REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

may 18, 1967

WONDER MECHANICAL
ENGINEERING CORPORATION,
Petitioner,

versus

CTA CASE NO. 1265

HON. JOSE B. LINGAD,
(In his capacity as
Acting Commissioner of
the Bureau of Internal
Revenue.)
Respondent.

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

D E C I S I O N

This is an appeal from the decision of respondent holding petitioner liable for deficiency percentage taxes from 1957 to June 30, 1960 in the amount of ₱25,080.91, inclusive of 25% surcharge for late payment thereof but exclusive of compromise penalty, computed as follows:

Sales		₱307,546.55
Less: Deductible raw material used		246,037.24
Amount subject to tax		₱ 61,509.31
Add: Unrecorded sales, 1957 to 1958		21,994.73
Total amount subject to tax . . .		₱ 83,504.04
7% Sales tax due thereon. . . .		₱ 5,845.28
Sales	₱ 1,700.00	
Less: Deductible raw materials. .	1,360.00	
Amount subject to tax	₱ 340.00	
10% of 7% Sales tax due thereon (R.A. No. 901).		2.38
Gross Receipts on job orders. . .	₱ 2,512.60	
3% Tax due thereon		75.38
30% Sales tax due on sales of steel chairs	₱48,420.00	14,526.00

Total sales and percentage taxes due	₱20,449.04
Less: Tax already paid	384.31
Deficiency sales and percentage taxes due	₱20,064.73
Add: 25% Surcharge thereon	5,016.18
TOTAL AMOUNT DUE AND DEMANDABLE . .	₱25,080.91

(p. 9, BIR rec.)

Petitioner, a domestic corporation incorporated under the laws of the Philippines in May 1947, is engaged in the manufacture of machines and other products. It was granted tax exemption by the President of the Philippines, through the Secretary of Finance, on May 30, 1949 under the provisions of Republic Act No. 35 for engaging in a new and necessary industry with respect to the manufacture of "machines for making a number of products such as cigarette paper, pails, lead washers, rivets, nails, chairs, etc." (BIR rec., p. 9) However, the tax exemption privilege of petitioner expired on May 30, 1951.

On September 14, 1953, petitioner applied with the Secretary of Finance for reinstatement of its tax exemption privilege under the provisions of Republic Act No. 901. The application was approved by the said official on July 7, 1954 as evidenced by a Certificate of Tax Exemption and a letter of the same date both signed by the Secretary of Finance (BIR rec. pp. 11-13).

On August 10, 1960 or soon thereafter, petitioner was investigated by an examiner of respondent to determine its tax liability. On December 7, 1960, Revenue Examiner Pedro Cabigao submitted a memorandum to the Chief, Investigation Division, Bureau of Internal Revenue, and reported, among others, that petitioner had (1) manufactured and sold steel chairs without paying the 30% sales tax imposed by Section 185(e) of the Tax Code; (2) accepted job orders without paying the 3% tax on gross receipts imposed by Section 191 of the same Code; (3) manufactured and sold other articles subject to 7% sales tax but not covered by the tax exemption privilege; (4) failed to register with the BIR books of accounts and sales invoices as required by the Bookkeeping Regulations; (5) failed to indicate in the sales invoices the Residence Certificate numbers of customers who purchased articles worth ₱50.00 or over, in violation of the Bookkeeping Regulations; and (6) failed to produce its books of accounts and business records for inspection and examination when required to do so by a revenue examiner, in violation of the Bookkeeping Regulations (BIR rec. pp. 17-18).

On the basis of the examiner's report, respondent assessed against and demanded from petitioner payment of ₱25,080.91 as deficiency percentage taxes for 1957 to 1960, inclusive of 25% surcharge. Respondent also suggested to petitioner the payment of ₱5,020.00 as total compromise penalty in extra-judicial settlement for various violations of the Tax Code and Revenue Regulations (See letter of demand dated October 6, 1961, BIR rec., pp. 28-29).

On August 8, 1962, petitioner requested respondent to reinvestigate petitioner's deficiency percentage tax assessment by alleging that (1) it is engaged in business as a new and necessary industry and, therefore, exempt from the payment of the percentage taxes; and (2) the deficiency percentage tax assessment of ₱30,100.91, inclusive of 25% surcharge and compromise penalty, is excessive and unwarranted (BIR rec., p. 60). After the denial of several requests for reinvestigation and reconsideration (Respondent's Memorandum, p. 2), petitioner filed its petition for review.

