REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

FELIX GAERLAN,
Petitioner,

- versus -

C.T.A. CASE NO. 615

MELECIO R. DOMINGO, in his capacity as Acting Commissioner of Internal Revenue,
Respondent.

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

DECISION

This is an appeal by the petitioner from the decision of the respondent dated October 8, 1958, holding him liable, as fish producer, for the payment of privilege and percentage taxes, surcharge and penalties amounting to ₱727.20.

The facts are stated in the following stipulation submitted by the parties on December 16, 1959:

"1. That the petitioner, Felix Gaerlan, is of legal age, Filipino citizen, and a resident of Daet, Camarines Norte; the respondent is the duly appointed Commissioner of Internal Revenue;

"2. That in 1951 and 1952, inclusive, the petitioner was engaged in business of catching fishes in the open sea and selling the fishes caught to the public;

"3. That the gross sales or receipts derived by the petitioner out of his fishing venture in 1951 and 1952 totaled the sum of ₱7,168.00;

"4. That the petitioner did not pay any privilege tax (C-14) or percentage (sales) taxes on his fishing venture during the abovementioned period;

"5. That sometime in February, 1957, the petitioner received a letter of demand dated January 7, 1957 from the Regional Director of the Bureau of Internal Revenue, Regional District No. 5, at Naga City, requiring the petitioner to pay the sum of ₱727.20, computed as follows:

Privilege tax (C-14) for 1951 & 1952 ------------------	₱ 20.00
7% tax due on ₱7,168.00 -------	501.76
25% surcharge -----------------	125.44
Compromise for late payment ---	30.00
Compromise for violation of Bookkeeping Law ----------	50.00
TOTAL AMOUNT DUE	₱727.20

"6. That the petitioner contested the correctness and legality of the said letter of demand mentioned in paragraph 5 hereof contending that a fisherman and/or fish operator is not a producer as contemplated under the provisions of the Tax Code, as amended;

"7. That a waiver of Statute of Limitations was duly executed and signed by the petitioner on August 28, 1957, duly accepted and approved by the respondent on October 1, 1957.

"8. That the petitioner's request for reconsideration of the Regional Director's letter of demand mentioned in paragraph 5 hereof was denied by the latter, which denial was appealed by the petitioner to the Commissioner of Internal Revenue;

"9. That on October 8, 1958, the respondent affirmed the decision of the B.I.R. Regional Director of Naga City and reiterated the demand for payment of the sum of ₱727.20 representing the privilege and percentage taxes, surcharge and compromise penalties, for engaging in business as producer of fish for the years 1951 and 1952, inclusive;

"10. That the petitioner appealed the respondent's decision mentioned in paragraph 8 hereof to this Honorable Court on January 9, 1959 and that the respondent filed his answer thereto on February 11, 1959."

The only issue presented to us for resolution in this case is whether or not petitioner, who is a fisherman or fishing operator, was a producer of fish in 1951 and 1952 subject to the payment of the 7% tax prescribed in Section 186 of the National Internal Revenue Code.

81

The provision of the Tax Code, upon which respondent justifies the imposition of the 7% tax in question, provides:

> "Sec. 186. Percentage tax on sales of other articles. - There k shall be levied, assessed, and collected once only on every original sale, barter, exchange, and similar transaction either for nominal or valuable consideration to transfer ownership of, or title to, the articles not enumerated in sections 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, producer, or importer; x x x" (As amended by Rep. Act No. 588.) (Underscoring supplied.)

The above-quoted provision was subsequently amended by Congress. Let us examine and analyze the amendatory acts. These enactments are determinative of the issue presented in this case. Republic Act No. 588 was approved and became effective on September 22, 1950. As expressly provided therein, the increased tax provided therefore shall continue in force and effect until December 31, 1952, after which period the original rates of tax shall again be in force. However, before the expiration of this date, Congress enacted Republic Act No. 726 (approved on June 6, 1952), extending the force and effectivity of the increased tax provided for in Republic Act No. 588 to December 31, 1953, after which "the original rate of tax shall again be enforced." On June 20, 1953, Republic Act No. 969 took effect and amended subparagraph (b) of the first paragraph of Section 188 of the Tax Code, as amended, to read as follows:

> "(b) Agricultural products and the ordinary salt when sold, bartered, or exchanged in this country by the producer or owner of the land where produced, as well as fish and its by-products when sold, bartered or exchanged by the fisherman or fishing operator, whether in their original state or not."

Subsequently, Republic Act No. 1612 was passed and became effective on August 24, 1956. It amended Section 186 of the National Internal Revenue Code to read as follows:

> "Sec. 186. Percentage tax on sales of other articles. - x x x And provided, further, That with respect to fish and its by-products when sold, bartered, or exchanged by the fisherman or fishing operator whether in their original state or not, a tax equivalent to five per centum only of the selling price or gross value in money shall be levied, assessed, and collected."

Republic Act No. 1856, which took effect on June 22, 1957, further amended Section 188 of the Tax Code, to read as follows:

> "Sec. 188. Transactions and persons not subject to percentage tax. - In computing the tax imposed in sections one hundred eighty four, one hundred eighty-five and one hundred eighty-six, transactions in the following commodities shall be excluded.
>
> (a) x x x x x
>
> (b) Agricultural products and the ordinary salt whether in their original form or not when sold, bartered, or exchanged in this country by the producer or owner of the land where produced, as well as all kinds of fish and its by-products when sold, bartered, or exchanged by the fisherman or fishing operator whether in their original state or not."

