REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MITHI NG BAYAN COOPERATIVE
MARKETING ASSOCIATION, INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 79

J. ANTONIO ARANETA, Collector
of Internal Revenue,
Respondent.

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

D E C I S I O N

The petitioner, Mithi ng Bayan Cooperative Marketing Association, Inc., of Sta. Cruz, Laguna, owns a rice mill. From the third quarter of 1952 to the fourth quarter of 1953, the total market value of rice milled by petitioner, including the by-products, amounted to ₱143,220.92. Claiming that it is a cooperative marketing association organized under Act No. 3425, as amended, and therefore exempt from taxation as owner or operator of a rice mill, it did not pay the fixed and percentage taxes imposed by Sections 182 and 189 of the Revenue Code. On the other hand, after due investigation, respondent found that petitioner was not operating in accordance with Act No. 3425. Accordingly, an assessment was made against petitioner for the sum of ₱3,590.53, as fixed and percentage taxes, plus a surcharge of 25%, itemized and computed as follows:

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2% of ₱143,220.92, market value of rice and its by-products removed from petitioner's rice mill ------------	₱2,864.42
25% surcharge -----------	716.11
Fixed tax for 1953 ------	10.00
Total -----------------	₱3,590.53

In addition to the sum of ₱3,590.53, petitioner was also asked to pay the sum of ₱100.00 as penalty, in extrajudicial settlement of its violations of Sections 178, 182, 183 and 189 of the Revenue Code, penalized under Sections 208 and 209.

Having failed to secure a reconsideration of the decision of respondent, petitioner instituted this appeal on February 14, 1955. Before the case could be heard on the merits, respondent sought to enforce collection of the sum of ₱3,690.53. Petitioner filed a petition to enjoin collection of said amount, pursuant to Section 11 of Republic Act No. 1125, but this Court denied the petition in its resolution of April 23, 1956 for failure of petitioner to satisfy the requirements for the suspension of the collection of the amount claimed by the Government. The said amount of ₱3,690.53 was paid under protest in two installments, the first on June 20, 1956 and the second on July 10, 1956. (Exhs. I & I-1.) Petitioner's appeal now seeks the refund of said amount.

Petitioner claims exemption from the fixed and percentage taxes imposed by Sections 182 and 189 of the Revenue Code pursuant to Section 48 of

Act No. 3425, as amended by Republic Act No. 702, which provides:

> "Sec. 48. Exemptions.- Any association organized under this Act shall not be subject to the payment of the merchant's sales tax, the income tax, and all other percentage taxes of whatever nature and description.
>
> "Any exemption under any and all existing laws applying to agricultural products in the possession or under the control of the individual producer, shall apply similarly and completely to agricultural products delivered by the farmer members to the association, or which are in the possession or under the control of the association."

In order to be entitled to exemption from the merchant's sales tax, income tax and other percentage taxes of whatever nature and description, a cooperative marketing association must be organized under Act No. 3425. What are the requirements in order that an association may be organized under said Act?

Sections 1, 3 and 7 of Act No. 3425, provide as follows:

> "Section 1. Title and declaration of purposes. - This Act shall be known and may be cited as 'The Cooperative Marketing law'. Every association incorporated under this law shall be operated primarily for the benefit of the members thereof, as producers, and should aim to promote, foster, and encourage the intelligent and orderly marketing of agricultural products between producers and consumers as direct as can be efficiently done; and to stabilize the marketing of agricultural products.
>
> x x x
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> "Sec. 3. Who may organize. Fifteen or more persons, a majority of whom are

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> residents of the Philippine Islands, engaged in the production of agricultural products, may form a cooperative marketing association, with or without capital stock, under the provisions of this Act, by the adoption of and filing with the Bureau of Commerce and Industry articles of incorporation and by-laws in the same manner as is required of other corporations organized under the Corporation Law, Act Numbered One Thousand Four Hundred Fifty-Nine as amended, except as herein provided.
>
> "Sec. 7. Who may be members. - Under the terms and conditions prescribed in the by-laws adopted by it, an association shall admit as members, or issue common stock only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessor and landlord who received as rent all or part of the crop raised on the leased premises."

Section 3 requires that a cooperative marketing association must be organized by persons engaged in the production of agricultural products, and Section 7 provides that only persons engaged in the production of agricultural products may be admitted as members. Section 1 provides that the association must be operated primarily "to promote, foster, and encourage the intelligent and orderly marketing of agricultural products between producers and consumers as direct as can be efficiently done; and to stabilize the marketing of agricultural products." In short, in order that an association may be organized under Act No. 3425, it is essential that it be organized by persons and be composed of members engaged in the production of agricultural products, and that it be operated primarily for marketing of the products of its members. Let us inquire whether petitioner has complied with these requirements.

The evidence shows that while the organizers are "engaged in agricultural production" (Exh. G, p. 104, BIR records), the by-laws of petitioner, which has not been amended, provides that any "person, residing in the municipality in which the association is organized, who pays a membership fee of ₱1.00 and buys at least a share of stock in his name, may become a member of the association" (Exh. A-1, p. 85, BIR records). In other words, a person not engaged in agricultural production may be admitted as a member. With respect to the rice mill owned by petitioner, no evidence has been presented to show that it is operated primarily to promote, foster, encourage and stabilize the merketing of the rice belonging to the members. On the contrary, it is obvious from the stipulation of facts dated December 11, 1957 submitted by the parties that the rice milled belonging to the members (assuming that they were all members of petitioner as insisted by its counsel) were intended for their own consumption and not for sale by the association for the benefit of its members. Clearly, petitioner can not be considered as having been organized in accordance with Act No. 3425, and its claim for exemption under Section 48 of said Act can not be sustained.

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There is another point which militates against petitioner's claim for exemption. Section 189 of the Revenue Code, which imposes a tax of 2% of the gross selling price or market value of rice milled by an operator of a rice mill, provides -

> "In case the raw materials are manufactured or milled in pursuance of a contract where the factory, central, or mill receives a share of the finished products, the tax on the share pertaining to the planter or owner of the raw materials shall be charged to the planter or owner and withheld by the proprietor or operator of the factory, central, or mill and paid by him to the Collector of Internal Revenue."

Where the palay milled by an operator of a rice mill belongs to another person, the law requires that the tax shall be charged to the owner of the palay and withheld by the operator of the mill to be paid by him to the Collector (now Commissioner) of Internal Revenue.

> "In case palay or corn is milled for compensation, the tax of (2%) based upon the market value of the rice or corn milled, including the by-products, shall be charged to the owner thereof and withheld by the operator or proprietor of the rice or corn mill. The compensation received for milling rice or corn is not subject to the tax prescribed in section 189 of the National Internal Revenue Code apart from the gross value of the rice or corn milled. In other words, although the compensation received for milling is not subject to tax, the same is not deductible from the gross value of the rice or corn milled on which the tax is to be computed." (Sec. 4, Revenue Regulations No. 7, 39 O.G. 919.)

In the case of herein petitioner, the palay milled by it belonged to its supposed members. Therefore, the tax on the rice milled is due and collect-

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ible from the owners and not from petitioner, although it is required to withhold the tax and to pay the same to respondent. The exemption provided in Section 48 of Act No. 3425 is granted solely in favor of cooperative marketing associations organized under said Act. The said exemption does not extend to the members of a cooperative marketing association or to other persons dealing with it. The exemption from taxation of a corporation does not carry with it the exemption of its stockholders. (Manila Gas Corporation v. Collector of Int. Rev., 62 Phil. 895.) It follows that the exemption of petitioner under Section 48 of Act No. 3425, even on the assumption that it is entitled to such exemption, does not extend to the persons who had their palay milled in petitioner's rice mill.

We now come to the claim for refund of the sum of ₱100.00 collected by respondent and paid by petitioner as "compromise penalty" for petitioner's supposed violations of Sections 178, 182, 183 and 189 of the Revenue Code, penalized under Sections 208 and 209 of said Code. Respondent maintains that the collection of said amount is in accordance with law and therefore the claim for its refund should be denied. The arguments in support of the proposition that respondent has power or authority to impose and collect "compromise penalties" have been fully considered and disposed of in University of Sto. Tomas v. Collector of Internal Revenue, C.T.A. No. 10, Sept. 10, 1956, and Ben L. Chuy and Lee Sin v. Collector of Internal Revenue, Civil Case No. 12823 (Pangasinan), decided on July 16, 1958. We do not deem it necessary to restate here our opinion in said cases. However, we feel that two other arguments advanced by counsel for respondent in opposing the claim for refund in the instant case deserve consideration. It is alleged that this Court "has no jurisdiction to pass upon or refund the amount collected by the Collector of Internal Revenue as compromise penalty in extrajudicial settlement of violations of the Tax Code", and that since "the petitioner voluntarily paid the aforesaid amount of ₱100.00 as compromise penalty", the said amount can not be refunded.

