

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. UNITED STATES LINES COMPANY, RESPONDENT.

G. R. No. L-16850. May 30, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal by the Commissioner of Internal Revenue from the decision of the Court of Tax Appeals (in CTA Case No. 556) holding the U. S. Lines Company liable for payment of common carrier's tax deficiency and surcharges in the total sum of only P502.75 instead of P25,769.41 as originally assessed and demanded by appellant Commissioner.

As found and stated in the decision of the Court of Tax Appeals, the U. S. Lines Company, a foreign corporation duly licensed to do business in the Philippines, name "American Pioneer Lines" (for referred to as the Company), is the operator of ocean-going vessels transporting passengers and freight to and from the Philippines. It is also the sole agent and representative of the Pacific Far East Line, Inc. another shipping company engaged in business in the Philippines as a common carrier by water.

In the examination of its books of accounts and other records to determine its tax liabilities for the period from January 1, 1950 to September 30, 1955 it was found that 27,1951 and April 29,1952, of chrome ores from Masinloc, Zambales to the United States, from which carriage or transportation freight revenue in the total sum of \$232,00.00 was realized by the vessel's owner, and for which the 2% common carrier's percentage tax imposed by Section 192 of the National Internal Revenue Code was never paid.

As a consequence, the Commissioner of Internal Revenue assessed and demanded from the Company, as deficiency tax, (a) the sum of P6,001.86 for its own business under the name American Pioneer Lines; (b) P5,429.00, as agent of Pacific Far East Line, Inc., and (c) P13,649.05 on the freight revenue of the West Coast Trans-Oceanic Steamship Lines Co. from the carriage or transportation of the chrome ores; or a total of P25,769.41.

At the instance of the Company, a reinvestigation of the case was conducted and a hearing thereon held before the Appellate Division of the Bureau of Internal Revenue. These, notwithstanding, the Commissioner maintained his demand. Thus, the Company filed a petition with the Court of Tax Appeals contesting the correctionness of (1) the conversion of "collect" revenues or those freight arid' passage receipts, commissions, and agency fees for services in the Philippines, but payable in the United States, at the rate of P2.003.75 to \$1.00 and (2) the demand on the Company of the 2% carrier's percentage tax on the gross receipts of the West Coast Trans-Oceanic Steamship Lines from the chrome ore shipments of November 27, 1951 and April 29, 1952.

The Court of Tax Appeals, in its decision, ruled for the Company on the first issue thus—

"We wish to make it dear that from the records of the case, it appears that all the "collect" revenues, or those freight charges, passage fares, commissions and agency fees collected in the United States in United States currency belong to petitioner's home office in the United States and were not remitted to petitioner's local

office in the Philippines. In short, the United States dollars collected abroad were not actually converted to and received in Philippine pesos, and therefore there is no occasion nor reason to use a conversion rate aside from the legal rate of exchange, i.e., \$1.00 to P2.00. If we have placed the judicial stamp of approval on the agreed conversion rates \$1.00 to P2.015 and \$1.00 to P2.02 with regard to the 'prepaid' freight and passage revenues, respectively, we did so in order to arrive at the actual amounts collected by the petitioner in Philippine pesos—the correct taxable gross receipts. (*Italics supplied*)

As to the second issue, it ruled that the 2% percentage tax under Section 192 of the tax Code is impossible only on owners or operators of the common carrier, and as there is no law constituting the shipping agent the withholding agent of the taxes due from the principal, said shipping agent is not personally liable for the tax obligations of the latter, unless the agent voluntarily assumes such obligation which, in this case, the agent Company did not. Consequently, the petitioning taxpayer was ordered to pay only a tax deficiency and surcharge in the sum of P502.75. Hence, the institution of this appeal.

The ruling by the lower court that the conversion of the "collect" freight fees (or those earned in the Philippines but actually paid in the United States in dollar) should be at the rate of P2.00 to \$1.00 as established by law (Sec. 48, Rep. Act No. 265), and not the rate of exchange of P2.00375 to \$1.00, as fixed by the Monetary Board, must be upheld. No evidence was presented rebutting the positive allegation of respondent taxpayer, which was sustained by the Tax Court, that the "collect" freightage fees were not remitted to the local office of the U. S. Lines Company (in the Philippines) nor actually converted to and received in Philippine pesos. In other words, no foreign exchange operations were involved here. The statement made in the Commissioner's brief (p. 20) that "it is uncontroverted that the respondent's (Company's) dollar earnings here representing its so-called 'collect' revenues were accounted for thru its bank, the National City Bank of New York at P2.00375 to a dollar, is not borne out by the records. What appears is that the Company received certain amounts from its home office in the United States to meet its local expenses, and these were withdrawn from a letter of credit in the First City Bank of New York in Manila at the rate of P2.00375 to a dollar. But the Company asserts—and there is no evidence to the contrary—that there is no relationship whatsoever between these funds and the freight fees collected in the United States.

The other issue is whether on the facts of the case, the Company as agent of the vessel "SS Portland Trader" in behalf of its owner, the West Coast Trans-Oceanic Steamship Lines Company, can be compelled to pay the 2% percentage tax on the freight revenue earned from the shipment of chrome ores transported from the Philippines to the United States. As stated earlier, the Court of Tax Appeals ruled, in the negative, citing and adopting a unanimous decision of the defunct Board of Tax Appeals rendered on July 30, 1953, purporting to interpret Section 192 of the National Internal Revenue Code, in which it held that a shipping agent is not personally responsible for the payment of the tax obligations of its principal, reasoning that there is no law constituting a shipping agent as a withholding agent of the taxes due from its principal.

It further stated that a shipping agent can only be held liable for the payment of the common carrier's percentage tax if such obligation is stipulated in the agency agreement, or if the agent voluntarily assumes the tax liability.

We can not agree to this view as applied to the present case, because it adopts a very restrictive interpretation of Section 192 of the Tax Code.^[1] What the legal provision purports to tax is the business of transportation, so much so that the tax is based on the gross receipts. The person liable is of course the owner or operators, but this does not mean that he and he alone can be made actually to pay the tax. In other words, whoever acts on his behalf and for his benefit may be held liable to pay, for and on behalf of the carrier or operator, such percentage tax on the business.

It is claimed for the Company that it merely acted as a "husbanding agent" of the vessel with limited powers. This

appears not to be so, A "husbanding agent" is the general agent of the owner in relation to the ship, with powers, among others, to engage the vessel for general freight and the usual conditions, and settle for freight and adjust averages with the merchant.[2] But whatever may be the technical functions of a "ship's husband", the Company, in the case at bar, was considered and acted more as a general agent. The agency contract is not extant in the records. Still, from the correspondence between the principal West Coast Trans-Oceanic Steamship Lines and the Company itself, and with other entities regarding the shipment in question, the real nature of the agency may be gleaned. Thus, in the letter of West Coast Trans-Oceanic Steamship Lines, dated October 20, 1951 (Exh. 30), giving instructions to the master of its vessel "SS Portland Trader", it referred to respondent Company as the "owner's agents" at the loading point (Masinloc) to which the vessel had to be consigned. In line with its designation as the "Owner's agent" and the vessel's consignee, respondent Company 4 wrote the master of the vessel (Exh. 23) advising him that it had secured Customs authority for the vessel to proceed to Masinloc, as well as the Export Entry covering the loading of the ore, giving instructions how to proceed with the loading and to keep it closely advised of all movements and daily tonnages laden. It also undertook to and did in fact prepare all the cargo documents. The corresponding bill of lading for the cargo was prepared and signed by the respondent Company "As Agent for West Coast Trans-Oceanic Steamship Line" wherein it acknowledged the receipt of 9,900 long tons of chrome, a prerogative act of a common carrier itself (p. 114, BIR record). Again, signing "As Agents for West Coast Trans-Oceanic Steamship Line", respondent Company transmitted the shipping documents covering the shipment of ore to Castle Cooke, Ltd., the vessel's agent at Honolulu (Exh. 20). All these were in respect to the first shipment on November 27, 1951.

Concerning the second shipment, we have first the letter of West Coast Trans-Oceanic Steamship Lines, dated February 21, 1952 addressed to respondent Company, advising it of the second trip of "SS Portland Trader" and stating: "We trust that you will handle the vessel at Manila and that your usual fee will apply", and requesting respondent Company to act also as supervisory agents at Saigon and Haiphong (p. 57, BIR records). The steamship company likewise, advised the master of its vessel that "its agents for Masinloc" will be the respondent Company from which "full assistance and information" could be obtained (Exh. 18, dated March 12, 1952). Evidently accepting the designation, respondent Company, representing itself as "the local agents" of the vessel (Exh. 21, dated March 26, 1952), secured the entry and clearance of the vessel at the customs. After the loading of ore at Masinloc, again respondent Company prepared the shipping documents and signed the bill of lading "As Agent for the West Coast Trans-Oceanic Steamship Lines" (p. 114, BIR record).

All these documents show that respondent Company clearly acted—as it held itself to the public and to the Government (specifically the Bureau of Customs)—as the shipowner's local agent or the ship agent representing the ownership of the vessel. To adopt the view of the trial court would be to sanction the doing of business in the Philippines by non-resident corporations over which we have no jurisdiction, without subjecting the same to the operation of our revenue and tax laws, to the detriment and discrimination of local business enterprises. We, therefore, hold that in the circumstances, said respondent is under obligation to pay, for and in behalf of its principal, the tax due from the latter. And, this is but logical, because, as provided in Article 595 of the Code of Commerce, "the ship agent shall represent the ownership of the vessel, and may, in his own name and in such capacity, take judicial and extra judicial steps in matters relating to commerce". If the shipping agent represents the ownership of the vessel in matters relating to commerce, then any liability arising in connection therewith may be enforced against the agent who is, as a consequence thereof, authorized to take judicial or extra-judicial steps, either in the prosecution or defense of the owner's rights or interests. As a matter of fact, if a foreign shipping company has a claim against the Government in relation to commerce, its local shipping agent, by virtue of Article 595 of the Code of Commerce, can file such a claim in his own name. Conversely, and logically, it must be admitted, the Government can hold the local shipping agent liable for the taxes due from his principal. This is,

of course, without prejudice to the right of the agent to seek reimbursement from his principal.

The contention that the agreement between the principal and agent solely determines the liability of the agent, is not tenable. Any agreement or contract to be enforceable in this jurisdiction is understood to incorporate therein the provision or" provisions of law specifying the obligations of the parties under such contract. The contract between herein respondent Company and its principal consequently imposed upon the parties not only the rights and duties delineated therein, but also the provisions of law such as that of the Code of Commerce aforecited.

As to the third assigned error, i.e., the amount of taxable receipts, the records are not clear. Petitioner Commissioner of Internal Revenue claims that there are contradictions in and among the three sets of summaries submitted by the respondent Company and they should not have been considered by the trial court. On the other hand, we find also that the assessments issued by the Commissioner are, likewise, conflicting. In the present petition, the prayer sets the tax delinquency of the respondent Company at P26,436.17, which is the amount demanded in his letter of demand of June 6, 1958 (Exh. E, also marked as Exh. 34).

In his brief, the Commissioner prays that respondent Company be ordered to pay the sum of P25,769.41, the amount demanded in his letter of June 28, 1956 (Exh. A, also marked as Exh. 26). In view of these discrepancies, a re-examination and verification of the records is necessary to determine the exact taxable amount on which the 2% common carrier's percentage tax is to be computed in accordance with the terms of this decision.

Wherefore, the decision of the Court of Tax Appeals in this case is modified as above-indicated, and the records remanded to the court a quo for the purpose herein directs ed. No costs. So ordered.

Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Dizon, and Regala, JJ., concur.

[1] "Sec. 192. Percentage tax on earners and keepers of garages.— Keepers of garages, transportation contractors, persons who transport passengers or freight for hire, and common' carriers by land, air, or water, except owners of bancas, and owners of animal-drawn two-wheeled vehicles, shall pay a tax equivalent to two per centum of their gross receipts: Provided, That those whose gross receipts do not exceed two hundred pesos each quarters shall be exempt from the payment of the tax provided for in this section." (As amended by sec. 2, Rep. Act No. 39).

[2] Bouvier's Law Dictionary, p. 3064, citing 4 B & Ad. 375; 1Y & C. 326; Turner vs. Burrows, 8 Wend. (N.Y.) 144; Gould V. Stanton, 16 Conn. 12

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