

THE COMMISSIONER OF CUSTOMS AND THE COMMISSIONER OF INTERNAL REVENUE, PETITIONERS, VS. MIGUEL FORTICH CELDRAN AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-23425. February 26, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal taken by the Government from a decision of the Court of Tax Appeals.

Sometime in October, 1960, Miguel Fortich Celdran [] hereinafter referred to as Celdran [] a Filipino physician, returning from the United States, in which he had stayed for about two (2) years arrived at the Port of Cebu, bringing with him, as part of his personal belongings, a Chevrolet "Impala" Car, 1959 model. The Collector of Customs of Cebu exempted the car from the payment of customs duty,[1] but imposed and collected P889.52 as special import tax of P11,295.12 as compensating tax, in addition to a P35.00 fine for alleged non-filing of a consular invoice, which sums were paid Celdran under protest. The same having been overruled by said officer, Celdran appealed to the Commissioner of Customs, with the same result, except as to the fine of P25.00, which was ordered refunded. On appeal, taken, once again, by Celdran, Court of Tax Appeals rendered a decision, the dispositive part of which is as follows:

"WHEREFORE, the decision appealed from is modified by eliminating the 25% margin fee from the tax base of the special import and compensating taxes and taking the invoice value of \$2,150.00 as the tax-able value of the imported car. After recomputing the taxes in accordance with our decision, the re-spondent Commissioners shall refund to petitioner the resulting amounts as overpaid taxes. Without pronouncement as to costs."

The case is now before us on petition for review, filed by the Solicitor General, on behalf of the Commissioner of Customs and the Commissioner of Internal Revenue, hereinafter referred to as appellants.

The questions for determination in this appeal are: 1) whether the margin fee of 25% of the value of the car shall be added thereto as part of the basis for the computation of the taxes above mentioned; and 2) whether the value of the car, for purposes of said computation, shall be the price given in its seller's invoice, or the value as determined by the Customs Appraiser, pursuant to Finance Department Order No. 289-A (November 19, 1957).

With reference to the first question, Section 1 of Republic Act No. 2609 reads:

"The provisions of any law to the contrary notwithstanding when and as long as the Central Bank of the Philippines subjects all transactions in gold and foreign exchange to licensing in accordance with the provisions of section seventy-four of Republic Act Numbered Two Hundred Sixty-Five, the Central Bank, in respect of all sales of foreign exchange by the Cen-tral and its authorized agent banks, shall have authority to establish a uniform margin of not more than forty per cent over the banks' selling rates stipulated by the Monetary Board under section seventy-nine of Republic Act Numbered Two Hundred sixty-five, which margin shall not be changed oftener than once a year except upon the recommendation of the National Economic Council and the approval of the President. The Monetary Board shall fix the margin at such rate as it may

deem necessary to effectively curtail any excessive demand upon the international reserve.

"In implementing the provisions of this Act, along with other monetary, credit and fiscal measures to stabilize the economy, the monetary authorities shall take steps for the adoption of a four-year program of gradual decontrol." (Underscoring supplied.)

Pursuant to this section and to Section 7 of the same Act; authorizing the Monetary Board to "prescribe and promulgate rules and regulations necessary to carry out the provisions" thereof, the Monetary Board had issued Central Bank Circular No. 95,2 Section 1 of which provides:

"Authorized agent banks shall collect on every sale of foreign exchange and the purchaser of foreign exchange shall pay to the authorized agent banks selling the foreign exchange a margin of twenty-five per-cent 25%, of the value of the Philippine peso on such sale x x x." (Underscoring supplied.)

The issue is whether or not this provision applies to the "Impala" car in question, considering that Celdran had bought it in the United States, with savings from his earnings as a physician working in a hospital therein, and that no agent bank of Central Bank of the Philippines had made any sale of foreign exchange in connection therewith.

The Court of Tax Appeals decided said issue in the negative stating:

"Petitioner (Miguel Fortich Celdran) further disputes the legality of including the 25% margin fee in the tax base for purposes of assessment and collection of taxes. He argues that the law, Republic Act No. 2609, imposes a margin fee on the sale of foreign exchange and since no such sale is involved in the instant case, the same should not be added to the tax base in computing his tax liability.

"We agree with petitioner. Inasmuch as in the instant case no dollars went out of the country and the margin levy of 25% did not form part of the total value of the imported car, we find no cogent reason for adding the margin fee to the tax base." (Underscoring supplied.)

