

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
THE MANILA PORT SERVICE, DEFENDANT AND APPELLEE.***G. R. No. L-18208. November 27, 1964*

Ponente: BAUTISTA ANGELO, J.

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The Manila Port Service, as a subsidiary of the Manila Railroad Company, entered on February 29, 1956, into a management contract with the Bureau of Customs wherein it was granted the exclusive right or privilege to receive, handle, care for and deliver all merchandise, imported or exported, passing over the Philippine government wharves and piers in the Port of Manila, and to charge and collect the cenraastre charges provided for in Section 11 of Republic Act No. 1371, subject to the terms, conditions, and restrictions stated in said management contract. Although it engaged in said arrastre business for sometime, the Manila Port Service has not paid the corresponding fixed and percentage taxes imposed by Sections 152 and 191 of the National Internal Revenue Code on arrastre contractors. Neither has it filed the returns required by Section 183 of the same code.

When he discovered that the Manila Port Service has not been paying the taxes due from it as an arrastre contractor, the Commissioner of Internal Revenue, on June 10, 1957, sent to it an assessment letter demanding payment of the amount of P138,903.93 as fixed tax for 1956 and 1957 and percentage tax on its gross receipts for the period from August 24, 1956 to February 28, 1957, plus the additional amount of P300.00 as compromise penalty allowed in extrajudicial settlement of violations of penal provisions of the National Internal Revenue Code.

On July 17, 1957, the Manila Port Service wrote the Commissioner of Internal Revenue denying its liability for the taxes in question on the ground that its mother company, the Manila Railroad Company, is exempt therefrom pursuant to Subsection 12 of Section 1 of Act No. 1510, and requesting withdrawal of the assessment. On February 10, 1958, the Commissioner answered refuting the claim of the Manila Port Service of tax exemption and reiterating its previous demand for payment of the taxes, which demand was further reiterated in a letter dated March 6, 1958.

On July 9, 1958, the Manila Railroad Company appealed to the Secretary of Finance the assessment of the Commissioner of Internal Revenue, which appeal was referred for comment to the Commissioner who, in a letter dated September 20, 1958 reiterated his stand that the Manila Port Service is liable to pay the taxes in question as arrastre contractor. On February 13, 1959, the Commissioner of Internal Revenue wrote a final letter to the Manila Port Service demanding once more payment of the assessment of P138,903.93 within 10 days from receipt with the warning that if the amount is not paid within the aforesaid period judicial action would immediately be taken against it.

Nothing that the Manila Port Service had no intention of paying the taxes assessed against it notwithstanding the fact that the assessment had already become final and executory, the Commissioner of Internal Revenue commenced the present action on November 22, 1960 before the Court of First Instance of Manila seeking

payment from the Manila Port Service of the amount of P138,903.93 as fixed and percentage taxes, including the 25% surcharge prescribed by law for late payment.

After trial, the court a quo rendered decision dismissing the complaint on the ground that the assessment of the taxes which plaintiff seeks to recover is erroneous, even if such assessment had become final and executory in view of the defendant's failure to appeal within the reglementary period. In due time, plaintiff has appealed.

It is now contended, among other errors, that the court a quo erred (1) in not holding that the assessment involved in this case had long become final and executory and could no longer be disputed by appellee, and (2) in not holding that, as internal revenue assessments can be disputed only in the Court of Tax Appeals, it has no jurisdiction to take cognizance of appellee's defense that the assessment is erroneous.

Under Section 7 of Republic Act No. 1125, the Court of Tax Appeals is given exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees of other charges, and other matters arising under the National Internal Revenue Code. And pursuant to Rule 11 of the same Act, any person or entity adversely affected by the decision of the Commissioner of Internal Revenue shall appeal to the same court within 30 days after the receipt thereof, and if the assessment of the Commissioner, or his decision thereon, is not appealed to the Court of Tax Appeals within the aforesaid period, such assessment becomes final, demandable and executory.[1]

Here the assessment has already become final precisely because appellee has failed to appeal as required by law thereby making indisputable the decision of the Commissioner of Internal Revenue. Thus, the original assessment of the taxes in question was contained in a letter sent to the Manila Port Service on June 10, 1957 which was refuted by said entity on July 17, 1957. On February 10, 1958, the Commissioner reiterated his previous assessment and demand. On July 9, 1958, the Manila Railroad Company appealed the assessment to the Secretary of Finance who in turn referred it to the Commissioner for comment. And on February 13, 1959, the Commissioner wrote the Manila Railroad Company reiterating once more his decision and demanding payment of the taxes within 10 days from receipt with the warning that if payment is not made within the aforesaid period judicial action would immediately be taken. However, neither the Manila Port Service, nor the Manila Railroad Company, took any step to appeal to the Court of Tax Appeals as required by law. It is evident that the assessment has already become final and, therefore, it can no longer be disputed in the present case.

"The facts involved in the present case are very similar to, if not on all fours with those involved in the case of *Republic of the Philippines vs. Enrique Magalona, Jr. et al.*, G. R. No. L-15002, promulgated on September 30, 1960, where we held that upon the facts before the Court, the income tax assessment in question therein was a final assessment in the income tax liability of the Magalonas for the calendar year 1950; that they had 30 days to dispute said assessment by appealing to the Court of Tax Appeals in accordance with the provisions of Section 11, Republic Act No. 1125; that having failed to do so, the assessment became final, executory and demandable,

"In the present case, therefore, after receiving the denial of his protest (Exhibit D) against the deficiency tax assessment made against him, appellant should have appealed therefrom within 10 days from June 21, 1955, his failure to do so having caused said assessment to become final, executory and demandable. Therefore, when on February 4, 1947, the action for collection was commenced, appellant was already barred from invoking any defense that would reopen the question of his tax liability on the merits. * * *"(*Republic of the Philippines vs. Albert*, supra)

The claim that there is no proof showing that appellee actually received Jilniuti's letter of February 13, 1959 containing his last decision (Exhibit II) is of no moment, it appearing that such matter was alleged in the complaint and the allegation was not denied in the answer. The answer merely confine itself to disputing the

validity of the assessment on the ground that it is erroneous.

Neither do we find merit in the claim that the assessment cannot become final because it is contrary to law for such is a mere defense which appellee should have set up before the proper court. As already stated, appellee failed to do so when it failed to appeal to the Court of Tax Appeals within the time prescribed by law.

Wherefore, the decision appealed from is reversed.

Appellee is hereby ordered to pay appellant the sum of P138,903.93 as fixed tax for 1956 and 1957 and percentage tax on its gross receipts from August 24, 1956 to February 28, 1957, inclusive of 25% surcharge for late Payment, with costs against appellee.

Concepcion, Reyes, J. B. L., Barrera, Paredes, Barrera, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

[1] Republic of the Philippines to. Juana H. Vda. de Del Rosario, et al., 105 Phil., 277; Uy Ham vs. Republic of the Philippine L-13809, October 20, 1950; Republic of the Philippines vs. Albert. L-12996, December 28, 1951.

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