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[G.R. No. L-25602. February 18, 1970]

REPUBLIC FLOUR MILLS, INC., petitioner, *vs.* THE COMMISSIONER OF INTERNAL REVENUE and THE COURT OF TAX APPEALS, respondents.

SYLLABUS

1. TAXATION; COURT OF TAX APPEALS; TAX FREE PRODUCT, MEANING.— No reason exists to read into the provisions of the law a qualification that is not there, nor to give to the phrase "tax-free product" a meaning other than what it ordinarily and commonly conveys - a material or article exempted from payment of tax.

2. ID.; ID.; PRODUCT, LEGAL DEFINITION OF.— "Product" covers "anything that is produced, whether as the result of generation, growth, labor or thought," If, as held in a case, fish were agricultural product, no reason is seen why wheat grains should not equally be products of agriculture.

3. ID.; ID.; EXEMPTION COVERAGE MUST PREVAIL.— The exemption granted to the petitioner covered not only the sales tax of the manufactured product but also the sales tax "on raw materials and supplies to be used exclusively in the manufacture of such exempt products." To bar the deductibility of the value of such raw materials from that of the finished product is to tear away the tax exemption from sales tax on said materials. Indeed, if, as is conceded, these wheat grains were allowed to enter in 1958 as exempt from paying advance sales tax, no reason exists why the value of this same material should be subjected to tax just because they were milled in 1959 and not in the year of importation.

4. ID.; ID.; LETTER OF THE LAW AS AGAINST STRICT CONSTRUCTION OF TAX STATUTES.— It is true that, in the construction of tax statutes, tax exemptions (and deductions are of this nature) are not favored in law, and are construed *strictissimi juris* against the taxpayer. However, it is equally a recognized principle that where the provision of the law is clear and unambiguous, so that there is no occasion for the court's seeking the legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction. In this case, we find the provision of Section 186-A--"whenever *a tax free product* is utilized, etc."--all encompassing to comprehend tax free raw materials, even if imported. Where the law provided no

qualification for the granting of the privilege, the court is not at liberty to supply any.

APPEARANCES OF COUNSEL

Agrava & Agrava for petitioner.

Solicitor General Antonio P. Barredo, Assistant Solicitor General Felicisimo R. Rosete and *Special Attorney Virgilio G. Saldajeno* for respondents.

DECISION

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

Appeal by the Republic Flour Mills from the decision of the Court of Tax Appeals (in CTA Case No. 1151) on the sole question of whether or not in computing the manufacturer's sales tax due on the flour it manufactured and sold in 1959, wherein wheat grains imported tax-free in 1958 were utilized, the cost of said wheat grains is deductible.

As stipulated by the parties and found by the court below, the facts of this case are briefly as follows:

In 1957, the Republic Flour Mills, Inc., a domestic corporation engaged in the business of manufacturing flour, was granted tax-exemption privileges as a new and necessary industry pursuant to Republic Act 901,[1] commencing on 28 January 1957 to continue as a diminishing exemption until 31 December 1962.[2]

In 1958, the corporation imported a quantity of wheat grains, part of which it was not able to mill and use in the business that year, so that by 1 January 1959 the corporation carried a surplus of ₱1,486,616.41 worth of wheat grains from the previous year's importation. These surplus grains were finally utilized and manufactured into flour and sold in 1959. For the year 1959, the

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[1] The exemption therein granted covers the fixed and privileged tax on business, percentage tax on sales of the manufactured products, and advance sales tax on raw materials and supplies to be used exclusively in the production of flour (pages 14-15, Rollo).

[2] For 1958, the tax exemption is 100%; 90% for 1959; 75% for 1960; 50% for 1961; and 10% for 1962 (Sec. 1, Rep. Act 901).

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corporation paid manufacturer's sales tax on its produce in the sum of ₱37,275.55, in the computation of which the cost of the wheat left over from the 1958 importation was treated as a deductible item from the gross sales in 1959.

On 28 March 1961, the Commissioner of Internal Revenue assessed the corporation of deficiency tax for 1959 in the total sum of ₱23,170.17. The corporation requested a reinvestigation of the assessment, and when it was denied filed a petition for review in the Court of Tax Appeals (CTA Case No. 1151) to contest the assessment of advance sales tax on the wheat grains imported tax-free in 1958 and the disallowance of the deduction of the cost of said wheat grains from its gross sales of flour in 1959.

Respondent Commissioner of Internal Revenue defended and maintained the assessment, on the ground that by 1959 the raw materials used by petitioner in its tax-exempt industry were already subject to payment of 10% tax thereon. During the hearing, the parties entered into a Partial Stipulation of Facts, the pertinent provisions of which are the following:

"12. That the legal issue is whether or not the cost of raw materials imported tax-free in the year 1958 which raw materials were utilized in the year 1959 for the manufacture of flour sold in 1959, is deductible from the gross sales in the year 1959;

"13. If the legal question before this Honorable Court should be resolved in the affirmative, Petitioner's tax liability shall be ₱3,288.16 computed as follows:

Net sales	₱21,011,818.17
Deduct: Cost of raw materials used for flour (including tax-free raw materials)	15,310,806.74
Taxable gross sales	5,701,011.43
7% tax thereon	399,070.80
10% of said tax	₱39,907.08
Less: Amount of Tax paid	37,276.55
Deficiency sales tax	2,630.53
Plus 25% surcharge	657.63
TOTAL AMOUNT PAYABLE	₱ 3,288.16

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"14. On the other hand, if the question is resolved in the negative, petitioner's tax liability shall be ₱24,587.98 computed as follows:

Net sales		₱21,011,818.17
Deduct: Cost of raw materials used four flour	₱15,310,806.74	
Less: Cost of tax-free raw materials	2,434,264.24	12,876,542.50
Taxable gross sales		₱ 8,135,275.67
7% tax thereon		569,469.30
10% of said tax		56,946.93
Less: amount paid		37,276.55
Deficiency sales tax due		19,670.38
Plus 25% surcharge		4,917.60
TOTAL AMOUNT DUE & COLLECTIBLE		₱24,587.98"

On 12 December 1965, the Court of Tax Appeals sustained the correctness of the disputed assessment, and petitioner corporation was ordered to pay the sum of ₱24,587.98 as deficiency sales tax and surcharge. Hence the filing by petitioner of the present appeal, on the same legal issue litigated by the parties in the court below.

It may be observed from the stipulated facts quoted above that the issue in this case has nothing to do with the enforcement or exercise of the tax-exemption privileges granted to the petitioner. The point in controversy is only whether or not the cost of the tax-free wheat grains used in the manufacture of flour, which is also tax-exempt, is a deductible item for purposes of computing the percentage tax (10%) admittedly due on the said manufactured product in 1959.

Disputing the assessment of deficiency tax by the respondent Commissioner of Internal Revenue, herein petitioner insists that the cost of imported tax-free wheat grains is a deductible item from its gross sales of the flour, pursuant to Section 186-A of the Internal Revenue Code, which reads:

"SEC. 186-A. Whenever a tax free product is utilized in the manufacture or production of any article, in the determination of the value of such finished article, the value of such tax free product shall be deducted."

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Respondent Commissioner refutes this contention, saying that, as defined by the Internal Revenue Office, the term "tax-free product" mentioned in the above-quoted Section 186-A refers to raw materials purchased from tax-exempt industries,[3] whereas the wheat grains involved in the case, although used by a tax-exempt industry, were not acquired from one enjoying tax-exemption privilege under our laws.

In the resolution of the lone issue in this case, it is worthwhile to mention that prior to 22 June 1957 the prevailing rule on the matter was to allow the cost of raw materials used in the manufacture of another article to be deducted from gross sales, whenever such raw materials had been subjected to sales tax. The reason therefor, as expressed by this Court, was to preclude a second assessment of the percentage tax on the raw materials.[4] This ruling finds basis in Section 186 of the Tax Code which reads:

"SEC. 186. *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: *Provided,* That *where the articles subject to tax under this section are manufactured out of materials likewise subject to tax* under this section and section one hundred and eighty-nine, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles.

. . . . . ."

