

COLLECTOR (NOW COMMISSIONER) OF INTERNAL REVENUE PETITIONER, VS. TAN ENG HONG, RESPONDENT.

G.R. No. L-16893. October 22, 1966

Ponente: REGALA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d4f28b79f423/>

REGALA, J.:

This is an appeal from the decision of the Court of Appeals in C.T.A. Case No. 436 entitled "Tan Eng Hong, Petitioner vs. Collector of Internal Revenue, Respondent," absolving Tan Eng Hong from certain tax liabilities as a commercial broker.

Sometime in 1952, the Philippine Council for United States Aid (PHILCUSA) called a public bidding for the supply of certain materials which it intended to give as aid to the Philippines. Tan Eng Hong won the bid so that from 1952 to 1955, inclusive, he made deliveries to PHILCUSA of the bidden goods for which he received in payment the total sum of P94,685.71. The Bureau of Internal Revenue determined that the various transactions under the above bid were carried out by Tan Eng Hong as a commercial broker and, accordingly, assessed against the sum received, fixed and percentage taxes and surcharge in the amount of P7,513.94.

Taking issue with the Bureau's ruling that he was acting as a commercial broker in supplying the goods under the above bid, Tan Eng Hong went to the Court of Tax Appeals, under C.T.A. Case No. 436, on a petition for review. After due trial and hearing, the said court rendered judgment with the following dispositive portion—

"WHEREFORE, in view of the foregoing considerations, the decision appealed from is hereby reversed, and the deficiency assessment for fixed and percentage taxes in the total sum of P7,513.94 issued by the respondent Collector of Internal Revenue is hereby cancelled and withdrawn. Without pronouncement as to costs."

The sole and principal predicate of the trial court's decision abovementioned was its finding that "petitioner Tan Eng Hong was not a broker but the importer of the goods sold to PHILCUSA." Consequently, the instant appeal refers alone to the correctness or error of the above finding that Tan Eng Hong was not a commercial broker. The commissioner of Internal Revenue urges that he was so.

To resolve the issue, it is necessary to discuss the specific details of the transactions in dispute. Inasmuch as there is no dispute by the parties herein on the trial court's account of it, We deem it best to reproduce the said account hereunder:

"To start with, PHILCUSA announces that 'Sealed bids * * * will be received * * * and then publicly opened for furnishing commodities for delivery C & W Manila.' (Exh. 7, pp. 44-46 BIR rec.; Exh. H, p. 65 CTA rec.) The petitioner, as a qualified bidder, submits his signed proposal together with a proposal bond. He 'offers and agrees, if this (his) bid be accepted within 20 calendar days from the date of opening, to furnish any or all of the items of which prices are quoted, at the price set opposite each item and delivered at the point(s) specified * * *.' (Exh. 7, pp. 44-46, BIR rec; Exh. H, p. 65 CTA rec.) The quotations of the petitioner is in Philippine currency for the C & F Philippine Port Value. In computing his bid, the total C & F dollar cost is converted to pesos on the basis of P2.00 to P1.00, and his profit in pesos which he personally and solely fixes, is then added

thereto in order to arrive at the correct total quotation.

"If the bid of the petitioner is accepted by PHILCUSA, he receives a letter of award wherein he is required to inform PHILCUSA of the (1) Net C & F dollar cost to his suppliers per item and per each supplier's group; (2) Names and addresses of his suppliers; and (3) Names of independent inspection firms that will undertake the inspection prior to the shipment of the goods. Hence, it is only after the petitioner has been finally awarded the bid contract that PHILCUSA comes to know of the names of the foreign suppliers of the commodities to be imported and the sole purpose seems to be to secure and facilitate the dollar payment of the imported goods to said suppliers abroad. Then, the petitioner is also requested to submit a performance bond and to apply at the Philippine National Bank for the corresponding letter (s) of credit in favor of his suppliers abroad. (Exh. Z, p. 32 CTA rec.) However, he is not required to secure an import license for the goods imported for PHILCUSA.

"Accordingly, the petitioner applies for a letter of credit with the Philippine National Bank in his own name and for his own account and in favor of his suppliers abroad. He pays the usual bank charges, but is not required to make payment of pesos into the counterpart fund nor pay the foreign exchange premium as no actual sale of dollars is involved. He is also exempt from the payment of the following: (1) Foreign exchange tax; (2) sales tax; (3) customs duties; (4) municipal taxes; (5) arrastre charges; and (6) delivery charges, except when otherwise provided in the contract. The dollars that are being used in all the PHILCUSA purchases belong to the United States Mutual Security Administration (hereinafter to as MSA) and are actually paid for by the Philippine Government by general payments from the special appropriation directly into the counterpart fund. (Par. 14, Exh. F., pp. 55-56 CTA rec, also Exh. 8, pp. 19-20 BIR rec.) And most probably for this reason, the petitioner authorizes the Philippine National Bank to "deliver all documents drawn under this credit to PHILCUSA." (Exh. G. p. 64 CTA rec.)

