

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. LIMACO & DE GUZMAN COMMERCIAL CO., INC., AND VISAYAN SURETY & INSURANCE CORPORATION, RESPONDENTS.*G.R. No. L-13081. August 31, 1962*

Ponente: PAREDES, J.

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In 1946, "Limaco & De Guzman Commercial Co., Inc., hereinafter referred to as defendant-principal, was engaged in the importation of cigarettes. To guarantee payment of the revenue taxes due to the government plaintiff, the defendant-principal and the Visayan Surety & Insurance Corporation, as surety, hereinafter referred to as defendant-surety, executed two importers Bonds (Exhs. B & CW), dated June 12, 1946 and June 29, 1946, in the amounts of P1,000.00 and P2,000.00, respectively, holding themselves jointly and severally liable to pay the said sums in favor of plaintiff, under the terms and conditions specified therein. On June 27, 1946, defendant-principal filed with the Bureau of Customs, entry papers covering shipment of 2 million "Spud" cigarettes it had imported from New York, U. S. on board the "SS Steel Ranger." The specific tax due thereon amounted to P6,000.00, at the rate of P3.00 / thousand (Sec. 13 [b] 2 of the Tax Code).

On July 15, 1946, defendant-principal thru its broker J. O. Hiponia, paid to the Bureau of Customs, the sum of P1,000.00 in cash, and P5,000.00 in PNB Check No. 601580-K, on account of said tax. The cigarettes were released to defendant-principal. The said check, however, was subsequently dishonored by the bank, for lack of funds, and returned to the maker.

On June 17, 1948, the Collector of Internal Revenue, demanded from defendant-principal, the payment of the aforesaid sum of P5,000.00 as deficiency specific tax due on the imported cigarettes (Exh. D). The said amount remained unpaid, notwithstanding repeated demands upon the defendant-principal and the defendant-surety (Exh. E, G, H, I and J). The Solicitor General on July 19, 1950, wrote to defendant-surety (Exh. 1), demanding payment within 10 days from receipt of the letter. In its reply, dated July 27, 1950, the defendant-surety requested for a copy of the statement showing the exact amount as well as the nature of the alleged specific taxes and that the complaint the Solicitor General "intended to institute against us (defendants) be temporarily suspended" (Exh. 2). On April 15, 1951, defendant-principal requested that action on the case be deferred as it was "willing to make representations with the Collector of Internal Revenue with a view to settling the matter amicably" (Exh. K). On April 25, 1951, the defendant-principal made a similar request to the Solicitor General (Exh. L), on the same ground.

On February 18, 1953, plaintiff filed a complaint with the CFI of Manila (Civil Case No. 18859), praying for the forfeiture of the bonds and payment of the sum of P5,000.00, plus interest. On March 7, 1953, the defendant-surety filed its answer, disclaiming its liability under the bonds, contesting the validity of the assessment and invoking the defense of estoppel and prescription. On February 5, 1954, the defendant-principal likewise filed its answer, contesting the validity of the tax assessment, on the ground of prescription.

On January 18, 1955, Hiponia paid P2,000.00 on account of the deficiency tax of P5,000.00.

On February 10, 1955, the defendant-surety, was granted by the CFI leave to file an amended answer by adding the defense of lack of cause of action. However, the order granting leave to amend was vacated, in view of the allegation that the case involved a disputed assessment of internal revenue taxes and the case was remanded on March 22, 1955, to the Court of Tax Appeals (Sec. 22, R. A. No. 1125). On March 17, 1955, the defendant-surety paid the outstanding balance of P3,000.00, in order that it might be removed from the black list of surety companies banned by the Collector of Internal Revenue.

The defendant-surety was erased from the black-list and again allowed to file bonds in the B.I.R.

On November 10, 1955, the defendant-surety after reviving the "motion for leave to amend answer" in the Tax Court, filed a second amended answer with counterclaim, seeking the return or refund of the P3,000.00 it had previously paid. On November 15, 1955, plaintiff-appellant filed a motion to dismiss the case, on the ground that "The specific tax in question in the above entitled case has been paid to the satisfaction of the plaintiff." The Tax Court, however, denied the motion and instead ordered the plaintiff to answer the counterclaim.

After due hearing, the Tax Court rendered a decision, the dispositive portion of which reads—

"WHEREFORE, the action of plaintiff for the forfeiture of importer's bond is hereby dismissed and the counterclaim of defendant being legally justified, the Collector of Internal Revenue should be, as he is hereby ordered to refund to the Visayan Surety and Insurance Corporation the sum of P3,000.00 with interest from date of payment. Without pronouncement as to costs."

In its appeal to this Court, plaintiff-appellant submits (1) that the counterclaim set up by defendant-surety, being for the recovery of taxes previously paid, should comply with the requisites of section 306 of the Tax Code; (2) That plaintiff-appellant's action has not been barred by the statute of limitations; (3) That the payment effected by defendant-surety was voluntary and, therefore,, constituted a waiver of prescription or of the statute of limitations and (4) That the amount of P3,000.00 was legally or correctly collected by the government.

Pursuant to the provisions of section 306 of the Tax Code, a taxpayer must first file "a claim for refund or tax credit with the Collector of Internal Revenue", before maintaining a suit or proceeding in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected. This provision is mandatory and a condition precedent to the prosecution of a suit for the recovery of taxes said to have been erroneously or illegally collected, the non-compliance of which bars the action, nay, it subjects the claim to dismissal, for lack of cause of action (*Johnston Lumber Co. Inc. vs. CTA & Coll. Int. Rev.* 101 Phil., 151.) No evidence whatsoever was presented to show that the defendant-surety filed a claim for refund or tax credit of the amount of P3,000.00 paid by it on March 17, 1955, before it filed on November 10, 1955, its second amended answer wherein the counterclaim in question was pleaded. There is not even an allegation in the counterclaim to that effect. The letter dated March 14, 1955 (Exh. 6 and 6A) can not be considered as claim for refund, because it merely informed the Collector of Internal Revenue that it was tendering payment of the sum of P3,000.00 so that defendant-surety might be removed from the black list. The law governing an action -for the recovery of taxes is section 306 of the Tax Code, whether or not the recovery is by a counterclaim or a separate action. The counterclaim should have been dismissed, for lack of cause of action.

Plaintiff-appellant's action has not prescribed. Under Sec. 332 (c) of the Tax Code, the collection of the tax by summary methods or by judicial action shall be effected within five (5) years after the assessment of the tax. In the case at bar, the Tax Court observed that "the taxes in question must have been assessed at the earliest on June 27, 1946," when a return (Importer's declaration) was filed or at the latest on July 15, 1946, when payment was made on the basis of the said importer's declaration, and concluded that "the instant action having been instituted

in the Court of First Instance only on February 8, 1953, it becomes apparent that the right to collect the tax in question has been barred by the statute of limitations". While the findings of the Tax Court has the character of finality, it appears, however, that the Tax Court in this particular case was merely dwelling in the realms of surmises and speculations when it pronounced that "the taxes in question must have been assessed at the earliest on June 27, 1946 when a return (importer's declaration) was filed or at the latest on July 15, 1946, when payment was made on the basis of the said importer's declaration". Factually, the assessment in question was not issued on July 14, 1946, but on June 17, 1948. When the Collector of Internal Revenue received information from the Bureau of Customs that the said sum of P5,000.00 was not paid (for lack of funds), he immediately issued a letter dated June 17, 1948 (Exh. D), addressed to the defendant-principal assessing and demanding from the latter the payment of the said P5,000.00. It was then that the unpaid specific tax of P5,000.00 was deemed to have been assessed. Assess means to impose a tax; to charge with a tax; to declare a tax to be payable; to apportion a tax to be paid or contributed, to fix a rate; to fix or settle a sum to be paid by way of tax; to set; fix or charge a certain sum to each tax-payer; to settle determine or fix the amount of tax to be paid (84 C. J. S. pp. 749-750). In the case at bar, when the tax was paid in cash and in check on July 15, 1946, the plaintiff-appellant had a right to rely, as it, in fact, relied that said payment fully settled the specific taxes due on the imported cigarettes. The cigarettes would not have been released, had plaintiff-appellant been aware that the payment did not fully settle the said specific taxes. It can not be said that July 15, 1946 (the date of payment), was the date of assessment from which the period of collection should start. July 15, 1946 was simply the date of tender of payment. The right to collect the amount of P5,000.00 began only after the P5,000.00—rubber-check was dishonored. The action to assess and collect the unpaid tax commenced anew on June 14, 1948, when a letter of demand for the amount of said rubber-check had been sent to the defendant-principal (Exh. D). This letter should be deemed to be an assessment because it declared and fixed a tax to be payable against, the party liable thereto, and demanded the settlement thereof. Judicial action having been instituted on February 18, 1953, the five year period for collection had not then elapsed.

