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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

August 5, 1960

LU DO & LU YM CORPORATION,
doing business under the
trade name PHILIPPINE
CORN PRODUCTS COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 516

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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D E C I S I O N

The petitioner is seeking the recovery of ₱49,746.02 which was collected by the Collector of Customs of Cebu, as deputy of the Commissioner of Internal Revenue, respondent herein, as advance sales and compensating taxes on 900 bales containing 493,926 pieces of empty cotton starch bags and paper liners imported by it from abroad and used by it in the manufacture and sale of corn starch. Its claim for refund having been denied by respondent, it has instituted the present appeal to review the adverse decision of respondent.

It appears that the sum of ₱49,746.02 is the aggregate of the advance sales and compensating taxes paid by petitioner from 1955 to 1957 on various importations of cotton bags and paper liners which it used in the manufacture and sale of corn starch. Having been granted tax exemption under Republic Acts Nos. 35 and 901, petitioner contends that the collection of the sum of ₱49,746.02 is illegal and, therefore, it is entitled to the refund of said amount.

On the other hand, respondent claims that the said amount was legally paid because under the tax exemption certificate issued by the Secretary of Finance to petitioner, cotton bags and paper liners are not among the articles which petitioner is authorized to import for use in the manufacture of corn starch free from all taxes.

In this appeal, three principal issues have been raised, to wit: (1) whether or not this Court has jurisdiction to take cognizance of the appeal; (2) whether or not the sum of ₱49,746.02 was paid in concept of deposit or as actual payment of the advance sales tax and compensating tax; and (3) whether or not the Secretary of Finance may validly limit the raw materials which petitioner could import from abroad free from all taxes.

In connection with the first issue, it is the view of respondent, consistently adhered to here and in other similar cases, that since the denial of the claim for refund is based upon decisions and opinions of the Secretary of Finance, this Court has no jurisdiction to entertain the appeal. It is alleged that in legal effect what is sought to be reviewed is the decision of the Secretary of Finance which is not reviewable by this Court. The fact remains that the taxes sought to be recovered are internal revenue taxes. Under Sections 306 and 309 of the Revenue Code, the power to determine whether internal revenue taxes are refundable or not is vested in the Commissioner of Internal Revenue. When a claim for refund of an internal revenue tax is filed with the Bureau of Internal Revenue, it is the Commissioner who is required to decide whether or not the amount being claimed is refundable or not. The fact that the Commissioner renders his decision pursuant to prior instructions or opinions of the Secretary of Finance does not mean that the decision was rendered by the latter. Similarly, if the Commissioner should decide a case following an opinion of the Secretary of Justice, as has often happened, the decision is that of the Commissioner, not of the Secretary of Justice. In the instant case, respondent actually rendered his decision denying the refund. (Exh. EE, page 17, C.T.A. records.) It is this decision which has been appealed to this Court, not a decision of the Secretary of Finance.

It may be stated that this question has been foreclosed by our decisions in Lacson v. Blaquera, C.T.A. No. 302, Sept. 2, 1957, and Phil. Corn Products v. Collector of Int. Rev., C.T.A. No. 340, Dec. 20, 1957.[1]

As regards the second issue, respondent claims that since the sum of ₱49,746.02 was collected by the Bureau of Customs as a deposit and not actual payment

[1] Affirmed on this point in Collector v. Lacson, G. R. No. L-12945, April 29, 1960; Commissioner of Int. Rev. v. Phil. Corn Products, G. R. No. L-13701, May 31, 1960.

of advance sales and compensating taxes, the right of petitioner to the recovery of said amount is not governed by Sections 306 and 309 of the Revenue Code which apply solely to internal revenue taxes actually paid. Hence, the petition for review states no cause of action. (See page 3 of the Answer.) Conceding the correctness of the view, that the right to recover an amount deposited to secure payment of an internal revenue tax is not governed by Sections 306 and 309 of the Revenue Code, then the right of petitioner to seek review of the decision of respondent is governed exclusively by Sections 7 and 11 of Republic Act No. 1125, under which a taxpayer may appeal to this Court from any decision of respondent in "other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue." And its right of recovery or appeal is not governed by the two-year period of limitation prescribed in Sections 306 and 309 of the Revenue Code. We find no merit in the stand of respondent on this issue. At any rate, there appears to us no need for an extended discussion of this issue as it will not affect the result.

The third and final issue relates to the power of the Secretary of Finance to limit the raw materials which may be imported tax free by new and necessary industries granted tax exemption under Republic Acts Nos. 35 and 901. Petitioner contends that a new and necessary industry, after it has been granted tax exemption, may import free from all taxes all the raw materials that it needs in its business. On the other hand, respondent claims that the exemption from taxation of a new and necessary industry is subject to the conditions and limitations imposed in the certificate issued by the Secretary of Finance authorizing it to operate as a new and necessary industry.

Petitioner has been granted the privilege of tax exemption under Republic Act No. 35, as amended and extended by Republic Act No. 901, as a new and necessary industry. The grant of exemption is subject, among others, to the following conditions:

> "Referring to your application of September 30, 1952 for tax exemption under the provisions of Republic Act No. 35, I have the honor to advise that in view of the favorable recommendations of the Secretary of Commerce and Industry and the Administrator of Economic Coordination, the same is hereby approved in respect to the manufacture of corn starch, corn gluten feed, and corn oil. <u>It is understood that the only raw material to be imported is sulphur (80 kilos of sulphur for every 30 metric tons of processed corn) and that this raw material will be procured locally as soon as similar article of domestic origin or manufacture shall have become available.</u>" (Letter of Secretary of Finance to petitioner dated June 9, 1953; Exh. 2-A-2, p. 166, C.T.A. records; underscoring supplied.)

The exemption from taxation of petitioner was granted in view of the favorable recommendations of the Secretary of Commerce and Industry and the Administrator of Economic Coordination, presumably after a thorough investigation of the needs and requirements of the business. When, therefore, the Secretary of Finance issued the certificate of exemption on June 9, 1953, he must have ascertained and established the fact that all the raw materials, except sulphur, needed in the manufacture of corn starch, corn gluten feed, and corn oil were all available locally at reasonable prices. Petitioner must have accepted the conditions imposed for its exemption with full knowledge of this fact, otherwise it should have requested reconsideration of said conditions.

Notwithstanding the limitation imposed with respect to the importation of raw materials, except sulphur, and the acceptance thereof by petitioner, it imported, from September 29, 1955 to April 24, 1957, 900 bales containing 493,926 pieces of empty cotton bags and paper liners which were used by it in the manufacture of corn starch. This is clearly a violation of its permit to operate as a new and necessary industry, and petitioner must pay the corresponding tax on said importations. If, as now alleged, corn starch bags and paper liners are available locally only at prices much more than the price of such articles when imported, and for this reason it can not operate profitably were it to buy locally such raw materials, the remedy is not by importing in violation of the terms of the grant of exemption but by seeking a modification thereof.

It is contended that the Secretary of Finance has no power to limit importation of raw materials needed by new and necessary industries. We believe that Section 11 of Republic Act No. 901 gives the Secretary of Finance ample power to determine what equipment and raw materials may be imported tax free by new and necessary industries. Said section provides:

> "Section 11. The Secretary of Finance shall promulgate the necessary rules and regulations for the proper enforcement and to carry out the intents and purposes of this Act, <u>and shall determine the scope and extent of the privileges granted hereunder</u>." (Underscoring supplied.)

But it is alleged that the power of the Secretary of Finance under Section 11 of Republic Act No. 901 "is limited to the classification as to which of the several industries or commercial ventures an applicant may have would be granted the privilege of tax exemption as a new and necessary industry." We do not think this conclusion is justified by the wording of said section. Republic Act No. 901 confers upon the Secretary of Finance two distinct and different powers. The first is the power to determine what kind or class of industries are new and necessary which may be granted exemption; the second is the power to determine the scope and extent of the privileges which may be enjoyed by a new and necessary industry after it has been granted tax exemption. The first is conferred upon the Secretary of Finance under Sections 1, 2, 3, 5 and 6 of Republic Act No. 901; the second under Section 11. The law imposes upon the Secretary of Finance the obligation of exercising both. (See Commissioner of Int. Rev. v. Phil. Corn Products, G. R. No. L-13701, May 31, 1960.)

DECISION -
C.T.A. CASE NO. 516

Petitioner having imported raw materials which it is not authorized to import tax free, the collection of the corresponding taxes on said importations was made in accordance with law.

The decision of respondent denying petitioner's claim for refund being in order, the same is hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, August 5, 1960.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge