

MISAMIS LUMBER CO., INC., PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. 10131. September 30, 1957

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

The Misamis Lumber Co., Inc. seeks the review of a decision of the Court of Tax Appeals, denying its claim for refund of the sum of P60,153.11 representing the amount paid by said company by way of percentage tax on its sales of lumber and logs to foreign buyers from the 2nd quarter of 1951 to the 2nd quarter of 1953.

It appears that during the aforementioned period, but prior to June 20, 1953, petitioner shipped-for export, under terms F.O.B. (free on board) Misamis City Port - on board foreign merchant vessel, in said port, lumber and logs valued P1,263,215.31, which had been purchased by foreign buyers established abroad; that pursuant to the contract with said buyers, petitioner defrayed all expenses incurred from the sawmills up to the loading of the lumber and logs on board foreign merchant vessels, whereas all freight and in ice charges were borne by the buyers; that the price of lumber and logs was paid in Manila; that respondent Collector of Internal Revenue collected, and petitioner paid, the sum of P60,153.11, representing five per cent of the gross value of said sales, as percentage tax under section of Commonwealth Act No. 186, otherwise known as the National Internal Revenue Code; and that petitioner's request for the refund of said sum was denied by said respondent.

The only issue in this case is whether the aforementioned sale were subject to the tax of five per cent provided that in said section 186. In this connection, it appears that this section and section 187 of Commonwealth Act No. 466 I originally read:

"Sec. 186. Percentage tax on sales of other articles.- There is levied, assessed, and collected once only on every original sale, barter, exchange, and similar transaction intended to transfer ownership of, or title to, the articles not enumerated in sections 184 and 185 a tax equivalent to three and one-half per centum of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer, producer, or importers. Provided, That where the articles are manufactured out of materials subject to tax under this section, the total cost of such materials as duly established, shall be deductible from the gross selling price or gross value in money of the manufactured articles: And provided further, That where the said articles are consigned abroad by the manufacturer or producer thereof, the shipment shall be subject to the tax established in section 187 and not to the tax imposed by this section."

"Sec. 187. Percentage tax on consignment abroad.- Every person, whether he is a merchant or not, and not herein specifically exempted, shall pay a tax of one and one-half per centum of the gross value in money of the commodities, goods, wares, and merchandise consigned abroad by him, such tax to be based on the actual selling price or value of the things in question at the time they are consigned abroad, whether consisting of raw materials or of manufactured or partially manufactured products or whether of domestic or foreign origins: Provided, That the tax prescribed in this section shall not be imposed on articles upon which the tax prescribed in sections 184, 185, 186, and 189 has previously been paid. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippines unsold, subject to the limitation

established in section 309 of this Code."

Pursuant to these provisions, sales of the articles referred to in section 186 were subject to a tax of 3-1/2 per cent of the gross sale price, except when the goods sold were "consigned abroad by the manufacturer or producer thereof," in which case the 1-1/2 per cent tax established in section 187 shall apply.

On October 1, 1946, section 186 was amended by Republic Act No. 41, to read

"There is levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction intended to transfer ownership of, or title to, the articles not enumerated in sections one hundred and eighty-four and one hundred and eighty-five a tax equivalent to five per centum of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer, producer, or importers: Provided, That where the articles are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of the manufactured articles."

Said Act (sec. 4), also, repealed the above-quoted section 187. Thus, the sales tax was increased to 5 per cent of the gross selling price and the tax on consignments abroad was abolished. Hence, the tax of 5 per cent was demanded by the Collector of Internal Revenue and paid by petitioner herein.

It is urged by the latter that it is exempt from the payment of said tax, because the explanatory note to the bill, which, later on, became Republic Act No. 41, said:

"Section 4 of the bill repeals Section 187 of the National Internal Revenue Code imposing a tax of 1-1/2 % on consignments abroad, because this tax is essentially an export tax and we should as a matter of policy, encourage exports," (Italics ours.)

Petitioner's pretense is untenable, for the lumber and logs above mentioned were consigned abroad by the purchasers thereof, not by herein petitioners. The latter placed said lumber and logs on board foreign merchant vessels in the Port of the City of Ozamis, pursuant to a contract fixing a price F.O.B. merchant vessels in said port. Consequently, petitioner was divested of its title to said property upon the aforementioned delivery in the Philippines, and the buyers, who became the owners of said property before it left our jurisdiction, were the exporters and consignors thereof. Upon the other hand, petitioner paid the sales tax, provided in section 186, not the tax on consignments established in section 187, before its repeal by Republic Act No. 41.

It is true, that Republic Act No. 894 amended section 186 to read as follows:

"There shall be levied, assessed, and collected once only on every original sale, barter, exchange, and similar transaction either for nominal or valuable considerations to transfer ownership of, or title to, the articles not enumerated in section one hundred and eighty-four and one hundred and eighty-five a tax equivalent to seven per centum of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer, producer, or importers: Provided, That where the articles are manufactured out of materials, subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of the manufactured articles: And Provided, further, That with respect to all forest products, whether manufactured or in the original form, a tax equivalent to five per centum only of the selling price or gross value in money shall be levied, assessed, and collected: And provided, finally, That with respect to goods or products shipped or exported abroad, no percentage tax shall be levied thereon irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods or products exported.

"In the case of operators of sawmills who buy logs for the purpose of sawing and/or cutting them into lumber of standard sizes, the tax prescribed in this section shall be computed on thirty-three and one-third per centum of the gross cost of logs purchased during any given quarter intended for manufacture. Operators or proprietors

of sawmills entitled to the privilege of paying the tax on thirty-three and one-third per centum of the gross cost of the logs purchased by them shall keep a complete record of their transactions, specially their purchase of logs together * with the corresponding vouchers, such as official and auxiliary invoices, or the commercial invoices of the producers from whom they purchased the logs, in cases where the logs purchased constitute merely a portion of the logs covered by an official invoice, in which commercial invoices the assessment numbers of the official invoices covering the logs and the names and addresses of the vendors shall be indicated. They shall also keep a complete record of lumber purchased by them for resale."

This legislation became effective, however, upon its approval on June 20, 1953, or subsequently to the sales involved in the case at bar, and, hence, such sales are not entitled to the benefits of said enactment.

Petitioner, likewise, cites the explanatory note to the bill, which eventually became said Republic Act No. 89, in an effort to show that the same is merely declaratory of the intent of Congress when it passed Republic Act No. 41. However, these legislations have been approved by two different Congresses, and, accordingly, neither is qualified to speak about the Intent of the other. Again, in the words of its sponsor, Republic Act No. 89 sought to abolish the consignment tax, and hence, not the sales tax. As we said in *Soriano y Cia vs. Collector of Internal Revenue* (51 Off. Gaz., 4548 +4553-4554):

"It should not be forgotten that the consignment tax formerly imposed on exports by section 187 of the Tax Code (now repealed by R.A. 41) is different from the sales tax imposed by Art. 186, which has not been repealed. The distinction between the two kinds of tax was pointed out by this Court in the case of *Vegetable Oil Cor. vs. Trinidad*, 45 Phil., 834-835, where we held:

'That the consignment tax is not a sales tax is, however, too obvious for argument; the fact that it is provided for in the same section as the sales tax does not necessarily make it so. There is all the difference in the world between a consignment and a sale. As stated by counsel for the appellee, the tax on consignments is a privilege tax pure and simple; it is a tax on the business of consigning commodities abroad from these Islands, * * * If the tax were one on sales we would readily agree that the sales, in order to be taxable in the Philippines must be consummated there.'

When the above case was decided} the sales tax and the consignment tax were both provided in section 1459 of the Administrative Code. Later, obviously to avoid confusion the legislature separated the two taxes, the sales tax having been provided under sections 184, 185 and 186 of the Internal Revenue Code, while the consignment tax was placed under Section 187. The latter section was subsequently repealed by Republic Act No. 41, so that the consignment tax on exports no longer exists, while the sales tax remains.

"Petitioner contends that to tax one who sells goods intended for export would be to nullify the legislative intent behind the repeal of the tax on consignments abroad, which is to encourage exports. The argument is fallacious. The law subjects to the payment of the sales tax not the buyer who intends to export what he buys, but the seller, because such sale is domestic and therefore liable for the payment of sales tax in this country.¹¹ (Italics ours.)

Lastly,

"The rule is recognized elsewhere that the legislature cannot pass any declaratory act or act declaratory of what the law was before its passage, so as to give it any binding weight with the courts. A legislative definition of a word as used in a statute is not conclusive of its meaning as used elsewhere: otherwise? the legislature liquid be usurping a judicial function in defining a term," (11 Am. Jur., 914; Italics supplied.) (Quoted in *Pastor M. Endencia and Fernando Jugo vs. Saturnino David* [93 Off. Gaz. 4822,4825].)

WHEREFORE, the decision appealed from is hereby affirmed, I' with costs against the petitioner. IT IS SO ORDERED.

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

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