

GOOD DAY TRADING CORPORATION, PETITIONER, VS. BOARD OF TAX APPEALS, RESPONDENT.

G.R. No. L-6574. July 31, 1954

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The facts in this case are not disputed. The petitioner Good Day Trading Corporation imported 238 cases of Chesterfield cigarettes on February 18, 1952. The corresponding surety bond was filed in its favor to secure the payment of the sum of P52,360, the amount of specific taxes due on the cigarette importation, and pursuant to existing law, the shipment was stored in a bonded warehouse under the custody of the Bureau of Customs. On September 23, 1952, while the cigarettes were still in storage, petitioner sold them to one Buenaventura Isleta for a total sum of P32,000, exclusive of specific taxes, the sale being conditioned on the buyer paying all the specific taxes or filing a surety bond with the Bureau of Internal Revenue to guarantee payment thereof, within 15 days from the sale agreement, besides paying all the storage fees, fire insurance premium and other expenses from the date of Bale until the cigarettes have been withdrawn by the buyer.

A few days after the sale agreement Isleta informed petitioner that he bought the cigarettes not for himself but on behalf of his companions who intended to pay the specific taxes with their backpay certificates or certificates of indebtedness. Petitioner then wrote a letter to the Collector of Internal Revenue advising him of the sale, at the same time requesting that should the certificates of indebtedness with which the buyers intend to pay the specific taxes on the cigarettes be approved and accepted, the surety bond previously filed by petitioner be ordered cancelled. This letter was duly received by the Collector of Internal Revenue.

Afterwards, when despite several, extensions given to Isleta and his companions they failed to show evidence that they had either paid the specific taxes or filed the corresponding surety bond, petitioner to avoid deterioration of the cigarettes, decided to rescind the sale and on December 8, 1952, on account of the specific taxes, it made an initial payment of P8,800 to the Collector of Internal Revenue and thereafter attempted to withdraw from storage 40 cases of cigarettes, covered by the initial payment. The warehouseman, however, refused delivery saying that Isleta and companions claimed ownership of the whole shipment because they already had submitted with the Bureau of Internal Revenue certificates of indebtedness (Back Pay) for payment of all the specific taxes, which according to them have already been approved and accepted by the Bureau. At the same time Isleta came to petitioner's office with a letter requesting the suspension of the withdrawal of the cigarettes by petitioner, with the condition that should he (Isleta and companions) fail to comply with the sale agreement on or before December 15, 1952, then petitioner may withdraw the whole shipment and Isleta and companions Would pay P10,000 as liquidated damages.

Eventually, the Bureau of Internal Revenue approved or accepted the certificates of indebtedness tendered by the buyers as payment of the specific taxes on the cigarettes, the issuance of the certificates of indebtedness having been approved by the National Treasurer of the Philippines. The Bureau of Internal Revenue also authorized the Bureau of Customs to release to the buyers the whole shipment; the buyers filed their entries with the Bureau of

Customs, and withdrew all the cigarettes and allegedly sold the same.

Thereafter, petitioner asked for the refund of the P8,800 paid by it in cash, in view of the full payment of the specific taxes on the cigarettes by the buyers. The Collector of Internal Revenue granted the refund and his action was approved by the Secretary of Finance. No appeal was taken from said decision; but because the amount involved was more than P5,000 the case was brought before the Board of Tax Appeals for final resolution under the provisions of Executive Order No. 401-A, section 9, particularly the second paragraph thereof. Said section 9 reads as follows:

"SEC. 9. In all cases involving an original assessment of P5,000 or less, the action of the Collector of Internal Revenue pursuant to his authority to compromise cases and make refunds under section 309 of the National Internal Revenue Code, and that of the Commissioner of Customs pursuant to similar authority under section 1369 of the Revised Administrative Code, shall in no case become effective unless approved by the Secretary of Finance. Copies of the action of the Collector of Internal Revenue or of the Commissioner of Customs, as the case may be, and of the approval thereof by the Secretary of Finance shall be promptly- furnished the Board of Tax Appeals, and within sixty days from the receipt of copy thereof, the Board may, for justifiable reasons, review the case *motu proprio*.

"But in cases involving an original assessment of more than P5,000, the approval by the Secretary of Finance of the action taken as aforesaid by the Collector of Internal Revenue or of the Commissioner of Customs shall not become effective until and unless the same is approved by the Board of Tax Appeals."

