

**LU DO & LU YM CORPORATION, DOING BUSINESS UNDER THE
TRADE NAME OF PHILIPPINE CORN PRODUCTS COMPANY,
PLAINTIFF AND APPELLANT, VS. CENTRAL BANK OF THE
PHILIPPINES, DEFENDANT AND A...**

G.R. Nos. 13033 and 13701. May 31, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

These two cases, one (G. R. No. L-13033) coming from the Court of First Instance of Manila, and the other (G. R. No. L-13701), from the Court of Tax Appeals, have, by agreement and request of the parties, been jointly submitted for deliberation and decision of this Court as they involve the same transaction (importation of empty cotton bags) and require the interpretation of the same law (Republic Act 35, as amended by Republic Act 901). The pertinent facts in both cases are not disputed.

Lu Do & Lu Ym Corporation, doing business under the trade name of Philippine Corn Products, Inc., is a domestic corporation engaged in the manufacture, packing, storage, distribution, and sale of corn starch, gluten feed and corn. Upon prior application for tax exemption under Republic Act 35, its business was certified by the Secretary of Finance as a new and necessary industry, effective October 1, 1952.

Between January, 1954 and March, 1955, the corporation imported from the United States 212 bales or 211,187 pieces of empty cotton bags for use in the packing, storage, distribution, and sale of its manufactured corn starch, upon which importations the Central Bank of the Philippines imposed and the said corporation paid the 17% excise tax on foreign exchange amounting to P24,498.43, and the sum of P13,654.92 demanded by the Bureau of Customs, in behalf of the Collector of Internal Revenue, as 7% sales or compensating tax on the articles.

On September 5 and 6, 1955, the Philippine Corn Products, Inc. filed with the Commissioner of Internal Revenue and the Central Bank of the Philippines, respectively, separate demands for the refund of the aforementioned amounts, both of which were denied on the ground, among others, that the imported articles were not covered by the tax exemption certificate issued by the Department of Finance. Hence, on December 6, 1956, the company filed a petition in the Court of Tax Appeals (CTA Case No. 340), praying for the refund of the sum of P13,654.92 representing the 7% compensating tax collected by the Collector of Internal Revenue allegedly in violation of Republic Act 35, as amended by Republic Act 901, it being contended that the imported cotton bags were necessary, convenient and indispensable in the manufacture, packing, storage, and distribution of its manufactured products.

In resisting this claim, respondent Commissioner of Internal Revenue maintained that empty cotton bags were not among the raw materials allowed by the Secretary of Finance to be imported tax-free, and, consequently, were subject to the 7% sales or compensating tax.

Deciding for the petitioner, the Court of Tax Appeals, in its decision of December 20, 1957, ordered the refund of

the sum of P13,654.92 collected by the revenue authorities from the Philippine Corn Products, Inc., on the ground that the imported articles were actually used in the manufacture of its finished products and thus exempted from taxes, and that the Secretary of Finance had no power to limit the articles which could be imported free of tax. With respect to the question of prescription, the court, considering the payments made by petitioner, upon clearance of the goods to the customhouse, as mere deposits, held that under customs law, the same did not become payments until after the publication of the final liquidation of the port entries in relation thereto. As respondent Commissioner of Internal Revenue failed to introduce evidence when the publication was made, the filing of the action on January 5, 1957, was presumed to have been made within the 2-year period prescribed by law. From this decision, this present petition for review was filed by the Commissioner of Internal Revenue (G. R. No. L-13701).

At about the same time, or on July 24, 1957, the Philippine Corn Products, Inc. instituted in the Court of First Instance of Manila an action for recovery of the sum of P24,498.43, against the Central Bank of the Philippines, claiming that defendant's collection of the said amount as 17% excise tax on the foreign exchange used for the importation of the same empty cotton bags, was made in violation of Republic Act 35, as amended by Republic Act 901.

The Central Bank of the Philippines moved to dismiss the complaint for lack of cause of action and non-joinder of indispensable parties, for the reason that the empty cotton bags imported by plaintiff were not among those allowed by the Secretary of Finance to be procured abroad and, consequently, not included in the exemption, and that the suit should have been instituted against the Auditor General or the Treasurer of the Philippines, because, with the expiration of the Exchange Tax Law on December 31, 1955, the monies collected by the Central Bank of the Philippines pursuant to Republic Act 601 were turned over to the Insular Treasurer. Sustaining defendant's contention, the lower court dismissed the complaint. Now, plaintiff corporation appeals to us (G. R. No. L-13033).

The questions raised by both parties in these cases may be answered with the resolution of a single issue, which is controlling on the others, i.e., whether the Company may be held liable for payment of the 7% compensating or sales tax and the 17% excise tax on foreign exchange, in connection with its importations of empty cotton bags.

The letter of the Secretary of Finance, granting the Company's application for tax exemption of its business, in full, reads:

"Gentlemen :

"Referring to your application of September 30, 1952 for tax exemption under the provisions of Republic Act No. 35, I have the honor to advise that in view of the favorable recommendations of the Secretary of Commerce and Industry and the Administrator of Economic Coordination, the same is hereby approved in respect to the manufacture of corn starch, corn gluten feed, and corn oil. It is understood that the only raw material to be imported is sulphur (60 kilos of sulphur for every 30 metric tons of processed corn) and that this raw material will be procured locally as soon as similar article of domestic origin or manufacture shall have become available.

"The exemption herein granted refers to the following internal revenue taxes:

"1. The fixed and privilege tax on business;

"2. The percentage tax on the sales of manufactured products in respect to which exemption is granted and on raw materials and supplies to be used exclusively in the manufacture of such products;

"3. The compensating tax on machinery and equipment to be exclusively used in the new and necessary

industry;

"4. The documentary stamp tax; and

"5. The income tax in respect to the net income derived from the exempted industry.

"The exemption shall cover a period of four (4) years from this date. Attention, in this connection is invited to paragraphs 2(2), 7 and 8 of Executive Order No. 433, series of 1951, which indicates the requisites for the continued enjoyment of the privileges herein granted." (Emphasis supplied.)

The Company does not controvert the fact that the Secretary of Finance, in approving its application, allowed only the importation of sulphur, and this, on a limited scale. In claiming for tax exemption for its importations of empty cotton bags, however, it maintains—and is sustained by the Court of Tax Appeals[1]—that the Secretary of Finance has no power under Republic Act 901 to limit the articles that may be imported as long as they are used by the Company in its new and necessary industry and the taxes that may be payable thereon are directly payable in respect to said industry. In support of this contention, the case of *Industrial Textiles Company of the Philippines et al. vs. Collector of Internal Revenue* (106 Phil., 1046) is cited. But respondent Company overlooks the fact that the rulings therein made were predicated on the provisions of Republic Act 35 which did not grant any authority to the Secretary of Finance except to recommend to the President for his determination, what qualifications an industry should possess to be entitled to the benefits of the Act. Contrarily, by express authority of Republic Act 901, the Secretary of Finance is empowered, among others, (1) himself (not the President) to determine, after availing of the facilities of the Department of Commerce and Industry, the Central Bank and the Office of Economic Coordination, whether an industry or business is new or necessary (Sec. 5) ; (2) to suspend the privileges granted thereunder if the grantee fails to comply with any of the new obligations imposed by the Act (Sec. 8); and (3) to promulgate rule³ and regulations necessary for the proper enforcement and to carry out the intents and purposes of the Act, and to determine the scope and extent of the privileges granted thereunder (Sec. 11). In empowering the Secretary of Finance, to pass upon applications and determine the qualifications of applicants to enjoy the privileges granted thereunder, Republic Act 901 did not limit his (the Secretary's) action relative to the granting or denial of the said applications. The mandate of the law is express and specific; "The Secretary of Finance shall * * * determine the scope and extent of the privileges granted thereunder." [2] Thus, he may either totally approve or disapprove an application, or may limit the privileges to be enjoyed within the scope, and extent determined by him unless, of course, such limitation is prohibited by law. In the instant case, the restriction on the importation of raw materials other than sulphur, imposed by the Secretary of Finance, cannot be considered violative of Republic Act 901. On the contrary, such restriction must have been made in compliance with the intendment of said law, that is, to boost local production by giving emphasis on the exploitation and utilization of local raw materials and the consequential conservation of foreign exchange [3]. The importations of empty cotton bags, not being covered by the grant are, therefore, subject to the taxes imposed thereon. The Company, in accepting the grant, is bound by the terms thereof and its remedy is to ask for its modification by the Secretary of Finance.

