

TAN CHIU, PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. 15008. January 28, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

Petitioner seeks the review of a decision of the Court of Tax Appeals denying his claim for refund of the sum of P3,648.32 collected from him under the provisions of Section 186 of the Internal Revenue Code on sales of undershirts manufactured by him.

It appears that petitioner purchased knitting materials amounting to P45,179.64 and P6,939.18 for the first quarter up to the last quarter of 1956 and from January to May, 1957. He was required to pay as percentage tax on the sales of the undershirts manufactured from the knitting materials purchased, the amount of P3,648.32. The Court of Tax Appeals sustained the assessment of the tax, declaring that the purpose of Section 186 of the Internal Revenue Code authorizing the deduction of the costs of materials manufactured from the gross selling price, is to avoid or prevent double taxation; that the purpose of the law is to prevent a second assessment of the percentage tax on the material that went into the production of the manufactured articles, but that as the sales tax on the materials purchased in the case at bar, which were manufactured into undershirts, were not required to be paid, by virtue of the provision of Republic Act No. 901 because of the exemption granted to new and necessary industries, said knitting materials not having been previously subjected to the payment of the sales tax, their value should not be deducted from the selling price of the products manufactured.

Petitioner's counsel argues that the subject of the tax or payor should be distinguished from the product of the subject thereof; that Republic Act No. 901 exempts the payor or manufacturers, not the materials used in the manufacture. The distinction is merely in words. When the payor or the person engaged in a new and necessary industry is exempt from the tax, that means that he does not pay tax or the sales tax on the products that he manufactures in the new and necessary industry. In this case the products that are manufactured are the cotton knitting materials previously manufactured by the tax exempt industry; so the cotton knitting materials produced are not subject to the sales tax. As no sales tax have been paid thereon (on the knitting materials), the deduction of the cost thereof from the value of the gross sales of petitioner, can not be claimed.

The decision of the Court of Tax Appeals is hereby affirmed, with costs against petitioner.

Bengzon, Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

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