

TALIGAMAN LUMBER CO., INC., PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. L-15716. March 31, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal from a decision of the Court of Tax Appeals sentencing petitioner, Taligaman Lumber Co., Inc., to pay the aggregate sum of P85,790.91 as deficiency sales tax and surcharge computed as follows:

Caloocan Branch

Sales tax assessed by respondent

P68,829.79

25% surcharge

17,207.45

Total tax and surcharge

P86.037.24

Less: (a) Overpayment of graduated fixed tax

P450.00

(b) Overassessment, see pages 14-15, supra

619.90

(c) Overpayment of forest charges

P247.58

P 1,917.48

Deficiency sales tax and surcharge

P84,119.76

Butuan Branch

Sales tax and surcharge assessed by respondent

P39,527.97

Less: (a)

Overassessment on shipments valued at P197,347.08

P12,334.19

(b)

Overassessment arising from overvaluation of certain shipments

3,994.66

16,328.85

Deficiency sales tax and surcharge

P23,199.12

Less payments made by petitioner

21,527.97

Balance unpaid

PI,671.15

SUMMARY

Caloocan Branch

P84,119.76

Butuan Branch

1,671.15

Total

P85,790.91

Petitioner herein, a domestic corporation with principal office in the City of Manila and branch offices in Grace Park, Caloocan, Rizal, and Butuan City, Agusan, is a duly licensed forest and timber concessionnaire. As such, it is engaged in the business of cutting logs in its concessions and converting said logs into lumber, as well as buying logs from other concessionaires. Most of the lumber cut in its sawmill in Agusan were sent to its branch office in Grace Park, Caloocan, Rizal, to be sold to different lumber dealers in Manila and suburbs.

Upon examination of the books of account of the Grace Park branch, an agent of the Bureau of Internal Revenue recommended, on December 23, 1953, an assessment of P134,381.11 as deficiency sales tax on the sales made in said branch for the years 1948 to 1952. Upon reexamination of said books of account, the agent recommended a reduction of the assessment to P93,931.86, plus 25% surcharge, or a total of P117,414.83. After a reinvestigation, made at the request of the company, upon receipt of the corresponding assessment, dated February 12, 1954, the amount of the assessment was further reduced, on or about May 31, 1955, to P66,916.21, plus 25% surcharge, or a total of P83,645.26, computed as follows:

1948

Sales P272,620.51

5% sales tax due thereon P13,631.03

1949

Sales P474,821.88

5% sales tax due thereon P23,741.09

1950

Cash sales P57,009.74

Sales on account P605,142.35

Total P662,152.09

Return sales 12,527.84

Net sales P649,624.25

Lumber purchase P38,725.60

Estimated 25% gross profit 9,681.40 48,407.00

Net taxable sales P601,217.25

Logs purchased from January 1—

Sept. 21, 1950 P161,910.30

Gross profit rate—60%

Cost is, therefore, 40%.

Therefore sales equals cost divided by

40% times 100. Hence, P161,910.30

divided by 40% equals P404,775.75

Logs purchased from Sept. 22 to Dec.

31, 1950 P66,062.60

P66,062.60 divided by 40 % x 100

equals P165,156.50 P569,932.25

Sales from concession P31,285.00

5% sales tax due thereon P1,564.25

Sales from logs purchased P404,775.75

Less cost P161,910.30

Taxable sales P242,865.45

Sales tax due thereon P12,143.27

1951

Sales P308,522.24

Logs purchased -----

P108,730.63

Gross profit rate—47%

Sales therefore is P108,730.63 divided by 53% x 100 P205,152.13

Sales from concession P103,370.11

5% sales tax due thereon P5,168.51

1950 & 1951

Purchase of logs from Sept. 22, 1950 to Dec. 31, 1950 P66,062.60

Purchase of logs from 1951 108,730.63

Total P174,793.23

33-1/3 thereof P58,264.41

5% sales tax due thereon P2,913.22

1952

Sales P193,368.41

5% sales tax due thereon 9,668.42

SUMMARY

Sales tax due for 1948 P13,631.03

Sales tax due for 1949 23,741.09

Sales tax due for 1950 (part) 1,664.25

Sales tax due for 1950 (part) 12,143.27

Sales tax due for 1951 5,168.51

Sales tax due for 1950 & 1951 (part) 2,913.22

Sales tax due for 1952 9,668.42

Total P68,829.79

Tax paid P1,066.00

To be refunded 847.58 1,913.58

Sales tax still due P66,916.21

25% surcharge 16,729.05

Total tax due and collectible P83,645.25

Meanwhile, another internal revenue agent had examined the records of the Butuan City branch and as a consequence, the sum of P93,145.94 was assessed on or about June 21, 1954, as deficiency sales tax, surcharge and penalties due on the sales made in said branch for the period from 1948 to 1953. Upon reinvestigation, the assessment was reduced, on or about November 15, 1954, to P39,527.97 computed as follows:

F.O.B. Exports (1950-1953) P1,062,401.44

Local sales of logs 70,358.48

Local sales of lumber 796.59

Total sales P1,135,556.51

Less: Sales not subject to tax —

Co-owners exports P520, 515.14

Purchased Logs 80,593.87 501,109.01

Taxable sales P632,447.50

5% tax thereon 31,622.38

25% surcharge 7,905.59

Total amount due p39,527.97

Upon receipt of this assessment on February 26, 1955, petitioner proposed—in order to avoid distraint and levy which the Government had meanwhile sought to effect—the payment of said sum of P39,527.97 as follows: "P3,597.97 in cash and the balance of P36,000 to be paid within twelve (12) months time at P3,000.00 a month, payable every end of the month", with a performance bond in favor of the Bureau of Internal Revenue to guarantee the payment of said balance of P36,000. Of this amount, the sum of P18,000 has already been paid.

Upon refusal of the Collector of Internal Revenue to reconsider or modify either assessment, petitioner brought the matter for review to the Court of Tax Appeals, which, as pointed out above, reduced the amount collectible from petitioner to the aggregate sum of P85,790.91. Hence this appeal by petitioner, who assails the decision of said Court, upon the ground: (1) that the right of the Government to collect deficiency taxes for the years 1948 and 1949 is already barred by the statutes of limitations; and (2) that the export sales made by petitioner's Butuan branch were consummated abroad and, hence, not taxable in the Philippines.

With respect to the first ground, petitioner alleges that the right of the Government to collect deficiency sales tax for the years 1948 and 1949 had already prescribed for, pursuant to section 331 of the Revised Internal Revenue

Law:

"Except as provided in the succeeding section, internal revenue taxes shall be assessed within live years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code."

Respondent, in turn, maintains that this case falls under section 332 (a) of the Internal Revenue Code, reading:

"In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission."

Petitioner objects to the application of this section 332 (a) upon the ground that there is no affirmative evidence that it had not filed the corresponding returns for the years 1948 1949. Thus the issue boils down to which of the two parties had the burden of proving such failure to file said returns. It is, however, clear that since prescription is one of the affirmative defenses set up by petitioner herein, it was incumbent upon the latter, if it wanted to avail itself of the benefits of section 331, to prove that it had submitted said returns, and that, having failed to do so, the conclusion must be that no such returns had been filed and that the Government had ten (10) years within which to make the corresponding assessments, as it did in this case.

It is urged that in alleging, in its amended answer to the amended petition filed with the Court of Tax Appeals, that "petitioner had failed to declare its correct taxable receipts during the years in question", the Government had admitted impliedly that petitioner had declared its receipts, though not correctly, thus relieving petitioner of the burden of proving that it had filed the corresponding returns. That the conclusion thus drawn from the above quoted averment is unwarranted becomes patent when we consider that petitioner omitted the clause following said allegation, namely: "hence, the assessment and collection of said taxes are authorized under the provisions of section 332 of the National Internal Revenue Code." In short, the Government relied upon the "failure to file a return", referred to in said section 332, not to mere inaccuracies in the return filed, which fall under section 331.

The second question raised by petitioner hinges on whether the export sales made by the Butuan City branch to Japanese buyers were consummated in the Philippines, as held by the lower court, or abroad, as petitioner" would have us believe. In this connection, petitioner's president testified that the real intent of the parties to the aforementioned sales was to effect the transfer of title to the buyers in Japan. However, petitioner did not introduce in evidence the corresponding contracts of sale. Upon the other hand, it is admitted that the agreed price was "F.O.B. Agusan", thus indicating, although prima facie, that the parties intended the title to pass to the buyer upon delivery of the logs in Agusan, on board the vessels that took the goods to Japan. Moreover, said prima facie proof was bolstered up by the following circumstances, namely:

- Irrevocable letters of credit were opened by the Japanese buyers in favor of the petitioners.
- Payment of freight charges of every shipment by the Japanese buyers.
- The Japanese buyers chartered the ships that carried the logs they purchased from the Philippines to Japan.
- The Japanese buyers insured the shipment of logs and collected the insurance coverage in case of loss in transit.
- The petitioner collected the purchase price of every shipment of logs by surrendering the covering letter of credit, bill of lading, which was indorsed in blank, tally sheet, invoice and export entry, to the corresponding bank in Manila of the Japanese agent bank with whom the Japanese buyers opened letters of credit.

- In case of natural defects in logs shipped to the buyers discovered in Japan, the latter, instead of returning such defective logs, accepted them, but were granted a corresponding credit based on the contract price.
- The logs purchased by the Japanese buyers were measured by a representative of the Director of Forestry and such measurement was final, thereby making the Government of the Philippines a sort of agent of the Japanese buyers.

Upon the foregoing facts and the authority of *Bislig Lumber Co. vs. Collector of Internal Revenue*, 110 Phil., 746; *Misamis Lumber Co., Inc. vs. Collector of Internal Revenue* (102 Phil., 116; 56 Off. Gaz., 517) and *Western Mindanao Lumber Development Co., Inc. vs. Court of Tax Appeals, et al.* (G. R. No. L-11710, June 30, 1958), it is clear that said export sales had been consummated in the Philippines and were, accordingly, subject to sales tax therein.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against the petitioner. It is so ordered.

Bengzon, C.J., Padilla, Labrador, Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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