In carrying out a commercial venture under the aforequoted arrangement, did Tan Eng Hong act as a commercial broker?

We do not think so.

In the case of *Kuenzle & Streiff, Inc. vs. The Commissioner of Internal Revenue*, G. R. No. L—17648, October 31, 1964, this Court held that the essential feature of a broker is the fact that he acts not for himself, but for a third person. As was therein held:

"Section 194 (t) of the Revenue Code defines a commercial broker in the following manner:

(t) 'Commercial broker' includes all persons, other than importers, manufacturers, producers, or bona fide employees, who, for compensation or profit, sell or bring about sales or purchases of merchandise for other persons, or bring proposed buyers and sellers together, or negotiate freights or other business for owners of vessels, or other means of transportation, or for the shoppers, or consignors or consignees of freight carried by vessels or other means of transportation. The term includes commission merchants.'

There does not seem to be any room for doubt that the petitioner falls within the above definition. Under the said section, as well as by the ruling handed down in at least two cases by this Court, the essential feature of a broker is the fact that he acts not for himself, but, for a third person. (*Kerr & Co., Ltd. vs. Collector of Internal Revenue*, 70 Phil. 36; *Behn, Meyers & Co., Ltd. vs. Nolting and Garcia* In Behn 35 Phil. 274) In Behn Meyer case, We said:

"* * * A broker is generally defined as one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name but in the name of those who employed him; he is strictly a middleman and for some purposes the agent of both parties (*Italics ours*).

It seems obvious from the facts of this case that Tan Eng Hong undertook the importation of the goods needed by PHILCUSA for himself and not for PHILCUSA. In effecting the importation of the said goods, he was

discharging his own, personal obligation as the winner in the bidding called by PHILCUSA. He imported the commodities not because PHILCUSA had asked him to but because he had obligated himself to deliver the same to PHILCUSA when he participated and won in the public bidding called by the said agency. Tan Eng Hong would have been liable in damages to PHILCUSA if he had failed to import the said goods so that when he carried out the importation, he was, first and foremost, serving his own interest and no one else's.

Upon the records of this case, it appears that Tan Eng Hong signed and submitted his bids or proposals under his name and the corresponding letters of credit were sent to his business address. The letters of credit, performance bonds, invoices and all other documents relative to the transactions were in his name. The bid contracts were strictly between Tan Eng Hong and PHILCUSA just as the formers contracts with his foreign supplier were strictly between them alone, i.e., Tan Eng Hong and the foreign supplier only. The foreign supplier and PHILCUSA had no privity of contractual relations whatsoever to the end that neither of them could have had any claim against each other for whatever fault or breach Tan Eng Hong might have committed relevant to the transactions in dispute. It would indeed be quite difficult to sustain any assertion that Tan Eng Hong was acting for and in behalf of PHILCUSA or his foreign supplier or both.

The broker must be the efficient agent or the procuring cause of the sale. The means employed by him and his efforts must result in the sale. He must find the purchaser, and the sale must proceed from his efforts acting as a broker. (Reyes vs. Mosqueda, 99 Phil, 241; 53 Off. Gaz., 2158). This condition may not be said to obtain in the case on hand. Tan Eng Hong did not merely bring PHILCUSA and his foreign supplier to come to an agreement for the sale of certain commodities. It was he himself who contracted with his foreign supplier for the purchase of the said goods. If, for one reason or another PHILCUSA had refused to accept the delivery of the said goods to it by Tan Eng Hong, the foreign supplier could not have compelled PHILCUSA otherwise. Similarly if somehow the foreign supplier had defaulted in the performance of its obligations to Tan Eng Hong, PHILCUSA could not have had any action or remedy against the said foreign supplier. All these indicate the distinct and independent personality of Tan Eng Hong as an importer and a commercial broker.

Wherefore, the decision appealed from is hereby affirmed in full. No pronouncement on costs.

Concepcion, C. J., Reyes, J. B. L., Dizon, Makalintal, Bengzon, J. P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Judgment affirmed.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.