

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. CIRILO D. CONSTANTINO AND COURT OF TAX APPEALS, RESPONDENTS.*G.R. No. L-25926. February 27, 1970*

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

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Appeal from the decision of the Court of Tax Appeals, in its CTA Case No. 1016, holding that the respondent, Cirilo D. Constantino, is not a commercial broker, as defined by Section 194(t) of the National Internal Revenue Code, providing as follows:

"'Commercial broker' includes all persons, other than importers, manufacturers, producers, or bona fide employees, who, for compensation or profit, sell or bring about sales or purchases of merchandise for other persons or bring proposed buyers and sellers together, or negotiate freights or other business for owners of vessels or other means of transportation, or for the shippers, or consignors or consignees of freight carried by vessels or other means of transportation. The term includes commission merchants."

and declaring him not liable to pay the commercial broker's percentage tax.

Petitioner Commissioner of Internal Revenue assessed against and demanded from respondent Constantino the commercial broker's percentage tax of 6% on his gross compensation for 1956, as dealer or distributor of the products of International Harvester, Macleod, Inc., (IHM for short). The tax was computed as follows:

Total discount for 1956 ----- P38,390.40

6% broker's percentage tax

due thereon ----- 2,303.40

25% surcharge ----- 575.85

Compromise penalty ----- 100.00

Total amount due and

collectible ----- P 2,979.25

Constantino protested the assessment on the ground that he is not a commercial broker. On his protest being overruled, he filed a petition for review with the court of Tax Appeals, which, after trial, found for him. Upon his reversal by the tax court, the revenue Commissioner interposed the present appeal.

The issue here is whether the relationship between and the respondent is one of principal and agent, as maintained by the Commissioner, or one of vendor and vendee, as maintained by the respondent taxpayer.

Respondent Cirilo D. Constantino is a businessman with a business establishment in San Pablo City known as "C.

C. Motor Service", where he stores, displays and sells trucks, machineries, equipment, spare parts and accessories shipped to him by International Harvester, Macleod, Inc., (formerly International Harvester Company of the Philippines) in accordance with their "Dealer Sales and Service Agreement", Exhibit "A", designating the said respondent as exclusive dealer of the products of the company within a prescribed territory. According to respondent's counsel, who is also the legal counsel and secretary of the company, the company sells its products through its dealers for purposes of economy and that since it may not be allowed to retail under the retail trade law, it sells by wholesale to its dealers (T.s.n., pages 49, 52-53).

In classifying himself as an independent merchant instead of a commercial broker, respondent Constantino cites the following facts: that under the "Dealer Sales and Service Agreement" that he signed with he may buy, on cash basis or credit terms, IHM products, such as trucks, tractors, other types of machinery and equipment and spare parts and accessories for resale to his customers within his designated territory; that under a "Schedule of Discounts and Terms", Exhibit "B", he is granted trade discounts of 16% for trucks, tractors and other heavy equipment and 30% for service parts; that he is also given a cash discount of 5% under certain conditions; that the terms and conditions on his credit purchases are governed by a "Retail Financing Agreement", Exhibit "C"; that he may purchase service parts on open credit account or on a 30-day term; and that he sold service parts to his customers on cash basis (T.s.n., pages 9-10). He states that his purchases of heavy equipment are commenced by his filing with the company a "Dealer Order for Goods", Exhibit "G" (BIR Record, page 153, after Exhibit "B", as the numbering of pages is inverted); if on credit, he executes a chattel mortgage in favor of IHM, Exhibit "L"; and, if he sells to his customer on credit, he requires said customer to execute also a chattel mortgage in his favor and he (respondent Constantino) then executes an "Indenture of Assignment", Exhibit "M-I", in favor of IHM.

Constantino also cites the fact that his purchases are covered by IHM's sales invoices, and when he re-sells he issues his own sales invoice; that delivery of his purchases from IHM are accepted by him "ex-bodega" in Manila, after which he services the heavy equipment at his establishment in San Pablo before delivery to his customer (T.s.n., page 26); that his credit purchases of trucks and other heavy equipment are insured by IHM and, in case of loss, the insurance proceeds belong to both in proportion to their interests, but the premiums are for his own account; that he insures himself the goods that he purchases on cash basis; and that at the end of each calendar year he includes in the inventory that he submits to the Bureau of Internal Revenue unsold stocks that he had purchased from IHM.

Without considering the forms and documents that petitioner Commissioner of Internal Revenue alluded to in his brief (forms and documents that were only annexed to his memorandum submitted to the tax court and not formally offered in evidence) but considering the entirety of respondent Constantino's own evidence, this Court is of the opinion that, for taxation purposes, he is not an independent merchant but an agent of IHM, or a commercial broker, as defined by the tax code, selling or bringing about sales and purchases of IHM's merchandise. A casual examination of respondent's evidence may give the impression that this relationship with the company is that of vendor and vendee, but a closer look into the actual legal effect of the terms and conditions embodied, rather than the names of the contracts used or the terminologies employed, in the chain of documents[1] shows that the relation between the company and the respondent is one of principal and agent.

From his own evidence and statement of facts, if Constantino wishes to "buy" from IHM, either on "cash basis" or on credit, he files a "Dealer Order for Goods", Exhibit "G". He failed to state or notice, however, the condition in the said order, which is in small print, that:

"the title of the goods delivered under this order shall remain in International Harvester Company of Philippines until the full purchase price shall have been paid in cash or acceptable security. Upon receipt of the subject equipment, the undersigned agrees to execute a chattel mortgage or other security instrument covering

the goods or-dered herein to secure the payment therefor, and prior to full payment of the purchase price, the undersigned shall have no right to sell or dispose of any goods delivered under this order except in the ordinary course of retail trade for their reason-able value, and upon the express condition that before delivery to a Purchaser, the undersigned shall secure from the Purchaser full settlement, and the proceeds of such resale, whether in cash, property or an obligation of the Purchaser, shall be considered the property of International Harves-ter Company of the Philippines, and shall be held in trust for the Company and subject to its order." (Emphasis supplied)

In plain language, the effect of the afore-quoted condition is that the title to goods sold by the Dealer to his "customer" passes directly to the latter from IHM, and that the price of such goods, even if previously shipped to the dealer upon his order, belongs to IHM, not to the dealer, who merely collects and holds the proceeds in trust. Hence, in the "Dealer Order for Goods", the dealer does not make purchase orders; he merely orders for shipment to himself the goods specified therein. And while in the "Dealer Sales and Service Agreement" the contractual provisions on orders for goods refer or use terms like "purchase", "obligation to sell" and "obligation to buy", the said Dealer Sales and Service Agreement expressly binds the dealer, when ordering goods, to place his orders "upon forms furnished by the Com-pany" (Exhibit "A", page 4), and the form furnished is the "Dealer Order for Goods", with the clause previously quoted.

Where the transaction between Constantino and his customer is on credit, Constantino requires his customer to execute a chattel mortgage in his favor but then he must assign in favor of IHM, by an "Indenture of Assignment", all his rights, interest and participation in the goods theretofore mortgaged to himself for the same amount. When the goods are delivered by IHM to the dealer, the dealer does not acquire ownership of the goods upon such delivery; and when the dealer "sells" the goods to his customer, the customer does not acquire ownership thereof upon such "sale", because the "Dealer Order for Goods" expressly stipulates that "title of the goods delivered under this order shall remain until the purchase price shall have been paid - - - - -." And the fact that the customer is made to execute a chattel mortgage does not make him the owner, because when the goods were "sold" to him by the dealer the latter did not own the goods. That the dealer should issue his own sales invoice to the customer is neither a means of acquiring ownership nor is it proof of ownership.

In the "Retail Financing Agreement" that the dealer enters into with the company, when he "buys" goods on credit for "resale" to customers, the dealer does not "buy" with his own funds, as the agreement expressly prohibits him from advancing the down payment and any installment to his customer; and when he "sells" to his customer, the "retail contract" as well as the customer's credit is subject to approval by the company (Exhibit "C", page 3, paragraph 4). The effect of such an arrangement is that it is the very customer who buys on credit because the purchase money comes from him, not the dealer, and the credit that is financed is the credit of the customer, not that of the dealer.