Respondent Company additionally claims that if the empty cotton bags do not come within the exempted raw materials, they, however, fall under the category of equipment covered by Exemption No. 3 of the letter of the Secretary of Finance. We do not think so.

Equipment has been defined as "materials or articles used in equipping as for an expedition; the articles comprised in an outfit, as furnishings, or apparatus; equipage; as laboratory equipment. * * * In industry, physical facilities available for production, including buildings, machineries, tools, etc." [4] "whatever is needed in equipping; the articles comprised in an outfit; equipage"; [5] "synonymous with furnishings". [6] Taken together with "machinery", as used in Exemption No. 3, the equipment referred to therein must relate to furnishings or

equipment necessary for the operation of the industry. Empty cotton bags actually used in the packing or preparation for the market of the finished products can hardly be considered as falling within the group.

The question raised by the Solicitor-General, in behalf of the Commissioner of Internal Revenue, that the proceeding here is in effect a review of the action of the Secretary of Finance in respect of the granting of the certificate of exemption and, therefore, beyond the jurisdiction of the Court of Tax Appeals, is of no substance, the primordial and immediate question involved being the refund of taxes allegedly collected illegally. In at least two cases,[7] this Court has already upheld inferentially the jurisdiction of the Court of Tax Appeals in this respect.

That the two-year period within which suit for recovery of tax erroneously or illegally collected should be filed is a prescriptive period and not a jurisdictional fact, has likewise been passed upon by this Tribunal in the cases of *College of Oral and Dental Surgery vs. Court of Tax Appeals et al.*, (102 Phil., 912; 54 Off. Gaz. [29] 7055) and *Panay Electric Co. vs. Collector of Internal Revenue, et al.*, (103 Phil., 819; 55 Off. Gaz. [24] 4430).

On the foregoing two procedural points, the decision of the Court of Tax Appeals presently before us is correct.

Coming now to the case appealed from the Court of First Instance of Manila (G. R. No. L-13033), dismissing the complaint which seeks the refund of the 17% excise tax on the foreign exchange used in the importation of the empty cotton bags, we agree with the lower court that the refund is not proper in view of our conclusion that such importation is not within the exemption granted to the Company. If the imported article itself is not exempt from taxation, the foreign exchange used in the importation of said article cannot logically be exempt from the exchange tax, for otherwise, the result would be to tax the principal but not the incidental.

Wherefore, the appealed order of the Court of First Instance (in G. R. No. L-13033) is affirmed, while the questioned decision of the Court of Tax Appeals (in G. R. No. L-13701) is hereby affirmed, in respect of the questions of jurisdiction and prescription, and reversed, insofar as it orders the refund of the compensating tax paid by the Philippine Corn Products, Inc. (Lu Do & Lu Ym Corporation), with costs against the latter in both instances. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion and Gutierrez David, JJ., concur.
Reyes, J.B.L., and Endencia, JJ., on leave, took no part.

[1] By a split vote of 2 against 1.

[2] Sec. 11. The Secretary of Finance shall promulgate the necessary rules and regulations for the proper enforcement and to carry out the intents and purposes of this Act, and shall determine the scope and extent of the privileges granted hereunder. (Republic Act No. 901; emphasis supplied.)

[3] Section 3-(3), Rep. Act 901.

[4] Webster's New International Dictionary, Second Edition.

[5] Department of Treasury, Gross Income Tax Div. vs. Rangercook, Inc., 49 NE 2d 548.

[6] State ex rel. Davis vs. Barber, 139 Fla 706, 19 So 809.

[7] *Marble Corporation of the Philippines vs. Collector of Internal Revenue, et al.*, G. R. No. L-8677, Dec. 28, 1957; *Industrial Textiles Co., et al. vs. Collector of Internal Revenue*, 103 Phil., 1046.

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