

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. VICTORIAS MILLING CO., INC., AND COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. 21171. January 31, 1967

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

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

This is a petition for review of a decision of the Court of Tax Appeals, in its CTA Case No. 685, entitled "Victorias Milling Co., Inc., Petitioner, versus Commissioner of Internal Revenue, respondent", declaring the former exempt from payment of advance sales tax on its importations of ready-made cloth sugar bags and materials for conversion into sugar Containers, and ordering the latter to refund the suit of P66,949.79, without interest, representing the balance of compensating tax already collected but applied as payment of advance sales tax, on said importations.

The undisputed facts of this case are:

Victorias Milling Co., Inc. (hereinafter referred to as the Company for short) is a domestic corporation engaged in the manufacture and sale of raw or centrifugal and refined sugar. As such manufacturer, and in the connection with the sale of its product (sugar), it imported from abroad, during the months of April to July, 1959, ready-made cloth sugar bags and appropriate materials for con-version into sugar containers which were scheduled to arrive, on different dates, at the Port of Iloilo.

Prior to its arrival, the Company made written requests to the Commissioner of Internal Revenue (hereinafter referred to as the Commissioner for short) to grant authority to his (latter's) agent, the Collector of Customs of Iloilo, to release the above stated imported goods without payment of compensating or advance sales tax, claiming that they are not subject thereto since they are not for resale but are exclusively used by the Company as containers of its refined sugar, for which it (Company), as manufacturer, pays the percentage tax imposed by Section 189 of the Tax Code.

The Commissioner denied the above requests, ruling that when said imported goods are used as containers of sugar which, in turn, are sold to the domestic market and not for export, they are subject to advance sales tax under Section 183 (b) in relation to Section 186 of the Tax Code.

The Company moved to reconsider the above ruling, but without success. Consequently, to facilitate its release upon arrival, the Company paid, under protest, to the Collector of Customs of Iloilo the total sum of P80,823.38, re-presenting compensating taxes on said importations and, at the same time, claimed for refund of the same from the latter official.

The Company followed up its claims for exemption and refund with the Commissioner but the latter reiterated his ruling; hence, the Company filed its petition for review with the Tax Court, contesting the Commissioner's adverse ruling and claiming that the assessment and collection of compensating or advance sales tax on said

importations is erroneous and illegal.

Subsequently, the Company amended its petition when the Collector of Customs of Iloilo applied and credited the sum of P13,873.53, as payment of compensating tax on the Company's importations for the year 1960 and 1961, thereby reducing its claim for refund from P80,823.38 to P66,949.79.

The Tax Court, after due hearing thereon, found that the importations in question are not for sale to other persons but are exclusively used by the Company as containers of its sugar, and took judicial notice of the fact that the selling price or market value of the sugar includes the value of said imported sugar bags, for which the Company pays the manufacturer's or miller's tax not only on the sugar itself but also on the sugar bags. Accordingly, the Tax Court rendered its decision, upholding the Company's contentions, reasoning out that, as said imported articles are for use of the Company and not for sale to others, Section 190 of the Tax Code should have been applied, and not sections 183 (b) and 186 (or 184 or 185) of the same Code; but since said Section 190 exempts said importations from payment of compensating tax, the same is not liable for Payment of advance sales tax; that to hold otherwise and to subject said importations to advance sales tax would render invalid and ineffective the exemption granted under said section 190; and that since the Company, as a sugar central, is being subjected to percentage tax under said section 189, said importations' are exempt, pursuant to Section 188 (d) of the Tax Code, from payment of advance sales tax. Not satisfied with the foregoing decision, the Commissioner pre-sented the instant petition for review before this Court.

The Commissioner assails the above decision of the Tax Court, con-tending that said articles were not imported merely for the exclusive use of the Company but also for sale to the public together with the sugar manufactured by the Company; and on this basis, he insists that said importations are subject to payment of advance sales tax under Section 183 (b) in relation to Section 186 of the Tax Code, although they are not, pursuant to Section 190 of the same Code, subject to compensating tax because they are to be used in the manufacture of articles for sale and are to form part thereof.

He also insists that the imposition of advance sales tax on the importa-tions in question does not render ineffective Section 190 of the Tax Code since the reason for not so subjecting the same to compensating tax is because they are subject to another tax, similar to those enumerated in said Section 190 who are, likewise, not so subjected to compensating tax because they have to pay another kind of tax; and that the articles in question do not come within any of the exceptions provided in said Section 183 (b); hence, they are subject to advance sales tax.

He further insists that as the articles exempted from the sales taxed under Section 188 (d) are those tax, under Section 189 and the articles in question are not among those enumerated in said section 189, as subject to the 2% tax; hence, they are subject to advance sales tax, as they are imported articles intended to be sold, and in fact sold, as containers together with the sugar produced and sold locally by the Company.