Certain decisions of this Court have been cited in support of the view that it has no jurisdiction to pass upon cases involving the exercise by respondent of the power to compromise under Section 309 of the Revenue Code. This is a mistake. What was meant was simply that this Court has no power to compel a taxpayer to enter into a compromise agreement with respondent. In all the cases decided by us where the question was raised, we invariably assumed jurisdiction and held that the Collector of Internal Revenue has no power to impose and collect the so-called "compromise penalties" in the absence of a compromise agreement validly entered into between the taxpayers and the Collector.

Counsel for the Government apparently admit the jurisdiction of this Court over cases involving penalties imposed and collected by respondent. We quote from their memorandum:

> "It is significant to note in this connection that under paragraph (1) of section 7 of Republic Act No. 1125 the Court of Tax Appeals has jurisdiction to review 'decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, <u>penalties imposed in relation thereto</u> x x x.' This particular provision in effect recognizes the authority of the Collector of Internal Revenue to impose and collect penalties." (Page 26, Memorandum for Respondent.)

If, as alleged, the "compromise penalty" collected from petitioner in this case comes under "penalties imposed in relation thereto" in Section 7 of Republic Act No. 1125, we see no reason for the claim that this Court has no jurisdiction over cases involving the collection by respondent of the so-called "compromise penalties". Section 7 of Republic Act No. 1125 is precisely the section that defines the jurisdiction of this Court.

The other ground for opposing the refund of the sum of ₱100.00 is that it was voluntarily paid. Counsel for respondent have apparently overlooked the evidence and their own admissions.

When this Court denied the petition for the issuance of a writ of preliminary injunction to

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suspend collection of the fixed and percentage taxes, surcharge and "compromise penalty" in the sum of ₱3,690.53, petitioner paid the amount under protest. The two official receipts issued by respondent (Exhs. I and I-1) both contain the notation "paid under protest". The amended answer filed by counsel for respondent contains the following admission: "That he admits the allegation in paragraph 6 thereof that respondent persisted and continuously demanded the payment of the sum of ₱3,690.53 from the petitioner x x x." Finally, from the very memorandum of counsel for respondent, an admission is made that the "compromise penalty" was imposed. Under these circumstances, to hold that there was a compromise agreement validly entered into between petitioner and respondent and that the sum of ₱100.00 was paid voluntarily as a consequence of such compromise agreement, would be a mockery. The dividing line between a voluntary act and an act which results from imposition, compulsion or threat by another is not so dim as to be imperceptible.

May the collection of the said amount be justified as a penalty imposed by the Collector of Internal Revenue under Sections 208 and 209 of the Revenue Code? We have held that the Collector has no such power. (Ben L. Chuy and Lee Sin v. Collector of Internal Revenue, supra, citing Murphy v. Trinidad, 44 Phil. 649.) Therefore, whether under Section 309 or under Sections 208 and 209, the collection of the said "compromise penalty" in the sum of ₱100.00 is unauthorized and illegal.

Counsel for respondent have correctly stated the rule that "payment made in <u>compromise settlement</u> of criminal liability for violation of the Tax Code are not recoverable notwithstanding a subsequent decision holding that there is no tax due." Here again, they have overlooked the requirement that there be a <u>compromise settlement</u> in order that any payment made thereunder may not be refundable. In this case, there is no such compromise settlement because petitioner refused to entertain respondent's <u>persistent demands</u> for settlement by compromise.

FOR THE FOREGOING CONSIDERATIONS, we are of the opinion that the sum of ₱3,590.53, representing the fixed and percentage taxes, plus surcharge, was validly collected from petitioner as operator of a rice mill, and its claim for refund thereof must be, as the same is hereby, denied. With respect to the sum of ₱100.00 as compromise penalty, the collection thereof being unauthorized and illegal, respondent is ordered to refund the said amount, plus interest at the legal rate. No pronouncement as to costs.

SO ORDERED.

Manila, August 14, 1958.

R M Umali
ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

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