

## COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. FIREMAN'S FUND INSURANCE COMPANY AND THE COURT OF TAX APPEALS, RESPONDENTS.

*G.R. No. L-30644. March 09, 1987*

Ponente: PARAS, J.

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### PARAS, J.:

This is an appeal from the decision of the respondent Court of Tax Appeals dated May 24, 1969, in C.T.A. Case No. 1629, entitled "FIREMAN'S FUND INSURANCE COMPANY v. COMMISSIONER OF INTERNAL REVENUE," which reversed the decision of petitioner Commissioner of Internal Revenue holding private respondent Fireman's Fund Insurance Company liable for the payment of the amount of P81,406.87 as documentary stamp taxes and compromise penalties for the years 1952 to 1958.

Private respondent is a resident foreign insurance corporation organized under the laws of the United States, authorized and duly licensed to do business in the Philippines. It is a member of the American Foreign Insurance Association, through which its business is cleared (Brief for Respondents, pp. 1-2).

The antecedent facts of this case are as follows:

From January, 1952 to December, 1958, herein private respondent Fireman's Fund Insurance Company entered into various insurance contracts involving casualty, fire and marine risks, for which the corresponding insurance policies were issued. From January, 1952 to 1956, documentary stamps were bought and affixed to the monthly statements of policies issued; and from 1957 to 1958 documentary stamps were bought and affixed to the corresponding pages of the policy register, instead of on the insurance policies issued. On July 3, 1959, respondent company discovered that its monthly statements of business and policy register were lost. The loss was reported to the Building Administration of Ayala Building and the National Bureau of Investigation on July 6, 1959. Herein petitioner was also informed of such loss by respondent company, through the latter's auditors, Sycip, Gorres and Velayo, in a letter dated July 14, 1959. After conducting an investigation of said loss, petitioner's examiner ascertained that respondent company failed to affix the required documentary stamps to the insurance policies issued by it and failed to preserve its accounting records within the time prescribed by Section 337 of the Revenue Code by using loose leaf forms as registers of documentary stamps without written authority from the Commissioner of Internal Revenue as required by Section 4 of Revenue Regulations No. V-1. As a consequence of these findings, petitioner, in a letter dated December 7, 1962, assessed and demanded from petitioner the payment of documentary stamp taxes for the years 1952 to 1958 in the total amount of P79,806.87 and plus compromise penalties, a total of P81,406.87.

A breakdown of the amount of taxes due and collectible are as follows:

YEAR

AMOUNT

1952

P6,500.00

1953

9,977.72

1954

10,908.89

1955

P14,204.52

1956

12,108.26

1957

7,880.68

1958

16,257.60

Total stamp taxes due on

policies issued from 1952 to 1958

77,837.67

Add: Stamp taxes on monthly

statements during:

1957 -----

1,218.35

1958 -----

3,264.39

Total -----

**P82,320.41**

Less: Stamp taxes paid per voucher

shown:

**1957 ----- P416.82**

1958 ----- 2,096.72

2,513.54

**AMOUNT DUE & COLLECTIBLE -----**

**P79,906.87**

(CTA Decision, Rollo, pp. 16-17).

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The compromise penalties consisted of the sum of P1,000.00 as penalty for the alleged failure to affix documentary stamps and the further sum of P600.00 as penalty for an alleged violation of Revenue Regulations No. V-1 otherwise known as the Bookkeeping Regulations (Brief for Respondents, p. 4).

In a letter dated January 14, 1963, respondent company contested the assessment. After petitioner denied the protest in a decision dated March 17, 1965, respondent company appealed to the respondent Court of Tax Appeals on May 8, 1965. After hearing respondent court rendered its decision dated May 24, 1969 (Rollo, pp. 16-21) reversing the decision of the Commissioner of Internal Revenue. The assailed decision reads in part:

"The affixture of documentary stamps to papers other than those authorized by law is not tantamount to failure to pay the same. It is true that the mode of affixing the stamps as prescribed by law was not followed, but the fact remains that the documentary stamps corresponding to the various insurance policies were purchased and paid by petitioner. There is no legal justification for respondent to require petitioner to pay again the documentary stamp tax which it had already paid. To sustain respondent's stand would require petitioner to pay the same tax twice. If at all, petitioner should be proceeded against for failure to comply with the requirement of affixing the documentary stamps to the taxable insurance policies and not for failure to pay the tax. (See Sec. 239 and 332, Rev. Code).

"It should be observed that the law allows the affixture of documentary stamps 'to such other paper as may be indicated by law or regulations as the proper recipient of the stamp.' It appears from this provision that respondent has authority to allow documentary stamps to be affixed to papers other than the documents or instruments taxed. Although the practice adopted by petitioner in affixing the documentary stamps to the business statements and policy register was without specific permission from respondent but only on the strength of his ruling given to Wise & Company (see Petitioner's Memorandum, p. 176, CTA rec.; p. 24, t.s.n.), one of the general agents of petitioner, however, considering that petitioner actually purchased the documentary stamps, affixed them to the business statements and policy register and cancelled the stamps by perforating them, we hold that petitioner cannot be held liable to pay again the same tax.