(Italics supplied)

With the establishment of tax-exempt industries in the mid-50s, enforcement of the foregoing provision must have created a peculiar problem, so much that on 22 June 1957 the legislature enacted Republic Act 2025, which inserted Section 186-A in the Tax Code, expressly constituting the value of tax-free products

[3] Gen. Circular No. V-252, 15 July 1957.

[4] Tan Chiu *vs.* Collector, L-15008, 28 January 1961, 1 SCRA 301.

to be a deductible item from the gross sales of the finished goods manufactured out of the same.

Cast against this background, We agree with the petitioner that there is actually no cause here calling for an administrative definition or interpretation of Section 186-A. For no reason exists to read into the provision a qualification that is not there, nor to give to the phrase "tax-free product" a meaning other than what it ordinarily and commonly conveys -- a material or article exempted from payment of tax.

The respondent Commissioner himself could supply no plausible reason for excluding tax-free imported raw materials from the coverage of the term "tax-free" product other than the lame argument that wheat grains are not a "product" because they are not made out of another article (V. B.I.R. Circular No. V-252, 15 July 1957).

The Commissioner's stand, upheld by the Tax Court, runs contrary to the legal definition of the term "product" which covers "anything that is produced, whether as the result of generation, growth, labor or thought" (Molina *vs.* Rafferty, 38 Phil. 171; 50 C. J. S., pages 631-632). If, as held in the case cited, *fish* were agricultural *product,* no reason is seen why wheat grains should not equally be products of agriculture. Indeed, if the Commissioner's definition were correct, it would be logical to expect that Section 186-A of the Tax Code (*ante*), instead of referring to *"a tax free product"* utilized in the manufacture of other articles, would have proclaimed the deductibility of the value of "products *of a tax exempt industry* . . . utilized in the manufacture or production of any article."

Further, it must not be overlooked that the exemption granted to the petitioner covered not only the sales tax of the manufactured product but also the sales tax "on raw materials and supplies to be used exclusively in the manufacture of such (exempt) products" (Brief for Appellee, page 1). To bar the deductibility of the value of such raw materials is to tear away the tax exemption from sales tax on said materials. Indeed, if , as is conceded, these wheat grains were allowed to enter in 1958 as exempt from paying

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advance sales tax, no reason exists why the value of this same material should be subjected to tax just because they were milled in 1959 and not in the year of importation.

That petitioner's manufactured flour would be subject in 1959 to only a part of the normal sales tax, pursuant to Republic Act 901, would not alter the principles herein established.

It is true that in the construction of tax statutes tax exemptions (and deductions are of this nature) are not favored in the law, and are construed *strictissimi juris* against the taxpayer.[5] However, it is equally a recognized principle that where the provision of the law is clear and unambiguous, so that there is no occasion for the court's seeking the legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction.[6] In this case, we find the provision of Section 186-A -- "whenever a *tax free product* is utilized, etc." -- all encompassing to comprehend tax-free raw materials, even if imported. Where the law provided no qualification for the granting of the privilege, the court is not at liberty to supply any.

WHEREFORE, and for the foregoing considerations, the decision appealed from is reversed and set aside, and, in accordance with the stipulation of the parties, petitioner is hereby ordered to pay to respondent Commissioner the sum of ₱3,288.16 as deficiency tax, with legal interest thereon from the date the tax became due.[7] No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Teehankee, Barredo and *Villamor, JJ.*, concur.

Decision reversed and set aside.

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[5] E. Rodriguez, Inc. *vs.* Collector, L-23041, 31 July 1969; Commissioner *vs.* Guerrero, L-20942, 22 Sept. 1967, 21 SCRA 180; Philippine Guaranty Co. *vs.* Commissioner, L-22074, 6 Sept. 1965; La Carlota Sugar Central *vs.* Jimenez, L-12436, 31 May 1961, 1 SCRA 295.

[6] 1 Mertens, Law of Fed. Income Taxation, page 59, and cases therein cited.

[7] Central Azucarera de San Pedro *vs.* Court of Tax Appeals, et al. L-23236 & L-23254, 31 May 1967, 20 SCRA 344, reiterated in Heald Lumber Co. *vs.* Tabios, et al., L-23123, 30 Sept. 1969.