REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE BULK CORPORATION,
Petitioner,

-versus- C.T.A. CASE NO. 1730

PROVINCIAL BOARD OF ASSESSMENT APPEALS OF NEGROS OCCIDENTAL and PROVINCIAL ASSESSOR OF NEGROS OCCIDENTAL,
Respondents.

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Rec. x/67

D E C I S I O N

This is an appeal from the decision of the Provincial Board of Assessment Appeals of Negros Occidental dated September 29, 1965 affirming that of the Provincial Assessor of Negros Occidental, denying the claim of petitioner for exemption from real estate tax on its bulkhandling machinery for the first five years of its operation under Section 3(f) of the Assessment Law.

Petitioner is a corporation duly organized under the laws of the Philippines. It is engaged in the business of handling all kinds of goods sold, transported or carried in bulk, with special emphasis on grains and sugar, in the Philippines or abroad. In connection with the above purpose, it constructed, maintained and operated a bulk-handling terminal equipped with buildings, roads, permanent seawall, wharf and docks valued at ₱2,003,852.67, and a bulk-handling machinery, electrical installations, railroad lines and water (cooling) system with an appraised value of ₱1,652,021.51.

The bulk-handling machinery, the assessment for realty tax purposes of which is questioned by petitioner, is installed in a large building and functions as follows: The sugar coming from the milling companies is unloaded by trucks on the conveyor belt from which it is subsequently fed to a big opening. The sugar is finally pumped through a large tube to the hull of the ship.

The bulk-handling machinery is admittedly a special kind of device which facilitates the handling and shipment of raw sugar on board ships. (pp. 29-30, t.s.n.). It dispenses with ~~the~~ use of sacks and the services of stevedores in the handling of sugar.

On July 15, 1964, respondent provincial assessor assessed the bulk-handling machinery, electrical installations, railway lines and water (cooling) system in the total amount of ₱49,560.60 as real estate tax for the years 1962, 1963 and 1964. On July 21, 1964, petitioner inquired from respondent provincial assessor why its bulk-handling machinery was not entitled to the five-year exemption from realty tax as provided for in Section 3(f) of the Assessment Law (Exh. D), to which inquiry the latter, in his letter dated July 30, 1964, replied that said realty is not entitled to the tax exemption on the ground that it was not exclusively used for industrial, agricultural, or manufacturing purposes (Exh. E).

Petitioner appealed the decision of the provincial assessor to the Provincial Board of Assessment Appeals of Negros Occidental, which in a decision dated September 29, 1965, affirmed the same. Hence, this appeal.

The issues raised in this case are as follows:

(1) Whether or not this Court has jurisdiction over the instant case; and

(2) Whether or not the bulk-handling machinery in question is exempt from payment of realty tax under the provision of Section 3(f) of the Assessment Law.

With respect to the issue of jurisdiction, respondent asserts that since the real estate tax assessed was not paid under protest by petitioner in accordance with Section 54 of the Assessment Law, this Court can not take cognizance of the case. On the other hand, petitioner contends that said provision of law does not apply to this case, and that Section 7(3) of Republic Act No. 1125, which confers upon the Court of Tax Appeals jurisdiction to review by appeal the decision of respondent Provincial Board of Assessment Appeals involving assessment and taxation of real property, is the applicable law.

We find the stand of respondent without merit. This is a case involving an appeal from the decision of the respondent Provincial Board of Assessment Appeals on the assessment and taxation of real property, which, under Section 7(3) of Republic Act No. 1125, is a matter within our exclusive appellate jurisdiction. The prepayment under protest of the disputed realty tax is not necessary for this appeal. In a case analogous to the present case, we held thus -

> "It is contended by respondents that, under Section 54 of the Assessment Law, supra, petitioner cannot institute an action in court assailing the validity of the tax without paying first the real property tax assessed against it as a condition precedent to the acquisition of jurisdiction by this Court. However, the extent and scope of the jurisdiction of the Court of Tax Appeals relative to the case at bar are embodied in Sections 7(3) and 11 of Republic Act No. 1125, the pertinent portions of which provide as follows:
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> > 'SEC. 7. Jurisdiction. The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -
> >
> > x x x x x
> >
> > (3) Decisions of provincial or city Board of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising

under the Assessment Law, including rules and regulations relative thereto.'

'SEC. 11. Who may appeal; effect of appeal.- Any person, association or corporation adversely affected by a decision or ruling of x x x any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.'

"The legal provisions conferring exclusive appellate jurisdiction on the Court of Tax Appeals to review decisions of the provincial or city Board of Assessment Appeals would be empty, meaningless and unenforceable because, under Section 54 of the Assessment Law, 'no Court shall entertain any suit assailing the validity of a tax assessed under this Act until the taxpayer shall have paid, under protest, the taxes assessed against him.' The conflict between Sections 7(3) and 11 of Republic Act No. 1125 and Section 54 of the Assessment Law, supra, should be harmonized and reconciled in order to give effect to the provisions of Republic Act No. 1125 creating the Court of Tax Appeals.

"Prior to the enactment of Republic Act No. 1125, all civil actions involving the legality of any tax, impost or assessment were under the jurisdiction of the Court of First Instance (Sec. 44, Republic Act No. 296). It is clear, therefore, that before the creation of the Court of Tax Appeals all cases involving the legality of assessment for real property taxes, as well as the refund thereof, were properly brought and taken cognizance by the said court. However, with the passage by Congress and the approval by the President of Republic Act No. 1125, the jurisdiction over cases involving the validity of realty tax assessment were transferred from the Court of First Instance to the Court of Tax Appeals (See Sec. 22, Rep. Act No. 1125). The only exception to the grant of exclusive appellate jurisdiction to the Tax Court relates to cases involving the refund of real property taxes, which remained with the Court of First Instance (See City of Cabanatuan, et al. v. Gatmaitan, et al., G.R. No. L-19129, February 28, 1963).

"A critical and analytical study of Section 7 of Republic Act No. 1125, in relation to subsections (1), (2), and (3) thereof, will readily show that it was the intention of Congress to lodge in the Court of Tax Appeals the exclusive appellate jurisdiction over cases involving the legality of real property tax assessment, as distinguished from cases involving the refund of real property taxes. To require the taxpayer, as contended by respondents, to pay first the disputed real property tax before he can file an appeal assailing the legality and validity of the realty tax assessment will render nugatory the appellate jurisdictional power of the Court of Tax Appeals as envisioned in Section 7(3), in relation to Section 11, of Republic Act No. 1125. If we follow the contention of respondents to its logical conclusion, we cannot conceive of a case involving the legality and validity of real property tax assessment, decided by the Board of Assessment Appeals, which can be appealed to the Court of Tax Appeals. The position taken by respondents is, therefore, in conflict with the Explanatory Note contained in House Bill No. 175, submitted during the First Session, Third Congress of the Republic of the

Philippines, and the last paragraph of Section 21 of Republic Act No. 1125 which provides as follows:

> 'SEC. 21. General provisions. -
>
> x x x x x
>
> 'Any law or part of law, or any executive order, rule or regulation or part thereof, inconsistent with the provisions of this Act is hereby repealed.'
>
> "Accordingly, we hold that this Court can entertain and give due course to petitioner's appeal assailing the legality and validity of the real property tax assessment here in question without paying first the disputed real property tax as required by Section 54 of the Assessment Law." (Samar Mining Co., Inc. vs. The Board of Assessment Appeals of Zamboanga Del Sur and Placido L. Lumbay, in his capacity as Provincial Assessor of Zamboanga del Sur, C.T.A. Case No. 1703, June 28, 1967; underlining ours.)

With respect to the second issue, petitioner contends that the bulk-handling machinery is exempt from realty taxes during the years 1962 to 1966, pursuant to Section 3(f) of the Assessment Law because it is used for industrial purposes. Respondent asserts the contrary. The resolution of this issue hinges on the meaning of industrial purpose under Section 3(f) of the Assessment Law that reads as follows:

> "Section 3. Property exempt from tax.-

xx xx xx xx

(f) Machinery, which term shall embrace machines, mechanical contrivances, instruments, appliances, and apparatus attached to the real estate, used for industrial, agricultural or manufacturing purposes, during the first five years of the operation of the machinery."

According to Webster's New International Dictionary (2nd Ed., 1954) the term "industrial" means: having to do with industry. In the case of Philippine Acetylene Company vs. The Commissioner of Customs (CTA Case No. 1147, December 26, 1963) this Court, ruling on the meaning of the term "industry", said the following:

"The term 'industry' has been defined as any department or branch of art, occupation or business conducted as a means of livelihood or for profit; especially one which employs much labor and capital and is a distinct branch of trade. (Black's Law Dictionary). The Secretary of Finance has interpreted 'industry' as including any <u>productive</u> enterprise which employs relatively large amounts of capital and/or labor. (1st indorsement of the Sec. of Finance to the Commissioner of Customs, Nov. 19, 1956, cited on page 5 of the Memorandum for Respondent.) x x x

"What is meant by 'productive enterprise'? The word 'productive' has been defined as follows:

'1. Having quality or power of producing; bringing forth, or able to bring forth, esp.

in abundance; generative; creative; fertile; as, productive soil, races, or imaginations.

'2. Effective in bringing forth or forward; originative; causative.

'3. Yielding or furnishing results, profits, or benefits; as productive enterprises or legislation.

'4. Econ. a. Effecting, or contributing to effect, production. b. Yielding, or devoted to the production of, a net return of wealth; - used with widely different meanings by different authors according to their different economic theories as to what kinds of labor or expenditure will contribute such an increment to the world's wealth as will support like production or expenditure in an endless series of cycles and yield a net result. Thus the mercantilists called productive any labor or expenditure that increased the stock of precious metals of a nation; the physiocrats called agricultural labor alone productive; Adam Smith extended productive to include the labor of agriculture, manufacturing, and commerce, and now many forms of labor and expenditure contributing only indirectly or remotely to the world's wealth, as by increasing the mental efficiency of some classes of laborers, are included as productive. (Webster's New International Dictionary, Second Edition, Unabridged.)'

And an enterprise means an undertaking or a venture.

"Tested by the foregoing definitions, we think that the term 'industry' as used in Section 6 of Republic Act No. 1394 is not limited to manufacturers. A person engaged in commerce or trade employing much labor and capital is engaged in industry because the enterprise is productive of results, profits or benefits. Petitioner, employing much labor and capital, is engaged in packaging liquefied petroleum gas purchased by it and selling the same. It is, therefore, engaged in industry within the meaning of Section 6 of Republic Act No. 1394."

In the case of Philippine Acetylene Company vs. Central Bank of the Philippines (G.R. No. L-17097, September 29, 1964) the Supreme Court, speaking of industry, said the following:

"By its nature, plaintiff explains, liquefied petroleum gas is a petroleum product that can exist as a gas or a liquid, and can be changed from gas to liquid or vice versa by an appropriate change in the temperature or pressure; and as the trial court noted, the handling of petroleum gas thru skid tanks requires technical skill and ingenuity. So it is an industry and not a simple merchandising activity. Plaintiff further insists, that the Central Bank itself admits that these skid tanks in question are a special kind of containers, being pressurized vessels, and that there is a need for specially prepared sealed and pressurized containers to keep the liquefied petroleum gas in liquefied state for distribution to end-users.

"Republic Act No. 601 as amended, has not defined the term 'industries' and furthermore, if Congress had intended to limit 'industries' to manufacturing industries, it was very easy for Congress to have done so; but as it did not, the presumption is that Congress has not limited nor intended to limit the term to 'manufacturing industries'. Indeed, considering the various amendments to the section under examination, expanding and adding exemptions from the tax, it should be proper not to give it a restricted interpretation. The idea, it seems clear, was to further and encourage the establishment and operation of industries in line with the Government's industrialization program. And it can not be denied that plaintiff was engaged in an industry; manufacture and/or sale of gasses. If in its operations it found profit or convenience in merely buying - instead of manufacturing - liquefied petroleum gas, and then selling it by means of special containers, it did not thereby lose its character as a corporation engaged in an industry. It may even be held in this particular aspect, to be engaged in a packaging industry, packing liquid gas for sale and distribution, which activity cannot be considered as a mere 'buy and sell business', taking into account the special training which the employees have to get in order to handle the gaseous product, what with pumps, regulators, valves and machinery employed therefor."

On the basis of the foregoing doctrine, petitioner is obviously engaged in an industry. Its enterprise is productive of results and benefits; uses the ingenuity of a special machinery obtained at great costs to handle more efficiently and economically the loading of sugar in bulk form instead of the employment of the crude services of stevedores. Petitioner's machinery, to our mind, is for industrial purpose. )

WHEREFORE, the decision of respondent Provincial Board of Assessment Appeals of Negros Occidental is hereby reversed. Without pronouncement as to costs.

SO ORDERED

Quezon City, December 26, 1967.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge