

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LUZON INDUSTRIAL CORPORATION AND MANILA SURETY &
FIDELITY CO., INC., DEFENDANTS AND APPELLANTS.**

G.R. No. L-7992. October 30, 1957

Ponente: BENGZON, J.

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BENGZON, J.:

Appeal from a judgment requiring defendants to pay 25 per cent surcharge for delinquency in the payment of taxes.

The case was submitted, in the court below, upon a stipulation of facts, which as summarized in the appealed decision were the following:

"Defendant Luzon Industrial Corporation was obligated to pay the plaintiff the amount of P36,232.93 for sales, tax on coconut oil, for the period from January 1, 1948 to March 31, 1948, and payable on or before April 20, 1948.

"On April 20, 1948, defendant Luzon Industrial Corporation made out its Check No. E-106782 drawn on the Hongkong Shanghai Banking Corporation, in the amount of P36,232.93, and payable to the City Treasurer of Manila. It sent its messenger to the Office of the City Treasurer of Manila on the said date, with instructions to pay over the said check to the City Treasurer. The messenger stayed in the premises of the City Treasurer's Office until 4:00 o'clock in the afternoon but was unable to make payment due to numerous taxpayers lined up in front of the office. Sensing that his turn may not reach him on time, the messenger sent the check by mail to the City Treasurer and was received by the latter on April 22, 1948. Upon receipt of the check on April 22, 1948, the City Treasurer applied the amount thereof to the payment of the sales tax due from Luzon Industrial Corporation, and referred the matter to the Collector of Internal Revenue for the imposition of the statutory surcharge of 25 per cent. Inasmuch as the check was actually received on April 22, 1948, the Collector of Internal Revenue decided to impose the 25 per cent surcharge as provided for in section 183 of the Revenue Code. Upon refusal of the Luzon Industrial Corporation to pay the surcharge, the Collector of Internal Revenue issued a warrant of distraint and levy against the properties of the former. The Luzon Industrial Corporation demurred of the writ and in order to suspend the execution of the same, agreed to furnish a bond, jointly and severally, with the defendant Manila Surety & Fidelity Co., Inc. to guarantee payment of the tax. Notwithstanding demands made by the plaintiff, defendants failed and refused to make good the amount of the bond, alleging that the surcharge sought to be imposed is null and void and not legally demandable."

The question is whether the tax should be deemed to have been paid on April 20 as appellants contend, or on April 22 as appellees and the lower court maintain. If on the first date, reversal of the judgment is indicated; if on the last, affirmance should be ordered.

Admittedly the Internal Revenue Law has no provisions regarding tax payments by mail. But the Bureau of Internal Revenue that was given power to issue rules and regulations for the implementation of the Internal

Revenue Laws, promulgated in 1926 its General Circular No. 206, dated October 27, 1926, the burden of which was that tax remittances by mail are deemed to have been received as payment on the day they were actually received, not on the day they were mailed. However in 1927 the Governor General issued Executive Order No. 92 of the following tenor:

"* * *. A taxpayer who makes a remittance through the mails of either money order, cash or check covering¹ a tax due from him shall be considered delinquent and subject to the payment of the surcharge or statutory penalty hereinabove mentioned where it can not be proven that the remittance was deposited in the mails in ample time to reach the office of the tax collector on or before the close of office hours on the last day for the payment of the tax."

The court below applied this Executive Order. Having found that as the check had been deposited in the mail after office hours on April 20, it could not in due course have reached the Manila Treasurer's Office on the same date, the Hon. Manuel Mejia, Judge, held the payment to have been effected out of time. The deadline was April 20, it must be recalled.

Nevertheless, appellants claim that this Executive Order has become obsolete, things having "greatly changed" and "business expanded" since 1927. They also claim it was repealed impliedly by Commonwealth Act No. 466 (National Internal Revenue Code) effective since the year 1939. Both contentions have no sound basis. As a matter of fact in 1943 this Court applied (and upheld) such Executive Order in *Jamora vs. Meer*, 74 Phil. 22. Therein this Court declared the taxpayer delinquent who deposited his remittance by registered mail after 4:00 o'clock in the afternoon of March 20, 1939—the deadline for payment—such mail having been in due course received on March 21; and this . Court approved the surcharge of 25 per cent collected for delinquency, by the revenue officials.

