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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

PLYWOOD INDUSTRIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 445

November 21, 1959

JOSE ARANAS, as Collector of Internal Revenue,
Respondent.

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DECISION

This is an action for the refund of the amount of ₱159,025.40 representing forest charges paid on logs removed from the forest concessions of petitioner.

The facts are, as gathered from the stipulation of facts and exhibits admitted during the hearing, that Plywood Industries, Inc. is a domestic corporation organized in 1951 and engaged in the manufacture of plywood panels and veneer sheets. On December 27, 1951, it was granted a tax exemption in respect to the manufacture of plywood panels, in accordance with the provisions of Republic Act No. 35 (Exhibits "1" & "V", p. 35, CTA rec.). The exemption was extended until December 31, 1958 pursuant to Republic Act No. 901 (Exhibits "2" & "C", p. 36, CTA rec.).

On September 5, 1955, petitioner corporation requested the Secretary of Finance that veneer sheets for export, and plywood panels for doors and table tops be included in the privilege of tax exemption granted to it. The Secretary of Finance, on February 21, 1956, granted the tax exemption with respect to the manufacture of veneer sheets for export only, but denied the request

401

with respect to the manufacture of plywood panels for doors and table tops (see Exhibits "H" & "3", p. 37, CTA rec.).

Petitioner corporation, at the time of its organization, made arrangements with the Sta. Clara Lumber Company, its sister corporation, whose timber concessions were located near petitioner's factory site, for a supply of its logs. (See Exhibit "G-2", p. 84, CTA rec.) It was also supplied with logs by other timber concessionaires operating in the vicinity (see pp. 6-7, t.s.n.). However, on November 12, 1953, petitioner applied to and acquired from the Bureau of Forestry a timber concession covering the area previously operated by Sta. Clara Lumber Company in Gingoog and Claveria, Oriental Misamis (see Exhibit"A-1", p. 70, CTA rec.; p. 22 t.s.n.). Later, in 1955, it also acquired timber concessions covering forest areas in the municipalities of Claveria, Balingasag, and Gingoog, Oriental Misamis.

The logs cut and removed from said concessions during their operations were used in the manufacture of plywood panels and veneer sheets, except the bad logs which were used in crating export products, in building constructions for the factory, houses and facilities of the employees and laborers, and in the repair and maintenance of bridges and wharves (see pp. 7-9, t.s.n.).

From the time petitioner operated its lumber concessions in 1953 up to 1957, it religiously paid forest charges in the total amount of ₱159,025.40 on logs removed from its concessions. (See Exhibits "6" & "6-A", pp. 4-7, CTA rec.). Of this total amount, ₱70,795.40 was paid by petitioner beyond the two-year period prior to the filing of the petition for review on November 21, 1957, and of this latter amount, ₱62,998.76 was paid beyond the two-year period prior to the request for refund by petitioner on September 23, 1957 (see Exhibit "6", pp. 4-5, CTA rec.; Exhibit "6-A", pp. 6-7, CTA rec.).

In his letters dated September 23, 1957 and October 12, 1957, petitioner requested for the refund of the sums of ₱150,177.88 and ₱8,847.52, respectively, or a total amount of ₱159,025.40, on the ground that, as ruled by this Court in Lacson vs. Blaquera, C.T.A. Case No. 302, September 2, 1957, forest charges are taxes within the meaning of Republic Act No. 901. Both requests were denied by respondent in his letters dated September 25, 1957 and October 22, 1957, respectively, for the reason that the Bureau of Internal Revenue did not agree with this Court's decision in the Lacson case (see Exhibits "7" & "7-A", pp. 8-9, CTA rec.). On November 15, 1957, petitioner requested for a reconsideration of respondent's decision denying the requests for refund (see Exhibits "8" & "8-A", pp. 10-12, CTA rec.), which request was denied on November 20, 1957 (Annex 1, Answer, p. 23, CTA rec.). Hence, the instant appeal, which was instituted on November 21, 1957.

In his answer to the petition for review, respondent raised the question of jurisdiction over the action for refund. He alleged that this Court cannot take cognizance of the action for refund with respect to taxes allegedly paid before November 21, 1955, for the reason that the action in court for refund thereof was not filed within the two-year period prescribed in section 306 of the National Internal Revenue Code; and that with respect to the taxes allegedly paid before September 23, 1955, the claim for refund therefore was not filed within the two-year period prescribed in section 309 of the National Internal Revenue Code. The parties, however, stipulated that of the total amount of ₱159,025.40 sought to be refunded, ₱70,795.40 was paid beyond the two-year period prior to the filing of the petition for review, and of the latter amount, ₱62,998.76 was paid beyond the two-year period prior to the request for refund (see Stipulation of Facts, par. 5, p. 3).

Section 306 of the National Internal Revenue Code provides:

> "Sec. 306. Recovery of tax erroneously or illegally collected.- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from ... of the tax or penalty."

In view of the stipulation of the parties, which we find to be in accord with the evidence on record, we find that this Court has no jurisdiction over the aggregate amount of ₱70,795.40, the payments of which were effected beyond the two-year period prescribed in the afore-quoted codal provision. Consequently, this Court has jurisdiction over the instant appeal only in so far as it involves the sum of ₱82,230.40, the payments of which were made within two years prior to the filing of the present petition for review on November 21, 1957.

Petitioner, however, insists that Article 2155 of the New Civil Code has partly modified or suspended the said Section 306 of the Tax Code.

Article 2155 of the New Civil Code is a general law. Section 306 of the Tax Code is a particular enactment. It is a cannon of statutory construction that when a general law and a particular law are in conflict, the latter governs.

> "Where there is in the same statute a particular enactment, and also a general one, which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of this particular enactment." (Lichauco & Co. vs. Apostol and Corpus, 44 Phil. 138, 139.)

> "When a special law is enacted and in force with respect to any particular matter, the provisions of the Civil Code on the same subject are not applicable except in so far as the statute may be defective." (Ramos vs. Hijos de L. de la Rama, 15 Phil. 554.)

"In the case of McKenna vs. Edmundstone (91 N.Y. 231) the Court said: 'It is well settled that a special and local statute, providing for a particular case or class of cases, is not repealed by a subsequent statute, general in its terms, provisions and application, unless the intent to repeal or alter is manifest, although the terms of the general act are broad enough to include the cases embraced in the special law.'"

"It is a cannon of statutory construction that a later statute, general in its term and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute. (Steamboat Co. vs. Collector, 18 Wall. (U.S.) 478; Cass County vs. Gillet, 100 U.S. 585; Minnesota vs. Hitchcock, 185 U.S. 373, 396." (Manila Railroad Co. vs. Rafferty, 40 Phil. 224, 229.)

"Es regla bien establecida de hermeneutica legal en esta jurisdiccion la de que una ley posterior de caracter general que no derogue expressamente una ley especial anterior no afectara las disposiciones de esta." (Manila Railroad Co. vs. Rafferty, 40 Phil. 237; Philippine Railway Co. vs. Coll. of Internal Revenue, G.R. No. L-3859, March 25, 1952)", cited in Visayan Electric Co. vs. David, 49 O.G., No. 4, pp. 1385-1388.)

Petitioner further contends that Section 306 of the Tax Code has been repealed by Section 11 of Republic Act No. 1125. This contention has been disposed of in Johnston Lumber Co., Inc. v. Court of Tax Appeals et al., G.R. No. L-9292, April 23, 1957, 53 O.G. No. 16, p. 5226, thus:

"x x x The specific provision of Republic Act No. 1125 regarding appeal (section 11) was intended to cope with a situation where the taxpayer, upon receipt of a decision or ruling of the Collector of Internal Revenue, elects to appeal to the Court of Tax Appeals instead of paying the tax. For this reason the latter part of said Section 11 provides that no such appeal would suspend the payment of the tax demanded by the Government, unless for special reasons, the Court of Tax Appeals would deem it fit to restrain said collection. Section 306 of the Tax Code, on the other hand, contemplates of a case wherein the taxpayer paid the tax, whether under protest or not, and later on decides to go to court for its recovery. We can, therefore, conclude that where payment has already been made and the taxpayer is merely asking for its refund, he must first file with the Collector of Internal Revenue a claim for refund before taking the matter to the Court, as required by Section 306 of the National Internal Revenue Code and that appeals from decision or rulings of the Collector of Internal Revenue to the Court of Tax Appeals must always be perfected within 30 days after the receipt of the decision or ruling that is being appealed, as required by Section 11 of Republic Act No. 1125. We see no conflict between the aforementioned sections of said laws."

