Lit.

MARLI PLYWOOD & VENEER CORPORATION,
Petitioner,

December 19, 1958

- versus -

C.T.A. CASE NO. 441

JOSE ARAÑAS, as Collector of Internal Revenue,
Respondent.

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D E C I S I O N

This is an appeal from a decision of the respondent Collector (now Commissioner) of Internal Revenue denying the petitioner's claim for refund of ₱4,774.58 representing compensating tax paid on an importation of a "Yanmar" Marine Diesel Engine and air compressor contained in seven (7) cases.

The facts of the case are not disputed and are summarized hereunder. In a letter dated June 24, 1953, the Secretary of Finance issued a certificate of tax exemption in favor of Mr. M. R. Lacson in pursuance of Republic Act No. 901 (Annex "A", Petition for Review) in relation to the latter's manufacture of plywood and veneer from Philippine woods. This certificate was however modified on January 17, 1955, in the sense that the full exemption privilege was made effective until December 31, 1958, and the diminishing exemption until June 20, 1962 (Exhibits "A" & "1", pp. 26 & 33-34, C.T.A. rec.)

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Subsequently, the business of M. R. Lacson in the manufacture of plywood and veneer was acquired by the petitioner, a domestic corporation with office and postal address at 626 Apelo Cruz, Pasay City and organized in accordance with law for the aforesaid purpose. On October 21, 1955, the Secretary of Finance authorized and approved the subrogation of the petitioner to the rights of M. R. Lacson in the exercise of the tax exemption privilege (Exhibit "2", p. 35, C.T.A. rec.). The plywood factory of the petitioner is located in Bayawan, Oriental Negros, while its selling and administrative offices are located at 626 Apelo Cruz, Pasay City (par. 3, Petition for Review; par. 1, Answer).

In 1956, petitioner imported a "Yanmar" marine diesel engine and air compressor contained in seven (7) cases valued at $24,493.00 (Exhibit "G", p. 2, B.I.R. rec.). Upon arrival thereof in Manila aboard the S/S "Mindanao", the petitioner requested for the release of the same from customs custody without payment of taxes and duties thereon. This request was denied on September 20, 1956 (Exhibit "3", p. 36, C.T.A. rec.) and the petitioner's request for reconsideration thereof (Exhibit "4", pp. 37-38, C.T.A. rec.) was likewise denied. (Exhibit "5", p. 39, C.T.A. rec.) Meanwhile, the merchandise was transhipped to Cebu City. On October 9, 1956, the petitioner paid to the customs office at Cebu City the sum of ₱22,405.01 covering customs duties, special import tax, compensating tax and other charges on said engine (see Annex "C", petition, p. 7, C.T.A. rec.) which payment is evidenced by Official Receipt No. 427851-J issued on the same day. (Exhibit "E", p. 29, C.T.A. rec.)

Thereafter, the petitioner filed with the respondent on November 29, 1956 a written request for the refund of the compensating tax paid in the sum of ₱4,774.58 (Annex "D", Petition) which request was however denied on August 20, 1957 (Annex "E", Petition). In a letter dated September 23, 1957 (Annex "F", Petition), the petitioner requested for a reconsideration of this decision which request was also denied by the respondent in a letter dated October 30, 1957 (Annex "G", Petition). Hence, the appeal to this Court.

There is no dispute as to the fact that the petitioner is actually engaged in a new and necessary industry particularly in the manufacture of veneer and plywood from Philippine wood and by virtue of which, it has been granted exemption from payment of taxes directly payable by it. It is also admitted that the "Yanmar" marine diesel engine and air compressor in question, which were imported by the petitioner, were fitted in the vessel "Marli II" (Exhibits "C", "D", and "F") owned by it. This vessel is used in transporting the finished products of the petitioner from its factory in Bayawan, Oriental Negros to Cebu or Manila for sale or distribution and in the return trip thereof, fuel and other stocks needed by the factory.

The only issue raised in this case is whether or not the merchandise in question consisting of a "Yanmar" marine diesel engine and an air compressor is exempt from the payment of compensating tax.