The case was set for hearing before the Tax Board and memoranda were filed after which, the Board issued its resolution dated January 31, 1953. The Board not only reversed the decision of the Collector of Internal Revenue granting the refund of P8,800 but it also rejected the payment of the entire amount of specific taxes in certificates of indebtedness, and ordered petitioner to pay the balance of P43,560 in cash. In other words, the Good Day Trading Corporation which originally imported the cigarettes whose specific taxes amounted to P52,360 was held liable and was ordered to pay the whole of said specific taxes.

Petitioner asked for reconsideration claiming that the payment of P8,800 in cash amounted to a double payment because the corresponding amount was later paid with certificates of indebtedness, accepted by the Collector of Internal Revenue and approved by the Secretary of Finance ; being double payment petitioner was entitled to a refund ; moreover, assuming that petitioner was not entitled to refund, the Tax Board had neither authority nor jurisdiction to order petitioner to pay the balance of P43,560 because it was not involved nor was it an issue in the matter submitted to the Tax Board for review. Acting upon the motion for reconsideration the Tax Board denied the same, saying that said motion was filed out of time; that the resolution had become final, and that even if the resolution were still subject to modification and that the Board were to admit that it had no jurisdiction to order the petitioner to pay the balance of the specific taxes due, still petitioner would gain nothing by it because the Tax Board may yet and could reverse the decision of the Collector of Internal Revenue and enjoin him to collect from petitioner the said amount of the balance, pursuant to the Board's ruling that the petitioner is the importer of the cigarettes and so was bound to pay said taxes. Petitioner is now appealing from the resolution and order of the Board of Tax Appeals.

Incidentally, and to avoid any possible confusion, we might state that, presumably due to a ruling by this Tribunal (University of Santo Tomas vs. Board of Tax Appeals, 93 Phil., 376; that the Board of Tax Appeal was illegally established (because by mere Executive Order) for the reason that the jurisdiction assigned to it deprived the Courts of First Instance of their jurisdiction to entertain and pass upon cases taken to them from actions and decisions of the Collector of Customs and the Collector of Internal Revenue regarding taxes, assessments, refunds, etc., Republic Act 1125 was subsequently passed. Said Act abolished the Board of Tax Appeal, created

what is now known as the COURT OF TAX APPEALS with practically the same jurisdiction and functions of the former Board of Tax Appeals, and although it repealed Executive Order No. 40J.-A nevertheless it provided that all cases decided by the former Board of Tax Appeals and appealed to the Supreme Court pursuant to Executive Order No. 401-A shall be decided by the Supreme Court on the merits, to all intents and purposes as if said Executive Order 401-A had been duly enacted by Congress. We are, therefore, deciding this case pursuant to the provisions of said Executive Order 401-A.

The main ground on which the Tax Board based its resolution is that petitioner Good Day Trading Corporation is the importer of the shipment of cigarettes and therefore is the one called upon to pay the specific taxes, and consequently, should pay the same in cash, and the Tax Board proceeds to cite authorities defining what is meant by an importer, namely, that the importer is the primary consignee to whom the goods are sent and who himself presents the invoices, makes the entry, receives the bill of lading, and gets the goods, as distinguished from one who may be the ultimate consignee, and that it does not include a person who purchases the goods from the importer after they have been brought within the jurisdiction of the United States. On the other hand, petitioner claims that under section 1248 of the Revised Administrative Code which reads as follows:

"SEC. 1248. When importation by sea begins and ends.—Importation by sea begins when the importing vessel enters the jurisdictional waters of the Philippines with intention to unlade therein, and is not completed until the duties due upon the merchandise have been paid or secured to be paid at a port of entry and the legal permit for withdrawal shall have been granted, or, in case said merchandise is free of duty, until it has legally left the jurisdiction of the customs." importation is not completed until the duties due upon the merchandise have been paid and legal permit for withdrawal shall have been granted; so that the person or entity paying the duties due and receiving the legal permit for withdrawal and actually withdrawing the goods becomes the importer.