He still further insists that the mere fact that the imported sugar bags were used and sold together with the sugar, which latter product is taxable under said section 189, does not convert the former as subject to the same tax under the same section 189 for the provisions imposing the sales tax (Sections 184, 185, and 186) and 2% miller's tax (Section 189), or the provisions exempting certain articles and persons from the sales tax (section 188), do not expressly or impliedly reduce the tax on said imported articles to the 2% tax under said section 189; and that the imposition of advance sales tax on the imported sugar bags will not result in double taxation since there was no evidence presented to show that the 2% tax paid by the Company was based on the gross selling of the sugar sold by it and that the said gross selling price included the value of said sugar bags, and that, under the circumstances obtaining in the case at bar, two distinct transactions and articles are being subjected to different taxes because the

advance sales tax is being imposed on one article, which is the sugar bag, while the 2% tax prescribed in said section 189 is imposed on a different article, which is the sugar itself.

And finally, the Commissioner contends that, on account of all the above arguments, the Company is liable for the payment of the sum of P20,206.13, as deficiency advance sales tax due from it, and the other sum of P13,873.59, representing the amount of compensating tax credited against the advance sales tax due from the Company but erroneously refunded to it by the Collector of Customs of Iloilo.

Upon the other hand, the Company sustains the decision of the Tax Court as the proper, logical and correct application and interpretation of the pertinent provisions, Section 183 (b) in relation to sections 184, 185 and 186; Section 188 in relation to Section 189; and Section 190) of the Tax Code.

The sole issue posed in the instant petition is whether or not the articles in question (imported sugar bags) are subject to advance sales tax under Section 183 (b) in relation to Section 186, both of the National Internal Revenue Code.

The pertinent proviso of Section 183 (b) of the Tax Code reads:

"(b) Sales tax on imported articles. - When the articles are imported, the percentage taxes established in sections one hundred eighty-four, one hundred eighty-five, and one hundred eighty-six of this Code shall be paid in advance by the importer, in accordance with regulations promulgated by the Secretary of Finance and prior to the release of such articles from customs' custody, based on the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commission, customs duty, and all similar charges, plus one hundred per centum of such total value in the case of articles enumerated in section one hundred eighty-four; fifty per centum of such total value in case of articles enumerated in section one hundred eighty-five; and twenty-five per centum in the case of articles enumerated in section one hundred and eighty-six. The tax imposed in this section shall not apply to articles to be used by the importer himself in the manufacture or preparation of articles subject to specific tax or those for consignment abroad and are to form part thereof."

while the pertinent proviso of Section 186 of the same Code also reads:

"Percentage tax on sales of other articles. - There shall be levied, assessed and collected once only on every original sale, barter, exchange, and similar transaction either for nominal or valuable considerations, intended to transfer ownership of, or title to, the articles not enumerated in sections one hundred and eighty-four and one hundred and eighty-five a tax equivalent to seven per centum of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer:
x x x x x x x ."

Among other arguments, the Company resists the collection of the sales tax demanded by the Revenue Commissioner on the ground that section 183 (d) of the Internal Revenue Code exempts therefrom:

x x x x x x x x x x x x

"(d) Articles subject to tax under section one hundred eighty-nine of this Code:"

and Section 189 levies upon operators of sugar centrals, like the Company herein, a tax of 2% on the money value (selling price or market value) of all sugar manufactured by them.

"Sec. 189. Percentage upon proprietors or operators of rope factories, sugar centrals, coconut oil mills, cassava mills and desiccated coconut factories. - Proprietors or operators of rope factories, sugar centrals, coconut oil mills, cassava and desiccated coconut factories shall pay a tax equivalent to two per centum of the value in money of all the rope, sugar, coconut oil, cassava flour or starch, and desiccated coconut manufactured or

milled by them, including the by-products of the raw materials from which said articles are produced or manufactured, such tax to be based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse: xxxxx" (Emphasis supplied)

To this argument, the Commissioner, in turn, retorts that the 2% tax of Section 189 applies only to sugar, but does not mention the containers thereof, which should separately pay the percentage tax under sections 183 (b) and 186.

We find the stand of the Commissioner to be untenable, for it does not take into account two undeniable facts: (a) that there is no evidence to the effect that the containers or sacks are separately charged against the sugar buyers and, as a consequence, the domestic buyers of the sugar pay only one price for both sugar and container and (b) that the buyer takes away with him the sugar and its container. On this basis, the price paid by the customer either includes both the price of the sugar and that of the container^[1], or else it represents the price of the sugar alone. If it be the first (the price paid is for both sugar and sack), then the value of the sacks is already subjected to the 2% tax imposed by section 189, and the sugar company has paid the same; hence, it may no longer be separately taxed (Section 188 (d), Tax Code).

If, on the other hand, the price paid by the buyer is for the sugar alone, then obviously the container is merely given away gratis, and not sold. In which case, there is no sale of the container that can be subjected to the percentage sales tax.

The foregoing renders unnecessary to discuss the merits of the other arguments advanced by the parties.

WHEREFORE, finding no reversible error committed in the decision under appeal, the judgment of the Court of Tax Appeals in CTA Case No. 685 is hereby affirmed. No costs.

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

[1] The Court of Tax Appeals took judicial notice of this fact, as the practice of respondent sugar company.

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