REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CENTRAL VEGETABLE OIL,
MANUFACTURING CO., INC.,
Petitioner,

-versus-

C.T.A. CASE NO. 4360

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

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D E C I S I O N

This involves an assessment and demand against petitioner for deficiency 3% miller's tax in the amount of P1,575,514.70 for the year 1986 contained in the Deputy Commissioner Eufracio D. Santos' letter dated November 17, 1988.

The assessment arose from the disallowance of petitioner's request for tax credit of the sales tax it paid on containers and packaging materials against the 3% miller's tax due on its gross sales of edible oil and allied products.

The facts are undisputed and are quoted below:

> Petitioner is a manufacturer of edible and coconut/coprameal cake and such other coconut related oil subject to the miller's tax of 3%. Petitioner also manufactures lard, detergent and laundry soap subject to the sales tax of 10%.
>
> In 1986, petitioner purchased a specified number of containers and

packaging materials for its edible oil from its suppliers and paid the sales tax due thereon.

After an investigation conducted by respondent's Revenue Examiner, Assessment Notice No. FAS-B-86-88-001661-001664 dated April 22, 1988 was issued against petitioner for deficiency miller's tax in the total amount of P1,575,514.70, details of which are as follows:

1 9 8 6
First Quarter
Deficiency 3% Miller's Tax

Net taxable sales	P11,414,675.57
3% Miller's tax due thereon	335,425.90
Less: Sales tax paid	88,762.71
Deficiency miller's tax	246,663.19
Add: 25% Surcharge	61,665.80
20% Int. fr. 4-21-86 to 4-21-88	123,331.60
TOTAL AMOUNT DUE AND COLLECTIBLE	P 431,660.59

1 9 8 6
Second Quarter
Deficiency 3% Miller's Tax

Net taxable sales	P 8,563,672.67
3% Miller's tax due thereon	249,427.37
Less: Sales tax paid	42,447.33
Deficiency miller's tax	P 206,950.04
Add: 25% Surcharge	51,737.51
20% Int. fr. 7-21-86 to 4-21-88	90,540.64
TOTAL AMOUNT DUE AND COLLECTIBLE	P 349,228.19

1 9 8 6
Third Quarter
Deficiency 3% Miller's Tax

Net taxable sales	P10,732,930.54
3% Miller's tax due thereon	312,609.63
Less: Sales tax paid	53,494.82
Deficiency miller's tax	259,114.81
Add: 25% Surcharge	64,778.70
20% Int. fr. 10-21-86 to 4-21-88	97,168.05
TOTAL AMOUNT DUE AND COLLECTIBLE	P 421,061.56

1 9 8 6
Fourth Quarter
Deficiency 3% Miller's Tax

Net taxable sales	P 8,672,015.59
3% Miller's tax due thereon	252,582.98
Less: Sales tax paid	13,501.79
Deficiency miller's tax	P 239,081.19
Add: 25% Surcharge	59,770.30
20% Int. fr. 1-21-87 to 4-21-88	74,712.87
TOTAL AMOUNT DUE AND COLLECTIBLE	P 373,564.36

On June 29, 1988, petitioner filed with respondent a letter dated June 27, 1988 requesting for reconsideration of the above deficiency miller's tax assessments, contending that the final provision of Section 165 of the Tax Code does not apply to sales tax paid on containers and packaging materials, hence, the amount paid therefor should have been credited against the miller's tax assessed against it. Again, thru letter dated September 28, 1988, petitioner reiterated its request for reconsideration.

On November 17, 1988, respondent finally came up with his decision denying petitioner's request for reconsideration, full text of which reads as follows:

November 17, 1988

Central Vegetable Oil
Manufacturing Co., Inc.
P.O. Box 2816
M a n i l a

Attention: Mr. James Chua
President

Gentlemen:

We have received your letter of September 28, 1988, relative to our assessment against your company in the amount of P1,575,514.75, as deficiency miller's tax for the year 1986.

