

RATTAN ART & DECORATIONS, INC., PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE AND THE COURT OF TAX APPEALS, RESPONDENTS.

G. R. No. L-17744. April 30, 1965

Ponente: PAREDES, J.

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PAREDES, J.:

Petitioner has been engaged in the manufacture and sale of articles made of rattan including rattan round pieces. On April 19, 1954, the Collector of Internal Revenue demanded of the petitioner the amount of P1 ,313.75 as Deficiency sales tax on round rattan pieces, surcharge and penalty thereon, for the period from September 4, 1951 to January 24, 1952. The articles were sold to foreign buyers on F. O. B. terms. On June 29, 1954, the Rattan Art & Decorations, Inc., asked for the cancellation of the demand, claiming: that the transaction was considered by it as an export and thus free from sales tax, title to said articles passing: only to the buyers upon arrival in the States and after inspection. Because of the letter asking cancellation, a re-investigation was conducted, and on September 30, 1954, the investigating agent found that the petitioner was not only liable for the P1,313.75, but for P96,706.30, computed as follows:

1949 (4th quarter)

P 878.02

1950

19,436.22

1951

28,569.17

1952

35,074.54

1953

2,805.09

1954 (1st & 2nd qrt.)

1,151.78

Deficiency Tax Due

87,914.82

Compromise

8,791.48

P 96,706.30

Based upon the report and re-assessment made, the Deputy Collector of Internal Revenue, on June 22, 1955, made a demand for the payment of P87, 914.93 within 30 days from receipt of the letter of demand, plus P8,700.00 as penalty.

Counsel for petitioner asked for a reconsideration and/or re-investigation, of the assessment. On June 17, 1958, a modified assessment was made, demanding the payment of P77,087.28, all told. The motion for reconsideration and/or readjustment of the assessment was denied and for failure of petitioner to pay the tax liability a Warrant of Dstraint and Levy, was sued out. On August 7, 1958, petitioner filed with the Court of Tax Appeals a Petition for Review of the assessment of Deficiency Sales Tax, claiming the same to be erroneous and/or the liability has already prescribed.

The respondent Collector of Internal Revenue interposed the following Special and Affirmative Defenses, to wit:

- (1) That the total amount of F77,087.28 representing deficiency sales tax for 1949 to 1952, 25% surcharge thereon, fixed tax for 1952 and 1953, and penalty was assessed against petitioner in accordance with law;
- (2) That the right of the respondent to assess and collect the tax has not yet prescribed.

After trial, the parties submitted their memorandum, petitioner sponsoring the theory that in so far as the tax liability for the sales of 1949 and the first two quarters of 1960, the same has already prescribed; and that the assessment was erroneous, since the transactions were export sales which were consummated outside of the Philippines and therefore exempt from sales tax. Upon the other hand, respondent Collector of Internal Revenue took the contrary view, claiming that petitioner failed to prove the assertion of prescription and that the sales having been on an F. O. B. term, the same have been ruled the CTA and the Supreme Court as having been consummated within the Philippines. Cited in support of the second contention are several cases G. R. No. L-11710, *Western Mindanao Lumber Dev. Co. vs. Coll. of Int. Rev.*, June 30, 1958; and others.

Because the assessment for 1950 did not appear to have been itemized by quarter, so that it could not be determined when prescription had commenced, the CTA ordered the reopening of the case for the reception of evidenced regarding said aspect. The order resulted in the presentation of a Stipulation of Facts, where among the computation was shown by the quarter. On 31, 1960, the CTA rendered judgment the pertinent of which read:

"The issues raised in this appeal arc (1) whether or not the sales to foreign buyers during: the period in question are domestic sales subject to the sales tax; (2) assuming that said sales are taxable, whether or not the right of the Government to assess the tax on sales made from 1949 to the second quarter of 1950 has prescribed; and (3) the legality of the imposition of the alleged penalty in the sum of P5,700.00.

"Under Section 186 of the National Internal Revenue Code, manufacturers other than manufacturers of articles enumerated in Section 184 and 185) are subject to the sales tax of 7% of the gross selling price of the articles sold. The tax is imposed on sales consummated in the Philippines. * * * A sale is deemed made or consummated at the place where title to the article sold passes from the seller to the buyer. * * *

"It appears that the articles sold by petitioner to foreign buyers were shipped abroad under terms F. O. B. Manila; that the expenses of packing and preparing the articles for shipment were charged to the buyers; that the freight charges were paid by the buyers at destination; that the shipments abroad were insured by the

buyers; that in those cases where the shipments insured by the petitioner, the insurance policies were indorsed to the buyers; and that payments for said shipment were made through drafts or letters of credit drawn against local banks.

"From the facts stated above, it is clear that title to the articles sold by petitioner to the foreign buyers was transferred to the latter from the moment they were placed on board the carrying vessels. The sales were, therefore, consummated in the Philippines and must be treated as domestic sales subject to the sales tax. * * * The fact that the price of the articles were paid for in dollars or in any other foreign currency will not alter the result. Accordingly, we are of the opinion that petitioner is subject to the sales tax on its sales to the foreign buyers under the circumstances mentioned above.

"It appears from the stipulation submitted by the parties dated July 28, 1960 that petitioner filed its quarterly return for the year 1950 within the period prescribed by Section 183-A, that is on or before April 2, 1960 with respect to petitioner's return for the first quarter of that year, and on or before July 20, 1950, as regards the return for the second quarter of the same year.

"* * * * *

"The evidence shows that the assessment was made on June 22, 1955, more than five years after the return was filed for the first quarter of 1950. Accordingly, the deficiency sales tax for the year 1949 and the first quarter of 1950 had already prescribed when the assessment was made on June 22, 1955. With respect to the deficiency sales tax for the second quarter of 1950, since the last day for filing the return was July 20, 1950, the five-year period within which to assess said deficiency tax had not yet terminated when the assessment was made.

"* * * * *

"For the foregoing Considerations, the decision appealed from is hereby modified and petitioner is ordered to pay to the Government the sum of P68,582.23, computed as follows:

Deficiency sales tax for 1950

P13,573.71

Deficiency sales tax, 1951

18,928.38

Deficiency sales tax, 1952

22,928.89

Total

P 54,800.98

25% surcharge

13,700.25

Total deficiency tax & surcharge

P 68,501.23

Fixed tax, 1952

6.00

Fixed tax, 1953

75.00

Total amount due

P 68,582.23

A motion for reconsideration of the above judgment Presented. In said motion, counsel for petitioner invoked, for the first time, the amendment of Section 186 of Internal Revenue Code by Republic Act No. 894, where in it was provided that effective June 20, 1953, shipments by manufacturers or producers, irrespective of shipping arrangements affecting the place of transfer of to the articles shipped, were exempted from sales tax. Under petitioner's contention, the deficiency sales taxes prior to the passage of the law (Act 894) should be condoned, by giving said law retroactive effect. The CTA denied the motion for reconsideration on November 5, 1960, thus the instant appeal.

In its brief, petitioner pointed three (3) errors allegedly committed by the lower court, to wit:

- (1) In not holding that by virtue of Central Bank's Rules and Regulations the herein sales having been dollar transactions were, therefore, foreign sale transactions;
- (2) In not holding that the herein transactions, made by and between the Rattan Art & Decorations, Inc., and foreign buyers were foreign sales, consummated outside Philippine territory and hence not subject to the domestic sales tax; and
- (3) In not holding Republic Act No. 894 as having retroactive effect.

Anent the first error, the petitioner had failed to prove that the transactions in question were in fact foreign sales. While it is true that the sale was paid in dollars, this alone did not make it a foreign sale and exempted from the payment of the sales tax. The compliance with Central Bank Rules and Regulations was only necessary for the purposes of controlling the use of foreign exchange. At any rate, this Court in a number of cases, where tax liability was sought to be exempted, under the same defenses, ruled that they did not involve foreign sales (*Bislig Lumber Co., Inc. vs. Coll. of Int. Rev.*, 110 Phil., 746 and cases cited therein).

This Court cannot also share the view taken by the petitioner, to the effect that the transactions in question were consummated outside of the territory of the Philippines and should not be subjected to domestic sales tax. It has not been denied that the sale of the goods were on F. O. B. terms; that the expenses of packing preparing the articles for shipment were charged to the buyers; that the freight charges were paid by the buyers at destination; that the shipments were insured by the buyers. Under these circumstances, there is no mistaking the fact that when the petitioner has placed the goods aboard the ship, all its rights ended there and the sole authority for the disposition of the shipped merchandise rested upon the foreign buyers. Title was transferred at that very moment. Petitioner, however, argues that although goods are shipped F. O. B., the intent of the parties regarding the disposition of the goods shall control. We may concede the merit of said argument, but in the case at bar, petitioner has failed to show a contrary intent was contemplated.

While it is true that payment were made after the boat had left Philippine waters, the delay did not change the fact that the transactions were consummated in the Philippines. It will be noted that the delay was merely caused by the preparation of the papers for submission to the banks against whom the letters of credit had been drawn. Even on the supposition that the contracts in the involved transactions were perfected in the United States, as claimed by the petitioner, still it does not follow that the passing of title should also be in the United States. Transfer of title to the vendee may be made by actual or constructive delivery (Art. 1477, NCC). The delivery of the goods on board the carrying vessels partake of the nature of actual delivery, since from that time, the foreign buyers assumed the risk of loss of the goods and paid the insurance premiums covering them.

The third and last error deals with the contention that Republic Act No. 894, which exempted the transactions at bar from liability for sales tax, should be given retroactive effect and extend to petitioner the benefits thereof. It must be recalled, however, that this is a tax case, and one who seeks exemption from payment thereof, should justify the exemption with the clearest legislative grant. During the period when petitioner was made liable for the taxes question, Republic Act No. 894 was not in existence. While it is true that a law creating new rights may be given retroactive effect, the same can only be made possible if the new right does not prejudice or impair any vested right. The government had already acquired such right in the taxes due from petitioner, when the exempting statute came to life. Moreover, this Court has ruled that transactions before the effectivity of Republic Act 894, cannot be given retroactive effect (*Misamis Lumber Co., Inc. vs. The Coll. of Int. Rev.*, 102 Phil. 116).

IN VIEW OF ALL THE FOREGOING, the decision appealed from should be, as it is hereby affirmed, in all respects.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

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