

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. CADWALLADER PACIFIC COMPANY, RESPONDENT.

G.R. No. L-20343. September 29, 1976

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Appeal taken by petitioner Commissioner of Internal Revenue from the August 15, 1962 decision of the Court of Tax Appeals in its CTA Case No. 587 holding that respondent Cadwallader Pacific Company is not embraced in the term commercial broker or commission merchant set out in Section 194 (t) of the National Internal Revenue Code, and hence not liable to pay the fixed and percentage taxes imposed on commercial brokers under Sections 182 (A, 3-S) and 195, respectively, of the tax code, and the imposition by the petitioner Commissioner of Internal Revenue on respondent Cadwallader Pacific Company of the 25% and 50% surcharges as devoid of legal basis; and that the Commissioner's method of computation of Cadwallader's sales tax as manufacturer of venetian blinds is erroneous, thus reducing its sales tax liability for 1952 from P6,701.59 to only P255.64.

Petitioner on May 24, 1955 assessed and demanded payment from respondent the aggregate amount of P37,830.94 representing allegedly its fixed and percentage taxes as a commercial broker, deficiency manufacturer's sales taxes and deficiency sales taxes from July 1, 1949 to December 31, 1954 (pp. 24-25, Vol. III, rec.).

Upon protest of respondent of the May 24, 1955 assessment, the petitioner on August 22, 1957 reduced the same to P23,492.84 (pp. 66-71, Vol. III, rec.). But instead of reducing the amount of the last assessment of August 22, 1957, the petitioner on September 9, 1958 increased it to P25,551.96 (pp. 122-124, Vol. III, rec.).

Bringing the September 9, 1958 assessment of P25,551.96 as devoid of legal basis, respondent went on October 2, 1958 to the Court of Tax Appeals, whose decision, as aforementioned, is now under review.

The undisputed facts are:

"Petitioner Cadwallader Pacific Company (Cadwallader for brevity), is a domestic corporation (Par. 1, Petition for Review, CTA rec. p. 1), the primary purpose of which, as embodied in its articles of incorporation, is

'To buy, manufacture, produce, or otherwise sell, import, export, trade and deal in general merchandise, goods, wares, food products and commodities of every kind and description' (BIR rec. p. 54).'

"And, incidental to its primary purpose, it is empowered among others:

'(3) To act as financial, commercial, general agent or factor of, or to undertake management of any person, partnership, corporation, or association carrying on any transaction or negotiation or any business of manufacturing or dealing in all kinds of goods, wares, merchandise, food products and commodities of every kind and description, and, while acting as such agent, factor or manager, to perform such acts, enter into such obligation and carry on such transactions as shall tend to promote the interests that the corporation shall represent.

'(4) To make and enter into all kinds of contracts, agreements and obligations by or with any person or persons, corporation or corporations, for the purchasing, acquiring, holding, manufacturing and selling or otherwise disposing of all kinds of general merchandise, goods, wares, food products and commodities of every kind and description, either as principal or agent, upon commission or otherwise' (BIR rec. pp. 53-54).

It has a branch office (Branch Office for brevity) in Arcadia, California, United States of America which serves as its buying office (Exhibits Y & 6, BIR rec. p. 31).

"During the period from July 1, 1949 to December 31, 1954 (see Exh. 5, BIR rec. p. 19), Cadwallader secured from its local customers orders for the purchase by the latter of merchandise. Pursuant to the arrangements agreed upon, an irrevocable letter of credit payable to the Branch Office was drawn by the buyer who placed the order. A copy of the contract, together with the irrevocable letter of credit was sent to the Branch Office which bought the merchandise and shipped them directly to the local customer in the Philippines on its (Branch Office) invoice (Exh. Y & 6, BIR rec. p. 31; see tsn p. 11). The corresponding bill of lading and other shipping documents and drafts drawn in favor of the Branch Office were forwarded to the bank which issued the letter of credit for acceptance and payment.

"For a better appreciation of the nature of the transactions between Cadwallader and the local buyers, we reproduce hereunder the provisions of a sample contract (Exh. X, BIR rec. p. 13):

'CADWALLADER PACIFIC COMPANY

Importers-Indentors-Exporters

Manufacturers' Representatives

337 Perez Street, Manila

Tel. 5-42-74, 5-33-90

Ref. INDENT ORDER NO. 34/768

CONTRACT

BUYER : Ventura Steel Window-Door Company-340 Mayhaligue, Manila hereby orders and agrees to purchase the merchandise specified below from

SELLER : Cadwallader Pacific Co. - P.O. Box No. 565, Arcadia, Calif., USA

Subject to the terms and conditions written hereon and printed on the reverse side hereof:

Description of Merchandise Ordered

TERMS : Irrevocable Letter of Credit in favor of seller for above amount.

SHIPMENT : Prompt. Subj. to U.S. Gov't. export regulations.

INSURANCE : Ordinary risks

MARKINGS : VSWDC Manila

CONFIRMED: ACCEPTED:

CADWALLADER PACIFIC COMPANY Ventura Steel Windows Co.

(Indentor) (Buyer)

By: By:

'CONDITIONS :

'1. SELLER and/or INDENTOR shall not be responsible for any loss, damage, or delay due to fire, mutiny, war, strikes, or any causes beyond their control. Failure to ship or deliver this contract and all time specifications, however worded, are only directory. SELLER and/or INDENTOR will not be responsible for non-delivery due to force majeure or to any causes beyond their control. All deliveries are subject to reasonable variations from standard in color, form, size and quality.

'2. The SELLER may ship any portion of the merchandise as soon as completed at the manufacturers' works, and/or made ready for shipment, and payment for any portion of the goods as shipped shall become due in accordance with the terms of payment specified on the reverse side hereof.

'3. Defaults, delay or defect in any one or more deliveries and/or portions thereof shall be considered as segregate default and shall not give right for the BUYER to rescind the whole order covered by this contract.

'4. Title to merchandise shall pass to BUYER at time of shipment. The merchandise called for in this contract shall be shipped, travel and be insured for account and risk of the BUYER, and the responsibility of the SELLER and/or INDENTOR shall cease once the shipping documents have been signed by the steamship company and delivered to the forwarding Bank.

'5. The SELLER and/or INDENTOR shall not be responsible in any way whatsoever for fines, charges, or any other expenses incurred because of the late or non-arrival of shipping documents covering the merchandise called for in this contract.

'6. Orders and all other specifications and conditions as stipulated in this contract cannot be modified or changed without written permission of the SELLER and/or INDENTOR.

'7. Should the BUYER secure re-lease of the merchandise called for in this contract by means of trust receipt, or otherwise, from the Bank holding the draft or drafts, SELLER and/or INDENTOR will in no event guarantee such trust receipt. Should the BUYER be unable to arrange for the release by trust receipt or otherwise, on arrival of the merchandise called for in this contract, SELLER and/or INDENTOR as the Seller's representative, shall have the right to take delivery of said merchandise and to sell the same in the open market privately and should the price obtained from this forced sale or sales be less than the contract price, the difference shall be for the account of the BUYER, who agrees to pay the same to SELLER and/or INDENTOR as the Seller's representative, on demand. All expenses incurred in making such forced sale or sales likewise shall be for BUYER'S account.

'8. Should the BUYER refuse, fail or otherwise neglect to accept SELLER'S draft or drafts, or otherwise fail, or neglect to make immediate payment and/or take delivery of the merchandise called for in this contract on arrival thereof, the BUYER agrees and gives to the SELLER and/or INDENTOR as the Seller's representative, the right and authority to take delivery and possession of the said merchandise and to sell or offer for sale the merchandise privately without prior notice to the BUYER; and should the proceeds realized from the sale or sales thereof be insufficient to cover up the total cost or value of the merchandise as invoiced by the SELLER plus the expenses of handling and selling, such shortage or deficit shall be made good covered up and paid by the BUYER to the SELLER and/or INDENTOR immediately upon demand by the SELLER and/or INDENTOR.

'9. All existing revenue and/or taxes, and/or any increase in such revenue and/or taxes, and/or any new taxes

imposed on the merchandise involved in this contract which may become effective after the date of this contract, shall be for account of the BUYER.

'10. All bank charges, such as exchange, interest, banking commission, etc., shall be for the account of the BUYER unless otherwise agreed upon in writing.