Under analogous conditions we held in *Commissioner of Customs vs. Icamen*:³

"Coming to the claim that the goods in question are subject to forfeiture because they were imported in violation of Central Bank Circular No. 45, the Court of Tax Appeals also found as a fact that the same were purchased by respondent with dollars received by him in the form of salary and allowances in Tokyo, Japan, while he was there as an officer of the Armed Forces of the Philippines detailed with the Philippine Liaison Group (U. N.) attached to the Philippine Mission in Tokyo. The evidence supporting this finding has not been contradicted. The case, therefore, does not involve 'imported goods' in the sense of goods purchased abroad and paid with money (in U. S. dollars or in Philippine Currency) coming from the Philippines. In other words, it is clear that they are goods brought into the Philippines which did not involve the sale of foreign exchange, this importation having taken place before the enactment of Republic Act No. 1410 prohibiting the so-called no dollar importation except under certain conditions." (Underscoring supplied.)

Inasmuch, as the margin fee, provided in Central Bank Circular No. 95, applies only to sales of foreign exchange by banks duly authorized to sell the same as agents of the Central Bank of the Philippines, and there has been neither such "sale of foreign exchange nor the intervention of any agent bank of the Central Bank, it follows necessarily, that the Court of Tax Appeals was right in deciding the first issue against appellants herein.

As regards the second issue, it appears that the invoice value of said car is \$2,150.00, whereas its "red book" value, or the published retail factory price thereof, is \$2,717.00. Appellants maintain that the above named taxes should be based upon the latter price, because Finance Department Order No. 289-A, directs that:

"1. All cars imported for personal use, irrespective of the country of origin shall be evaluated by the appraiser either on the actual purchase price of the car when bought directly from the manufacturer or franchised dealer abroad or if not known or questionable the published retail factory price for the year of manufacture. x x x

"2. The actual purchase price of the car when bought directly from the manufacturer or franchised dealer abroad or published retail factory price which-ever is accepted by the appraiser, shall be entitled to a depreciation allowance for the applicable model year of all makes of cars, regardless of country where man-ufactured, in accordance with the following table: x x x x." (Underscoring supplied.)

Appellants further argue that the determination of which the two (2) prices shall be used in computing the taxes collectible is left to the judgment of the customs appraiser, whose determination is presumed to be correct, and that, since Celdran had failed to show that he had bought the car from a manufacturer or franchised dealer of cars in the United States, its invoice price cannot serve as the basis of the taxes adverted to above.

Section 1405 of the Tariff and Customs Code, upon which Finance Department Order No. 289-A is predicated, reads:

"x x x Proceedings and report of appraisers. Appraisers shall, by all reasonable ways and means, ascertain, estimate and determine the value or price of the articles as required by law, any invoice, or af-fidavit thereto or statement of cost, or of cost of production to the contrary notwithstanding, and after revising and correcting reports of the examiners as they may judge proper, shall report in writing on the face of the entry the value so determined ir-respective of whether such value is equal, higher or lower than the invoice and/or entered value of the articles.

"Appraisers shall describe all articles on the face of the entry in tariff and such terms as will enable the Collector to pass upon the appraisal and classification of the same, which appraisal and classification shall be subject to his approval or modification, and shall note thereon the measure-ments and quantities, and any disagreement with the declaration."

In this connection, it appears that the car involved in this case is a two-door 8-cylinder Impala car, 1959 model, which came in "unboxed," aboard the 'SS Doña Aurora," and was cover-ed by informal entry No. 293753, series of 1960; that the car had a mileage reading of 216, 029, as described in said informal entry; that, at the time of its purchase, there were some defects in the windshield and its tires were so worn out that they had to be replaced; that the car invoice, issued by the Byrne Bros., Inc., is not an ordinary sales invoice, but a certified "Bill of Sale," dated January 15, 1960, signed by the dealer's vice-president and rati-fied, on the same date, before a notary public of New York; that the price of the car had been fully paid; that the car was encumbered with a chattel mortgage in favor of the First National City Bank of New York, for a loan in the sum of \$1,056.00; and that, on October 24, 1960, a consular invoice was issued by the Consulate Gen-eral of the Philippines in New York, and ratified by Philippine Con-sul Belen S. Bautista, as well as verified by the Philippine Customs Attache in New York, Zosimo de Veyra, stating that the "selling price to purchaser" and the "current export value" of the car is \$2,150.00.

Upon the other hand, there is absolutely no evidence that this invoice price of the car is not its actual purchase price, so as to justify a disregard thereof and a resort to the published retail factory price. Again, the record does not show that any customs examiner has made his "report in writing on the face of the entry," as required in Section 1405 of the Tariff and Customs Code, that the value of the car has been determined by him to be higher than its invoice price.

Considering the public character of the Certified Bill of Sale and the official character of the consular invoice adverted to above, and there being no reasonable ground to deny to these do-cuments the faith and credence normally due thereto, we hold that the conclusion reached by the Court of Tax Appeals in resolving the second issue should not be disturbed.

WHEREFORE, the decision appealed from should be, as it is hereby, affirmed, without special pronouncement as

to costs.

IT IS SO ORDERED.

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

[1] Under Section 105(i) of the Tariff and Customs Code.

2 Dated July 17, 1959.

3 L-112351, June 29, 1965.

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