

**HENG TONG TEXTILES CO., INC., (BEFORE), PHILIP
MANUFACTURING CORPORATION (NOW), PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE AND THE COURT OF TAX
APPEALS, RESPONDENTS.**

G.R. No. L-19737. August 26, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

In 1952 the then Collector of Internal Revenue assessed against the petitioner deficiency sales taxes and surcharges for the year 1949 and the first four months of 1950 in the aggregate sum of P89,123.58. The assessment was appealed to the Board of Tax Appeals, whence the case was transferred to the Court of Tax Appeals upon its organization in 1954, and there was affirmed in its decision dated February 28, 1952. The matter was thereafter elevated to this Court for review.

The deficiency taxes in question were assessed on importations of textiles from abroad. The goods were withdrawn from Customs by Pan-Asiatic Commercial Co., Inc., which paid, in the name of the petitioner, the corresponding advance sales tax under section 183(b) of the Internal Revenue Code. The assessment for the deficiency, however, was made against the petitioner, Heng Tong Textiles Co., Inc (now Philip Manufacturing Corporation) on the ground that it was the real importer of the goods and did not pay the taxes due on the basis of the gross selling prices thereof. There is no dispute as to the amount as computed by the internal revenue examiners and confirmed by the Collector. The only issues posed in the instant petition for review are (1) whether or not the petitioner was the importer of the goods; and (2) whether or not it was guilty of fraud so as to warrant the imposition of a penalty of 50% on the deficiency.

The Court of Tax Appeals based its decision of affirmance, finding the petitioner the importer of the goods, on a number of evidentiary circumstances. First, Heng Tong Textiles Co., Inc. and Pan-Asiatic Commercial were sister corporations. This is not controverted by the petitioner. Second, the commercial documents covering the importations (shipping documents, insurance papers, and records of payment of the advance sales tax in the Bureau of Customs) were all in the name of the petitioner. Third, in connection with the advance sales tax aforesaid, Pan-Asiatic Commercial wrote the petitioner the following letter:

"In compliance with your request regarding the 5% Sales Tax that we paid for you for the year 1949 and the first quarter of 1950 against the goods that you ordered from various United States suppliers, through us, we attach hereto a list giving a breakdown of this 5% Sales Tax, together with the corresponding Official Receipt Numbers and other details relative to the orders covered by these payments."

Fourth, there is both documentary and testimonial evidence - the latter being declarations of the petitioner's own witnesses - that Pan-Asiatic Commercial acted merely as indorser. Indeed the original petition for review below contains the allegation that "during the taxable year 1949, Heng Tong Textiles Co., Inc. placed through Pan-Asiatic Commercial Co. Inc. orders for importations of textiles from the United States in the sum of

P2,190,948.66."

Petitioner excepts to the conclusion of the Court of Tax Appeals and avers that the importation papers were placed in the name of the petitioner only for purposes of accommodation, that is, to introduce the petitioner to tex-tile suppliers abroad; and that the petitioner was not in a financial position to make the importations in question, valued at over a million pesos, since its paid-up capital was only P30,000.00. These circumstances show nothing but a private arrangement between the petitioner and Pan-Asiatic Commercial, which in no way affected the role of the peti-tioner as the importer as far as the Government and its right to collect the taxes were concerned. Pan-Asiatic Commercial might have furnished the necessary financing for the importations in question, but that did not militate against the petitioner's being the importer; nor did the idea of building up its reputation among textile suppliers abroad render it necessary for the withdrawal of the goods from customs and the payment of the advance sales tax to be made in the petitioner's name, these being purely local operations or for Pan-Asiatic Commercial to affirm, in the private communication sent by it to the petitioner, that the latter was the one that ordered the goods from the United States.

If anything, we perceive in the entire set-up an arrangement through which the sales taxes due could be minimized, by having Pan-Asiatic Commercial, as indorsed of the goods, withdraw the same from Customs upon payment of the advance sales tax and then execute a sale thereof to Heng Tong Textiles at cost, or at a negligible profit. As it turned out, according to the Court of Tax Appeals, "the goods were made to appear as having (thus) been sold. . . so that no sales tax was paid by petitioner upon the sales of such goods...(and) neither was any sales tax paid on the supposed sales of said goods by the Pan-Asiatic Com-mercial to the petitioner as the sales were made apparently at cost." This is so because "during the period in question," the Court of Tax Appeals added, "the sales tax on sales of imported articles was based on the gross selling price thereof, the Advance sales tax paid upon removal of the goods from the customhouse being credited against the tax on the actual gross selling price paid by the importer. (See Rep. Act No. 253; General Circular No. V-106, February 19, 1951.)"

In our opinion, however, the arrangement resorted to does not by itself alone justify the penalty imposed. Section 183(a), paragraph 3, of the Internal Revenue Code, as amended by Republic Act No. 253, speaks of willful neglect to file the return or willful making of a false or fraudulent return. An attempt to minimize one's tax does not necessarily constitute fraud. It is a settled principle that a taxpayer may diminish his liability by any means which the law permits. "The intention to minimize taxes, when used in the context of fraud, must be proved to exist by clear and convincing evidence amounting to more than mere preponderance, and cannot be justified by mere speculation. This is because fraud is never light to be presumed." (Yutivo Sons Hardware Co., vs. CTA, G. R. No. L-13203, and cases cited.) No such evidence is shown by the record in the case of the herein petitioner. Its actuation not incompatible with good faith on its part, that is, with a genuine belief that by indorsing the goods to Pan-Asiatic Commercial so that the latter could, as it did, take delivery thereof, Pan-Asiatic Commercial would in law be con-sidered the importer. It may even be true, as the peti-tioner insists, that it was Pan-Asiatic Commercial that financed the importations but placed them in the name of the petitioner as a matter of accommodation, in which case the element of fraud would be ruled out, although from the legal viewpoint and as far as the right of the Government to collect the taxes was concerned the petitioner was the real importer and hence must shoulder the tax burden.

The decision of the Court of Tax Appeals is modified, by eliminating therefrom the penalty of 50% on the amount of deficiency sales taxes imposed, and is affirmed in all other respects. No pronouncement as to costs.

Concepcion, C.J., Reyes, Dizon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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