 1988 by cancelling the income tax liability of P87,907.21 due to petitioner's availment of the tax amnesty accorded in Executive Order No. 41, excluding the withholding tax liability of P1,551.82. And, having failed to avail of the tax amnesty covering business taxes under Executive Order No. 64, petitioner remained liable for the deficiency fixed tax of P81,859.12, inclusive of increment.

Hence, petitioner's instant appeal.

It may suffice to state that the parties submitted the case for decision on the basis of the pleadings waiving the filing of their respective memorandum on the legal issue of whether the petitioner may validly be considered an "export producer" vis-a-vis "export trader".

In assailing the deficiency assessment, petitioner holds itself as an "export producer" engaged in the "manufacture, production or processing of articles or products for export in commercial quantity". (Sec. 187(y), Tax Code.). It lays stress on its business of a 100% exportation of Philippine-made handicrafts, viz.: baskets, rattan chairs, fruit trays and other rattan products, locally purchased, allegedly, in partially manufactured or semi-finished forms. These products had to undergo a kind of manufacturing/processing such as polishing by sandpaper, varnishing and/or painting, cloth lining for fruit trays, labelling and packaging, and final quality inspection, before exportation, which activities serve as the linchpin in validating its claim as an "export producer", subject to a fixed annual tax of P100.00 only.

Respondent Commissioner of Internal Revenue's unvarying assertion would have petitioner considered an "export trader" engaged in the buying of Philippine-made products, and subsequently exporting them (Sec. 187(z), Ibid.) per report of investigation, insofar as pertinent, that -

> The Accounting records showed that subject taxpayer is engaged in the business of an export trader. It buys locally produced native handicrafts which are already in the finished form, from different suppliers most of which are from the Bicol provinces and the firm exports these abroad. However, subject taxpayer claims that it is an export producer in 1981 but it was found that it does not keep cost accounting records. It does not have daily production reports and the activity observed in the premises was not manufacturing but merely the packaging of finished native products in cartons and loading them in container vans for shipment abroad.

Accordingly, the assessment, to wit:

1981 Deficiency Fixed Tax

Export trading sales	P7,963,209.70
Fixed tax due	30,000.00
Add: 25% surcharge	7,500.00
Basic tax plus surcharge	37,500.00
Add: 14% int. fr. 2/1/81 to 2/15/81	198.73
20% int. fr. 2/16/81 to 1/15/81	44,160.39
AMOUNT DUE AND COLLECTIBLE	P 81,859.12

We reach the same conclusion as the respondent Commissioner.

We believe that the petitioner may properly be considered an "export trader" within the purview of Section 187(z) of the Tax Code. And, we find nothing ambiguous nor obscure in the language of said provision insofar as the same is brought to bear upon the petitioner in the case at bar. The circumstances obtaining are by no means clear as to the petitioner's claim of being engaged in the "manufacture, production and processing of articles or products". The mere application of labor by such activities as varnishing, painting, polishing, labelling, packaging and the like on the handicrafts without transforming the same into new or different articles does not give rise to another manufactured product nor change the character or the use for which they were originally intended.

It takes more than this sort of finishing touches or cosmetic efforts so to speak to have them considered for purposes of the provisions of the Tax Code, i.e., substantially by physical or chemical process alters the conditions of any raw material or manufactured product to prepare them for special use or uses as marketable product (Sec.

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187(z), ibid.), much less, deem "processing", i.e., converting the raw materials into marketable form by special treatment or series of action that results in a change of the nature or state of the product. Merely packing, packaging and sorting out and classifying shall not by themselves constitute processing (Sec. 3-1, RA 6135, otherwise entitled, Export Incentives Act). Petitioner must have overplayed its understanding of the term "export producer".

Moreover, the report of investigation upon which based the respondent's classification of the petitioner as an "export trader" furnishes the best means of its own exposition in terms of tractable data openly laid and fully disclosed and as such deserves the credence that should normally be accorded. And, petitioner points to no factual errors nor superfluities which need be abridged. And, not that the examiners credentials are impecable but to their favor must be conceded the presumption of regularity in the performance of official duty which have not been disproved by any affirmative evidence of irregularity or unlawful conduct. (Prima Business Machines, Inc. v.

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Commissioner of Internal Revenue, CTA Case No. 2990, August 3, 1981.) We feel compelled to affirm the import and force of the report of findings which may not be suffered to petrify in futility.

WHEREFORE, finding the petition to be without merit, the same is hereby dismissed and the payment of the amounts sought ordered with costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, January 15, 1991.

ALEX Z. REYES
Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

CERTIFICATION

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

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals

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