

PHILIPPINE TOBACCO FLUE-CURING AND REDRYING CORPORATION, PETITIONER, VS. THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENT. C. NOLI ARAGON, INTERVENOR.

G.R. No. L-22337. June 14, 1969

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by petitioner Philippine Tobacco Flue-Curing and Redrying Corporation from the decision of the Court of Tax Appeals dated December 28, 1963 affirming the assessment issued against it by the respondent Commissioner of Internal Revenue in the total sum of P2,507,693.17, representing advance sales tax due on the importation of ten million pounds of high grade, flue-cured Virginia leaf tobacco.

There is no dispute as to the following facts: On August 13, 1957 petitioner, a domestic corporation, through its President, Harry S. Stonehill, applied for a barter permit under the provisions of Republic Act No. 1194, with the Agricultural and Cooperative Finance Corporation (ACCFA), to export approximately 14 million pounds of locally grown and sun-dried Virginia leaf tobacco, and, by way of barter, to import around 10 million pounds of U.S. Virginia leaf tobacco. As the importation of the latter was at the time banned by regulations of the Central Bank of the Philippines, the then acting ACCFA Administrator, upon petitioner's request, indorsed the application to the President of the Philippines. Acting upon the application - which was favorably recommended by the acting ACCFA Administrator - the President of the Philippines approved the same under the terms set forth in a letter dated January 13, 1958 signed by the then Executive Secretary, Juan C. Pajo, some of which are as follows:

"x x the exportation of 14 million pounds of locally grown and produced sundried Virginia leaf tobacco by the Philippine Tobacco Flue-Curing & Redrying Corporation (PTFRC) to be exchanged or bartered with 10 million pounds of foreign Virginia type leaf tobacco which has to be imported for allocation among local cigarette factories x x" (Annex "B" of offer to stipulate, p. 188 CTA rec.)

Thereafter and as directed by the Office of the President, the No-Dollar Import Office of the Department of Commerce and Industry issued to petitioner Barter Permit No. BT-1830 (Special), which reads as follows:

"NDIO Form No. 3-B

"(To be accomplished in sextuplicate)

"Permit No. BT-1830 (SPECIAL)

"Date issued January 21, 1958

"Ref. Appl. No. _____

"Republic of the Philippines

"Department of Commerce and Industry

"No Dollar Import Office

"Manila

"PERMIT TO IMPORT COMMODITIES

FOR BARTER UNDER

"REPUBLIC ACT NO. 1410

"(To accompany Application Form No. 3)

"BY VIRTUE OF THE PRESIDENTIAL DIRECTIVE DATED JANUARY 13, 1958

"This PERMIT is hereby granted to PHIL. TOBACCO FLUE-CURING & REDRYING CORPORATION with business address at 332 A. Bonifacio, Balintawak, Quezon City, to EXPORT to (refer to p.2) and IMPORT from (refer to p. 2) into the Philippines the commodities listed herewith a total value of FOUR MILLION NINE HUNDRED THOUSAND DOLLARS (\$4,900,000.00) for export; and FOUR MILLION NINE HUNDRED THOUSAND DOLLARS (\$4,900,000.00) for import, in accordance with Section 1(d) of Republic Act 1410.

"The barter transaction will be effected on a commodity-to-commodity basis.

"All export document must be presented to this Office prior to the shipment of any exportation, and import document prior to the issuance of a Release Certificate for the imports, and in both cases this Office must be furnished copies of said documents.

"This PERMIT, without a Release Certificate issued by this Office, is not by itself a clearance to export nor an authority for the release of im-ported goods upon arrival.

"This PERMIT shall be valid only until January 21, 1960 unless otherwise revoked by this Office.

"This PERMIT cannot be transferred, assigned or negotiated.

"OTHER CONDITIONS:

- "1. A performance bond must be filed equi-valent to P1,000,000.00 to guarantee compliance of the terms and conditions of the permit.
- "2. That the permit holder (PTFCRC) give preference to cigarette factories that may be interested in buying the imported foreign leaf tobacco based on the equitable allocation furnished by the ACCFA.
- "3. That no outflow of dollars be involved.
- "4. That the duration of this barter permit be not more than 24 months beginning from the date when such permit is approved and no further Virginia leaf tobacco barter licenses or import-ation be allowed during the period that this permit is in force.
- "5. That only after the licensee has exported the Philippine low-grade Virginia leaf tobacco shall they be allowed to import an equivalent value of US grown Virginia and/or Burley leaf tobacco.

"Witness my hand and the seal of the NO DOLLAR IMPORT OFFICE this 21st day of January, 1958, in the City of Manila, Philippines.

"By authority of the Secretary

"(Sgd.) CARLOS QUIRINO

"Administrator"

(Underline supplied)

Pursuant to the Barter Permit and within the periods beginning June, 1958 to January 4, 1960, 9,997,772 lbs. of U.S. Virginia and/or Burley leaf tobacco were received and landed at the port of Manila, with shipping documents con-signing the commodity to petitioner. However, before the commodity was released from Customs, petitioner endorsed the bills of lading, in blank, to various local cigarette manu-facturers who eventually obtained the release thereof from Customs' custody without payment of the advance sales tax, on the strength of said documents and the contracts of sale of the aforesaid imported Virginia leaf tobacco entered into between petitioner, on one hand, and said local cigarette manufacturers, on the other.

On May 20, 1960, the Commissioner of Internal Revenue assessed and demanded from petitioner the payment of the sum of P2,507,693.17, as advance sales tax due on the importation of the nearly 10 million lbs. of Virginia leaf tobacco already referred to. Petitioner's request for a reconsideration of the assessment having been denied, it filed on September 3, 1960 a petition for a review thereof with the Court of Tax Appeals. The latter, as stated at the outset, affirmed the assessment. Hence the present appeal, petitioner claiming that the Court of Tax Appeals committed the following errors:

I

"THE COURT OF TAX APPEALS ERRED IN CONCLUDING THAT THE TRANSFER OF THE U.S. LEAF TOBACCO SHIPMENTS MADE BY THE PETITIONER TO THE CIGARETTE MANUFACTURERS BY INDORSING THE VARIOUS BILLS OF LADING PRIOR TO RE-LEASE OF THE GOODS FROM CUSTOMS' CUSTODY, WERE DONE ILLEGALLY AND NOT IN THE ORDINARY COURSE OF BUSINESS INSPITE OF THE FACT THAT UNDER THE TERMS OF THE BARTER PERMIT, THE PETITIONER WAS OBLIGATED TO ALLOCATE THE U.S. LEAF TOBACCO TO VARIOUS CIGARETTE MANUFACTURERS.

II

"THE COURT OF TAX APPEALS ERRED IN FINDING THAT THE INDORSEMENTS OF THE BILLS OF LADING WERE NOT DONE IN GOOD FAITH, WHICH FINDING IS CONTRARY TO THE EVIDENCE IN THE CASE.

III

"THE COURT OF TAX APPEALS ERRED IN REFUSING TO RECOGNIZE THE VALIDITY OF THE INDORSEMENT OF THE BILLS OF LADING, THEREBY IGNORING THE INDISPUTABLE FACT THAT THE CIGARETTE MANUFACTURERS, AS THE INDORSEES THEREOF WHO EFFECTED THE RELEASE OF THE VIRGINIA LEAF TOBACCO FROM CUSTOMS' CUSTODY, WERE THE IMPORTERS OF THE U.S. LEAF TOBACCO WITHIN THE PURVIEW OF THE CUSTOMS AND TAX LAWS OF THE PHILIPPINES.

IV

"THE RESPONDENT COURT OF TAX APPEALS ERRED IN FINDING, WITHOUT SUPPORT IN THE EVIDENCE, THAT, IN ISSUING THE BARTER PERMIT THE GOVERNMENT IMPOSED AS ONE OF THE PRINCIPAL CONDITIONS THE PAYMENT BY THE PETITIONERS OF ADVANCE SALES TAXES ON THE SHIPMENTS OF THE U.S. LEAF TOBACCO IMPORTED INTO THE PHILIPPINES."

The issues raised in the second and fourth alleged errors appear to be factual, possible of resolution only after a review of facts, because, as regards the Court of Tax Appeals' finding to the effect that the indorsement of the bills of lading made by petitioner to several local cigarette manufacturers was not done in good faith, petitioner's contention is that said finding is "contrary to the evidence in the case"; and, as regards the same court's finding that the Barter Permit was issued on condition that advance sales taxes on the shipment should be paid by petitioner, the latter claims that it is "without support in the evidence". Both findings therefore are not reviewable in this appeal.

