

ADVERTISING ASSOCIATES, INC., PETITIONER, VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.*G.R. No. L-6553. September 30, 1955*

Ponente: MONTEMAYOR, J.

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This is a petition for review of the decision of the Board of Tax Appeals affirming the ruling of the respondent Collector of Internal Revenue which denied the refund to petitioner of the sum of P11,986.18 paid by it as percentage taxes on sales of neon-tube signs, electric signs, and electric advertising devices, pursuant to section 185 (k) of the National Internal Revenue Code. The basic facts in this case are not disputed and are stated in the decision of the Tax Board which we reproduce below:

"The petitioner is a manufacturer of neon-tube signs for advertising purposes. Petitioner manufactures neon-tube signs upon previous orders from advertisers. After the neon-tube signs with their corresponding armatures are finished, they are delivered to petitioner's customers, who pay the corresponding sales price, according to contract. Sometimes neon-tube signs are rented by customers. The respondent assessed the amount of P8,581.59 corresponding to the 3rd quarter of 1948 to 4th quarter of 1949 and the sum of. P3,404.59, corresponding to the period covered from 1950 to 1951, as sales tax pursuant to the provisions of Section 185(k) of the Tax Code. The petitioner paid the total sum of P11,986.18 as demanded by the respondent. On May 12, 1949, petitioner demanded the refund of P8,581.59 as excess tax, alleging that petitioner should be taxed as a contractor or publisher and not as a manufacturer in accordance with the provisions of Section 191 of the Tax Code. Respondent denied the petitioner's request for refund in his letter dated December 20, 1950 and received by petitioner on January 2, 1951. On June 23, 1951, petitioner addressed a letter to the Secretary of Finance requesting advice as to what steps petitioner should take in order to perfect its appeal before this Board. Inasmuch as no action was taken by the Department of Finance, petitioner on April 28, 1952 addressed a letter to the respondent requesting reconsideration of its letter dated December 20, 1950 and at the same time requested the refund of the additional sum of P3,404.59, taxes paid for the year 1950-1951. Respondent in his communication dated October 14, 1952, and received by petitioner on October 20, 1952, refused to reconsider his ruling and considered his decision dated December 20, 1951, final. Petitioner now comes to this Board for the review of the respondent's decision.

We also reproduce the pertinent portions of the two sections of the Tax Code:

"Sec. 185. Percentage tax on sales of automobiles, sporting goods, refrigerators, and others.—There shall be levied, assessed and collected only once on every original sale, barter exchange or similar transaction intended to transfer ownership of, or title to, the articles herein below enumerated, a tax equivalent to thirty per centum of the gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer, producer or importer: * * *

"(k) Neon-tube signs, electric signs, and electric advertising devices.

* * * * *

"Sec. 191. Percentage tax on road, building, irrigations, artesian well, waterworks, and other construction work contractors, proprietors or operators of dockyards, and others.—* * * publishers, except those engaged in the publication or printing and publication of any newspaper, magazine, review, or bulletin which appears at regular intervals, with fixed prices for subscription and sale, and which is not devoted principally to the publication of advertisements; printers, and bookbinders, shall pay a tax equivalent to three per centum of their gross receipts."

* * * * *

It is the contention of petitioner that it is not a manufacturer but only a contractor of neon-tube signs for the reason that it makes neon-tube signs, electric signs, and electric advertising devices only by contract and by previous order of the party paying for the signs or devices; also, that petitioner may also be considered a publisher for the reason that the neon signs made by it really publish a product or a business, and that consequently, it should be taxed under section 191 of the Tax Code which imposes as much lower tax both in rate and in amount. According to the Solicitor General, however, the very articles of incorporation of petitioner rebuts its contention that it is not a manufacturer. We quote a portion of said articles of incorporation, viz.:

"To conduct a general advertising business, both as principal and agent, including the preparation and arrangement of advertisements, and the manufacture and construction of advertising devices and novelties; * * *"