Finally, Republic Act No. 2025, which took effect on June 27, 1957, amended section 186 of the Tax Code so as to read as follows:

"Sec. 186. Percentage tax on sales of other articles. - There shall be levied, assessed, and collected once only on every original sale, barter, exchange, and similar transaction either for nominal or valuable considerations, intended to transfer ownership of, or title to, the articles not enumerated in sections one hundred and eighty-four and one 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 subject to tax under this section are manufactured out of materials likewise subject to tax under this section and section one hundred and eighty-nine, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles."

A perusal of the foregoing various enactments compels the observation that a fisherman or fishing operator is not a producer liable for the 7% tax prescribed in Section 186 of the Tax Code, as amended by Republic Acts Nos. 588 and 726. It will be noted, that the Explanatory Note of House Bill No. 3870, which later became Republic Act No. 969, discloses that "under existing practice, sales tax is paid on the gross receipts of fish sold" x x x and that, "the remedy is to exempt the fishing industry from the payment of sales tax on fish and fish products." If, as argued by respondent, prior to enactment of said Republic Act No. 969, the fisherman or fishing operator is included in the term "producer" found in Section 188 of the Tax Code, as amended, said "explanatory note" should have used the expression, under existing law instead of the phrase, "under existing practices." It is precisely because of the then existing but illegal practice of exacting payment of sales tax on gross receipts of fish sold that Republic Act No. 969, which expressly exempts from the payment thereof, was enacted. And the fact that it was the practice of the Bureau to tax the sales of fish based on the gross receipts of the producers thereof prior to June 20, 1953, does not justify the imposition of privilege and percentage taxes on receipts derived by petitioner on his fishing venture during the years 1951 and 1952.

Moreover, it is the general rule in the interpretation of statutes levying taxes or duties not to extend their provisions beyond the clear import of the language used. In case of doubt, such statutes are construed against the Government and in favor of the citizen, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly declare. (Manila Railroad Co. v. Collector, 52 Phil. 950; Luzon Stevedoring Co. v. Trinidad, 43 Phil. 803.)

Finding that petitioner is not liable for privilege and percentage taxes on the receipts he derived from his fishing venture during the years 1951 and 1952, it follows that he is equally not liable for surcharge and penalties.

WHEREFORE, the decision appealed from is hereby reversed, without pronouncement as to costs.

SO ORDERED.

Manila, March 16, 1960.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge Roman M. Umali dissents in a separate opinion.

85

FELIX GAERLAN,
Petitioner,

- versus - C.T.A. CASE NO. 615

MELECIO R. DOMINGO, in his capacity as Acting Commissioner of Internal Revenue,
Respondent.

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

DISSENTING OPINION

I dissent.

The majority opinion states that a fisherman or fishing operator is not a producer within the meaning of Section 186 of the Revenue Code, and therefore not subject to the percentage tax prescribed in said section even prior to the amendment of Section 188(b) providing for the exemption of fish and its by-products when sold, bartered, or exchanged by the fisherman or fishing operator whether in their original state or not. The opinion, to my mind, gives a very restricted meaning to the term "producer".

The term "producer" does not differ essentially from "manufacturer", except that it is more commonly used to denote a person who raises agricultural crops and puts them in a condition for the market. (50 C. J. 631.) The more common and generally accepted meaning of "producer" is broader in scope. It includes a person who makes an article or commodity available for the satisfaction of human wants.

The term "produce", as a verb, means "to make, or to create so as to be, available for satisfaction of human wants." The term "produce", as a noun, means "that which is produced, brought forth, or yielded; product; yield." (Webster's New Collegiate Dictionary.) If "produce" means "to make available for the satisfaction of human wants," it follows that a "producer" means a person who makes an article or commodity available for the satisfaction of human wants; hence, it is not limited to one who manufactures or creates an article or commodity and to those who raise agricultural crops. A person who gathers sand and gravel from river beds or from the seashore and sells them is a "producer". And a person who gathers forest products or cuts timber from the forests for sale, without manufacturing such articles, is also a producer. Such person does not create or manufacture sand and gravel or forest products, but he is nonetheless a producer because he makes available such articles for public consumption, i. e., for the satisfaction of human wants. The same must be true in the case of a person who gathers or catches fish from the sea; he does not, it is true, create or manufacture the fish, but he makes it available for human consumption by catching and selling the same. I can not perceive any distinction, for tax purposes, prior to the enactment of Rep. Act No. 969, between a person who gathers sand and gravel, or one who cuts or gathers forest products, from a person who is engaged in catching fish from the sea. They have all been considered producers under Section 186 of the Revenue Code from the date it was enacted in 1939.

It is claimed that the amendment of Section 188 (b) providing for exemption from the sales tax of fish and fish by-products when sold by fishermen is to correct an illegal practice of the Bureau of Internal Revenue. I think this is a misstatement of the congressional purpose. To quote from the explanatory note of the bill which became Rep. Act No. 969:

> "The fishing industry has been clamoring during the last few years up to the present time about its losses in its operations. In order to enable the industry to survive and to continue its operations which are vital in the furtherance of the food production campaign of the Government and to save as much dollars as possible by avoiding importation of canned and salted fish, the remedy is to exempt the fishing industry from the payment of sales tax on fish and fish by-products." (Explanatory Note of H.No. 3870.)

FOR THE FOREGOING CONSIDERATIONS, I vote to affirm the decision of respondent.

R. M. Umali
ROMAN M. UMALI
Associate Judge

88