Section 168 of the Tax Code provides that sales, miller's or excise taxes paid on raw materials or supplies used in the milling process shall not be allowed against the miller's tax due. You contend that since packaging materials are not used in the milling process then, the sales taxes paid thereon should be allowed as a credit against the miller's tax due because they do not fall within the scope of the prohibition.

It is our position, however, that since the law specifically does not allow taxes paid on the raw materials or supplies used in the milling process as a credit against the miller's tax due, with more reason should the sales taxes paid on materials not used in the milling process be allowed as a credit against the miller's tax due. There is no provision of law which allows such a credit-to-be made.

In view of the above, we are reiterating the assessment referred to above. We request that you make payment immediately so that this case may be considered closed and terminated.

Very truly yours,

(SGD.) EUFRACIO D. SANTOS
Deputy Commissioner

On May 2, 1989, petitioner filed the instant Petition for Review with this

Honorable Court assailing the validity of the herein tax assessment. (pp. 98-101, CTA rec.)

The only issue posed for our determination is whether or not petitioner is liable for deficiency miller's tax for the year 1986 in the amount of P1,575,514.70.

The question in this case hinges on the application of the final proviso of Section 168 of the National Internal Revenue Code which reads:

> "Provided, finally, that credit for any sales, miller's or excise taxes paid on raw materials or supplies used in the milling process shall not be allowed against the miller's tax due, xxx"

According to respondent, the aforesaid provision clearly and specifically does not allow taxes paid on raw materials or supplies used in the milling process as a credit against the miller's tax due. And there being no specific provision allowing such tax credit, the sales tax paid on materials not used in the milling process cannot be allowed as a credit against the miller's tax due. Simply put, the issue is: Whether or not the containers and packaging materials are raw materials used in the milling process within the contemplation of the afore-quoted statute.

Petitioner's contention is to the effect that respondent erred in not allowing petitioner to credit the sales tax it paid on the containers and packaging materials against the miller's tax assessed against it because the final proviso of Section 168 of the National Internal Revenue Code does not apply in the case at bar and that it is entitled to a tax credit pursuant to the ruling of then Commissioner Ruben Ancheta.

Petitioner is of the opinion that the application of the final proviso of Section 168 is preposterous and devoid of reason because the containers and packages cannot be considered as "raw materials" utilized in the milling process for the following reasons:

> First: The raw materials used by petitioner in manufacturing edible oil are copra and/or coconut oil. In other words, the term "used" in the final proviso of Section 168 of the NIRC refers or is strictly confined to "raw materials" or supplies fed, supplied or put into the apparatus, equipment, machinery or its adjuncts that cause or execute the milling process. On the other hand, the containers, such as tin cans, and/or packages are not used or fed into the milling machinery nor were ever intended for conversion to form part of the finished product, i.e., refined coconut/edible oil. Consequently, it would be absurd to say that said containers and packages are "used in the milling process", for the process

involves "grinding, crushing, stamping, cutting, shaping or polishing" (See THE DICTIONARY, by TIME, COPYRIGHT 1974, p. 444). It is one of the primary canons of construction that all statutes should receive a reasonable interpretation, if the meaning of the statute is at all doubtful. It has been a well-entrenched doctrine in our jurisdiction that "xxx in the interpretation of statutes levying taxes or duties, that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed beyond what statutes expressly and clearly import (Commissioner of Internal Revenue vs. Fireman's Insurance Co., 168 SCRA 315; Manila Railroad Co. vs. Collector of Customs, 52 Phil. 950; Collector vs. La Tondena, Inc., 5 SCRA 665; Luzon Stev. Co. vs. Trinidad, 43 Phil. 803). Furthermore, since the interpretation given by respondent would result to absurdity, such construction must be peremptorily avoided (Ledesma vs. Pictain, 79 Phil. 95; Diokno vs. Rehabilitation Finance Corp., 91 Phil. 108, People vs. Villanueva, 1 SCRA 1248; Lagdameo vs. Lao, 12 SCRA 626; Guevara vs. Inocentes, 16 SCRA 370).

