

**INTERPROVINCIAL AUTOBUS CO., INC., PETITIONER, VS.
COLLECTOR OF INTERNAL REVENUE, RESPONDENT.***G.R. No. L-6741. January 31, 1956*

Ponente: LABRADOR, J.

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This is an appeal by way of certiorari from a decision of the Court of Appeals reversing the judgment of the Court of First Instance of Misamis Occidental in civil case No. 1161, entitled *The Inter provincial Autobus Co., Inc., plaintiff versus Eibiano L. Meer as Collector of Internal Revenue, defendant and absolving the defendant-appellant therein from the complaint.*

Plaintiff is a common carrier engaged in transporting passenger and freight by means of TPU buses in Misamis Occidental and Northern Zamboanga. Sometime in the year 1941 the provincial revenue agent for Misamis Occidental examined the stubs of the freight receipts that had been issued by the plaintiff. He found that the stubs of the receipts issued during the years 1938 to 1938 were not preserved; but those for the years 1939 to 1940 were available. By referring, however, to the conductors' daily reports for 1936 to 1938, he was able to ascertain the number of receipts for those years and these, together with those for 1939 to 1940, gave a total during the 5-year period from 1936 to 1940, of 194,406 freight receipts issued. Both the said daily reports of plaintiff's conductors and the available stubs did not state the value of the goods transported thereunder. Pursuant, however, to sections 121 and 127 of the Revised Documentary Stamp Tax Regulations of the Department of Finance promulgated on September 16, 1924, he assumed that the value of the goods covered by each of the above-mentioned freight receipts amounted to more than P5, and assessed a documentary stamp tax of P0.04 on each of the 194,406 receipts. The tax thus assessed amounted to P7,776.24, which was collected from the deposit of the plaintiff in the Misamis Occidental branch of the Philippine National Bank. Plaintiff demanded the refund of the amount, and upon refusal of the defendant, plaintiff filed the action. The Court of First Instance of Misamis Occidental having rendered judgment in favor of the plaintiff, the defendant appealed to the Court of Appeals. This court reversed the decision appealed from and absolved the defendant from the complaint, Hence, this appeal.

In this Court petitioner-appellant presents the following propositions: (1) that the judgment of the Court of Appeals is null and void, because it had no jurisdiction of the case, which involves "the validity of an assessment; (2) that the decision of the Court of Appeals is erroneous because freight receipts are not bills of lading within the meaning of Section 1449, sub-paragraph (r), of the Revised Administrative Code of 1917, and because the provision of section 121 of the Revised Documentary Stamp Tax Regulations, to the effect that if the bill of lading fails to state the value of the goods shipped, it must be held that the tax is due, is illegal; (3) that the documentary stamp tax on freight receipts should be paid by the shipper of the merchandise, not by the carrier; and (4) that the collection of the tax is illegal because it was done beyond the period of limitation fixed by law for its collection.

The first proposition, that the Court of Appeals had no jurisdiction of the appeal from the Court of First Instance, is well founded. Both the Constitution and the Judiciary Act of 1948 grant to the Supreme Court exclusive Appellate jurisdiction over all cases involving the legality of any tax, assessment, or toll, or any penalty in

relation thereto. The Court of Appeals in turn has no jurisdiction over cases the exclusive appellate jurisdiction of which is granted the Supreme Court. As the legality or validity of the tax is involved in the present appeal the Supreme Court is the one that had jurisdiction thereof and the Court of Appeals had none. The decision of the Court of Appeals was, therefore, null and void.

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 bus 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 effects 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.

The next claim involves the validity of Department of Finance Regulation No. 26 dated September 16, 1924, which provides:

"Sec. 121. Basis of the tax and affixture of stamps.—Bills of lading are exempt from the documentary stamp tax imposed by paragraphs (q) and (r) of section 1449 of the Administrative Code when the value of the goods shipped is P5 or less. Unless the bill of lading states that the goods are worth P5 or less, it must be held that the tax is due, and internal revenue officers will see to it that the tax is paid in P11 cases where the bill of lading does not state that the shipment is worth P5 or less."

"Sec. 127. 'Chits,' memorandum slips, and other papers not in the usual commercial form of bills of lading, when used by common carriers in the transportation of merchandise or goods for the collection of fees, therefor are considered as bills of lading, and the ordinal thereof issued or used should bear the documentary stamp as provided by paragraphs (q) and (r) of section 1449 of the Administrative Code."

