

ANTONIO CO PO, PETITIONER, VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. L-17303. August 31, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

This is a petition to review the decision of the Court of Tax Appeals in C.T.A. case No. 313, denying petitioner's claim for refund of the sum of P1,782.72 alleged as illegally collected advanced sales tax on goods purchased by him from the United States Military Bases in the Philippines at Sangley Point, Clark Field, and Olongapo from 1954 to 1956.

Petitioner is a merchant doing business under the name and style of St. Luke's Trading. On several occasions during the years 1954 to 1956, petitioner purchased through public auctions various articles from the United States military authorities in the military bases, removed the goods therefrom and subsequently sold the same to other third parties. On these transactions which were treated as importations, the respondent Collector of Internal Revenue, imposed and collected the advance sales tax in question, under the provisions of Section 183(B) of the National Internal Revenue Code, in relation to Sections 184, 185 and 186 of the same Code.

It is the contention of the petitioner that he is not liable for the payment of said advance sales tax because it is argued, he is not an importer, not having engaged in the business of importation, and that there was no importation by him inasmuch as the goods "did not come to the country from a foreign country", Sangley Point, Clark Field, and Olongapo not being considered as foreign territory. Moreover, the petitioner claims that the sales to him by the U.S. authorities in these bases were the original sales mentioned in the law subject to the tax and, that therefore the subsequent sales by him were not taxable. And finally the petitioner maintains that before Republic Act No. 1612 came into effect on August 24, 1956, purchasers of tax-free articles were not considered the importers thereof, and invoked in support of his contention the decision of the Supreme Court in the case of Collector of Internal Revenue, et al. vs. Marcelino Viduya, et al., 103 Phil., 93.

The issue herein raised is not new. It has already been settled contrary to the contention of petitioner, in a series of decisions of this Court in cases involving similar factual situations, wherein it was held in effect that goods and materials while in the army bases or installations in the Philippines are, in contemplation of law, on foreign soil (Saura Import & Export Co. vs. Meer, 88 Phil., 199) that one who acquires title to surplus equipment found in U.S. Bases or installations within the Philippines by purchase, and then brings them out of those bases or depots, is an importer; that the bringing out of such goods and materials, after acquiring titles to such goods, is importation in the legal sense (A. Soriano & Cia vs. Collector of Internal Revenue, 97 Phil., 505) and that the said materials removed from these bases and depots were, for purposes of the internal revenue taxes, purchased or received from "outside the Philippines," (Bisaya Land Transportation Co. Inc. vs. Collector of Internal Revenue, G. R. No. L-12100, & L-11812, May 29, 1959).

It is true that the areas covered by the United States Military Bases are not foreign territories both in the political

and geographical sense. But because of the special arrangements regarding their status and the resulting legal relations and situations obtaining therein by reason of the Military Bases Agreement with the United States, this Court has ruled, for the purposes of Section 183 (B) of the National Internal Revenue Code, in the manner set forth in the cases heretofore adverted to. The reason is, in synthesis, stated in the case of *Go Cheng Tee vs. Meer*, 87 Phil. 18, in the following language:

"Como ya hemos dicho, el ejercito americano no estaba obligado a pagar ningun impuesto sobre tales efectos, porque no habian sido traídos aqui para fines de comercio sino comp objetos de abastecimiento militar. Solamente se convirtieron en mercancías de comercio cuando el demandante los obtuvo en compra para dedicarlos al negocio, y solamente desde entonces quedaban sujetos a impuesto. La venta original de que habla el artículo 5 de la ley No. 503[1] es la realizada por el demandante al publico de Filipinas y no la venta hecha a el por el "Foreign Liquidation Commission". En esta transaccion el demandante compro; no vendio * * * La venta hecha por el demandante a sus parroquianos es la venta original y no la compra hecha por el de la "Foreign Liquidation Commission." (p. 24)

Hence, under this ruling, the original sale is not the sale made by the U.S. authorities to the petitioner but the subsequent sale that the herein petitioner makes to his customers. To hold otherwise would be to bring about the very situation which the law intends to avoid, that is, the influx of articles free of tax into the military bases, and the subsequent indiscriminate and unchecked distribution and sale thereof to the general public also free of tax. It is in this spirit that the decisions herein cited were conceived and formulated. Besides, for the purposes of our customs and tax laws, the sale by the U.S. authorities to the petitioner is considered but a continuation of the importation of the goods to the Philippines. As was held in the case of *Go Cheng Tee vs. Meer*, supra:

"* * * pero la importacion no termin6 con la entrega al demandante por la "Foreign Liquidation Commission" de dichos efectos sino hasta cuando se hubiese pagado el impuesto correspondiente. * * * Mientras estaban bajo el control del ejercito y para uso militar, los efectos no debian pagar ningun impuesto al Gobierno Filipino. Pero inmediatamente despues de transferidos al demandante para fines comerciales, desde ese momento nacio el derecho del gobierno de gravar sobre ellos el impuesto correspondiente, y mientras no lo pague el demandante no termina la importacion. Por eso el demandante que negocio con ellos es el importador bajo los terminos precisos de la ley." (p. 22)

Applying this ruling to the case at bar, the importation therefore, continues and is not completed until the petitioner pays the taxes due on the articles. For that long, therefore, in contemplation of law the petitioner is the importer.

However, it is argued by the petitioner that before the amendment of Section 183 (B) of the National Internal Revenue Act by Republic Act 1612, incorporating therein the provision

"In the case of tax-free articles brought or imported into the Philippines by persons, entities or agencies exempt from tax which are subsequently sold, transferred, or exchanged in the Philippines to non-exempt private persons or entities, the purchasers shall be considered the importers thereof. The tax due on such articles shall constitute a lien on the article itself superior to all other charges or liens, irrespective of the possessor thereof." (Sec. 5, Republic Act No. 1612)

the purchasers of tax-free articles brought into the Philippines by persons or agencies exempt from tax were not considered the importers of said tax-free articles. He then concludes that, having purchased the tax-free articles before Republic Act No. 1612 took effect on August 24, 1956, his purchases were not taxable as he was not then the importer thereof.

This contention is incorrect because the *Saura* and *Soriano* cases (supra) were decided in 1951 and 1955 respectively, long before the enactment of Republic Act 1612. In fact the amendment merely adopted an existing

ruling of the Bureau of Internal Revenue, which is in line with the decisions of this Court, that purchasers of articles brought or imported tax-free into the Philippines, shall be subject to the payment of advance sales tax. This clearly appears in the explanatory note to House Bill No. 5809 now Republic Act 1612, which enumerates the features of the proposed amendments, among which is the

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"4. Incorporation into the provision of Section 183 (B) the existing ruling of the Bureau of Internal Revenue considering as the importers, purchasers of articles brought w imported tax-free into the Philippines, and establishing a lien for the tax on such articles irrespective of the possessors thereof. This provision will merely place said purchasers in the same footing as those purchasing similar articles from taxable persons, entities, or agencies." (Congressional Record, House of Representatives, page 2946, May 17, 1956) (*Italics supplied*).

The case of Collector of Internal Revenue vs. Viduya, 103 Phil., 93 invoked by petitioner is not a point. That case concerns the purchase by Viduya, who was not a merchant, of an automobile apparently for his own use, from a member of the staff of the American Embassy in Manila who brought the car from the United States also for his personal use here. The issue there involved relates to the payment by end-users of compensating tax under Section 190 of the Tax Code. The advance sales tax is levied upon merchants, importers and manufacturers who resell, barter or exchange the articles purchased or imported or who use them in the manufacture or preparation of articles subject to specific tax or those for consignment abroad. The end-users do not pay the advance sales tax; the merchants, importers and manufacturers do not pay the compensating tax. The compensating tax is not an import tax.[2] Obviously, a ruling on the question of the payment of compensating tax, as the one in the Viduya case, can not have application to a case involving the payment of advance sales tax, as is the issue in the present case.

The appealed judgment of the Court of Appeals being in accordance with law, the same is hereby affirmed with costs against the appellant. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] The same as Section 184 of the National Internal Revenue Code.

[2] International Business Machine Corporation vs. Collector of Internal Revenue, 98 Phil., 595.

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