The petitioner argues that it is entitled to the tax exemption on said merchandise on the ground that the "Yanmar" marine diesel engine and air compressor which were fitted into the motor boat "Marli II" are machineries necessarily and indispensably connected with the operation of the new and necessary industry to which the petitioner is dedicated. The respondent, on the other hand, argues that the petitioner is not entitled to such exemption on the theory that the tax in question is not in respect to the plywood industry and for this purpose cites the case of Collector of Internal Revenue v. Marcelo Steel Corporation & Court of Tax Appeals. (G. R. No. L-9248, October 31, 1956.)

The law involved in this case is found in Section 1, Republic Act No. 901, which states as follows:

> "x x x Any person, partnership, company or corporation who or which, subsequent to the approval of this Act, shall engage in a new and necessary industry shall be entitled to exemption until December thirty-one, nineteen hundred and fifty-eight from payment of taxes, directly payable by such person, partnership, company or corporation in respect to said industry x x x."

To come within the orbit of the tax exemption privilege provided by the afore-cited rule, the tax must not only be "directly payable", by the corporation, but it must also be "in respect to said industry". The limitation is significant. The restrictive language of the statute evidently excludes from the tax exemption privilege the activities or transactions not indispensable to the existence and operation of the industry. It thus must render taxable these transactions which are merely related thereto incidentally or for convenience.

In the light of the foregoing rule, the contention of the petitioner that the machineries in question are tax exempt because they were installed in the vessel "Marli II" and as such essential to the existence of its plywood industry, is, we believe, untenable. The plywood factory of the petitioner, can exist and operate independently of the operation of "Marli II". The vessel is not necessary and indispensable to the existence of the plywood industry. Taken singly, the plywood factory is an industry different and separate from transportation activity to which the "Marli II" is dedicated. The transportation activity of the vessel may supplement the industry or manufacture of veneer and plywood in the sense that the former furnishes convenience in the operation of the latter, but it is not indispensable thereto. The petitioner can manufacture veneer and plywood even without the "Marli II", as in fact it did prior to the fitting of said vessel. This is borne out by the fact that from 1953 up to the latter part of

1956, a period of almost three years, the petitioner operated its factory and manufactured veneer and plywood without said vessel.

The foregoing application of Section 1, of Republic Act No. 901 is in consonance with the doctrine laid down in the case of Collector of Internal Revenue vs. Marcelo Steel Corporation and Court of Tax Appeals (G. R. No. L-9248, October 31, 1956). The mere fact that that case treats of a gift tax while the present case involves compensating tax is a distinction which has no consequence. More important is its ratio decidendi which controls in the instant case. In that case, the Supreme Court held that "the acquisition of additional contiguous lots by donation to the corporation for the expansion of its business activities, after the operation has lasted for several years, no longer falls under the category" of being necessary and essential to the establishment of its original plant. Similarly, in this case, we hold that the operation of the vessel "Marli II", as a means of transporting petitioner's finished products, long after the factory was in operation, is not indispensable to the operation of its industry. It follows that the petitioner is not entitled to tax exemption on the said machineries under Section 1, of Republic Act No. 901.

Moreover, it is a well recognized rule that, to be entitled to the privilege of tax exemption, the grant must be clear and explicit. It can not be predicated upon vague implications. The language of the statute must be too plain as to leave no doubt as to its meaning. For the claim of tax exemption by virtue of a statute, must be construed strictissimi juris against the person claiming such exemption. (Govt. of P.I. vs. Monte de Piedad, 35 Phil. 42; Asiatic Pet. Co. vs. Llanes, 49 Phil. 466; House vs. Posadas, 53 Phil. 338; Phil. Tel. & Tel. Co. vs. Collector, 53 Phil. 639.)

We are therefore of the opinion that the claim for the exemption from the compensating tax of the "Yanmar" marine diesel engines and air compressor in question is without merit, and so hold accordingly.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of the Collector (now Commissioner) of Internal Revenue denying the claim for refund of the sum of ₱4,774.58 paid as compensating tax is affirmed, with costs against the petitioner.

SO ORDERED.

Manila, December 19, 1958.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTIN M. LUCIANO
Associate Judge

Aff'd.-G.R. L-14930, Sept. 30, 1960.

ROMAN M. UMALI
Associate Judge

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