Even assuming that July 15, 1946 is the date of assessment, still the action to collect is not barred by the statute of limitations, because the statute was suspended. When the rubber-check was dishonored and demand letters were sent by the plaintiff-appellant and the Solicitor General to defendant-principal (Exhs. D, E, G, H, I and "1", the last being an extrajudicial demand for payment of P3,000.00 on July 19, 1950), the defendant-principal wrote two letters to the Solicitor General on April 15 and 25, 1951, respectively, requesting for the deferment of the judicial action to be taken by the latter towards the collection of the obligation, so that the former could make representations with the Collector to settle the matter amicably (Exhs. K and L). This being the case, the prescriptive period to effect the collection of the tax which allegedly commenced on July 15, 1946, was interrupted, "The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors and when there is any written acknowledgment of the debt by the debtor" (Art. 1155, New Civil Code). The defendants-appellees, under the circumstances, should be the last to claim prescription. As held in the case of *Lattimore vs. U. S.* 12 F. Supp. 895, 16 AFTR 1240, "Taxpayers seeking to recover overpayment in income tax could not claim that collection by Commissioner was barred by limitations where procedure carried out which resulted in postponement of collection was that requested by taxpayers". Having acknowledged the debt in writing in April 1951, and the complaint was filed in 1953, prescription had not set in. The full time for the prescription must be reckoned from the cessation of the interruption (*Segucio vs. Bulos*, G. R. Nos. L-17608-09, July 31, 1962, and cases cited therein). Had it not been for the filing of the complaint in 1953, the interruption would have ceased in April 1956.

Moreover, it should be recalled that the present action is essentially one to collect on the bonds which is an action separate and distinct from an action to collect taxes. Article 1144 of the Civil Code which provides that actions

upon a written contract, must be brought within ten (10) years from the time the right of action accrues, finds a fitting application (Rep. of the Phil. vs. Xavier Gun Trading, et al. G. R. No. L-17325; Rep. of the Phil. vs. Dorego, et al., G. R. No. L-16594, both promulgated April 26, 1962). It appearing that said bonds were executed on June 12 and 29, 1946, the right of the government to collect the amounts covered thereby, prescribed on June 12 and 29, 1956. The complaint was filed on February 18, 1953.

The last argument advanced by defendant-surety is that the sum of P3,000.00 was illegally or erroneously collected and payment thereof was involuntary, having been allegedly made under duress. The sum of P3,000.00 sought to be refunded in the counter-claim was covered by the surety bond in the total sum of P3,000.00. The total sum of P6,000.00 for specific taxes were just and demandable, for it represented the tax for 2 million "Spud" cigarettes, at the rate of P3.00/thousand (Sec. 13 [b] 2, of the Tax Code) and the subsequent payment in cash in the same sum of P3,000.00, in order to remove the name of the defendant-surety from the black list, can not be considered involuntary. A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent (Art. 1335, Civil Code). Having been made by the defendant-surety to preserve its credit and enable it to carry on its business with the Bureau of Internal Revenue, the said payment can not be considered involuntary (Harvey vs. Gerard Nat. Bank, 119 Pa. 212, 13 A. 202; 48 C. J. 751).

In view hereof, the decision appealed from is reversed and the plaintiff-appellant is absolved from refunding the amount of P3,000.00 to appellee defendant-surety, with costs against the latter.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Barrera, Dizon, Regala, and Makalintal, JJ., concur.

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