

THE COLLECTOR OF INTERNAL REVENUE, DEPUTY COLLECTOR OF INTERNAL REVENUE AND MUNICIPAL TREASURER OF SAN FERNANDO, LA UNION, PETITIONERS, VS. MARCELINO T. VIDUYA AND THE COURT OF ...

G.R. No. 10808. February 28, 1958

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from the decision of the Court of Tax Appeals in Court of Tax Appeals case No. 150, entitled "Marcelino T. Viduya vs. Collector of Internal Revenue, et al.", ordering the respondent therein (now petitioner) to refund to Marcelino T. Viduya (hereinafter referred to as the respondent) the sum of P943.20 as compensating tax under section 190 of the Tax Code paid by the latter under protest.

The undisputed facts are as follows:

David H. Sencindiver, Jr., a member of the staff of the American Embassy in Manila, was the owner of a 1950 Model Buick Sedanet bearing Motor No. 59877524, which he had acquired for his personal use in the State of Virginia, U. S. A., and registered with the Motor Vehicles Division of that state in his own name. On November 7, 1952, he brought said car for his use in the Philippines and upon its arrival here it was released to him by the Philippine customs authorities without requiring the payment of the compensating tax prescribed under section 190 of the National Internal Revenue Code, Sencindiver being a citizen of the United States and a member of the Staff of the American Embassy in the Philippines, and therefore exempt from the payment of such tax. Sencindiver obtained, subsequently, a certificate of registration from the Motor Vehicles Office in Manila and thereafter was issued a SPL plate, reserved for members of the diplomatic corps and other agencies of the United States Government in the Philippines.

On December 4, 1958, Sencindiver sold the vehicle to respondent Marcelino T. Viduya, who immediately registered the transfer with the Motor Vehicles Office, and later, secured a certificate of registration in his name.

Subsequently, on June 22, 1954, the Bureau of Internal Revenue demanded from the respondent the payment of P943.20 as compensating tax on the automobile under said section 190 of the National Internal Revenue Code. An exchange of correspondence between the petitioner Collector and respondent took place, and finally, on October 8, 1954, the latter paid the amount demanded under protest, as evidenced by Official Receipt No. B-4464856, issued by the Municipal Treasurer of San Fernando, La Union.

In a letter to the Collector of Internal Revenue, dated March 7, 1955, the respondent requested the refund of the aforesaid amount of P943.20, which request was denied by said petitioner in his answer, dated March 4, 1955. This letter-decision was received by respondent on May 31, 1955 by ordinary mail. With such refusal, a petition for review was filed with the Court of Tax Appeals by the respondent on June 20, 1955.

The only issue brought to this appeal is whether the respondent Marcelino T. Viduya may be considered an

importer under section 190 of the National Internal Revenue Code, and thus liable under said section for the payment of compensating tax specified therein.

Section 190 of the Code provides:

"Compensating Tax.-All persons residing or doing business in the Philippines who purchase or receive from without the Philippines any commodities, goods, wares, or merchandise excepting those subject to the specific taxes under Title IV of this Code shall pay on the total value thereof at the time they are received by such persons including freight, postage, insurance, commission, and all similar charges, a compensating tax equivalent to the percentage tax imposed under this Title on original transaction affected by merchants, importers, manufacturers, such tax to be paid upon the withdrawal or removal of the said commodities, goods, wares, or merchandise from the customhouse or post office. * * * " (emphasis supplied)

Under this section of the Tax Code, it is necessary that the act of purchasing or receiving be effected from without the Philippines;

"All persons purchasing or receiving from without the Philippines any commodities * * * " (section 190, supra).

The meaning of the phrase used in the law becomes clearer if it is taken into consideration together with the Report of the Tax Commission recommending this tax. The Tax Commission made the following observations:

"It is proposed to levy upon all persons who purchase or receive directly from abroad commodities, goods, wares and merchandise except those subject to specific taxes under the proposed plan, a tax equivalent to the percentage tax imposed on original sales, barter, or exchanges of similar articles effected by merchants, importers, or manufacturers. The tax will be based on the total value of the articles at the time they are received, including freight, postage, insurance, commission and all other charges, and it will be paid before the articles are actually removed from the customhouse or post-office. However, merchants, importers, and manufacturers will not be required to pay this tax where the articles purchased or received by them from without the Philippines are intended for resale, barter, or exchange, or for use in connection with their "business and are actually disposed of or so used. Furthermore, the tax will not be assessed or collected on any single shipment consigned to any one person when the total value of the shipment does not exceed P100.

The purpose of this proposal is to place persons purchasing goods from dealers doing business in the Philippines in equal footing, for tax purposes, with those who purchase goods directly from without the Philippines. Under the present law, the former bear the burden of the local sales tax because it is shifted to them as part of the selling price demanded by the local merchants, while the latter do not. The proposed tax will do away with this inequality and render justice to merchants and firms of all nationalities who are in legitimate business here, paying taxes and giving employment to a large number of people. (Report of the Tax Commission of the Philippines, Vol. I, pp. 74-75) (emphasis supplied)

It is thus apparent that the corresponding tax was designed to be paid only upon goods "directly received from without" the Philippines by the purchaser or end user; it was intended to be a substitute of the sales tax that would be otherwise paid by an importer who resold the goods within Philippine jurisdiction. Obviously, appellee Viduya does not come within its purport, for he did not receive the automobile "directly from without", but purchased it after the same had been lawfully brought to the Islands "from without" by the former owner. If at all, it is the latter who, because of the sale of the automobile, should be required to pay the sales tax, if he were a merchant; but we need not make any pronouncement on this aspect of the matter, since it is not in issue before us.

The Collector of Internal Revenue invokes section 1248 of the Revised Administrative Code, which provides:

"When importation by sea begins and ends.-Importation by sea begins when the importing vessel enters the jurisdictional waters of the Philippines with, intention to unload therein, and is not completed until the duties due upon the merchandise have been paid at a port of entry and the legal permit for withdrawal shall have been

granted, or in case said merchandise is free of duty, until it has legally left the jurisdiction of the customs."

This Court has elsewhere pointed out (*International Business Machines Corporation vs. Collector of Internal Revenue*, 98 Phil., 595; 53 Off. Gaz., [11], 3465) that the compensating tax under section 190 of the Internal Revenue Code is not an import tax; consequently section 1248, invoked by the Collector, does not apply thereto, the same being enacted for the purpose of determining the accrual of the import "duties due upon the merchandise". At any rate, since the automobile in question, while in the hands of its former owner (a member of the diplomatic corps), was free of duty, its importation was completed upon its withdrawal from the customs zone.

Under the circumstances, as the lower court held, "it would be too much of a stretch to hold that the petitioner was an importer within the provision of section 190 of the Tax Code, for the car as well as the vendor, were already in the Philippine territory, and had been here one year before the sale to the petitioner (respondent herein) was effected".

Appellant cited section 11 of Republic Act 1612 amending section 190 of the National Internal Revenue Code, which provides:

"In the case of tax-free articles brought imported into the Philippines by persons, entities or agencies exempt from tax which are subsequently sold, transferred or exchange in the Philippines to non-exempt private persons or entities, the purchasers or recipients shall be considered the importers thereof. The tax due on such articles shall constitute a lien on the article itself superior to all charges or items, irrespective of the possessors thereof."

This amendment, however, was approved and took effect only on August 24, 1956 and can not retroact to the sale made between Sencindiver and the respondent on December 4, 1953. The law itself provided that it shall not have retroactive effect except as to section 10 thereof. Upon the other hand, it could be reasonably argued that the enactment of this law is a recognition that the compensating tax under sec. 190 of the Internal Revenue Code was not intended to cover cases like the one before us.

The judgment appealed from is affirmed. So ordered.

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

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