Under our view of the case, whether or not petitioner is the importer of the cigarettes in question, is of little import because under section 125 of the National Internal Revenue Code which provides—

"SEC. 125. Payment of specific tax on imported articles.—Specific taxes on imported articles shall be paid by the owner or importer to the customs officers, conformably with regulations of the Department of Finance and before the release of such articles from the customhouse." either; the owner or importer shall pay the specific taxes on imported articles. So that if the sale of the cigarettes by the importer to the owners of the certificates of indebtedness was valid, then said purchasers become the owners of the shipment and could pay the specific taxes. We, therefore, believe and hold that the Tax Board erred in holding that only petitioner Good Day Trading Corporation was called upon and could pay the specific taxes on the cigarette shipment.

What about the payment of the balance of P43,560 ordered by the Tax Board to be paid by petitioner in spite of the paying of the entire specific tax in certificates of indebtedness? We agree with the petitioner that only the question of the refund of P8,800 was in issue and was involved in the matter considered and decided by the Tax Board. It will be remembered that there was no appeal from the decision of the Collector of Internal Revenue approving the refund, which decision was approved by the Secretary of Finance. If it was brought to the Tax Board at all, it was because of the provisions of section 9 of Executive Order No. 401-A already reproduced at the first part of this decision. Under said section, in cases of original assessments involving P5,000 or less, in one case and involving more than P5,000 in another it is the action of the Collector of Internal Revenue pursuant to his authority to compromise cases and make refunds under section 309 of the National Internal Revenue Code, that is subject to review and approval by the Tax Board. So that the assessment and payment of the specific tax of P52,360 in themselves, where there was neither dispute nor appeal, was not subject to review by the Tax Board. What was subject to review and what: was in issue here was the refund of P8,800 approved by the Collector of Internal Revenue and approved by the Secretary of Finance because that was an action taken by the Collector of Internal Revenue pursuant to his authority to compromise cases and make refunds under section 309 of the

National Internal Revenue Code. Consequently, the consideration and resolution by the Tax Board should be confined to that amount and to the propriety of the refund, nothing more.

One of the reasons if not the main consideration behind the action of the Tax Board in ordering the payment of the whole of the specific taxes by the petitioner, and in: cash, is reflected in a portion of its resolution which we quote:

"* * *. It is apparent that interested parties wanted to negotiate their backpay certificates by circumventing the law and as wisely recommended by the Collector of Internal Revenue in his memorandum 'as a measure of sound fiscal policy, the acceptance of applications for issuance of certificates of indebtedness for the payment of specific tax on imported articles, should be disapproved.' To allow the purchasers the payment of specific tax on imported goods in backpay certificates will open a way to unscrupulous dealers to speculate in the negotiation of backpay certificates."

The Tax Board in its resolution added that "it is highly improper for the Government to accept certificates of indebtedness in lieu of cash." We can well understand the point of view of the Tax Board. There is reason to suspect that the 29 alleged purchasers of the cigarettes whose certificates of indebtedness (back pay) were used to pay the specific taxes, were not bona-fide purchasers; that they were not interested in the cigarettes imported but were solely concerned with getting their backpay liquidated by any one who may have bought the same at a discount and later used them to pay the specific taxes by making it appear that 29 persons who had nothing in common but their ownership of backpay certificates, and who heretofore were never importers, dealers or buyers of foreign cigarettes, all of a sudden were drawn and banded together to invest in a commodity they never dealt in or were interested in, and became purchasers and owners of the entire shipment of cigarettes.

The interest taken and solicitude shown by the Tax Board for the Government and the public, is commendable indeed. However, the present appeal has to be decided solely on the basis of the pertinent provisions. Whether or not owners of backpay certificates should be given certificates of indebtedness ostensibly to be used to pay taxes but in reality to be speculated upon and negotiated by some unscrupulous persons, is wholly the legal concern of the Treasurer of the Philippines and the Department to be affected later by the use of said certificate of indebtedness. The attitude of the Tax Board intended to minimize this anomalous practice may be of great interest to the department or departments of the Government charged with the issuance of certificates of indebtedness based on backpay, and the acceptance of the same in payment of taxes.

In view of the foregoing, the resolution of the Tax Board denying the refund of the P8,800 and ordering petitioner to pay the balance of P43,560 is reversed. No costs. Let copies of this decision be furnished the Treasurer of the Philippines and the Secretary of Finance.

Paras, C. J., Pablo, Bengzon, Reyes A., Jugo, Bautista Angelo, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.

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