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FIRST DIVISION

[G.R. Nos. L-22805 & L-27858. June 30, 1975]

WONDER MECHANICAL ENGINEERING CORPORATION represented by Mr. LUCIO QUIJANO, President & General Manager, *petitioner, vs.* **THE HON. COURT OF TAX APPEALS and THE BUREAU OF INTERNAL REVENUE BEING REPRESENTED BY THE COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

TAXATION; TAX EXEMPTION; AN INDUSTRY TO BE ENTITLED THERETO MUST BE "NEW AND NECESSARY"; CASE AT BAR.— From the provisions of the law, it is clear that an industry to be entitled to tax exemption must be "new and necessary" and that the tax exemption was granted to new and necessary industries as an incentive to greater and adequate production of products made scarce by the second world war which wrought havoc on our national economy, a production "sufficient to meet local demand or consumption"; that will contribute "to the attainment of a stable and balanced national economy"; an industry that "will make its products available to the general public in quantities and at prices which will justify its operation." Viewed in the light of the foregoing reasons for the State grant of tax exemption, We are firmly convinced that petitioner was granted tax exemption in the *manufacture and sale "of machines* for making cigarette paper, pails, lead washers, nails, rivets, candies, etc.," as explicitly stated in the Certificate of Exemption, but certainly not for the manufacture and sale of the articles produced by those machines. Aside from the clarity of the State's intention in granting tax exemption to petitioner in so far as it manufactures machines for making certain products, as manifested in the acts of its duly authorized representatives in the Executive branch of the government, it is quite difficult for Us to believe that the manufacture of steel chairs, jeep parts, and other articles not constituting machines for making certain products would fall under the classification of "new and necessary" industries envisioned in Republic Acts

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35 and 901 as to entitle the petitioner to tax exemption. There is no way to dispute the "cardinal rule in taxation that exemptions therefrom are highly disfavored in law and he who claims tax exemption must be able to justify his claim or right thereto by the clearest grant of organic or statute law" as succinctly stated in the decision of the respondent Court of Tax Appeals in C.T.A. No. 1265 (L-27858). Tax exemption must be clearly expressed and cannot be established by implication. Exemption from a common burden cannot be permitted to exist upon vague implication. (*Asiatic Petroleum Co. vs. Llanes*, 49 Phil. 466; *House vs. Posadas*, 53 Phil. 338; *Collector of Internal Revenue vs. Manila Jockey Club, Inc.*, G.R. No. L-8755, March 23, 1956, 98 Phil. 676).

APPEARANCES OF COUNSEL

Sarte & Espinosa for petitioner in L-22805.

Solicitor General Arturo A. Alafriz, Solicitor Alejandro B. Afurong and *Special Attorney Augusto A. Lim* for respondents.

Jose Sarte for petitioner in L-27858.

Solicitor General Antonio P. Barredo, Assistant Solicitor General Felicisimo R. Rosete, Solicitor Lolita O. Gal-lang and *Special Attorney Elpidio C. Cid* for respondents.

D E C I S I O N

ESGUERRA, *J.*:

Two petitions for review of the decisions of the respondent Court of Tax Appeals in G.R. Nos. L-22805 and L-27858. The first decision (L-22805) dismissed the appeal of petitioner Wonder Mechanical Engineering Corporation in C.T.A. Case No. 1036, "for lack of jurisdiction, the same having been filed beyond the 30 day period prescribed in Section 11 of Republic Act No. 1125," and confirmed the decision of respondent Commissioner of Internal Revenue which "assessed against petitioner the total amount of ₱69,699.56 as fixed taxes and sales and percentage taxes, inclusive of the 25% surcharge for the years 1953-54." The second decision (L-27858) ordered the same petitioner to pay respondent Commissioner of Internal Revenue the amount

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of "₱25,080.91 as deficiency sales and percentage taxes from 1957 to June 30, 1960, inclusive of the 25% surcharge, plus costs," based on the common principal issue of "whether or not the manufacture and sale of steel chairs, jeepney parts and other articles which are not machines for making other products, and job orders done by petitioner come within the purview of the tax exemption granted it under Republic Act Nos. 35 and 901."

Petitioner is a corporation which was granted tax exemption privilege under Republic Act 35 in respect to the "*manufacture of machines* for making cigarette paper, pails, lead washers, rivets, nails, candies, chairs, *etc.*" The tax exemption expired on May 30, 1951. On September 14, 1953, petitioner applied with the Secretary of Finance for reinstatement of the exemption privilege under the provisions of R.A. 901 approved July 7, 1954, the reinstatement to commence on June 20, 1953, the date Republic Act 901 took effect.

In G.R. No. L-22805, respondent Commissioner of Internal Revenue, sometime in 1955, caused the investigation of petitioner for the purpose of ascertaining whether or not it had any tax liability. The findings of Revenue Examiner Alfonso B. Camillo on September 30, 1955, stated "that during the years 1953 and 1954 the petitioner was engaged in the business of manufacturing various articles, namely, auto spare parts, flourescent lamp shades, rice threshers, post clips, radio screws, washers, electric irons, kerosene stoves and other articles; that it also engaged in business of electroplating and in repair of machines; that although it was engaged in said business, it did not provide itself with the proper privilege tax receipts as required by Section 182 of the Tax Code and did not pay the sales tax on its gross sales of articles manufactured by it and the percentage tax due on the gross receipts of its electroplating and repair business pursuant to Sections 183, 185, 186 and 191 of the same Code."

Based on the foregoing, respondent Commissioner of Internal Revenue assessed against petitioner on November 29, 1955, the total amount of ₱69,699.56 as fixed taxes and sales and percentage taxes, inclusive of the 25% surcharge, as follows:

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Sales and percentage taxes for 1953 and 1954	₱55,719.65
25% surcharge	13,929.91
C-14 fixed tax (1953-1954)	20.00
C-4 (27) fixed tax (1954)	10.00
C-4 (37) fixed tax (1953-1954)	20.00
TOTAL	₱69,699.56

Respondent also suggested the payment of the amount of ₱3,300.00 as penalties in extrajudicial settlement of petitioner's violations of Sections 182, 183, 185, 186 and 191 of the Tax Code and of the Bookkeeping Regulations (p. 25, B.I.R. rec.).

In G.R. No. L-27858, respondent Commissioner of Internal Revenue caused the investigation of petitioner for the purpose of ascertaining its tax liability on August 10, 1960, as a result of which on December 7, 1960, Revenue Examiner Pedro Cabigao reported that "petitioner had manufactured and sold steel chairs without paying the 30% sales tax imposed by Section 185(c) of the Tax Code; accepted job orders without paying the 3% tax in gross receipts imposed by Section 191 of the same Code; manufactured and sold other articles subject to 7% sales tax under Section 186 of the same Code but not covered by the tax exemption privilege; failed to register with the Bureau of Internal Revenue books of accounts and sales invoices as required by the Bookkeeping Regulations; failed to indicate in the sales invoices the Residence Certificate number of customers who purchased articles worth ₱50.00 or over, in violation of the Bookkeeping Regulation; and failed to produce its books of accounts and business records for inspection and examination when required to do so by the revenue examiner in violation of the Bookkeeping Regulations (pp. 17-18 B.I.R. rec.)."

Based on the foregoing, the respondent Commissioner of Internal Revenue on October 6, 1961, assessed against the petitioner "the payment of ₱25,080.91 as deficiency percentage taxes and 25% surcharge for 1957 to 1960 and suggested the payment of ₱5,020.00 as total compromise penalty in extrajudicial settlement of the various violations of the Tax Code and Bookkeeping Regulation (pp. 28-29 B.I.R. rec.)."

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Regarding the compromise penalty suggested by respondent Bureau of Internal Revenue in both G.R. L-22805 and L-27858, it does not appear that petitioner accepted the imposition of the compromise amounts. Hence We find no compelling reasons to alter the decision of respondent Court of Tax Appeals in L-27858 that —

"With respect to the compromise penalty in the total amount of ₱5,020.00 suggested by respondent to be paid by petitioner, it is now a *well settled doctrine that compromise penalty cannot be imposed or collected without the agreement and conformity of the taxpayer* (*Collector of Internal Revenue vs. University of Santo Tomas, et al.*, G.R. Nos. L-11274 & L-11280, November 28, 1958; the *Collector of Internal Revenue v. Bautista, et al.*, G.R. Nos. L-12250 & 12259, May 27, 1959; *The Philippines International Fair, Inc. v. Collector of Internal Revenue*, G.R. Nos. L-12928 & L-12932, March 31, 1962)." (Italics for emphasis)

Inasmuch as the figures appearing in the Bureau of Internal Revenue's tax delinquency assessments in both cases (L-22805 and L-27858) are not in dispute, and the respondent Court of Tax Appeals ruled in its decision in G.R. No. L-27858 on the lone issue presented in both cases that the tax assessment of "₱25,080.91 as deficiency sales and percentage taxes from 1957 to June 30, 1960" must be paid by petitioner as the *sale of other manufactured items did not come within the purview of the tax exemption granted petitioner*. We find it no longer necessary to make a definite stand on the question raised in L-22805 as to the alleged error committed by respondent Court of Tax Appeals in dismissing the appeal in C.T.A. 1036 (subject matter of L-22805) for lack of jurisdiction, the same having been filed beyond the 30-day period prescribed in Section 11 of Republic Act 1126. Suffice it to say on that issue that appellants must perfect their appeal from the decision of the Commissioner of Internal Revenue to the Court of Tax Appeals within the statutory period of 30 days, otherwise said Court acquires no jurisdiction.

We turn Our attention on the vital issue of tax exemption claimed by petitioner as basis for questioning the tax assessments made by respondent Bureau of Internal Revenue in both cases

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(G.R. L-22805 and 27858). There is no doubt that petitioner was given a Certificate of Tax Exemption by the Secretary of Finance on July 7, 1954, as follows:

"Be it known that upon application filed by Wonder Mechanical Engineering Corporation, 1310 M. Hizon, Sta. Cruz, Manila, in respect to the manufacture of *machines for making cigarette paper, pails, lead washers, nails, rivets, candies, etc.*, the said industry/industries have been determined to be new and necessary under the provisions of Republic Act No. 901 (or of Republic Act No. 35), in view of which this Certificate of Tax Exemption has been issued entitling the abovenamed firm/person to tax exemption from the payment of taxes directly payable by it/him in respect to the said industry/industries until December 31, 1958, and thereafter to a diminishing exemption until June 20, 1959, as provided in Section 1 of Republic Act No. 901, except the exemption from the income tax which will wholly terminate on June 20, 1955, (B.I.R. rec., page 13)." (Italics for emphasis)

Republic Act 35, approved on September 30, 1946, grants to persons "*who or which shall engage in a new and necessary industry,*" for a period of four years from the date of the organization of such industry, exemption "from the payment of all internal revenue taxes directly payable by such person." Republic Act 901, approved on June 20, 1953, which amended Republic Act 35 by extending the period of tax exemption, elaborated on the meaning of "new and necessary industry" as follows:

"Sec. 2. For the purposes of this Act, a "*new industry is one not existing or operating on a commercial scale prior to January first, nineteen hundred and forty-five.* Where *several applications for exemption* are filed in connection *with the same kind of industry*, the Secretary of Finance shall *approve them in the order in which they have been filed until the total output or production of those already granted exemption for that particular kind of industry is sufficient to meet local demand or consumption*; Provided, That the limitation shall not apply to products intended for export." (Italics for emphasis)

"Sec. 3. For the purposes of this Act, a "necessary" industry is one complying with the following requirements:

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(1) *Where the establishment of the industry will contribute to the attainment of a stable and balanced national economy.*

(2) Where the industry will *operate on a commercial scale* in conformity with up-to-date practices and *will make its products available to the general public in quantities and at prices which will justify its operation* with a reasonable degree of permanency.

(3) Where the *imported raw materials represent a value not exceeding sixty percentum of the manufacturing cost plus reasonable selling and administrative expenses:* Provided, That a grantee of tax exemption shall use materials of domestic origin, growth, or manufacture wherever the same are available or could be made available in reasonable quantity and quality and at reasonable prices x x x." (Italics for emphasis)

From the above-quoted provisions of the law, it is clear that an industry to be entitled to tax exemption must be "new and necessary" and that the tax exemption was granted to new and necessary industries as an incentive to greater and adequate production of products made scarce by the second world war which wrought havoc on our national economy, a production "sufficient to meet local demand or consumption"; that will contribute "to the attainment of a stable and balanced national economy"; an industry that "will make its products available to the general public in quantities and at prices which will justify its operation."

Viewed in the light of the foregoing reasons for the State grant of tax exemption, We are firmly convinced that petitioner was granted tax exemption in the *manufacture and sale "of machines* for making cigarette paper, pails, lead washers, nails, rivets, candies, *etc.*," as explicitly stated in the Certificate of Exemption (Annex A of the petition in G.R. No. L-22805), but certainly not for the manufacture and sale of the articles produced by those machines.

That such was the intention of the State when it granted tax exemption to the petitioner in the manufacture of *machines* for making certain products could be deduced from the following:

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"Before the approval of the original grant of tax exemption to petitioner for engaging in a new and necessary industry under Republic Act No. 35, the then Secretary of Finance submitted a memorandum to the Cabinet, dated March 3, 1949, the pertinent portions of which read as follows:

'x x x If (petitioner) turns out *machines* whenever orders therefore are received. Among its products are a medicine tablet *wrapping machine* for Dr. Agustin Liboro, photographs of which are attached, a loud speaker for the Manila Supply, and a "*Lompia wrapping" machine* for a certain Chinese. x x x

The manufacture of the *above-mentioned machines* can be *considered a new and necessary industry* for the purpose of Republic Act No. 35. It is recommended that the benefits of said Act be extended to this corporation in respect to said industry.

Respectfully submitted:

(SGD.) PIO PEDROSA
Secretary'"

"The letter of the Executive Secretary to the petitioner dated May 30, 1949, reads as follows:

'S i r s:

"I have the honor to advise you that His Excellency, the President, has today, upon recommendation of the Honorable, the Secretary of Finance, approved your application for exemption from the payment of internal revenue taxes on *your business of manufacturing machines* for making a number of products, such as cigarette paper, pails, lead washers, rivets, nails, candies, chairs, *etc.*, under the provisions of Section 2 of Republic Act No. 35.

Very respectfully,

(SGD.) TEODORO EVANGELISTA
Executive Secretary'"
(Italics for emphasis)

Aside from the clarity of the State's intention in granting tax exemption to petitioner in so far as it manufactures machines for making certain products, as manifested in the acts of its

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duly authorized representatives in the Executive branch of the government, it is quite difficult for Us to believe that the manufacture of steel chairs, jeep parts, and other articles not constituting machines for making certain products would fall under the classification of "new and necessary" industries envisioned in Republic Acts 35 and 901 as to entitle the petitioner to tax exemption.

There is no way to dispute the "cardinal rule in taxation that exemptions therefrom are highly disfavored in law and he who claims tax exemption must be able to justify his claim or right thereto by the clearest grant of organic or statute law" as succinctly stated in the decision of the respondent Court of Tax Appeals in C.T.A. No. 1265 (L-27858).

Tax exemption must be clearly expressed and cannot be established by implication. Exemption from a common burden cannot be permitted to exist upon vague implication. (*Asiatic Petroleum Co. vs. Llanes*, 49 Phil. 466; *House vs. Posadas*, 53 Phil. 338; *Collector of Internal Revenue vs. Manila Jockey Club, Inc.*, G.R. No. L-8755, March 23, 1956, 98 Phil. 676).

WHEREFORE, the decisions of respondent Court of Tax Appeals in these two cases are affirmed.

Costs against the petitioner in both cases.

Makalintal, C. J., Castro, Makasiar, and *Martin, JJ.*, concur.