

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. DINGALAN FOREST PRODUCTS CORPORATION, AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-24405. August 27, 1968

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CONCEPCION, C.J.,:

Petition of the Commissioner of Internal Revenue to review a decision of the Court of Tax Appeals, the last two paragraphs of which read:

"In view of the ruling of this Court in the case above-quoted, and it appearing from the evidence of record that of the P48,767.73 sought to be refunded, the sum of P27.92 was not assigned to the petitioner, and the amount of P3,065.86 represents sales taxes on hand-sawn lumber, the sale of which manufactured products was properly treated as original sale effected by the petitioner, we hold that the petitioner is entitled to the refund of the sum of P45,673.95.

"WHEREFORE, the respondent is hereby ordered to refund to the petitioner the sum of P45,673.95, without any pronouncement as to costs."

The case had been submitted to said Court for decision upon a stipulation with the Dingalan Forest Products Corporation - hereinafter referred to as the petitioner - to the effect:

"1. That the petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with offices at the ground floor, Ledesma Bldg., Intramuros, Manila; while respondent is the Commissioner of Internal Revenue, duly appointed and acting as such, with offices at the Finance Building, Manila;

"2. That petitioner has, since October 30, 1957, to date, been the holder of forest concession located in the Municipality of Dingalan, Gabaldon, and Baler, of the pro-vince of Nueva Ecija and Quezon, respectively;

"3. That during the period from January of 1960 to January 19, 1962, the petitioner cut and removed forest products from its aforesaid concession and paid the corresponding forest charges thereon to the Government pursuant to the applicable provisions of the National Internal Revenue Code;

"4. That petitioner sold the said forest products to its various customers who were billed in the sale invoices the corresponding sales tax but the latter assigned to the former, as shown by the attached annexes 'A-1' to 'A-50' whatever refund may be due them by reason of the payment thereof to the respondent, except the amount of P27.92 re-presenting the sales tax billed by its customers who did not make the necessary arrangement;

"5. That out of the sum of P48,767.73 representing sales taxes paid and involved in this case, the amount of P3,065.86 represents taxes billed to petitioner's customers on its sales of hand-sawn lumber;

"6. That in the sale of said forest products by the petitioner, the latter paid the sum of P48,767.73 to the respondent in the concept of percentage or sales taxes for the period from April, 1960 to January 20, 1962, per Annex 'B' hereto attached and incorporated herein as part of this Stipulation of Facts;

“7. That petitioner requested a refund of this said percentage or sales taxes but the respondent denied the same;

“8. That the parties confine the issue of this case on the question of whether or not the petitioner is entitled to the refund of the said amount of P48,767.73.”

In due course, the tax court rendered its appealed decision de-creeing the refund to petitioner herein of the sum of P45,673.95, upon the ground that the sales taxes prescribed in the National Internal Revenue Code are imposed only upon "original sales;" that the forest charges collected by the Government from the petitioner were "payments for timber taken from public forests," in the language of this Court in *Collector of Internal Revenue v. Pio Barretto and Sons*;^[1] that the "original sales" of the timber to which said sum of P45,673.95 refers were, therefore, those made by the Government to the petitioner; and that the sales of said timber, made by the latter to its customers, are not "original sales," and, hence, not subject to sales tax.

The doctrine laid down in the Barretto case was, however, revoked in *Cordero v. Conda*,^[2] in which we held that "forest charges are internal revenue taxes, whether one labels them taxes on property or excise taxes, i.e., taxes upon the privilege of cutting and carting away timber and forest products," which, accordingly, are not sold by the Government to the forest concessionaire.

In support of the theory adhered to in the decision appealed from, the Court of Tax Appeals cited its own view in the case of *Antonio Guerrero v. Collector of Internal Revenue* (C.T.A. Case 286), then on appeal before the Supreme Court. Again, said view of the Tax Court was, on January 31, 1967, rejected and reversed by us in *Commissioner of Internal Revenue v. Guerrero and Guerrero v. Commissioner of Internal Revenue*.^[3] We quote from our decision therein:

"As regards the second item of P1,192.51, representing fixed and percentage taxes and surcharges, as producer of the logs involved in the reassessment, the Court of Tax Appeals held that Guerrero is not liable therefor, upon the theory that said logs were sold by the Government to the one who had cut and removed the products from the forest that the original sale of said logs was, therefore, made by the Government, not by the concessionaire or cutter of the forest products; and that, accordingly, Guerrero is not liable for the payment of the corresponding fixed and percentage taxes thereon. This theory is based upon the premise that, whereas in *Collector of Internal Revenue vs. M. R. Lacson*, G.R. No. L-12945 (April 29, 1960), we held that forest charges are internal revenue taxes, this ruling was reversed in *Collector of Internal Revenue vs. Pio Barretto Sons*, G.R. No. L-11805 (May 31, 1960).

