

TAN GUAN, PETITIONER, VS. HONS. MARIANO NABLE, AUGUSTO M. LUCIANO, ROMAN M. UMALI, JOSE ARAÑAS OR COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

G.R. No. L-18598. July 23, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Petitioner Tan Guan seeks a review on certiorari of a decision of the Court of Tax Appeals upholding two (2) assessments made by the Commissioner of Internal Revenue - hereinafter re-referred to as Commissioner - one for P72, 450 and the other for P128, 800, with costs.

The first represents specific taxes allegedly due for the quantity of cigarettes that could have been produced out of 300 bobbins of cigarette paper disposed of by Imperial Tobacco Company - hereinafter referred to as Imperial - of which Tan Guan is one of the principal partners, whereas the second constitutes the specific taxes allegedly due on the cigarettes that could have been manufactured out of the 800 bobbins of cigarette paper said to have been purchased by Imperial from the Philippine Cig-arette Manufacturing Co., Inc., hereinafter referred to as the Manufacturing Co.

The records show that Tan Guan and one Gonzalo Padua were cashier and president, respectively, as well as the main partners of Imperial, a partnership organized in 1950. The partnership was dissolved in 1951, owing to failure to secure the requisite municipal license for the manufacture of cigarettes.

Prior thereto, Imperial had purchased from the Mabuhay Cigarette Factory and Seng Kee & Co. 860 and 300 bobbins of cigarette paper, respectively. On July 30, 1951, Imperial noti-fied the Commissioner that it had delivered 300 bobbins (6000 meters) to the Marikina Cigarette Factory - hereinafter referred to as Marikina - on July 28, 1951. Subsequent investigations by agents of the Commissioner led them however, to the conclusion that this alleged transaction is fictitious. Hence, on January 21, 1953, the Commissioner - acting in accordance with section 150 of the National Internal Revenue Code[1] and section 10 of Revenue Regulations No. V-7, dated October 31, 1950[2] - demanded from Imperial, through Padua, the payment of P72, 450, as specific tax on the quantity of cigarettes that can be manufactured with said 300 bobbins of cigarette paper.

On February 9, 1953, Padua conveyed to the Commis-sioner his (Padua's) intention to appeal to the conference staff. The appeal was given due course on February 10, 1953, and was set for the hearing before said conference staff on March 3 and 31, 1953. Padua took part at the hearing on March 3, but, nobody appeared on behalf of Imperial at the hearing on March 31, 1953, despite the promise made by Padua to then produce some documents. Accordingly, in a communication dated May 5, 1953, the Commissioner demanded from Imperial the payment of P71, 450 - the balance of said specific tax, after deducting P1000 paid on February 20, 1953 - plus P10, 000, as compromise penalty. The communication having been returned unserved, a warrant of distraint was issued against Padua, on September 4, 1953; but, to no avail, for no property belonging to him could be found. A criminal action for violation of the Tax Code was, on October 24, 1957, filed against Padua, in the Court of First Ins-tance of

Manila, to be dismissed later upon the ground of prescription of action. On March 20, 1958, the Commissioner demanded from Tan Guan¹ the payment of said sum of P72, 450 and, in addition thereto, of P128, 800, as specific taxes on cigarettes.

The factual background of this additional assessment of P128, 800 is as follows: On December 5, 1950, the Manufacturing Co. - a duly registered manufacturer of cigarettes - asked the Commissioner's permission to sell 800 bobbins of cigarette paper to Imperial. At the foot of the Manufacturing Co.'s request was a statement, signed by Imperial's manager, to the effect that Imperial really wanted to buy said 800 bobbins of cigarette paper. The permit was forthwith granted. On July 23, 1952, in the course of a routine investigation conducted by the Bureau of Internal Revenue - hereinafter referred to as the Bureau - a representative of Imperial denied that the latter had received said 800 bobbins of cigarette paper. There upon, the Commissioner assessed against the Manufacturing Co. the sum of P128, 800 as specific tax due on the cigarettes that could have been manufactured out of said cigarette paper. The Manufacturing Co. sought a reconsideration of this assessment, and, at the hearing thereon, before the Conference Staff - notice of which had been served on Tan Guan, who did not appear, despite the subpoena duces tecum issued therefor - the Manufacturing Co. introduced testimonial and documentary evidence of the delivery of the goods to Imperial. Hence, on March 20, 1958, the Commissioner withdrew the assessment against the Manufacturing Co. and, in lieu thereof, assessed said sum of P128, 800, as specific taxes on the cigarettes that Imperial could have manufactured out of said 800 bobbins of cigarette paper. Tan Guan could not be located, however, until April 30, 1958, when the corresponding assessment notice was delivered to him. On May 6, 1958, the Commissioner issued a warrant of distraint against the properties of Tan Guan. The next day, Civil Case No. 4979 of the Court of First Instance of Rizal was filed by the Government to recover from Tan Guan the aforementioned sums of P72, 450 and P128, 800, as specific taxes on cigarettes. About a week later, or on May 15, 1958, Imperial asked the Commissioner a rehearing, but, before this request could be acted upon, Tan Guan filed a petition for review with the Court of Tax Appeals which, in due course, rendered the appealed decision in favor of the Government. Hence, this appeal.

The main defense set up by Tan Guan is that of prescription of action. With respect to the assessment for P72, 450, he maintains that the same was made on January 21, 1953, whereas, the aforementioned civil action for the recovery of said sum and that of P128, 800 was filed on May 7, 1958, or beyond the prescriptive period of five (5) years which, Tan Guan maintains, is applicable thereto. It should be noted, however, that the running of said period was interrupted on February 9, 1953, when Padua, acting on behalf of Imperial, appealed the disputed assessment to the conference staff and that, on May 8, 1953, the Commissioner re-iterated the demand for the payment of said sum of P72, 450 (less P1, 000 paid on February 20, 1953) in addition to P10, 000 as compromise penalty. Accordingly, from May 8, 1953 to May 7, 1958, when the civil action was commenced, less than five (5) years had elapsed.

Moreover, the prescriptive period of five (5) years applies only when a return is filed.¹ However,

" In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission."¹

In *Bisaya Land Transportation Co. v. Collector of Internal Revenue* and *Collector of Internal Revenue v. Bisaya Land Transportation Co.*,² we held that this provision applies whenever a return is not filed, whether it is required or not. Since, the civil action for the recovery of P72, 450 and P128, 800 was commenced on May 7, 1959, or long before the expiration of the aforementioned period of ten (10) years, it is clear that the plea of prescription cannot be sustained.

It is next urged that the Tax Court erred in holding that the alleged sale to Marikina is fictitious, and that, the

assessment for P72, 450 should, therefore, be invalidated. This pretense is manifestly devoid of merit, for: (1) Imperial's alleged request for permission to sell to Marikina - unlike the request of the Manufacturing Co. - was not accompanied by the written confirmation of the supposed buyer or its representative, contrary to the provisions of Section 4 of Revenue Regulations No. V-7; (2) the signature, purporting to be that of the Commissioner, on the alleged permit to make the sale in question, is, admittedly, forged; (3) Marikina is not registered in the Bureau of Internal Revenue and is, evidently, a non-existent entity; and (4) Jose de Dios, who allegedly acknowledged receipt, on behalf of Marikina, of the 300 bobbins involved in this assessment, is, likewise, a fictitious or non-existent person.

As regards the assessment for P128, 800, it is urged that the sale of 800 bobbins of cigarette paper by the Manufacturing Co. to Imperial has not been duly established. In this connection, it is not denied that said Manufacturing Co. asked permission from the Commissioner to sell said goods to Imperial; that this request was supported by a written statement of Imperial, attesting to its intent to purchase said goods; that the consummation of the sale thereof is evidenced by invoices of the Manufacturing Co.; and that the latter had issued official receipts for payments made by Imperial. More-over, the foregoing documentary evidence were confirmed by affidavits of those who delivered the goods to Imperial. It is true that no records of Imperial to this effect have been presented. This is due, however, to the fact that Imperial had kept no records or books of accounts. At any rate, the findings of the Commissioner and those of the Court of Tax Appeals are borne out by substantial evidence.

The validity of Section 10 of Revenue Regulations No. V-7; upon which the Commissioner based his action, is, likewise, assailed by Tan Guan; but this issue was not raised in the Tax Court, and, consequently, cannot be entertained, for the first time, on appeal.

WHEREFORE, the decision appealed from should be, as it is hereby affirmed, with costs against petitioner-appellant, Tan Guan.

IT IS SO ORDERED.

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

[1] "SEC. 150. Records to be kept by manufacturers...Assessment based thereon. - The Secretary of Finance is authorized to prescribe, by regulations, the records which shall be kept by manufacturers of articles subject to specific tax, and such records, whether of raw materials received into the factory or to articles produced therein, shall be deemed public and official documents for all purposes.

"The records of raw materials kept by such manufacturers may be used as a species of evidence by which to determine the amount of specific taxes due from them, and whenever the amount of raw materials received into any factory exceeds the amount of manufactured or partially manufactured products on hand and lawfully removed from the factory, plus waste removed or destroyed, and a reasonable allowance for unavoidable loss in manufacture, the Collector of Internal Revenue may assess and collect the tax due on the products which should have been produced from the excess."

[2] "Failure on the part of a cigarette manufacturer to report any loss or destruction of cigarette paper or the removal, withdrawal, or transfer of cigarette paper from the factory premises or place of business of the manufacturer without a written authority from the Collector of Internal Revenue shall be considered prima facie evidence that the cigarette paper alleged to have been lost or destroyed, or removed, withdrawn or transferred was used in the manufacture of cigarettes, which have been removed for sale or consumption without the prepayment of the specific tax. In such case, the corresponding specific tax shall be assessed and collect pursuant to the

provisions of Section 150 of the National Internal Revenue Code."

1 Evidently acting pursuant to Articles 1822 and 1824 of our Civil Code, reading:

"ART. 1822. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act."

"ART. 1824. All partners are liable solidarily with the partnership for everything chargeable to the partnership under articles 1822 and 1823."

1 Section 331, National Internal Revenue Code.

1 Section 332(a), National Internal Revenue Code.

2 L-12100 and L-11812, May 29, 1959.

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