SECOND: Respondent's interpretation of the term raw materials is contrary to law and jurisprudence. Thus, raw materials as used in the definition of "manufacture", denotes materials from which final product is made (Black's Law Dictionary, 4th ed., citing State vs. Hennessy Co., 71 Mont. 301, 230, p. 64, 65). And consistent with said definition, Revenue Regulations Nos. 2-86 and 11-86 [effective January 1, 1986 and August 1, 1986, respectively] which govern the filing of quarterly percentage tax return and payment thereof under the provisions, *inter alia*, of Section 168 of the NIRC, define raw materials or material, to wit:

> "any article which when used in the MANUFACTURE of another article, becomes a homogenous part thereof, such that it can no longer be identified in its original state nor may be removed therefrom without destroying or rendering useless the finished article to which it has been merged, mixed or dissolved."

Tested in the light of the foregoing statutory definition, it is evident that containers and packages used by petitioner are not within the purview of the final proviso of Section 168 of the NIRC. Understandably, containers and packages are finished products while raw materials are as yet to be manufactured, processed or milled into finished goods. As such, containers and packages are separate and distinct from the finished goods, in that the former are utilized as receptacles, not as ingredients or components, of the latter. As a coup de grace, it is pertinent to note the case of Caltex (Phils.) Inc., vs. Manila Port Service (17 SCRA 1075) where the Supreme Court aptly defined containers and/or packages -

> "xxx a package is a bundle made up for transportation; a packet; a bale; a parcel; or that in which anything is packed; a box, case, barrel, crate, etc. in which goods are packed; a container" (Underscoring Ours)

The definition is an emphatic rejection of respondent's construction that petitioner's containers and packages are raw materials used in the milling process. (pp. 80-82, CTA rec.)

Respondent however contends pursuant to Revenue Regulations 2-86 and 11-86 and BIR Ruling

No. 66-027 dated January 29, 1966, "that containers are raw materials of manufactured articles".

This contention is without merit. Suffice it to say that what was defined in the cited Revenue Regulations, is the term "**raw materials**". Said Revenue Regulations did not define "**containers**" or "**packaging materials**". Clearly therefore respondent's contention that the containers and packages are raw materials is untenable.

Section 168 of the National Internal Revenue Code expressly limits the articles subject to percentage tax [miller's tax] to the following, viz: "rope, sugar coconut oil, palm oil, cassava flour or starch, desiccated coconut, manufactured, processed or milled by them, including the by-product of the raw materials, from which said articles are produced, processed, or manufactured." (p. 116, CTA rec.) From the aforesaid enumeration, it is unquestionable that containers and packaging materials are not subject to miller's tax. As such, the alleged miller's tax assessed against petitioner for its containers and packaging materials, in the first place, has no basis, in fact and in law. (pp. 116-117, CTA rec.)

Furthermore, the cited BIR Ruling No. 66-027 has no legal effect whatsoever in this case, for it is deemed revoked, repealed or superseded by the cited Revenue Regulations 2-86 and 11-86. And besides, the subject matter of the said BIR Ruling No. 66-027 is not Section 168 of the NIRC but "Section 188(e) of the Tax Code" in relation to "Republic Act No. 4086" (AN ACT TO PROMOTE THE TEXTILE INDUSTRY OF THE PHILIPPINES BY EXEMPTING, UNDER CERTAIN CONDITIONS, IMPORTATIONS OF NEEDED RAW MATERIALS, CHEMICALS, DYESTUFFS AND SPARE PARTS AND THE SUBSEQUENT MANUFACTURE AND SALE OF PRODUCTS DERIVED THEREFROM, FROM DUTIES AND TAXES, BY CREATING A SPECIAL FUND FOR VITAL RESEARCH, AND FOR OTHER PURPOSES). Therefore, respondent cannot seek refuge in said BIR Ruling No. 66-027.

