REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ETERNIT CORPORATION,
Petitioner

versus C. T. A. CASE NO. 201

COLLECTOR OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - x Dec. 15, 1956

D E C I S I O N

This is a petition to review the assessment made by respondent in the sum of ₱38,793.80 determined as fixed and percentage taxes plus surcharge due from petitioner and the sum of ₱3,000.00 imposed as compromise penalty.

Petitioner is a domestic corporation engaged in the manufacture of asbestos cement products, particularly asbestos cement corrugated sheets. Allegedly to avoid the ill-will generated in the improper installation of its products, petitioner undertook to install the asbestos cement corrugated sheets and accordingly collected installation charges. Respondent determined that petitioner was engaged in business as building contractors and assessed the latter the 3% tax under Sections 182, 183(a) and 191 of the National Internal Revenue Code, computed as follows:

Total gross receipts from January 1, 1951 to June 30, 1955	₱1,033,168.27
3% tax due on ₱1,033,168.27. .	30,995.04
25% surcharge thereon.	7,748.76
Fixed Taxes, 1951-1955	50.00
AMOUNT DUE & COLLECTIBLE . . .	₱ 38,793.80

During the trial of this case, the respondent admitted an error in the determination of the gross receipts and it was agreed by both parties that the total gross receipts should only be ₱1,021,588.86 (see Exhibit L) and assessment by respondent should be accordingly corrected.

Petitioner was originally granted a tax exemption as an entity engaged in a new and necessary industry under the provisions of Republic Act No. 35. This tax exemption was extended until December 31, 1958 pursuant to Republic Act No. 901, as per letter dated July 1, 1954, of the Secretary of Finance (Exhibit "8"). By virtue of the foregoing exemption, petitioner contends that the aforementioned assessment is illegal in that its exemption under Republic Act Nos. 35 and 901 cover the taxes herein involved. In the alternative, petitioner claims that at most it is liable only for the 3% tax on the installation charges collected and received from its customers.

The issues therefore involved here may be stated briefly, thus:

> 1. Whether or not the tax exemption granted to petitioner under Republic Act No. 35 as amended by Republic Act No. 901 includes the fixed and percentage tax sought to be imposed by respondent for the installation of the asbestos cement corrugated sheets; and if in the affirmative
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> 2. Whether or not the 3% fixed and percentage tax should be computed on the charges for installing the sheets, as well as on the cost of the materials (sheets) or only on

the charges of installation thereof.

The pertinent statutory provisions pursuant to which petitioner was granted tax exemption are reproduced below:

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 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."

By these afore-quoted statutory provisions, for one engaged in a new and necessary industry to be entitled to exemption from the payment of taxes, two concomitant requisites must be present: firstly, the taxes must be directly payable by the person, partnership, company or corporation engaged in the industry; and secondly, the taxes must be in respect to said industry. There is no dispute that the fixed and percentage taxes sought to be imposed by respondent would directly be payable by petitioner. Consequently, it becomes necessary to determine whether, under the circumstances of this case, petitioner is liable for the payment of the fixed and percentage tax assessed and demanded by respondent under Sections 182, 183(a) and 191 of the Tax Code.

Since the only purpose in undertaking the installation of the asbestos cement corrugated sheets was to avoid the ill-will generated by the improper installation thereof, petitioner contends that the installation was and is in respect to its industry --- the manufacture of asbestos products--- and therefore falls within the exemption granted under Republic Acts Nos. 35 and 901. On the other hand, respondent maintains that the installation of the sheets is not included within the exemption, in that the manufacture of asbestos products and their installation are two distinct businesses taxable under different sections of the Tax Code.

The exemption granted to petitioner under Republic Act Nos. 35 and 901 is limited to taxes in respect of its industry, i.e. to the manufacture of asbestos cement products (Exhibit "8-A"). The word "manufacture" should be understood in its common or ordinary meaning and the following are in point:

> "To make or fabricate raw materials by hand, art, or machinery and work into forms convenient for use; and when used as a noun, anything made from raw materials by hand, or by machinery, or by art." (Bouvier's Law Dictionary,

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3rd. Rev., Vol. II, p. 2086, citing People v. Wemple, 61 Hun 53 N. Y. Supp. 711)

"'Manufacture' is process or operation of making wares or any material products by hand, by machinery, or by other agency; often carried on systematically with division of labor and with the use of machinery." (Iden v. Bureau of Revenue, 89 P. 2d 519, 521, 43 N. M. 205; cited in 26 Words & Phrases 611)

"x x x The word 'manufacture' means the making of anything by hand or artifice, or the process of making anything by art of reducing materials into a form fit for use, by the hand or by machinery, or the production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations whether by hand labor or by machinery." (Curry v. Alabama Power Co., 8 So. 2d 521, 526, 243 Ala. 53; cited in 26 Words & Phrases, p. 614)

"'Manufacture' is the production of articles for use from raw or prepared materials, by giving to these matters new forms, qualities, properties, or combinations, whether by hand labor or by machinery; also anything made for use from raw or prepared materials." (26 Words & Phrases, p. 622)

"The elemental meaning of the term 'to manufacture' is "to make" (etymologically, to make by hand) - to make and produce something as a new construction out of existing materials . . . In other words, the process of manufacture brings about the production of some new article by the application of skill and labor to the original substance or material out of which such new product emerges. If, however, there is merely a superficial change in the original materials or substances, and no substantial and well-signalized transformation in form, qualities, and adaptability in use, quite different from the originals, it cannot properly and with reason be held that a new article or object has emerged - a new production been created." (Com. v. Weiland Packing Co. [1928] 292 Pa. 447, 141 A. 148)