'11. The proper Courts empowered by the laws of the Republic of the Philippines shall have jurisdiction over all suits which may arise from any violations of this contract, and the BUYER shall pay for all court costs plus an amount equivalent to 10% of the total invoice value of the merchandise called for in this contract to cover attorney's fees.

'12. In case the BUYER refuses to accept SELLER'S draft or drafts, or to pay any amount which may become due or delinquent, the BUYER agrees to pay interest on such amount becoming due, delinquent or deficient at the rate of 12% per annum computed from date of shipment of the merchandise to date of complete payment in full, including such interest.

'13. All orders covered by this contract are subject to cancellation by the SELLER and/or INDENTOR if the financial responsibility of the BUYER proves at any time to be unsatisfactory to the SELLER and/or INDENTOR; or if the BUYER fails to pay any note or obligation due the SELLER and/or INDENTOR; or if the BUYER has failed to make satisfactory settlement to the SELLER and/or INDENTOR on previous orders or shipments.

'14. It is understood and agreed upon that insofar as the CADWALLADER PACIFIC COMPANY is concerned, its intervention is limited to a mere broker in effecting this transaction and that no responsibility whatsoever attaches to it. It is also understood and agreed further, that in the event there is violation of the conditions given hereof, BUYER recognizes the said CADWALLADER PACIFIC COMPANY as the SELLER'S and/or SHIPPER'S representative authorized and empowered to bring suit in the name of the SELLER and/or SHIPPER, or its own name CADWALLADER PACIFIC COMPANY alone without joining the SELLER and/or SHIPPER, in which case the personality of the CADWALLADER PACIFIC COMPANY shall not be questioned in court by the BUYER or by its agent and/or representatives.

'15. Should it be stipulated that buyer shall open an irrevocable confirmed Letter of Credit or in such terms as indicated in this contract in favor of seller or shipper upon confirmation of this order and the same is confirmed, the buyer hereby agrees and binds himself to open said letter of credit for the full value of this order, inclusive of such other expenses or charges indicated therein, or remit the foregoing by telegraphic transfer. In the event that buyer fails, neglects or refuses to comply with the foregoing within ten (10) days from receipt of such confirmation, buyer will be liable for all and whatsoever kind of expenses and damages incurred in connection with this order.'

"Profits derived from the transactions were accounted for in Cadwallader's profit and loss statement as 'commission earned'. Although one-half of the profits were credited in favor of Cadwallader and one-half in favor of the Branch Office, the whole was declared as income in the former's Philippine income tax returns (Exh. 1, BIR rec., p. 62).

"For the periods from July 1, 1949 to September 21, 1950 and from September 22, 1950 to December 31, 1954, Cadwallader realized profits on said transactions in the amounts of P36,622.22 and P141,503.70, respectively, or a total of P178,125.92 on which respondent assessed broker's percentage and fixed taxes, inclusive of surcharges, in the amount of P18,010.37 (Exh. 4, BIR rec., pp. 38-39)." [Decision of the Court of Tax Appeals, pp. 10-14, Vol. I, rec.; p. 4, Vol. II, rec.; pp. 13-15, Vol. III, rec.].

I

1. Petitioner is correct in his contention that respondent acted as a commercial broker in effecting the transactions involved in this present appeal. Paragraph 14 of the contract used and prepared by respondent is but too clear on this point. It clearly defines its participation in effecting the said transactions as that of a commercial broker, thus:

"14. It is understood and agreed upon that insofar as Cadwallader Pacific Company is concerned, its intervention is limited to a mere broker in effecting this transaction and that no responsibility whatsoever attaches to it. It is also understood and agreed further, that in the event there is violation of the conditions given hereof, BUYER recognizes the said CADWALLADER PACIFIC COMPANY as the SELLER'S and/or SHIPPER'S representative authorized and empowered to bring suit in the name of the SELLER and/or SHIPPER or its own name CADWALLADER PACIFIC COMPANY alone without joining the SELLER and/or SHIPPER, in which case the personality of the CADWALLADER PACIFIC shall not be questioned in court by the BUYER or by its agents and/or representatives" (Italics supplied).

Aforesaid paragraph speaks of three parties, contrary to the claims of the respondent. It makes mention of buyer, seller and/or shipper and Cadwallader Pacific Company in the capacity of a broker and as seller's and/or shipper's representative. By the very wording of the said paragraph, seller is a different entity from Cadwallader Pacific Company, but said company also acts as the seller's and/or shipper's representative for certain specified purposes. As admitted by respondent, "[A]n indent transaction requires three parties to the transaction, namely, the customer or buyer, the commercial broker or indentor, and the supplier who is usually a non-resident manufacturer residing in the country where the merchandise is to be bought" (p. 42, Vol. II, rec., pp. 18-19, 22, Respondent's Brief, Vol. I, rec.). By the very terms of paragraph 14, Cadwallader Pacific Company acts not only for its local customers but likewise for the undisclosed seller or manufacturer. Thus, in case of violations of the conditions of the contract, "x x x BUYER recognizes the said CADWALLADER PACIFIC COMPANY as the SELLER'S and/or SHIPPER'S representative authorized and empowered to bring suit in the name of the SELLER and/or SHIPPER or its own name CADWALLADER PACIFIC COMPANY alone without joining the SELLER and/or SHIPPER, in which case the personality of the CADWALLADER PACIFIC COMPANY shall not be questioned in court by the BUYER or by its agents and/or representatives." It cannot therefore now be successfully claimed by respondent that it is itself the seller in the said transactions for it expressly names itself in the contract in paragraph 14 thereof, as the representative of the seller and/or shipper. Simple common sense should have deterred respondent from making this contention for one cannot represent itself in a representative capacity. The main office in the Philippines acts for its local customers while the branch office in the United States acts for and deals with the seller or manufacturer. Because the main and the branch offices are one and the same Cadwallader Pacific Company, the clear conclusion is that it acts for both the buyer and the seller. The general pattern of conduct of the respondent in these transactions as contained in the agent's report (Exh. 5, pp. 22-16, BIR rec., Vol. III, rec.) very well confirms this proposition. Thus:

"Respondent's Manila office secured prospective buyers in the Philippines. Once a prospective buyer was secured, the respondent and the buyer entered into an indent order contract a sample of which is found on page 15 of the BIR records. A copy of the indent contract was forwarded to California, U.S.A., together with an irrevocable letter of credit drawn in a local branch by the buyer in favor of respondent's California office. Upon receipt of the indent order contracts, the California office canvassed the U.S. market to fill up the orders contained therein as neither the respondent nor its California office carried stocks in trade. Immediately upon procuring the goods or merchandise ordered by the Philippine buyer, the California office invoiced them in the name of the buyer and shipped them direct to the latter, accompanied by the usual bill of lading and other shipping documents and by drafts drawn against the buyers in favor of respondent's California office, such drafts being forwarded to the local bank or banks that issued the irrevocable letters of credit for presentation, acceptance and payment by the local buyers" (pp. 5-6 of Petitioner's Brief, p. 49, Vol. I, rec.).

By statutory definition, "(t) 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 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."

By judicial interpretation, it was held that:

"A commission merchant is one engaged in the purchase or sale for another of personal property which, for this purpose, is placed in his possession and at his disposal. He maintains a relation not only with his principal and the purchasers or vendors, but also with the property which is the subject matter of the transaction. x x x x x x

"x x x The broker, unlike the commission merchant, has no relation with the thing he sells or buys. He is merely an intermediary between the purchaser and the vendor. He acquires neither the possession nor the custody of the things sold. His only office is to bring together the parties to the transaction. x x x" (Pacific Commercial Co. vs. Yatco, 68 Phil. 398).

"A broker is generally defined as one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name, but in the name of those who employed him; he is strictly a middleman and for some purposes, the agent of both parties" x x x (Behn Meyer & Co., Ltd. vs. Nolting and Garcia, 35 Phil. 274).

"The chief feature which distinguishes a broker from other classes of agents is that it is the intermediary or middleman and, in effecting a sale or exchange of property, acts in a certain sense as the agent of both parties to the transaction. Another distinction is that the idea of exclusiveness enters into an employment agency, while in respect of a broker there is a holding out of oneself generally for employment in matters of trade, commerce and navigation and on this principles, a broker is distinguished from a clerk (12 C.J.S. pp. 8-9, citing cases, italics supplied)" [Kuenzle & Streiff, Inc. vs. Commissioner of Internal Revenue, 12 SCRA 300; Collector of Internal Revenue vs. Tan Eng Hong, 18 SCRA 431].