If the transaction is on "cash basis", a procedure similar to transactions on credit is followed; the dealer orders specific goods for shipment to himself by filing the "Dealer Order for Goods"; if his order is accepted by the company, the company ships the goods and issues a delivery receipt (Exhibit "D"), not a cash invoice, as the respondent contends in his brief. Under such a delivery receipt, the goods are termed "Sold to Mr. Cirilo D. Constantino" for "Cash"; but the same receipt also indicates that it is for the supposed vendee's "order", obviously referring to the "Dealer Order for Goods", and that the shipment is "Due and payable first day of month following shipment". It is, therefore, clear that even when the company ships the goods to the dealer on a supposed "cash basis" it is payable in cash but it does not prove that cash or money was paid - - - payment is not yet due cash or money was paid - - - payment is not yet due - - - and that the company shipped the goods but retained ownership of the same in accordance with the "order".

Since the company retained ownership of the goods, even as it delivered possession unto the dealer for resale to customers, the price and terms of which were subject to the company's control, the relationship between the company and the dealer is one of agency, tested under the following criterion:

"The difficulty in distinguishing between contracts of sale and the creation of an agency to sell has led to the establishment of rules by the application of which this difficulty may be solved. The decisions say the transfer of title or agreement to transfer it for a price paid or promised is the essence of sale. If such transfer puts the transferee in the attitude or position of an owner and makes him liable to the transferor as a debtor for the agreed price, and not merely as an agent who must account for the proceeds of a resale, the transaction is a sale; while the essence of an agency to sell is the delivery to an agent, not as his property, but as the property of the principal, who remains the owner and has the right to control sales, fix the price and terms, demand and receive the proceeds less the agent's commission upon sales made. 1 Mechem on Sales, Sec. 43; 1 Mechem on Agency, Sec. 48; Williston on Sales, 1; Tiedeman on Sales, 1." (Salisbury v. Brooks, 94 SE 117, 118-119)

It is contended that the respondent is not an agent of IHM because their "Dealer Sales and Service Agreement" expressly provide that he "is not the Company's agent in any respect - - - -", but the control by the company of the resale made (or agreed upon to be made) by the dealer is so pervasive as to exclude the idea of the latter being an independent merchant. The extent of his dependence upon and control by the company is shown in the provisions of the "Dealer Sales and Service Agreement":

An order for goods by the dealer "shall not be considered as accepted until written acceptance - - - - is given to the Dealer, or delivery has been made to the Dealer - - - -." "Prices, discounts and terms - - - - shall be those established by the Company - - - -" which are "subject to change at any time without notice." Places of delivery "shall be those established by the Company - - - -" and the dealer "will accept delivery at points of delivery selected by the Company and pay all transportation charges thereon - - - -." "Prior to full payment of the purchase price to the Company, the Dealer shall have no right to sell or dispose of any goods - - - - without first securing the written approval of the Company." At any reasonable time, the company may enter the dealer's premises, "to examine his books and records - - - -." The dealer is bound "to provide and maintain adequate physical facilities acceptable to the Company - - - -." He "agrees to maintain accounting records", "to furnish monthly operating statements" and "a complete detailed financial statement." He "shall properly store and care for all goods purchased - - - - and protect the same from injury or damage from any cause." The quantity of goods allotted to the dealer "shall be determined solely by the Company." "The dealer agrees, in reselling goods - - - - to enter into a Sales Contract with each customer on one of the current printed blank forms furnished by the Company for that purpose and to give no different or additional allowances, warranties or guaranties on behalf of the Company beyond those included in the Sales Contract." The agreement "may be terminated at any time by either party without cause - - - -" and since "this is a personal agreement, it shall automatically terminate upon the death of the Dealer." The agreement involves "mutual confidence and trust, and it may not be assigned by either party." Now, to insure "the faithful performance on the Dealer's part of the conditions of this agreement," the dealer is required to put up a bond, which is in the amount of P30,000.00.

As respondent is not an independent merchant, but an agent, the discount of 16% that he receives is not a "trade discount" but a compensation or profit for selling or bringing about sales or purchases of merchandise for the company.

The assessment made by petitioner Commissioner of Internal Revenue against respondent Constantino does not include the 30% discount that the respondent is entitled to or benefited from his sales of service parts; even so, the sales of or transactions on service parts is covered by stipulations between the company and the respondent different from those on heavy machineries or big items; for these reasons, it is unnecessary to pass upon the taxability of said 30% discount.

FOR THE FOREGOING REASONS, the appealed decision is hereby reversed, and another one entered affirming the assessment and ordering the respondent to pay the same, with costs against the respondent.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

[1] These are all in the nature of adhesion contracts, being on printed forms prepared and supplied by IHM, that binds the dealer and the company as well as that which binds him with his customer.

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