

[WITH RESOLUTION OF AUGUST 31, 1960]

G.R. No. 11805. May 31, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a decision of the Court of Tax Appeals, declaring respondent Pio Barretto Sons, Inc. exempt from the payment to the total amount of P79,933.41, representing (1) forest charges and 300% surcharges on alleged purchases of logs not accompanied by auxiliary invoices for the years 1947 to 1949; (2) forest charges and 300% surcharges on undeclared purchases of logs in 1949 and 1951; (3) 50% surcharge for discharging without permit from 1948 to 1949; (4) and deficiency sales tax and surcharge from 1947 to 1949. The exact amounts are detailed in a letter of the Collector of Internal Revenue to Pio Barretto Sons, Inc. dated December 10, 1954 (Exh. 2), as follows:

1947-49

Regular forest charges on 1,196,111 bd. ft. or 2,585.16 cu. m. of 1st group round logs @ P3.50 per cu. m.

P9,048.06

Regular forest charges on 409,513 bd. ft. or 965.83 cu. m. of 2nd group round logs @ P2.00

1,931.66

Total regular charges

P10,979.72

450% surcharges for cutting w/o license, trans w/o permit and late payment

49,408.74

Total regular charges and surcharges

P60,388.46

1949

Regular forest charges on 349,831 bd. ft. or 825.07 cu. m. of undeclared purchases of timber @ P2.00 per cu. m.

1,650.14

150% surcharges for trans, w/o inv., disch. w/o permit and late payment

2,475.21

Total regular charges and surcharges

4,125.35

TOTAL CARRIED FORWARD

64,513.81

TOTAL BROUGHT FORWARD

64,513.81

1951

Regular forest charges on 83,355 bd. ft. or 196.59 cu. m. of undeclared purchases of timber @ P1.25 per cu. m.

245.74

75% surcharges for transp. w/o inv., disch. w/o permit and late payment

184.32

Total regular charges and surcharges

430.06

1948-49

50% surcharge for discharging w/o permit 39,395 bd. ft. of 1st group timber based on the regular charges

162.58

Total forest charges and surcharges

65,106.46

1947-49

5% sales tax on total value of logs of P237,231.34

11,861.57

25% surcharge

2,965.39

Total sales tax and surcharge

14,826.96

GRAND TOTAL COLLECTIBLE

P79,933.41

The above assessment was based on the report of Internal Revenue Agent Celso P. Razal, who conducted an investigation of the log purchases of the respondent during the periods indicated, the sawn lumber sold by it during the same period of time, as disclosed from respondents' own books, papers and records.

(1) Agent Razal found that from January to June 14, 1947, June 15 to December 31, 1947, January to December, 1948, and January to December, 1949, the respondent had acquired a total of 1,096,111 board feet of first group logs and 409,513 board feet of second group logs. However, the respondent was not able to produce the commercial or official receipts showing positive payment of the forest charges thereon, nor the auxiliary invoices of said logs. The respondent explained to the agent that the logs in question were actually purchased by it as shown by the vouchers signed by the sellers and payees; that it was a buyer in good faith and liability should be assessed against the vendors who sold the logs to it; that because of lack of forms compliance with the forest regulations regarding the invoicing of said logs could not be made at the time of the acquisition of the logs. The Collector of Internal Revenue assessed the regular forest charges thereon at P10,979.72 and the surcharges for cutting without license, transporting without invoice, discharging without permit, plus late payment at P49,408.74, making a total of regular charges and surcharges of P60,388.46.

(2) In the year 1949, some 349,831 board feet or 825.07 cubic meters of logs were found to have been purchased but undeclared, and the Collector assessed against the respondent P1,650.14 for regular forest charges and P2,475.21 as surcharges, or a total of P4,125.35.

(3) In 1951, the petitioner assessed against the respondent P245.74 for undeclared purchases of logs totalling 83,355 board feet or 196.59 cubic meters, and P184.32, as surcharges thereon, or a total of P430.06.

(4) During the years 1948 and 1949, it was found that respondent discharged without permit 39,395 board feet of first group timber, upon which the sum of P162.58 was assessed.

