

KOPPEL (PHILIPPINES) INC., PLAINTIFF AND APPELLANT, VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.*G.R. No. L-1977. September 21, 1950*

Ponente: MORAN, C.J.

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On February 14, 1946, plaintiff submitted its percentage tax return for the last quarter of 1941, wherein it appeared that the percentage tax it owed the government amounted to P7,156.40. This tax should have been paid on or before January 20, 1942, but it was not so paid on account of the war. Commonwealth Act No.722 was passed by Congress extending the period of payment to the last day of February, 1946. In its return above-mentioned, plaintiff requested defendant to authorize postponement of payment so that it may re-establish its business on a more normal basis, but defendant, in a letter dated February 27, 1946 but received by plaintiff on March 1, 1946, denied the request for lack of authority to grant the same. Wherefore, plaintiff paid the tax the same day it received defendant's reply letter, namely, on March 1, 1946. Defendant demanded payment of surcharge corresponding to one day delinquency which plaintiff paid under protest, after a considerable discussion with defendant. The surcharge thus paid was 25 per cent on the aforesaid percentage tax, and amounted to P1,789.10. Action was filed to recover the amount paid under protest, and after trial, judgment was rendered for the defendant. Hence, this appeal by plaintiff.

There is no question that the percentage tax should have been paid on or before February 28, 1946, and that it was not so paid until March 1, 1946. Nor is there any question that the Collector of Internal Revenue has no authority to extend fee. period for payment of percent- age taxes. In a case where Chinese citizens could not pay their taxes because of riots against them, and their request for extension of the time to pay was denied, this court held—

"Section 1458 of the Administrative Code, as last amended by Act No.3074/provides the following; "The percentage taxes on business shall be payable at the end of each calendar quarter in the amount lawfully due on the business transacted during each quarter * * *. If the percentage tax on any business is not paid within the time prescribed above the amount of the tax shall be increased by twenty-five per centum, the increment to be a part of the tax.' This provision is mandatory. It provides a plan which works out automatically. It confers no discretion on the Collector of Internal Revenue. That official may not disregard the law and substitute therefor his own personal judgment." (Lim Co Chui vs. Posadas. 47 Phil. pp. 462, 463.)

On the other hand, appellant invokes Section 309 of the National Internal Revenue Code which reads as follows:

"Section 309. Authority of Collector to make compromise and to refund taxes.—The Collector of Internal Revenue may compromise any civil or other case arising under this Code or other law or part of law administered by the Bureau of Internal Revenue, may credit or refund, taxes erroneously or illegally received, or penalties imposed without authority, and may remit before payment any tax that appears to be unjustly assessed or excessive."

In the instant case, however, the payment of the percentage taxes owed by plaintiff was received by defendant neither erroneously nor illegally. The Collector acted rightly and legally in receiving such payment. Said taxes

were not "unjustly assessed or excessive," for there is absolutely no dispute as to the correctness of the assessment. The surcharge demanded and paid was not a "penalty imposed without authority." Again, this Court in *Lim Co Chui vs. Posadas*, (*supra*) held:

"Section 1582 of the Administrative Code, as amended by Act No.2835, provides the following: "The Collector of Internal Revenue * * * may, remit before payment any tax that appears to be unjustly assessed or excessive." This provision confers discretion on the Collector of Internal Revenue in certain cases but not in the instant case. The twenty-five per cent penalty for non-payment is not "unjustly assessed" because it is not assessed at all, and is not "excessive" because it is merely the amount specifically fixed by the law. The Collector of Internal Revenue simply collects that which the law has said that he must collect. He is not authorized to refund taxes as a matter of gratuity."

And in the instances in which the Collector of Internal Revenue is vested with authority to compromise, such authority should be exercised in accordance with the Collector's discretion, and courts have no power, as a general rule, to compel him to exercise such discretion one way or another.

Appellant seems to seek refuge in a statement made by this Court in the case above cited (*Lim Go Chui vs. Posadas*) which is as follows:

"It may possibly be, as intimated by Judge Cooley in his standard treatise on Taxation, volume 2, page 901, that 'there might be excuses for non-payment which would justify the interference of the courts.' The maxim is: *Impossibilium nulla obligatio est*. There is no obligation to do impossible things. But here, there is no allegation in the complaint that the inability of the Chinese to pay their taxes on time was due to any order by the Government or to any action taken by the Government, and no allegation that the delay in payment was caused by the fault of him to whom it was to be paid."

In the instant case, no order was issued and no action was taken by the government which made it impossible for plaintiff to pay its taxes on February 28, 1946. Plaintiff claims that the Collector's delay in sending his reply letter was the cause of such impossibility. It is a fact, however, that impossibility was not the true cause of non-payment because plaintiff, on February 26, 1946, had enough money to pay said taxes and there was nothing precluding it from making payment, except its negligence due to ignorance of the law. Plaintiff did not know that the defendant had no authority to postpone payment, and, therefore, the request for extension was a waste of time. What is more, plaintiff had no right to take for granted that its request for extension would be granted by defendant. When plaintiff received no reply to its request on or before February 28, 1946, its duty was to inquire from defendant what his decision was, or to pay the taxes before the expiration of the time fixed by law. The trouble was that apparently plaintiff did not even know when the last day of payment was. And it is elementary that ignorance of the law excuses no one from compliance therewith.

In view of the foregoing, judgment is affirmed with costs against the appellant.

Ozaeta, Paras, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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