

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. TELEFUNKEN SEMICONDUCTOR PHILIPPINES, INC., COURT OF TAX APPEALS, AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 103915. October 23, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

This is a petition for review on certiorari of the decision[1] of the Court of Appeals affirming the decision of the Court of Tax Appeals which ordered petitioner to grant a tax credit to private respondent Telefunken Semiconductors Philippines, Inc. (TELEFUNKEN) in the amount of P2,482,042.35 representing contractor's tax allegedly paid erroneously for the period October 1979 to September 1981.

The undisputed facts, as found by respondent Court of Tax Appeals (CTA), are as follows:

Private respondent Telefunken is a domestic corporation registered with the Board of Investments (BOI) as an export producer on a preferred pioneer status under Republic Act No. 6135.

From October 1979 to September 1981, Telefunken produced semi-conductor devices amounting to P92,843,774.00 which were entirely sold to foreign markets.

It filed percentage tax returns on the said exportation declaring a total of P2,482,042.35 as contractor's tax, which was paid and verified to have been received by the government.

Telefunken wrote a letter to the Appellate Division of the Bureau of Internal Revenue (BIR) dated January 19, 1982 stating that the payment of contractor's tax of P2,482,042.35 was erroneous and requested its refund or tax credit thereof. Telefunken contended that under the provisions of Section 7 of Republic Act No. 6135 in relation to Section 8 (a) of Republic Act No. 5186 (The Investment Act), it was exempted from the payment of all national internal revenue taxes for the period in question, except for income tax.

The sole issue raised by petitioner is whether or not Telefunken, a corporation registered under Republic Act No. 6135 as a pioneer export producer, was exempted from payment of the 3% contractor's tax from October 1979 to September 1981.

The controlling statute is Section 205 (16) of the 1977 National Internal Revenue Code (NIRC), which states:

"Section 205. Contractors, proprietors or operators of dockyards and others. A contractor's tax of three percentum of gross receipts is hereby imposed on the following:

x x x x x x x x

(16) Business agents and other independent contractors including private detective or watchman agencies, except gross receipts of a pioneer enterprise registered with the Board of Investments under Republic Act 5186." (As amended by P.D. No. 1457, June 11, 1978)

Petitioner argues that the law speaks of firms registered under Republic Act No. 5186 and thus, the privilege of tax exemption cannot be made to apply to firms registered under Republic Act No. 6135. Specifically, he states that Telefunken is not covered by the Tax Code exemption because "exemption from contractor's tax is extended to pioneer enterprises registered with the Board of Investments under Republic Act No. 5186 in relation to Section 205 of the Tax Code."

Firms, such as Telefunken, registered under Section 7 of Republic Act No. 6135 were entitled to a tax exemption, except income tax, only on a graduated basis. This graduated scale is set out in Section 8 (a) of Republic Act No. 5186:

"Sec. 8. Incentives to a Pioneer Enterprise. In addition to the incentives provided in the preceding section, pioneer enterprises shall be granted the following incentive benefits:

(a) Tax Exemption. - Exemption from all taxes under the National Internal Revenue Code, except income tax, from the date the area of investment is included in the Investment Priorities Plan, to the following extent:

- (1) One hundred per cent (100%) for the first five years;
- (2) Seventy-five per cent (75%) for the sixth through the eighth year;
- (3) Fifty per cent (50%) for the ninth and tenth years;
- (4) Twenty per cent (20%) for the eleventh and twelfth years; and
- (5) Ten per cent (10%) for the thirteenth through the fifteenth year.

Provided, That the above schedule shall apply only to enterprises registered in areas included for the first time in the sixth or subsequent Investment Priorities Plan or therein carried over from the previous Investment Priorities Plan. Provided, however, That in areas previously declared preferred and/or carried over the sixth or subsequent Investment Priorities Plan and wherein enterprises have already registered, the exemption herein provided shall be as follows:

- (1) One hundred per cent up to December 31, 1972;
- (2) Seventy-five percent up to December 31, 1975;
- (3) Fifty per cent up to December 31, 1977;
- (4) Twenty per cent up to December 31, 1979;
- (5) Ten per cent up to December 31, 1981.

Provided, further, That subject to the approval of the National Economic and Development Authority, the Board may extend the duration of the tax exemption provided in any bracket for pioneer projects whose total costs would exceed one hundred million pesos (P100,000,000.00), subject to the condition that in no case shall the total period of exemption herein exceed twenty (20) years. (As amended by Presidential Decree No. 92 of January 6, 1973)"

Petitioner contends that for Telefunken to qualify for total exemption, aside from its registration under Republic Act No. 6135, it must also be registered with the BOI under Republic Act No. 5186.

We find petitioner's contentions to be devoid of merit.

Section 7 of Republic Act No. 6135 (the law under which Telefunken is registered) provides that registered export producers in a pioneer status are entitled to the incentives provided in Section 8 (a) of Republic Act No. 5186.

