

THIRD DIVISION

[G.R. No. 107135, February 23, 1999]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. THE
COURT OF APPEALS CENTRAL VEGETABLE MANUFACTURING CO.,
INC., AND THE COURT OF TAX APPEALS, RESPONDENTS.**

D E C I S I O N

PURISIMA, J.:

Before the Court is a Petition for Review on *Certiorari* from the judgment of the Court of Appeals affirming *in toto* the decision of the Court of Tax Appeals which required the Commissioner of Internal Revenue to credit the sales taxes paid by Central Vegetable Oil Manufacturing Co., Inc. (CENVOCO) on containers and packaging materials of its milled products, against the deficiency miller's tax due thereon for the year 1986.

As culled in the decision of the Court of Tax Appeals, the undisputed facts are, as follows:

"Petitioner (private respondent CENVOCO herein) is a manufacturer of edible and coconut/coprameal cake and such other coconut related oil subject to the miller's tax of 3%. Petitioner also manufactures lard, detergent and laundry soap subject to the sales tax of 10%.

In 1986, petitioner purchased a specified number of containers and packaging materials for its edible oil from its suppliers and paid the sales tax due thereon.

After an investigation conducted by respondent's Revenue Examiner, Assessment Notice No. FAS-B-86-88-001661-001664 dated April 22, 1988 was issued against petitioner for deficiency miller's tax in the total amount of P1,575,514.70 x x x .

On June 29, 1988, petitioner filed with respondent a letter dated June 27, 1988 requesting for reconsideration of the above deficiency miller's tax assessments, contending that the final provision of Section 168 of the Tax Code does not apply to sales tax paid on containers and packaging materials, hence, the amount paid therefor should have been credited against the miller's tax assessed against it. Again, thru letter dated September 28, 1988, petitioner reiterated its request for reconsideration.

On November 17, 1988, respondent wrote CENVOCO, the full text of which letter reads

November 17, 1988

Central Vegetable Oil

Manufacturing Co. Inc.

P.O. Box 2816

Manila

Attention: Mr. James Chua

President

Gentlemen:

We have received your letter of September 28, 1988, relative to our assessment against your company in the amount of P1,575,514.75, as deficiency miller's tax for the year 1986.

Section 168 of the Tax Code provides that sales, miller's or excise taxes paid on raw materials or supplies used in the milling process shall not be allowed against the miller's tax due. You contend that since packaging materials are not used in the milling process then, the sales taxes paid thereon should be allowed as a credit against the miller's tax due because they do not fall within the scope of the prohibition.

It is our position, however, that since the law specifically does not allow taxes paid on the raw materials or supplies used in the milling process as a credit against the miller's tax due, with more reason should the sales taxes paid on materials not used in the milling process be allowed as a credit against the miller's tax due. There is no provision of law which allows such a credit-to-be made.

In view of the above, we are reiterating the assessment referred to above. We request that you make payment immediately so that this case may be considered closed and terminated.

Very truly yours,

(SGD) EUFRACIO D. SANTOS

Deputy Commissioner

(CA Decision, pp.31-33 Rollo)

Dissatisfied with the adverse action taken by the BIR, CENVOCO filed a petition for review with the Court of Tax Appeals, which came out with a decision, dated December 3, 1990, in favor of CENVOCO, disposing, thus:

"WHEREFORE, in view of the foregoing, petitioner Central Vegetable Oil Manufacturing Co., Inc., is not liable for deficiency miller's tax for the year 1986 in the amount of P1,575,514.70.

No pronouncement as to costs.

SO ORDERED." (Rollo, p. 53)

Appealed to the Court of Appeals, the said decision was affirmed *in toto*. (Rollo, p. 38)

The Court of Appeals adopted the reasons cited and ratiocination by the Court of Tax Appeals for allowing the sales tax paid by CENVOCO on the containers and packaging materials of its milled products to be credited against the miller's tax due thereon, viz -

"The main issue in this case is whether or not respondent CENVOCO is liable for deficiency miller's tax for the year 1986 in the amount of P1,575,514.70. This in turn hinges on whether or not containers and packaging materials are raw materials used in the milling process within the contemplation of the final proviso of Section 168 of the National Internal Revenue Code, which reads:

'Provided, finally, that credit for any sales, miller's or excise taxes paid on raw materials or supplies used in the milling process shall not be allowed against the miller's tax due, except in the case of a proprietor or operator of a refined sugar factory as provided hereunder.'

xxx xxx xxx

"xxx We agree with respondent Court that containers and packages cannot be considered "raw materials" utilized in the milling process. In arriving at the conclusion, respondent Court quoted with approval the reasons cited by CENVOCO, as follows:

'FIRST; The raw materials used by Cenvoco in manufacturing edible oil are copra and/or coconut oil. In other words, the term "used" in the final proviso of Section 168 of the NIRC refers or is strictly confined to "raw materials" or supplies fed, supplied or put into the apparatus, equipment, machinery or its adjuncts that cause or execute the milling process. On the other hand, the containers, such as tin cans, and/or packages are not used or fed into the milling machinery nor were ever intended for conversion to form part of the finished product, i.e., refined coconut/edible oil. Consequently, it would be absurd to say that said containers and packages are "used in the milling process", for the process involves "grinding, crushing, stamping, cutting, shaping or polishing". (See THE DICTIONARY, by TIME, COPYRIGHT 1974, p. 444) x x x

'SECOND; Petitioner's interpretation of the term raw materials is contrary to law and jurisprudence. Thus, raw materials as used in the definition of " manufacture", denotes materials from which final product is made (Black's Law Dictionary, 4th ed. citing State vs. Hennessy Co., 71 Mont. 301, 230, p. 64, 65). And consistent with said definition, Revenue Regulations Nos. 2-86 and 11-86 [effective January 1, 1986 and August 1,