REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LUXAIRE PRODUCTS, INC.,
Petitioner,

- versus - C.T.A. CASE No. 1922

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

Sept 30/71

D E C I S I O N

From a letter-decision of respondent dated February 28, 1968, holding petitioner liable in the sum of ₱61,517.22 representing deficiency sales and contractor's taxes, surcharges and compromise penalties, the latter has appealed to this Court.

Petitioner is a domestic corporation engaged in the business of manufacturing jalousies, venetian windows and doors. Upon its request, it was granted tax exemption privileges under Republic Act No. 35 for a period of four years from the date of the organization of the industry, per letter dated April 25, 1950, of the Secretary of Finance (Exh. "B-1", p. 50, CTA rec.). Subsequently, the tax exemption privileges were extended until December 31, 1958. Thereafter, petitioner was allowed to enjoy a deminishing exemption until June 20, 1959, as provided in Section 1 of Republic Act No. 901, per letter dated October 9, 1953, of the Secretary of Finance (Exh. B-1, pp. 51-52, CTA rec.).

Upon investigation, an examiner of the Bureau of Internal Revenue reported that aside from wood jalousies, petitioner manufactured glass jálousies allegedly not covered by the certificate of exemption. He also reported that the installation fees were considered part of the selling price of the wood or glass jalousies. As a result of these findings, petitioner was required to show cause why it should not be held liable for the sales tax on its gross sales of glass jalousies in the total amount of ₱487,962.71 for 1957 and 3% tax on its gross receipts derived from the installation of jalousies for the same year under Section 191 of the Revenue Code. In reply, petitioner alleged that the sales of glass jalousies were covered by the tax exemption granted under Republic Acts Nos. 35 and 901, and that the amounts charged for the installations of the jalousies sold were integral parts of the sales price of jalousies. Notwithstanding the allegations of petitioner, respondent decided that it was liable for the total amount of ₱61,517.22, representing deficiency sales and contractor's taxes, surcharges and compromise penalties, computed as follows:

"Gross sales/receipts per return - -	₱ 16,144.70
Gross sales/receipts of glass jalousies per investigation-	487,962.71
Total gross sales/receipts per investigation - - - - - - - -	₱504,107.41
Less: Deductible costs - - - - - -	10,906.47
Total taxable sales/receipts - - -	₱493,200.94
Less: Taxable sales/receipts of glass jalousies not covered by the exemption - - - - - -	487,962.71
Taxable sales/receipts under the exemption - - - - - - - - - -	₱ 5,238.23
7% tax due thereon - - - - - - -	366.63
Less: Tax already paid - - - - -	336.64
Deficiency tax due - - - - - - -	₱ 30.04
25% surcharge due thereon - - -	7.51
Total amount due - - - - - - - - -	₱ 37.55
Compromise penalty - - - - - - -	10.00₱
	₱ 47.55

Taxable sales/receipts of glass jalousies not covered by the exemption - - - - - - -	₱487,962.71	
Less: Costs (already deducted as shown in the above computation) - - - - - - - - -	n o n e	
Taxable sales/receipts - - - - - - -	₱487,962.71	
7% tax due thereon - - - - - - - - -	34,157.39	
Less: Tax paid (already deducted as shown in the above computation) - - - - - - - - -	n o n e	
Deficiency tax - - - - - - - - - - - -	₱ 34,157.39	
75% surcharge due thereon on the ground of fraud - - - -	25,618.04	
Total amount due - - - - - - - - - - -	₱ 59,775.43	
Compromise penalty - - - - - - - - -	300.00	
		₱60,075.43
Total gross receipts as installation fees per investigation - - - - - - - - - - -	₱ 22,747.33	
3% contractor's tax due thereon- -	₱ 682.42	
Less: Tax paid (already deducted as shown in the above computation) - - - - - - - - -	n o n e	
Deficiency tax - - - - - - - - - - - -	₱ 682.42	
75% surcharge due thereon on the ground of fraud - - - -	511.82	
Total amount due - - - - - - - - - - -	₱ 1,194.24	
Compromise penalty - - - - - - - - -	200.00	
		₱61,394.24
Grand total of tax due and collectible - - - -		₱61,517.22

(Exh. 11, pp. 49-50, BIR rec.).