It states:

"Section 7. Incentives to registered export producers. - Registered export producers. - Registered export producers unless they already enjoy the same privileges under other laws shall be entitled to the incentives set forth in paragraphs (h), (i) and (j) of Section 7 of Republic Act Numbered Fifty-one hundred eighty-six, known as the Investment Incentives Act; and registered export producers that are pioneer enterprises shall be entitled also to the incentives set forth in paragraphs (a), (b) and (c) of section 8 of the said Act. In addition to the said incentives, and in lieu of other incentives provided in Section 7 and in Section 9 of that Act, registered export producer shall be entitled to benefits and incentives as enumerated hereunder:

x x x x x x x x."

(Italics supplied)

We find no ambiguity in the law. When construed together, the above-quoted provisions yield no other conclusion but that gross receipts of a pioneer enterprise registered with the Board of Investments, such as Telefunken, are exempt from the contractor's tax. This is in accordance with the policy of the government, as declared in Section 2 of Republic Act No. 6135:

"x x x to actively encourage, promote, and diversify exports of services and of manufacturers utilizing domestic raw materials to the fullest extent possible, and to develop new markets for Philippine products, in order to attain a rising level of production and employment, increase foreign exchange earnings, hasten the economic development of the nation, and ensure that the benefits of development accrue to the Filipino people."

There is no difference between the gross receipts of pioneer enterprises registered with the Board of Investments under Republic Act No. 6135 and the gross receipts of registered pioneer enterprises under Republic Act No. 5186. In fact, petitioner himself had ruled in this vein on February 4, 1974 in the case of Asian Transmission Corporation.[2]

Petitioner, in that case, said:

"This refers to your letters dated November 29 and December 19, 1973 requesting a ruling as to whether your contractors namely, C.E. Construction Corporation and Marsteel Corporation are exempt from the payment of the 3% contractor's tax prescribed under Section 191(16) of the Tax Code. It appears that your application for registration as export producer under Republic Act No. 6135 has been approved by the Board of Investments on January 8, 1974 on a pioneer status.

In reply, I have the honor to inform you that under the last paragraph of Section 191(16) of the Tax Code, gross receipts x x x from a pioneer industry registered with the Board of Investments under the provisions of Republic Act Numbered Five Thousand One Hundred and eighty-six', are exempt from the contractor's tax. It is clear that the intention of the law is to relieve the pioneer industry from ultimately shouldering the contractor's tax which could be passed on to it legally by its contractor.

Pursuant to Section 7 of Republic Act No. 6135, that corporation as a registered export producer on a pioneer status is entitled to the same tax incentives granted to a pioneer industry set forth in Section 8(a) of Republic Act No. 5186. Under this latter provision, a pioneer industry is exempt from all taxes under the National Internal Revenue Code, except income tax. In other words, both a registered export producer on a pioneer status under Republic Act No. 6135 and a pioneer industry under Republic Act No. 5186 are entitled to the same tax exemption benefits under the Tax Code. Such being the case, like the latter, the former should not also shoulder the contractor's tax which could be passed on it legally by its contractor.

In view thereof, the gross receipts derived by C.E. Construction Corporation and Marsteel Corporation from the construction of your transmission plant in Canlubang, Laguna, are exempt from the 3% contractor's tax."
(Italics supplied)

Petitioner now maintains that this 1974 ruling has been abrogated with the passage of the 1977 Tax Code, Section 205(16) which expressly mentions only pioneer enterprises registered with the Board of Investments under Republic Act No. 5186 as exempt from the contractor's tax, with no reference being made regarding pioneer enterprises registered under Republic Act No. 6135.

When petitioner made his 1974 ruling, he based the same on Section 191(16) of the Tax Code which states:

"SEC. 191. Contractors, proprietors or operators of dockyards, and others. - A contractor's tax of three per centum of the gross receipts is hereby imposed on the following:

x x x x x x x x

(16) Business agents and other independent contractors except persons, associations and corporations under contract for embroidery and apparel for export, as well as their agents and contractors and except gross receipts of or from a pioneer industry registered with the Board of Investments under the provisions of Republic Act Numbered Five Thousand one hundred and eighty-six." (Italics supplied)

A comparison of the above with the previously quoted Section 205(16) of the 1977 Tax Code reveals that both provisions specifically mention pioneer industries registered with the Board of Investments under Republic Act No. 5186 as exempt from payment of the contractor's tax. In fact, the wording of the relevant part of both provisions are the same. Clearly, Telefunken falls under the category of "pioneer industries" contemplated under Section 205(16) and should be entitled to the exemption provided for.

Lastly, under Sec. 246 of the National Internal Revenue Code, rulings of the BIR may not be given retroactive effect, if the same is prejudicial to the taxpayer.[3]

WHEREFORE, the decision of the Court of Appeals is hereby AFFIRMED. No costs.

SO ORDERED.

Melo and Panganiban, JJ., concur.

Vitug, J., in the result.

Feliciano, (Chairman), no part.

[1] CA-G.R. SP No. 22910, Luis A. Javellana, J., ponente, Serafin V.C. Guingona and Cancio C. Garcia, JJ., concurring; Rollo, p. 23.

[2] Rollo, p. 28-30.

[3] SEC. 246. Non-retroactivity of rulings. - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith.

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