

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. LIANGA BAY LOGGING CO., INC. AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-35266. January 21, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

Challenged in the appellate proceedings at bar is the decision of the Court of Tax Appeals in C.T.A. Case No. 1741[1] which, reversing the decision of the Commissioner of Internal Revenue, absolved respondent Lianga Bay Logging Co. Inc. from liability for a 25% surcharge for alleged failure to provide auxiliary invoices covering forest products cut and removed from its forest concession during the period from April, 1956 to December, 1961, plus the sum of P300 as 'compromise penalty' for using commercial scale table in violation of Section 4 (j) of Regulations No. 85 of the Department of Finance (Revised Internal Revenue Forest Products Regulations)."[2]

Lianga Bay Logging Co., Inc. (hereafter, simply Lianga), a domestic corporation, has been a forest concessionaire since 1956, holding an ordinary timber license issued by the Bureau of Forestry up to March 12, 1958 when its license was converted into a Timber License Agreement (No. 49).[3] Within its forest concession, Lianga has also been operating a sawmill, and in connection therewith posted a bond in the amount of P25,000.00 with the Collector of Internal Revenue to guarantee payment of such forest charges as may be due from it.[4] Forest officers have been assigned to Lianga's concession. They prepared monthly reports setting forth inter alia the quantity of logs cut and removed within a certain period and the computation of the forest charges due thereon. It was on the basis of these reports that forest charges were paid by Lianga to the Bureau of Internal Revenue thru the deputy provincial treasurer.[5] For the period from April, 1956 to December, 1961, inclusive, it paid a total of P336,462.40 in regular forest charges.[6]

Some two years later, the Commissioner of Internal Revenue wrote to Lianga, demanding payment of P84,115.60, representing a 25% surcharge on said sum of P336,462.40, on the theory that it had removed forest products from its cutting area without the auxiliary invoices required by Section 267 of the National Internal Revenue Code, being covered only by "commercial tables" (prepared by the forest officers assigned to Lianga, supra).[7] The Commissioner also required payment of P300.00 as compromise if Lianga wished "to settle extrajudicially the violation" in question. Lianga asked the Commissioner to reconsider his assessment and demand. It claimed that as operator of a Class C sawmill, it was not required to prepare and submit auxiliary invoices pursuant to Section 23 of Regulations No. 85 of the Department of Finance. When the Commissioner refused to change his stand, Lianga appealed to the Court of Tax Appeals with the result already mentioned.[8]

In substantiation of his plea for reversal by this Court of the Tax Court's decision, the Commissioner of Internal Revenue invokes:

1) Section 267 of the National Internal Revenue Code pertinently providing that, "If forest products shall be removed without invoice ** the forest charges shall be increased by twenty-five per centum **; "

2) Sec. 11 of the Revised Internal Revenue Forest Products Regulations No. 85,[9] requiring that -

" ** Before transporting from the public forests or forest reserves within the cutting area forest products cut or gathered under an ordinary license issued by the Director of Forestry the licenses shall list such forest products on blank forms of auxiliary invoices (B.I.R. Forms No. 1404 in the case of timber or B.I.R. Form No. 1405 in the case of firewood or other minor forest products) which may be secured from the deputy provincial treasurer of the municipality where the said forest products have been cut or gathered. ** ;" and

3) Sec. 13 of the same Regulations No. 85 providing that -

" ** The possessor of forest products cut or gathered without license or on which charges are payable is required to present auxiliary invoices. The procedure outlined in Section 11 ** shall then be followed. Surcharges shall be collected for cutting without license, for cutting in violation of the terms of the license, transporting without invoice, or discharging without permit."

It appears however that the Commissioner has not read either the facts or the law completely and correctly. Consequently, his appeal must be resolved against him.

Section 11 of Regulations No. 85 applies, as the Court of Tax Appeals points out, to a "forest concessionaire who is the holder of an ordinary license;" but there are separate provisions "on invoicing and payment of forest charges ** in the case of owners or operators of sawmills who are forest concessionaires," like Lianga.[10] For purposes of said Regulations, "sawmills are classified into Class A, B, C, and D." These different classes are accurately described by the Court a quo in light of the relevant sections of the same Regulations,[11] as follows:

"Class A refers to those operated by holders of forestry licenses for the purpose of sawing timber cut under their licenses, irrespective of whether or not the sawmills are located within the licensee's cutting area. These licensees are required to accomplish auxiliary invoices and to secure official invoices as provided in Section 11 of the Regulations in the same manner as ordinary licenses. (See Sec. 26 **.)

Class B sawmills are those operated by holders of forestry licenses, in or near the forest, without a forest officer being stationed therein, and for the operation of which a bond is filed with the Collector (now Commissioner) of Internal Revenue to guarantee the payment of all forest charges due from the concessionaires. Operators of Class B sawmills are required to keep and accomplish, in lieu of the auxiliary invoices, the Log Scale Record (B.I.R. Form No. 14.15); Daily Trimmer Tally (B.I.R. Form No. 14.11); Sawmill Invoice (B.I.R. Form No. 14.13); and monthly Abstract of Sawmill invoice (B.I.R. Form No. 14.14). Unlike ** ordinary licensees and operators of Class A sawmills who are required to accomplish auxiliary invoices and to pay forest charges for every shipment of forest products removed from the cutting area, operators of Class B sawmills are required to accomplish the records mentioned above and to pay the forest charges due from them at the end of each month. What is required to be presented to the deputy provincial treasurer in effecting payment of forest charges is the Log Scale Record which is made the basis for the computation of the amount of forest charges. (See Sec. 27, Regs. No. 85.)

Class C sawmills are those operated by holders of forestry licenses, at which forest officers are permanently stationed for the purpose of scaling all logs felled, and for the operation of which a bond is filed with the Commissioner of Internal Revenue to guarantee payment of forest charges due from the concessionaires. As in the case of operators of Class B sawmills, operators of Class C sawmills are not required to accomplish auxiliary invoices, but in lieu thereof, the copy of the monthly scale report furnished operators of Class C sawmills by forest officers is the one which they are required to present to the deputy provincial treasurer for the purpose of paying the forest charges due from them. (See Sec. 28, Regs. No. 85.)

Class D sawmills are those operated by holders of forestry licenses who are permitted to measure their timber after being sawn. For this privilege, they are required to pay P10.00 for each 1,000 board feet of first and second group timber and P5.00 for other groups. For the purpose of paying the forest charges on forest

products cut and removed from their concessions, operators of Class D sawmills are required to accomplish a monthly summary of lumber sawn (B.I.R. Form No. 14-12). They are also required to keep and use the records and forms prescribed for Class B and C sawmills according as to whether or not a forest officer is stationed at the mill. (See Sec. 29, Regs. No. 85.)."

It is relevant to advert to the official position of the Director of Forestry -- expressed in a memorandum to Forestry Regional Directors, District Foresters and Officers in Charge, dated September 6, 1966[12] -- -that operators of Class C sawmills are not required to accomplish auxiliary invoices, to wit:

"When the logs are scaled by the Bureau of Forestry in the cutting area of a Class C sawmill (a timber licensee with a sawmill) and the corresponding monthly scale reports are submitted for collection at the end of the month, under this condition and/or situation the logs in question may be transported without any corresponding auxiliary invoice. (Sec. 28 [b] of Regulations No. 85)

Also, when the logs are being transported within the concession area, they need not be accompanied by an auxiliary invoice inasmuch as the Scaler of the Bureau of Forestry measures the logs at the point of discharge which is either at the sawmill or log yard. ** "