"With respect to the 'compromise penalties' in the total sum of P1,600.00, suffice it to say that penalties cannot be imposed in the absence of a showing that petitioner consented thereto. A compromise implies agreement. If the offer is rejected by the taxpayer, as in this case, respondent cannot enforce it except through a criminal action. (See Comm. of Int. Rev. vs. Abad, L-19627, June 27, 1968.)" (CTA Decision, Rollo, pp. 20;-21).

Hence, this petition filed on June 26, 1969 (Rollo, pp. 1-8).

The petition is devoid of merit.

The principal issue in this case is whether or not respondent company may be required to pay again the

documentary stamps it has actually purchased, affixed and cancelled.

The relevant provisions of the National Internal Revenue Code provide:

"SEC. 210. Stamp taxes upon documents, instruments, and papers. — Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid, for and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same, and at the same time such act is done or transaction had." (Now Sec. 222).

"SEC. 232. Stamp tax on life insurance policies. — On all policies of insurance or other instruments by whatever name the same may be called, whereby any insurance shall be made or renewed upon any life or lives, there shall be collected a documentary stamp tax of thirty-five centavos on each two hundred pesos or fractional part thereof, of the amount issued by any such policy. (220) (As amended by PD 1457)

"Insurance policies issued by a Philippine company to persons in other countries are not subject to documentary stamp tax. (Rev. Regs. No. 26)

"Medical certificate attached to an insurance policy is not a part of the said policy. Insurance policy is subject to Section 232 of the Tax Code while medical certificate is taxable under Section 237 of the same Code.

"Insurance policies are issued in the place where delivered to the person insured." (As amended.)

"SEC. 221. Stamp tax on policies of insurance upon property. — On all policies of insurance or other instruments by whatever name the same may be called, by which insurance shall be made or renewed upon property of any description, including rents or profits, against peril by sea or on inland waters, or by fire or lightning, there shall be collected a documentary stamp tax of six centavos on each four persons, or fractional part thereof, of the amount of premium charged." (Now Sec. 233.)

"SEC. 237. Payment of documentary stamp tax. — Documentary stamp taxes shall be paid by the purchase and affixture of documentary stamps to the document or instrument taxed or to such other paper as may be indicated by law or regulations as the proper recipient of the stamp, and by the subsequent cancellation of same, such cancellation to be accomplished by writing, stamping, or perforating the date of the cancellation across the face of each stamp in such manner that part of the writing, impression, or perforation shall be on the stamp itself and part on the paper to which it is attached; Provided, That if the cancellation is accomplished by writing or stamping the date of cancellation, a hole sufficiently large to be visible to the naked eye shall be punched, cut or perforated on both the stamp and the document either by the use of a hand punch, knife, perforating machine, scissors, or any other cutting instrument; but if the cancellation is accomplished by perforating the date of cancellation, no other hole need be made on the stamp." (Now Sec. 249.)

"SEC. 239. Failure to affix or cancel documentary stamps. — Any person who fails to affix the correct amount of documentary stamps to any taxable document, instrument, or paper, or to cancel in the manner prescribed by section 237 any documentary stamp affixed to any document, instrument, or paper, shall be subject to a fine of not less than twenty pesos or more than three hundred pesos. (Underscoring supplied.) (Now Sec. 250.)

As correctly pointed out by respondent Court of Tax Appeals, under the above-quoted provisions of law, documentary tax is deemed paid by: (a) the purchase of documentary stamps; (b) affixture of documentary stamps to the document or instrument taxed or to such other paper as may be indicated by law or regulations; and (c) cancellation of the stamps as required by law (Rollo, p. 18).

It will be observed however, that the over-riding purpose of these provisions of law is the collection of taxes. The three steps above-mentioned are but the means to that end. Thus, the purchase of the stamps is the form of

payment made; the affixture thereof on the document or instrument taxed is to insure that the corresponding tax has been paid for such document while the cancellation of the stamps is to obviate the possibility that said stamps will be reused for similar documents for similar purposes.

