

A. SORIANO Y CIA., PETITIONER AND APPELLANT, VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT AND APPELLEE.*G.R. No. L-5896. August 31, 1955*

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

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This is a petition for review of the decision of the Board of Tax Appeals affirming the decision of the respondent-appellee Collector of Internal Revenue holding the petitioner A. Soriano y Cia. liable for the payment of P47,002.52 as sales tax and surcharge (as required by Sec. 182 of the National Internal Revenue Code, as amended) on its gross sales to the United Africa Co., Ltd, of 57 tractors acquired from the Foreign Liquidation Commission.

It appears that in the year 1947, petitioner was engaged in the business of selling surplus goods acquired from the Foreign Liquidation Commission pursuant to an agreement with the United States Government whereby petitioner undertook to rehabilitate the Veterans Administration Building (formerly Heacock Building) for and in consideration of over a million pesos worth of surplus goods. Part of the surplus goods consisted of tractors which were then in the various U. S. military bases or depots in the Philippines. The petitioner had yards known as "Sta. Mesa Yard" and "Pieco Yard" located in Manila, where some of the surplus goods were stored, and those which were defective reconditioned.

In January, 1947, the United Africa Co., Ltd. sent its representative, Hugh Watson Gibson, to the Philippines to look into the availability of tractors for sale in the Philippines. Gibson learned of petitioner's business and contracted to buy tractors from the latter, to be delivered f.a.s. (free alongside ship), Manila, in good working condition and capable of running off lighters under their own power. A tractor expert, Mr. Tex Taylor, was employed by the foreign company to select, inspect and test the tractors before delivery.

Tex Taylor went to the different military bases, took the serial numbers of the tractors which he wanted, and gave the list thereof to the petitioner, who then secured from the Foreign Liquidation Commission the purchase invoices and other documents for the immediate release of the tractors. The tractors were then removed by petitioner to its Pieco Yard, where they were tested by Tex Taylor. Those found to be in good condition were approved by Taylor, wherefore petitioner presented to him the sales invoices for his signature, stamping his approval thereon. Twenty-four of the tractors were found defective and so were brought to petitioner's Sta. Mesa Yard for reconditioning. Upon approval of each invoice, the same was presented by petitioner to the Philippine Refining Company, Inc., an affiliate of the foreign buyer, for payment of the purchase price. The Philippine Refining Co. would in turn notify the National City Bank of New York and the Hongkong and Shanghai Banking Corporation, Manila, where the United Africa Co. had dollar deposits, to make payment of petitioner's invoices. The tractors were delivered by petitioner to the pier in Manila by means of barges as soon as notice was received from the representative of its foreign buyer that a carrying vessel was ready. On June 24 and August 26, 1947, the Philippine Refining Co., Inc. shipped the 57 tractors acquired from petitioner from the port of Manila to United Africa Co., Ltd. at Dares Salaem, East Africa. The total value of the tractors was P757,000. However, due to

certain defects of some of them upon reaching Africa, the sum of P4,959.19 was reimbursed by petitioner to its foreign buyer by credit memo.

The question at issue is whether or not petitioner is liable for the payment of percentage or sales tax on its gross sales of the 57 tractors in question to the United Africa Co., Ltd. under the provisions of Sec. 186 of the National Internal Revenue Code.

"Section 186, Percentage tax on sales of other articles.—There is levied, assessed, and collected once only on every original sale, barter, exchange, and similar transaction intended to transfer ownership of, or title to, the articles not enumerated in sections 184 and 185, a tax equivalent to five per centum of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer, producer, or importer; * * *." (Italics supplied)

Under the above provisions, petitioner's liability would thus depend on first, whether or not it was an importer of the 57 tractors in question, and second, whether it made an original sale thereof in the Philippines.

The theory of the Bureau of Internal Revenue, affirmed by the defunct Board of Tax Appeals, is that petitioner imported the tractors from the army bases; that they were subsequently sold to its foreign buyer within the Philippines; and that title passed upon delivery to the carrier f.a.s. Manila.

In the cases of *Go Chen Tee vs. Meer*,^[1] L-2825 (July 7, 1950) and *Saura Import and Export Co. vs. Meer*,^[2] L-2927 (February 26, 1951), this Court has already held that one who acquires title to surplus equipment found in U. S. army bases or installations within the Philippines by purchase, and then brings them out of those bases or depots, is an importer, and sales made by him of such surplus goods to the general public are taxable under sections 185 and 186 of the Tax Code.

