95 Phil. 142

[G.R. No. L-4510. May 31, 1954]

MARC DONNELLY & ASSOCIATES, INC., PETITIONER, VS. MANUEL AGREGADO, AUDITOR GENERAL; CORNELIO BALMACEDA, SECRETARY OF COMMERCE AND INDUSTRY; AND RAMON L. PAGUIA, CHIEF OF THE SUGAR QUOTA OFFICE, RESPONDENTS.

D E C I S I O N

BAUTISTA ANGELO, J.:

This is a petition for review of a decision of the Auditor General denying the claim of petitioner of the refund of the export fees paid by it to the Sugar Quota Office in the amount of P54,862.84.

On July 2, 1946, Congress enacted Commonwealth Act No. 728, making it unlawful for any person, association or corporation to export agricultural or industrial products, merchandise, articles, materials, and supplies without a permit from the President of the Philippines. This Act confers upon the President authority to "regulate, curtail, control, and prohibit the exportation of materials abroad and to *issue such rules and regulations as may be necessary* to carry out the provisions of this Act, through such department or office as he may designate."

On July 10, 1946, the President acting upon the authority vested in him by Commonwealth Act No. 728, promulgated Executive Order No. 3, prohibiting the exportation of certain materials therein enumerated allowing the exportation of other merchandise, like scrap metals, provided an export license is first obtained from the Philippine Sugar Administration.

On April 24, 1947, the Chief of the Executive Office, by authority

of the President, sent a communication to the Philippine Sugar Administration authorizing the exportation of scrap metals upon payment by the applicants of a fee of P10 per ton of the metals to be exported. Subsequently, the Cabinet, upon recommendation of the National Development Company, approved a resolution fixing the schedule of royalty rates to be charged on metal exports.

Petitioner herein exported large amounts of scrap iron, brass, copper, and aluminum during the period from December, 1947 to September 1948, for which it paid by way of royalty fees the total amount of ?54,862.84. This amount was collected by the Sugar Quota Office under the authority granted by the Chief of the Executive Office and the resolution of the Cabinet above mentioned. The case is now before us by way of appeal from the decision of the Auditor General who denied the request for refund of said royalty fees.

Petitioner contends that the resolution of the Cabinet of October 24, 1947, fixing the schedule of royalty rates on metal exports and providing for their collection constitutes an undue delegation of legislative powers because, in substance, it creates and imposes an *ad valorem* tax.

Article VI, section 22(2), of the Constitution provides:

> "The Congress may by law authorize the President, subject to such limitations and restrictions, as it may impose, to fix, within specified limits, tariffs rates, import or export quotas, and tonnage and wharfage dues."

It is clear from the above that Congress may by law authorize the President, subject to certain limitations, to fix, within specified limits, tariff rates, import or export quotas, and tonnage and wharfage dues. And pursuant to this constitutional provision, Congress approved Commonwealth Act No. 728 conferring upon the President authority to regulate, curtail, control, and prohibit the exports of scrap metals and to issue such rules and regulations as may be necessary to carry out

its provisions. And implementing this broad authority, the Cabinet approved the resolution now in question authorizing the levy and collection of certain royalty fees as a condition for the exportation of scrap metals and other merchandise.

In our opinion, this resolution is perfectly legal because it was done by authority of Commonwealth Act No. 728 and in pursuance of an express provision of our Constitution. The fact that the resolution was approved by the Cabinet and the collection of the royalty fees was not decreed by virtue of an order issued by the President himself does not, in our opinion, invalidate said resolution because it cannot be disputed that the act of the Cabinet is deemed to be, and essentially is, the act of the President. And this is so because, as this Court has aptly said, the secretaries of departments are mere assistants of the Chief Executive and "the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, *and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive.*" (Villlena *vs*. The Secretary of Interior, 67 Phil., 451.) To hold otherwise would be to entertain technicality over substance. And with regard to the acts of the Cabinet, this conclusion acquires added force because, unless shown otherwise, the Cabinet is deemed to be presided over always by the President himself.

It is contended that the royalty rates prescribed in the Cabinet resolution are not fees but in effect partake of the nature of an *ad valorem* tax the imposition of which cannot be delegated to the President by Congress. The rule which forbids delegation of legislative power is not absolute. It admits of exceptions as when the Constitution itself authorizes such delegation (Constitution of the Philippines by Tanada and Fernando, p. 449). In the present case, our Constitution expressly authorizes such delegation. (Article VI, section 22 [2].) This is so because the royalty rates may take the form of tariff rates. At any rate, Commonwealth Act No. 728 confers upon the President authority to regulate, curtail, control, and prohibit the exportation of scrap

metals, and in this authority is deemed included the power to exact royalties for permissive or lawful use of property right. (Raytheon Mfg. Co. *vs*. Radio Corporation of America, 190, N. E. 1, 5, 286 Mass. 84, cited in Words and Phrases, Vol. 37, p. 810.)

One point that should be considered is the distinction between the business of exporting scrap metals, on one hand, and other merchandise on the other. As a rule, common trades or industries, or the exportation of merchandise in general, cannot be prohibited, but may only be regulated in the exercise of the police power of the State; not so with regard to scrap metals whose exportation may be completely banned. This is the core of Commonwealth Act No. 728. It authorizes the President not merely to regulate but to prohibit altogether the exportation of certain articles, among them scrap metals. Hence, there is no absolute right on the part of any person or entity to export such materials. But the President, acting under the authority granted by said Act, did not, in promulgating Executive Order No. 3, choose to place a complete ban on the exportation of scrap metals, but permitted such exportation upon payment of certain royalty. If the President can prohibit altogether such exportation, a fortiori he can, as he did, impose conditions and limitations he may deem proper in granting the privilege, one of them being the payment of royalties similar to the ones subject of the present litigation.

The payment of these royalties cannot be considered as contended by petitioner, as an imposition or one exacted under duress, for the exporter who wants to avail of this privilege is free to act on the matter as his interest might dictate. Compliance with the resolution was optional. It was left entirely to his discretion. If with full knowledge of the condition imposed, by the resolution the exporter of the prohibited article deems it convenient to traffic on it because of the profit he expects to derive from the transaction, he cannot later be heard to complain of what the Government has exacted because of the presumption that, in spite of that charge, the transaction would still bring him a substantial profit. The payment of the royalty can be considered as the consideration for the exercise of the privilege and one who avails of that privilege and pays the consideration is guilty of

estoppel. This is the predicament of petitioner.

Wherefore, petition is dismissed, without pronouncement as to costs.

Labrador, J., concurs.

Paras, C. J., Montemayor and *Jugo, JJ.,* concur in the result.

CONCURRENTE

PABLO, M.,:

La recurrente pide la devolution de la cantidad de P54,968.41 que habia pagado a la Sugar Quota Office por el permiso que obtuvo para exportar desperdicios de metal, "scrap metals." Cuando la recurrente pidio permiso estaba enterada de que le Ley del Commonwealth No. 728 declaraba ilegal, sin permiso del Presidente de Filipinas, la exportacion de productos, mercancias, articulos, materiales y efectos agricolas o industriales. En su articulo 2, dicha ley autoriza al Presidente para regular, restringir, controlar y prohibir dicha exportacion y dictar los reglamentos necesarios para llevar a efecto las disposiciones de dicha ley. En 10 de julio de 1946, ejerciendo los poderes que le conferia dicha ley, el Presidente promulgo la orden ejecutiva No. 3 que prohibia la exportacion de los materiales enumerados en el articulo 1.°; pero permitia la exportacion de otras mercancias como los desperdicios de metal con la condition de que se obtuviera antes licencia de la Philippine Sugar Administration. En 24 de octubre de 1947 el Gabinete, por recomendacion del Administrador de la National Development Company, aprobo una resolucion establecierido un "schedule of royalty rates on metal exports."