In the case at bar, there appears to be no dispute on the fact that the documentary stamps corresponding to the various policies were purchased and paid for by the respondent Company. Neither is there any argument that the same were cancelled as required by law. In fact such were the findings of petitioner's examiner Amando B. Melgar who stated as follows:

"Investigation disclosed that the subject insurance company is a duly organized corporation doing business in the Philippines. It keeps the necessary books of accounts and other accounting records needed by the business. Further verification revealed that it has, since July, 1959, been using a 'HASLER' franking machine, Model F-88, which stamps the documentary stamps on the duplicates of the policies issued. Prior to the acquisition of the said machine, the company buy its stamps by allowing the Manager to issue a Manager's check drawn against the National City Bank of New York and payable to the City Treasurer of Manila. It was also found out that during this period (1952 to 1958), the total purchases of documentary stamps amounted to P77,837.67, while the value of the used stamps lost amounted to P65,901.11. Verification with the files revealed that most of the monthly statements of business and registers of documentary stamps corresponding to insurance policies issued were missing while some where the punched documentary stamps affixed were small in amount are still intact.

"The taxpayer was found to be negligent in the preservation and keeping of its records. Although the loss was found by the company's private investigator (see attached true copies of his reports) was not an 'Inside Job,' still the company should be held liable for its negligence, it appearing that the said records were placed in a bodega, where almost all patrons of the coffee shop nearby could see them. The company also violated the provision of Section 221 of the National Internal Revenue Code which provides that the documentary stamps should be affixed and cancelled on the duplicates of bonds and policies issued. In this case, the said stamps were affixed on the register of documentary stamps. (pp. 35-36, BIR rec.; Underscoring supplied.)" (CTA Decision, Rollo, pp. 18-19.)

Such findings were confirmed by the Memorandum of Acting Commissioner of Internal Revenue Jose B. Lingad, dated November 7, 1962 to the Chief, Business Tax Division, which states:

"The records show that the FIREMAN'S FUND INSURANCE COMPANY allegedly paid P77,837.67 in documentary stamp taxes for the policies of insurance issued by it for the years 1952 to 1958 but could only present as proof of payment P11,936.56 of said taxes as the rest of the amount of P65,901.11 were lost due to robbery. Upon verification of this payment however it was found that the FIREMAN'S FUND INSURANCE COMPANY affixed the documentary stamps not on the individual insurance policies issued by it but on a monthly statement of business and a register of documentary stamps, the use of which was not authorized by this Office. It was claimed that the same procedure was used in the case of the lost documentary stamps aforementioned. As this practice is irregular and the remaining records are not conclusive proofs of the payment of the corresponding documentary stamp tax on the policies, the FIREMAN'S FUND AND INSURANCE COMPANY is still liable for the payment of the documentary stamp taxes on the policies found not affixed with stamps." (Original BIR Record, p. 87).

Later, respondent Court of Tax Appeals correctly observed that the purchase of documentary stamps and their being affixed to the monthly statements of business and policy registers were also admitted by counsel for the Government as could clearly be gleaned from his Memorandum submitted to the respondent Court. (Decision, CTA Rollo, pp. 4-5).

Thus, all investigations made by the petitioner show the same factual findings that respondent company purchased

documentary stamps for the various policies it has issued for the period in question although it has attached the same on documents not authorized by law.

There is no argument to petitioner's contention that the insurance policies with the corresponding documentary stamps affixed are the best evidence to prove payment of said documentary stamp tax. This rule however does not preclude the admissibility of other proofs which are uncontradicted and of considerable weight, such as: copies of the applications for manager's checks, copies of the manager's check vouchers of the bank showing the purchases of documentary stamps corresponding to the various insurance policies issued during the years 1952-1958 duly and properly identified by the witnesses for respondent company during the hearing and admitted by the respondent Court of Tax Appeals (Brief for Respondent, p. 15).

It is a general rule in the interpretation of statutes levying taxes or duties, that in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed beyond what statutes expressly and clearly import (*Manila Railroad Co. v. Collector of Customs*, 52 Phil. 950 [1929]).

There appears to be no question that the purpose of imposing documentary stamp taxes is to raise revenue and the corresponding amount has already been paid by respondent and has actually become part of the revenue of the government. In the same manner, it is evident that the affixture of the stamps on documents not authorized by law is not attended by bad faith as the practice was adopted from the authority granted to Wise & Company, one of respondent's general agents (CTA Decision, Rollo, p. 20). Indeed, petitioner argued that such authority was not given to respondent company specifically, but under the general principle of agency, where the acts of the agents bind the principal, the conclusion is inescapable that the justification for the acts of the agents may also be claimed for the acts of the principal itself (Brief for the Respondents, pp. 12-13).

Be that as it may, there is no justification for the government which has already realized the revenue which is the object of the imposition of subject stamp tax, to require the payment of the same tax for the same documents. Enshrined in our basic legal principles is the time honored doctrine that no person shall unjustly enrich himself at the expense of another. It goes without saying that the government is not exempted from the application of this doctrine (*Ramie Textiles, Inc. v. Mathay Sr.*, 89 SCRA 587 [1979]).

Under the circumstances, this court RESOLVED to DISMISS this petition and to AFFIRM the assailed decision of the Court of Tax Appeals.

Fernan, (Chairman), Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

Alampay, J., on leave.

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