

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. ANTONIO G. GUERRERO AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-19074. January 31, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

These are two (2) appeals from the same decision of the Court of Tax Appeals. One (L-19074) was taken by the Commissioner of Internal Revenue, and the other (L-19089) by Antonio G. Guerrero. The dispositive part of said decision reads:

"In line with the foregoing opinion, the decision appealed from is hereby modified. Petitioner (Antonio G. Guerrero) is ordered to pay the sum of P3,775.66 within thirty days from the date this decision becomes final. No pronouncement as to costs." (Parenthesis ours.)

Said Antonio G. Guerrero was, during the years 1949 and 1950, a dealer in logs, which he used to sell to the Aparri Lumber Company, hereinafter referred to as the company.

On April 2, 1954, the then Collector of Internal Revenue made an assessment and demand requiring Guerrero to pay the sum of P4,014.91, representing fixed and percentage taxes and forest charges, as well as surcharges and penalties, in connection with his aforementioned business transaction with the company. Upon Guerrero's request, the matter was submitted to the Conference Staff of the Bureau of Internal Revenue, which, in due course, thereafter, or on January 11, 1956, recommended that the assessment be increased to P5,139.17, computed as follows:

"C-14 producer's fixed tax for 1949 and 1950	P20.00
5% sales tax on P18,760.20 (P14,377.92 & P4,382.28)	938.01
25% surcharge	234.50
Total for fixed and sales taxes and surcharges	P1,192.51

Vol. of timber, July 4, 1949 to

May 21, 1950 (41,880 & 13,892) 55,772 Bd. Ft.

Add: 40% for squaring 22,309 " "

Total volume to be assessed 78,081 " "

or . . . 184.15 cu. m

Regular forest charges on 184.15 cu. M. at P3.50 P 644.53
 300% surcharge for cutting without license 1,933.59
 50% (x) surcharge for transporting without invoice 322.26
 50% surcharge for discharging without permit 322.26
 50% surcharge for late payment 322.26
 Forest charges & surcharges P3,544.90

Regular forest charges on 13.94 cu. m. at P3.50 48.79
 300% surcharge for cutting without license 146.37
 25% surcharge for transporting without invoice 12.20
 25% surcharge for discharging without permit 12.20
 25% surcharge for late payment 12.20
 Forest charges & surcharges P 231.76
 TOTAL AMOUNT DUE . . . P4,969.17

"In addition to the above amount, the sums of P20.00 and P100.00 as compromise penalties in extrajudicial settlement of his penal liabilities under sections 208 and 209 of the N.I.R.C. should be reiterated. That another sum of P50.00 as compromise penalty for his violation of the Bookkeeping Regulations should be imposed against the taxpayer, he having admitted during the hearing of this case that he did not keep books of accounts for his timber business."

This recommendation was approved by the Collector of Internal Revenue, who, accordingly, made the corresponding reassessment, upon receipt of notice of which Guerrero requested, on February 10, 1956, a rehearing before the Conference Staff. Instead of acting on this request, on April 20, 1956, the corresponding Internal Revenue Regional Director issued a warrant of distraint and levy against the properties of Guerrero, in order to effect the collection of his tax liabilities under said reassessment. Hence, on June 8, 1956, Guerrero filed with the Court of Tax Appeals the corresponding petition for review. Subsequently, said court rendered the decision appealed from. Hence, these appeals.

There is no dispute as to the volume of sales of logs made by Guerrero during the years 1949 and 1950, upon which the disputed reassessment is based. The only issues in these appeals are whether or not he is liable for the payment of: (1) P3,775.66, by way of forest charges and surcharges on the logs sold to the company, which the Court of Tax Appeals answered in the affirmative; (2) P1,192.51, by way of fixed and percentage taxes and surcharges, as producer of said logs, which said court decided in the negative; (3) P668.36, as additional forest charges and sales taxes, as well as surcharges, which was decided by the trial court in favor of the taxpayer; and (4) P120.00 and P50.00 as compromise penalties for violation of Sections 208 and 209 of the Revised Internal Revenue Code and of the bookkeeping regulations, respectively, likewise, decided by the Court of Tax Appeals against the Government.

With respect to the first item, Guerrero maintains that he is not liable therefor because he bought the logs in question for the company, as agent thereof and with money belonging thereto. However, before the Conference Staff of the then Bureau of Internal Revenue, Guerrero had claimed that he financed his business with his own

money and sold the logs to the company on a commission basis. Moreover, he admitted having sold some lumber to other enterprises in Manila, although he had previously asserted that he dealt exclusively with the company.

