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COURT OF TAX APPEALS
MANILA

October 24, 1962

SILVER SWAN MANUFACTURING COMPANY, INC.,
Petitioner,

- versus -

C.T.A. CASE No. 628

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

X - - - - - - - - - - - - - X

D E C I S I O N

This is an appeal from the decision of the respondent denying petitioner's claim for refund of the amounts of ₱10,137.57 and ₱16,737.39, representing the advance sales tax and sales tax, respectively. (Par. 11, Stipulation of Facts, pp. 35-39, CTA rec., hereinafter referred to as Stifacts)

The petitioner is engaged in business as a manufacturer of soy sauce, worcestershire sauce and canned salted beans. (Par. 1, Stifacts) On February 7, 1957, the petitioner filed two separate applications with the Secretary of Finance for tax exemption of its products under Republic Act No. 901, one for soy sauce and worcestershire sauce, and the other, for canned salted beans, both of which were disapproved on April 24 and June 1, 1957, respectively, because "the manufacture of soy sauce and worcestershire sauce cannot qualify as a new industry," and in the case of canned salted beans, because the total cost of imported raw materials to be used in the manufacture thereof will exceed the maximum allowed by law. (Par. 2, Stifacts; pp. 139-154, BIR rec.)

On August 29, 1957, the petitioner filed a request for reconsideration of the disapproval of its applications for tax exemption. On October 15, 1957, the Secretary of Finance partially reconsidered his decision by granting the petitioner a tax exemption with respect to the manufacture of soy sauce only, but reiterated the disapproval of the application for tax exemption of worcestershire sauce, (Par. 3, Stifacts; pp. 155-160, BIR rec.) and on November 26, 1957, the Secretary of Finance also reiterated the denial of tax exemption with respect to the manufacture of canned salted beans. (Par. 4, Stifacts; p.161, BIR rec.)

The petitioner, in its letters dated December 17 and 19, 1957, both filed on January 9, 1958, requested for further reconsideration of the said denials, and in his two letters both dated March 28, 1958, the Secretary of Finance finally granted the petitioner a tax exemption for the manufacture of worcestershire sauce and canned salted beans. (Par. 5, Stifacts; pp. 162-167, BIR rec.)

Before the approval of petitioner's applications for tax exemption, it imported and received from abroad certain raw materials which were used by it in the manufacture of soy sauce, (Par. 6, Stifacts; pp. 118-119, 131-132, 168-187, BIR rec.) and the petitioner paid the total amount of ₱10,135.57 as advance sales taxes on the said importations. (Par. 7, Stifacts; pp. 16-24, BIR rec.)

For the period from February to July, 1957, inclusive, the petitioner filed the sales tax returns for the sales of its manufactured products, i.e., soy sauce, worcestershire sauce and canned salted beans, as required by Section 183 of the Tax Code, and paid thereon the total amount of ₱16,737.39, as 7% sales tax prescribed in Section 186 of the same Code. (Par. 8, Stifacts; pp. 36-41, 98-101, BIR rec.)

On October 27, 1958, the petitioner filed with the respondent, its claim for refund, dated October 23, 1958, of the sums of ₱12,428.57 and ₱21,940.26, representing the advance sales taxes paid during the period from March 5 to September 30, 1957, and the sales taxes paid during the period from March 11, 1957 to February 4, 1958. (Par. 9, Stifacts; pp. 53-56, BIR rec.) In its letters dated November 11 and 13, 1958, the petitioner amended its claim for refund dated October 23, 1958, by segregating the amounts paid before August 27, 1957 - the date of commencement of petitioner's tax exemption with respect to the manufacture of soy sauce as fixed by the Secretary of Finance - from those paid after said date. (Par. 10, Stifacts; pp. 58-60, BIR rec.)

The respondent, in his letter dated November 14, 1958, which was received by the petitioner on January 19, 1959, denied the latter's claim for refund of taxes paid prior to August 27, 1957 on the ground that they are not legally refundable, whereas, as regards the taxes paid after said date, the same were referred to the City Revenue Officer for verification. Consequently, only the amounts of ₱10,137.57 and ₱16,737.39 representing the advance sales and sales taxes paid before August 27, 1957 are being claimed in the present petition for review. (Par. 11, Stáfácts; p. 65, BIR rec.)

The only issue in this case is whether or not the benefits of tax exemption should retroact to February 7, 1957 - the date of filing of the applications for tax exemption, or only to August 27, 1957 - as fixed by the Secretary of Finance as the date of filing of the request for reconsideration.

