

PHILIPPINE SCRAPPERS, INC., ONG CHI & CO., AND PHILIP MONFORT, PETITIONERS, VS. THE AUDITOR GENERAL, RESPONDENT.

G.R. No. L-5670. January 31, 1955

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for review of the decision of the Auditor General rendered on March 21, 1952, denying the claim of petitioners for the refund of the royalty fees paid by them to the Sugar Quota Office in the amount of P4,950, P205,675.55, and P38,009.30, respectively.

On July 2, 1946, Congress enacted Commonwealth Act No. 278 making it unlawful for any person, association or corporation to export to any destination agricultural or industrial products, merchandise, articles, materials and supplies without a permit from the President of the Philippines. Section 2 of this Act confers upon the President authority to "regulate, curtail, control, and prohibit the exportation of materials abroad and to issue such rules and regulations as may be necessary to carry out the provisions of this Act, through such department or office as he may designate."

On July 10, 1946, the President, acting upon the authority vested in him by Commonwealth Act No. 728, promulgated Executive Order No. 3, prohibiting the exportation of certain materials enumerated in section 1 thereof, but allowing the exportation of other merchandise, like scrap metals, provided an export license is first obtained from the Philippine Sugar Administration. And on November 1, 1946, section 2 of Executive Order No 3 was amended by Executive Order No. 23 fixing the export license fee to be charged for the exportation of merchandise, including scrap metals, allowed in said Executive Order No. 3.

On April 24, 1947, the Chief of the Executive Office, by authority of the President, sent a communication to the Philippine Sugar Administration authorizing the exportation of scrap metals upon payment by the applicant of a fee of P10 per ton of the metals to be exported. Subsequently, the Cabinet, upon recommendation of the National Development Company, approved a resolution fixing the schedule of royalty rates to be charged on metal exports.

Petitioners herein, on several occasions, exported large amounts of scrap metals for which they paid by way of license fees and royalties the sum of P248,634.85. This amount was collected by the Sugar Quota Office under the authority granted to it by the Chief of the Executive Office and the resolution of the Cabinet above mentioned.

On November 17, 1949 and September 26, 1950, respectively, petitioners filed formal claims with the Auditor General for the refund of said license fees and royalties on the ground (a,) that Commonwealth Act No. 728 does not authorize their collection; (6) that he Cabinet has no authority to provide for such collection and therefore its resolution of October 24, 1947 is null and void; and (c) that Commonwealth Act No. 728 is inoperative being an export law not approved by the President of the United States pursuant to the provision of the Ordinance appended to the Constitution of the Philippines.

On May 21, 1952, the Auditor General denied the claims for refund and from this decision petitioners interposed the present petition for review.

It should be stated that the present case is similar to the one recently decided by this Court,—*Marc Donnelly & Associates, Inc. vs. Manuel Agregado, et al.*, (92 Phil., 152)—wherein the issues raised are practically the same as those involved herein and wherein this Court held that the collection by the Government of the license and royalty fees in question was valid and legal. For the purposes of this decision, it would suffice for us to incorporate herein by reference what we said in the decision rendered in the above mentioned case.

There is, however, one question raised herein which was not raised in the previous case which has reference to the alleged invalidity of Commonwealth Act No. 728 on the ground that it being an export law the same was not approved by the President of the United States pursuant to the provision of the Ordinance appended to our Constitution.

The record, it is true, shows that petitioners in their claim for refund filed with the Auditor General maintained that said Act was inoperative because it has never been submitted to the President of the United States for approval, but there is no showing by competent evidence that such is the fact in order that such claim may merit consideration. On the other hand, it appears that Commonwealth Act No. 728 was approved on July 2, 1946 and the Executive Orders of the President of the Philippines implementing said Act were issued much after the proclamation of the Philippine Republic, and it is to be presumed that the President has acted on the matter knowing that the law has been complied with. At any rate, even granting *arguendo* that the claim is correct, We are of the opinion that petitioners are now estopped or prevented from setting up the invalidity or unconstitutionality of Commonwealth Act No. 728 it appearing that they had acted thereon, or invoked the benefits deriving therefrom, when they applied for the exportation of scrap metals as provided for in said Act. It has been held that "a person who obtains a license under a law, and seeks for a time to enjoy the benefits thereof, cannot afterwards, and when the license is sought to be revoked, question the constitutionality of the act." (Cooley's Constitutional Limitations, Vol. I, pp. 369-370.)

"Generally, one who, under the requirements of a statute or ordinance, applies for and accepts, together with its attendant benefits, a license or permit, of a franchise, or a certificate of public convenience and necessity, if the application and acceptance are voluntarily made, cannot thereafter attack the statute or ordinance containing the requirement as unconstitutional, * * *." (16 C.J.S., pp. 192-193.)

"While one will not be estopped to deny the validity of a taxing statute which has already been declared unconstitutional at the instance of other parties, one may, by his acts or omissions, waive the protection against unlawful taxation afforded by a constitutional provision, or may be estopped to raise constitutional objections to the validity of a taxing statute, or a statute imposing a lien for failure to pay assessments. Thus, one who has availed himself of the benefits of a tax bill or who has invoked a provision thereof, is precluded from attacking its constitutionality." (16, C.J.S., pp. 193-194.)

"There are cases where a law in its application to a particular case must be sustained, because the party who makes objection has, by prior action, precluded himself from being heard against it. Where a constitutional provision is designed for the protection solely of the property rights of the citizen, it is competent for him to waive the protection and to consent to such action as would be invalid if taken against his will. On this ground it has been held that an act appropriating the private property of one person for the private purposes of another, on compensation made was valid if he whose property was taken assented thereto; and that he did assent and waive the constitutional privilege, if he received the compensation awarded, or brought an action to recover it. So if an act providing for the appropriation of property for a public use shall authorize more to be taken than the use requires, although such act would be void, without the owner's assent, yet with it all objection on the ground of unconstitutionality is removed. (So a person who obtains a license under a law, and seeks for a time

to enjoy the benefits thereof, cannot afterwards, and when the license is sought to be revoked, question the constitutionality of the act." (Cooley's Constitutional Limitations, Vol. I, pp. 868-370.)

Wherefore, petition is dismissed, without pronouncement as to costs.

Paras, C. J., Montemayor, Jugo, and Labrador, JJ., concur.

CONCURRING OPINION

PABLO, M.:

Por las razones expuestas por mi al concurrir en el sobreseimiento en la causa G. E. No. L-4510, Marc Donnelly & Associates, Inc. vs. Manuel Agregado, et al., sostengo que el Auditor General no tiene jurisdiccion para conocer de la presente causa y, por tanto, no puede decidir si la Ley No. 728 es anticonstitucional o no. Debiera de hacer planteado la cuestion en el Juzgado de Primera Instancia.

Voto por el sobreseimiento de la presente causa.

REYES, J.B.L., J.:

I concur, for the reasons that petitioners are estopped from raising the question of the constitutionality of Commonwealth Act No. 728, and also, as stated in the concurring opinion of Mr. Justice Pablo and the case of Marc Donnelly & Associates Inc. vs. Manuel Agregado, et al., 50 Off. Gaz., 4269, 95 Phil., 142, that the Auditor-General has no power to pass on question of constitutionality.

Concepcion, J., concurs.

DISSENTING OPINION

BENGZON, J.:

I Disagree, on the grounds explained in my dissenting opinion in Donnelly vs. Agregado, 95 Phil., 152.

REYES, A., J.:

I also disagree for the reasons stated in Mr. Justice Bengzon's dissenting opinion in Donnelly vs. Agregado, 95 Phil., 152.

Petition dismissed.

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