Petitioner contends that it is entitled to a tax credit pursuant to the Ruling of the then Commissioner Ruben Ancheta dated October 18, 1984 which reads:

> xxx xxx xxx
>
> This refers to your letter dated September 5, 1984 requesting that the 10% sales tax paid on container cans purchased by you, be credited against the 2% (now 3%) miller's tax due on the refined coconut edible oil.
>
> It is represented that you process copra and/or coconut oil and sell the refined edible oil in cans; that said cans are purchased from can manufacturers who in turn bill to you the price of the

> cans and the 10% tax paid thereon which are separately shown on the invoice; and that the cost of the cans, including the 25% miller's tax is computed.
>
> In reply, I have the honor to inform you that your request is hereby granted. xxx (Pacific Oxygen & Acetylene Co. vs. Commissioner, G.R. No. L-17708, April 30, 1965)." (Emphasis supplied.)

citing the case of Pacific Oxygen & Acetylene Co. vs. Commissioner, G.R. L-17708, April 30, 1965.

The above ruling of the Commissioner Ruben Ancheta dated October 18, 1984 was effective and in force when petitioner availed itself of the tax credit in 1986 of a specified number of containers and packaging materials. Such being the case, the said ruling cannot be revoked by the November 17, 1988 opinion of the Deputy Commissioner Eufracio D. Santos (Exh. F) as in that way, to apply it retroactively, would clearly be prejudicial to petitioner. Section 278 of the National Internal Revenue Code states as follows:

> "Non-retroactivity of rulings. Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayer xxx." (Underscoring ours)

The reason for incorporating the aforequoted provision in the National Internal Revenue Code was aptly declared by the Supreme Court in ABS-CBN Broadcasting Corporation vs. CTA (No. G.R. L-52306, Oct. 12, 1981; 108 SCRA 143), thus -

> "This Court is not unaware of the well-entrenched principle that the Government is never estopped from collecting taxes because of mistakes or errors on the part of its agents. In fact, utmost caution should be taken in this regard. But, like other principles of law, this also admits of exceptions in the interest of justice and fair play. The insertion of Section 338-A (now Section 327) into the National Internal Revenue Code, as held in the case Tuazon, Jr. vs. Lingad (58 SCRA, p. 170), is indicative of legislative intention to support the principle of good faith. In fact, in the United States, from where Section 24(b) was patterned, it has been held that the Commissioner or Collector is precluded from adopting a position inconsistent with one previously taken where injustice would result therefrom, or where there has been a misrepresentation to the taxpayer." (Emphasis supplied)

The underlying principle of Section 338-A, now Section 278 of the Tax Code, is to provide for the non-retroactivity of rulings of the Commissioner of Internal Revenue (Tan Chong vs. Sec. of Labor, 72 Phil. 307.) The principle of said provision is good faith in that "the Commissioner or Collector is precluded from adopting a position inconsistent with one previously taken where injustice would result therefrom, or where there has been a misrepresentation to the taxpayer." (ABS-CBN Broadcasting Corporation vs. CTA, *ibid*, citing Tiagon, Inc. vs. Lingad, 158 SCRA 130.)

In the case at bar, the imposition of the deficiency miller's tax for the year 1986 will surely result to the prejudice and injustice to petitioner in that the sales tax paid by petitioner on the containers will not be credited against the alleged deficiency miller's tax; petitioner will then be subject to tax twice considering that said miller's tax is based on the gross selling price of the refined coconut edible oil on said containers. (pp. 115-116, CTA rec.)

Consequently, the 1984 ruling of Commissioner Ruben Ancheta, allowing petitioner to credit the sales tax it paid on containers against the deficiency miller's tax on 1986 cannot be revoked or repealed by the 1988 ruling/opinion (Exh. F) of Deputy Commissioner Santos. (p. 116, CTA rec.)

WHEREFORE, in view of the foregoing, petitioner Central Vegetable Oil Manufacturing Co., Inc., is not liable for deficiency miller's tax for the year 1986 in the amount of P1,515,514.70.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Philippines, December 3, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ALEX Z. REYES
Presiding 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