

PACIFIC OXYGEN & ACETYLENE CO., PETITIONER AND APPELLANT, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT AND APPELLEE.*G.R. No. L-17708. April 30, 1965*

Ponente: MAKALINTAL, J.

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Appellant is a domestic corporation engaged in the manufacture and sale of acetylene and oxygen. In the process of manufacture it uses calcium carbide purchased from the Maria Cristina Chemical Industries of the Philippines, a concern engaged in an industry that is tax-exempt under Republic Act No. 901 (which grants such exemption to new and necessary industries). In computing the percentage taxes on its sales of acetylene for the year 1954, 1955 and 1956, appellant deducted the price of the calcium carbide from the gross selling price of said product, but the deduction was not allowed by the Commissioner of Internal Revenue. As a result an assessment for deficiency taxes was made in the sum of P5,855.97. Protesting the disallowance, appellant sought a review of the assessment in the Court of Tax Appeals, which sustained the Commissioner's ruling and also granted the latter's counterclaim for an amount erroneously credited in favor of appellant. The case is now before us on appeal from the Tax Court's decision.

The assessment made by the Commissioner is based on Section 186 of the Internal Revenue Code, which fixes the tax at seven (7%) per cent "of the gross selling price or gross value in money of the articles sold * * *, such tax to be paid by the manufacturer or producer." Appellant, on the other hand, relies on the following proviso in the same section, to wit:

"That where the articles subject to tax under this section are manufactured out of materials likewise subject to tax under this section and section one hundred and eighty-nine the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles."

Appellant's contention is that it bought the calcium carbide not from the tax-exempt Maria Cristina Chemical Industries of the Philippines but from the National Carbon Philippines, Inc., which, it is averred, may be presumed to have paid the corresponding percentage taxes in view of the usual business practice of adding the amount thereof to the sales price of every article sold. Appellant points to the sales invoices (Exhibits A-1 to A-45) covering the purchases of calcium carbide made by it, wherein the National Carbon Philippines, Inc. appears to be the seller. However, this is contradicted by the statement in the stipulation of facts entered into by the parties, to the effect that "the calcium carbide used by the petitioner in the manufacture of acetylene and oxygen was purchase from a tax-exempt industry, the Maria Cristina Chemical Industries of the Philippines thru the National Carbon Philippines, Inc." In merely as an agent of the real seller and in that capacity issued its own receipts to cover the purchases.

The proviso in Section 186 relied upon by appellant is intended to prevent a second assessment of the percentage

tax on materials that go into the production of a manufactured article. Since the calcium carbide used by appellant had not been previously taxed because of the exemption admittedly granted by Republic Act No. 901 to the Maria Cristina Chemical Industries of the Philippines, the cost thereof cannot be allowed as a deduction (*Tan Chiu vs. The Collector of Internal Revenue*, L-15008, January 28, 1961). And in the absence of evidence as in this case there is none that in the sales invoices issued by the National Carbon Philippines, Inc. the percentage taxes were included as part of the purchase prices paid by appellant, we cannot make an affirmative finding on the point. No reliance can be placed on a mere presumption that a "usual business practice" has been followed, the inclusion of such taxes as part of the prices paid by appellant being, if true, easily capable of positive proof.

Appellant next seeks refuge in Section 186-A of the Tax Code, which provides that "whenever a tax-free product is utilized in the manufacture or production of any article, in the determination of the value of such finished article, the value of such tax-free product shall be deducted." This provision does not apply to the taxes subject of this case, because Republic Act No. 2025, which inserted Section 186-A in the Tax Code (and amended some other sections thereof), expressly states that it would take effect upon its approval, and it was approved only on June 22, 1957, or after the period for which the deficiency taxes were assessed. There is nothing in that statute to indicate that it was meant to have retrospective effect. Like other statutes, tax laws operate prospectively, whether they enact, or repeal, unless the purpose of the legislature to give retrospective effect is expressly declared or may be implied from the language used (*Lorenzo vs. Posadas*, 64 Phil. 353; *Commissioner of Internal Revenue, vs. Filipinas Compañia de Seguros* 58 Off. Gaz. No. 3, p. 460).

With respect to appellee's counterclaim, the Court of Tax Appeals, found that an investigating agent of the Bureau of Internal Revenue had mistakenly credited appellant with P364.02 as alleged overpayment of percentage taxes for the year 1955 and 1956. The counterclaim for this amount was properly granted by the Tax Court on the ground that appellant had not filed a written claim in order that the same might be credited to it. According to Section 309 of the Tax Code, before the Commissioner of Internal Revenue can exercise his authority to credit or refund taxes erroneously or illegally reviewed, a written claim therefor must be filed with him by the taxpayer within two years after payment (Section 309 Tax Code). An investigating agent has no such authority in the first place, much less where no written claim for credit has been filed; and his error in crediting appellant with the amount in question does not place the Government in estoppel (*Pineda vs. Court of First Instance of Tayabas*, 52 Phil. 803; *Canlubang Sugar Estate vs. Standard Alcohol Co. (Phil.), Inc.*, L-10387, April 16, 1958; *Philippine American Drug Co. vs. Collector of Internal Revenue and Court of Tax Appeals*, 106 Phil. 161] nor preclude it from correcting the mistake upon discovery thereof (*Genato Commercial Corporation vs. Court of Tax Appeals*, 104 Phil. 615).

The decision appealed from is affirmed, with costs against appellant.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, Bengzon, J.P. and Zaldivar, JJ., concur.

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