The only issue submitted by the parties for resolution is whether or not the sales tax due from petitioner in the manufacture and sale of steel chairs, jeep parts, and other articles (subject to 30% and 7% under Sections 185/o7 and 186 of the Revenue Code and the 3% tax on the gross receipts of a contractor under Section 191 of the same Code) are covered by the tax exemption privilege granted by the Secretary of Finance under Republic Act No. 901.

Petitioner contends that the manufacture and sale of steel chairs, jeep parts, and other articles are exempt from taxation on account of the Certificate of Tax Exemption granted by the Secretary of Finance which provides, among others, as follows:

> "Be it known that upon application filed by WONDER MECHANICAL ENGINEERING CORP., 1310 M. Hizon, Sta. Cruz, Manila, <u>in respect to the manufacture of machines for making cigarette paper, nails, lead washers, nails, rivets, candies, etc.</u> the said industry/industries have been determined to be new and necessary under the provisions of Republic Act No. 901 (or of Republic Act No. 35), in view of which this Certificate of Tax Exemption has been issued entitling the above-named firm/person to tax exemption from the payment of taxes directly payable by it/him in respect to the said industry/industries until December 31, 1958 and thereafter to a diminishing exemption until June 20, 1959, as provided in section 1 of Republic Act No. 901, except the exemption from the income tax which will wholly terminate on June 20, 1955." (BIR rec., p. 13; underscoring supplied.)

On the basis of the foregoing provisions of the Certificate of Tax Exemption, petitioner claims that steel chairs, jeep parts, and other articles are industrial items manufactured by it and, therefore, exempt from taxation within the meaning and scope of the tax exemption granted by the Secretary of Finance, *supra*. Petitioner further claims that the tax exemption granted to it for engaging in a new and necessary industry is broad and all embracing because of the inclusion of the word "etc." following the enumeration of the tax-exempt articles. It is argued that the grant of tax exemption should be interpreted liberally in favor of petitioner because the said grant has for its purpose the development and growth of petitioner's business as a dollar-saving industrial firm.

Respondent countered by alleging that the manufacture and sale of steel chairs, jeep parts, and other articles as well as the acceptance of job orders by petitioner are not covered by the grant of tax exemption because said exemption is limited to the manufacture and sale of machines for making the articles enumerated in its tax exemption certificate.

In short, petitioner maintains the view that the manufacture and sale of cigarette paper, pails, lead washers, nails, rivets, candies, etc., or the acceptance of job orders for the manufacture thereof, are exempt from taxation. On the other hand, respondent contends that the manufacture and sale of machines for making said articles and not the manufacture and sale of the articles itself are covered by the grant of tax exemption (Respondent's Memorandum, p. 3).

The contention of respondent is meritorious. A careful examination and evaluation of the evidences of record show that, before the approval of the original grant of tax exemption to petitioner for engaging in a new and necessary industry under Republic Act No. 35, the then Secretary of Finance submitted a memorandum to the Cabinet, dated March 3, 1949, the pertinent portions of which read as follows:

> "x x x It (petitioner) turns out machines whenever orders therefor are received. Among its products are a medicine tablet wrapping machine for Dr. Agustin Liboro, photographs of which are attached a loud speaker for the Manila Supply, and a 'Lumpia wrapper' machine for a certain Chinese. x x x
>
> The manufacture of the above-mentioned machines can be considered a new and necessary industry for the purpose of Republic Act No. 35. It is recommended that the benefits of said Act be extended to this corporation in respect to said industry.
>
> Respectfully submitted:
>
> SGD. PIO PEDROSA
> SECRETARY"

(BIR rec., p. 10; parenthesis & underscoring supplied)

It is clear from the foregoing memorandum of the Secretary of Finance to the Cabinet that the original tax exemption granted by the Government to the petitioner refers to the manufacture and sale of machines for making a number of products. The said evidence is corroborated by the letter of the Executive Secretary to the petitioner dated May 30, 1949, which reads as follows:

"Sirs:

"I have the honor to advise you that His Excellency, the President, has today, upon recommendation of the Honorable, the Secretary of Finance, approved your application for exemption from the payment of internal revenue taxes on your business of manufacturing machines for making a number of products, such as cigarette paper, pails, lead washers, rivets, nails, candies, chairs, etc., under the provisions of Section 2 of Republic Act No. 35.