The appellants do not impugn the legal power of the then Governor General to issue the above executive order, which by the way, was recommended by the Insular Auditor, the Collector of Internal Revenue and the Department of Finance. [1] Indeed no taxpayer should be heard to complain on that score, the said order being in effect beneficial to his class in the sense that even if his payment is actually received in the collecting government office after the last day fixed by law for such payment, still he will not be considered delinquent if he shows he had deposited his remittance in the post office in time to be received in regular course on the due date.

Again it is contended that the governing principle is section 1 of Rule 27 of the Rules of Court:

"Section 1. Filing with the Court, defined.—The filing of pleadings, appearances, motions, notices, orders and other papers with the court as required by these rules shall be made by filing them with the clerk of the court. The date of mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post-office registry receipt, shall be considered as the date of their filing, payment, or deposit in this court."

Yet that rule applies expressly to payments or deposits of money "in the court." It does not cover payments made in other government offices; and it could not do so, for the simple reason that it had been promulgated by this Supreme Court in the exercise of its power under the Constitution to regulate procedure "in all courts" and we could not have attempted to extend our power of regulation to¹ administrative matters under the Executive Department in charge of tax receipts or collections.

Lastly and as an alternative prayer, appellants request that the surcharge be reduced by the court in accordance with Article 1154 [2] of the Civil Code which gives the judge power to "equitably modify the penalty when the

principal obligation has been partly or irregularly fulfilled by the debtor." They say, by sending its messenger to the City Treasurer's Office, the taxpayer "undoubtedly demonstrated its good faith and (made) efforts to pay its obligation on time." We agree with the trial judge that this article refers to penalties prescribed in contracts—which is not the matter before us. The case of *Treasurer vs. Rodis* (40 Phil. 850) invoked by appellants involved the penalty provided in a bond, which is a contractual obligation. Therein the court could exercise, and did exercise the power to equitably modify the penalty.

In this instance the law directs the collection of 25 per cent surcharge; and this we held to be mandatory on the Collector, who has no discretion in the matter (*Lim Co Chui vs. Posadas*, 47 Phil. 460).

In view of the foregoing, the appealed judgment will be affirmed with costs against appellants.

Paras C. J., Padilla, Montemayor, Reyes A., Bautista Angelo, Labrador, Conception, Reyes J.B.L. and Endencia, JJ., concur.

[1] Official Gazette, December 22, 1957.

[2] Article 1229, New Civil Code.

DISSENTING OPINION

FELIX J.:

The narration of facts made in the majority decision is unquestionably correct. In order, however, that said facts may be considered in their own light and thus show their shocking consequences, I deem it proper to state briefly and in a nutshell those that constitute the basic grounds on which my dissent rests. The Government required defendant Luzon Industrial Corporation to pay for the first quarter of 1948—January 1 to March 31—a tax in the amount of P56,232.98 for its sales of oil, which payment had to be made with the City Treasurer of Manila not later than April 20, 1948. To fully satisfy that obligation, said defendant issued on the latter date Check No. E-106782 of the Hongkong and Shanghai Banking Corporation and sent a messenger or representative to the Office of the City Treasurer of the City of Manila to make delivery thereof. This messenger, however, sensing that he would not be able to reach his turn before the closing of office hours in view of the numerous taxpayers lined ahead of him, thought it expedient to make the payment by registered mail, which he did on the same day, and in the ordinary course of mail said Check No. E-106782 was actually received and cashed by the City Treasurer of Manila on April 22, 1948. For the alleged 2 days' delay in receiving the check (not in the issuance thereof) the Republic of the Philippines, through the Collector of Internal Revenue, sought to collect from defendants herein 25 per cent amounting to P9,058.23 and in the action that the Republic of the Philippines instituted for that purpose in the Court of First Instance of Manila against the above-mentioned defendants, the lower court rendered decision for the plaintiff which is affirmed by a majority of this Court. I certainly cannot agree with this final disposition of the action.