Petitioner makes extensive arguments and citation of authorities as to the meaning of manufacturer in an endeavor to show that it does not really manufacture neon-tube signs, electric signs and electric advertising devices but only sells or leases its services in making said signs according to the wishes and instructions of the customer. To us there is no need of seriously considering said authorities and arguments because the decisive point involved in the case is the meaning and purpose of section 85(k) of the Tax Code. What was the intention of the Legislature in enacting said legal provision and what did it mean to tax? In this connection, it is both relevant and interesting to give a brief history of this legal provision. According to the decision of the Tax Board, and we quote:

"* * * The original text of the Tax Code (Commonwealth Act No. 466) approved on June 15, 1939, does not include the manufacture of neon-tube signs as taxable under Section 185. This was due to the fact that the business of manufacturing neon-tube signs was not at the time very lucrative for lack of demand. But as years went by, the demand for such devices increased, so, under Republic Acts Nos. 41, 217, 588, and 594, the rate of percentage tax was increased from 10% to 15% and then to 30%."

And, the Solicitor General adds that at the beginning When the tax was only 10 per cent the petitioner without question or protest paid the same; and it was only when the tax was increased to 15 per cent and then to 30 per cent that it thought of questioning the legality of the assessment and for the first time claimed that it did not fall under the provisions of section 185(k). From the time that the tax on neon-tube signs, electric signs, and electric advertising devices was imposed there had been no such neon-tube signs and electric devices mass-produced for sale to the public. And even at the present time petitioner admits that no such signs and devices are made or sold to the public except upon orders by the customers. This being the case, and if as contended by petitioner that its business of making and manufacturing neon-tube signs, electric signs, and electric advertising devices does not come under section 185 (k) of the Tax Code then one may ask what neon-tube signs, electric signs, and electric advertising devices does said section 185(k) tax? As the Tax Board aptly frames the question in the last part of this decision:

"If petitioner does not come within the purview of section 185 (k) of the Tax Code, what neon-tube signs, electric signs, and electric advertising devices does Congress intend to tax?"

The answer would be "none". In other words, Congress would be placed in the position of imposing a tax on

something that did not exist and so will have performed a futile and useless legislative act.

"A statute is a solemn enactment of the state acting through its legislature and it must be assumed that this process achieve result. It cannot be presumed that the legislature would do a futile thing." (Sutherland Statutory Construction, Vol. 2, p. 237.)

As a rule taxes are imposed on existing industries, occupations, transactions, products and articles and not on those that may possibly exist or come in the future. Tax law makers, and tax collectors who generally propose and recommend the enactment of tax laws, are usually practical-minded people who deal with and consider existing situations and problems and not those that may possibly arise in the future. When the 10 per cent, then 15 per cent and later 30 per cent tax was imposed on neon-tube signs, electric signs, and electric advertising devices sold, exchanged, or transferred the Legislature could not have had in mind and referred to any other signs or devices than those which were being made and manufactured by previous order, such as those manufactured by petitioner. The Legislature was not so much interested in how those neon-tube signs and electric advertising devices were made and manufactured as it was in their eventual sale to the public and to customers who ordered them. We therefore find and hold that the Tax Board committed no error in affirming the ruling of the Collector of Internal Revenue.

Petitioner also claims that it should be allowed deductions for the materials used in the making of these electric signs which are now being taxed under section 185(k). But according to the Solicitor General, although he agrees that the cost of the materials used in the manufacture of the finished articles on which the sales tax has been previously paid may be deductible from the gross selling price of the finished article, petitioner did not raise this issue before the Tax Board, and during the hearing before said body no proof, was presented to show that said deduction had not been allowed, as a result of which the Tax Board did not make any finding on the point. We agree with the Solicitor General that at this stage of the case, this matter cannot be considered.

In view of the foregoing, the decision of the Tax Board is hereby affirmed with costs. We find it unnecessary to pass upon the other points raised in the petition.

Bengzon, Acting C. J., Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.

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