Very respectfully,

(Sgd.) TEODORO EVANGELISTA
Executive Secretary"

(BIR rec., p. 9; underscoring supplied)

Consequently, when the tax exemption privilege granted to petitioner under Republic Act No. 35 was reinstated under Republic Act No. 901, it is obvious that the industrial items manufactured and sold by petitioner, consisting of steel chairs, jeep parts, and other articles, are not the machines contemplated in, referred to, or covered by the Certificate of Tax Exemption issued by the Secretary of Finance on July 7, 1954. The scope of the tax exemption granted by the said official cannot be increased or extended beyond the clear language of the tax exemption grant under the provisions of Republic Act No. 901 (Commissioner of Internal Revenue v. Philippine Corn Products, Inc. [Lu Do & Lu Ym Corp.], G.R. No. L-13701, May 31, 1960). It is a cardinal rule in taxation that exemptions therefrom are highly disfavored in law and he who claims tax exemption must be able to justify his claim or right thereto by the clearest grant of organic or statute law.

> "Another factor that should be borne in mind in connection with the interpretation of the exemption clause under consideration is that by its very nature the law that exempts one from tax must be clearly expressed because the exemption cannot be created by implication. Thus, it was held that 'Exemption 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 the common burden cannot be permitted to exist upon vague implication.' (Asiatic Petroleum Co. vs. Llanes, 49 Phil., 466; See also House vs. Posadas, 53 Phil., 338.)" (Collector of Internal Revenue v. Manila Jockey Club, Inc., G.R. No. L-8755, March 23, 1956, 98 Phil. 676.)

The argument that petitioner's business is a dollar-saving industry and that a strict interpretation of the tax exemption grant would obstruct and hinder the economic growth of our country, suffice it to say that laws granting tax exemption, which are in derogation of the sovereign right of the State to tax, are strictly construed against the taxpayer and liberally interpreted in favor of the Government.

> "Claim of exemption from taxation by virtue of a statute is construed strictissimi juris. It must rest upon language in regard to which there can be no doubt as to the meaning, and the

> exemption must be granted in terms too plain to be mistaken." (26 R.C.L. 313; see also Government of the P. I. vs. Monte de Piedad, 35 Phil. 42; and The Roman Catholic Apostolic Church in the Philippines vs. Hastings et al., 5 Phil. 701, 703, citing Providence Bank vs. Billing, 4 Peters, 514; Yazoo Company vs. Thomas, 132 U.S., 174; Schurz vs. Cook, 148 U.S. 397).

A careful scrutiny of the records show that petitioner has not disputed the correctness of the items and figures found in respondent's letter of demand against it. Accordingly, we hold petitioner liable for the payment of the deficiency percentage taxes in the amount of ₱25,080.91 covering the period from 1957 to June 30, 1960.

With respect to the compromise penalty in the total amount of ₱5,020.00 suggested by respondent to be paid by petitioner, it is now a well-settled doctrine that compromise penalty cannot be imposed or collected without the agreement and conformity of the taxpayer (Collector of Internal Revenue v. University of Santo Tomas, et al., G.R. Nos. L-11274 & L-11280, November 28, 1958; The Collector of Internal Revenue v. Bautista, et al., G.R. Nos. L-12250 & L-12259, May 27, 1959; The Philippines International Fair, Inc. v. Collector of Internal Revenue, G.R. Nos. L-12928 & L-12932, March 31, 1962).

WHEREFORE, with the exception of the compromise penalty of ₱5,020.00, the decision of respondent appealed from is hereby sustained. Petitioner is, therefore, ordered to pay respondent or his duly authorized collection agent the amount of ₱25,080.91 as deficiency sales and percentage taxes from 1957 to June 30, 1960, inclusive of the 25% surcharge. With costs against petitioner.

SO ORDERED.

Quezon City, May 18, 1967.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R. M. Umali
ROMAN M. UMALI
Presiding Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge