

NATIONAL POWER CORPORATION, PETITIONER, VS. JOSE ARANAS, MELECIO DOMINGO, COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-21402. September 23, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The relevant facts of this case are stated in the decision under review (C.T.A. Case No. 702):

"From May 30, 1953 to June 30, 1955, the petitioner, a Government corporation, purchased lumber from the Heald Lumber Company for the aggregate amount of P702,816.38. It appears that the sales tax due on said sales of lumber at the rate of 5% of the gross selling price, imposed by Section 186 of the National Internal Revenue Code, as amended, was not paid by the seller upon the representation of petitioner that its purchases were not taxable, and that should it be finally held that the tax was due it would assume liability for such tax.

Upon insistence of respondent on collecting the tax on said sales, petitioner secured an opinion of the Secretary of Justice (Op. No. 106, dated May 14, 1954) to the effect that purchases of petitioner were exempt from tax under its charter, Republic Act No. 358. This opinion, was, however, revoked by the Cabinet on February 25, 1955. Convinced of its liability, petitioner paid the total sales tax in the sum of P35,140.82, but refused to pay the 25% surcharge for late payments as provided in section 183(a) of the Revenue Code in the sum of P8,785.25. Petitioner contends that the surcharge should not be imposed in view of the fact that the failure to pay the tax on time was due to the opinion of the Secretary of Justice. Respondent decided to impose and collect the surcharge on the ground that he has no discretion on the matter, hence this appeal (to the Court of Tax Appeals)."

On November 29, 1962 the Court of Tax Appeals affirmed the decision of the Collector of Internal Revenue and ordered petitioner to pay the surcharge. Hence this appeal.

The sole issue in this case involves petitioner's liability for the 25% surcharge for non-payment of the sales tax within the statutory period. Petitioner tries to justify its omission by arguing that it was merely complying with the legal advice of the Secretary of Justice, who officially sustained its claim of exemption from the payment of the disputed sales tax in his Opinion No. 106, series of 1954 (May 14, 1954), which reads in part:

"Republic Act No. 358 exempts the National Power Corporation from 'all taxes, duties, fees, imposts, charges and restrictions of the Republic of the Philippines, and its provinces, cities, and municipalities.' This exemption is broad enough to include all taxes, whether direct or indirect, which the National Power Corporation may be required to pay, . . . That it is indirect is of no moment, for it is the corporation that ultimately pays it. The view which refuses to accord the exemption because the tax is first paid by the seller disregards realities and gives more importance to form than to substance."

Besides, petitioner points out that upon being informed of the adverse final decision taken by the Cabinet, it immediately paid the taxes due. This circumstance alone, so petitioner claims, is sufficient evidence of its good faith, generated by the belief that it was exempt from all taxes, direct or indirect.

The explanation does not strike us as meritorious. Petitioner cannot honestly maintain that its failure to pay the

sales tax due was, all along, inspired by the aforecited opinion of the Secretary of Justice. The opinion was rendered on May 14, 1954, whereas the first transaction from which the tax liability arose was consummated as early as May 30, 1953. Obviously, in claiming exemption even then, petitioner was acting mainly on the basis of its own interpretation of the relevant provision of its charter (Republic Act No. 358), although it impliedly admitted the possibility that such interpretation could be erroneous, as shown by its representation made to the seller that it would assume liability for the tax should it be finally declared liable. And again, after the opinion of the Secretary of Justice was set aside by the Cabinet on February 25, 1955, petitioner still failed to pay the sales tax due within the statutory period;^[2] as a matter of fact, the full payment was made only on October 14, 1955, almost eight (8) months after the action of the Cabinet, and four (4) months after the last known transaction subject of the tax.

Besides, it is quite clear that the exemption provided in the statute^[2] refers only to those taxes directly payable by petitioner. Insofar as its purchases of lumber from the Heald Lumber Co. were concerned the sales tax imposed by Sec. 186 of the National Internal Revenue Code was payable by the seller, and if the assessment was made against petitioner it is because it assumed liability therefor. To exempt petitioner from such liability would be in effect exempting the seller itself, which is not justified under the provisions of the Revenue Code.

WHEREFORE, the judgment appealed from is affirmed, without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Judgment affirmed.

[1] Section 183 of the National Internal Revenue Code Provides:

"SEC. 183. Payment of percentage taxes.—

(a) It shall be the duty of every person conducting a business on which a percentage tax is imposed under this Title, to make a true and complete return of the amount of his, her or its gross monthly sales, receipts or earnings, or gross value of output actually removed from the factory or mill warehouse and within twenty days after the end of each month, pay the tax due thereon: . . ."

[2] Section 2 of Republic Act No. 358 provides:

"SEC. 2. To facilitate the payment of its indebtedness, the National Power Corporation shall be exempt from all taxes, except real property tax, and from all duties, fees, imposts, charges and restrictions of the Republic of the Philippines, its provinces, cities and municipalities." .

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