The above regulations were promulgated under the authority of section 79 (B) of the Administrative Code, (originally section 2 of Act 2803), which expressly provides:

"The Department Head shall have power to promulgate, whenever he may see fit to do so, all rules, regulations, orders, circulars, memorandums, and other instructions, not contrary to law, necessary to regulate the proper working and harmonious and efficient administration of each and all of the offices and dependencies of, his Department, and for the strict enforcement and proper execution of the laws relative to matters under the jurisdiction of said Department; but none of said rules or orders shall prescribe penalties for the violation thereof, except as expressly authorized by law. * * *"

Did the Secretary of Finance infringe or violate any right of the taxpayer when he directed that the tax is to be collected in all cases where the bill of lading or receipt does not state that the shipment is worth P5 or less, or, in the language of the petitioner-appellant, when he (Secretary) created a presumption of liability to the tax if the

receipt, fails to state such value? It can not be denied that the regulation is merely a directive to the tax officers; it does not purport to change or modify the law; it does not create a liability to the stamp tax when the value of the goods does not appear on the face of the receipt. The practical usefulness of the directive becomes evident when account is taken of the fact that tax officers are in no position to witness the issuance of receipts and check the value of the goods for which they are issued. If tax officers were to assess or collect the tax only when they find that the value of the goods covered by the receipts is more than five pesos, the assessment and collection of the tax would be well-nigh impossible, as it is impossible for tax collectors to determine from the receipts alone, if they do not contain the value of the goods, whether the goods receipted for exceed P5, or not. The regulation impliedly required the statement of the value of the goods in the receipts; so that the collection of the tax can be enforced. This the petitioner-appellant failed to do and he now claims the unreasonableness of the provision as a basis for his exemption. We find that the regulation is not only useful, practical and necessary for the enforcement of the law on the tax on bills of lading and receipts, but also reasonable in its provisions.

The regulation above quoted falls within the scope of the administrative power of the Secretary of Finance, as authorized in Section 79 (B) of the Revised Administrative Code, because it is essential to the strict enforcement and proper execution of the law which it seeks to implement. Said regulations have the force and effect of law.

"In the very nature of things in many cases it becomes impracticable for the legislative department of the Government to provide general regulations for the various, and varying details for the management of a particular department of the Government. It therefore becomes convenient for the legislative department, of the Government, by Law, in a most general way, to provide for the conduct, control and management of the work of the particular department of the Government; to authorize certain persons, in charge of the management, control, and direction of the particular department, to adopt certain rules and regulations providing for the detail of the management and control of such department. Such regulations have uniformly been held to have the force of law, whenever they are found to be in consonance and in harmony with the general purposes and objects of the law. Many illustrations might be given. For instance, the Civil Service Board is given authority to examine applicants for various positions within the Government service. The law generally provides the conditions in a most general way, authorizing the chief of such Bureau to provide rules and regulations for the management of the conduct of examinations, etc. The law provides that the Collector of Customs shall examine persons who become applicants to act as captains of ships for the coastwise trade, providing at the same time that the Collector of Customs shall establish rules and regulations for such examinations. Such regulations, once established and found to be in conformity with the general purposes of the law, are just as binding upon all of the parties, as if the regulations had been written in the original law itself. (United States vs. Grimaud, 22 U. S., 506; Williamson vs. United States, 207 U. S., 425; United States vs. United Verde Copper Co., 196 U. S., 207.)" (United States vs. Tupasi Molina, 29 Phil, 119, 125.)

Another reason for sustaining the validity of the regulation may be found in the principle of legislative approval by re-enactment. 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.

"* * *. of course, the rule does not operate to freeze a meaning which is in evident conflict with the clearly expressed legislative intent. *Helvering vs. Hallock*, 309 U. S. 106, 119-121, 60 S. Ct. 444; 84 L. Ed. 604 A.L.R., 1368. But where a statute is susceptible of the meaning placed upon it by Treasury ruling and Congress thereafter reenacts the provision 'without substantial change, such action is to some extent confirmatory that the ruling carries out the congressional purpose." (*Mead Corporation vs. Commissioner of Internal Revenue*, 116 F [2d] 187, p. 194)

"The fact that an identical Treasury Regulation with regard to computation of stamp tax on conveyances had been in effect during several re-enactments of the statute was persuasive evidence of congressional approval thereof. * * *." (Railroad Federal Sav. and Loan Ass'n. vs. United States, 135 F [2d], p. 290)

"The law, I believe, is now settled that substantial re-enactment of legislation which has been construed by Treasury Regulations is at least strong evidence of legislative approval of such construction. It is presumed that Congress knew of the existing administrative interpretations of the statute. * * *." (Cargill vs. United States, 46 F. Supp. 712, 716.)

"Regulations promulgated by the Commissioner of Internal Revenue . under authority of the Revenue Act of 1928 acquired the effect of law by substantial re-enactment of provision of the 1928 Act in the 1932 Revenue Act. * * *." (S. Slater & Sons, Inc., vs. White, etc., 33 F. Supp. 329, 330.)

It is to be noted that the regulation does not purport to modify or change the law in the sense that when the value of the merchandise (for which the receipt is issued) does not appear thereon the tax shall always be impose. Such a meaning would have the effect of changing the law; the regulation should not be understood in this illegal or authorized sense. The regulation should be considered merely as a directive to internal revenue officers to assess the tax and collect the same. As already adverted to, it only creates a presumption of the liability of the taxpayer, which presumption, however, is not conclusive upon the taxpayer who can adduce evidence that the tax is not collectible because the value of the merchandise concerned does not exceed the amount of P5. It was in pursuance of this interpretation of the regulation that the trial court permitted evidence to be introduced to show that the petitioner-appellant is not subject to the tax on the receipts. Claim is made that the evidence submitted by the petitioner-appellant proved that the freight receipts covered shipment of merchandise worth not more than P5. It is argued in support of this claim that the said freight receipts were issued to people carrying agricultural produce from one place to, another, perhaps from their farms to the towns or to their residences. The Court of Appeals' decision, upon which the claim is made, does not state that said receipts were actually issued for shipments the value of which was not more than P5 each. The decision of the Court of Appeals in fact is that the petitioner-appellant "merely tried to establish through his witnesses", the facts above mentioned, which is not a finding that the receipts covered merchandise more than P5 in value. Upon consideration of the claim and the testimonies with which it is supported, we are unable to agree with said contention. It is a common knowledge that when barrio residents or those living in farms go to town and bring along with them their daily needs on their daily "produce, they ordinarily do not secure receipts for these baggages or cargoes but keep these under their seats. The common , practice is for a passenger carrying cargoes of small value not to secure receipts therefor; for convenience and economy he keeps them under his seat in the bus so as to make them easily accessible when he goes down, and at the same time save the few centavos that the issuance of the receipt entails. On the other hand, receipts for valuable cargo are demanded, to insure against their loss. Our conclusion is that the receipts must have been issued for shipments or merchandise in excess of P5 in value. The evidence submitted notwithstanding, the fact that it has not been contradicted fails to prove to our satisfaction that the merchandise for which receipts were issued were actually worth P5 or less. Furthermore,¹ the rule is that in actions for the recovery of taxes assessed and collected, the taxpayer has the burden of proving that the assessment is illegal.

"All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various counties who have to do 'with the assessment of .property for taxation will knowingly violate the duties imposed upon them by law."

"As a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, the burden of proof is upon the complaining' party. It is incumbent upon the property owner clearly to

show that the assessment was erroneous, in order to relieve himself from it." (51 Am. Jur. pp. 620-621.)

"The burden is on him who seeks the recovery of a tax already paid to establish those facts which show its invalidity.' United States vs. Anderson, 209 U. S. 422, 428, 70 L. ed. 347, 46 Sup. Ct. Rep. 131; Fidelity Title & T. Co. vs. United States, 259 U. S. 304, 306, 66 L. ed., 953, 954, 42 Sup. Ct. Rep. 514. (Compañia General de Tabacos vs. Collector of Int. Rev., 73 L. ed., 704, 706.)

"* * *. But the presumption is that taxes paid are rightly collected upon assessments correctly made by the commissioner, and in a suit to recover them the burden rests upon the taxpayer to prove all the facts necessary to establish the illegality of the collection. United States vs. Anderson, supra. See United States vs. Rindskopf, 100 U. S. 419, 26 L. ed., * * *." (Niles Bement Pond Co. vs. United States, 74 L. ed., 901, 904.)

The rule above-mentioned has not been complied with and the action for recovery must be denied.

It is also contended that the tax should be collected from the holder of the receipt, and not from the one who collected it, which is the transportation company. There is no merit in this contention because the law expressly provides that the tax should be paid by the one "making, signing, issuing, accepting, or transferring the same." (Section 1449, Revised Administrative Code of 1917). The receipts were made, and issued by the transportation company; it is therefore liable for the payment of the tax thereon.

The last contention of the petitioner-appellant is that the tax could no longer be collectible because the same was assessed and collected after seven years, the tax having been due in 1936-1938 and the assessment having been made in the year 1947. The period within which a tax may be assessed is ten years after the discovery of the falsity, fraud or omission (section 332, paragraph (a), National Internal Revenue Code). Petitioner-appellant cites, in support of his contention, paragraph (c) of the same action. This paragraph refers to the collection of the tax by distraint or by levy or by a proceeding in court, and the period prescribed is within five years after the assessment of the tax.

Was the levy justified? The discovery, according to the pleadings, took place in the year 1941 and the warrant of distraint or levy was issued on September 30, 1946 (paragraphs 3 and 4 of the complaint). The pleadings do not show, neither does the evidence, the specific date of the assessment. It is only alleged in the complaint that the examination of the books took place in the year 1941. In order to sustain the claim, of the invalidity of the levy, it is necessary for the plaintiff to allege and prove that the levy took place after five years from the date of the assessments. But the date, of the assessment has not been proved. This is a material matter that the petitioner-appellant should have proved to assail the levy. Because of his failure to do so the exemption from levy may not be invoked by him. Besides, the question was not raised in the pleadings as a ground to void the collection of the amount. The court cannot assume that the levy and distraint took place beyond the period prescribed by law. This conclusion is supported by the presumption of the regularity of the acts of public officers. In any event the collection was made in 1947, within ten years after the discovery in 1941, and the liability of petitioner-appellant is not thereby affected.

For the foregoing considerations, the judgment of the Court of Appeals is declared void and that of the Court of First Instance, reversed and the respondent-appellee absolved from the complaint. With costs against the petitioner-appellant.

Parás, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ. concur.

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