The case was submitted for decision in the lower court upon a stipulation of facts after which the trial Judge held that although Section 183 of the National Internal Revenue Code does not provide how payment should be made and, therefore same could be exacted in any manner recognized by law, yet and inasmuch as Executive Order No. 92 issued by the Acting Governor General on December 30, 1927, upon authorizing taxpayers to remit through the mail payment for taxes due, provided that same be deposited in the mail within ample time to reach the office of the tax collector on or before the close of office hours of the last day for the payment of the tax, as otherwise it

would be considered as late payment; and considering that Check No. E-106782 of the Hongkong & Shanghai Banking Corporation intended for the settlement of the tax due by defendant taxpayer was mailed only on the last day of payment and was actually received by the City Treasurer on April 22, 1948, or 2 days later, same was made out of time, and disregarding the arguments advanced by defendants, they were ordered to pay the plaintiff the amount of P9,058.23 representing 25 percent surcharge on the tax with legal interest from the date of the filing of the complaint and costs. Under the circumstances obtaining in the case such decision is, in my opinion, evidently oppressive and unconscionable.

The issue before Us was the determination of whether or not the payment of a tax effected by mail posted on the last day of payment, after a representative of the taxpayer had been at the office of the Treasurer at the City Hall of Manila to effect the payment, which he failed to do because the personnel in said Treasurer's Office was too busy to attend to him, should be considered as late payment.

The tax which defendant corporation allegedly paid out of time was imposed by section 183 of the Tax Code, which reads as follows:

Sec. 183. Payment of Percentage Taxes—(A) In General.

The percentage taxes on business shall be payable at the end of each calendar quarter in the amount lawfully due on the business transacted during each quarter; and it shall be the duty of every person conducting a business on which a percentage tax is imposed under this Title, within 20 days after the end of each calendar quarter, to make a true and complete return of the amount of the gross sales, receipts, or earnings, or gross value of output actually removed from the factory or mill warehouse, during the preceding calendar quarter and pay the tax thereon: Provided, That it shall be the duty of any person retiring from a business subject to the percentage tax to notify immediately the nearest internal revenue officer thereof and, within 20 days after closing his business, file his return or declaration, and pay the tax thereon.

If the percentage tax on any business is not paid within the time prescribed above, the amount of the tax shall be increased by 25 per cent, the increment to be a part of the tax.

* * * * *

As already stated, the Tax Code does not contain any specific directive as to the mode or manner in which taxes should be paid and We have to rely on other sources to solve the question at issue. Plaintiff pointed out the existence of Executive Order No. 92, series of 1927, which in part provides that:

* * *, A taxpayer who makes a remittance through the mails of either money order, cash or check covering a tax due from him shall be considered delinquent and subject to the payment of the surcharge or statutory penalty hereinabove mentioned where it cannot be proven that the remittance was deposited in the mails in ample time to reach the office of the tax collector on or before the close of office hours on the last day for the payment of the tax.

On the other hand defendants invoke the provisions of section 1, Rule 27, of the Rules of Court which reads as follows:

Sec. 1. Filing with the Court, defined.—The, filing of pleadings, appearances, motions, notices, orders and other papers with the court as required by these rules shall be made by filing them with the clerk of the court. The date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post-office registry receipt, shall be considered as the date of their filing, payment, or deposit in this court.

They allege that these provisions refer not only to pleadings, notices, orders or other papers filed with the Court, but also cover payments made or deposits remitted thereto. So defendant retorts that by analogy, or at least in a suppletory character, the same should be extended and made applicable to analogous cases like the one at bar.

In passing upon the respective contentions of the parties on this point, I can reason out my opinion in this guise: A perusal of the pertinent part of the aforequoted Executive Order No. 92, Series of 1927, issued by the then Acting Governor General on December 30, 1927, shows that it is a sort of directive address to the collecting officers of the Bureau of Internal Revenue authorizing them to accept payments of taxes in general coursed through the mails, provided that same be deposited in the mail in ample time to reach the office of the tax collector on or before the close of office hours of the last day for the payment of the tax, as otherwise it would be considered as late payment and although the purpose of the order is to avoid the last-hours-rush of taxpayers, it could not have the effect of binding the taxpayers who had the right of satisfying their obligations in any manner provided for by law. The limitation on the time allowed by the Order to make payments by mail, entirely disregards the rights of the taxpayers, for no person could be compelled to fulfill his obligation before the expiration of the time he had to do so under the law, for he might not be until then in a position to make any payment. Moreover, it is to be noted that said Executive Order was issued not only long before the promulgation of the National Internal Revenue Code (Commonwealth Act No. 466, approved June 15, 1939), but also after the position of the Governor General was abolished with the establishment of the Commonwealth that gave the people of the Philippines a practically independent and autonomous government. That is undoubtedly the reason why plaintiff itself, after admitting that the National Internal Revenue Code is a later legislation and, therefore, Executive Order No. 92 might be considered inapplicable or even repealed, it resorts to the argument that inasmuch as Section 183 of said Code was substantially adopted from section 1458 of the Revised Administrative Code of 1917, We should consider the contemporaneous interpretation given to that prior enactment in determining the meaning of the re-enactment. However, and after doing this as suggested by plaintiff, I cannot find that the provisions of Executive Order No. 92, which was a general authority addressed to fiscal officers as to the manner of collection of taxes in certain instances, have any particular bearing on section 183 of the present Tax Code. It is true that during the Japanese occupation this court applied the aforequoted provisions of Executive Order No. 92 in the case of *Jamora et al. vs. Bibiano L. Meer*, as Collector of Internal Revenue (74 Phil. 22, prom, November 11, 1942), but what We said in that case, to wit, that:

"The laws imposing penalties for delinquencies are clearly intended to hasten tax payments or to punish evasions or neglect of duty in respect thereof. If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the government and its multifarious activities would be as precarious as taxpayers are willing or unwilling to pay their obligations to the state in time.",

does not cover the situation obtaining in the case at bar in which appellant Luzon Industrial Corporation sent its messenger or representative to the City Hall of Manila, on April 20, 1948, the last day set for the payment of the tax, but before the closing- of office hours of the City Treasurer, to satisfy its obligation, which the messenger failed to do, not because the money was not ready or available, but on account of numerous taxpayers lined ahead of him, he thought it expedient to send the payment by registered mail, which he did on the same day, a fact which was not shown in the *Jamora* case. Furthermore, the present case is not one of condonation of surcharges or

penalties because no surcharge or penalty was due as the payment of the tax was made on time and there was nothing to be condoned.

Although I do not hold that the provisions of section 1 of Rule 27, are necessarily applicable, yet I think that in the absence of a specific provision of the law as to how payments of taxes are to be made, the Rules of Court should be preferred to Executive Order No. 92, as they have more suasive influence and are more in consonance with justice and equity.

Anyway, and even assuming for the sake of argument, that the payment was really late by 2 days, yet it would be unconscionable and beyond the bounds of equity to order appellants to pay the whole sum of P9,058.23 (25 per cent of the tax due) for just 2 days of delay which caused no inconvenience or damage to the Government. The circumstances of this case would call, at most, for the imposition of a nominal penalty as a compromise, let us say P100. We can take judicial notice that the Collector of Internal Revenue has compromised in recent years claims that deserve less benign consideration.

In connection with appellant's alternative prayer for a reduction of the surcharge under the provisions of article 1154 of the Civil Code, which gives the Judge power to "equitably modify the penalty when the principal obligation has been partly or irregularly fulfilled by the debtor", the majority opinion holds that the collection of 25 per cent must be considered mandatory on the Collector and that he has no discretion on the matter citing the case of *Lim Co Chui vs. Posadas* (47 Phil. 460). I cannot agree with the majority of the Court in view of the general powers allowed the Collector to make compromises under section 309 of the National Internal Revenue Code. With or without said precedent, there is no room for asperity and rigidity in the case at bar.

For the foregoing considerations, I am of the opinion and thus hold that the decision appealed from should be reversed and plaintiff's complaint dismissed, without pronouncement as to costs.

Judgment affirmed.

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