

VICTORIAS MILLING CO., INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, ET AL., RESPONDENTS; COMMISSIONER OF INTERNAL REVENUE, PETITIONER VS. VICTORIAS MILLING COMPANY, E...

G.R. No. L-24769 and G.R. NO. L-24779.. February 25, 1967

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

From the decision of the Court of Tax Appeals in CTA Case No. 1106 (Victorias Milling Co. vs. Commissioner of Internal Revenue), declaring that sugar bags and materials imported by the Victorias Milling Co. from September 7, 1959 to August 26, 1960, and subsequently used and disposed of by it as containers for the sugar sold, were not subject to advance sales tax and ordering the Commissioner of Internal Revenue to refund the sum of P158,269.61, without interest, both parties have appealed to this Court. The issues tendered are identical to those posed in Case G. R. No. L-21171, Victorias Milling Co. vs. Commissioner of Internal Revenue, decided on January 31, 1967.

The appeal of the Revenue Commissioner (G. R. No. 24779) assails the decision of the Tax Court in rejecting his contention that the sugar bags and containers were imported for sale and, as such, were subject to the payment of advance sales tax under sections 183 (b) and 190 of the Internal Revenue Code. This contention was already overruled by this Court in the aforementioned case (G. R. No. L-21171) where we held that, since section 188 (d) of the Revenue Code exempts expressly from sales tax those "articles subject to tax under section 189 of this Code", the payment by the milling company of the 2% tax imposed by section 189, on the gross value in money of all sugar manufactured or milled by it, based on the market value or actual selling price of the article at the time it leaves the factory or mill warehouse, necessarily results in the exclusion from sales tax of the value of the bags in which the sugar is contained, there being no evidence that the price of the bags was not included, or that it is charged or sold separately from that of the sugar contained therein at the time of the sale. And we reasoned out that, alternatively, if the price or market value of the sugar upon which the tax was paid by the sugar company did not include that of the bags, then the bags were not sold by it and, therefore, there was no sale of bags to be taxed, since no evidence exists on record that the sugar company received a separate consideration for such bags.

The argument of the Commissioner that the exemption of the price of sugar under section 189 of the Revenue Code can not include that of the bags or containers, because said section mentions only the former, but not the latter, does not take into account that there is no proof that the sugar company deducted the value of the bags or containers in reporting the market value or price of the sugar it sold, for purposes of the tax under section 189.

Upon the other hand, the Milling Company appealed from the Tax Court's decision in Case G. R. No. L-24769, contending that the refund of the protested sales tax collected by the revenue authorities should have been ordered with payment of interest thereon, for the reason that in ruling that the bags and materials imported by said company the Commissioner of Internal Revenue was guilty of arbitrariness, since he had previously ruled that

such importations were exempt from sales tax. As we have concluded in the preceding case G. R. No. L-21171, the mere fact of the reversal of a ruling previously rendered is not per se evidence of arbitrariness; neither is the fact that the administrative ruling is found by the courts not in accordance with law. Arbitrariness pre-supposes inexcusable or obstinate disregard of legal provisions, which, in this case, we do not think exists, the Commissioner's holding being to some extent, plausible on the strict letter of the law.

WHEREFORE, the decision of the Court of Tax Appeals, in its CTA Case No, 1106, is affirmed. No costs.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, Zaldivar, Sanchez, and Castro, JJ., concur.

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