(5) In the years 1947 to 1949, 5% sales tax on a total value of logs amounting to P237,231.34 was computed at P11,861.57, with 25% surcharges amounting to P2,965.39. So a total of P14,826.96 was assessed against the respondent on this count.

Respondent appealed to the Court of Tax Appeals alleging that it did not fall, transport or discharge without license or permit any logs, or make undeclared purchases of the same; that the computation of the sales tax is inaccurate and that the Bureau of Internal Revenue has already examined and verified the books of the respondent for sales tax purposes, and issued a deficiency sales tax assessment, which has been paid; that the Collector can no longer assess for the years earlier than January 12, 1950 because there is no allegation of fraud against it and its records were constantly subject to examination by agents of the Bureau. The Court of Tax Appeals held a trial of the issues, and thereafter rendered a decision, which is the subject of the present appeal. In connection with the forest charges and surcharges from 1947 to 1949, the Collector of Internal Revenue alleges that the respondent had loaned money or made cash advances to suppliers and that the latter paid the respondent in the form of logs, by way of sale, and therefore the suppliers were acting as agents of the respondent herein. The court below did not

sustain this claim of the Collector, holding that there is no relationship of principal and agent under the circumstances above-indicated. We agree to this conclusion; the giving of cash advances for timber or logs to be supplied do not make the supplier agents of the buyer.

As to the liability of the respondent herein for the forest charges and surcharges for logs for which he has been unable to present official receipts of payment of the forest charges and the auxiliary invoices thereof, the court below held that a person in the position of the respondent herein may not be penalized upon presumption, as the evidence only proves that respondent herein was a purchaser in good faith of the logs. Anent the argument of the Collector of Internal Revenue that Section 13 of Regulation No. 85 of the Department of Finance makes the respondent herein responsible for the forest charges and surcharges, the court below held that the term "possessor of forest products" in said Section 13 of Regulation No. 85 refers to the person who gathers or cuts the forest products like the licensees, and not to a subsequent possessor for value. Going further on same issue, the court below also held that the Internal Revenue Code has seen fit to classify forest charges as internal revenue taxes, and therefore the principle that the lien on the forest products may not be enforced against an innocent purchaser, must be applied. It further held that it was incumbent upon the Collector to show that the owners of private woodlands from whom some of the logs were purchased had not registered their private woodlands, otherwise such owners can not be charged for illegal cutting.

On this appeal petitioner relies mainly on the provisions of Sections 11 and 13 of the Revised Internal Forestry Regulations No. 85 dated December 28, 1934, and duly approved by the Secretary of Finance. Said Sections are as follows:

"Sec. 11. Payment of charges on products cut under ordinary license.—Before transporting from the public forest or forest reserves or using within the cutting area forest products cut or gathered under an ordinary license issued by the Director of Forestry, the licensee shall list such forest products on blank forms of auxiliary invoices (B.I.R. Form No. 14.04 in the case of timber or B.I.R. Form No. 14.05 in the case of firewood or other minor forest products) which may be secured from the deputy provincial treasurer of the municipality, where the said forest products have been cut or gathered. Said auxiliary invoices, when completed, shall be sworn to before the deputy provincial treasurer concerned by the licensee or his agent duly authorized in writing. These auxiliary invoices shall, in the case of timber, be made in quintuplicate and in the case of firewood and minor forest products, in quadruplicate. After they are duly sworn to, the deputy provincial treasurer shall compare the barrios or sitios shown thereon with those described in the copy of the license furnished by the Bureau of Forestry, and shall prepare an official invoice together with its stub and coupons and collect from the licensee or his agent the amount of charges due on the products so invoiced. He shall then affix to the official invoice in the space provided for that purpose internal revenue stamps in an amount equal to the charges collected, and cancel them. He shall also enter the assessment and serial numbers of the official invoice on each copy of the auxiliary invoice. The official invoice shall then be detached and together with two copies of the auxiliary invoice in the case of timber, or one copy in the case of firewood or minor forest products, shall be delivered to the licensee, to be sent along with the products until they arrive at their destination. If the barrios or sitios shown on the auxiliary invoice differ from those shown on the copy of the license, such discrepancy shall be considered prima facie evidence that the products were not cut in the licensed area and the additional charges of 100 per centum shall be collected unless the licensee presents satisfactory proof that the products were cut in the licensed area. The coupon and two copies of the auxiliary invoice shall be forwarded to the Collector of Internal Revenue with the report of stamps sold. The Collector of Internal Revenue will transmit one copy of the auxiliary invoice to the Director of Forestry. The remaining one copy of the auxiliary invoice shall be sent by the deputy provincial treasurer to the nearest forest station. Upon arrival of the products at the, point of destination, the licensee or his agent shall present the official invoice and auxiliary invoices to the deputy provincial treasurer of the municipality or to the Collector of Internal Revenue in the City of Manila, and apply for a discharge permit. The deputy provincial treasurer or the Collector of

