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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

UNION GARMENT CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 416

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - x

DECISION

Petitioner seeks to recover the sum of ₱4,114.38 collected from and paid by it as percentage tax under Section 191 of the National Internal Revenue Code, inclusive of surcharge and compromise penalty.

The petitioner herein, Union Garment Co., Inc., is a domestic corporation duly organized in accordance with law and engaged in the business of tailoring, with office and factory located at 1650 Felix Huertas, Sta. Cruz, Manila. In 1953, after a public bidding, the petitioner entered into a contract with the Armed Forces of the Philippines (hereinafter to be referred to as AFP), under the terms of which contract the former tailored, for the exclusive use of, and in accordance with, specifications supplied by the latter, pants, drawers, shirts and similar apparel. The AFP furnished the cloth in the manufacture of the aforesaid apparel, while the petitioner furnished the labor and the materials needed in the sewing thereof.

Upon examination of petitioner's books and records, it was determined that the gross receipts derived by the petitioner from its contract with the AFP in 1953 amounted to ₱185,634.94. On the basis of this determination, the respondent on March 19, 1954, assessed against petitioner the respective sums of ₱5,569.05, as percentage tax, and ₱1,392.26, as 25% surcharge, or a total of ₱6,961.31. On May 15,1954, the petitioner deposited with the City Treasurer of Manila the sum of ₱5,569.05 under Official Receipt No. 0709087-B. Due to the protest lodged against this assessment, a reinvestigation of petitioner's tax liability was conducted. As a consequence of the reinvestigation, the respondent, on August 10, 1956, reduced the assessment to the amount of ₱4,114.38 representing percentage tax, surcharge and compromise penalty. On November 7, 1956, the respondent wrote a letter to the City Treasurer of Manila, copy of which was furnished to the petitioner, authorizing the latter to convert the deposit of ₱5,569.05 to the extent of ₱4,114.38 into actual payment and to return the balance of ₱1,454.67 to the petitioner. Accordingly, the deposit of ₱5,569.05 was converted into actual payment to the extent of ₱4,114.38, and the balance of ₱1,454.67 was returned to the petitioner.

On August 27, 1957, the respondent, thru the Regional Director, Mr. Misael P. Vera, decided against petitioner's protest, thereby denying the request for refund of the ₱4,114.38 paid as percentage tax, surcharge and compromise penalty. From this decision, the petitioner interposed the instant appeal.

This case presents only the legal issue of whether or not the petitioner is liable for percentage tax, including surcharge and compromise penalty, on the gross receipts it derived in 1953 under a contract entered into with the AFP.

The petitioner contends that its transactions with the AFP are purchases for military purposes, and therefore are tax free in pursuance of Par. 11, page 632, Republic Act No. 816 (General Appropriation Act of 1952), which provides that "(c) All purchases made by the AFP for military purposes shall be tax free."

The respondent, however, maintains that said transactions are not exempt from the percentage tax prescribed in Section 191 of the Tax Code, for two reasons: First, because the aforecited provision of Paragraph 11, page 632, of Republic Act No. 816, is invalid as violative of Section 19 (2) of Article VI of the Constitution of the Republic of the Philippines; and Second, because, even assuming arguendo that it is valid, the pretended tax exemption in question does not include the percentage tax imposed by Section 191 of the National Internal Revenue Code on gross receipt of tailors.

It is settled as a general principle that courts will not pass on the constitutionality of an act if the merits of the case in hand may be fairly determined otherwise without so doing (Flint vs. Stone Tracy Co., 220 U.S. 107, 55 L. Ed. 389, 31 S. Ct. 342, Ann. Cas. 1912B 1312; 11 Aml Jur., Sec. 94, p. 723), and if a case may be decided on either one of two grounds and one of these does not involve the constitutionality of a statute, the court will decide it on that ground (United States vs. L. Cohen Grocery Co., 255 U.S. 81, 65 L. Ed. 516, 41 S. Ct. 298, 14

ALR 1045). Accordingly, we will proceed to dispose of the merits of this case on a ground other than the issue of constitutionality of Paragraph 11, page 632, of Republic Act No. 816.

The pretension of the petitioner that its transactions with the AFP are purchases and therefore are exempted from the payment of taxes in pursuance of Paragraph 11, page 632, Republic Act No. 816 is untenable. These transactions involved the tailoring by the petitioner of pants, drawers, shirts and similar apparel out of clothing materials furnished by the AFP. They are more in the nature of lease of work by contract or for a fixed price (see Art. 1713, Civil Code of the Philippines) for the former supplied the labor in the manufacture or tailoring thereof. They are not purchases within the contemplation of Paragraph 11, page 632, Republic Act No. 816. The term "purchases", as used in the aforesaid statute, is a common term. And in the absence of a legislative intent to the contrary, a common term in a statute is presumed to have been used in its common sense (Sutherland Statutory Construction, Vol. 2, pp. 434-437). In the case at bar, we find nothing in Republic Act No. 816 which indicates that the term "purchases" found therein was used to convey a meaning other than its ordinary import. Consequently, the said term "purchases" should be interpreted and taken in its ordinary import. In common parlance, purchase signifies the buying of real estate and of goods and chattels (Bouvier's Law Dictionary, Vol. II, p. 796). Ordinarily, it refers to the purchase of articles and it is in this common sense that Congress intended to use the term "purchases" found in Paragraph 11, page 632, Republic Act No. 816. Congress intended to exempt from the payment of taxes only purchases of articles made by the AFP for military purposes. Nowhere in Republic Act No. 816 can we perceive a congressional intent to exempt lease of services by the AFP from the payment of taxes. The conclusion that Congress intended to exempt from the payment of taxes only purchases of articles made by the AFP for military purposes is buttressed by the fact that, under Section 188 of the Tax Code, persons importing articles under the contract for the exclusive use of the AFP are not subject to percentage tax.

Upon the rationale that petitioner's transactions with the AFP are not purchases of articles made by the latter, and that the same are more in the nature of lease of work by contract or for a fixed price, we hold that the petitioner is liable for the payment of the percentage tax prescribed in Section 191 of the National Internal Revenue Code.

To hold the petitioner exempt from payment of percentage tax under the provisions of Paragraph 11, Section 632, of Republic Act No. 816 would be unduly expanding this statutory provision. It is a cardinal rule well recognized by our Courts that, to be entitled to the privilege of tax exemption, the grant must be clear and explicit. It cannot be predicated upon vague implications. The language of the statute must be too plain as to leave no doubt as to its meaning and intent. The claim of tax exemption by virtue of a statute must be construed _strictissimi juris_ against the person claiming it. (Gov't of the Philippines vs. Monte de Piedad, 35 Phil., 42; Asiatic Pet. Company vs. Llanes, 49 Phil., 466; House vs. Posadas, 53 Phil., 338; Phil. Tel. & Tel. Co. vs. Collector, 53 Phil., 639; Collector vs. Manila Jockey Club, G. R. No. L-8755, March 23, 1956.) Having failed to establish his right to the claim for tax exemption by a clear grant of the statute, petitioner's action must fail.

As regards the surcharge in the sum of ₱802.87 included in the basic percentage tax, we find its imposition and collection legal. Section 183 of the Tax Code provides for an increment of 25% to the amount of the tax in cases where the said tax is not paid within the time prescribed therein. This provision is mandatory (Lim Co Chiu v. Posadas, 47 Phil. 461). Having failed to pay within the time prescribed by law, the petitioner is liable therefor.

However, with respect to the compromise penalty in the amount of ₱100.00 which the petitioner seeks to recover, it is to be observed the said sum of ₱100.00 is a part of the ₱5,569.05 which was deposited and later partly converted into a payment of the reduced assessment. The petitioner never agreed to a compromise. He did not acquiesce to the imposition and collection of the penalty. The imposition and collection of the penalty is clearly illegal and unauthorized (Collector of Internal Revenue v. U.S.T. et al., G. R. Nos. L-11274 & L-11280, November 28, 1958).

WHEREFORE, in view of the foregoing considerations, the decision appealed from is hereby modified in the sense that the respondent Collector of Internal Revenue is ordered to refund to the petitioner the sum of ₱100.00 which was collected as compromise penalty. With costs against the petitioner.

SO ORDERED.

Manila, February 22, 1960.

MARIANO NABLE
Presiding Judge

I concur in the result.

ROMAN M. UMALI
Associate Judge

I abstain:

AUGUSTO M. LUCIANO
Associate Judge