Upon the other hand, the auxilliary invoices presented by Guerrero before the Bureau of Internal Revenue were either spurious, or referred to logs other than those involved in the disputed reassessment. Thus, for instance, in Exhibit 8-AA (O.R. No. 6578049, p. 82, BIR record), the word "June" was superimposed over the word "May" and, at the back of Exhibit 8-AA-1 (p. 81, BIR record), which is the corresponding invoice, two similar alterations were made. In the auxilliary invoices Exhibits 00-3 and 00-4 (pp. 28-29, BIR record), submitted by Guerrero to the Conference Staff, as Exhibits C-3 and C-4, his name is written (script), in ink, on the space opposite the word "consignee". However, in the copies of said auxilliary invoices (Exhibits 8-R-2 and 8-S, pp. 117 and 119, BIR record), taken from the company, the corresponding space is blank. Again, the taxpayer's name on said Exhibits 00-3 and 00-4 is handwritten with a penmanship that is markedly different from that of Segundo Agustin, the signatory of said invoices, who had supposedly accomplished the same, thus indicating that said name could not have been written by Segundo Agustin, and rendering the authenticity of the documents highly doubtful. Furthermore, said invoices, as well as the other invoices submitted by Guerrero to the Conference Staff (Exhibits C-1 to C-14, also, marked as Exhibits 00-1 to 00-14, pp. 18-31, BIR record), referred to logs other than those involved in the questioned reassessment.

The foregoing circumstances clearly indicate that the logs involved in said reassessment were obtained from illegal sources, and that the forest charges due thereon had not been paid. Since these charges "are liens on the products and collectible from whomsoever is in possession" thereof, "unless he can show that he has the required auxilliary and official invoice and discharge permit" (*Collector of Internal Revenue vs. Pio Barretto Sons*, 108 Phil. 542) - which Guerrero has not shown — it follows that he is bound to pay the aforementioned forest charges and surcharges, in the sum of P3,775.66.

As regards the second item of P1,192.51, representing fixed and percentage taxes and surcharges, as producer of the logs involved in the reassessment, the Court of Tax Appeals held that Guerrero is not liable therefor, upon the theory that said logs were sold by the Government to the one who had cut and removed the products from the forest; that the original sale of said logs was, therefore, made by the Government, not by the concessionaire or cutter of the forest products; and that, accordingly, Guerrero is not liable for the payment of the corresponding fixed and percentage taxes thereon. This theory is based upon the premise that, whereas in *Collector of Internal Revenue vs. M.R. Lacson*, 107 Phil., 945 (April 29, 1960), we held that forest charges are internal revenue taxes, this ruling was reversed in *Collector of Internal Revenue vs. Pio Barretto Sons*, *supra*.

It is true that the dispositive portion of our decision in the first case expressly sustained the concurring and dissenting opinion of a member of the Court of Tax Appeals in the appealed decision thereof and that the writer of the opinion maintained that forest charges are internal revenue taxes. A careful perusal of the text of the decision of the Supreme Court therein shows, however, that said dissenting opinion is not the ratio decidendi of the aforementioned decision. It should be noted that the Collector of Internal Revenue contested the jurisdiction of the Court of Tax Appeals to entertain the appeal taken by Lacson from the assessment made by said officer involving forest charges, and that the Supreme Court upheld the authority of the tax court to hear and decide said appeal, because the issue therein was the validity of said assessment. From the viewpoint of the Supreme Court, this issue was decisive on the question of jurisdiction of the Court of Tax Appeals, regardless of whether forest charges were taxes or not.

At this juncture, it may not be amiss to advert to a problem of semantics arising from the operation of Section 1588 of the Revised Administrative Code, the counterpart of which is now Section 315 of the National Internal Revenue Code, pursuant to which:

"Every internal revenue tax on property or on any business or occupation, and every tax on resources and receipts, and any increment to any of them incident to delinquency, shall constitute a lien superior to all other charges or liens not only on the property itself upon which such tax may be imposed but also upon the property used in any business or occupation upon which the tax is imposed and upon all property rights therein."

x x x x

The enforcement of this lien by the Commissioner (formerly Collector) of Internal Revenue, has often induced the parties adversely affected thereby to raise the question whether a given charge is a tax or not, on the theory that there would be no lien if said question were decided in the negative. In connection therewith, said parties had tended to distinguish between taxes, on the one hand — as burdens imposed upon persons and/or properties, by way of contributions to the support of the Government, in consideration of general benefits derived from its operation — and license fees — charged in the exercise of the regulatory authority of the state, under its police power — and other charges - for specific things or special or particular benefits received from the Government — on the other hand.

It is high time to stress that the term "tax", as it appears in said Section 1588 of the Revised Administrative Code and Section 315 of the National Internal Revenue Code, is used in these provisions, not in the limited sense adverted to above, but, in a broad sense encompassing all Government revenues collectible by the Commissioner of Internal Revenue under said Code, whether involving taxes, in the strict technical sense thereof, or not. Thus, under the heading "injunction not available to restrain collection of tax", Section 305 of said Code — which is the first provision of Title IX (entitled "General Administrative Provisions"), Chapter I (entitled "Remedies in General) thereof — provides:

"No court shall have authority to grant an injunction to restrain the collection of any national internal-revenue tax, fee, or charge imposed by this Code."

Similarly, under the heading "Civil remedies for the collection of delinquent taxes," Section 316 of the same Code ordains:

"The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be (a) by distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and (b) by judicial action. Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes.

No exemption shall be allowed against the internal revenue taxes in any case." (Underscoring supplied.)

In other words, the National Internal Revenue Code makes a distinction between taxes, on the one hand, and fees or charges, on the other; but as used in Title IX of said Code, the term "tax" includes "any national internal revenue tax, fee or charge imposed by" the Code. And it is in this sense only that we sustained the view taken in the aforementioned concurring-dissenting opinion in *Collector of Internal Revenue vs. Lacson* (supra). Hence, in the *Barretto* case, it was held that the Government does not sell forest products, but merely collects charges on the privilege granted by it "for the exploitation of forest concessions, i.e., charges for the right to exercise the privilege granted by the Government to the licensee of cutting timber from a public forest or forest reserve". In line with this view, we stressed in *Cordero vs. Conda*, L-22369 (October 15, 1966), the declaration made in *Cebu Portland Cement Co. vs. Commissioner of Internal Revenue*, L-18649 (February 27, 1965), that a forest charge "is a tax not on the minerals, but upon the privilege of severing or extracting the same from the earth," although strictly a fee for something received is not a tax. As a consequence, the original sale, as contemplated in Section

189 of the Internal Revenue Code, is made by the concessionaire or whoever cuts or removes forest products from public forests or forest reserves - in the case at bar, Guerrero, who is accordingly, bound to pay said sum of P1,192.51.

While this case was being heard in the Court of Tax Appeals, certain documents were discovered, tending to show that Guerrero had evaded the payment of forest charges on certain logs (other than those heretofore mentioned), which had been shipped and sold by him to the company. Said documents, which were found in the possession of the latter, covered logs shipped and sold thereto as follows:

Exhibit Date Volume Invoice Page

8-I-2 May 9, 1949 4.966 Cu. m. 12272263 156 (BIR Rec)

8-I-3 May 9, 1949 2.151 Cu. m. 12272263 155

"

"

8-BB-1 May 20, 1949 5.20 Cu. m. 6578041 77

"

"

8-AA-1 May 21, 1949 4.63 Cu. m. A-6578048 81

"

"

The aforementioned documents consist of auxilliary invoices - purporting to have been issued by Concessionaire Segundo Agustin to Guerrero as consignee of the logs therein mentioned - which are not included in Agustin's certificate (Exhibit OO, p. 32 BIR record) of the invoices covering logs sold by him to Guerrero, thus showing that the said invoices (Exhibits 8-1-2, 8-1-3, 8 BB-1 and 8-AA-1) are spurious; that the logs therein described must have been obtained by Guerrero from illegal sources; and that the forest charges and the sale and percentage taxes thereon have not been paid. Although these charges and taxes are not included in the original and revised assessments made in this case, petitioner herein maintains that Guerrero may nevertheless be held liable therefor, inasmuch as:

"Where plaintiffs themselves show facts upon which they should not recover, whether defendant pleaded such fact as a defense or not, their claim should be dismissed. Evidence introduced without objection becomes property of the case and all the parties are amenable to any favorable or unfavorable effects resulting from the evidence." (Italics ours; *Beam vs. Yatco*, 82 Phil. 30.)

Petitioner's contention is untenable. The foregoing doctrine deals with plaintiff's right to recover, when his own evidence proves the contrary. In short, it refers to a point in issue. In the case at bar, the additional logs under

consideration were not included in the contested assessments. Since the jurisdiction of the Court of Tax Appeals is purely appellate, said Court correctly declined to make an award thereon, for lack of jurisdiction over the same.

With reference to the last two (2) items of P120.00 and P50.00, the Court of Tax Appeals did not sentence Guerrero to pay the same upon the ground that he had not entered into a compromise agreement with the Government. The record shows, however, that Guerrero had expressed his willingness to pay "any compromise penalty which may be imposed by the Honorable Court."

In short, we find that the Court of Tax Appeals has erred in not sentencing Antonio G. Guerrero to pay, besides the sum of P3,775.66 awarded in the decision appealed from, the aforementioned additional sums of P1,192.51, P120.00 and P50.00. Thus modified, with the addition of these sums in the award in favor of the Government and against Antonio G. Guerrero, the decision appealed from is hereby affirmed, therefore, in all other respect, with costs against the latter.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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