Internal Revenue will then follow the procedure outlined in section 17 (a) hereof.

If the licensee or his authorized agent prefers to pay the forest charges and secure the official invoice in a municipality other than that where the forest products have been cut or gathered, before the removal of the products from the cutting area a written permission of the Collector of Internal Revenue to that effect should be previously secured.

Persons required by the regulations to execute and present Schedule I, paragraphs 1 to 4 auxiliary invoices (B.I.R. Form No. 140.04) must prepare this form in a manner as to put together all timber or lumber of the same form, the same species and the same group."

"Sec. 13. Payment of charges on forest products taken without license.—The possessor of forest products cut or gathered without license on which charges are payable is required to present auxiliary invoices. The procedure outlined in section 11 of these regulations shall then be followed. Surcharges shall be collected for cutting without license, for cutting in violation of the terms of the license, transporting without invoice, or discharging without permit."

We note that the above regulations specifically point out in detail the procedure to be followed by licensees from the time of cutting timber, during the transportation of the same to its destination, and the discharge thereof at the said destination. In brief, the regulations provide that upon cutting timber the licensee must submit to the nearest Internal Revenue officer, or the deputy provincial treasurer of the province where the timber is cut, an auxiliary invoice in quintuplicate of the timber cut, containing the serial number of the logs, their species, their lengths, radius, if round, thickness and width if squared, and their volume in cubic meters. These auxiliary invoices are then sworn to before the deputy provincial treasurer, who shall prepare an official invoice together with its stub and coupons and collect from the licensee or his agent the amount of charges due on the product so invoiced. The official invoice or receipt of payment is then detached and together with two copies of the auxiliary invoice it delivered to the licensee, to be carried along with the logs to the point of destination. Upon arrival at the point of destination, the licensee or his agent shall present the official invoice and the auxiliary invoice to the deputy provincial treasurer thereat and apply for a discharge permit. Note that at this time the deputy provincial treasurer is supposed to check if the timber described in the auxiliary invoice tallies with the timber actually discharged. The deputy provincial treasurer then grants a permit to discharge the timber and returns the official invoice to the consignee, together with the auxiliary invoice.

It will be noted, as reported by the Internal Revenue Agent, and not denied by the respondent herein, that none of these three official documents, the official invoice, the auxiliary invoice and the discharge permit, were found in the possession of the respondent herein to cover the timber (1,096,111 board feet first group and 409,513 board feet second group) on which the assessment of P60,388.46 was made. An official of the respondent company declared that the persons who delivered to it the timber (Stated that the forest charges have been paid but none of the documents were furnished.

The question we have to decide is whether under the circumstances the respondent herein should be responsible for the assessment made, including forest charges and surcharges.

In the first place, we do not subscribe to the proposition of the court below that because the collection of the forest charges has been entrusted to the Collector of Internal Revenue, said forest charges are taxes to be governed in the same manner as internal revenue taxes. As the court below had admitted, the Tax Commission had expressly stated that forest charges are not taxes but the price of forest products.