In the case at bar, the manufacturing consists of the fabrication or fashioning of cement and mineral asbestos fiber into asbestos cement corrugated sheets. The moment the sheets are produced the process of manufacturing them ceases, for they have thereby become ready for the use for which they have been intended. The grant of tax exemption to the petitioner as a new and necessary industry applies only up to the production of the sheets; it does not reach out beyond the stage of production. The installation of the sheets on buildings is absolutely alien to their manufacture. The word "manufacture" seems to refer in its ordinary sense to goods, wares and merchandise to the making of articles of commerce, and does not include building or construction of outdoor structures (Morrison-Knudson Co. vs. State Board of Equalization, 58 Wyo. 500, 131 P 2d 927, 931). The sheets can be manufactured without installing them on buildings. The installation is an activity or industry distinct and separate from manufacturing. It is not in respect to or directly related to the manufacture of asbestos cement products (asbestos cement corrugated sheets). "Not all possible transactions or activities of industries are directly related thereto." (Collector of Internal Revenue v. Marcelo Steel Corp. et. al., G. R. No. L-9248, October 31, 1956) To sustain petitioner's contention that the installation of the sheets is in respect to the manufacture of the same would unduly stretch and strain the concept of manufacturing and would unreasonably extend the tax exemption granted under the law. We are therefore of the opinion that the petitioner is liable for the contractor's tax of three percent (3%) on its activities of installations.

We now come to the second issue. As an alternative, petitioner argues that if it is at all liable for the contractor's tax as we have so held, the tax should be based only on the charges for installation of the corrugated sheets, i.e. on the amount of ₱149,044.63. The argument is premised on the proposition that when the gross receipts are composed of different items, some exempt from tax and some not exempt from tax, only those not exempt from tax should be included in computing the 3% contractor's tax. Upon the other hand, respondent relies on the phrase "their gross receipts" in Section 191 of the Tax Code and avers that the contractor's tax is not a tax on the materials used but on the whole price of the job, which price is measured by the costs of materials and labor.

We find petitioner's view, in this regard well taken. The contractor's tax should be computed on the basis of the gross receipts that arise exclusively from the business or industry of installing the asbestos cement corrugated sheets. It should be determined on the basis of the receipts derived solely by petitioner as an installer or contractor, which receipts, in the instant case, were paid to it as cost of labor or installation. To include the cost of the sheets would frustrate the exemption granted to petitioner from the payment of the "percentage tax on the sales of the manufactured products in respect to which exemption is granted x x x". It would contravene the cardinal purpose of Republic Acts Nos. 35 and 901 which have been enacted to help new and necessary industries to weather the financial troubles to which they may be exposed in the formative years of their existence. Moreover, to include in the computation of the contractor's tax the cost of materials -- the cost of the asbestos cement corrugated sheets -- would in effect, impose a tax on two distinct activities or industries of selling the sheets and installing them by treating both as one industry. Such a procedure would be tantamount to imposing a tax upon the manufacture and incidental sale of asbestos cement products which is precisely granted the tax exemption. The respondent should be consistent in his finding that petitioner maintains two distinct businesses, only one of which is tax exempt.

The case of Commonwealth v. Keystone Bridge Co., 27 Atl. 1, 156 Pa. St. 500, cited by petitioner to support its contention that it should not be liable for the 3% contractor's tax is not in point. It is to be noted that Keystone Bridge Co. was authorized under Acts of 1863 and 1872 to <u>manufacture bridges</u> and its corporate authority was not limited merely to the manufacture of materials for bridges. Indeed, it extended to the fashioning, assembling and erecting of the materials into bridges. Truly, the power to manufacture bridges necessarily implied the power to erect them.

But in the case at bar, petitioner was merely authorized to manufacture asbestos cement products, particularly to manufacture asbestos cement corrugated sheets -- not to manufacture building roofs of asbestos cement products. The corporate authority of petitioner ended with the production of the sheets. It did not extend to their installation. The power to manufacture the sheets did not necessarily carry with it the power to install them. We are therefore of the opinion and so hold that petitioner is liable to pay the contractor's three percent (3%) tax only on the receipts of petitioner for installation of its asbestos cement corrugated sheets.

On the question of the compromise penalty in the sum of ₱3,000.00 we have consistently held that this Court has no jurisdiction to pass upon the matter nor to compel the taxpayer to pay the same, considering that by its essence, a compromise implies mutual agreement between the parties and the choice of paying or not paying it manifestly belongs to the taxpayer (See Western Mindanao Lumber Co. vs. Collector, C. T. A. Case No. 223, October 27, 1956; Jai Alai Corporation vs. Araneta, C. T. A. Case No. 108, July 31, 1956; Central Azucarera de Tarlac v. Collector of Internal Revenue, C. T. A. Case No. 90, July 9, 1956; Briñas v. Collector of Internal Revenue, C. T. A. Case No. 16, September 14, 1955).

WHEREFORE, the assessment dated September 28, 1955, of the respondent Collector of Internal Revenue is hereby modified in the sense that petitioner Eternit Corporation is liable for fixed and percentage taxes on its receipts for installation of asbestos cements production with the corresponding surcharge. Petitioner is accordingly hereby required to pay the respondent the sum of ₱5,639.17, detailed as follows:

Total gross receipts from labor or installation	₱149,044.63
3% tax due on ₱149,044.63 . . .	4,471.34
25% surcharge	1,117.83
Fixed taxes, 1951-1955	50.00
AMOUNT DUE	₱ 5,639.17

Without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, December 15, 1956.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

In the result:

ROMAN M. UMALI
Associate Judge