

SOTERO ESCARILLA, PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. L-11402. February 28, 1959

Ponente: PARAS, C.J.

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PARAS, C.J.:

The following facts are uncontroverted: On June 29, 1948, the petitioner purchased from the Surplus Property Commission under Surplus Property Invoice No. 8236 the "entire contents of the fuel Sump Area, consisting of 3,055 (more or less) drums of lubricating oil; Gear oil; Fog oil; Tar and Torpedo oil, located at NDS. Samar Naval Base, Guian, Samar" valued at 26,500.00, on which he paid P1,350.00 as compensating tax.

On October 13, 1948, Provincial Revenue Agent Daniel G. Jimenez of Leyte wrote a letter to the Collector of Internal Revenue, respondent herein, recommending an assessment of deficiency specific tax in the amount of P28,225.00 on the 3,055 drums or 611.000 liters of lubricating oil acquired by the petitioner from the Surplus Property Commission, according to the figures appearing in SPC Invoice No. 8236 and in the report of Revenue Agents Roman Carzon and Pablo Amascual. The latter and storekeeper Victor Maderazo subsequently went to Naval Base to further ascertain the exact quantity of oil purchased by the petitioner. On October 18, 1948, after a thorough verification of the records of the Surplus Property Commission at Guiuan, Samar, more particularly the tally-out sheets certifying, with specifications as to quantity and kind, to the removal of the oil in question by the petitioner from the area, Agents Roman Carzon and Pablo Amascual submitted a report to provincial Revenue Agent Daniel G. Jumenez, recommending the assessment and collection from the petitioner of the sum of P54,210.02 as deficiency specific and compensating taxes on the lubricating and other oils and greases purchased by him from the Surplus Property Commission under SPC Invoice No. 8236. According to the working sheets of Agent Amascual, the petitioner acquired from the Surplus Property Commission on June 29, 1948, the following:

Lubricating Oils:

4,957 Drums (53 gal.)

267 Drums (10 gal.)

5,370 Cans (5 gal.)

33,480 Tins (4 gal.)

Boaring grease and other greases:

1,258 Cans (25 lbs.)

4,166 Cans (10 lbs.)

249 Cans (5 lbs.)

3 - in - oil:

2,160 Tins (4 oz.)

Petrolatum:

120 Cans (10 lbs.)

84 Cans (5 lbs.)

Provincial Revenue Agent Jimenez consequently recommended to the respondent that the petitioner be required to pay P54, 210.02. On October 23, 1948, the respondent sent to the petitioner a letter, demanding the payment of said amount as deficiency specific and compensating taxes.

In order to insure the success of collection and avoid possible pilferages and unauthorized removal, the respondent, on December 7, 1948, placed under constructive distraint the articles in question located at Capongo wharf and Calicuan, Samar. The petitioner signed a receipt for said articles, promising, among other things, not to remove 70 drums of lubricating oil without prior payment of taxes; and after discovery thereof, he accomplished BIR Delinquency Form No. 3301 wherein he admitted having thus violated the provisions of section 142-b of the National Internal Revenue Code and being liable for a specific tax in the amount of P700.00 and compromise fee of P10.00 which he voluntarily paid. The tax liability of the petitioner was correspondingly reduced to P53,510.02 which, on May 11, 1954, the Standard Vacuum Oil Company, in compliance with a deed for guarantee, paid to the respondent under Official Receipt No. 1001266.

On November 18, 1954, the Acting Chief, Law Division, of the Bureau of Internal Revenue recommended the refund to the petitioner of P28,676.03 on the ground that there was in fact an overpayment of the specific and compensating taxes, but said recommendation was opposed by the Chief of the Specific Tax Division in a lengthy memorandum dated December 3, 1954. The respondent sustained the latter and in a communication dated March 21, 1955, informed the petitioner of the denial of his claim for refund. The Court of Tax Appeals on appeal held the same opinion.

The several errors assigned by the petitioner relate to the findings of the Court of Tax Appeals as to the quantity and kind of oil purchased by the petitioner from the Surplus Property Commission. It is argued that he bought only 3,055, and not 4,957, drums of lubricating oil as shown by the best evidence, namely, Sales Invoice No. 8236.

As SPC Invoice No. 8236 described the entire contents of the Fuel Dump Area as "3,055 (more or less) drums of lubricating oil." and therefore did not specify the exact number of drums, the respondent chose to ascertain the matter. After thorough investigation, Internal Revenue Agents Amscual and Maderazo reported that they went to the office of the Surplus Property Commission at Guian, Samar, and checked all the records regarding the transaction; that they found in the Accounting Office a copy of SPC Invoice No. 8236 with attached mimeographed copies of numerous tally-out sheets on their working sheets; that they also checked the number of drums of oil at Calicuan Naval Base forming part of the purchase but not yet delivered to the petitioner; that after proper computation the total number of drums was 4,957 and petitioner's total liability amounts to P54,210.09.

These direct and definite findings have not been controverted by direct and definite evidence on the part of the petitioner. In fact the latter never questioned said findings until after more than five years had elapsed. There is no explanation for the long delay.

Godofredo Bugarin of the Surplus Property Unit of the Board of Liquidators testified that the practice was to prepare six copies of each tally-out sheet and to furnish the buyer with one copy. The sheets prepared by the Internal Revenue agents were "faithful reproductions" of the tally-out sheets or "whether they were in any way deceitful." The unexplained failure of the petitioner to produce his copies of the tally-out sheets of course invites the presumption that said document would be adverse to his cause if produced.

The tally-out sheets are certainly the best evidence of their contents. The testimony of witnesses Amascual and Maderazo and their working sheets were, however, properly admitted by the Court of Tax Appeals as secondary evidence, after having been shown to its satisfaction, thru the testimony of Godofredo Bugarin of the Board of Liquidators that the Office of the Surplus Property Commission in Guiuan, Samar, is already deposited in the bodega of the Board of Liquidators; that as one of those in charge of the records of said Board, he had exerted efforts to locate the tally-out sheets in question but could not find the same.

Wherefore, the decision appealed from its affirmed with costs against the petitioner. So ordered.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion and Endencia, JJ., concur.

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