Having thusly disposed of the question of prescription, there remain for our consideration the issues of whether or not the payment of the forest charges come within the purview of the tax exemption granted to petitioner corporation; and if it does, whether the amount of ₱88,230.40 paid by petitioner as forest charges, is refundable.

The statutory provisions pertinent to the issue are as follows:

Republic Act No. 35.

"Section 1. Any person, partnership, company or corporation who or which shall engage in a new and necessary industry shall, for a period of four years from the date of the organization of such industry, be entitled to exemption from the payment of all internal revenue taxes directly payable by such person, partnership, company or corporation in respect to said industry."

Republic Act No. 901.

"Section 1. 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 all taxes directly payable by such person, partnership, company or corporation in respect to said industry. x x x"

From the above, it is clear that for a new and necessary industry to be entitled to tax exemption under the law, three requisites must concur, namely: (1) the taxes involved are internal revenue taxes; (2) that they are directly payable by the person, partnership, company or corporation engaged in the industry; (3) the taxes must be in respect to said industry.

It is the contention of petitioner that forest charges are taxes. On the contrary, respondent maintains that forest charges are not internal revenue taxes, but rather the price paid by the concessionaire for the forest products removed from the forest.

The question of whether forest charges are taxes has been decided by this Court in Lacson v. Blaquera, supra, wherein we said and we quote:

> "The proposition that forest charges are taxes is confirmed by Section 18 of the Tax Code, which provides as follows:
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> 'Sec. 18. Sources of revenue.- The following taxes, fees, and charges are deemed to be national internal revenue taxes:
>
> x x x x
>
> '(g) Miscellaneous taxes, fees and charges, namely, taxes on banks, and insurance companies, franchise taxes, taxes on amusements, charges on forest products, fees for dealing weights and measures, firearms license fees, radio registration fees, tobacco inspection fees,

and water rentals.*" (Underscoring supplied.)

> *It must be so because forest charges like all other national internal revenue taxes are imposed primarily to raise revenue for the support of the government and are not exactions for purpose of regulations and inspection." (See Calalang vs. Lorenzo & Villar, G.R. No. L-6991, June 17, 1955; 51 O.G. 2859, 2860.)

It is undeniable that the forest charges in question were directly payable, and in fact were paid, by petitioner. However, respondent contends that they were not paid in respect to the manufacture of plywood panels and veneer sheets, but they were paid in respect to the operation of the timber concessions, a business which is not a new and necessary industry, and not included within the scope of the tax exemption. Petitioner, on the other hand, advocates the contrary view for the reason that, as alleged, the operation of its concessions is directly related to its business of manufacturing plywood panels and veneer sheets for export.

The contention of petitioner that the operation of its timber concessions is directly related to the manufacture of plywood panels and veneer sheets for export is, we believe, untenable. The operation of the timber concessions by petitioner is not in respect to petitioner's industry of manufacturing plywood panels and veneer sheets because it is not necessary and essential to the establishment of its plywood factory. This is borne by the fact that petitioner's industry has been established and existing prior to the acquisition and operation of its timber concessions. Petitioner's industry of manufacturing plywood panels and veneer sheets has been operating since 1951 and it was only in 1953 and 1955 that it secured its timber concessions. The former could exist, as it has been existing prior to, independently of the latter.

While logs or lumber are essential raw materials in the manufacture of plywood panels and veneer sheets, it was not necessary for petitioner to subsequently acquire the timber concessions in question in order to manufacture plywood panels and veneer sheets. Petitioner could buy logs or lumber elsewhere, as it did before. The concessions in question were merely incidental to the industry. Their operation was a business separate and distinct from the industry of manufacturing plywood panels. And we have had an occasion to say that 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 those transactions which were merely related thereto incidentally or for convenience (Marli Plywood & Veneer Corporation v. Arañas, C.T.A. Case No. 441, December 9, 1958).