Petitioner insists, however, that it did not import the 57 tractors in question for the Foreign Liquidation Commission because title to the same passed to its foreign buyer while the goods were still at the foreign bases, and that they passed Philippine territory merely in transit to pier, Manila, where they were delivered f.a.s.; hence its sale of the tractors was not domestic and therefore not liable for the payment of sales tax.

Petitioner's theory is not supported by the records. It admits that delivery of the tractors 'was made by it to the carrier f.a.s. Manila (letter to Secretary of Finance of August 18, 1950, I Records, p. 192; also letter of October 17, 1949, p. 132). The rule is that where the contract is to deliver goods f.a.s, the property passes on delivery at the wharf or the dock (II Williston on Sales, pp. 120-121; 46 Am. Jur. 608-609). Otherwise stated, delivery to the carrier is delivery to the buyer, (*Behn, Meyer & Co., Ltd. vs. Yangco*, 38 Phil., 602; 46 Am. Jur. 605). True that this rule yields to evidence of a contrary intent between the parties, but there is here no proof to show that petitioner and its foreign buyer intended otherwise, that, is, that delivery and the passing of title to its buyer should take place right in the army bases where the tractors were located. On the contrary, petitioner itself has admitted that Tex Taylor (who is no alleged to have accepted delivery of the tractors in behalf of the United Africa Co., Ltd.) has no power or authority whatever to do so.

In its letter to the Collector of Internal Revenue on July 16, 1949 (Records, Vol. I, p. 119), petitioner stated:

"(2) Prices and terms having been agreed upon, Mr. Gibson secured the services of a tractor expert from United States thru United Africa Co. offices in New York. Tractor expert Mr. Tex Taylor came over to the Philippines to inspect and 'accept' the tractors.

"We wish to state here that the so-called acceptance by Mr. Taylor of these tractors was simply an acceptance as to condition and did not constitute an acceptance of delivery. The tractors in question were U. S. Army and Navy Surplus equipment. They were second hand and needed reconditioning. Mr. Tex Taylor saw to it that

they were properly reconditioned. Neither Mr. Gibson nor Mr. Taylor had authority to accept delivery of these tractors".

And in a subsequent letter addressed to the Secretary of Finance on October 17, 1949 (Records, p. 131), petitioner further stated:

"(b) Mr. Tex Taylor, who is alleged to have inspected and accepted in the Philippines the tractors subject of this sale was a mere technician, employee of the United Africa Co. with specific and limited functions consisting of examining and approving the condition of the tractors for purchase and could not have been considered the general and legal representative of our purchaser for he had no authority to enter into any sort of business transaction in the Philippines."

These letters show that Tex Taylor had no authority to accept delivery of the tractors for, the buyer United Africa Co., Ltd., his duty being merely to inspect and approve their condition. The designation by Taylor of the tractors he selected at the bases, therefore, was merely a preliminary step for their removal from the bases to petitioner's service and storage yards in Manila, where Taylor actually inspected and tested them, and those found defective (23 tractors) were brought to the Sta. Mesa Yard where they were reconditioned (t.s.n. pp. 14-15). Then petitioner made delivery of the tractors at the pier in Manila whenever there was an available boat for transportation to Africa, and it was so informed by the representatives of the United Africa Co. Hence, it was only at Manila that the goods were delivered, and title passed to the buyer; and from their removal from the bases until their delivery at shipside, title to the tractors was in the seller.

Other undisputed facts in the record also force the conclusion that title to the tractors in question passed to petitioner's buyer not at the bases, but only at pier, Manila. First, it was petitioner who paid for the delivery charges from the different bases to the pier/ pursuant to the tax in "fob" or "f.a.s." sales that "the seller pays all charges and is subject to risk until the goods are placed alongside the 'vessel' (Williston, supra). Second, the tractors were described in petitioner's invoices (Vol. I, Records, pp. 65-70) as bearing certain numbers followed by the phrase "Our Unit Sta. Mesa" or "Our Unit Pieco", showing that the tractors were first brought to petitioner's yards and numbered accordingly, in the same way that all goods found and stored in these yards were numbered, and it was only after they had passed petitioner's yards that they were delivered to the buyer. Third, two of petitioner's invoices (Records, I, pp. 70-71) state that the tractors were inspected and accepted at Pieco Yard and/or Sta. Mesa Yard, which disproves petitioner's contention that Tex Taylor tested and approved of them right in the bases. Fourth, petitioner's own witness Epimaco Gonzales admitted that it was only at Pieco Yard that Taylor inspected and tested the tractors (t.s.n. 9-10).

