

**SAURA IMPORT AND EXPORT CO., INC., PLAINTIFF AND APPELLANT
VS. BIBIANO L. MEER, AS COLLECTOR OF INTERNAL REVENUE,
DEFENDANT AND APPELLEE.**

G. R. No. L-2927. February 26, 1951

Ponente: TUASON, J.

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TUASON, J.:

This was an action to recover a tax paid under protest in the amount of P22,593.62. Decision was against plaintiff.

The parties submitted an agreed statement of facts, from which it appears that in February and March, 1946, the plaintiff, Saura Import & Export Co. Inc., frought from the Foreign Iduuidation Commission, a United States Government agency, jeeps, weapons carriers and trucks, all of which, at the time of the purchase, were located in different United States Army depots in the Philippines, and that immediately or soon after, plaintiff took delivery of those goods and later sold them or turned them over to third persons in the Philippines.

Holding that plaintiff was anjinporter, the Collector of Internal Revenue levied on the aforesaid motor vehicles the percentage tax prescribed in sections 185 and 186 of Commonwealth Act No. 466, which tax amounted to the figure above stated.

Plaintiff-appellant formulates two questions; first, whether it was aivimporter and, second, whether the sales it made to third persons were original sales within the meaning of sections 185 and 186 of Commonwealth Act No. 466, otherwise known as the National Internal Revenue Law. Decision on the first question will dispose of the second, for, if the plaintiff was an importer, its sales were original sales and taxable under the sections above mentioned.

An analogous question involving analogous goods bought from the same agency and disposed of in the same manner, was raised and decided July 17, 1950, in G. R. No. L-2825, entitled *Go Cheng Tee vs. Bibiano L. Meer*, etc. (47 Off. Gaz., Supp. to No. 12, p. 269)[*]. In that case, this Court said among other things:

"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 como 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 es la realizada por el demandante al publico de Filipinas, y no la venta hecha a el por la 'Foreign Liquidation Commission.' En esta transaccion, el demandante compro; no vendio. Y el impuesto se cobro por la venta y no por la compra. 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.' La primera venta, esto es, la realizada por la 'Foreign Liquidation Commission' en favor del demandante, no estaba sujeta a ningun impuesto, y la hecha por el demandante al publico es la venta que esta sujeta a impuesto, porque se ha hecho para fines comerciales.

"Declaramos que bajo los terminos precisos del Codigo Administiativo Revisado, el demandante fue

importador y de acuerdo con el artículo 5 de la ley del Commonwealth No. 503, la venta realizada por el a sus parroquianos es venta original. Como corolario forzoso, estaba en la obligación de pagar los impuestos que el Administrador de Rentas Internas lo cobro. No erro el Juzgado a quo al absolver al demandado."

To this we may add that the United States enjoyed in the Philippines a privilege akin to extraterritoriality.

The Tydings-McDuffie Act of 1934, as amended, provided in section 10 for the retention of American naval reservations and fueling stations in the Philippines after independence. And the Filipino people in 1934, in approving the Tydings-McDuffie Act, expressed their willingness that American defense establishments be located on Philippine soil after independence.

In 1943, the Commonwealth Government-in-Exile held a series of conversations with officials of the United States Government regarding the liberation of the Philippines, the possible advancement of the date of independence following liberation, and the military relations between the Philippine Republic and the United States after independence. Our Government at that time expressed its conformity with the expansion of the scope of military cooperation between the two countries after independence to provide for the establishment and maintenance here of bases of the Army, Navy and the Air Force. That arrangement was incorporated and implemented by a Joint Resolution of the United States Congress approved by the President of the United States on June 29, 1944. In that resolution, it was resolved by the Senate and House of Representatives of the United States of America that after negotiation with the President of the Commonwealth of the Philippines or the President of the Philippine Republic, "the President of the United States is hereby authorized, by such means as he finds appropriate, to withhold or to acquire and to retain such bases, necessary appurtenances to such bases, and the rights incident thereto in addition to any provided for by the Act of March 24, 1934 (Philippine Independence Act), as he may deem necessary for the mutual protection of the Philippine Islands and of the United States."

The Philippine Congress by joint resolution and by unanimous vote on July 28, 1945, adhered to the policy and program set forth in the Joint Resolution of the United States Congress. (See the Message of President Roxas to the Senate of the Philippines dated March 17, 1947, urging the approval of the Agreement between the Republic of the Philippines and the United States of America concerning military bases, 43 Off. Gaz., No. 3, pp. 954-964.)

While the above-mentioned resolutions of the United States Congress and the Philippine Congress referred to treaties to be made after Philippine independence, there was in March, 1946, an existing order of affairs not dissimilar to that which was to be the subject of future negotiations. By political relationship between the two countries and by reason of war—which was, at least technically, still in progress—the United States Government on that date enjoyed jurisdictions! rights over certain areas of the Philippine territory and over military goods brought here and intended for the United States Army. While on army bases or installations within the Philippines those goods were, in contemplation of law on foreign soil. The result was that when plaintiff, after acquiring title to such goods, brought them outside of those bases or depots, there was importation in the ordinary sense, let alone in the sense envisaged in section 1248 of the Revised Administrative Code.

At the time of the purchase in question, the United States Army in the Philippines was a belligerent occupant, at least of army bases, army depots, and army installations it was using for the prosecution of the existing war. By section 280 of the Rules of Land Warfare, belligerent occupation (in this case by the United States Army), ceased only when "the occupant evacuated the district or was driven out by the enemy, or by levee en masse, and the legitimate government actually resumed its functions." Having possible pertinence to this topic is the following passage from *Tan Tuan et al. vs. Lucena Food Control Board, etc.*, (84 Phil., 687; 47 Off. Gaz., 1739):

"The fact that this was not foreign territory did not deprive the United States Army of the status of belligerent occupant. Military government may be established not only in foreign territory occupied or invaded in time of

war, but also domestic territory in a state of rebellion or civil war. (Chase, C. J., in *Ex parte Milligan*, 4 Wall., 2, 141; 18 L. ed., 281.) This right to establish government is not at all dependent upon the right of conquest, but is treated as an incident to the merel right of belligerent occupation. A nation can not conquer its own territory, but it may subdue and occupy such portions of it as are made the theater of an insurrection against its authority (*Hefferman vs. Porter*, 96 Am. Dec, 459), or, for that matter, of foreign invasion. Also, the occupied territory may belong to a state allied to the occupant, and which willingly confides its domain to the protection of it. (3 Hyde International Law [1945], 1876, 1877.)"

The appealed decision is affirmed with costs against the appellant.

Moran, C. J., Paras, Feria, Pablo, Bengzon, Padilla, Montemayor, Reyes and Jugo, JJ., concur.

[*] 87 Phil., 18.

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