By its own stipulation, respondent Cadwallader Pacific Company had correctly described its participation in the transactions covered by the indent contract, which it, itself, prepared, as that of a broker. Hence, it cannot now avoid the legal effects of that admission by repudiating the same on the pretext that its actual conduct of the transactions is otherwise. For, as already stated, the aforesaid paragraph 14 of the indent contract, which deals specifically with the nature of respondent's participation in the contract, not only expressly stated respondent's participation as that of a broker; but likewise gave the features of one acting as a broker. Thus "x x x its intervention is limited to a mere broker in effecting the transaction and no responsibility whatsoever attaches to it. x x x [I]n the event there is violation of the conditions given hereof, BUYER recognizes the said CADWALLADER PACIFIC COMPANY as the SELLER'S and/or SHIPPER'S representative authorized and empowered to bring suit in the name of the SELLER and/or SHIPPER or its own name CADWALLADER PACIFIC COMPANY alone without joining the SELLER and/or SHIPPER, in which case the personality of the CADWALLADER PACIFIC COMPANY shall not be questioned in court by the BUYER or by its agents and/or representatives." Furthermore, on the very face of the contract, respondent Cadwallader Pacific Company signed, not as a seller, but as an indenter (Exh. X, pp. 13-15, Vol. III, rec.).

It is thus our considered view that Cadwallader Pacific Company, in effecting the transactions, subject matter of the present case, acted within the statutory definitions of a commercial broker, which expressly includes that of a commission merchant.

2. Respondent Court of Tax Appeals therefore erred in making an interpretation contrary to the express and clear

provisions of the indent contracts used by respondent Cadwallader Pacific Company in the transactions subject of the present case. The contract was clear as to Cadwallader's participation and hence, there was no need to make any interpretation. Even assuming that indeed there was doubt brought about by the other stipulations of the contract, that doubt should be resolved against respondent Cadwallader Pacific Company, because, firstly, paragraph 14 of the indent contract should govern since said paragraph alone specifically deals with the nature of respondent's participation in effecting the transactions covered by the said indent contract, the very main issue of the case, and as already stated, respondent Cadwallader Pacific Company not only described its participation therein as a mere broker but also signed in the contract as an indenter; and secondly, the contract having been prepared by respondent Cadwallader Pacific Company, all doubts arising therefrom must be resolved against it.

3. Respondent Cadwallader Pacific Company contends that respondent Court of Tax Appeals was right in holding as authoritative its previous decision in *Cadwallader Pacific Company vs. Commissioner of Internal Revenue* (CTA Case No. 536, Dec. 23, 1960) which this COURT affirmed in 1966 (G.R. No. L-18297, 18 SCRA 827-834).

But the rationale of the aforesaid decision cannot apply in the present case for various reasons:

- a. While it is true that the contracts used and prepared by respondent Cadwallader Pacific Company in the transactions involved in the previous and second Cadwallader cases are almost identical in terms and stipulations, there is no denying the fact that paragraph 14 of the contract involved in this second Cadwallader case is substantially different from that of the contract in the previous Cadwallader case. Parenthetically, it must be stated that the previous Cadwallader case covers the taxable years 1955 to 1957 while this second case, now before US on appeal, covers earlier taxable years 1949 to 1954.

Paragraph 14 of the contract used by respondent Cadwallader during the taxable years 1955 to 1957, which was the subject of the previous Cadwallader case provides as follows:

"14. It is understood and agreed that in the event there is violation of the conditions given hereof, BUYER recognizes the said CADWALLADER PACIFIC COMPANY, Manila, as the SELLER'S representative authorized and empowered to bring suit in the name of the seller who is the CADWALLADER PACIFIC COMPANY alone, in which case the personality of the CADWALLADER PACIFIC COMPANY shall not be questioned in court by the BUYER or by its agents and/or representatives" (p. 23 of Petitioner's Brief).