Petitioner argues that the goods in question did not acquire a taxable situs in the Philippines because they merely passed Philippine territory in transit and that they were not intended for local use but for exportation to a foreign country. We find this argument irrelevant, since the tax in dispute is one on transaction (sales) and not a tax on the property sold. The sale of the tractors was consummated in the Philippines, for title was transferred to the foreign buyer at the pier in Manila; hence, the situs of the sale is Philippines and it is taxable in this country.

Finally, petitioner urges that the repeal of the consignment or "export tax" under Sec. 187 of the Internal Revenue Code shows the intention of the legislature to exempt all exports from tax.

It should not be forgotten that the consignment tax formerly imposed on exports by section 187 of the Tax Code (now repealed by R. A. 41) is different from the sales tax imposed by Art. 186, which has not been repealed. The distinction between the two kinds of tax was pointed out by this Court in the case of Vegetable Oil Corp. vs. Trinidad, 45 Phil., 834-835, where we held:

"That the consignment tax is not a sales tax is, however, too obvious for argument, the fact that it is provided

for in the same section as the sales tax does not necessarily make it so. There is all the difference in the word between a consignment and a sale. As stated by counsel for the appellee, the tax on consignment Is a privilege tax pure and simple; it is a tax on the business of consigning commodities abroad from these glands. * * * If the tax were one on sales we Would readily agree that the sales, in order to be taxable in the Philippines must be consummated there."

When the above case decided, the sales tax and the consignment tax were both provided for in section 1459 of the Administrative Code. Later, obviously to avoid confusion, the legislature separated the two taxes, the sales tax having been provided under sections 184, 185 and 186 of the Internal Revenue Code, while the consignment tax was,' placed under Sec. 187. The latter section was subsequently repealed by Republic Act No. 41, so that the consignment tax on exports no longer exists, while the sales tax remains.

Petitioner contends that to tax one who sells goods intended for export would be to nullify the legislative intent behind the repeal of the tax on consignments abroad, which is to encourage exports. The argument is fallacious. The law subjects to the payment of the sales tax not the buyer who intends to exports what he buys, but the seller, because such sale is domestic and therefore liable for the payment of sales tax in this country.

"Domestic and foreign sale distinguished.—The sales tax liability of a person consigning his timber abroad depends upon where the title to the timber consigned passes from the seller to the buyer. If the title to the timber consigned abroad passes to the buyer within the jurisdiction of the Philippines, the transaction is domestic and is subject to the sales tax; otherwise, the transaction will be considered a foreign sale and is exempt from the sales tax prescribed in section 186 of the Tax Code." (Formilleza, Commentaries on the N. I. R. C, Vol. II, pp. 729-730)

As for the legislative policy to exempt consignments abroad from tax in order to encourage exports, the Solicitor General has pointed out that it is only the exportation of locally produced or manufactured products, and not every kind of exportation, that Congress wanted to encourage and promote. Hence, section 189 of the Code exempts from percentage tax cocbnut oil and by-products of copra produced or manufactured in the Philippines; section 190, idem, exempts from compensating tax imported article to be used in the manufacture or preparation of articles in this country for consignments abroad; section 3 of R. A. 601 exempts from the foreign exchange tax amounts used for the payment of transportation charges on articles or containers imported into the Philippines intended for use in the manufacture or preparation of local products for consignment abroad; and R. A. 822 exempts from the processing tax imposed by Sec. 189 of the Code dessicated coconut manufactured in this country if removed for exportation. Clearly enough, the exportation of the tractors in question does not come under the declared policy of the legislature to encourage exportation of products locally manufactured and produced. On the other hand, as correctly observed by the Solicitor General, our country needed then, and still needs now, tractors for the development of our own agriculture, so that the sale of of such tractors to foreign buyers for a profit, thereby depriving our own countrymen of their use in the development of our own agriculture and increase of our production, hardly justifies the tax exemption that petitioner claims.

Wherefore, the decision appealed from is affirmed, with costs against petitioner. So ordered.

Bengzon, Acting C. J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador and Concepcion, JJ., concur.

Judgment affirmed.

[1] 87 Phil., 18.

[2] 88 Phil., 199.

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