The law governing this case is Republic Act No. 901, which revised Republic Act No. 35, entitled "An Act Authorizing the Exemption of New and Necessary Industries From the Payment of the Internal Revenue Taxes," particularly Sections 4 and 9 of said Act, which provide as follows:

> "Sec. 4. The benefits of exemption of new and necessary industries from the payment of all taxes under this Act shall, upon the approval of the application for exemption by the Secretary of Finance, retroact as of the date of the filing of the application for exemption." (Underscoring supplied.)
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> "Sec. 9. Upon receipt of the application by the Secretary of Finance, the date and time of receipt thereof shall be noted and if it appears that the industry or factory is exemptible under this Act and regulations, a certificate of exemption may be issued." (Underscoring supplied.)

To our mind, the language of the law applicable to the case at bar is clear, unambiguous, and does not need any interpretation nor construction. (Government of P.I. v. Monte de Piedad, 35 Phil. 42) It expressly provides that "the benefits of exemption of new and necessary industries," like the petitioner herein, "from the payment of all taxes x x x shall, upon the approval of the application for exemption by the Secretary of Finance, retroact as of the date of filing of the application for exemption." (Sec. 4, Rep. Act No. 901) And to erase any room for doubt as to the date of filing of any application for tax exemption, or in other words, the date of effectivity of the tax exemption, the law further requires that "upon the receipt of the application (for tax exemption) by the Secretary of Finance, the date and time of receipt therefor shall be noted". (Sec. 9, Rep. Act No. 901)

In the present case, it is an admitted fact that the applications for tax exemption were filed on February 7, 1957. Accordingly, applying the law to the instant case, we are of the opinion and so hold that the benefits of tax exemption of petitioner Silver Swan Manufacturing Company, Inc., as a new and necessary industry, should retroact to February 7, 1957. The fact that the Secretary of Finance has fixed August 27, 1957, as the date the tax exemption should commence simply because it was the date when the request for reconsideration was filed, it not binding upon this

Court (Koppel [Phil.], v. Yatco, 79 Phil. 496) for whatever action he has taken on the matter shall be valid only when not contrary to the express provisions of Republic Act No. 901. (Art. 7, Civil Code; Walter E. Olsen & Co. v. Aldanese, 43 Phil. 259; Wise & Co. v. Meer, 78 Phil. 655) When the law is clear, neither this Court nor the Secretary of Finance may, on any ground whatsoever, disregard the law or circumvent the same. The remedy lies with the legislature if it could be convinced of the necessity of amending the law. (Silva v. Cabrera, 88 Phil. 381)

Moreover, we note that there is no valid and reasonable basis for fixing August 27, 1957 - the date of filing of the request for reconsideration, as the date when the benefits of tax exemption should commence. We have carefully examined and scrutinized the records of the case and we found that the conditions and circumstances of the petitioner on February 7, 1957 - the date of filing the applications for tax exemption were the same as on August 27, 1957 - the date fixed by the Secretary of Finance as the date of filing of the request for reconsideration. As a matter of fact, the facts and circumstances stated in petitioner's request for reconsideration of the decision of the Secretary of Finance, disapproving petitioner's applications for tax exemption, were already then existing on February 7, 1957, when the original applications for tax exemption were filed with the

Secretary of Finance. Hence, in the case at bar, there is not even a semblance of a reason for fixing a date other than that fixed by law from which the petitioner will begin to enjoy the benefits of tax exemption under Republic Act No. 901.

The cases of Commissioner of Internal Revenue vs. Philippine Corn Products, Inc., G.R. No. L-13701, May 31, 1960 and Lu Do et al vs. Commissioner of Internal Revenue, C.T.A. Cases Nos. 516 and 692, decided on August 5, 1960 and September 30, 1960, respectively, cited by respondent in support of his stand are not in point. The only issue in the case at bar as the parties have made it quite clear before us, is not, as in the three previous cases just cited, the discretionary power of the Secretary of Finance to determine what raw materials used in a new industry may be exempted from taxes, but simply the date of effectivity of the tax exemption once approved by the Secretary of Finance. As heretofore stated, the provisions of Sections 4 and 9 of Republic Act No. 901 are quite clear, specific and determinative on this score.

WHEREFORE, in view of the foregoing considerations, the decision appealed from is hereby reversed, and respondent Commissioner of Internal Revenue is ordered to refund to petitioner Silver Swan Manufacturing Company, Inc., the amounts of ₱10,137.57 and ₱16,737.39, representing the erroneously or illegally collected advance sales tax and sales tax, respectively, or the total sum

Decision:-
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of ₱26,874.96, without interest. No costs.

SO ORDERED.

Manila, October 24, 1962.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge