

MASBATE CONSOLIDATED MINING COMPANY, PLAINTIFF AND APPELLEE, VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. L-7898. February 27, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This appeal stems from an action instituted in the Court of First Instance of Manila by plaintiff against the defendant seeking the refund of the sum of P57,551.10 representing certain compensating' taxes collected by the latter under section 190 of the National Internal Revenue Code. Subsequently, plaintiff reduced the amount of its claim to P50,152.27 recognizing that its right to claim for the refund of P7,398.83 was barred by prescription in view of the lapse of two years from its payment to the filing of the suit.

Plaintiff's action is based upon its claim that said section 190 of the i National Internal Revenue Code is in effect a tax on imports and the same, can have no valid effect unless approved by the President of the United States in line with the provisions of section 1 (9) of the Ordinance appended to our. Constitution. And since the requisite approval was proclaimed only on October 16, 1940, after the importation subject of the tax was made, plaintiff contends that the collection of the tax is invalid and unconstitutional.

Defendant set up as main defense that the amount which plaintiff seeks to recover was collected as compensating tax under section 190 of the National Internal Revenue Code, which was in effect from July 1, 1939 to October 15, 1940, which section imposes, not a tax on imports, but rather a percentage tax on the; privilege of use, and that for such kind of tax the approval of the President of the United States is not necessary to make the law valid and effective.

The trial court sustained the view of the plaintiff holding that the tax imposed by section 190 of the National Internal Revenue Code as originally enacted, is "essentially and inherently a tax on imports" and as such it requires the approval bf the President of the United States. Consequently, it rendered judgment ordering the defendant to refund ta the plaintiff the amount of P50.152.27. Hence this appeal.

It appears that on July, 15, 1939, the President of the Commonwealth Government approved Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code. With the exception of section 187 thereof, the law was made effective as of July 1, 1939. 'Section 190 of said Act , provides for a compensating tax on commodities, goods, wares, or merchandise purchased or received by any Philippine resident from without the Philippines. Said section, as originally enacted, reads as follows:

"SEC. 190. Compensating tax.—All persons purchasing or receiving from without the Philippines any commodities, goods, wares, or merchandise, excepting those subject to specific taxes under Title IV of this Code, shall pay on the total value thereof at the time they are Received by such persons, including freight, postage, insurance, commission, and all similar charges, a compensating tax equivalent to the percentage tax imposed under this Title on original transactions effected' by merchants, importers, or manufacturers, such tax

to be paid upon the withdrawal or removal of said commodities, goods, wares, from the customhouse or the post office; Provided, however, that merchants, importers, and manufacturer's, who are subject to tax under sections 184, 185, 186, 187, and 189 of this Title shall not be required to pay the tax herein imposed where the articles purchased or received by them from without the Philippines are to be resold, bartered, or exchanged, or used in connection with their business."

The foregoing provision was subsequently amended by section 6 of Commonwealth Act No. 503 which provides that said amendment "shall be effective only when the same shall have been approved by the President of the United States * * * and such approval shall have been made known by proclamation by the President of the Philippines." Such approval was obtained and was embodied in a proclamation which was issued by the President of the Philippines on October 16, 1940. But before the approval and proclamation aforesaid, plaintiff bought and imported from outside the Philippines certain merchandise for use exclusively in connection with its mining business and defendant collected thereon the amount in question as compensating tax under section 190 of the National Internal Revenue Code.

The issue to be determined is whether said section 190, under which the tax in question was assessed, imposes an import tax and, therefore, did not acquire validity until after the President of the Philippines proclaimed on October 16, 1940 its approval by the President of the United States pursuant to paragraph 9, section 1, of the Ordinance appended to our Constitution.

The issue raised is not new. It was raised for the first time in *International Business Machines Corporation of the Philippines vs. Collector of Internal Revenue*, No. L-6732, *Infra*, p. 595, wherein this Court had occasion to express its view on the matter. In discussing the nature of the tax imposed by section 190 of the National Internal Revenue Code, this Court said that the compensating tax imposed therein is not a tax on the importation of goods. "This is evident", said the Court, "from the proviso that imported merchandise which is to be disposed of in transactions subject of sales tax under sections 181, 185, 186, 187 and 189 of the Internal Revenue Code, is expressly exempted from the compensating tax. This feature shows that it is not the act of importation that is taxed under section 190, but the use of imported goods not subjected to a sales tax: otherwise the compensating tax would have been levied on all imported goods regardless of any subsequent tax that might accrue. Moreover, the compensating tax accrues whether or not the imported goods are subject to pay customs duties."

The above ruling finds support in the decision of the United States Supreme Court in *Henneford vs. Silas Mason Co. Inc.*, 300, U. S. 577, 81 L. Ed., 814, 818-819, the pertinent portion of which we quote:

"The tax is not upon the operations of interstate commerce, but upon the privilege of use after commerce is at an end.

"Things acquired or transported in interstate commerce may be subjected to a property tax, non-discriminatory in its operation, when they have become part of the common mass of property within the state of destination. *Wiloil Corp; vs. Pennsylvania*, 294 U. S. 169, 175, 79 L. ed. 838, 840, 55 S. Ct. 368; *Cudahy. IJacking Co. vs. Minnesota*, 246 V. S. 450, 453, 62 h. ed. S27, 829, 88 S:-.Ct. 373 *Brown-Forman Ca. vs. Kentucky*, 217 D. S. 563, 575, 54 L. ed. 883 887, SO S. Ct. \$78; *American Steel and Wire Co. vs. Speed*, 192 U.S. BOO, 519, 48 L. ed. 538, 546, 24 S. Ct. 365; *Woodruff vs. Parham* 8 Wail. 123, 1ST, 19 L. ed. 38S, 386. This is so, indeed,, though they are still in the original packages. *Sonneborn Eros. vs. Cureton (Sonrohorn Bros. vs. Keeling)* 262 U.S. 506, 67 L. ed. 1095, 43 S. Ct. 643; *American Steel and Wire Co. vs. Speed*, 192 U. S. 500, 48 L. ed. 538, 24 S. Ct. 365, *supra*; *Woodruff vs. Parham*, S Wall, 123, 19 L. ed. 382, *supra*. For like reasons they may be subjected, when once they are at rest, to a non-discriminatory tax upon use or enjoyment. *Nashville, C. and St. L. E. Co. vs. Wallace*, 288 U.S. 249, 267, 77 L. ed. 730, 738, 53 S. Ct. 345, 87 A.L.H. 1191; *Edehnan vs. Boeing Air Transport* 289 U.S. 249, 252, 77 L. Ed. 1155, 1157, 58 S. Ct. 691'; *Monamotor Oil Co. us. Johnson*, 292 U.S. 86, 93, 78 L. ed. 1141, 1147, 64 S. Ct. .575. The privilege of use is only one attribute,

among many, of the bundle of privileges of use that make up property or ownership, *Nashville, C. and St. L. U. Co. vs. Wallace*, 288 U.S. 249, 77 L. vs. Henneford, 183 Wash. 317, 49 P. (2d) 14) does not make the power to impose it v less, for anything the commerce clause has to say of its validity, than calling it a property tax and laying it on ownership. A non-discriminatory tax upon local sales . . . has never been regarded as imposing a direct burden upon interstate commerce and has no greater or different effect upon that commerce than a general property tax to which all those enjoying the protection of the State may be subjected. *Eastern Air Transport vs. South Carolina Tax Commission*, 285 U.S. 147, 153, 76 L. L. ed. 673, 675, 52 S. Ct. 340. A tax upon the privilege of use or storage when the chattel used or stored has ceased to be in transit is now an impost so common that its validity has been withdrawn from the arena of debate. *Nashville, C. and St. I. R. Co. vs. Wallace*, 228 U.S. 249, 77 L. Ed. 730, 53 S. Ct. 345, 87 A.L.R. 1191, supra; *Edelman vs. Boeing Air Transport*, 289 U.S. 249, 77 L. ed. 1155, 53 S. Ct. 591, mpra,,; *Monamotor Oil Co. vs. Johnson*, 262 U.S.86, 78 L. Ed. 1141, 54 S. Ct 575, supra; Cf. *Vancouver Oil Co. vs. Henneford*, 183 Wash. 817, 49 P. (2d) 14, supra."

The decision appealed from is reversed. The case is dismissed, with costs against appellee.

Parás, C. J., Padilla,, Montemayor, Reyes, A., Jugo, Labrador, Concepcion, Reyes, J. B. L. and Endencia, JJ., concur.

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