On the other hand, the original contract prepared by respondent Cadwallader Pacific Company which was used by it during the taxable years 1949 to 1954, subject of this present (second) case on appeal, provides:

"14. It is understood and agreed upon that insofar as Cadwallader Pacific Company is concerned, its intervention is limited to a mere broker in effecting this transaction and that no responsibility whatsoever attaches to it. It is also understood and agreed further, that in the event there is violation of the conditions given hereof, BUYER recognizes the said CADWALLADER PACIFIC COMPANY as the SELLER'S and/or SHIPPER'S representative authorized and empowered to bring suit in the name of the SELLER and/or SHIPPER or its own name CADWALLADER PACIFIC COMPANY alone without joining the SELLER and/or SHIPPER, in which case the personality of the CADWALLADER PACIFIC COMPANY shall not be questioned in court by the BUYER or by its agents and/or representatives."

A reading of the two provisions readily shows the glaring variance in their terms and conditions. While the original text of paragraph 14 of the contract, which was the one used in this present second case, expressly defines respondent's liability as that of a broker, the subsequent contract, which was the one used in the previous Cadwallader case, omits the said definition or admission. Herein petitioner had reason to insinuate that, "x x x respondent, in order to escape liability for broker's fixed and percentage tax, deleted from its later contracts the statement to the effect that the intervention in the transactions involved in said contracts is that of a mere broker"

(p. 24 of Petitioner's Brief). Indeed, respondent Cadwallader was not held liable for said broker's fixed and per-centage taxes for the years 1955 to 1957 by virtue of OUR affirmance of the decision of the Court of Tax Appeals in the previous Cadwallader case. But in this present appeal, WE can no longer allow respondent to escape from said taxes by reason of the explicit stipulation of paragraph 14 used by respondent in the transactions covered by this case to the effect that it is a broker, which express stipulation is not found in the contract involved in the previous Cadwallader case for the reason that it was subsequently deleted from the contract used by respondent Cadwallader in its subsequent transactions, which were the subject matter of the prior Cadwallader case.

b. The original contract under its crucial para-graph 14 named or mentioned three (3) parties: the seller and/or shipper; the buyer; and Cadwallader Pacific Company as broker and as representative of the seller and/or shipper; while the later contract involved in the previous Cadwallader case named only two parties and expressly named Cadwallader Pacific Company as the seller, thus removing one of the very features of a broker/agency transaction which was present in the original contract.

4. Consequently, respondent Cadwallader Pacific Company is liable to pay the broker's fixed and per-centage taxes and surcharges, in the total amount of P18,018.37.

Respondent Cadwallader Pacific Company is liable for the 25% and 50% surcharges: 25% surcharge for late payment of percentage tax in accordance with section 183 of the Tax Code; and 50% surcharge for having willfully neglected to file the returns for broker's tax purposes within the time prescribed by said section 183 of the Tax Code. Its failure is willful for the reason that while it was well aware of the fact that it is a broker as it itself expressly stipulated in its indent contract, which it drafted, it failed to file the necessary tax returns for brokers.

II

Petitioner disputes the correctness of respondent's computation of its liability for manufacturer's per-centage tax. It appears from the records that: "(D)uring the years 1952, 1953 and 1954, Cadwallader engaged in the manufacture of venetian blinds, making therefrom gross sales in the respective sums of P245,345.50, P215,867.24 and P226,136.32. Believing itself taxable as a contractor, it paid the corresponding contractor's percentage tax. Subsequently, respondent assessed it for manufacturer's sales tax under section 186 of the National Internal Revenue Code, which, after deducting the amounts paid as contractor's tax, amounted to P6,701.59 (Annex 'A' of Petition for Review). Cad-wallader admits liability for percentage tax on the sales of venetian blinds it manufactured, but questions the computation of the tax appearing in the assessment (see Memorandum for Petitioner, CTA rec. p. 51)" [Decision of the Court of Tax Appeals, p. 14, Vol. I, rec.].

The parties are one that respondent is liable as a manufacturer under section 186 of the National Internal Revenue Code. They are at odds however on the correct amount of deductible raw materials used in the manufacture of venetian blinds. In resolving the conflicting claims of the parties on this point, the Court of Tax Appeals stated:

"Cadwallader also assails the deficiency assessment for manufacturer's sales tax. It is urged that the 25% mark-up and expenses, consisting of bank charges, marine insurance and brokerage fees, should be added to the cost of raw materials used during the year involved. But respondent argues that these items have already been included in the inventory of cost of raw materials.