"Forest charges, which are not properly taxes but rather the price paid for exploiting national resources, need to be revised to make them more in harmony with present-day conditions in the industry and with public policies." (Report of the Tax Commission, p. 36, Vol. 1)

"Forest charges are to be distinguished from taxes. They are, strictly speaking, the price which the Government charges for the privilege granted to concessionaires to exploit the public domain, rather than a tax imposed to support the general services of the government. Since under the Constitution all timber lands in the public domain belong to the State, sound public policy demands that they be conserved or wisely exploited in order that the patrimony of the nation may not be impaired. The increasing production of lumber in recent years means both a more rapid depletion of our forest resources and increasing expenditures by the Government for reforestation which now amount to about half a million pesos a year." (ID., p. 90, Vol. 1)

If the Filipino people are not to be cheated of the products of their national patrimony, forest charges should rather be considered as lien on the forest products, the term "charge" being synonymous with the term "lien". That such a lien has been created is to be inferred from the above-quoted Section 13 of the Regulation, which makes the possessor responsible for forest charges and surcharges on timber cut from the public forests. The conclusion of the court below that the term possessor in Section 13 of the Regulation refers only to a licensee, is entirely at odds with the established practice of the Bureau of Forestry and the interpretation placed thereon by both the Bureau of Forestry and the Bureau of Internal Revenue. As We read both Sections 11 and 13, We find that the interpretation given by the court below to the term "possessor" does not jibe with the provisions of Section 11, especially those which require three steps to be taken before timber cut in public forests can ultimately reach the consignee.

The procedure outlined in detail in Section 11 of the Regulations above-quoted for the proper documentation of timber and other forest products after cutting and before removal from a public forest, during transportation, and at the time of discharge, has been adopted to protect such valuable patrimony as our forests are against waste and spoliation both by regular licensees as well as by trespassers. The provision of Section 13 making the possessor of timber or other forest products, without the corresponding documents required in Section 11, responsible for the forest charges and surcharges, is a necessary concomitant of Section 11; without it (Section 13) the strict documentation in Section 11 would be defeated, because possessors not actually caught in the act of cutting, transporting or discharging the timber, would be exempted, not only from the payment of the ordinary forest charges, but also from the heavy penalties that the law imposes for violations of its provisions and the regulations issued there under. The rule that a possessor of timber without the proper documentation above-mentioned is presumed to be a purchaser in good faith—because one can not be presumed to be a law violator—is clearly contrary to sense and reason. If a possessor of timber and other forest products really purchased them from a licensee who has paid all the charges, he should have the documents evidencing the legality of the taking away thereof from the forest. Our laws on personal properties like vehicles and large cattle require certificates or permits to insure that said vehicles and cattle may not go into the hands of thieves with impunity and may be recovered from the latter. Similarly, the regulations require the strict documentation of timber and other forest products that thieves and forest violators may not go unpunished and our valuable patrimony protected and the collection of the charges due the State therefrom assured.

According to the court below, it is the Government that must show that a person in possession of timber without the official documents must prove that the timber so possessed has been illegally cut. The rule thus adopted by the court below flies in the teeth of the regulations above-quoted.

A person who buys or purchases timber without the official documents mentioned above is not a buyer in good faith; he should know that under the Regulations in force since 1934 timber cut in public forests should be accompanied by the documents required. In no case is the rule of caveat emptor be more applicable than in the present, where products from the patrimony of the people have apparently been taken away illegally. The purchaser thereof can not be said to be a purchaser in good faith unless he can show the official documents, the receipts for payment of the charges and the discharge permit covering the timber, because he ought to know the law and regulations regarding the payment of forest charges and the invoicing, transporting and discharging of

forest products.

Lastly, the adoption of the decision of the court below would certainly create unlimited opportunities for licensees and buyers to connive with each other and cheat the State of its lawful revenues. Whether from a practical point of view or from that of public policy, forest charges should be considered as a lien on the timber, and licensees or possessors of forest products, whoever they may be, should be made to respond for the forest charges and surcharges fixed in the law, and a lien should be pronounced on said timber or other forest products not only when they are yet in the condition of unsawn logs, but also after the same had been sawed into lumber and disposed off. It is only by such practical construction of the regulations and by the enforcement of such a public policy that the public patrimony may be saved from spoliation and ruin.

