

MINDANAO BUS COMPANY, PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. L-14078. February 24, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal by certiorari from a decision of the Court of Tax Appeals, ordering the petitioner-appellant Mindanao Bus Company to pay P15,704.16, as documentary stamp taxes for the period from January 1, 1948 up to September 16, 1953. The decision sought to be reviewed modifies an assessment by the Collector of Internal Revenue eliminating the compromise penalty imposed by the Collector.

Petitioner is a common carrier engaged in transporting passengers and freight by means of auto-buses in Northern Mindanao, under certificates of public convenience issued by the Public Service Commission. Sometime in September, 1953, an agent of the respondent Collector of Internal Revenue examined the books of accounts of the petitioner and found that the freight tickets used by it do not contain the required documentary stamp tax. Said agent took with him 500 booklets of tickets used by the petitioner and counted the freight receipts contained therein. He counted 1,305 freight tickets. Assuming that each freight ticket covers baggage valued at more than P5.00, the Collector of Internal Revenue, upon recommendation of the agent, assessed against the petitioner the sum of P15,704.16, exclusive of compromise penalty, as documentary stamp taxes from January 1, 1948 up to September 16, 1953. The tax is computed in the following manner:

Number of registered booklets of 100 tickets each,
86,282

from Oct. 29, 1948 to September 16, 1953

Number of booklets assessed to have been used
14,000

from Jan. 1, 1948 to Oct. 31, 1948

=====

Total Number of Booklets Used from Jan. 1, 1948
to Sept. 16, 1953 100,282

=====

Number of Ticket Booklets verified as basis for

500

assessment

Number of freight tickets per booklet of 100 tickets

2.61

each =====

Total number of tickets booklets used from Jan. 1, 1948
to Sept. 16, 1953 100,282

Multiply by average number of freight tickets per
2.61

booklet

=====

Documentary stamp tax on 261,736 Freight Tickets P15,704.16

Total Amount Due and Collectible P15,704.16

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The assessment of the Collector was appealed to the Court of Tax Appeals. In that court the respondent Collector was declared in default and the petitioner presented its evidence. The tax court, modified the decision of the Collector and ordered the petitioner to pay only P15,704.16 as documentary stamp tax for the period above-stated, without any compromise penalty. Upon petitioner's motion for reconsideration, the court resolved to reopen the case, for the sole purpose of allowing the petitioner to present as evidence the 500 booklets and 17 sackful, respectively, of passenger and freight tickets of the petitioner. During the rehearing of the case, the petitioner, however, failed to submit the said evidence; instead it presented stub tickets, Exhibits "X-1" and "X-2", which were already in its possession during the first hearing, the Court of Tax Appeals denied the motion for reconsideration. Hence this appeal.

In this Court, petitioner-appellant presents the following assignments of error:

- THE TAX COURT ERRED IN PRESUMING THE CORRECTNESS OF THE ASSESSMENT, AND IN NOT FINDING SAME NOT BASED UPON THE BEST EVIDENCE OBTAINABLE, BUT IS ARBITRARY. SPECULATIVE, HYPOTHETICAL, GROSSLY EXAGGERATED AND WITHOUT FACTUAL BASIS.
- THE TAX COURT ERRED IN HOLDING THAT THE TICKETS ISSUED FOR EXCESS BAGGAGE ARE BILLS OF LADING SUBJECT TO THE DOCUMENTARY STAMP TAX.
- THE TAX COURT ERRED IN NOT FINDING AND DECLARING SECTION 127 OF REGULATION NO. 26 OF THE DEPARTMENT OF FINANCE UNCONSTITUTIONAL.
- THE TAX COURT ERRED IN HOLDING THE PETITIONER LIABLE AND REQUIRING IT TO PAY THE TAX ASSESSMENT OF P15,704.16.

In support of its first assignment of error, the petitioner-appellant claims that the computation made by the respondent is not based upon the best available evidence, but on mere presumptions. This claim is devoid of merit. The agent of the Bureau of Internal Revenue who investigated the petitioner's books of accounts found it impossible to count one by one the freight tickets contained in used booklets dumped inside the petitioner's bodega, because the booklets were so numerous most of them were either torn or destroyed. The procedure followed by said agent, which is the average method, in ascertaining the total number of freight tickets used during the period under review can not be impugned because an actual count of the freight tickets is practically

impossible. The average method is the only way by which the agent could determine the number of booklets used during the period in question.

