

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. MANILA MACHINERY & SUPPLY COMPANY AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-25653. February 28, 1985

Ponente: PLANA, J.

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PLANA, J.:

Appeal by the Commissioner of Internal Revenue from the decision of the Court of Tax Appeals in CTA Case No. 1250 ordering the refund to respondent Manila Machinery & Supply Co. of P21,620.36 allegedly erroneously paid as commercial broker's percentage tax.

The following partial stipulation of facts outlines the two different modes of business operation of private respondent (petitioner in the CTA):

"(1) as sales representative of certain United States manufacturers and/or suppliers, petitioner's transactions or activities are outlined as follows:

"(1) Philippine buyer ascertains from petitioner whether or not a certain machinery or equipment it desires to buy is available from the U.S. manufacturers or suppliers represented by the former and, if available, requests for price quotations of desired machinery or equipment;

"(2) If agreeable, Philippine buyer places purchase order either directly with the United States manufacturer and/or supplier or with petitioner who forwards it to the U.S. manufacturer;

"(3) Upon notification that the purchase order is accepted, the Philippine buyer opens with a local bank a letter of credit in favor of the United States manufacturer or supplier to cover payment of the goods ordered;

"(4) United States manufacturer or supplier ships the goods to Philippine buyer and collects from the U.S. correspondent of the local bank where the letter of credit was opened, payment of the goods;

"(5) United States manufacturer or supplier credits the petitioner for commission. (CTA rec., pp. 70-73.)

"(2) as distributor of United States manufacturers and/or suppliers, its (petitioner's) transactions or activities are outlined as follows:

"(1) Philippine buyer ascertains from petitioner whether or not a certain machinery or equipment which the said buyer desires to purchase is available from the U.S. manufacturers or suppliers for whom petitioner acts as distributor and, if available, requests for price quotation of the desired machinery or equipment;

"(2) Petitioner furnishes the Philippine buyer with price quotation based on price list f.o.b. factory which is furnished petitioner and fixed by the United States manufacturer or supplier;

"(3) If agreeable, Philippine buyer places the purchase order with the petitioner;

"(4) Upon notice of the acceptance of the purchase order, the buyer opens with a local bank a letter of credit in favor of the petitioner's agent in San Francisco, California, United States of America to cover the price of the

goods ordered;

"(5) Petitioner prepares the purchase instructions in accordance with the purchase order of the Philippine buyer and forwards the same to its agent in the United States;

"(6) The said agent procures the goods from the U.S. manufacturer or supplier;

"(7) United States manufacturer or supplier invoices goods for petitioner's agent in San Francisco, California;

"(8) Petitioner's agent prepares sales invoice of the petitioner and ships the goods to the Philippine buyer."
(CTA rec., pp. 70-73.)

It appears that during the tax period in question, respondent taxpayer realized an income of P630,635.62 from both its activities as sales representative and as distributor of American manufacturers/suppliers and paid thereon P37,837.94 as broker's percentage tax on the assumption that the income consisted entirely of commissions. Later however respondent sought a partial refund of P21,620.36 on the ground that of the total income of P630,635.62, P360,339.35 was not broker's commission but simply overprice or profit (plus exchange income on overprice) realized from ordinary sales of machineries and equipment it had purchased from American companies.

After the request for refund had been denied by the Bureau of Internal Revenue, the taxpayer appealed to the Court of Tax Appeals from which it obtained as aforesaid a favorable judgment, which is now assailed.

The single issue posed in this petition for review is whether the P360,339.35 earned by respondent taxpayer in its capacity "as distributor" of American machineries and equipment should be considered as commission subject to commercial broker's tax under the Tax Code or profit from sales which is not subject thereto.

The merit of respondent's stand is clear on the face of the appealed decision -

"Petitioner (taxpayer) contends that it is not a commercial broker within the definition provided in Section 194(t) of the Revenue Code, which reads:

"(t) 'Commercial broker' includes all persons, other than importers, manufacturer, 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 business for owners of vessels, or other means of transportation, or for the skippers, or consignors or consignees of freight carried by vessels or other means of transportation. The term includes commission merchants."

"One of the purposes of petitioner corporation, as stated in its articles of incorporation, is to 'make and enter into all kinds of contracts, agreements, and obligation with any persons, corporation or corporations, or other associations for the purchasing, acquiring, selling, or otherwise disposing of goods, wares, and merchandise of all kinds, either as principal or agent, upon commission, consignment, or indent orders.' (BIR rec., pp. 43-48.) Petitioner is, therefore, authorized to act either as principal or agent in the transaction of its business. However, the evidence of record regarding petitioner's transactions which gave rise to the income in question indicates the status of petitioner as an independent dealer and not as a commercial broker. Petitioner's contracts with several U.S. manufacturers indubitably show that it acted as an independent dealer. Pertinent portions of these contracts read:

Joy Manufacturing Company

"1. Subject to the terms and conditions hereinafter set forth, the Company grants to the Distributor the exclusive right to purchase for resale the following listed articles and machines. x x x x, manufactured or sold by the Company within the territory indicated hereinafter." (Underscoring supplied; Distributor's Contract, CTA rec., p. 78.)

Briggs & Stratton Corporation

"'Distributor' is an individual or firm under agreement with Briggs & Straton Corporation, whose principal business is the resale of products or commodities at wholesale to Dealers, etc., x x x x. Distributor shall not act as the agent for the Company under this agreement, nor shall Distributor have any right or power hereunder to act for or to bind the company in any respect or to pledge its credit. x x x x." (Underscoring supplied; Distributor Agreement, CTA rec., p. 83.)

The Jeffrey Manufacturing Company

"The purpose of this agreement is to effect through the Representative a wider sales outlet for the Manufacturer's products. This is to be accomplished by the Representative purchasing certain products, hereinafter listed, and produced by the Manufacturer, for resale, and diligently promoting their sale in the Representative's territory." (Italics supplied; Export Representative Agreement, CTA rec., 85.)

Toledo Scale Corporation

"II.

(a) To sell only to the Dis-tributor Toledo Machines for use in the Distributor's territory, except the following machines. x x x

"IV.

The responsibility of the Company for merchandise ordered by the Distributor x x x shall end with its delivery f.o.b. factory, all risks of fire, loss or damage after the shipment has been delivered f.o.b. factory or while in possession of any trans-portionation company x x x, shall be borne by the Distributor.

"V.

(h) x x x It is expressly the intention of the parties hereto that the Distributor's status is that of an independent contractor." (Underscoring supplied; Export Distributor's Sales Agreement, CTA rec., pp. 90-93.)

"Respondent cites the agreement of petitioner with the Toledo Scale Corporation (CTA rec., pp. 90-93.), which authorizes petitioner to solicit sales of certain products of the latter corporation, as an indication of brokerage. But respondent merely quoted that portion wherein petitioner is authorized to act as agent or representative but did not mention petitioner's equal authority to act as distributor or independent dealer with respect to the same corporation.

"A perusal of the records of the case at bar equally yields the conclusion that petitioner, through its agent, M.S. Smith in San Francisco, California, U.S.A. (BIR rec., pp. 49-50), was the purchaser and owner of the machineries it sent to the Philippine buyers. This conclusion is established by the fact that when petitioner received purchase orders from local buyers and there was no stock available, it sent the orders to its agent in California and required the latter 'to purchase from x x x x' the U.S. manufacturers or suppliers the items called for in the purchase orders (See BIR rec., pp. 63, 79, 98, 111 & 124.) Petitioner was in turn paid through the letters of credit opened by the Philippine buyers with local banks in favor of agent M.S. Smith. (See BIR rec., pp. 59-128.)

"The facts (1) that petitioner shouldered the losses resulting from some of the transactions in questions (See BIR rec., pp. 21-22); (2) that if petitioner had no stock available in the Philippines, it forwarded the purchase order to its agent in California who procured the machineries from U.S. manufacturers (BIR rec., Exh. "1", pp. 53-56); and

(3) that the U.S. Manufacturers invoiced the goods to petitioner's agent in California who prepared the sales invoice and shipped the goods to the Philippine buyers (See CTA rec., Stifacts, pp. 70-73) negate agency."

In effect, the instant petition controverts the factual findings of the court a quo. It is well settled that in passing upon petitions for review of the decisions of the Court of Tax Appeals, this Court is generally confined to questions of law. The findings of fact of said Court are not to be disturbed unless clearly shown to be unsupported by substantial evidence. (Rules of Court, Rule 44, Section 2. Republic Act 1125, Sections 18-19.) Substantial evidence has been construed to mean not necessarily preponderant proof as is required in ordinary civil action, but such kind of "relevant evidence as a reasonable man might accept as adequate in support of a conclusion." (De Lamera vs. Court of Agrarian Relations, et al., 17 SCRA 368.) There is no circumstance of record indicating that the findings of the lower court are not supported by substantial evidence.

WHEREFORE, the appealed decision is affirmed.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Relova, Gutierrez, Jr., De La Fuente, and Alampay, JJ., concur.

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