"The contention of respondent that the inventory cost already in-cludes the 25% mark-up, bank charges, marine insurance, and brokerage fees is incorrect because their cost, as appearing in the records, represents only the cost, C & F, and licenses and fees and taxes paid.

"Having sustained the proposition that the mark-up and expenses are not yet included in the inventory costs of raw materials and the same should, therefore, be added thereto, it follows that respondent's method of computing Cadwallader's liability for sales tax on the manufactured venetian blinds is erroneous. Consequently, we find Cadwallader's method, as illustrated in the memorandum submitted in support of its answer to the petition for review, proper and correct.

"However, we find that Cadwallader, in its computation of its liability for sales tax on the manufacture of venetian blinds, represented the total amount of purchases of raw materials imported in 1952 as P46,321.68. From Exhibit I, we gather that the total amount of purchases should be P46,421.68 (the sum of the dollar value, C&F Manila, and license fee and sales tax), which we hold to be correct. In view of this inadvertent error, we find Cadwallader liable for the payment of deficiency manufacturer's sales tax amounting to P204.51 plus a surcharge of 25% for late payment. However, for the years 1953 and 1954, it is not liable for deficiency sales tax.

"Similarly, we find that mechanical errors have been committed in Cadwallader's proffered computation of the sales tax on venetian blinds manufactured in 1953 and 1954. Thus, instead of P7,710.74 as the total amount of tax already paid for 1953, the correct amount is P7,110.74 (see Exh. Y-1, BIR rec., p. 73). And instead of the sums of P581.53 and P1,932.11 spent for marine insurance and brokerage fees in 1954, the correct figures are P572.18 and P1,882.05, respectively (see Exhibit S, No. 5, Petitioner's Folders). These errors do not alter the fact that Cadwallader does not owe deficiency sales tax on venetian blinds manufactured in 1953 and 1954. On the contrary, there is an overpayment, the refund or credit of which is not sought in this proceeding.

"We find Cadwallader's objection to the employment of the ratio method in determining the cost of deductible raw materials used in 1954 meritorious. Cadwallader has presented in evidence invoices, vouchers and importer's declarations upon which the cost of raw materials may be ascertained.

"Cadwallader did not contest its liability for the payment of advance sales tax in the amount of P840.00 for the period from February 16, 1951 to December 31, 1953" (pp. 16-17, Vol. I, rec.).

The foregoing pronouncements of the Court of Tax Appeals are factual and the settled rule is that such factual findings can only be disturbed on appeal if not supported by substantial evidence (*Surigao Consoli-dated Mining Co. Inc. vs. Collector of Internal Revenue*, 9 SCRA 733 [1963]). Petitioner failed to show in his brief that the foregoing factual findings of the Court of Tax Appeals are unsupported by substantial evidence. On the other hand, WE find, after going over the voluminous records of the case (Exhibits F, G, H, H-A, H-1 to H-10-a and I, Vol. IV, rec.; Exhibits J, J-1 to J-10, Vol. V, rec.; Exhibits K, M, N, N-1 to N-20, Vol. VI, rec.; Exhibits O, O-1 to O-54, Vol. VII, rec.; Exhibits P, P-1, Q, R, R-1 to R-46, S, T, T-1 to T-57, U, V, V-1 to V-13 and W, Vol. VIII, rec.) that the findings of the Court of Tax Appeals are amply supported by the evidence. The decision of the Court of Tax Appeals (pp. 17-18, Vol. I, rec.) as well as the brief (pp. 29-35 thereof, p. 55, Vol. I, rec.) of respondent pointed to the evidence on records substantially supporting the aforequoted findings of fact.

WHEREFORE , RESPONDENT CADWALLADER PACIFIC COMPANY IS HEREBY DIRECTED TO PAY ALSO THE BROKER'S FIXED AND PERCENTAGE TAXES FOR THE YEARS 1949 TO 1954 PLUS SURCHARGES IN THE TOTAL AMOUNT OF P18,018.37. THE DECISION APPEALED FROM IS HEREBY AFFIRMED IN ALL OTHER RESPECTS. WITH COSTS AGAINST RESPONDENT.

Teehankee, (Chairman), Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

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