On September 27, 1967, petitioner asked for reinvestigation and cancellation of the foregoing assessment, contending (a) that the sales being taxed are covered by the tax exemption granted the taxpayer under Republic Act No. 901; and (b) that the taxpayer has not committed any fraud (Exh. 11, pp. 54-55, BIR rec.).

On the ground that the manufacture of glass jalousies is not included in the tax exemption granted; and that the deviation from the manufacture of wood jalousies to glass jalousies was designed to defraud the Government of lawful revenue, respondent, in a letter dated February 28, 1968, denied the request for reinvestigation and cancellation of the assessment. Hence, this appeal.

The issues to be resolved in this case are as follows:

1. Whether or not the tax exemption granted petitioner under Republic Act No. 901 includes the manufacture of glass jalousies; and

2. Whether or not the tax exemption granted petitioner under the same Act includes the 3% contractor's tax sought to be imposed by respondent for the installation of the manufactured products.

Since petitioner was granted tax exemption by the Secretary of Finance in respect to the manufacture of "wood jalousies, venetian windows and venetian doors" under the provisions of Republic Acts Nos. 35 and 901, it is argued that the manufacture of glass jalousies by petitioner is covered by its tax exemption privilege because the term "glass jalousies" is but another name of, or is synonymous to, "venetian doors and venetian windows". Respondent brushed aside this stand of petitioner as an erroneous conclusion of law and/or fact for the reason that the word "wood" attached to the term "jalousies, venetian windows and venetian doors" as indicated in the latter's certificate of tax exemption is used to describe all the three articles. And averring that a jalousy, venetian window or venetian door may be made either of glass, or wood, metal, or even plastic, depending upon the kind of slats or materials used in the manufacture thereof, respondent contends that the tax exemption granted to petitioner does not include the use of glass in the manufacture of jalousies.

Worthwhile noting is petitioner's detailed description of the products manufactured by it, including the specifications of the materials used (Exh. I, pp. 60-62, CTA records), which was the basis of the favorable recommendation of its application for tax exemption by the Director of Commerce (Exh. H, pp. 58-59, CTA records) and of the subsequent approval thereof by the Secretary of Finance (Exh. A, p. 48, CTA records). When its original application for tax exemption from the payment of internal revenue taxes under the provisions of Republic Acts Nos. 35 and 901 was forwarded by the Secretary of Finance thru the Secretary of Commerce and Industry and the Commissioner of the Budget to the President of the Philippines (Exh. D-1, p. 54, CTA records), the Director of Commerce, who was asked to make his comment and recommendation thereon, requested petitioner, in order to have an exact appraisal of its manufacture as defined by law, to submit miniature samples of the products and detailed information regarding quotations and description thereof (Exh. G, p. 57, CTA records).

In its letter dated October 11, 1949 to the Bureau of Commerce (Exh. 1, supra), petitioner described its products as follows:

> This corporation (petitioner) was not existing before the war and was organized for the purpose of introducing and manufacturing these new products namely: Jalousies, Jalousie Windows, Jalousie Doors, Venetial Wall or Partitions, Venetian Windows, Venetian Doors and Awning Windows, under factory production basis.

Jalousies, Jalousie Windows and Jalousie Doors are adjustable louvres and consist of a series of wood slats pivoted at each end so as to rotate about a horizontal axis and so connected that they may be moved in unison. The operating mechanism allows the slats to be adjusted and locked to any desired angle or locked securely in a closed position, through an intervening screen or other member.

Venetian Walls and Partitions, Venetian Windows and Venetian Doors are the same as jalousies with the difference that we put glass vanes in the former instead of wooden slats in the latter. These consist of clear, obscure, tinted or heat-resisting glass vanes, hinged on 4" centers. The vanes are adjustable to any position within 115 degrees through a screen or other member, and are locked securely in place by means of a brass rack and pinion gear operator. Double interlocking angles provide complete water resistance at the end of the vanes.

Gate City Awning Windows which are the type of Awning Windows we manufacture are controlled by a worm and gear drive at the right hand side of the opening. Each tier operates independently. Smooth, even operation is achieved by the use of two sets of raising mechanism connected by horizontal bars which distribute the raising force equally to both sides of the sash.

