

40 Phil. 1046

[G. R. No. L-10936. April 25, 1958]

THE COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. INDUSTRIAL TEXTILES COMPANY OF THE PHILIPPINES AND THE COURT OF TAX APPEALS, RESPONDENTS.

CONCEPCION, J.:

The Collector of Internal Revenue seeks a review of a decision of the Court of Tax Appeals, ordering him to refund to respondent, Industrial Textiles Company of the Philippines, the sum of P13,195.76, without costs. The facts are set forth in petitioner's brief, from which we quote: ‘

“It is not disputed that on March 26, 1952 respondent ITEMCO was granted a certificate of tax exemption by the Secretary of Finance pursuant to Republic Act No. 35 for a period of 4 years from March 26, 1952 on the ground that it is engaged in a new and necessary industry, which is the manufacture of jute and burlap bags. During the period of exemption (April, 1952) the ITEMCO imported 50,000 bags of cement from Japan (p. 4, t.s.n.). Upon withdrawal of the said cement from the customs house, the petitioner required the ITEMCO to pay the sum of P13,195.76 as compensating tax, which amount was paid by the latter under Official Receipt No. 368540, dated April 22, 1952. On June 4, 1952, ITEMCO requested the refund of the said amount of P13,195.76 on the ground that it was granted exemption from the payment of internal revenue taxes by the Secretary of Finance pursuant to the provisions of Republic Act No. 35. ITEMCO claims that the aforesaid cement were used in the construction of buildings, offices, clinics of its personnel and in the paving of its yards and drive-ways. Said request for refund was denied by the petitioner in a letter to the ITEMCO, dated December 8, 1952, on the ground that the 50,000 bags of cement were not germane to and exclusively used in the manufacture of bags and similar products made out jute, burlap, kenaf and saluyot fibers. Thereafter, ITEMCO appealed to the defunct Board of Tax Appeals and the case was docketed as B.T.A Case No.

115. After due hearing, a decision was rendered by the defunct Board of Tax Appeals on March 24, 1953 in favor of ITEMCO, which decision was appealed to this Honorable Court. The appeal was docketed as G. R. L-6668. After the parties have filed their respective briefs, the appeal was dismissed without prejudice, in view of the decision of this Honorable Court in the case of U.S.T. vs. Board of Tax Appeals, G. R. L-5701.

On March 22, 1954, ITEMCO revived the action by filing a complaint in the Court of First Instance of Manila praying that the petitioner be ordered to refund to ITEMCO the sum of P13,195.76 which the latter paid as compensation tax (pp. 1-3, rec). Pursuant to Section 22 of Republic Act No. 1155, the case was remanded to the Court of Tax Appeals for final disposition (p. 23, rec.).”

Section 1 of Republic Act No. 35 provides:

“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.”

It is admitted that respondent is engaged in the manufacture of jute bags; that the manufacture of jute bags from jute, kenaf, burlap and saluyot fibers is a new and necessary industry, within the purview of Republic Act No. 35, and is considered as such by the Secretary of Finance; that any corporation engaged in a new and necessary industry is entitled to exemption from the payment of all internal, revenue taxes directly payable by said corporation in respect to such industry for a period of four years from the date of its organization; and that “the tax of P13,195.76” involved in this case “was paid directly” by respondent within said period of four (4) years. Moreover, the compensating tax in dispute is, beyond question, an internal revenue tax (section 190 of the National Internal Revenue Code [C. A. No. 466]). Again, respondent has alleged, and it is not contested, that the 50,000 bags of Portland cement upon which said tax had been levied and collected “were used exclusively” by respondent “in the construction of its factory, office buildings, and other structures and installations” and that the same “are exclusively used” by respondent “in the manufacture of jute bags.” Petitioner maintains, however, that said 50,000 bags of

cement are “not germane of bags and other similar products made from jute, kenaf, burlap and saluyot fibers,” and that the compensating tax on said cement is not refundable, because the certificate of exemption granted to respondent by the Secretary of Finance, on March 26, 1952, was limited, as regards said tax, to “articles, goods or materials used exclusively in the new and necessary industry.”

It should be noted, however, that this certificate of exemption does not require the materials exempted to be used “*in the manufacture*” of jute bags. It is enough, for the purposes of said certificate, that said materials be used “exclusively in the new and necessary industry.” Moreover, the exemption is granted *by law*, not by the Secretary of Finance, who cannot amend or modify the statutory exemption. It is true that, pursuant to section 2 of Republic Act No. 35,

“The President of the Philippines, shall, upon recommendation of the Secretary of Finance, periodically determine the qualifications that the industries should possess to be entitled to the benefits of this Act.”

The authority under this provision is vested, however, in the *President*, not the Secretary of Finance, who may only make *recommendations* to the President. Besides, said authority is limited to the determination of “the qualifications that the *industries*”—not the articles, goods or materials—“should possess to be entitled to the benefits” of Republic Act No. 35. In other words, the President shall, upon recommendation of the Secretary of Finance, determine *what industries are, within the contemplation of the law, “new and necessary.”* Once a given industry has thus been classified under this category, and continues to belong to such class, neither the Secretary of Finance nor the President may impose limitations upon, or otherwise qualify, the enjoyment of the exemptions granted in section 1 of Republic Act No. 35.

Last, but not least, it is obvious that the main purpose of this legislation is to encourage the *establishment* and *operation* of new and necessary industries. The exemption from internal revenue taxes of materials used in the manufacture of the products of such industries is, of course, conducive to the accomplishment of such purpose. But said materials constitute only *one* of the factors necessary for production. The same generally requires buildings and structures, to house the machinery, equipment, tools and materials necessary to manufacture the articles, goods or merchandise, the production of which constitutes a new and necessary industry. Hence, the exemption from internal revenue taxes on the materials

used exclusively *in the construction* of said buildings and structures—provided that these are exclusively used for the manufacture of said articles, goods or merchandise and the taxes are otherwise directly payable by the person, partnership, company or corporation engaged in said new and necessary industry, in respect of the same—is clearly within the purview of Republic Act No. 35. Otherwise, its goal could not possibly be achieved.

Wherefore, the decision appealed from is hereby affirmed, without special pronouncement as to costs. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Labrador, Reyes, J. B. L., Endencia, and Félix, JJ., concur.

Decision affirmed.