La recurrente contiende que la cantidad que pago de acuerdo con dicha tarifa (schedule) y que hoy reclama fue un impuesto sobre las cantidades de desperdicios de hierro, laton, bronce y aluminio que habia exportado desde diciembre de 1947 hasta septiembre de 1948.

En 2 de diciembre de 1947 la recurrente, acogiendose a las disposiciones de la ley del Commonwealth No. 327, presento su reclamacion al Auditor General, alegando que el impuesto era anticonstitucional, porque el Gabinete no tenia autoridad para adoptar dicho impuesto y que solamente el Congreso es el que esta autorizado para aprobar ley sobre impuestos. En su decision de 8 de noviembre de 1950 el Auditor denego el reembolso, y contra ella la recurrente apelo en 25 de enero de 1951.

Los articulos 1 y 2 de la Ley del Commonwealth No. 327, en que se funda su reclamacion, dicen asi:

> "SECTION 1. In all cases involving the settlement of accounts or claims, other than those of accountable officers, the Auditor General shall act and decide the same within sixty days, exclusive of Sundays and holidays, after their presentation. If said accounts or claims need reference to other persons, office or offices, or to a party interested, the period aforesaid shall be counted from the time the last comment necessary to a proper decision is received by him. With respect to the accounts of accountable officers, the Auditor General shall act on the same within one hundred days after their submission, Sundays and holidays excepted.
>
> "In case of accounts or claims already submitted to but still pending decision by the Auditor General on or before the,approval of this Act, the periods provided in this section shall commence from the date of such approval.
>
> "SEC. 2. The party aggrieved by the final decision of the Auditor General in the settlement of an account or claim may, within thirty days from receipt of the decision, take an appeal in writing:
>
> > "(*a*) To the President of the United States, pending the final and complete withdrawal of her sovereignty over the Philippines, or

> "(*b*) To the President of the Philippines, or
>
> "(*c*) To the Supreme Court of the Philippines if the appellant is a private person or entity.
>
> "If there are more than one appellant, all appeals shall be taken to the same authority resorted to by the first appellant.
>
> "From a decision adversely affecting the interests of the Government, the appeal may be taken by the proper head of the department or in case of local governments by the head of the office or branch of the Government immediately concerned.
>
> "The appeal shall specifically set forth the particular action of the Auditor General to which exception is taken with the reasons and authorities relied on for reversing such decision."

Toda reclamation, al parecer, esta incluida en la palabra "claims" porque su significado es amplio; pero no esta incluida la reclamation que pide el reembolso de una contribution indebidamente cobrada, porque el Codigo Administrativo de 1916, el Codigo Administrative Revisado de 1917, la Ley No. 3685 y el Codigo Nacional de Rentas Internas disponen especificamente ante que autoridad deben presentarse reclamaciones de reembolso de impuestos ilegalmente cobrados.

Si el Auditor General tiene facultad o jurisdiction para resolver asuntos como el presente, entonces una reclamation presentada antes de la proclamation de la independencia seria apelable al Presidente de los Estados Unidos. No creemos que la Legislatura haya intentado, ni en suenos, que el Presidente de Estados Unidos y el de Filipinas se entretuviesen en asuntos de tal naturaleza. Si se tratase, por ejemplo, de recobrar un impuesto ilegalmente cobrado por poseer licencia de armas de fuego, ¿apelaria el interesado al Presidente de Estados Unidos si no estuviese satisfecho de la decision del Auditor? La palabra "claims" de que habla el articulo 1.° de la Ley del Commonwealth No. 327 que se aprobo en 18 de junio de 1938 no debe referirse a reclamaciones de

reintegro de impuestos indebidamente cobrados, porque la resolucion de las mismas ya estaba encomendada expresamente al Administrador de Rentas Internas y a los tribunales de justicia por el Codigo Administrativo Revisado de 1917, tal como fue enmendado por la Ley No. 3685.

El articulo 1721 del Codigo Administrativo de 1916, el articulo 1579 del Codigo Administrativo Revisado de 1917 y el articulo 1579 del ultimo codigo, tal como fue enmendado por la Ley No. 3685, dicen textualmente: "When the *validity of any tax is questioned*, or its amount disputed, or other question raised as to liability therefor, the person against whom or against whose property the same is sought to be enforced shall pay the tax under instant protest, or upon protest within thirty days, (10 dias en el Cod. Adm. de 1916 y Cod. Adm. de 1917) and shall thereupon request the decision of the Collector of Internal Revenue. If the decision of the Collector of Internal Revenue is adverse, or if no decision is made by him within six months from the date when his decision was requested, the taxpayer may proceed, at any time within two years after the payment of the tax to bring an action against the Collector of Internal Revenue for the recovery * * *" (Art. 1579 Cod. Adm. Rev., tal como fue enmendado por la Ley No. 3685.)

En las palabras "any tax" empleadas en los tres codigos estan incluidas todas las reclamaciones sobre cualquier impuesto indebidamente cobrado: no se refieren a impuestos de rentas internas solamente.

La disposicion especifica del Codigo Administrativo Revisado, tal como fue enmendado, debe prevalecar sobre la disposicion de caracter general de la ley del Commonwealth No. 327: asi lo exige la hermaneutica legal.

El asunto citado por la mayoria de la Manila Electric Company contra el Auditor General y Comision de Servicios Publicos, 73 Phil., 128, no puede servir de precedente; no se percataron el Auditor y este Tribunal del articulo 1579 del Codigo Administrativo Revisado, tal como fue enmendado, .de que el asunto era de la incumbencia del Administrador de Rentas Internas y del Juzgado de Primera Instancia.

El articulo 584 del Codigo Administrativo Revisado dice asi: “The authority and powers of the Bureau of Audits extend to and comprehend all matters relating to accounting procedure, including the keeping of the accounts of the Government, the preservation of vouchers, the methods of accounting, the examination and inspection of the books, records, and papers relating to such accounts, and to the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as to the examination and audit of all debts and claims of any sort due from or owing to the Government of the Philippine Islands in any of its branches. * * *” Esta disposicion no incluye la reclamacion de impuestos indebidamente cobrados. Darle al Auditor facultad para resolver semejante reclamacion es concederle funcion judicial.

El Codigo Nacional de Rentas Internas (en sustitucion del Codigo Administrativo Revisado y otras leyes enmendatorias) en vigor cuando la recurrente presento su reclamacion dispone lo siguiente:

> “Sec. 306. Recovery of tax erroneously or illegally collected.— No suit or proceeding shall be maintained in any court for the recovery of any national internal-revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid tinder protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty.’

La cantidad que reclama la recurrente esta incluida en las siguientes palabras: “of any sum alleged to have been excessive or in any manner wrongfully collected”, que equivalen a any tax empleadas por los codigos anteriores.

No es de la incumbencia del Auditor General decidir la reclamacion

sobre la devolucion de impuestos ilegalmente cobrados o declarar que una ley, orden o resolution que dispone el cobro de un impuesto, sea o no anticonetitucional. Son dos cuestiones que deben resolver los tribunales de justicia, porque son asuntos escucialmente judiciales y no administrativos. La recurrente, por tanto, debio de haber planteado la devolucion del impuesto anticonstitucionalmente cobrado ante el Administrador de Rentas Internas primero o la Philippine Sugar Administration, y si se denegara o no se resolviera su reclamacion, presentar demanda ante el Juzgado de Primera Instancia dentro de dos anos despues de pagados los impuestos. (Art. 306, Cod. Nac. de Rentas Internas.)

Podria argiiir la recurrente que el impuesto hoy discutido no es de rentas internas sino de exportation y, por lo tanto, no debiera plantearse ante el Administrador de Rentas Internas ni en el Juzgado de Primera Instancia. Tal contention seria insostenible, porque en Visayan Electric, S. A. contra Saturnino David, etc., 92 Phil., 969; Philippine Railway Co. *vs*. Collector of Internal Revenue, 91 Phil., 35 y Manila Railroad Co. contra Rafferty, 40 Jur. Fil., 237, se trataba de un indebido aumento de impuesto sobre franquicia, y la cuestion se planted ante el Administrador de Rentas Internas y luego ante el Juzgado de Primera Instancia.

El Auditor General no tiene jurisdiction para resolver la reclamacion fundada en la anticonstitucionalidad del impuesto cobrado; tampoco este Tribunal adquiere jurisdiccion apelada.

Por estas razones, concurro con el sobreseimiento de la causa.

Diokno, J., concurs.

CONCEPCION, J.:

Creo, con el Magistrado Pablo, que el Auditor General carece de autoridad para determinar la validez de Ios derechos o “royalties” envueltos en la presente causa.

DISSENTING

BENGZON, J.:

With due deference to the majority opinion, my vote is for the petitioner.

On several occasions, between December 1947 and September 1948, the dometsic corporation Marc Donnelly and Associates, Inc. exported considerable quantities of scrap iron, brass, copper and aluminium, for which it paid under protest to the Sugar Quota Office "royalties" the total amount of P54,862.84. Such royalties were admittedly demanded "under the authority granted to it (Sugar Quota Office) by the resolution of the Cabinet of October 24, 1947," which reads as follows:

> "Upon the recommendation of the General Manager of the National Development Company, the Cabinet approved the following schedule of royalty rates on metal exports:

Scrap copper	P50.00 per metric ton
Scrap brass	50.00 per metric ton
Scrap aluminum	20.00 per metric ton
Scrap lead	40.00 per metric ton
Scrap cast iron	5.00 per metric ton
Scrap steel	2.00 per metric ton
Burnt scrap wire other than burnt copper wire	5.00 per metric ton"

Contending that the Cabinet's resolution was invalid, and that the payments were involuntary, Marc Donnelly and Associates Inc. submitted to the Auditor General, in September 1950, a formal claim for refund, which was denied with the explanation:

> "The collection of the royalties in question is based on the resolution of the Cabinet, dated October 24, 1947, which is assailed by

> you as unconstitutional. Inasmuch as this Office has no power to pass upon the constitutionality or validity of said resolutidn and the fact that the resolution is presumed to be constitutional unless declared by a competent court to be otherwise, the request for refund of royalties collected by virtue of said resolution is hereby denied."

Reversal of the Auditor's decision is now requested under the provisions of Comm. Act No. 327 and Rule 45 of the Rules of Court. In Manila Electric *vs*. Auditor General, 73 Phil., 128, we entertained a similar petition. It is urged that the exactions are illegal, the Cabinet having no lawful power to require the collection of "royalty" fees on metal exports.

As the Auditor General disapproved the refund solely upon the ground that the Cabinet's resolution "should be presumed to be constitutional unless declared by a competent court to be otherwise," the question is the Cabinet's authority to direct the collection of the aforesaid royalties.

No statute has been quoted authorizing the Cabinet to levy the assessment. Observe that "the taxing power of the State is exclusively a legislative function, and taxes can be imposed only in pursuance of legislative authority" (61 C. J. p. 81).

However, seeking to justify the collection, the respondents have formulated these propositions:

1. Commonwealth Act No. 728, (July 1946) made it unlawful to export agricultural or industrial products, materials or supplies, without a permit from the President. It authorized the President to regulate, control or prohibit exportation of materials and to issue rules and regulations in connection therewith.

2. In the exercise of such authority, the President promulgated Executive Order No. 3 prohibiting the exportation of scrap metal unless an export license was first obtained from the Philippine Sugar Administration. Subsequently the Cabinet at its 132nd meeting of October

24, 1947 approved the resolution in question.

3. And the President authorized the collection by the indorsement of the Chief of the Executive Office dated April 24, 1947 which reads as follows:

   "Respectfully referred to the Philippine Sugar Administration, Manila, hereby authorizing the exportation of scrap brass and scrap metals representing only the balance of the export permits issued before November 1, 1946 upon payment by the applicants concerned of a fee of P10 per ton of scrap brass and scrap metals to be exported."

4. The President was validly authorized by Congress (delegation of legislative power) (Art. VI Sec. 22(2) Constitution) to regulate, control and prohibit the exportation of metals.

5. "When the Cabinet, which is considered the highest advisory body to the President approved the resolution in question and the President himself authorized the Sugar Quota Office to levy and collect royalties as fixed in said resolution, this was done by authority of Com. Act No. 728."

6. The authority to regulate included the authority to exact royalties or export dues.

To repeat, the respondents' defense is founded on the above propositions which for convenience, have been numbered in six separate paragraphs to facilitate examination or analysis.

The first two paragraphs are undeniable. The third is incorrect insofar as it asserts that these royalties were demanded pursuant to the indorsement of April 24, 1947. The Auditor General expressly found they were demanded by virtue of the resolution of the Cabinet—not by the indorsement—and this involves a question of fact, the indorsement referring specifically to exports "representing only the balance etc." which did not evidently cover herein petitioner's consignments abroad.

The fourth proposition is correct.

Inasmuch as the indorsement of the Executive Office is inapplicable, the fifth proposition poses the crucial question whether the Cabinet approved the resolution by authority of Com. Act No. 728. The authority to regulate—and to require payment of fees on—exports was entrusted to the President. That power was not expressly delegated by the President to the Cabinet. (It is doubtful whether lie could validly do so.) And the Cabinet is not the President. True, the President presides Cabinet meetings, but his voice is only one, convincing though it may be. Furthermore, the Cabinet may meet without the presence of the President. The conclusions of the Cabinet and its resolutions are not necessarily the President's. We may not, therefore, hold that, in the eyes of the law, the Cabinet's resolution of October 24, 1947 was the act of the President. It was the act of the Cabinet, that had *no statutory authority* to require payment of royalties or export fees. Our ruling in the Villena cas[1] followed by the majority, applies only to *executive* powers of the President —not to legislative powers delegated to him, *Delegata potestas delegari nonpotest.*

Not even Congress could constitutionally delegate to the Cabinet its power to tax.

As a suppletory proposition, the respondents claim the entire transaction "might be regarded as a contract between the government, the latter conceded to the exporters the privilege of exporting certain goods the export of which could otherwise have been prohibited. The government, therefore, collected the royalty, not by virtue of its taxing power, but in the exercise of a contractual right."

But the comparison is unacceptable, because the exporter was not *on equal footing* with the Government; it was virtually under duress. The officers said, "pay, otherwise your metals will not be exported." And the exporter had to disgorge, under protest; otherwise his goods would rust and rot. And then, accepting the comparison for the sake of argument, I think "the Government"[2]

means the appropriate governmental agency, which in this instance should be the Legislature or the President (at most).

Surely not the Cabinet.

Supposing however that the resolution of the cabinet might be regarded as a Presidential directive, the question remains whether the President himself had power to exact the "royalty." In my opinion he had not. Under Com. Act 728 he could, at most, require a license fee; but a "royalty" is not a fee. It connotes some kind of ownership,[3] far different from that power of regulation justifying the exaction of license fees. Yet even supposing the royalty had been labeled "export fees," it would undoubtedly be also unauthorized, because, virtually, it was a tax, for it tended to produce revenue—*ad valorem* charges. It was not collected merely as compensation for services rendered, in the interest of necessary regulations. This difference between fees and taxes is well-known in this jurisdiction, the one implying the exercise of police power, and the other the taxing power. And authority to collect fees, does not ordinarily embrace the power to impose taxes.[5]

In this regard it is noteworthy that, doubting the validity of these exactions, the House approved in 1950 a bill (H. Bill No. 511) validating the Cabinet action re royalties on metal exports. Such bill, however, failed to pass the Senate, because there were objections to its retroactive operation.

It is said that, because the President had the power to regulate and prohibit exportation of metals, he could permit exportation thereof upon payment of taxes. This is tantamount to saying that, as the Secretary of Education has power to regulate the establishment and operation of schools, he may, instead of regulating, just require the schools to pay taxes—without supervision, inspection etc. And because the city of Baguio has authority to control or prohibit the establishment of gambling houses, and houses of ill-fame (Sec. 2553 (u) Rev. Adm. Code), it may permit their operation upon payment of taxes. Extreme examples indeed: but they illustrate the idea that the police

power to prohibit, or regulate, does not include the power to permit upon payment of taxes.

The power of regulation and prohibition in the case of schools or gambling houses is founded upon the same principles as the power to prohibit exportation of metals: pro bmm publico. Police power. Such regulation or prohibition cannot be bartered away in exchange for thousands of pesos.

It is also said that the matter was not within the jurisdiction of the Auditor General's Office. It was a "claim * * * due from * * * the Government of the Philippine Islands" within the meaning of Art. 584 of the Revised Administrative Code. It was also a claim within the scope of C. A. No. 327. The fact that appeal to the President of the U. S. is no longer feasible, does not have, in my opinion, the effect of annulling the whole law. (C. A. No. 327) Granted that the Auditor General had no authority to annul the Cabinet's resolution, still it does not follow that the Auditor had no power to take cognizance of the monetary claim against the Government. Before him were two questions: Was the tax collected in accordance with the Cabinet's resolution? Was this resolution valid or constitutional? He answered the first in the affirmative. As to the second he said he must hold it valid because he had no power to annul it. He thought prudently; but he acted on the claim. And we now *have appellate* jurisdiction. Had he decided both questions in the negative, appeal could still be made to this Court.

Let us remember that this being a government of laws, its officers may only exercise those powers expressly or impliedly granted by the Constitution or the statutes. Acts performed by them without authority are void, confer no rights, afford no protection. Royalties or taxes demanded without lawful authority and paid under protest, should be returned[6] no matter the
consequent loss of revenue. The citizen will thus be imbued with the fullest respect, the utmost loyalty to constituted authority and republican government.

Reyes, A. J., concurs.

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[1] Villena vs. Secretary of the Interior, 67 Phil., 461.

[2] The question is not whether the Government may tax metal exports.

[3] Apparently such was the Cabinet's view. It approved the resolution induced by a memorandum of the General Manager, National Development Co. saying: "However, it is an indisputable fact that the scrap iron, scrap metals, scrap brass, etc. that were lying in any public places and waters, especially sunken ships and barges, belong to our government and we would, therefore, recommend that the parties who were issued licenses be required to pay our government a royalty of a minimum $5.00 or P10.00 per ton of scrap iron, scrap metals, scrap brass etc. that may be exported. But this "ownership" was not pressed here. Obviously, collection in this case was a mistaken application of the Cabinet's resolution, as the metals exported were not shown to be "lying in public places and waters specially sunken ships and barges."

[4] Manila Electric Co. *vs*. Auditor General, 73 Phil. 128; Cu Unjieng *vs*. Palstone, 42 Phil. 818; Phil. Transit *vs*. Treasurer, 83 Phil. 722.

[5] Cooley on Taxation (1924) Vol. 4 pp. 3531-3534; Kiowa County *vs*. Dunn, 21 Colo. 185, 40 Pac. 357; Jackson *vs*. Newman, 59 Miss. 385; Western U. Tel. Co. *vs*. City Council, 56 Fed. 419.

[6] Zaragosa vs. Alfonso, 46 Phil., 159.

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