

F. F. HAMLIN, PETITIONER, VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G. R. No. L-12991. December 23, 1959

Ponente: BENGZON, J.

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BENGZON, J.:

Appeal from the decision of the Court of Tax Appeals sustaining the Collector of Internal Revenue's imposition of a deficiency compensating tax. We think the decision should be affirmed.

On September 17, 1950, the S/S President Wilson brought in a Mercury automobile consigned to F. F. Hamlin, an American resident of Cebu City. Transhipped to Cebu, the car arrived there on September 21, 1950, aboard the F/S Albert. Hamlin took it from the customhouse on September 23, 1950, after paying thereon a compensating tax of P927.95, at the rate of 15% of the total value as evidenced by an official receipt dated September 22, 1950. Because Republic Act 588, effective September 22, 1950, had increased the compensating tax to 50% of the total value of the automobile, the Collector of Internal Revenue in 1954, demanded payment of the deficiency tax: P2,164.31.

Refusing to pay, Hamlin took the matter to the Tax Appeals Court. He contended: (a) he actually paid the tax on September 21 in the afternoon, but pursuant to certain accounting practices, the customs man wrote September 22 on the official receipt; and (b) in the circumstances he should be charged 15% only—not the 50% effective September 22, 1950.

The said court refused to believe testimonies of employees presented to contradict the date appearing on the official documents. At any rate it held, "according to Sec. 190 of the Tax Code, the compensating tax is 'to be paid upon withdrawal or removal of the commodities * * * from customs custody/ Hence the payment to be made should be determined upon such withdrawal or removal. As the removal was actually effected on September 23, 1950, the tax should have been paid immediately before such withdrawal and the tax rate of 50% then enforced as of such time would be applied."

We find no fault with the above reasoning. It is supported by the wording and evident intention of section 190, of the Tax Code, the corresponding portion of which reads as follows:

"SEC. 190. Compensating Tax.—All persons residing or doing business in the Philippines, who purchase or receive from without the Philippines any commodities, goods, wares, or merchandise, excepting those subject to specific taxes under Title IV of the Code, shall pay on the total value thereof at the time they are received by such persons, including freight, postage, insurance, commission, and all similar charges, a compensating tax. * * * to be paid upon the withdrawal or removal of said commodities, good, wares or merchandise from the customhouse or the post office. * * *." (Italics ours.)

It is clear from this provision that the tax is to be paid at the time the goods are received, and is to be computed as of the date of withdrawal or removal, because the total value of the merchandise must necessarily include such charges as arrastre, brokerage, warehousing or other expenses incident to the delivery. And the rate of tax

prevailing on such day has perforce to be applied.[1] Note that this tax takes the place of the sales tax. And ordinarily there is no perfected sale until the delivery (or withdrawal for customs in this case) takes place. Note also that this is not an import tax.[2]

Granting, however, that petitioner is right in his proposition that the tax should be computed as of the day he actually paid it, we find no good reason to disturb the factual finding of the Tax Court that payment was actually made on September 22, 1950. The receipt bears that date, and many official steps generally taken before payment of the tax bear the date September 22. Besides, it takes a very unusual case (not to say unlikely) for employees to remember four or five years after September 22, 1950, that payment had actually been made on the preceeding day. What is more, the first letter addressed to the Collector of Internal Revenue (Exh. 5) on behalf of Hamlin regarding this same matter did not question— impliedly admitted—the Customs' statement that payment was made on September 22, 1950.

The letter reads as follows:

"GENTLEMEN:

Our Mr. F. F. Hamlin of Bogo-Madellin Milling Co., Inc., Cebu advises us in a letter dated November 4, 1954 of the following:—

I imported a Mercury sedan car into the Philippines which arrived in Manila on September 17, 1950 on the S/S President Wilson. It was trans-shipped via the F.S. "Albert" and entered the Port of Cebu for consumption on September 21, 1950. The Bureau of Customs, Cebu put in a telephone call to the Bureau of Internal Revenue, Cebu on September 21, 1954 asking what rate of compensating tax was then in force. The information from the Bureau of Internal Revenue was that 15% was the correct rate. The Bureau of Customs, Cebu now contend that as the actual payment was made on September 22, 1950 the increase to 50% should prevail. This hinges on section 184 of the Internal Revenue Code and a foot note on page number 138."

For your information, we enclose photostatic copies of the following:—

- (1) * * *.
- (2) Official Receipt No. 160010 dated September 22, 1950 in the amount of P927.95.
- (3) * * *.
- (4) * * *.

We would be much obliged if your good office would kindly give us your ruling in order that Mr. Hamlin may be guided accordingly in his relations with the Bureau of Customs in Cebu."

It will be noted that whereas payment on September 22, 1950 is twice mentioned, the letter never claimed payment on September 21.

Wherefore, we find no error in the Tax Court's judgment. Affirmed with costs.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

[1] Cf. *Luzon Brokerage vs. Posadas*, 51 Phil., 305.

[2] *Collector vs. Viduya*, 103 Phil., 93; 54 Off. Gaz. (20), 5502; *International Business vs. Collector*, 98 Phil., 595; 53 Off. Gaz. (11); 3465; *Basbate Consolidated vs. Collector of Internal Revenue*, 98 Phil., 441; 53 Off. Gaz. (13), 4075.

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