Now, the Tax Court's finding, on the basis of the evidence, is that Lianga is a Class C sawmill.[13] The record does indeed establish its character as such: in accordance with said Regulations No. 85, forest officers have been permanently assigned to its concession for the purpose of scaling all logs felled, and it has posted a bond to guarantee the payment of the forest charges that may be due from it. It is not, therefore required by Regulations No. 85 to accomplish and submit auxiliary invoices -- required only of Class A sawmills, i.e., holders of ordinary timber licenses, *supra*. What is required in lieu thereof, pursuant to said Regulations No. 85, are the monthly scale reports (B.I.R. Form 14.15, drawn up by the forest officers assigned to the concessions, and subsequently presented to the deputy provincial treasurer for the purpose of paying the corresponding forest charges) as well as the Daily Trimmer Tally (B.I.R. Form No. 14.11); sawmill or commercial invoice (B.I.R. Form No. 14.13); and monthly Abstract of Sawmill invoice (B.I.R. Form No. 14.14). It is noteworthy that the petitioner does not claim and has made no effort whatever to prove that these forms were not accomplished. Thus, as the Tax Court declares, it is presumed that Lianga "has complied with the requirements regarding the keeping and use of the records and documents required of Class C sawmills, among which are the Daily Trimmer Tally and commercial invoice." [14] In fact, it appears that the forest officers' reports and computations were the basis for the payment of forest charges by Lianga, and the basis, as well, of the Commissioner's computation of the alleged 25% surcharge.

Furthermore, Section 267 of the Tax Code, imposing a surcharge of 25% of the regular forest charges if forest products are removed from the forest concession "without invoice," does not specify the nature of the invoice contemplated. Obviously, as the Tax Court says, the term is not limited to auxiliary invoices. It may refer as well to "official" or "commercial" invoices such as those prepared by Class C sawmills, *supra*. This is the interpretation placed on the term by said Regulations No. 85 themselves, which declare that the 25% surcharge is imposable on "Forest products transported without official invoice, or commercial invoice, as the case requires." And since, as far as the record goes, sawmill or commercial invoices were in fact prepared by Lianga, no violation of the rule may be imputed to it at all.

As to the "compromise penalty" of P300.00 also sought to be imposed, there is no basis therefor, and, as the Court of Tax Appeals finally declares, "the imposition of the same without the conformity of the taxpayer is illegal and unauthorized (Coll. v. U.S.T., 104 Phil. 1062; Phil. Int. Fair v. Coll., G.R. Nos. L-12928 & L-12932, March 31, 1962)."

WHEREFORE, the petition is DENIED, and the challenged decision of the Court of Tax Appeals, being in conformity with the facts and the law, is AFFIRMED, without pronouncement as to costs. SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] The appeal was perfected long prior to the effectivity of B.P. Blg. 129 pursuant to which jurisdiction over appeals from the Court of Tax Appeals and other quasi-judicial tribunals was vested in the Court of Appeals (DBP. v. CA, G.R. No. 86625 [Resolution of the Court en banc], Dec. 22,1989)

[2] Rollo, pp. 22-31. The decision, dated Oct. 30, 1971, was written by Hon. Roman M. Umali, Presiding Judge, and was concurred in by Hon. Estanislao R. Alvarez and Hon. Ramon L. Avanceña, Associate Judges.

[3] Rollo, pp. 22-23 (CTA Decision), 81-82 (Liang's Answer)

[4] Id., pp. 29, 82

[5] Id., pp. 82-83

[6] Id., pp. 22-23; 83-84

[7] Id., pp. 83-84,107

[8] Id., pp. 23

[9] Emphasis supplied

[10] Rollo, pp. 24-25

[11] Id., pp. 25-28; emphasis supplied

[12] Id., p. 30

[13] The Acting Director of Forestry, e.g., has attested to Liang's being an operator of a Class C sawmill and that forest officers are permanently assigned in its forest concession for the purpose of scaling and manifesting them in accordance with Regulations No. 85.

[14] Rollo, p. 29

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