

### Title:

\*\*Ker & Co., Ltd. vs. Jose B. Lingad, as Acting Commissioner of Internal Revenue (G.R. No. L-25926, February 27, 1970)\*\*

### Facts:

Ker & Co., Ltd. was assessed P20,272.33 by the Commissioner of Internal Revenue as a commercial broker's percentage tax, surcharge, and compromise penalty for the period from July 1, 1949, to December 31, 1953. Ker & Co. requested cancellation of the assessment which was denied, leading them to file a petition for review with the Court of Tax Appeals. The Court upheld the tax liability except for the compromise penalty, fixing the due amount at P19,772.33.

The contract central to the dispute was between Ker & Co. and United States Rubber International. Here, Ker & Co. was designated as the Distributor and was to sell products within specified territories. The shipments were consigned to Ker & Co. and remained the property of United States Rubber International until sold. The contract included stipulations that the Distributor could not dispose of the products outside the designated territories without consent, and must operate under terms and prices set by the Company.

### Issues:

1. Whether the relationship between Ker & Co., Ltd., and United States Rubber International constituted a vendor and vendee or a broker and principal relationship.
2. Whether Ker & Co., Ltd. should be considered a commercial broker under Section 194(t) of the National Internal Revenue Code (NIRC).

### Court's Decision:

The Supreme Court affirmed the decision of the Court of Tax Appeals. The relationship between Ker & Co., Ltd. and United States Rubber International was deemed that of a broker and principal.

**\*\*Issue 1:\*\*** The relationship was determined to be one of brokerage or agency by analyzing the contractual stipulations. Despite a clause denying Ker & Co., Ltd. as an agent, the consistency of terms indicating control by United States Rubber International over prices, territories, and sales procedures reinforced the brokerage nature.

**\*\*Issue 2:\*\*** Under Section 194(t) of the NIRC, which defines a commercial broker as one who sells or facilitates sales for compensation, Ker & Co., Ltd. met the criteria given its role in selling consigned products under the terms set forth by United States Rubber

International.

### ### Doctrine:

The Supreme Court reiterated that the essence of an agency relationship in commercial transactions is defined by the retention of ownership and control by one party over another, even despite explicit disclaimers in a contract. The guiding principle is the control exerted over the goods and the stipulations like consignment, detailed sales reports, and insurance responsibilities, as highlighted in the case **Commissioner of Internal Revenue v. Constantino**.

### ### Class Notes:

- **Definition of Commercial Broker (NIRC Section 194[t]):** A commercial broker includes those who sell or bring about sales for compensation, excluding importers, manufacturers, producers, or bona fide employees.
- **Important Takeaways:**
  - Retention of ownership by the consignor in a consignment agreement.
  - Control over terms of sale, prices, and business practices by the consignor constitutes an agency relationship.
  - Explicit contractual disclaimers must be viewed in context of the entire contractual arrangement, and are not solely determinative.

### **Relevant Statutory Provision:**

- **Section 194(t), NIRC:** It defines who is considered a commercial broker for tax purposes.

### ### Historical Background:

Post-World War II, the Philippines set the stage for modernizing its taxation framework. Cases like this one, scrutinized the evolving definitions of commercial activities within the tax code framework. This case aligns with broader efforts in Philippine jurisprudence to establish clear markers for business and tax classification, ensuring accurate tax liabilities according to business practices. The ruling reinforced the authority of the Court of Tax Appeals on subjects within its specialized domain, bolstering trust in administrative interpretations.