Summing up what We have said before, We hold that Section 11 of the said Regulations refers to all persons who are in possession of timber without the necessary official and auxiliary invoices and discharge permits. We also hold that the charges are liens on the products and collectible upon whomsoever is in possession, unless he can show that he has the required auxiliary and official invoice and discharge permit. In accordance with these conclusions, We hold that respondent is liable for the sum of P60,388.46 as forest charges, surcharges on the 1,096,111 board feet of first group logs and 409,513 board feet of second group logs for which it failed to show the corresponding official invoices, auxiliary invoices and discharge permits.

The next issue raised in the appeal is the liability of the respondent herein for the sums of P4,125.35 and P430.06 as forest charges and surcharges, respectively, on logs allegedly purchased in 1949 and 1951 but not declared in the books of the respondent herein. There should not be any question as to the respondent's liability for these charges and surcharges. Respondent herein had obtained the logs but did not enter the same in its books. Under the rule We have laid down above, the respondent as possessor is responsible for the forest charges and surcharges, otherwise by mere omission, people to whom timber or forest products have been delivered would easily hide such products and cheat the Government of the lawful charges thereon.

We also hold that the respondent herein should also be responsible for the payment of P162.58 as 50% surcharge for discharging without permit in 1948 and 1949. Were we to allow persons to discharge without permit, evasion of the forest charges would easily be achieved. It is by checking the timber with the auxiliary invoice, or guias that the Government can find out whether logs or timber had been illegally cut, or transported and discharged without license and permit. The collection of these charges is a necessary consequence and part of the system to insure collection of all forestry charges and especially to check overshipments.

The last question to be decided is that of the liability of respondent for the sales tax of 5% on the logs it had purchased from various loggers which were not covered by the corresponding official and auxiliary invoices and discharge permits required by Regulation No. 85. The internal revenue agent had found that respondent had deducted the supposed amount of said 5% sales tax from the gross sales of sawn lumber, pursuant to then existing law that owners of sawmills as producers of manufactured goods may deduct from the gross value of their sales of sawn lumber the cost of the raw materials used in the manufacture or sawing, including the sales tax thereon. As it does not appear that the loggers from whom respondent purchased the logs had paid said 5% sales tax on the logs delivered to respondent, the logical inference from this fact is that the respondent must have discounted said sales tax from the price of the logs given to the supplier of the logs, taking upon itself the responsibility of paying said 5% tax, or assuming liability therefor to the Government. There are two other circumstances that support such an inference and such a liability. The loggers as suppliers of logs were financed in their logging operations by respondent, which advanced funds therefor and must have, in their accounting of such funds, already retained the sales tax on the logs supplied for payment to the Government. In the second place, as We have concluded from a consideration of the first question, which refers to the liability of respondent for the forest charges due on the logs

not covered by official and auxiliary invoices, respondent can not have the consideration of buyer and possessor in good faith of the said logs, for which reason it may not claim exemption from liability for the sales tax due on the logs it had received without invoice and which it subsequently manufactured into sawn lumber. We are forced to conclude, therefore, that respondent should be made to pay the sales tax of 5% above described, including the tax deficiency, for a total of P14,826.96.

The last item subject of the appeal is the amounts of P1,000.00 and P200.00 demanded by the Collector of Internal Revenue as compromise penalties, which demand was denied by the Court of Tax Appeals for the reason that the respondent did not agree thereto and, therefore, petitioner has no right to impose the same. While it is true that violations of the National Revenue Code and the Forestry Regulations have been committed, the remedy of the petitioner for these violations is to sue the respondent therefor. This has been the ruling of this Court in G. R. Nos. L-11274 and L-11280, Collector of Internal Revenue vs. University of Sto. Tomas, et al., and University of Sto. Tomas vs. Collector of Internal Revenue, prom. November 28, 1958, and reiterated in G. R. Nos. L-12250 and 12259, Collector of Internal Revenue vs. Bautista, et al., and Bautista, et al., vs. Collector of Internal Revenue prom. May 27, 1959. The decision of the Court of Tax Appeals refusing to impose payment of the said amounts as compromise penalties against the respondent is, therefore, affirmed.

