REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE MANUFACTURING
COMPANY, INC.,
Petitioner,

versus C.T.A. CASE NO. 448

THE COLLECTOR OF
INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is a petition for review of a decision of respondent Collector (now Commissioner) of Internal Revenue dated October 31, 1957, assessing petitioner the total amount of ₱146,666.46, as deficiency sales tax and surcharge for the period from the first quarter of 1951 to the first quarter of 1956, plus the sum of ₱1,000.00 as compromise penalty.

Petitioner is a domestic corporation engaged in the business of manufacturing and selling cooking oil, soap, lard and margarine.

In June, 1956, agents of the Bureau of Internal Revenue submitted a report to respondent recommending that, for the period from the first quarter of 1951 to the first quarter of 1956, petitioner be assessed for deficiency sales tax and surcharge on account of the following alleged discrepancies:

(1) That petitioner paid on its sales of refined oil only the 2% miller's tax instead of the 7% sales tax imposed on a manufacturer;

(2) That petitioner deducted from the gross sales of its manufactured articles

(such as cooking oil, lard, margarine etc.) the amounts paid to contractors from whom it ordered containers, crates, cartons, labels, etc which were used in the manufacture and sale of its finished products;

(3) That petitioner deducted from the gross sales of its manufactured articles the value of raw-materials purchased from tax-exempt industries; and

(4) That petitioner paid the 2% miller's tax on the coconut oil processed and used by it in the manufacture of its cooking oil, soap and lard but deducted the value thereof from the gross sales of its manufactured products.

On July 18, 1956, based on the aforesaid report of the revenue agents, petitioner was assessed by respondent for deficiency sales tax and surcharge in the total amount of ₱4,523,560.89, computed as follows:

Market value of the refined oil sold from the 1st qtr. of 1951 to the 1st qtr. of 1956. . . .	₱24,850,590.89	
7% tax due on ₱24,850,590.89.	₱ 1,739,541.25	
Less: Taxes paid. . . .	495,011.73	
Deficiency sales tax. .		₱1,244,529.52
Total amount paid to contractors and deducted from your taxable sales.	₱1,319,164.58	
7% tax due on ₱1,319,164.58.		92,341.52
Total amount of non-deductible raw materials deducted from your sales.	₱ 973,659.57	
7% tax due on ₱973,659.57.		68,156.17
Market value of the coconut oil purposely processed for use in the manufacture of edible oil, lard and soap. . .	₱76,231,626.42	
7% tax due on ₱76,231,626.42.	5,336,213.84	

Less: Taxes (2%) paid..	₱ 1,524,470.11	
Deficiency sales tax. .		₱3,811,743.73
Total		₱5,216,770.94
Less: Advance sales tax paid.		1,597,922.23
Total deficiency sales tax.		₱3,618,848.71
25% surcharge thereon..		904,712.18
TOTAL AMOUNT STILL DUE & COLLECTIBLE.		₱4,523,560.89

In its letters dated August 9, 1956, February 9, 1957 and May 26, 1957, petitioner protested and requested reconsideration and/or reinvestigation of the assessment.

On October 31, 1957, after a reinvestigation, respondent issued a revised assessment demanding from petitioner, apart from a compromise penalty of ₱1,000.00, the aggregate sum of ₱146,666.46, as deficiency sales tax for the first quarter of 1951 to the first quarter of 1956, itemized as follows:

Total amount paid to contractors which was deducted from taxable sales.	₱1,319,164.58	
7% tax due thereon . .		₱92,341.52
Total cost of raw materials purchased from tax-exempt industries.	₱ 357,023.57	
7% tax due thereon. . .		₱24,991.65
		₱117,333.17
Plus 25% surcharge. . .		29,333.29
Deficiency sales tax & surcharge due.		₱146,666.29

The revised assessment, in other words, eliminated two principal items of the original assessment and retained only the items corresponding to the 7% sales tax on the alleged cost of containers, labels, crates, cartons, etc.; the 7% sales tax on the cost of raw materials purchased from tax-exempt industries; and the 25% surcharge thereon.

