

BISLIG BAY LUMBER COMPANY, INC., PETITIONER VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. L-13186. January 28, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

Bislig Bay Lumber Company, Inc. seeks a review under section 18, Republic Act No. 1125, of that part of a judgment rendered by the Court of Tax Appeals on 9 October 1957, ordering it to pay the Government the sum of P175,681.30, as deficiency sales tax and surcharge on shipments of logs to buyers in Japan from 14 June 1951 to 19 June 1953 (C.T.A. case No. 155; Annex C).

On 27 September 1954 the respondent assessed the petitioner pursuant to section 186 of the National Revenue Code, as amended by Republic Acts Nos. 588 and 594, as follows:

1.

Deficiency sales tax on sales of logs to buyers in Japan from June 14, 1951 to June 19, 1953, with an aggregate selling price of P2,810,900.00

P140,545.04

25% surcharge

35,136.26

P175,681.30

2.

Deficiency sales tax on sales of lumber to buyers in Manila and Cebu from the first quarter of 1951 to the first quarter of 1954

5,380.96

6,663.70

25% surcharge

1,832.74

P182,346.00

On 29 October 1954 the petitioner requested the respondent to reconsider the assessment on the ground that with respect to the first item, title to the logs passed from the petitioner to the foreign buyers outside of the Philippines, hence such sales of logs were not subject to tax, and, with respect to the second item, the assessment should be based on the final invoices covering the actual selling price and not on the shipping tallies or mill invoices covering the estimated selling price of lumber. On 16 June 1955 the petitioner received a letter from the respondent dated 3 June 1955 denying his request for reconsideration. On 13 July 1955 the petitioner filed in the Court of Tax Appeals a petition for review of the respondent's assessment (Annex A). On 24 August 1955 the respondent filed his answer to the petition for review (Annex B). After hearing, on 9 October 1957 the Court rendered judgment modifying the decision of the respondent and ordering the petitioner—

* * * to pay (the Government) the sum of P175,681.30, representing deficiency sales tax and surcharge on shipments of logs to buyers in Japan under terms F.O.B. and C. & I., Bislig, covering the period from June 14, 1951 to June 19, 1953. The deficiency assessment on domestic sales of logs and lumber amounting to P6,626.65 is set aside. With costs against petitioner. (Annex C)

copy of which the petitioner received on 2 November 1957. On 2 December 1957 the petitioner filed this petition for review in this Court.

The petitioner's appeal is only from the assessment of deficiency sales tax on sales of logs to buyers in Japan from 14 June 1951 to 19 June 1953 amounting to P104,545.04 and 25% surcharge amounting to P35,136.26, or a total of P175,681.30. The findings of the Court of Tax Appeals with respect thereto are:

From the stipulation of facts submitted by the parties and the evidence adduced during the hearing of the case, it appears that the contracts of sale were negotiated by petitioner's agent in Japan; that the contracts of sale were confirmed by said agent by means of purchase notes sent to the sellers and seller's notes to the buyers; that the logs were shipped either under terms F.O.B. Bislig, Surigao, or C. & I., Bislig, Surigao; that by the terms of the bills of lading the logs were "consigned to the order of the seller (notify respective buyers)"; that all freight charges were paid by the buyers; that in shipments under terms F.O.B. Bislig, the logs were insured by the buyers; that in shipments under terms C. & I., Bislig, the logs were insured by the seller, petitioner herein; and that the bills of lading, insurance policies taken in the name of the seller, and other commercial and shipping documents were indorsed in blank and presented to the bank in Manila for collection through whom the foreign buyers opened letters of credit. (Annex C.)

In *Misamis Lumber Co., Inc. vs. Collector of Internal Revenue*, 102 Phil., 116; 56 Off. Gaz., 517, where the petitioner shipped for export on board foreign merchant vessels, lumber and logs purchased by foreign buyers established abroad, F.O.B. (free on board) Misamis City port, the petitioner defraying all expenses incurred from the sawmills to the loading on board the vessels, the buyers paying in Manila all freight and insurance charges, and the price; and in *Western Mindanao Lumber Development Co., Inc.*, G.R. No. L-11710, 30 June 1958, where the facts are similar to the first case, except that the loading was made in Basilan or Cotabato, and while the price was paid in Manila too, payment was made upon presentation of the corresponding invoices and bills of lading to the local banks where the buyers had opened letters of credit, after the various shipments had been made^[1] this Court upheld the legality of the assessments for sales tax under the provisions of section 186 of the National

Internal Revenue Code, as amended by Republic Acts Nos. 588 and 594, made by the Collector of Internal Revenue. The facts in the case at bar are not different from those of the two cited cases and nothing would warrant a departure from the ruling laid down therein.

The fact that, as pointed out by the petitioner, it has a legal representative in Japan whereas the buyers have none in the Philippines to whom the logs could be delivered; that all the shipping documents such as export sales invoices, export entry, export license, exchange control license, certificate of inspection by the Bureau of Forestry, and certificate of origin together with the bills of lading, were all issued in the name of the petitioner as exporter and not of the Japanese buyers; that the logs were consigned to the petitioner or its order; and that in all the bills of lading made by the petitioner covering shipments of logs to Japan there were drafts attached to the bills of lading and the amounts in the drafts represent the selling price of the logs shipped to Japan, do not necessarily prove that title to the logs passed unto the buyers in Japan and not in the Philippines, thereby exempting it from the payment of sales tax. They are mere schemes to ensure the performance by the buyers of their obligations under their contracts.[2] As the Court of Tax Appeals held, " * * * ownership in the logs passed in the Philippines from the seller to the foreign buyers because the freight charges were paid by the buyers; the shipments were insured by the buyers (and in those cases where insurance was taken by the seller the policies were indorsed in blank and delivered to the agent in Manila of the foreign buyers, which has the same effect as if the insurance was taken by the buyers); and, what is more important, the bills of lading and other shipping documents were indorsed in blank by the seller and presented for collection to a local bank with whom the foreign buyers opened irrevocable letters of credit. Therefore, neither the fact that the bills of lading in this case provided that the logs were deliverable to the seller or its order, or that a draft was invariably attached to each bill of lading, is of legal consequence."

The judgment under review is affirmed, with costs against the petitioner.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

[1] In these two cases the shipments were made before the enactment into law of Republic Act No. 894 on 20 June 1953, providing "That with respect to goods or products shipped or exported abroad, no percentage tax shall be levied thereon irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods or products exported."

[2] Article 1503, new Civil Code.

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