

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
XAVIER GUN TRADING AND LUZON SURETY CO., INC., DEFENDANTS,  
LUZON SURETY CO., INC., DEFENDANT AND APPELLANT. REPUBLIC  
OF ...**

*G.R. Nos. L-17325 and L-16594. April 26, 1962*

Ponente: PAREDES, J.

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**PAREDES, J.:**

As these cases pose the same issues, they are jointly decided.

G. R. No. L-17325:—The Bureau of Internal Revenue discovered that the "Xavier Gun Trading" (Iligan and Malabang branches), failed to declare certain amounts representing sales for 1948. Mrs. Estrella F. Javier, branch manager, acknowledged the violation and promised to pay the corresponding tax delinquency in the amount of P712.20. Thereafter, Xavier Gun Trading made partial payments until a balance of P312.70 still remained due and collectible. On June 5, 1952, in Manila, Xavier Gun Trading, as principal and the Luzon Surety Co. Inc., as surety, executed an ordinary bond for payment of taxes, guaranteeing payment of the sum of P312.70 in favor of the Republic of the Philippines. In said bond, the said principal and the Luzon Surety Co. bound themselves jointly and severally, to pay the aforesaid obligation of P312.70 within six months from date thereof.

The Manila store of the Xavier Gun Trading was likewise investigated and an assessment letter dated May 19, 1952, was sent, demanding payment of P2,951.14, representing sales taxes, fixed taxes, surcharge and penalty for 1948 and 1950. On June 5, 1952, also in Manila, Xavier Gun Trading, as principal and the Luzon Surety Co., Inc., as surety, executed an ordinary bond for payment of taxes, guaranteeing payment of said amount in favor of the Republic, in which the principal and the surety, bound themselves jointly and severally to pay the said obligation of "P2,951.14 within six months from date thereof."

The condition common to the two bonds is "that if the above-bounden principal shall well and truly pay unto the Republic of the Philippines the full sum of (P312.70 and P2,951.14), in the manner and at the date indicated above, this obligation shall ipso facto become null and void; otherwise, it shall remain in full force and effect." Notwithstanding repeated demands, neither the Xavier Gun Trading nor the surety company paid the aforementioned amounts secured by the bonds.

On May 23, 1958, an action was instituted in the CFI of Manila by the plaintiff Republic against the defendants Xavier Gun Trading and Luzon Surety Co. Inc. for the forfeiture of the two ordinary bonds for payment of the taxes in question. Defendant Xavier Gun Trading was declared in default for failure to answer within the reglementary period; while the surety company, although admitting the execution of the two bonds, puts up the defense that plaintiff's cause of action, if any, is barred by the statute of limitations and that the Court of First Instance has no jurisdiction over the subject matter of the action. Both contentions, were overruled by the trial court which rendered judgment ordering the defendants to pay plaintiff the amounts prayed for in the complaint, and to pay the costs. The defendants appealed and alleged that the lower court erred:—

(1)

In applying article 1144 of the new Civil Code a general law, instead of section 332 (c) of the National Internal Revenue Code, a specific law, in determining the period of prescription and

(2)

In not dismissing the complaint on the ground of prescription.

G. R. No. L-16594:—On June 16, 1951, Tomas Dorego, as principal, with Natividad Dorego and Silvestre Arroyo as sureties, executed in the City of Iloilo, a surety bond guaranteeing payment of P2,600.00 in favor of the Republic, representing percentage taxes due from the principal Tomas Dorego on his sales of sand and gravel. Under the said bond, the Doregos bound themselves jointly and severally, to pay the aforesaid obligation as follows—

"I will pay the Government the sum of P260.00 upon acceptance of this bond and P260.00 monthly, beginning July 16, 1951, until the whole amount of P2,600.00 is fully paid; and that if the principal shall be in default in the payment of this obligation or any installment hereof, the Commissioner of Internal Revenue or its authorized deputy may consider the entire balance as at once due and payable and demand its payment".

The Doregos paid only the sum of P260.00, as first installment on June 19, 1951, thereby leaving unpaid the balance of P2,340.00. Notwithstanding repeated demands, the Doregos failed and refused to pay the balance. Hence, on March 25, 1959, the Republic filed a complaint in the CFI of Iloilo against them, for collection.

On April 14, 1959, the defendants-Doregos filed a motion to dismiss the complaint on the ground that the right of the Republic to collect has already prescribed. Acting on the motion, the CFI of Iloilo, dismissed the complaint, declaring that since the payment of the first installment of P260.00 on June 19, 1951, no action was instituted in due time to enforce the collection of the balance unpaid, "As the action to collect the principal obligation prescribed in five years, that is, on June 20, 1956, the guaranty to pay the same necessarily ceased to exist also on June 20, 1956, for the accessory can not outlive the principal obligation." The Republic appealed directly to this Court, contending that the lower court erred in dismissing the case on the ground of prescription of action, an issue which is purely legal in nature.

The tax-payers and their sureties in both cases do not deny having executed the bonds in question but claim that under section 332, par. (c) of the Tax Code, the cause of action of the Republic is barred by the statute of limitations. Their theory is that the action being for collection of taxes, the action is barred pursuant to section 332 (c) of the Tax Code, inasmuch as the present actions were instituted more than 5 years from the assessments. The Government, on the other hand, avers that Article 1144 of the new Civil Code is applicable, because the actions are for the forfeiture of the bonds in question. The all-important issue, therefore, is: which law should apply?

The Internal Revenue Code provides—

"SEC. 332. Exceptions as to period of limitation of assessment and collection of taxes-

(a) \* \* \* \* \*

(b) \* \* \* \* \*

(c) Where the assessment of any internal revenue tax has been made within the period of limitation above described such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Collector of Internal Revenue and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made

before the expiration of the period previously agreed upon".

