

IPEKDJIAN MERCHANDISING CO., INC., PETITIONER, VS. COURT OF TAX APPEALS AND COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

G.R. No. L-14791. May 30, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

On January 11, 1951, respondent Collector of Internal Revenue assessed the sum of P97,502.25, as compensating tax and surcharge, due from petitioner Ipekjdian Merchandising Co., Inc., on its imported gold chains, not actually sold but which were converted into gold bullion and later sold by petitioner as such, plus the amount of P200.00 as penalty for petitioner's violation of section 190 of the Tax Code.

Petitioner subsequently appealed this decision to the Board of Tax Appeals being BTA Case No. 10. The said Board having affirmed the decision of respondent, petitioner thereafter appealed the said decision to this Court. On March 30, 1954, we dismissed the appeal without prejudice, in view of the ruling in the case of *U.S.T. vs. Board of Tax Appeals*, 93 Phil., 376; 40 Off. Gaz., 2245.

After the resolution of this Court had become final and executory, petitioner sought to reinstate its appeal in this Court, but said petition for reinstatement was denied on March 21, 1955. Later, petitioner tried to reopen its case in this Court, by having it docketed for hearing as CTA Case No. 107. The same was however, dismissed on July 26, 1955, on the ground of lack of jurisdiction for having been filed beyond 30 days from the receipt of the assessment made by respondent. Petitioner moved for reconsideration of said dismissal, but the motion was denied on October 1, 1955.

On November 3, 1955, the petitioner made a partial payment, in the amount of P5,000.00.

On February 26, 1958, the respondent filed the present motion for execution of judgment before the Court of Tax Appeals, praying that petitioner company be ordered to pay the balance of P92,505.25, as compensating tax and surcharge, plus P200.00 as penalty. A resolution was promulgated on July 16, 1958, ordering the Clerk of Court to issue the writ of execution. Presiding Judge Nable and Associate Judge Luciano wrote the majority opinion, while Judge Umali dissented.

The only issue before Us is whether or not the lower court (CTA) had jurisdiction to grant respondent Commissioner's motion for execution of the judgment of the Board of Tax Appeals in BTA Case No. 10 - which issue boils down ultimately to the question of whether or not, under the third par. sec. 21, of Rep. Act No. 1125, BTA Case No. 10 was pending in the BTA, when said Act became law on June 16, 1954. Paragraph 3, of said section 21, provides-

"Executive Order Numbered Four Hundred and One-A, dated the fifth of January, nineteen hundred and fifty-one, is repealed and the Board of Tax Appeals created therein, abolished: Provided, however, That all cases heretofore decided by the said Board of Tax Appeals and thence appealed to the Supreme Court pursuant

to Executive Order Numbered Four hundred one-A shall be decided by the Supreme Court on the merits to all intents and purposes as if said Executive Order had been duly enacted by the Congress: And provided, further, That all cases now pending in the said Board of Tax Appeals shall be transferred to the Court of Tax Appeals and shall be heard and decided by the latter to all intents and purposes as if they had been originally filed therein."

The petitioner in its appeal, submits that BTA Case No. 10, was already terminated and closed, when the Court of Tax Appeals (CTA) was created; that said section 21 above-quoted is not applicable and not self-executing; that "the pending cases" referred to therein, are limited to those still to be heard and decided by the CTA; that the CTA had unduly enlarged the scope of said section 21, and that the execution ordered by the Board of Tax Appeals in cases like BTA Case No. 10, fosters multiplicity of suits. The respondents believe otherwise.

It is admitted, as argued by the petitioner, that administrative orders, cannot be enforced in the courts in the absence of an express statutory provision for that purpose, but there are instances where statutes usually provide for the judicial enforcement of such orders, sometimes by provisions for transfer of the administrative record and decisions to a court, for the entry of a judgment or decree and sometimes by actions for penalties for violation of orders or by actions to enforce reparation awards (42 Am. Jur. 528). The administrative records of the BTA were automatically transferred to the CTA upon the latter's creation, among which was the case at bar, BTA Case No. 10. There was an entry of judgment or decree in the decision of the Board of Tax Appeals in said Case, because the aforesaid decision was appealed by the petitioner to this Court, pursuant to the provisions of Executive Order No. 401-A, although on March 30, 1954, We resolved to dismiss the said appeal, and as per entry of judgment, the dismissal became final and executory on May 14, 1954. Being a case, where the judgment or decision of a defunct administrative body had become final and executory, who is then called upon to undertake its execution? Is it the CTA, or should a separate action be availed of for the purpose?

It is true that in the case of *U.S.T. vs. BTA*, (supra), it was held that the BTA was an administrative body and its proceedings and decisions were administrative in character. But the petitioner, did not take into consideration the fact that subsequently on June 16, 1954, "all cases therefore decided by the said Board of Tax Appeals and thence appealed to the Supreme Court, pursuant to Executive Order Number Four Hundred One-A, shall be decided by the Supreme Court on the merits to all intents and purposes as if said Executive Order had been duly enacted by Congress" and "that all cases now pending in said Board of Tax Appeals shall be transferred to the Court of Tax Appeals, and shall be heard and decided by the latter to all intents and purposes as they had been originally filed therein" (section 21, supra). We can thus see, that Rep. Act No. 1125 had conferred judicial character on the proceedings and decisions of the BTA. It, therefore, results that the decisions of the BTA, in cases not subsequently brought before the Court of First Instance, in accordance with the decision in the case of *U.S.T. vs. BTA* (supra), or before the CTA, under the provisions of Rep. Act No. 1125, within the 30 day period prescribed in section 11 thereof, counted from the creation or organization of the CTA (*Lim Tio, et al. vs. CTA. et al.*, G.R. No. L-10681, March 29, 1958; *Sta. Clara Lumber Co. vs. CTA*, G.R. No. L-9833, Dec. 21, 1957), received judicial confirmation under said R.A. No. 1125 and the same should be considered final and executory and enforceable by execution, just like any other decision of a court of justice. Factually, several decisions of the BTA were affirmed on appeal by this Court and were executed by the CTA (*Cu Unjieng Sons vs. BTA*, 100 Phil., 1; *Cebu Arratre Service vs. Coll. of Int. Rev.*, 99 Phil., 297; *Advertising Associates vs. Coll. of Int. Rev.*, 97 Phil., 636.)

The dominant theme of petitioner in assailing the applicability of section 21 on the case at bar, is that it was no longer pending in the Board of Tax Appeals when the CTA was created on June 16, 1954, arguing that pending cases are limited to those still to be heard and decided by the CTA. We find no merit in this argument. The spirit and the letter of the law warrant the conclusion that the BTA acquired jurisdiction in all cases then pending in the

BTA and that cases pending in the said Board, include not only those which had been filed but not yet heard, or those filed and heard but not yet decided but also those filed, heard, decided and those the judgment of which has not yet been executed and fully satisfied.

It has been stated that "An execution is the fruit and end of the suit, and is very aptly called the life of the law. The suit does not terminate with the judgment; and all proceedings on the execution, are proceedings in the suit, and which are expressly, by the act of Congress, put under the regulation and control of the Court out of which it issues. It is a power incident to every court from which process issues, when delivered to the proper officer, to enforce upon such officer a compliance with his duty, and a due execution of the process, according to its command" (Bank of U.S. vs. Halstead, U.S. Supreme Court Report, 6 Law Ed. pp. 264-267, 268).

True enough, as contended by petitioner, that the CTA cannot hear and decide a case that has already been entered through no fault of the Collector, but through failure of petitioner who slept on its right to bring its case to the proper court, after the case was dismissed without prejudice by this Court. But more true still, is the fact that after the finality of the decision in BTA Case No. 10, there was yet something left to be done, and that is, the execution of the final decision, after the Collector has filed a motion to that effect which, as heretofore stated, is the fruit and the end of the suit and the life of the law. And considering that "A case in which an execution has been issued is regarded as still pending, so that all proceedings on the execution are proceedings in the suit" (21 Am. Jur. 18, citing several cases), it is logical to hold that BTA Case No. 10, was still pending before the defunct BTA, prior to the execution of its final decision.

Significantly enough, We have ruled that the CTA merely took over the functions previously exercised by the defunct BTA (Sampaguita Shoe, et al. vs. Comm. of Customs, et al., 102 Phil., 850: Good Day, etc. vs. BTA, 95 Phil., 569); that a case originally filed with and decided by the BTA, appealed to the Supreme Court but dismissed, without prejudice, following the decision in the U.S.T. vs. BTA (supra), filed again with the CTA, but dismissed on the ground that it was not filed within the 30-day period, prescribed in section 11, Rep. Act No. 1125 and again appealed to the Supreme Court, was not a new case (Lim Tio, etc. vs. CTA, supra) - all of which reveal that the Court of Tax Appeals could and/or should grant a motion for execution and issue writ to enforce the judgment of the BTA.

The judicial power would be incomplete and entirely inadequate to the purpose for which it was intended, if, after judgment, it could be arrested in its progress. The authority to carry into complete effect the judgments of the courts, necessarily results by implication, from the power to ordain and establish such courts (Bank of U.S. vs. Halstead, supra). It is the duty of the Courts to facilitate and not to retard the determination of litigated causes (14 Am. Jur. 277).

It should be recalled that petitioner, a solvent taxpayer, after having been afforded and after having exhausted all the administrative and judicial remedies within its reach, willingly made a partial payment of its tax liability in the sum of P5,000.00 of the P97,502.25 which the BTA had required it to pay, as compensating tax, by virtue of a final judgment. Petitioner should be the last to resort to technicalities, Questioning the manner by which respondent had sought to enforce the judgment with respect to the balance, long due to the government.

Petitioner, to re-enforce its position cited the cases of Santos vs. Crispina Perez Vda. de Caparas, 105 Phil., 992; and Patente vs. Saulog, 105 Phil., 525, and Carmen Planas vs. Collector, L-15934, Oct. 31, 1961. The Santos and Patente Cases are not applicable, much less controlling, in the case at bar. The facts and circumstances giving rise to the ruling in these two cases are different from those obtaining in the present case. The Santos case is a claim for the recovery of unpaid wages. The one at bar is a tax case against the petitioner. In the Santos case, a decision was rendered by the Wage Administration Service (WAS), and the Wage Administration Service Law expressly

requires court action for the execution of its decision. In the case at bar, the final and executory judgment was rendered by the BTA, and no such requirement was expressed in Executive Order No. 401-A, creating the BTA. The WAS is not the same as the BTA; their functions are different; the WAS can not as a rule, decide cases; the BTA was empowered to adjudicate tax liabilities, after due hearing. In the present case, the decision of the lower court was null and void, and there was, therefore, no decision to be executed. In the present case, there was a valid decision, final and executory and was merely awaiting the proper court to order its execution.

IN VIEW HEREOF, We hold that the decision of the Board of Tax Appeals in BTA Case No. 10, can and should be, executed by the respondent Court of Tax Appeals. The petition for certiorari is, therefore, DISMISSED, with costs against the petitioner herein.

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

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