

UNION GARMENT CO., INC., PETITIONER, VS. COURT OF TAX APPEALS AND COLLECTOR OF INTERNAL REVENUE, RESPONDENTS.

G.R. No. L-16809. January 31, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is a petition for the review of a decision of the Court of Tax Appeals dismissing a petition for the refund of the sum of P4,114.38 collected and paid under protest by petitioner as percentage tax under Section 191 of the National Internal Revenue Code, including surcharge and compromise penalty.

The petitioner is engaged in the business of tailoring with office and factory at 1660 Felix Huertas, Sta. Cruz, Manila. In the year 1953 petitioner, after public bidding, entered into a contract with the Armed forces of the Philippines (AFP) under which petitioner was granted the exclusive privilege and right to sew or tailor pants, drawers, shirts and similar apparel for it, in accordance with specifications supplied by the AFP. The AFP furnished the cloths for manufacture into apparel while petitioner only furnished the labor and the services needed in the sewing and tailoring.

The petitioner claims it is exempted from the tax assessed against it under section 191 of the Tax Code. On the other hand, the respondents maintain that petitioner is not exempt. The court below ruled on this issue in the following manner—

"The pretension of the petitioner that its transactions with the AFP are purchases and therefore are exempted from the payment of taxes in pursuance of Paragraph II, page 632, Republic Act No. 816 is untenable. These transactions involved tailoring by the petitioner of pants, drawers, shirts and similar apparel out of clothing materials furnished by the AFP. They are more in the nature of lease of work by contract or for a fixed price (see Art. 1713, Civil Code of the Philippines) for the former supplied the labor in the manufacture or tailoring thereof. They are not purchases within the contemplation of Paragraph II, page 632, Republic Act No. 816. The term "purchases", as used in the aforesaid statute, is a common term. And in the absence of a legislative intent to the contrary, a common term in a statute is presumed to have been used in its common sense (Sutherland Statutory Construction, Vol. 2, pp. 434-437). In the case at bar, we find nothing in Republic Act No. 816 which indicates that the term "purchases" found therein was used to convey a meaning other than its ordinary import.

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"Upon the rationale that petitioner's transactions with the AFP are not purchases of articles made by the latter, and that the same are more in the nature of lease of work by contract or for a fixed price, we hold that the petitioner is liable for the payment of the percentage tax prescribed in Section 191 of the National Internal Revenue Code."

Hence this petition for review.

It is claimed on the appeal that the legislative intent of Rep. Act No. 816, which extends exemption to all purchases made by the AFP, should be interpreted liberally, and the law on the matter, namely, Rep. Act No. 816,

reflected in Section 188 of the National Internal Revenue Code as amended, section 2 of Rep. Act No. 601 as amended, and, paragraph (9) of page 788 of Rep. Act No. 906 (Appropriation Law). It is argued that in consonance with the policies and the above provisions of the law,"contract for a piece of work should not be distinguished from a contract of sale" and therefore the phrase "all purchases made by" applies to commodities and services without distinction whether the contract is for a piece of work or not.

We find no merit in this argument. The exception contained in the tax statutes must be strictly construed against the one claiming the exemption. It must be remembered that the cloth was furnished petitioner appellant so all that he invested in the contract with the AFP was the service rendered in sewing the materials into garments. The petitioner appellant therefore, sold nothing but the services rendered by it. Services can not mean materials and fall under the provisions imposing a tax on sums or amounts received for the lease or services, in accordance with the following provision of the Tax Code—

"Sec. 191. Percentage tax on road, building, artesian well, waterworks, and other construction work contractors, proprietors or operators of dockyards, and others.— * * * and tailor shops * * * shall pay a tax equivalent to three percentum of their gross receipts.

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For the foregoing considerations, the decision sought to be reviewed is hereby affirmed, with costs against petitioner appellant.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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