On November 4, 1957, the revised assessment was received by the petitioner and was appealed to this Court on December 2, 1957.

During the pendency of this case, respondent's counsel filed a "Manifestation" agreeing with the petitioner that the "Commissioner of Internal Revenue cannot impose the compromise penalty where the petitioner has not agreed thereto", thus in effect waiving his claim to the compromise penalty.

The principal issues to be resolved in this case are the following:

(1) Whether or not the disallowance of the total amount of ₱1,319,164.58 which was deducted by the petitioner from the gross selling price of its manufactured products as cost of containers, cartons, crates, labels, etc. is legal;

(2) Whether or not in connection with the first issue, the assessment has partially prescribed;

(3) Whether or not the disallowance of ₱357,023.57 representing the cost of raw materials purchased from tax-exempt industries and deducted by petitioner from the gross sales of its manufactured articles is correct.

(4) Whether or not the imposition of the 25% surcharge is valid.

With respect to the first issue it appears that the sum of ₱1,319,164.58 which was deducted by petitioner from the gross selling price of its manufactured oils, soap, lard and margarine, represents the total amount

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paid by it, during the period in question, to various entities for freight and hauling charges, as well as for materials such as can, buckets, cartons, labels, tags, liners, wooden crates, decorated tin plates etc. used in the production and sale of its finished products. The breakdown of said amount is as follows:

Philippine Tin Lithography (cans & buckets).	₱ 588,740.74
General Offset Press (cartons). . . .	522,620.63
South Sea Printing (Labels, liners, tags & cartons with weight figures).	68,581.39
M. J. Gonzales & Ass. (decorated tinplates).	10,156.99
Sarangaya Const. etc. (wooden crates).	9,888.75
Advertising Associates (decorated tinplates).	56,618.29
Tan Chong Pin MRR (freight & hauling).	7,029.44
General Advertising Agency (article unascertainable).	17.00
Pacific Offset Press (decorated tinplates).	17,762.45
Manalang Gen. Advertising (decorated tinplates).	9,790.69
Liwayway Publications (labels & stickers).	2,950.03
Standard Bookbinding (wrappers). . .	1,350.00
Allied Printers (decorated tinplates).	253.96
Philippine Business Forms (cartons). .	19,795.26
Cacho Hermanos & J. Anastacio (labels)	3,608.96
TOTAL.	₱1,319,164.58

The pertinent provision of the Revenue Code in this issue is Section 186 thereof which runs as follows:

> SEC. 186. Percentage tax on sales of other articles. - There shall be levied, assessed and collected once only on every original sales, barter, exchange, and similar transaction either for nominal or valuable considerations to transfer ownership or title to, the articles not enumerated in Section one hundred and eighty-four and one hundred and eighty-five a tax equivalent to seven per centum of the gross selling price or gross value in money of the articles

> so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer: Provided, That where the articles are manufactured out of materials subject to tax under this Section, the total cost of such materials, as duly established shall be deductible from the gross selling price or gross value in money of the manufactured articles: x x x.

<u>Tan Chong Pin MRR (Freight and Hauling) - ₱7,029.44</u>

From a perusal of Section 186 of the Revenue Code it is at once patent that cost of freight and hauling is not deductible from the gross selling price of petitioner's manufactured products. Only materials are deductible and verily freight and hauling are not materials (Insular Lumber Co. v. Coll. of Int. Rev., G.R. No. L-7190, April 28, 1956).

<u>Liwayway Publications (Labels & Stickers) - ₱2,950.03</u>

From the language of Section 186 of the Revenue Code it would seem that what is deductible from the gross selling price of manufacturers like petitioner is the price of materials obtained by them from manufacturers or producers thereof which are also subject to the sales tax upon sale, barter or exchange of said materials. The theory is that since the materials have already been subjected to the sales tax, they should not be again subjected to the same sales tax when used by the subsequent manufacturers.

The material covered by the law include materials used for the marketing of the finished products. Thus, it has been held that the cost of paper bags used in the sale of ice cream are deductible (Arcega et al. v. Comm. of Int. Rev., C.T.A. Case No. 574, Oct. 30, 1964, citing La Tondeña Inc. v. Comm. of Int. Rev., C.T.A. Case No. 1017, Nov. 9, 1962). The cost of bottles, tin cans, cartons and wooden boxes used as containers of finished products have been declared by the Bureau of Internal Revenue to be deductible from the gross selling price of manufactured articles sold.

> Containers are, as a rule, considered raw materials for purposes of sales tax. Therefore, the total cost of containers, if purchased from manufacturers primarily engaged in the manufacture thereof, is deductible from the gross selling price of the manufactured articles sold. (B.I.R. Ruling, Oct. 10, 1955)

> The cost of bottles, tin cans and carton and wooden boxes which are used by the local manufacturer as containers of the articles it manufactures is deductible from the gross selling price or gross value in money of the articles manufactured if the local company or manufacturer purchased the containers directly from local manufacturers thereof. (B.I.R. Ruling, Feb. 17, 1955)

> Containers are, as a rule, considered, for sales tax purposes, raw materials. Accordingly, the cost of tin containers purchased by a pop corn manufacturer from the manufacturers thereof and used by the pop corn manufacturer thereof as containers for his products which are sold together with said containers is deductible from the gross selling price of said products, it being understood that the manufacturer of said tin containers had paid the 7% sales tax on his sales thereof, pursuant to section 186 of the Tax Code, as amended by Republic Act No. 1612. (B.I.R. Ruling, Jan. 11, 1957)

The labels and stickers involved in this item were made by Liwayway Publications to the specification of and exclusively for petitioner. The stickers and labels bear the printed word "Venus" and are used for the containers of petitioner's finished products and becomes a part thereof. For making these stickers and labels, Liwayway Publications is classified by Section 191 (17) of the Revenue Code as a contractor subject to the contractor's tax of 3% and not to the sales tax. Thus provides said law:

> SEC. 191. Contractors, proprietors or operators of dockyards and others. - A contractor's tax of three per cent of gross receipts is hereby imposed on the following:
>
> x x x x x x x x x x x x
>
> (17) Printers, bookbinders, lithographers and publishers except those engaged in the publication or printing and publication of any newspaper, magazine, review or bulletin which appears at regular intervals, with fixed prices for subscription and sale and which is not devoted principally to the publication of advertisements;
>
> x x x x x x x x x x x x

As a matter of fact a letter of Liwayway's acting General Manager to respondent, dated July 3, 1958 reads thus:

> As per your letter of June 27th, we would like to inform you that our records concerning our printing contracts with the Philippine Manufacturing Company in 1951 had been destroyed, and that since 1952, we have been dealing with the Philippine Advertising Associates.
>
> However, please be informed that the Liwayway Publications, Inc. has paid the 3% tax required on all receipts of payments for our printing jobs.

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In fine the materials supplied by Liwayway Publications to petitioner are not materials made by manufacturers subject to sales tax on the first sale, barter or exchange and are not deductible from the gross selling price of petitioner's finished products.

South Sea Printing (Labels, Liners, Tags Cartons With Weight Figures - ₱68,581.39

For the labels and tags involved herein, labor and materials were supplied by South Sea Printing; for the liners, petitioner furnished the grease proof paper and South Sea Printing merely affixed the design, die-cuts and delivered the finished liners to petitioner; and as for the cartons, petitioner furnished the cartons and South Sea Printing merely blotted out the weight figures and printed new weight figures thereon. The labels were made in accordance with the specifications of petitioner and the same bear the printed words "Philippine Manufacturing Company" and the brand of petitioner's products such as "Venus", "Sunshine" and "Victor".