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The materials we use for the manufacture of these products are as follows:

a- For Jalousies, Jalousie Windows and Jalousie Doors:
1. Brass Hardware
2. Copper Screws & G. I. Nails
3. Lumite or Copper or Aldura Screens
4. Kiln-Dried Native Wood
5. Paints

b- For Venetial Walls or Partition, Venetian Windows and Doors:
1. Brass Hardware
2. Copper Screws & G. I. Nails
3. Lumite or Copper or Aldura Screens
4. Local Glass 7/32" thick
5. Kiln-Dried Native Wood
6. Paints

c- For Awning Windows:
1. Aluminum Hardware
2. Copper Screws & G.I. Nails
3. Lumite or Copper or Aldura Screens
4. Kiln-Dried Native Wood
5. Woodlife preservative paints.

In recommending the approval of the tax exemption of petitioner, the Director of Commerce stated in part that:

> Venetian Walls and Partitions, Venetian Windows and Venetian Doors are the same as jalousies with the difference that glass vanes are placed in the former instead of wooden slats in the latter. These consist of clear, obscure, tinted or heat-resisting glass vanes, hinged on 4" centers. The vanes are adjustable to any position within 115 degrees through a screen or other member, and are locked securely in place by means of a brass rack and pinion gear operator. Double interlocking angles provide complete water resistance at the end of the vanes. (Exh. H-2, p. 58, CTA records.)

The Secretary of Finance, acting favorably on the aforesaid application for tax exemption, granted petitioner a tax exemption privilege "in respect to the manufacture of wood jalousies, venetian windows and venetian doors." (Exhs. A & 1, p. 48, CTA records.)

Under these circumstances, what are the kinds of jalousies that were to be manufactured by petitioner in respect of which it was granted tax exemption as a new and necessary industry under the provisions of Republic Acts Nos. 35 and 901? Petitioner itself gave the ready answer. Jalousies which are of adjustable louvres and which consist of a <u>series of wood</u> pivoted at each end so as to rotate about a horizontal axis and so connected that they may be moved in unison. As a matter of fact, in specifying the materials used for the manufacture of jalousies, kiln-dried wood was listed as one of them by petitioner. Glass, glass pane or glass vane was not included. The word "wood" before jalousies in its tax exemption certificate is therefore but a confirmation of what petitioner specified in its application for exemption. Accordingly, the tax exemption privilege granted by the Secretary of Finance to petitioner with respect to the manufacture of jalousies would apparently not include glass jalousies.

Petitioner, however, argues that the manufacture of glass jalousies is covered by its tax exemption granted under Republic Acts Nos. 35 and 901 because the term "glass jalousies" is but another name for, or is synonymous to, "venetian windows and venetian doors." Or to put it more succintly in interrogative form, since the only items appearing in the sales invoices of petitioner were wood and glass jalousies (Exh. L, p. 35, BIR records), are "glass jalousies" the same as "venetian windows and venetian doors" as the term is used and understood in the certificate of tax exemption?

This brings us back to petitioner's own detailed information with regard to the industry it is engaged in, including the specifications of the materials used in the manufacture of its products. Petitioner's products have been classified by it into three groups: first, jalousies, jalousie windows and jalousie doors; second, venetian walls and partitions, venetian windows and venetian doors; and third, gate city awning windows. Petitioner was granted tax exemption in respect to the manufacture of "wood jalousies" as far as the first group is concerned; the manufacture of "venetian windows and venetian doors" regarding the second group; and no tax exemption in respect to the manufacture of awning windows. And as already stated above, the materials used for the manufacture of jalousies include kiln-dried native wood but do not include glass or glass panes, while for venetian windows and venetian doors, local glass 7/32" thick is included.

As described by petitioner to the Director of Commerce when its original application for tax exemption was still pending investigation and inspection, jalousies are adjustable louvres and consist of a series of wood slats pivoted at each end so as to rotate about a horizontal axis and so connected that they may be moved in unison. Hence, insofar as the manufacture of jalousies is concerned, petitioner was granted tax exemption privilege in respect to the manufacture of wood jalousies only. On the other hand, venetian windows and venetian doors are the same as jalousies with the only difference that glass vanes are placed in the former (venetian windows and venetian doors) instead of wood slats in the latter (jalousies). Thus the word "wood" was not attached to the term "venetian windows and venetian doors" in the certificate of exemption of petitioner.

Insofar as the certificate of tax exemption of petitioner is concerned, what then is the difference between wood jalousies on one hand and venetian windows and venetian doors on the other hand? In the light of the above, we cannot but draw the conclusion that venetian windows and venetian doors are the same as glass jalousies. It can not be said that the word "wood" attached to the term "jalousies" as indicated in the certificate of tax exemption is also used to describe "venetian windows and venetian doors" for that would be tantamount to deleting or removing the words "venetian windows and venetian doors" from the tax exemption certificate of petitioner. For if venetian windows and venetian doors are the same as jalousies in which both consist of a series of wood slats pivoted at each end so as to rotate about a horizontal axis and so connected that they may be moved in unison, the term "venetian windows and venetian doors" in petitioner's tax exemption certificate would be a surplusage. Needless to say, the wording of the tax exemption certificate provides the safest guide as to the extent and scope, import and meaning of the tax exemption privileges of petitioner which should be enforced as written and from which no deviation or deletion should be made.

Of course, we have not overlooked the well-settled rule that exemption from taxation is not favored, and is never presumed, so that if granted, it must be strictly construed against the taxpayer. (Coll. v. Manila Jockey Club, 98 Phil. 670; Coll. v. Manila Jockey Club, 99 Phil. 289; Abad v. Court of Tax Appeals, 18 SCRA 374; Phil. Acetylene Co., Inc., v. Comm., 20 SCRA 1056; Comm. v. Guerrero, 21 SCRA 180; Comm. v. Visayan Electric Co. 23 SCRA 715.) But the tax exemption privilege of petitioner, free from any legal defects, must be enforced as written. The term "wood jalousies, venetian windows and venetian doors", viewed as a whole, makes it clear that each product is different from the others. And in accordance with the intention of the parties who were instrumental in the preparation and wording of the tax exemption certificate of petitioner, we must apply the term and provisions thereof as intended. Consequently, we are of the opinion that the tax exemption privilege of petitioner under Republic Act No. 35 and Republic Act No. 901 (reinstatement of the exemption) included venetian windows which were intended to be the same as glass jalousies.

Coming to the second issue which involves the 3% contractor's tax sought to be imposed by respondent under Section 191 of the National Internal Revenue Code for the installation of petitioner's manufactured products, this question has already been foreclosed by the case of Coll. v. Eternit Corp., 105 Phil. 565. The Supreme Court, in affirming the decision of this Court, held that:

> "We agree to the above reasoning and conclusions of the Court of Tax Appeals, in holding that the cost of the products installed should be free from tax under the exemption granted by Republic Act No. 901, but refusing the claim of the corporation for exemption from paying the contractor's tax on the cost of the installation of sheets they had sold and delivered, because in this latter respect it is performing the work of a contractor, which is subject to another tax provisions. <u>The law granting the exemption does not state exemption for the act of installation of its manufactured products, and under the rule of strict interpretation of laws granting tax exemptions, the sums received for installation can not be included in the general exemption. Such sums, therefore, must be held subject to contractor's tax.</u>" (Underscoring ours.)

In conclusion, the appealed decision is reversed insofar as it holds petitioner liable for deficiency sales tax, surcharge and compromise penalty in the sum of ₱60,075.43. However, petitioner, as a contractor, is liable for the amount of ₱852.92, computed as follows:

Total gross receipts derived from the installation of the products sold - - - - - - - - - -	₱22,747.33
3% contrator's tax due thereon - -	682.42
25% surcharge - - - - - - - - - - - -	170.50
Total of tax and surcharge - - - -	₱ 852.92

The compromise penalty of ₱200.00, as far as this part of the appealed decision is concerned, can not be imposed unless petitioner consents thereto. If respondent believes that petitioner has incurred a criminal liability for violation of the Revenue Code, he is free to institute the corresponding criminal proceedings, but for him to impose a penalty without its consent is clearly illegal and unauthorized. (Coll. v. U.S.T., 104 Phil. 1062; Dy Peh v. Coll., 28 SCRA 216; Comm. v. Itogon-Suyoc Mines, Inc. 28 SCRA 867)

WHEREFORE, petitioner Luxaire Products, Inc., is hereby ordered to pay respondent Commissioner of Internal Revenue the amount of ₱852.92, representing deficiency contractor's tax and surcharge. No costs.

SO ORDERED.

Quezon City, September 30, 1971.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge