Not appealed by B.I.R.
decision final.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

CALAMBA SUGAR PLANTERS'
COOPERATIVE MARKETING
ASSOCIATION, INC.,
Petitioner,

- versus -

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

C.T.A.
CASE NO. 216

Jan. 5, 1957

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DECISION

The petitioner Calamba Sugar Planters' Cooperative Marketing Association, Inc., is a non-stock and non-profit corporation with principal office located at Calamba, Laguna, organized by planters of sugar cane in that area on October 23, 1953, in accordance with the provisions of Act No. 3425, as amended by Republic Act No. 702. Prior to its incorporation, the planters-members undertook individually the milling of their sugar cane, and for that purpose, they executed individually milling contracts with the Canlubang Sugar Estate which operates a sugar central in Laguna. However, after the incorporation of the cooperative marketing association and in accordance with the purposes for which it was organized and created, the members thereof turned over to the petitioner the entire management, production and milling of their respective sugar cane by means of a "Marketing Agreement

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and Power of Attorney", and, since then, the cooperative association had been undertaking these activities in behalf of its members pursuant to the provisions of said agreement and of Act No. 3425, as amended. But, in spite of the organization and incorporation of the cooperative marketing association, the sugar produced by its members continued to be milled by the Canlubang Sugar Estate because the petitioner is not an owner or operator of any sugar mill or central. Under this arrangement for milling of the sugar cane, the Canlubang Sugar Estate retains a share of the finished products and the petitioner receives the remaining portion thereof that corresponds to the farmers or planters as owners of the sugar cane milled.

On January 27, 1955, the petitioner wrote the respondent Collector of Internal Revenue requesting for exemption from the payment of the 2% tax prescribed by Section 189 of the National Internal Revenue Code on its share of the finished products milled by the central from the sugar cane delivered by the petitioner to the Canlubang Sugar Estate. The said request for exemption was made pursuant to and by virtue of Republic Act No. 702 which amended Section 48 of Act No. 3425. Pending consideration of the said request, the Canlubang Sugar Estate, owner and operator of the sugar central whih milled petitioner's sugar cane, deposited with the Deputy Provincial Treasurer at Calamba, Laguna, the total amount of ₱39,345.50 to cover the 2% miller's tax on the share of the milled sugar received by the Calamba Sugar Planter's Cooperative Marketing Association, Inc.

On July 23, 1955, the respondent denied petitioner's request for exemption, and on August 8, 1955, the petitioner filed its motion for reconsideration which was also denied. On December 8, 1955, the petitioner filed its claim for the refund of the amount of ₱39,345.50 deposited as 2% miller's tax which was also denied by the respondent. Hence, the present appeal.

The only issue in this case, as correctly stated by the respondent, is whether or not the petitioner can claim exemption from the payment of the 2% tax prescribed by section 189 of the National Internal Revenue Code by virtue of the provisions of section 48 of Act No. 3425, as amended by Republic Act No. 702.

The pertinent provisions of Section 189 of the Tax Code read as follows:

> "Sec. 189. Percentage tax upon proprietors or operators of rope factories, sugar centrals, rice mills, coconut oil mills, corn mills, and desiccated coconut factories. - Proprietors or operators of x x x x sugar centrals, x x x shall pay a tax equivalent to two per centum of the gross value in money of all the x x x x sugar, x x x manufactured or milled by them, including the by-products of the raw materials from which said articles are produced or manufactured, such tax to be based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse; x x x"

"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 planters 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." (Underscoring supplied).

And Section 48 of Act No. 3425, as amended by Republic Act No. 702 on May 9, 1952, provides as follows:

"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 exemptions 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." (Underscoring supplied.)

There is no controversy between the petitioner and the respondent that the former is exempt from the payment of the merchant's sales tax, income tax and all other percentage taxes of whatever nature and description as provided by Section 48 of Act No. 3425, as amended by Republic Act No. 702. The parties are also in complete agreement that the tax prescribed by Section 189 of the Tax Code is a percentage tax and as a matter of fact, the respondent does not deny outright to the petitioner its right to claim exemption from the 2% tax imposed by Section 189 of the Tax Code.

However, the respondent claims that in the case at bar, the "petitioner is not entitled to exemption because it cannot rightfully claim exemption from a tax to which it is not directly and personally liable." The question therefore narrows down to whether or not, under the provisions of the second paragraph of Section 189 of the Tax Code hereinabove quoted, the petitioner is directly liable for the payment of the 2% tax.

The petitioner contends that under the second paragraph of Section 189, the 2% tax is imposed on both the planter and the miller. And for the tax pertaining to the planter's share of the finished products, the planter is directly liable, and in the instant case, the petitioner by virtue of the Marketing Agreement and Power of Attorney executed in its favor. On the other hand, the respondent contends that the 2% tax in question is essentially a miller's tax and is therefore a tax on the Central which is owned and operated by the Canlubang Sugar Estate, and the fact that the tax is ultimately shifted by the Central to the petitioner does not convert it into a tax upon the latter.

We find the contention of the petitioner well-founded and meritorious. It is true as contended by the respondent that the percentage tax levied by Section 189 of the Tax Code is essentially a miller's tax and is imposed on and assessed upon proprietors or operators of rope factories, sugar centrals, rice mills, coconut oil mills, corn mills, and desiccated coconut factories, and as a general rule therefore, only proprietors and operators of mills or factories are subject to and liable for the payment of the 2% percentage tax. However, the second paragraph of the same section provides for an exception which reads: "In case the raw materials are x x x milled in pursuance of a contract where the x x x central x x x receives a share of the finished products, the tax on the share pertaining to the planters x x x of the raw materials shall be charged to the planters x x x and withheld by the proprietor or operator of the x x x central x x x and paid by him to the Collector of Internal Revenue."

To our mind, the law is clear and unambiguous. The words "charged to the planter" as used in the law can only mean that the planter is subject to and directly liable for the payment of the 2% percentage tax on his share of the finished products. Any other interpretation would do violence to the clear context of the law and would be tantamount to judicial legislation. The withholding of the tax by the proprietor or owner of the central and the subsequent payment of the same to the Collector of Internal Revenue is only a method of collecting the tax due and payable on the milled sugar similar to the collection at source of income tax on wages. (Revenue Regulations No. V-8-A, 50 OG 4681, Oct. 1954) and on income paid to non-resident aliens (sec. 53-a, Nat. Int. Rev. Code). In short, the proprietor or operator of the central is merely constituted as the withholding agent of the Collector of Internal Revenue and the planter is the person primarily and directly liable for the payment of the tax on his share of the sugar milled.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the petitioner is hereby declared exempt from the payment of the 2% tax prescribed by Section 189 of the National Internal Revenue Code on its share of the sugar milled by the central of the Canlubang Sugar Estate.

The respondent is hereby ordered to refund to the petitioner the sum of ₱39,345.50 which was withheld as 2% percentage tax under Section 189 of the Tax Code and deposited by the Canlubang Sugar Estate with the Deputy Provincial Treasurer of Calamba, Laguna, without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, January 5, 1957.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge

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