As in the case of Liwayway Publications, South Sea Printing is taxable as a contractor under Section 191 (17) of the Tax Code and not for sales tax. In fact, a certification from its manager states that South Sea Printing is a printing contractor and all its receipts from the Philippine Manufacturing Company from 1951 to 1956 have been declared for the contractor's percentage tax. Accordingly, the sum of ₱68,581.39 paid by petitioner to South Sea Printing is not deductible.

Cacho Hermanos & J. Anastacio (Labels & Stickers) - ₱3,608.96

This item involves labels and stickers supplied to petitioner by Cacho Hermanos and J. Anastacio, made in accordance with the specification of petitioner. The making of such labels and stickers as in the Liwayway case is essentially a printer's job and the transactions between petitioner and Cacho Hermanos and J. Anastacio are subject to the 3% contractor's tax under Section 191 (17) of the Revenue Code and not to the sales tax. This item is not deductible.

Philippine Tin Lithography (Cans & Buckets) - ₱588,740.74

A sample of the contracts between petitioner and Philippine Tin Lithography provides that: "PMC will furnish the tin plates. This order is subject to the terms and conditions on our contract for assembly and delivery of cans and buckets." Elaborating on this transaction petitioner's witness said:

A. We have certain suppliers - like Philippine Tin Lithography. Before the tin plates are sent to be formed into tin cans, these sheets are sent to M. J. Gonzales where they put certain signs or decorations.

Q. In other words, the tin plates are purchased as raw materials by the petitioner?

A. Yes, sir.

Q. From the time of your purchase, what is the next step done by the petitioner to make them into packaging materials?

A. They are sent to the lithography where the name of the product is printed.

Q. And after the printing, then these tin plates are converted by a certain contractor for the purpose of making them into containers?

A. Yes, sir.

Q. And once these are converted into containers, they are delivered to the petitioner for use in the sale of its manufactured products?

A. Yes.

The contracts between petitioner and Philippine Tin Lithography were obviously for service or piece work, that is, assembling the tin sheets of petitioner into cans and buckets (Article 1715, Civil Code of the Philippines), not of sale, barter or exchange. Philippine Tin Lithography is therefore subject to the 3% contractor's tax under Section 191(18) of the Revenue Code, not to the sales tax. This item is not deductible.

<u>M. J. Gonzales and Associates
(Decorated Tin Plates) - ₱10,156.99</u>

As may be seen from what has been said in the Philippine Tin Lithography item, all that M. J. Gonzales did was to design decorations in tin plates and his contract with petitioner was obviously one for service or piece work and not one of sale, barter or exchange by a manufacturer subject to sales tax.

This item is not deductible.

Manalang General Advertising
(Decorated Tinplates) - ₱9,790.69

Advertising Associates
(Decorated Tinplates) - ₱56,618.29

Pacific Offset Press
(Decorated Tinplates) - ₱17,762.45

Allied Printers
(Decorated Tinplates) - ₱253.96

In these four items, all that Manalang General Advertising, Advertising Associates, Pacific Offset Press and Allied Printers did was to decorate the tin-plates supplied to them by petitioner and charge the latter for the work as in the case of M. J. Gonzales and for the same reason stated therein these items are not deductible.

Standard Bookbinding
(Wrappers) - ₱1,350.00

It is admitted that petitioner furnished the materials (pulp board in large sheets) and Standard Bookbinding merely cut these into sizes for pulpboard innerwrappers for toilet soap. This obviously involves a contract for service or piece work and not sale of materials to petitioner. Consequently, the sum of ₱1,350.00 paid to Standard Bookbinding is not deductible from the gross selling price of petitioner's products.

General Advertising Agency
(Articles Unascertainable) - ₱17.00

Petitioner admits that the kind of articles involved in this item is not ascertainable and it has not shown the nature of the transaction between petitioner and General Advertising Agency. In other words petitioner has not justified the deduction. Since an assessment is presumed to be correct and it is the taxpayer's duty to justify a deduction this item cannot be deducted for failure of the petitioner to prove its claim. (Inter-Provincial Bus Co., Inc. v. Coll. of Int. Rev., G.R. No. L-6741, Jan. 31, 1956; Perez v. Court of Tax Appeals, et al., G.R. No. L-10507, May 30, 1958; Coll. of Int. Rev. v. Bohol Land Transportation Co., G.R. No. L-13099, April 29, 1960.)

San Miguel Corporation
(Toothpaste Tubes) - ₱702.38

This item which is touched in petitioner's Supplementary Memorandum is not covered by the assessment in question and has no bearing to the issues of this case.

Sarangaya Construction and Woodcraft
(Wooden Crates) - ₱9,888.75

Sarangaya Construction and Woodcraft supplied petitioner wooden crates used by the latter for packing its products in bulk. Said supplier appears to be a manufacturer, in the business of supplying other manufacturers with wooden crates. There can be no question of the deductibility of this item for it is not controverted that Sarangaya Construction and Woodcraft paid 7% sales tax for the crates it sold to petitioner.

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This item is deductible.

<u>General Offset Press
(Cartons) - ₱522,620.63</u>

<u>Philippine Business Forms
(Cartons) - ₱19,795.26</u>

These items refer to cartons printed "Purico" with perforation and ready to be folded into boxes to be used as containers for petitioner's products for marketing. These were supplied to petitioner by General Offset Press and Philippine Business Forms which are in the business of supplying cartons to manufacturers.

A printer is classified as contractor under Section 191 of the Revenue Code but to our mind a printer is a contractor only when it undertakes an essentially printing job. When it also engages in the making of pre-formed boxes to be used as containers, it does a manufacturing job, and as such is subject to the sales tax. The making of boxes is not a printing activity. A box to be used as a container is not a printed matter but a manufactured article (33 Words and Phrases, p. 640, citing Kraut v. United States, 134 F. 701, 142 F 1037). These items are deductible.

Respondent Commissioner urges that since it has not been shown that General Offset and Philippine Business Forms paid sales tax for their transactions with petitioner the latter is not entitled to deduction of the price of the materials it purchased from said suppliers.

Whether or not General Offset Press and Philippine Business Forms paid sales tax for the materials sold to petitioner and used by the latter for its own manufacturing purposes, the price of materials so purchased by petitioner is deductible. There is nothing in the language of Section 186 of the Revenue Code that requires actual payment of the sales tax on the material as a prerequisite of the right to deduct the value of said material when used for manufacturing. The tax is presumed to be collected by the Bureau of Internal Revenue at the proper time and from the proper taxpayer - the Philippine Business Forms and General Offset Press in this case. (Cebu Portland Cement Co. v. Collector (now Commissioner) of Internal Revenue, G.R. No. L-20563, Oct. 29, 1968.). And there is also good authority to the effect that the fact that the suppliers of petitioner did not actually pay sales tax for such materials is no reason for burdening petitioner with said sales tax (Abad v. Court of Tax Appeals and the Commissioner of Internal Revenue, G.R. Nos. L-20834 & 20903, October 19, 1966). 18 SCRA 374

We find no merit in petitioner's alternative assertion that at least the cost of raw materials used by the contractors, whether supplied by petitioner or the contractors themselves, should be deducted from the gross selling price of petitioner's products. Assuming arguendo that the contention of petitioner has a basis in law there is no evidence as to the costs of said raw materials. There is no means by which we can determine the deductible amount and the onus of proving said amount is on the taxpayer and his failure to comply with this burden is fatal (Limpan Investment Corp. v. The Coll. of Int. Rev., CTA Case No. 1397, Dec. 11, 1967).

In fine only the total amount of ₱766,859.94 is properly subject to 7% sales tax, itemized as follows:

Philippine Tin Lithography (cans & buckets).	₱588,740.74
South Sea Printing (labels, liners, tags & cartons with weight figures)	68,581.39
M.J. Gonzales & Associates (decorated tinplates).	10,156.99
Advertising Associates (decorated tinplates).	56,618.29
Tan Chong Pin MRR (freight and hauling).	7,029.44
General Advertising Agency (article unascertainable).	17.00
Pacific Offset Press (decorated tinplates).	17,762.45
Manalang Gen. Advertising (decorated tinplates).	9,790.69
Liwayway Publications (labels & stickers).	2,950.03
Standard Bookbinding (wrappers). . . .	1,350.00
Allied Printers (decorated tinplates).	253.96
Cacho Hermanos & J. Anastacio (stickers & labels).	3,608.96
TOTAL	₱766,859.94

With respect to the second issue, which is prescription, petitioner's position is that the portion of the assessment covering the first quarter of 1951 to the third quarter of 1952 has prescribed because the quarterly returns therefore were filed on April 19, 1951, July 19, 1951, October 18, 1951, January 18, 1952, April 19, 1952, July 21, 1952 and October 20, 1952, respectively, and the revised assessment was received only November 4, 1957. In other words, petitioner postulates that the five-year limitation should be counted from the filing of the returns to the date the revised assessment was received. Alternatively, petitioner maintains that even assuming *arguendo* that the period of prescription should be counted from the original assessment, the portion thereof covering the first and second quarter of 1951 has prescribed.

On the other hand, respondent claims that no part of the assessment has prescribed because: (1) the deficiencies in question were just reiterated in the revised assessment of October 31, 1957 and, therefore, they should be deemed originally assessed on July 18, 1956; (2) the quarterly returns filed were false or fraudulent and, therefore, the period to assess the tax is ten (10) years from the discovery of the falsity or fraud pursuant to Section 332(a) of the Tax Code; and (3) petitioner should be estopped from claiming the defense of prescription because it had occasioned the same or contributed to it.

The law requires that the tax shall be assessed within five (5) years after the return was filed (Sec. 331, Tax Code). However, in the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed at any time within ten (10) years after the discovery of the falsity, fraud or omission (Sec. 332 (a), Id).

Interpreting Section 332 (a) aforesaid the Supreme Court said in Jose B. Aznar v. Court of Tax Appeals and Collector of Internal Revenue, G.R. No. L-20569, August 28, 1974:

> Petitioner argues that Sec. 332 of the NIRC does not apply because the taxpayer did not file false and fraudulent returns with intent to evade tax, while respondent Commissioner of Internal Revenue insists contrariwise, with respondent Court of Tax Appeals concluding that the very "substantial underdeclarations of income for six consecutive years eloquently demonstrate the falsity or fraudulence of the income tax returns with an intent to evade the payment of tax."
>
> To our minds we can dispense with these controversial arguments on facts, although we do not deny that the findings of facts by the Court of Tax Appeals, supported as they are by very substantial evidence, carry great weight, by resorting to a proper interpretation of Section 332 of the NIRC. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely - "falsity", "fraud" and "omission". That there is a difference between "false return" and "fraudulent return" cannot be denied. While the first merely implies deviation from the truth, whether intentional or not, the second implies intentional or deceitful entry with intent to evade the taxes due.

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> The ordinary period of prescription of 5 years within which to assess tax liabilities under Sec. 331 of the NIRC should be applicable to normal circumstances, but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years provided for in Sec. 332 (a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced.
>
> There being undoubtedly false tax returns in this case, We affirm the conclusion of the respondent Court of Tax Appeals that Sec. 332 (a) of the NIRC should apply and that the period of ten years within which to assess petitioner's tax liability had not expired at the time said assessment was made.

Under the foregoing doctrine the five-year period for prescription does not apply to cases where there is deviation from the truth in the return thus making it a false return. There is a deviation from the truth in petitioner's returns and they are thus false returns. It appears therein that petitioner deducted from the gross selling price of its products the sums paid to its suppliers of materials on the false assumption that the transactions between petitioner and suppliers were subject to the sales tax when in fact they were not. Because of this falsity or deviation from the truth assessment may be made within ten years from the discovery of the falsity. Assuming that the falsity of the returns was discovered in 1951 when the returns were made, the ten-year period provided in Section 332 (a) of the Revenue Code in case of a false return had not yet lapsed in 1956 when the original assessment was made nor in 1957 when the revised assessment was received by petitioner.

And now we come to the third issue.

It is admitted that in the manufacture and sale of its products during the period in question, petitioner used raw materials (corrugated cartons and papers) purchased from tax-exempt industries under Republic Acts Nos. 35 and 901, the total cost of which amounted to ₱357,023.57.

Prior to the effectivity of Section 186-A of the Internal Revenue Code on June 22, 1957, which exempts the costs of raw materials purchased from tax-exempt materials used in the manufacture of finished articles, the settled doctrine is that the cost of materials purchased from tax-exempt industries are not deductible from the gross selling price of the manufactured article in which they were used. (Tan Chiu v. The Coll. of Int. Rev., G.R. No. L-15008, Jan. 28, 1961; Pacific Oxygen & Acetylene Co. v. Comm. of Int. Rev., G.R. No. L-17708, April 30, 1965; 13 SCRA 622-625.) Considering that this case involves the period from 1951 to 1956, that is, prior to the effectivity of said law, said ruling of the Supreme Court in the aforesaid cases is controlling. Tax laws are of prospective effect and there is nothing in Section 186 of the Revenue Code that provides for its retroactive effect. This item is not deductible.

Finally, we come to the last issue, the 25% surcharge for late payment prescribed in Section 183(a) of the Tax Code.

The imposition of this penalty is mandatory, and neither the Commissioner nor the courts may waive the same. It is enough that the tax was not paid on time in order that the surcharge becomes imposable, it being immaterial whether the non-payment or delay in the payment of the correct tax was due to fortuitous events or circumstances not attributable to the taxpayer. (Lim Co Chui v. Posadas, 41 Phil. 460; Republic v. Luzon Industrial Corp. 102 Phil. 189, cited in Arcega et al. v. Comm., CTA Case No. 574, Oct. 30, 1964; Koppel v. Coll., 87 Phil. 348; See also Liddel & Co., Inc. v. Coll., 2 SCRA 632; and Yutivo Sons Hardware Co. v. Court of Tax Appeals, et al., 1 SCRA 160.) Apparently, the only exception to this is when the non-payment or delay in the payment of the tax is due to acts or rulings of the Government itself which was relied upon by the taxpayer. (See National Power Corp. v. Arañas, G.R. No. L-21402, Sept. 23, 1968; Continental Mfg. Corp. v. Comm. of Int. Rev., CTA Cases Nos. 1027, 1324 & 1351, Dec. 27, 1968; Connel Bros. v. Coll. of Int. Rev., G.R. No. L-15470, Dec. 26, 1963; 9 SCRA 738-741.) In this case we find no such positive act or ruling which prompted the delay in the payment of the correct sales tax. Consequently, the imposition of the 25% surcharge is in order.

To summarize, petitioner is liable to pay deficiency sales tax and surcharge for the period in question in the total amount of ₱95,250.98 computed as follows:

Total amount paid to contractors and deducted from taxable sales.		₱766,859.94
7% sales tax on ₱766,859.95.		53,680.20
Total amount of raw materials purchased from tax-exempt industries. . .	₱357,023.57	
7% sales tax on ₱357,023.57.		24,991.65
Total deficiency sales tax.		₱ 78,671.85
25% surcharge thereon		19,667.96
Total amount due & collectible.		₱ 98,339.81

WHEREFORE, the decision appealed from is hereby modified. Petitioner is ordered to pay to the respondent Commissioner of Internal Revenue or his authorized representative the total sum of ₱98,339.81 as deficiency sales tax and surcharge for the period under review. Without pronouncement as to costs.

SO ORDERED.

Quezon City, September 3, 1974.

Ramon L. Avanceña

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

R M Umali

ROMAN M. UMALI
Presiding Judge

Estanislao R. Alvarez

ESTANISLAO R. ALVAREZ
Associate Judge

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