While the facts that the personnel and management of petitioner's concessions were part of the management of its plywood factory; and that the factory management determined and controlled the concessions' production schedule indicate the relation of the concessions to petitioner's industry of manufacturing plywood panels, still this relation is not conclusive of the indispensability of the former (concessions) to the existence and operation of the latter (industry of manufacturing plywood panels). The personnel and magagement of a taxable activity may be a part of the management of an exempt industry without the said activity becoming necessary and indispensable to the industry. In the same manner, the determination and control by an exempt industry of the production schedule of a taxable activity does not make the latter necessary and indispensable to the former.

Finally, "exemptions from taxation are highly disfavored in law; and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from a common burden cannot be permitted to exist upon vague implication." (Asiatic Petroleum Co. v. Llanes, 49 Phil. 466; House vs. Posadas, 53 Phil. 338; Collector v. Manila Jockey Club, Inc., G.R. No. L-8755, March 23, 1956.)

In the light of the foregoing considerations, we rule that the forest charges in question do not come within the purview of the tax exemption granted to petitioner corporation.

The case of Lacson v. Blaquera, <u>supra</u>, which is cited by petitioner in support of its stand, is distinguishable from and inapplicable to the case at bar for the reason that in the former, the timber concession was already being operated at the time the tax exemption on the industry of manufacturing plywood was granted. In the instant case, the timber concessions were acquired and operated by petitioner after the grant of tax exemption on the industry of manufacturing plywood panels.

Having ruled that the forest charges in question do not come within the purview of the tax exemption granted to petitioner, it follows that the amount of ₱88,230.40 paid as forest charges are not refundable.

WHEREFORE, respondent's decision denying the claim for refund is hereby affirmed, without pronouncement as to costs.

SO ORDERED.

Manila, November 21, 1959.

MARIANO NABLE
Presiding Judge

I concur in the result.

ROMAN M. UMALI
Associate Judge

I concur in a separate opinion.

AUGUSTO M. LUCIANO
Associate Judge

PLYWOOD INDUSTRIES, INC.,
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- versus - C.T.A. CASE NO. 445

JOSE ARAÑAS, as Collector
of Internal Revenue,
Respondent.

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CONCURRING OPINION

I concur. And in addition, I wish to quote the pertinent ruling of the Supreme Court in Collector of Internal Revenue vs. Marcelo Steel Corporation and Court of Tax Appeals, 53 O.G. 674, with regard to the express limitation or condition in the law that the taxes from which the exemption of new and necessary industries is granted must be payable by an industry "in respect thereto".

Mr. Justice Labrador, speaking for the Supreme Court in the above-cited case, said:

> "Not all possible transactions or activities of industries are directly related thereto.
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> x x x x
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> The purchase of the original site may perhaps be a transaction in respect to the industry because necessary and essential to the establishment of its original plant. But the acquisition by donation of lots contiguous to the original lots, after the operation had lasted some few years, no longer falls under the above category. The convenience that the new lots contribute should not justify further extension of the exemption. Such a course would lead to exemption from all taxes, whereas the law is restrictive in its language and limits said exemption only to those that directly relate to the

> new industry. We hold that the new acquisition is beyond the intent and spirit of the legislation in question." (Underscoring supplied; Collector of Internal Revenue vs. Marcelo Steel Corporation and Court of Tax Appeals, supra.)

Applying the above quoted ruling to the case at bar, I believe that the subsequent acquisition by the petitioner of the new timber concessions, after the successful operation of its plywood plant for several years without them, no longer falls under the category of a tax exempt activity of a new and necessary industry. The convenience that the new timber concessions may contribute should not justify further extension of the tax exemption that the petitioner is enjoying.

Moreover, the tax exemption of the petitioner covers only the process of manufacturing plywood panels and veneer sheets for export, and does not include the establishment and operation of forest concessions which is a separate and distinct occupation or industry subject to another tax provision (Collector of Internal Revenue vs. Eternit Corporation, G.R. No. L-11891, April 29, 1959), the products of which have an immediate and independent market value. (Marble Corporation of the Philippines vs. Court of Tax Appeals, G.R. No. L-8677, December 28, 1957.)

AUGUSTO M. LUCIANO
Associate Judge