For the foregoing considerations, the respondent company is hereby ordered to pay the Government the following amounts: (a) P60,388.46, as total regular charges and surcharges on 1,096,111 board feet of first group timber for the years 1947 to 1949; (b) P4,125.35, as total regular charges and surcharges on 349,831 board feet of undeclared purchases of timber in the year 1949; (c) P430.06 as total regular charges and surcharges on 83,355 board feet of undeclared purchases of timber in the year 1951; (d) P162.58 as 50% surcharge for discharging without permit 39,395 board feet of first group timber in the years 1948 and 1949; (e) P14,826.96 as total sales tax and surcharge for the years 1947 to 1949; or a grand total of P79,933.41. However, the respondent company is hereby declared exempt from paying the compromise penalties of P2,000.00 and P200.00. The judgment appealed from is therefore modified in the manner indicated above. With costs against respondent.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Barrera, and Gutierrez David, JJ., concur.

RESOLUTION

August 31, 1960.

LABRADOR, J.:

Respondent Pio Barretto Sons, Inc., asks for leave to file a second motion for reconsideration, alleging that this Court should refer this case to the court below in order for it to make a finding of facts to justify the assessment made by the petitioner Collector of Internal Revenue, and that this Court should make an express ruling on the defense of prescription presented by respondent in the court below.

Because these matters have not been expressly passed upon in our decision and because of the importance of the questions of law raised, we have chosen to rule herein on the questions as above indicated. The forest charges assessed and now in question are for timber cut in the years from 1947 to 1949.

On the first question, we have taken pains to examine the records of the case below, as well as all the papers submitted by the petitions at the trial, and we find no claim or contention of any kind made therein by the respondent contesting the correctness of the figures upon which the assessment was made. In the petition before the Court of Tax Appeals, petitioner therein, in paragraph 7 of its petition, only denies the accuracy of the

computation of the sales tax upon which deficiency is being collected, but not on the figures use for making the computation. As to the forest charges and surcharges all that the respondent states in its petition is that he denies having felled, transported or discharged logs or having undeclared purchases on logs, or having violated Section 37 of the Tax Code. The figures upon which the petitioner Collector of Internal Revenue has based his assessment were taken from books and papers of the respondent. No claim is ever made that said figures, of logs sold or lumber sold, are incorrect. As a matter of fact, the Court of Tax Appeals in its decision assumes that the figures on which the assessment is made, are correct and the respondent never questioned the same, and all it did question is the validity or legality of the assessment made. The correctness of the figures taken from the books and papers of the respondent not having been impugned by respondent in the Court of Tax Appeals, as said figures are taken from its own books and papers, the correctness of the accounts on which the assessment was made was never in issue in the court below. Hence this Court can not order the return of the records to the court below for the determination of the figures basis of the assessment.

As to the claim that the assessment made by the Collector of Internal Revenue has prescribed, because 5 years have already expired, we find this claim to be without merit. The provision cited by the respondent to support its contention is as follows:

"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." (National Internal Revenue Code, 213).

It can be seen from the above-quoted provision, that the prescriptive period of 5 years begins from the filing of the return. In the case at bar the assessment by the Collector of Internal Revenue is not based on a return filed by respondent. The above provision does not, therefore, apply. Moreover, as already stated in the decision, forest charges and surcharges are payments for timber taken from public forests, and they are considered as internal revenue taxes only in the sense that they are to be collected by the Collector of Internal Revenue and the regulations for their collections are contained in the National Internal Revenue Code. Forest products are obtained under licenses issued by the Government and forest charges are in a sense contractual in origin. No prescriptive period having been prescribed by law for this Case, Sec. 43 of the Code of Civil Procedure should apply. The books of sales and the invoices of timber bought were examined in 1953, and Internal Revenue agents found that many purchases of logs were without invoices and sales underdeclared. The action to collect for the under-declaration and for forest charges on logs purchased without invoice should begin from said year, 1953, because it was in that year the deficiencies amounting to fraud were discovered. The period for the prescription should, therefore, be reckoned from 1953. The assessment, therefore, was made within the period prescribed by the statute.

Wherefore, the motion for reconsideration filed in this case is hereby denied.

Paras, C. J., Bengzon, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

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