The agent also correctly assumed that the value of the goods covered by each freight ticket is not less than P5.00. It is a common practice of passengers in the rural areas not to secure receipts for cargoes of small value and to demand receipts only for valuable cargo (*Inter-provincial Autobus Co., Inc. vs. Collector of Internal Revenue*, 98 Phil., 290; 52 Off. Gaz. [2] 791). If the freight tickets were issued, the baggage carried must have been valuable enough.

On the other hand, it was the duty of petitioner to present evidence to show inaccuracy in the above method of assessment (*Inter-provincial Autobus Co. Inc. vs. Collector*, *supra*; *Perez vs. C. T. A.*, 101 Phil., 630; *Perez vs. C. T. A., et al.*, G. R. No. L-10507, May 30, 1958; *Government of P. I. vs. Monte de Piedad*, 35 Phil., 42), but it failed to do so. The claim of petitioner that the freight tickets issued by it are not bills of lading subject to documentary stamp tax must also be dismissed in view of our ruling in the case of *Inter-provincial Autobus Co., Inc. vs. Collector*, *supra*:

"But the claim that freight tickets of bus companies are not bills of lading or receipts within the meaning of the Documentary Stamp Tax Law is without merit. Bills of Lading, in modern jurisprudence, are not those issued by masters of vessels alone; they now comprehend all forms of transportation, whether by sea or land, and includes the receipts for cargo transported.

"The term 'bill of lading' is frequently defined, especially by the older authorities as a writing signed by the master of a vessel acknowledging the receipt of goods on board to be transported to a certain port and there delivered to a designated person or on his order. This definition was formulated at a time when goods were principally transported by sea and, while adequate in view of the conditions existing at that early day, is too narrow to suit present conditions. As comprehending all methods of transportation, a bill of lading may be defined as a written acknowledgment of the receipt of goods and an agreement to transport and to deliver them at a specified place to a person named or on his order. Such instruments are sometimes called 'shipping receipts,' 'forwarders' receipts,' and 'receipts for transportation'. The designation, however, is not material, and neither is the form of the instrument. If it contains an acknowledgment by the carrier of the receipt of goods for transportation, it is, in legal effect, a bill of lading." (9 Am. Jur. 662; *Italics supplied*)

"Section 227 of the National Internal Revenue Code imposes the tax on receipts for goods or effect shipped from one port or place to another port or place in the Philippines. The use of the word place after port and of the word 'receipt' shows that the receipts for goods shipped on land are included."

As its third assignment of error, the petitioner-appellant questions the validity of Section 127 Regulation No. 26, insofar as it provides that chits, memoranda and other papers not in the usual commercial form of bill of lading, when used by the common carrier in the transportation of goods for the collection of fares, are to be considered bill of lading subject to documentary stamp tax, alleging that said section is beyond the powers of the Secretary of Finance, which are contained in Section 388 of the Tax Code, this argument should also be dismissed for lack of merit. As the Solicitor General correctly argues, the validity of Section 127 of Regulation No. 26 should be upheld under the principle of legislative approval by reenactment. Section 127 of said regulation sought to implement Sections 1449 (q) and (r) of the Revised Administrative Code, and the latter provisions were reenacted in Section 227 of the National Internal Revenue Code. Section 127 is in the same Regulations as Section 121. We are quoting hereunder a portion of the decision of this Court in the case of *Inter-provincial Autobus Co., Inc. vs. Collector*, 98 Phil., 290; 52 Off. Gaz., (2) 791, *supra*, to sustain our ruling that the third assignment of error in the case at bar should be dismissed:

"Another reason for sustaining the validity of the regulation, may be found in the principle of legislative approval by reenactment. The regulations were approved on September 16, 1924. When the National Internal Revenue Code was approved on February 18, 1939, the same provisions on stamp tax bills of lading and

receipts were reenacted. There is a presumption that the legislature reenacted the law on the tax with full knowledge of the contents of the regulations then in force regarding bills of lading and receipts, and that it approved or confirmed them because they carry out the legislative purpose."

The fourth assignment of error, being only a consequence of the first three, the same should also be dismissed.

Wherefore, the decision appealed from should be affirmed, with costs against petitioner-appellant.

Bengzon, Acting C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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