

VISAYAN CEBU TERMINAL CO., INC., PETITIONER AND APPELLANT, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT AND APPELLEE. D E C I S I O N

G. R. Nos. L-19530 & 19444. February 27, 1965

Ponente: PAREDES, J.

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PAREDES, J.:

Pursuant to a Management Agreement entered into by and between the Bureau of Customs and the Visayan Cebu Terminal Co., Inc., on June 24, 1957, after a public bidding the latter as Contractor, was appointed the sole manager of the Arrastre Service at the Port of Cebu, covering import cargoes, including transit import cargoes. The salient features of the Management Agreement, pertinent to the case under consideration, are:

"This agreement, made and entered into this 24th day of June, 1957, in the City of Manila, by and between the Bureau of Customs, in the exercise of the powers conferred upon it by Act No. 3002, as amended by Commonwealth Act No. 285 and Republic Act No. 140, hereinafter called the BUREAU, and the Visayan-Cebu Terminal Company, Inc., a corporation duly organized and existing by virtue of and under the laws of the Republic of the Philippines, with principal office in the City of Cebu, Philippines, and represented in this transaction by its President duly authorized and empowered to legally bind the corporation hereinafter called the CONTRACTOR.

* * * * *

2. During the period while this agreement remains in force and effective, the CONTRACTOR shall be, and the BUREAU does hereby appoint the CONTRACTOR, sole manager of the Arrastre Service at the Port of Cebu, * * *, subject always, however, to the terms, conditions, restrictions, subjections, supervisions and provisions in this agreement contained, * * *.

23. It is further understood and agreed that in consideration of the rights and privileges granted the CONTRACTOR for the management of the Arrastre Service, the Bureau shall receive twenty-eight per centum (28%) of the total monthly gross income derived from whatever source in connection with the operation of the Arrastre Service, payable monthly within ten (10) days of the succeeding month."

* * * * *

On November 26, 1958, Restituto Bacareza of the Bureau of Internal Revenue, Manila, demanded of the Company the payment of P121,919.45, due the government, covering percentage taxes and penalties, for the period from August 24, 1956 to October 31, 1958. The company, on December 18, 1958, replied that it was not liable for the 3%, percentage tax demanded. Thereafter, the books of the company (petitioner herein) were examined by two Internal Revenue Examiners (Pascual and Fuentes) who were introduced to the company by Andres Relampagos, then Provincial Revenue Officer of Cebu, in a formal letter dated March 24, 1959. The two examiners, on April 7, 1959, issued a certificate that they had gone over the books of the company and made a memorandum to the Provincial Revenue Officer, stating that the petitioner was not "subject to the 3% percentage tax contemplated in

Section 191 in relation to 182, both of the National Internal Revenue Code, as amended, because they are paying 28% straight based on their gross receipts as per contract entered into and by the Bureau of Customs, hence no assessment could be made". In spite of the Memorandum, the Deputy Commissioner of Internal Revenue, Melecio Domingo, wrote the petitioner, advising that it was liable to the government in the total sum of P73,072.17, as percentage taxes and surcharges. After a series of communications, the liability of the petitioner was computed at P56,202.97, including P4,000.00 as compromise penalty, which was finally reduced to P52,172.97. The compromise penalty was also reduced from P4,000.00 to P500.00.

Not satisfied with the assessment, the petitioner appealed the case to the Court of Tax Appeals, which rendered judgment, the pertinent portions of which read: "Having found petitioner to be within the ambit of Section 191 of the Tax Code, it follows that it is liable for the payment of the percentage tax provided therefor.

"In the alternative, petitioner contends that since the 28% of gross receipts goes to the Bureau of Customs as its share, the same should not be included in computing the 3% percentage tax.

"We agree to this contention. The total amount of cash received by petitioner and its earnings from the arrastre operation without including any amount of money that did not go to its funds as its property should be deemed its gross receipts, liable to the payment of the percentage tax. Indeed, gross receipts should not include any money that has been especially earmarked for some other person (Commissioner vs. Manila Jockey Club, Inc., 108 Phil., 821). And the government could not have intended to consider as gross receipt the 28% that went to one of its institutions, the Bureau of Customs, and thereby collect percentage tax on it from petitioner. To hold petitioner liable for the payment of percentage tax is unquestionably unjust and not contemplated by Section 191 of the Tax Code.

"WHEREFORE, the decision appealed from is hereby modified in the sense that petitioner Visayan Cebu Terminal Co., Inc., is ordered to pay the Commissioner of Internal Revenue the sum of ₱41,416.38, as unpaid percentage tax and 25% surcharge. Without special pronouncement as to costs."

The above judgment is now before Us, on appeal by both parties. Petitioner claims that the same is "contrary to law because it completely disregards the fact that the subject company is merely acting as the Manager of the Bureau of Customs, which entity is the one really subject to tax, if the said tax is to be imposed", and prays a reversal of such judgment. Upon the other hand, the Commissioner alleges that the CTA erred in exempting the corporation from paying percentage tax on the 28% delivered to the Bureau of Customs.

It would seem that in the appeal of petitioner company the only issue raised for determination is whether or not petitioner is liable for the payment of the 3% percentage tax as provided for in Section 191 of the National Internal Revenue Code. The said section provides:

"Percentage tax on road, building, irrigation, artesian well, waterworks and other construction work contractors, or proprietors or operators of dockyards, and others. Road, building, irrigation, artesian well, waterworks, and other construction work contractors; * * *, shall pay a tax equivalent to three per centum of their gross receipts."

Admittedly petitioner, as found by the Court of Tax Appeals, is an arrastre contractor, under the reproduced section of the Tax Code. The nature of the work undertaken by petitioner is more than sufficient to show that it is an arrastre contractor, which renders service covering the handling of cargoes at piers and wharves (Sadaya vs. Coll. of Int. Rev., 99 Phil. 297.) It will also be noted that in the very Management Agreement, petitioner has been categorically referred to as CONTRACTOR. Being a contractor, the petitioner is subject to the percentage tax.

The contention that it being merely the manager of the Bureau of Customs, it should not be subject to tax, is farfetched. The mere fact that it pays the Bureau of Customs 28% of its gross receipts, does not detract from its

character as Contractor. If the Bureau of Customs is the principal of petitioner, there is no sense in giving said Bureau 28% of the gross receipts only, and petitioner, the agent 72%. It has been likewise argued that inasmuch as petitioner handles only imported cargo in its arrastre operations, pursuant to Republic Act No. 140, it should be exempted from the percentage tax, reasoning out that only those handling interisland cargo are liable. For one thing, section 191 of the Tax Code does not establish any distinction, moreover it is a well settled rule that he who claims exemption should prove by convincing proofs that he is exempted. Petitioner utterly failed to present such proofs.

The argument of the petitioner, to the effect that it should not be made to pay the percentage tax at all, because agents of the Internal Revenue have categorically stated in a memorandum that it is not liable, is without legal basis. The agents did not have the power to make such pronouncements, and even if they were so authorized, their recommendations are always subject to the review of their superiors, who may countermand or affirm them. The government is never estopped to collect legitimate taxes because of the error committed by its agents (*Genato Commercial Corp. vs. CTA, et al.*, 104 Phil. 615).

The Commissioner of Internal Revenue, on his part, contends that the 28% received by the Bureau of Customs constitutes "a business expense of the respondent, which is not deductible from the latter's gross receipts for purposes of the 3% tax imposed by Section 191 of the Tax Code." In exempting the petitioner from the payment of 3% tax on the 28% given to the Bureau of Customs, the CTA cited the case of *Manila Jockey Club vs. Collector*, supra, wherein this court, among others, has said:

"Needless to say, gross receipts of the proprietor of the amusement place should not include any money which although delivered to the amusement place has been especially earmarked by law or regulation for some person other than the proprietor."

The Commissioner, however, postulates that the above ruling is not applicable to the instant case, for there is no law or regulation which specifically earmarks 28% of the total monthly gross receipts derived from the arrastre service in question, for the Bureau of Customs. Republic Act No. 140, amending Act No. 3002 and Comm. Act No. 285, under which the management agreement was entered into does not so provide. Withal, it is not disputed that said amount had been given to the Bureau of Customs under the authority of par. 23 of the Management Contract, heretofore reproduced, which can be lawfully construed as "regulation." As the learned trial Court has aptly observed: "* * * the government could not have intended to consider as gross receipts the 28% that went to one of its institutions, the Bureau of Customs, and there-by collect percentage tax on it from petitioner. To hold petitioner liable for the payment of percentage tax is unquestionably unjust and not contemplated by Section 191 of the Tax Code."

PREMISES CONSIDERED, the decision appealed from should be, as it is hereby AFFIRMED, in all respects. No special pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Reyes, J.B.L., Barrera, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

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