

THE COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. SUYOC CONSOLIDATED MINING COMPANY, ET AL., RESPONDENTS.

G. R. No. 11527. November 25, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Suyoc Consolidated Mining Company, a mining corporation operating before the war, was unable to file in 1942 its income tax return for the year 1941 due to the last war. After liberation, Congress enacted Commonwealth Act No. 722 which extended the filing of tax returns for 1941 up to December 31, 1945. Its records having been lost or destroyed, the company requested the Collector of Internal Revenue to grant it an extension of time to file its return, which was granted until February 15, 1946, and the company was authorized to file its return for 1941 on the basis of the best evidence obtainable.

The company filed three income tax returns for the calendar year ending December 31, 1941. On February 12, 1946, it filed a tentative return as it had not yet completely reconstructed its records. On November 28, 1946, it filed a second final return on the basis of the records it has been able to reconstruct at that time. On February 6, 1947, it filed its third amended final return on the basis of the available records which to that date it had been able to reconstruct.

On the basis of the second final return filed by the company on November 28, 1946, the Collector assessed against it the sum of P28,289.96 as income tax for 1941, plus P1,414.50 as 5 per cent surcharge and P3,394.80 as 1 per cent monthly interest from March 1, 1946 to February 28, 1947, or a total of P33,099.26. The assessment was made on February 11, 1947. On February 21, 1947, the company asked for an extension of at least one year from February 28, 1947 within which to pay the amount assessed, reserving its right to question the correctness of the assessment. The Collector granted an extension of only three months from March 20, 1947.

The company failed to pay the tax within the period granted to it and so the Collector sent to it a letter on November 28, 1950 demanding payment of the tax due as assessed, plus surcharge and interest up to December 31, 1950. On April 6, 1951; the company asked for a reconsideration and reinvestigation of the assessment, which was granted, the case being assigned to another examiner, but the Collector made another assessment against the company in the sum of P33,829.66. This new assessment was made on March 7, 1952. On April 18, 1952, the Collector revised this last assessment and required the company to pay the sum of P28,289.96 as income tax, P1,414.50 as surcharge, P20,934.57 as interest up to April 30, 1952 and P40 as compromise.

After several other negotiations conducted at the request of respondent, including an appeal to the Conference Staff created to act on such matters in the Bureau of Internal Revenue, the assessment was finally reduced by the Collector to P24,438.96, without surcharge and interest, and of this new assessment the company was notified on July 28, 1955. Within the reglementary period, the company filed with the Court of Tax Appeals a petition for review of this assessment made on July 26, 1955 on the main ground that the right of the Government to collect the tax has already prescribed. After the case was heard, the court rendered its decision upholding this defense

and, accordingly, it set aside the ruling of the Collector of Internal Revenue. The Collector interposed the present petition for review.

Under the law, an internal revenue tax shall be assessed within five years after the return is filed by the taxpayer and no proceeding in court for its collection shall be begun after the expiration of such period (Section 331, National Internal Revenue Code). The law also provides that where an assessment of internal revenue tax is made within the above period, such tax may be collected by distraint or levy or by a proceeding in court but only if the same is begun (1) within five years after assessment or (2) within the period that may be agreed upon in writing between the Collector and the taxpayer before the expiration of the 5-year period [Section 332 (c), *Idem.*].

It appears that the first assessment made against respondent based on its second final return filed on November 28, 1946 was made on February 11, 1947. Upon receipt of this assessment respondent requested for at least one year within which to pay the amount assessed although it reserved its right to question the correctness of the assessment before actual payment. Petitioner granted an extension of only three months. When it failed to pay the tax within the period extended, petitioner sent respondent a letter on November 28, 1950 demanding payment of the tax as assessed, and upon receipt of the letter respondent asked for a reinvestigation and reconsideration of the assessment. When this request was denied, respondent again requested for a reconsideration on April 25, 1952, which was denied on May 6, 1953, which denial was appealed to the Conference Staff. The appeal was heard by the Conference Staff from September 2, 1953 to July 16, 1955, and as a result of these various negotiations, the assessment was finally reduced on July 26, 1955. This is the ruling which is now being questioned after a protracted negotiation on the ground that the collection of the tax has already prescribed.