Article 1144 of the new Civil Code states—

"The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract.

\* \* \* \* \*

The herein tax-payers and the bondsmen argue that the subject-matter of the actions, "being the assessment taxes", they would be without the authority of law, after 5 years from the date of assessment; that Article 1144 aforequoted is unavailing, because the execution of the bonds was merely incidental to the collection of the taxes, as they were filed to give the tax-payer additional time of grace, and that as the Civil Code provisions are general, referring to all classes of contract, while the provision in the Revenue Code is specific, referring to internal revenue taxes, the latter constitute an exception to the general act, or provision (*Lichauco vs. Apostol*, 44 Phil., 138).

We do not share this view. The present actions by the government are for the forfeiture of the bonds in question. Although the subject-matter of said bonds are internal revenue taxes, it cannot be denied that upon the execution of said bonds, the tax-payer, as principal and the bondsman, as surety, assumed a new and entirely distinct obligation and became subject to an entirely different kind of liability. Thus, it has been held:

"However, as soon as the bond was executed, the taxpayer assumed a second and entirely distinct obligation, and became subject to a new and entirely different kind of liability . . . The new liability was voluntary and contractual. It was in form a direct and primary obligation, not to pay a tax, but to pay the sum of \$12,635.00, defeasible only upon payment by the taxpayer of a certain amount, to be fixed by subsequent action of the Commissioner. No limitation was put upon the time within which the Commissioner was required to act in fixing such sum. Inasmuch as the Collector had the right to proceed immediately for the collection of the tax, it follows that he also had the right to require, as the price of forbearance from such action, a general promise to pay such amount as might be found due at any time, either before or after the expiration of the statutory period . . ." (*McCaughn vs. Philadelphia Barge Co.* 27 F (2d) 628, *Italics supplied.*)

"The making of the bond gives the United States a cause of action separate and distinct from an action to collect taxes which it already had. The statutes now pleaded to bar the suit can not be extended by implication to a suit upon a subsequent and substituted contract. The postponement of the collection of taxes returned was a waiver of the statutory limitation of five years that would have applied had the voluntary return of the taxpayer stood and no bond been given. If there is any limitation applicable to a suit on the bond, it is conceded that it has not yet become effective." (*United States vs. Barth Co.*, 73 L. Ed. 746, U.S. 278-279, *Italics supplied.*)

Section 332 (c) of the Revenue Code, is not applicable to actions of forfeiture of bonds. The period of limitation provided in this section is evidently confined to actions for the collection of taxes. So that the question of conflict between a general and special law, has no relevance to the present cases.

The bonds under consideration are written contracts imposing rights and liabilities, according to the terms thereof. Since the principals and sureties failed to pay the liabilities in the manner and on the dates indicated in said bond, the right of the government to take court action for their forfeiture is clear. And these actions were filed in both cases, within the 10 years period from the accrual of the right of action.

Furthermore, to uphold the tax-payers' defense of prescription would in effect nullify their distinct and separate undertaking in the bonds which were executed and filed by them to lighten the payment of their tax obligations. In

a recent case (Republic vs. Araneta, et al., 61 Off. Gaz., [9] 1174) this Court held—

"\* \* \*. The appellants-taxpayers failed to pay any of the installments despite demand (Annexes E, G & I). Hence, the appellee sued on the bond (Annex B) which is a separate and distinct obligation of the parties thereto. For this Court to sustain the appellants' defense of prescription would in effect nullify their undertaking in the bond which was executed and filed by them to lighten their tax obligation or burden by being allowed to pay in six equal installments.

The action to enforce the obligation on the bond executed on 18 March 1949, having been filed in court by the appellee on 22 February 1957, was within the prescriptive period of ten years.

The appellants-taxpayers' argument that the bond (Annex B) being ancillary to the principal obligation to pay their tax liability, which already has prescribed, the enforcement of their obligation in the bond also has prescribed, is untenable. What has been said about their claim of prescription against the collection of the tax equally applies to the claim of prescription against the enforcement of the bond obligation or undertaking".

Assuming for the purposes of argument that said section 332 (c) is applicable, still We find that the collection of the tax liabilities in question has not prescribed. Sub-par. (2), par. (c) of Sec. 832 (supra), states that the 5 year period for collection of taxes may be extended by agreement between the Collector and the tax-payer, made before the expiration of such five-year period. The bonds in question, contain a promise that if the principal shall well and truly pay to the Republic the sums in question, in the manner and at the dates indicated therein, the obligations shall ipso facto become null and void, otherwise, they shall remain in full force and effect. The tax-payers having failed to pay their tax liabilities, the bonds remained in full force and effect. The period during which the bonds remained effective may be considered to have suspended the running of the 5 year period of prescription provided for in said section 322 (c). The rule is in accord with the general law on prescription that requires a written acknowledgment of the debtor to renew the cause of action or interrupt the running of the limitation period (Art. 190, sec. 50; Art. 1155, new Civil Code; Collector vs. Solano & CTA No. L-11475, July 31, 1958). The obligations contracted in the bonds by the tax-payers, constitute a written acknowledgment of the debt by the debtor which interrupted the 5-year period of prescription (Act 1155 N.C.C.).

In view hereof—

- (1) In case G. R. No. L-17325, the judgment appealed from is affirmed, with costs against the defendant-appellant; and
- (2) In case G. R. No. L-16594, the order of dismissal appealed from is reversed, and the case remanded to the court of origin for further proceedings, with costs against the defendants-appellees.

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

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