

## PHILIPPINE ACETYLENE COMPANY, PLAINTIFF AND APPELLEE, VS. CENTRAL BANK OF THE PHILIPPINES, DEFENDANT AND APPELLANT.

*G.R. No. 17097. September 29, 1964*

Ponente: BENGZON, C.J.

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### BENGZON, C.J.:

This is a civil action for the recovery of taxes allegedly collected without authority of law.

It appears that in September, 1955, pursuant to Republic Act No. 601, the Philippine Acetylene Company paid to the Central Bank the sum of P3,197.06, as taxes on foreign exchange which plaintiff applied to the payment of costs, transportation, and other charges incident to the importation of ten skid tanks or cylinders of 1,000-gallon capacity each; it also appears that in the same month, plaintiff again paid defendant the sum of P3,310.81, for identical taxes on foreign exchange in connection with ten other imported skid tanks or cylinders.

These skid tanks were later installed in plaintiff's premises. Said tanks are special pressure vessels used to maintain pressure on liquefied petroleum gases—to keep them in liquid state—which plaintiff bought from Caltex for sale to its customers in smaller pressure containers.

Since under Section 2 of Republic Act No. 601 as amended, the tax should not be assessed or collected on

"machineries, equipment, accessories and spare parts for the use of industries \* \* \*."

plaintiff asked for refund of its payment, contending that the tax had been collected on accessories or equipment for use of an industry; but refund was denied; motions for reconsideration were likewise denied. So the present action was instituted.

According to the Bank, plaintiff's case 'does not come within the exemption, because the skid tanks were not imported by the plaintiff as indispensable for the use of an industry; but were imported by it purely and simply as receptacles needed by it in its business of purchase and sale of liquefied petroleum gases. The Bank points out that plaintiff is not engaged in any industry for which the 20 skid tanks were indispensable, said plaintiff being merely a merchant, using the skid tanks in its business. Lastly, defendant further contends that the action taken by the plaintiff comes too late, since the money had been reverted to the National Treasury and already forms a part of the general funds.

Having heard both sides, the Manila court of first instance rendered judgment ordering the Central Bank to return the moneys collected by it from plaintiff.

The Central Bank appealed.

The main issue is whether or not the skid tanks in question fall within the exemption provided in Section 2 of Republic Act No. 601 as amended, which reads as follows:

"Sec. 2.—The tax provided for in Sec. 1 of this Act shall not be collected on foreign exchange used for payment of the costs, transportation and/or other charges incident to importation into the Philippines of a \* \* \*

machinery, equipment, accessories, and spare parts for the use of industries, \* \* \*."

There is no question that plaintiff-appellee is engaged in the industry of a manufacturer (and seller) of acetylene gas, oxygen gas, and other gases. However, it does not Manufacture liquefied petroleum gas; it buys liquefied pet-gas in bulk from the Caltex Refinery in Batangas and retails it to individual consumers. It imported the skid tanks for transporting and storing such liquefied petroleum gas.

The Rank says no manufacturing phase ever occurs in the process, no transformation of raw materials, either in form, utility or substance takes place. Wherefore, it maintains that plaintiff-appellee is a dealer only of liquefied petroleum gas, not using the tanks in an industry.

On the other hand, plaintiff-appellee's stand is that it has been and is actually engaged in the manufacture of oxygen, acetylene and nitrogen gases, and in the packaging and distribution of liquefied petroleum gas in which industry, there is an investment of over a million pesos this employment for more than one hundred men.

By its nature, plaintiff explains, liquefied petroleum gas is a petroleum product that can exist as a gas or a liquid, and can be changed from gas to liquid or vice versa by an appropriate change in the temperature or pressure; and as the trial court noted, the handling of petroleum gas thru skid tanks requires technical skill and ingenuity. So it is an industry and not a simple merchandising activity. Plaintiff further insists, that the Central Bank itself admits that these skid tanks in question are a special kind of containers, being pressurized vessels, and that there is a need for specially prepared sealed and pressurized containers to keep the liquefied petroleum gas in liquefied state for distribution to end-users.

Republic Act No. 601 as amended, has not defined the term "industries" and furthermore, if Congress had intended to limit "industries" to manufacturing industries, it is very easy for Congress to have done so, but as it did not, the presumption is that congress has not limited nor intended to limit the term to "manufacturing industries". Indeed, considering the various amendments to the section under examination, expanding and adding exemptions from the tax, it should be proper not to give it a restricted interpretation. The idea, it seems clear, was to further and encourage the establishment and operation of industries in line with the Government's industrialization program. And it can not be denied that plaintiff was engaged in an industry; manufacture and/or sale of gases. If in its operations it found profit or convenience in merely buying—instead of manufacturing—liquefied petroleum gas, and then selling it by means of special containers, it did not thereby lose its character as a corporation engaged in an industry.[1] It may even be held in this particular aspect, to be engaged in a packaging industry, packing liquid gas for sale and distribution, which activity cannot be considered as a mere "buy and sell business", taking into account the special training which the employees have to get in order to handle the gaseous product, what with pumps, regulators, valves and machinery employed therefor.

The argument that the action to recover the tax should be directed not against the Central Bank, but against the Treasurer of the Philippines has no merit, because the Central Bank of the Philippines is a corporate entity with power to sue and be sued (Sec. 4, Republic Act No. 265) and sec. 5 of Republic Act No. 601 (as amended) directs that refund of taxes be made by the Central Bank. As a matter of fact, defendant's own counsel who took the witness stand, admitted that the Central Bank, according to its Annual Report of 1956, retained the sum of Ten Million Pesos to cover up claims for refund of this special excise tax.

IN VIEW OF THE FOREGOING, the ruling of the lower court is affirmed in toto, i.e., ordering the Central Bank to refund to the therein plaintiff, the Philippine Acetylene Company, the sums of P3,197.06 and P3,310.81 claimed in the complaint. No pronouncement as to costs.

Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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[1] Note that under the exemption, it is not necessary to prove that the accessories are "indispensable" to the industry. It is sufficient that they are used.

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