It is obvious from the foregoing that petitioner refrained from collecting the tax by distraint or levy or by proceeding in court within the 5-year period from the filing of the second amended final return due to the several requests of respondent for extension to which petitioner yielded to give it every opportunity to prove its claim regarding the correctness of the assessment. Because of such requests, several investigations were made and a hearing was even held by the Conference Staff organized in the collection office to consider claims of such nature which, as the record shows, lasted for several months. After inducing petitioner to delay collection as he in fact did, it is most unfair for respondent to now take advantage of such desistance to elude his deficiency income tax liability to the prejudice of the Government invoking the technical ground of prescription.

While we may agree with the Court of Tax Appeals that a mere request for reexamination or reinvestigation may not have the effect of suspending the running of the period of limitation for in such case there is need of a written agreement to extend the period between the Collector and the taxpayer, there are cases however where a taxpayer may be prevented from setting up the defense of prescription even if he has not previously waived it in writing as when by his repeated requests or positive acts the Government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government. And when such situation comes to pass there are authorities that hold, based on weighty reasons, that such an attitude or behavior should not be countenanced if only to protect the interest of the Government.

This case has no precedent in this jurisdiction for it is the first time that such has risen, but there are several precedents that may be invoked in American jurisprudence. As Mr. Justice Cardozo has said: "The applicable principle is fundamental and unquestioned. 'He who prevents a thing from being done may not avail himself of the nonperformance which he has "himself occasioned, for the law says to him in effect "this is your own act, and therefore you are not damnified.'" " (R. H. Stearns Co. vs. U.S., 78 L. ed., 647). Or, as was aptly said, "The tax could have been collected, but the government withheld action at the specific request of the plaintiff. The plaintiff is now estopped and should not be permitted to raise the defense of the Statute of Limitations." [Newport Co. vs. U.S., (DC-WIS), 34 F. Supp. 588].

The following authorities cited in the brief of the Solicitor General are in point:

"The petitioner makes the point that by the Revenue Act of May 29, 1928 (chap. 852, 45 Stat. at L. 791, 875, sec. 609, U.S.C. title 26, sec. 2609), a credit against a liability in respect of any taxable year shall be 'void' if it has been made against a liability barred by limitation. The aim of that provision, as we view it, was to invalidate such a credit if made by the Commissioner of his own motion without the taxpayer's approval or with approval falling short of inducement or request. Cf. *Stange vs. United States*, 282 U. S. 270, 75 L. ed. 335, 51 S. Ct. 145, supra; Revenue Act of 1928, sec. 506 (b) (c), chap. 852, 45 Stat. at L. 791, 870, 871, U.S.C. title 26, sec. 1062a. If nothing more than this appeared, there was to be no exercise in invitum of governmental power. But the aim of the statute suggests a restraint upon its meaning. To know whether liability has been barred by limitation it will not do to refer to the flight of time alone. The limitation may have been postponed by force of a simple waiver, which must then be made in adherence to the statutory forms, or so we now assume. It may have been postponed by deliberate persuasion to withhold official action. We think it an unreasonable construction that would view the prohibition of the statute as overriding the doctrine of estoppel (*Randon vs. Tobey*, 11 How. 493, 519, 13 L. ed. 784, 795) and invalidating a credit made at the taxpayer's request. Here at the time of the request, the liability was still alive, unaffected as yet by any statutory bar. The request in its fair meaning reached forward into the future and prayed for the postponement of collection till the audits for later years had been completed in the usual course. This having been done, the suspended collection might be effected by credit or by distraint or by other methods prescribed by law. Congress surely did not mean that a credit was to be void if made by the Government in response to such prayer.

"The applicable principle is fundamental and unquestioned. 'He who prevents a thing from being done may not avail himself of the nonperformance which he has himself occasioned, for the law says to him in effect "this is your own act, and therefore you are not damnified," ' ' *Dolan vs. Rogers*, 149 N. Y. 489, 491, 44 N.E. 167, and *Imperator Realty Co. vs. Tull*, 228 N. Y. 447, 457, 127 N.E. 263, quoting *West vs. Blakeway*, 2 Mann. & G. 729, 751, 133, Eng. Reprint, 940, 949. Sometimes the resulting disability has been characterized as an estoppel, sometimes as a waiver. The label counts for little. Enough for present purposes that the disability has its roots in a principle more nearly ultimate than either waiver or estoppel, the principle that no one shall be permitted to found any claim upon his own inequity or take advantage of his own wrong. *Imperator Realty Co. vs. Tull*, 228 N.Y. 447, 127 N.E. 263, supra. A suit may not be built on an omission induced by him who sues. *Swain vs. Seamens*, 9 Wall. 254, 274, 19 L. ed. 554, 560; *United States vs. Peck*, 102 U.S. 64, 26 L. ed. 46; *Thomson vs. Poor*, 147 N.Y. 402, 42 N.E. 13; *New Zealand Shipping ' Co. vs. Societe des Ateliers* (1919) A. C. 1, 6-H. L.; 2 Williston, Contr. sec. 689." (*R. H. Stearns Co. vs. U.S.*, supra; Italics supplied.)

"* * * It is admitted that these assessments were timely made in August 1923. Upon the making of the assessment the Commissioner sought to make collection, which likewise was at a time when the statute had not run on collection, but the authorized representative of the Lattimores strenuously objected to the collection and urged the Commissioner to withhold collection, pending adjustment of the controversy between them and the Commissioner. The Commissioner yielded to their request and postponed collection until August 19, 1926, which was after the statute had run on collection. In the meantime, further claims for refund and protests were filed, conferences were held and consideration was given to the settlement of the controversy, and the matter was not finally disposed of until 1926, when the statute had run on collection. The procedure carried out was that requested by plaintiffs, and they cannot now be heard to say that the collection was not timely. *R. H. Stearns Company vs. United States*, 291 U.S. 54, 54 S. Ct. 325, 78 L. Ed. 647." (*Lattimore vs. U.S.*, 12 F. Supp. 895, 91.)

Wherefore, the decision appealed from is reversed. The decision of the Collector of Internal Revenue rendered on July 26, 1955 is hereby affirmed. No costs.

Paras, C. J., Bengzon, Labrador, Concepcion, Reyes, J. B. L, and Endencia, JJ., concur.

DISSENTING

MONTEMAYOR, J., :

As stated in the majority opinion, the respondent Suyoc Consolidated Mining Company was unable to file in 1942 its income tax return for the year 1941, because of the last war. Acting upon an extension granted by Commonwealth Act 722 and by the Collector of Internal Revenue, it finally filed the first income tax return (tentative) on February 12, 1946. For purposes of reference I am listing below in chronological order, the dates which are material and relevant for purposes of computation of the period of prescription.

February 12, 1946..... Respondent filed its "tentative return".

November 28, 1946..... Respondent filed its "final return".

February 6, 1947..... Respondent filed its amended final return".

February 11, 1947..... Notice of 1st assessment (Based on the final return sent to the respondent) (Amount of assessment—P33,099.26).

February 14, 1947..... Receipt of respondent of said assessment.

February 21, 1947..... Respondent asked for extension of time (one year) to pay the assessment, but reserving right to question its validity. He was given only three months from March 20, 1957.

November 28, 1950..... Petitioner demanded payment of tax assessed.

April 6, 1951..... Respondent asked for reconsideration and reinvestigation of the assessment.

March 7, 1952..... Notice of 2nd assessment (Based on the amended final return) was sent to respondent. (Amount—P33,289.96).

April 18, 1952..... Petitioner revised the assessment made on March 7, 1952 (Now it is P50,697.03)

July 26, 1955..... Petitioner reduced the assessment of April 18, 1952 after various negotiations. (Now it is P24,438.96)

It will be noticed that petitioner Collector made his first assessment based on the final return submitted by Suyoc on November 28, 1946, on February 11, 1947. The assessment was in the amount of P33,099.26. Suyoc asked for an extension of time of one year within which to make payment, at the same time reserving its right to question the validity of the assessment, but it was granted only three months from March 20, 1947, that is to say, up to June 20, 1947. After said deadline, the Collector should immediately have demanded payment or resorted to the administrative remedy of distraint and levy, but strange to say, the Collector did not act and allowed more than three years to pass (from June 20, 1947 to November 28, 1950). It was only on November 28, 1950 that the Collector demanded payment on the basis of his assessment. On April 6, 1951, Suyoc asked for reconsideration and reinvestigation. After about a year, that is, on March 7, 1952, the Collector made a second assessment of P33,829.66, which was larger than his first assessment by about P800. Then on April 18, 1952, the Collector made a revised third assessment of P28,289.96 as income tax, P1,414.50 as surcharge, P20,934.57 as interest up to April 30, 1952, and P40.00 as compromise, which all added up to the staggering amount of P50,679.03, far different from and much larger than the first and second assessment by almost P17,000. After several negotiations, including appeal to the conference staff created to act on such matters in the Bureau of Internal Revenue, the assessment was finally reduced on July 26, 1955 to only P24,438.96, without surcharge, without

interest and without any amount as compromise. It is this last assessment, which Suyoc appealed to the Court of Tax Appeals.

For purposes of reference, I am reproducing the pertinent sections of the National Internal Revenue Code:

"SEC. 331. Period of limitation upon assessment and collection.— Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day; Provided, that this limitation shall not apply to cases already investigated prior to the approval of this Code."

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

(c) Where the assessment of any internal-revenue tax has been made within the period of limitation above prescribed such tax .may be collected by Restraint 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.

"SEC. 333. Suspension of running of statute.—The running of the statute of limitations provided in section three hundred thirty-one or three hundred thirty-two on the making of assessments and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during; which the Collector of Internal Revenue is prohibited from making the assessment or beginning distraint or levy or a proceeding in. court, and for sixty days thereafter."

To me, the best argument against the contention of the Collector, and the ruling contained in the majority opinion that the right of the Collector to collect the tax assessed by it has not prescribed, and that the petition or petitions filed by Suyoc for investigation and revision of the assessment extended the period of prescription, is the well written and reasoned decision (Resolution) of the Court of Tax Appeals, through Judge Roman M. Umali to which I agree. I am reproducing with approval the pertinent portions of said decision:

"Petitioner filed the instant petition for review on the grounds that certain losses were improperly disallowed by respondent as deductions from its gross income, arid that the right of the Government to collect the tax, if any is due, has prescribed. When this case was called for hearing counsel for petitioner asked that the question of prescription be first resolved before hearing the case on the question involving the correctness of the assessment. The sole issue raised at this time for resolution of this Court is, therefore, confined to the question of prescription.

"Upon the evidence submitted and admitted by the parties, it appears that the last and final assessment made by respondent covering the income tax due from petitioner for the year 1941 was made on July 26, 1955, more than five years from the date the 'amended return' was filed on November 28, 1946, or from the date the amended final return' was filed on February 6, 1947. The "right of respondent to assess the tax has, therefore, prescribed pursuant to Section 331 of the National Internal Revenue Code which requires that the assessment be made within five years from the date the return was filed.

"Even granting that the first assessment made on February 11, 1947, is the one to be considered in determining whether or not the assessment was made within the statutory period it follows that it must have to be considered also as the starting point from which the period within which the right to collect should be computed. Accordingly, on the theory, that the assessment in this case was made within five years from the date the return was filed, the right of the Government to collect the tax assessed has prescribed, respondent having failed at any time from February 14, 1947 up to the time the instant petition for review was filed on

September 19, 1955, a period of more than 5 years, to institute appropriate proceedings, judicially or otherwise, for the collection of the tax. (See Sec. 332 [c], National Internal Revenue Code.)

"From whatever angle the case is viewed, we find that the right of the Government to collect the income tax assessed against petitioner for the year 1941 has prescribed. But it is insisted that the requests of petitioner for reconsideration of the assessment, and while the same were pending consideration by respondent, had the effect of suspending the running of the statute of limitations. The statute of limitations upon assessment and collection of national internal revenue taxes provided in Sections 331 and 332 of the Revenue Code may be suspended only 'for the period during which the Collector of Internal Revenue is prohibited from making the assessment or beginning distraint or levy or a proceeding in court, and sixty day thereafter.' (Sec. 333, Revenue Code.) Nowhere does the law recognize that a simple request for reconsideration of an assessment, unaccompanied by any positive indication that the taxpayer is waiving his right to assert the defense of prescription, has the effect of suspending the running of the statute of limitations.

"That a request for re-examination or reconsideration of an assessment does not suspend the running of the statute of limitations seems to be the prevailing opinion in the Bureau of Internal Revenue. This may be inferred from the fact that General Circular No. V-182 dated January 17, 1955 had to be promulgated.

Paragraph 6 of said circular provides:

"6. Within thirty (30) days from the receipt of the deficiency tax assessment notice, the taxpayer may request reinvestigation or re-examination of the assessment, subject to the following requirements prescribed in paragraph 3 of Department Order No. 213:

'(a) The taxpayer shall put the specific grounds of his protest in writing and under oath, accompanied by such additional documents and evidence supporting his protest;

(b) He shall pay one-half (1/2) of the total assessment and file a bond to guarantee the payment of the balance together with the penalties that shall have accrued at the time of final payment; and

'(c) He shall sign a statement that he is waiving the periods of prescription involved in the assessment and collection of the deficiency tax in question.' (Italics supplied.)

"If a simple request for reinvestigation or re-examination of an assessment suspends the running of the statute of limitations, as alleged by respondent, there is no necessity for the requirement that a taxpayer must, sign a statement that he is waiving the periods of prescription' as a condition for -the granting of the request for reinvestigation or re-examination. General Circular No. V-182 obviously in line with Section 332 (c) of the Revenue Code which provides that the waiver of the taxpayer must be contained in an agreement in writing extending the five year period of limitation upon the right of the respondent to collect internal revenue taxes.

"FOR THE FOREGOING CONSIDERATIONS We are of the opinion that the right of the Government to collect from petitioner the sum of P24,438.96 as income tax for the year 1941 has prescribed. Accordingly, the decision appealed from is hereby set aside, without pronouncement as to costs."

I fully agree with the Court of Tax Appeals that whether we consider February 11, 1947 or July 26, 1955, as the date of the assessment, the right of the Collector, either to make collection "within five years from February 11, 1947 or to make assessment within five years from February 6, 1947, has prescribed. I do not believe that a mere petition for revision or reinvestigation can be regarded as an agreement of the taxpayer to extend the period of prescription. The very law clearly so states. Section 333 says that the running of the statute of limitations provided in Sections 331 and 332 shall be suspended only when the Collector is prohibited from making the assessment or beginning the distraint. No such prohibition or inability to make assessment or begin the distraint is claimed for the Collector. And Section 332 (c) says that the period for collection may be extended only by express agreement in writing by the taxpayer and the Collector. Evidently, nothing short of such express written agreement to extend

will suspend the running of the period.

It will be observed that Suyoc made only one petition for extension, that is, for one year within which to pay the assessment, but reserving its right to question the validity thereof. It was given only three months. Thereafter, it never asked for any other extension. True, it asked for revision and reconsideration of the different assessments made by the Collector, but this in no way can be regarded as an express agreement to extend the period; and the Collector was well aware of the fact that a mere petition to amend, modify, revise or revive the assessment or reinvestigate the case cannot extend the period of prescription, as evidenced by the very General Circular No. V-182, promulgated for the guidance of the Bureau of Internal Revenue. Said circular among other things provides that in order that there be an extension of the period of prescription and presumably, for the protection of the Government, the taxpayer must sign a statement that he is waiving the period of prescription involved in the collection of the tax.

The trouble with the actuations of the Collector, in this case is that he would appear to have unduly delayed definite and affirmative action on the assessment and collection, as shown by the wide gaps—first, a period of more than three years from February 14, 1947, when Suyoc received notice of the first assessment (extended by the Collector to June 20, 1947) to November 28, 1950, when the Collector demanded payment; then another period of about two years from November 28, 1950 to March 7, 1952 when he made the second assessment.

Not only was there undue delay on the part of the Collector, but his actuations would seem to have been characterized by indecision and uncertainty. First, he made an assessment in the amount of P33,099.26. Then he increased this to P33,829.66. Then on April 18, 1952, he again increased this assessment to P50,678.03, until on July 26, 1955, this sum of over P50,000 was reduced to P24,438.96, without surcharge, without interest and without any amount as compromise. Why all this difference or differences in the amounts of the assessment?

One could well imagine and understand that a first assessment more or less hastily prepared may be revised within a reasonable time, say a few months or even a year, either increasing it or decreasing it. But when the Collector over a period of more than eight years kept banging his assessment, increasing the same by substantial amounts and then decreasing the same substantially, and at the same time utterly forgetting the period of prescription set by the law and also forgetting to protect the interest of the Government by requiring the taxpayer to agree expressly and in writing to extend the period of such prescription; and equally important, forgetting and failing up to the present time to institute proceedings, administrative by distraint and levy or judicial by court action, to collect, the Government has no one to blame but itself and its officials, certainly not the taxpayer who did nothing but ask for revision of the assessment to obtain a correct figure while it finally got but too late, after a wait of over eight years.

