

LIM TIONG (MANILA LUMBER), PETITIONER, VS. THE COURT OF TAX APPEALS AND THE COLLECTOR OF INTERNAL REVENUE, RESPONDENTS.

G. R. No. L-10964. February 27, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for a review of a judgment of the Court of Tax Appeals under section 18, Republic Act No. 1125, affirming the assessment made by the Collector of Internal Revenue and ordering the petitioner to pay the sum of P2,938.20 as deficiency sales tax imposed by section 186, as amended by Republic Acts Nos. 588, 594 and 894, of the National Internal Revenue Code and surcharge for the period from 1949 to 1953 inclusive. The facts are not disputed. As found by the Court of Tax Appeals—

This is an appeal from the decision of the respondent Collector of Internal Revenue assessing and demanding from the petitioner the payment of the sum of P2,938.20 as deficiency sales tax and surcharge, and the additional sum of P250.00 in extra-judicial settlement of his penal liability for violation of the provisions of the National Internal Revenue Code, or a total of P3,188.20.

It appears that petitioner Lim Tiong owns and operates the Manila Lumber which is provided with C-13 privilege tax receipt for buying and selling logs and lumber, and C-14 privilege tax receipt for buying logs intended to be sold after having been cut into standard sizes of lumber. The petitioner, not being an owner of a sawmill, merely buys logs and have them processed into lumber of various sizes by the Oriental Sawmill, Pio Barretto & Sons and other sawmills in Manila. He then pays the sawmill owners for their services rendered computed on the number of board feet cut and/or sawn. (Memorandum for the Petitioner, p. 1; Stipulation of Facts, par. 2.)

Prior to September 22, 1950, the date when Republic Act No. 588 took effect, the petitioner had been paying 5 per cent sales tax on the gross selling price of the lumber after deducting the cost of the logs. After the date just mentioned, the petitioner continued to pay the 5 per cent sales tax but computed on the 33 1/3 % of the gross cost of logs purchased and from which said lumber were processed, pursuant to the second paragraph of Section 186 of the National Internal Revenue Code, as amended by Republic Acts Nos. 588, 594 and 894.

On May 21, 1954, the respondent Collector of Internal Revenue issued an assessment and demand against the petitioner requiring the payment of the sum of P2,938.20 as deficiency sales tax and surcharge covering the period from 1949 to 1953, inclusive, plus the additional amount of P250.00 in extrajudicial settlement of his penal liability. The said deficiency assessment which is the subject of the present appeal, was computed by the respondent on the basis of 5% sales tax on the gross sales of lumber less the cost of the logs converted into such lumber in accordance with the first paragraph of Section 186 of the Tax Code, as amended. The petitioner admits the correctness and accuracy of the figures in the deficiency assessment but questions the basis on which the said assessment was computed.

The only question at issue in this case is the determination of whether or not the petitioner is "an operator of a sawmill" in order that he can take advantage of the provisions of the second paragraph of section 186 of the

National Internal Revenue Code with respect to the payment of the 5% sales tax on the lumber he is selling.

The petitioner contends that he is an operator of a sawmill or at least one by fiction of law, as according to him a sawmill is a factory or manufacturing establishment where logs are cut, sawn and converted into lumber of different sizes, and as in the payment of sales tax he is considered a manufacturer of lumber under section 186 of the National Internal Revenue Code, he must be deemed also to be an operator of a sawmill, for one cannot be a manufacturer of lumber without being an operator of a sawmill. The Court held:

* * * the records clearly show that he does not own or operate one, nor did he, at one time or another, ever enter into a contract of lease of a sawmill. No iota of evidence was presented to show that during the period in question, the petitioner was in possession of, or at least had something to do with the running of any sawmill. He merely hired the services of operators and owners of sawmills on piece of work basis, and paid them for their work rendered computed on the number of board feet cut and/or sawn.

* * * It is our considered opinion that the term "operators of sawmills" as used in section 186 of the National Internal Revenue Code refers only to those who actually supervise, manage and control the operation of sawmills. In the instant case, the petitioner has no say whatsoever in the management and operation of any sawmill and we hold that he is not an operator of a sawmill.

Moreover, the petitioner does not possess the necessary permit from the Director of Forestry for the operation of a sawmill which is required by Republic Act No. 460. To our mind, this is a clear index that the petitioner is in reality not an operator of a sawmill which he pretends to be, and bolsters our conclusion that he should pay the percentage sales tax under the first paragraph of Section 186 of the National Internal Revenue Code.

There is no reason which would justify a contrary pronouncement.

The petitioner claims that the judgment under review if not reversed would violate the rule of uniformity in taxation ordained by the Constitution, because there would be original sales of sawn lumber manufactured out of purchased logs taxed on their gross selling price less the cost of logs purchased and original sales of the same sawn lumber taxed on the 33 1/3% of the gross cost of logs purchased and intended for manufacture. Section 186, as amended, of the National Internal Revenue Code makes a distinction between the basis of the tax on original sales of forest products payable by the manufacturer or producer and that on original sales payable by operators and proprietors of sawmills who buy logs for the purpose of sawing and/or cutting them into lumber of standard sizes. Within each class there is uniformity of taxation. Hence the constitutional mandate on uniformity of taxation is not infringed upon. Republic Act No. 460 requires operators of sawmills to obtain from the Director of Forestry permits for the operation of such sawmills. The reason why the petitioner did not secure any permit was because he did not and does not operate a sawmill.

The judgment under review is affirmed, with costs against the petitioner.

Paras, C. J., Bengzon, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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