Be that as it may, all the errors allegedly committed by the Court of Tax Appeals are resolved, directly or indirectly, in the following considerations:

Petitioner can not deny that it applied to import, and Permit No. BT-1830 (Special) issued to it on January 21, 1958, allowed it to "import x x x into the Philippines" the U.S. grown Virginia and/or Burley leaf tobacco mentioned therein. Questions that arise in this connection are, firstly, whether by allocating the imported tobacco to several local cigarette manufacturers to whom it delivered the corresponding shipping documents, and by the release by Customs of the imported tobacco to said local cigarette manufacturers upon presentation of said shipping documents and without payment of the advance sales tax due, petitioner ceased to be the importer and, instead, the aforesaid local cigarette manufacturers became the importers thereof; and secondly, whether or not petitioner could assign or transfer the permit granted to it without violating the terms thereof.

The resolution of the questions thus posed will offer no particular difficulty provided We lay aside the technical considerations and legal niceties upon which petitioner relies to evade payment of the assessment.

As heretofore stated, it is not open to question nor doubt that petitioner applied for a permit to import U.S. Virginia and/or Burley leaf tobacco. To secure it in spite of the ban imposed upon the importation of such commodity by regulations of the Central Bank, it, in turn, offered to purchase and thereafter to export from the Philippines local Virginia leaf tobacco worth \$4,900,000 - the equivalent of the importation cost of the foreign leaf tobacco to be imported.

The permit granted to petitioner expressly and in clear terms provided, among other conditions: "this permit cannot be transferred, assigned or negotiated." The manifest and logical purpose of this condition was to have petitioner retain its character as - and thus remain in the eyes of the law and the Government, the importer of whatever U.S. Virginia leaf tobacco was brought into the Philippines under and by virtue of said permit. This conclusion becomes more evident in the light of the fact that, were the local cigarette manufacturers to whom the foreign leaf tobacco was ultimately allocated or sold to be considered the importers thereof, they would be exempt from paying the advance sales tax. (Petitioner's brief p. 28) In other words, by the simple expedient of selling the foreign leaf tobacco to them, petitioner would have been able to evade or avoid payment of the advance sales tax due on the commodity, amounting to the considerable amount of P2,507,693.17. Petitioner's attempt to accomplish this cannot be sanctioned.

Petitioner's deal with the Government, in plain words, was in effect not more than that, Central Bank regulations to the contrary notwithstanding, he will be allowed to import ten million pounds of U.S. Virginia leaf tobacco but subject to two conditions expressly stated in the Permit, namely: (a) that in return for that privilege, it would

export locally produced Virginia leaf tobacco equivalent in value to that of the Virginia leaf tobacco to be imported, and (b) that after the commodity had been imported, petitioner would allocate the same among several local cigarette manufacturers who were in dire need thereof for blending purposes. In other words, petitioner must first import the foreign tobacco, then allocate or sell it - naturally at a profit - to local cigarette manufacturers to fill the latter's need for it. As a matter of fact, in the contracts entered into by and between petitioner, on the one hand, and local cigarette manufacturers, on the other, petitioner was invariably referred to as importer of the U.S. Virginia leaf tobacco contracted for, while the local cigarette manufacturers were referred to as buyers thereof - all this in the light of the Barter Permit BT-1830 issued to petitioner.

Finally, as at the time petitioner filed its application to import the importation of U.S. Virginia or Burley leaf tobacco was banned by Central Bank regulations and there was no law exempting petitioner from payment of advance sales tax on commodities imported by it, it would be taxing too much one's credulity to accept what in effect is the kernel of petitioner's contention: that the Government, by granting him the Permit to import foreign Virginia leaf tobacco, not only bestowed upon him the signal privilege of going over the prohibitory regulations of the Central Bank but, in addition, (a) exempted him from payment of the corresponding advance sales tax, and/or (b) placed in his hands the means of avoiding payment of said taxes by merely assigning the shipping documents thereof or selling the commodity to third parties.

As regards the release of the commodity by Customs authorities without payment of the advance sales tax, all that we need say is that respondent Commissioner authorized said release subject to a reservation that further verification and investigation would be made. The assessment imposed and the demand for the payment of the corresponding amount were the result of such examination and verification.

WHEREFORE, the appealed decision being in accordance with law and the facts of the case, the same is hereby affirmed, with costs.

Reyes, J.B.L., Acting C.J., Makalintal, Zaldivar, Sanchez, Capistrano, Teehankee, and Barredo, JJ., concur.
Concepcion, C.J., and Ruiz Castro, J., on official leave.
Fernando, J., did not take part.

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