The majority opinion places much reliance on the case of *R. H. Stearns Company vs. U.S.*, 291 U.S., 54, and makes extensive quotation therefrom. After reading said case, I agree with counsel for Suyoc that it is not applicable, for the reason that in that case, the taxpayer signed two waivers of the period of limitation; that although the second waiver was not signed by the Commissioner, nevertheless, the taxpayer on several occasions had requested him to withhold collection. Naturally, the United States Supreme Court was constrained to hold that when the taxpayer not only signed waivers but had deliberately asked and persuaded the Commissioner to postpone collection, he cannot invoke the benefit of prescription to the running of which he has contributed. Our law expressly and clearly provides that in order to suspend the period of prescription or to extend it, the taxpayer and the Collector must sign an agreement to that effect. Nothing short of this will effect said extension or suspension of the period of limitation. Mere petitions for revision or reinvestigation by the taxpayer cannot suspend the running of the period of prescription. The taxpayer may make as many requests for revision or examination as he wishes, but the Collector need not act upon them to the prejudice of the Government; and even

if he does act upon said petitions, he should always keep an eye on the running of the period, on the dead line, so that for the protection of the Government, he could enforce collection before it is too late.

Prescription in the assessment and in the collection of taxes is provided by the Legislature for the benefit of both the Government and taxpayer; for the Government for the purpose of expediting the collection of taxes, so that the agency charged with the assessment and collection may not tarry too long or indefinitely to the prejudice of the interests of the Government which needs said taxes to run it; and for the taxpayer so that within a reasonable time after filing his return, he may know the amount of the assessment which he is required to pay, whether or not such assessment is well founded and reasonable so that he may either pay the amount of the assessment or contest its validity in court, either by filing an action for the refund, if already paid, under the old law, or appeal the disputed assessment to the Court of Tax Appeals under the present law creating the Tax Court. It would surely be prejudicial to the interest of the taxpayer for the Government collecting agency to unduly delay the assessment and the collection because by the time that the collecting agency finally gets around to making the assessment or making the collection, the taxpayer may then have lost his papers and books to support his claim and contest that of the Government, and what is more, the tax is in the meantime accumulating interest which the taxpayer eventually has to pay.

In connection with this extension of the period of prescription or limitation for the Government to collect taxes, it will be noticed from Section 332 (c) of the Internal Revenue Code that even if the taxpayer and the Collector agree to extend the period of limitation, said period has to be specific or fixed, and if said period of extension is to be further extended, another agreement has to be made again specifying the period of said further extension. From all this, it is evident that to extend the period of limitation or prescription, an express agreement in writing to that effect, signed by the Collector and the taxpayer is necessary. Naturally, a mere petition by the taxpayer for revision or re-examination of the assessment cannot and will not automatically extend the period of limitation. However, under the theory espoused by the majority, let the taxpayer just ask, not for an extension of the time to pay or the Government to collect, but for a mere re-examination or revision of the assessment, and lo, and behold, all the carefully prepared provisions of the tax law about prescription and statutory limitation are laid aside, and the collecting agency of the Government may then postpone and delay the collection indefinitely, until such time as it is good and ready to resume proceedings from where it left off, and if the taxpayer complains of the delay or invokes prescription, he is instantly met with and silenced by the doctrine of estoppel. I believe that is not what the law and the Legislature contemplated.

To me, this matter of the extension of the period of limitation is quite clear, but assuming for a moment that there were any doubt about it, then we have the time honored and well settled rule of statutory construction that tax laws should be interpreted liberally in favor of the taxpayer and strictly against the Government, except in the matter of tax exemptions, in which case the rule is reversed. In the case of *Manila Railroad Co. vs. Collector of Customs*, 52 Phil. 952, this Tribunal said:

"* * *. It is the general rule in the interpretation of statutes levying taxes or duties not to extend their provisions beyond the clear import of the language used. In every case of doubt, such statutes are construed most strongly against the Government and in favor of the citizen, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import. (*U. S. vs. Wigglesworth* [1842], 2 Story, 369; *Froehlich & Kuttner vs. Collector of Customs* [1911], 18 Phil., 461.)"

Years ago, the Supreme Court of the United States, through Chief Justice Marshall, in the case of *McCulloch vs. The State of Maryland*, 4 Law Ed, 579, said that the power to tax is the power to destroy. Evidently, to moderate this awesome and dangerous taxing power of the Legislature, and in order to temper the rigor of tax laws, this sound and salutary rule of liberal construction of tax laws in favor of the taxpayer has been evolved and laid

down.

For the foregoing reasons, I dissent.

Padilla, J., concurs.

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