"It is true that the dispositive portion of our decision in the first case expressly sustained the concurring and dissenting opinion of a member of the Court of Tax Appeals in the appealed decision thereof and that the writer of the opinion maintained that forest charges are internal revenue taxes. A careful perusal of the text of the decision of the Supreme Court therein shows, however, that said dissenting opinion is not the ratio decidendi of the aforementioned decision. It should be noted that the Collector of Internal Revenue contested the jurisdiction of the Court of Tax Appeals to entertain the appeal taken by Lacson from the assessment made by said officer involving forest charges, and that the Supreme Court upheld the authority of the tax court to hear and decide said appeal, because the issue therein was the validity of said assessment. From the viewpoint of the Supreme Court, this issue was decisive on the question of jurisdiction of the Court of Tax Appeals, regardless of whether forest charges were taxes or not.

"At this juncture, it may not be amiss to advert to a problem of semantics arising from the operation of Section 1588 of the Revised Administrative Code, the counterpart of which is now Section 315 of the National Internal Revenue Code, pursuant to which:

'Every internal revenue tax on property or on any business or occupation, and every tax on resources and receipts, and any increment to any of them incident to delinquency, shall constitute a lien superior to all other charges or

liens not only on the property itself upon which such tax may be imposed but also upon the property used in any business or occupation upon which the tax is imposed and upon all property rights therein.'

x x x x

"The enforcement of this lien by the Commissioner (for-merly Collector) of Internal Revenue, has often induced the parties adversely affected thereby to raise the question whether a given charge is a tax or not, on the theory that there would be no lien if said question were decided in the negative. In connection therewith, said parties had tended to distinguish between taxes, on the one hand - as burdens imposed upon persons and/or properties, by way of contributions to the support of the Government, in consideration of general benefits derived from its operation - and license fees - charged in the exercise of the regulatory authority of the state, under its police power - and other charges - for specific things or special or particular benefits received from the Government - on the other hand.

"It is high time to stress that the term 'tax', as it appears in said Section 1588 of the Revised Administrative Code and Section 315 of the National Internal Revenue Code, is used in these provisions, not in the limited sense adverted to above, but, in a broad sense encompassing all Government revenues collectible by the Commissioner of Internal Revenue under said Code, whether involving taxes, in the strict technical sense thereof, or not. Thus, under the heading 'injunction not available to restrain collection of tax', Section 305 of said Code - which is the first provision of Title IX (entitled 'General Administrative Provisions'), Chapter I (entitled 'Remedies in General') thereof - provides:

'No court shall have authority to grant an injunction to restrain the collection of any national internal-revenue tax, fee, or charge imposed by this Code.'

"Similarly, under the heading 'Civil remedies for the collection of delinquent taxes,' Section 316 of the same Code ordains:

'The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be (a) by distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and (b) by judicial action. Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes.

No exemption shall be allowed against the internal revenue taxes in any case.' (Underscoring supplied.)

"In other words, the National Internal Revenue Code makes a distinction between taxes, on the one hand, and fees or charges, on the other; but as used in Title IX of said Code, the term 'tax' includes 'any national internal revenue tax, fee or charge imposed by' the Code. And it is in this sense only that we sustained the view taken in the aforementioned concurring-dissenting opinion in *Collector of Internal Revenue vs. Lacson* (supra). Hence, in the *Barretto* case, it was held that the Government does not sell forest products, but merely collects charges on the privilege granted by it 'for the exploitation of forest concessions, i.e., charges for the right to exercise the privilege granted by the Government to the licensee of cutting timber from a public forest or wrest reserve'. In line with this view, we stressed in *Cordero vs. Conda*, G.R. No. L-22369 (October 15, 1966), the declaration made in *Cebu Portland Cement Co. vs. Commissioner of Internal Revenue*, G.R. No. L-18649 (February 27, 1965), that a forest charge 'is a tax not on the minerals, but upon the privilege of severing or extracting the same from the earth,' although strictly a fee for something received is not a tax. As a consequence, the original sale, as contemplated in Section 189 of the Internal Revenue Code, is made by the concessionaire or whoever cuts or removes forest products from public forests or forest reserves - in the case at bar, *Guerrero*, who is accordingly, bound to pay said sum of P1,192.51."

We find no plausible reason to depart from this ruling.

WHEREFORE, the decision appealed from is hereby reversed and another one shall be entered dismissing this case, with costs against petitioner Dingalan Forest Products Corporation.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] G.R. No. L-11805, May 31, 1960. See Resolution of August 31, 1960.

[2] G.R. No. L-22369, October 15, 1966.

[3] G.R. Nos. L-19074 and 19089.

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