

COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. ETERNIT CORPORATION, RESPONDENT. ETERNIT CORPORATION, PETITIONER, VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. Nos. L-11891 and G.R. No. L-11913. April 29, 1959

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a decision of the Court of Tax Appeals dated December 15, 1956, assessing a tax of P5,639.17, on the gross receipts in the mixed sales and installation amounting to P1,021,600.44, received by the Eternit Corporation, from January, 1951 to June, 1955, which gross receipts is itemized as follows:

"For asbestos products.

P772,244.88

For accessories

98,970.63

For Labor

149,044.63

For delivery charges

1,340.30

(p. 12, Brief for Appellant-Appellee
Eternit Corporation)

The Eternit Corporation is engaged in the manufacture of asbestos cement products, particularly asbestos corrugated sheets for roofing. Upon its petition, it had been granted exemption from tax by reason of the fact that it is an essential and necessary industry, in accordance with the provisions of Republic Act Nos. 35 and 901. The exemption granted by the Secretary of Finance was extended until December 31, 1958 pursuant to said Republic Act No. 901, as per letter dated July 1, 1954, of the said Secretary.

The Collector of Internal Revenue assessed a tax of 3 per cent on the Eternit Corporation as contractor on the total

sum of P1,021,600.44, as above set forth. Not satisfied with this assessment Eternit Corporation appealed to the Court of Tax Appeals, claiming that no tax on the above amount is collectible for the same is free from any tax in accordance with the above-mentioned laws (Rep. Act Nos. 35 and 901). The Court of Tax Appeals held that the sum of P772,244.88, which represents the selling price of the asbestos products delivered, as well as the item of P98,970.63 for accessories, should be exempt from tax, but held that contractor's tax of 3 percent be assessed on the amount of P149,044.63. The tax assessed in accordance with this ruling is P5,639.17. Against this decision, both parties have appealed to this Court.

The Collector of Internal Revenue argues that the gross receipts of the Eternit Corporation in the mixed sales-installation represents only 11.3 per cent of its total sales, so that the installation of the asbestos roofing manufactured by said corporation is not necessary to encourage the sale of its products and is not a part of such sales. It is further argued on behalf of the Collector that if the installation of the asbestos roofing were to be undertaken by another contractor, not the Eternit Corporation, the contractor would be required to pay a 3 per cent tax on the gross receipts as required by Section 191 of the National Internal Revenue Code. It is finally argued that to exempt the Eternit Corporation from paying 3 per cent contractor's tax on its gross receipts on the so-called mixed sales and installation is a violation of the rule of equality and uniformity of taxation and of the further rule that a statutory grant of exemption from taxation is to be strictly construed.

In answer to the above contentions, the Eternit Corporation claims that difficulty in the sale of its corrugated asbestos sheets is encountered because of difficulty in their installation; that to overcome this difficulty, it has been necessary to organize its own force of employees or laborers to make the installation of its sheets, especially for all customers who cannot afford to pay for competent engineers, or whose constructions do not justify the employment of such competent engineers.

The Court of Tax Appeals adopted a middle ground, holding that the exemption in favor of the Eternit Corporation should extend up to the end of the process of the manufacture and sale; that asbestos sheets can be manufactured without installation, and, on the other hand, installation is distinct and separate from manufacture. It ruled that to extend the exemption up to installation would be to unduly strain or stretch the idea of manufacture and also unduly extend the exemption granted under the law. It, therefore, held that the contractor's tax should be assessed on the amount of P149,044.63.

But it also refused to give validity to the contention of the Collector of Internal Revenue, reasoning that to impose the contractor's tax on the cost of the sheets installed, and not on the installation cost alone, would frustrate the exemption granted to petitioner Eternit Corporation from the payment of the "percentage tax on the sales of the manufactured products in respect to which exemption is granted." The exemption of the Eternit Corporation was, therefore, extended to the sale and delivery, of the asbestos roof manufactured. In such sale, the court said, the Eternit Corporation was engaged in the manufacture thereof, which is tax free; but in installing the same in the houses of its customers, it engages in another occupation, that of installation, which should be subject to tax.

We agree to the above reasoning and conclusions of the Court of Tax Appeals, in holding that the cost of the products installed should be free from tax under the exemption granted by Republic Act No. 901, but refusing the claim of the corporation for exemption from paying the contractor's tax on the cost of the installation of sheets they had sold and delivered, because in this latter respect it is performing the work of a contractor, which is subject to another tax provisions. The law granting the exemption does not state exemption for the act of installation of its manufactured products, and under the rule of strict interpretation of laws granting tax exemptions, the sums received for installation can not be included in the general exemption. Such sums, therefore, must be held subject to contractor's tax.

Wherefore, the decision appealed from is hereby affirmed, without costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Concepcion, and Endencia, JJ., concur.

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