

## **SIXTO CELESTINO, PETITIONER AND APPELLANT, VS. AUDITOR GENERAL OF THE PHILIPPINES, AND THE CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, RESPONDENTS AND APPELLEES.**

*G.R. No. 12183, May 29, 1959*

Ponente: MONTEMAYOR, J.

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### **MONTEMAYOR, J.:**

This is an appeal from the decision of the Auditor General denying the claim of petitioner for the payment of 7,926 boxes of ordnance items and 20 radial engines withdrawn by the Armed Forces of the Philippines (AFP) from Ordnance Sub-Depot No. 6, located at Isaac Peral, Manila.

Under the Roxas-Vegelback Agreement signed in Manila on September 11, 1946, and approved by the Philippine Government by virtue of Republic Act No. 33, vast amounts of property, especially war materials, which had been declared surplus to the needs of the Government of the United States of America and which were found necessary for the reconstruction and rehabilitation of the Philippines, were transferred to the Philippine Government, and the President of the Philippines was authorized to administer said surplus property and to sell or dispose of so much of the same as may not be needed by the Government, its subdivisions, and instrumentalities.

Part of said surplus property was the fixed installations and movable goods located at Ordnance Sub-Depot No. 6, Isaac Peral, Manila. It was the intention and policy of the Government to first satisfy and meet the needs of its agencies and instrumentalities, such as the Armed Forces of the Philippines, before disposing of said surplus property. And so on October 6, 1948, the defunct Government Enterprises Council (GEC) approved and turned over to the AFP, all combat materials located in said depot. Subsequently, on February 6 to 25, 1949, the property in said depot was placed on negotiated offers. In said offers, the following clause was specifically inserted:

"Excluded: A11 combat materials (military, weapons, gun parts and accessories) that may be found,"

Pursuant to said clause, representatives of the AFP were authorized by the Chairman of the Surplus Property Commission (SPC) on March 18, 1949 to earmark and take delivery by means of memorandum receipts all such combat materials as they needed from said depot, in addition to military weapons, gun parts, and accessories; and on March 25, 1949, the SPC Chairman ordered the said depot closed for customers' inspection until the AFP had completed withdrawal of combat materials located therein. Two months later, or on May 3, 1949, the AFP was requested by the SPC to issue a certificate of release for the said depot in order to facilitate the early liquidation and disposition of the remaining contents thereof. However, the AFP representatives found that about 70 % of the items located at the depot fell under the category of combat materials; that the ear-marking and withdrawal of the same would require a longer period of time; and so, the then Chief of the Ordnance Service, Col. Benjamin C. Molina, informed the SPC in his 5th indorsement dated May 5, 1949, that the AFP would offer no objection to the release of Sub-Depot No. 6, subject to the condition imposed in the 2nd indorsement dated March 24, 1949, namely:

"\* \* \* the AFP retains the exclusive right to screen all the items as soon as the buyer starts hauling them from

the depot. The AFP representative will require the buyer to open the boxes and inspect the contents before they are hauled from the depot. Any combat material which is found to be within the AFP requirements and which may be considered dangerous to public safety will be segregated by the AFP representative and will be withdrawn by the AFP. (*Italics supplied; Exhibit N, Annex A*)

Thereafter, or on July 12, 1949, the Control Committee of the GEC, upon recommendation of the SPC, approved the negotiated sale of the remaining fixed installations and movable property located at Ordnance Sub-Depot No. 6, Isaac Peral, Manila, to the Fil-American Irregular Troops, represented by petitioner Sixto Celestino for the sum of P42,000, plus compensating tax, or a total of P44,100. After the approval of the negotiated sale, Invoice, No. 10644, dated July 15, 1949, covering the property sold was issued to the vendee, and possession of the depot was delivered to it under Tally-out Sheets dated August 26, 1949.

In this connection, it should be stated that before the sale, the condition imposed by Col. Benjamin C. Molina, contained in his indorsement of March 24, 1949, as already reproduced, was called to the attention of Celestino, representative of the vendee, and he signified his written conformity thereto in the very same 5th indorsement, as follows:

"We hereby agree to the condition set in the 5th indorsement above by Benjamin C. Molina dated May 5, 1949.

"Fil-American Troop Division

By: "(Sgd) MAJOR BONIFACIO CASTILEJOS

"(Sgd.) SIXTO CELESTINO

Furthermore, the sales Invoice No. 10644 (Exh. T. Annex A), evidencing the sale to petitioner contained this clause:

"Excluded: All combat materials (military weapons, gun parts and accessories) that may be found."

This same clause also appears in the Tally-Out Sheet, (Exh. W, Annex A) signed by petitioner, evidencing the delivery to petitioner of the installations and articles found therein.

About three months after the sale of the depot in question or on October 19 to December 6, 1949, authorized representatives of the Ordnance Service, AFP, withdrew certain items therefrom, among, them, 7,926 boxes of ordnance materials and 20 radial engines. Petitioner demanded payment for the same, but the AFP refused to pay on the ground that ownership over said materials never passed to the petitioner, the same having been expressly excluded from the sale. Petitioner appealed to the Secretary of National Defense who affirmed the stand taken by the AFP; thereupon petitioner took the case to the President of the Philippines who, on December 7, 1951, denied petitioner's claim. A motion for reconsideration was equally denied on April 28, 1955. Petitioner requested the President to give his consent to the filing of a suit against the AFP, which request was referred to the Secretary of Justice for comment. In view of the recommendation of the Secretary of Justice that the provisions of Commonwealth Act No. 327 be brought to the attention of the petitioner, the latter filed his claim with the Auditor General on June 21, 1955. After due hearing the Auditor General on February 6, 1957, rendered a decision disallowing the claim. Petitioner is now appealing from said denial to us.

Pending appeal in this Court and before the parties had filed their briefs, the Solicitor General filed a motion to dismiss the appeal, claiming that the same was perfected beyond the 30-day period prescribed by law for the reason that a copy of the Auditor General's decision was received by the petitioner on February 12, 1957 and the notice of appeal was filed with the Auditor General only on March 27, 1957, while the petition for review was filed with us on March 28, 1957. By resolution of May 29, 1957, said motion to dismiss the appeal was denied. The said resolution was presumably based on the fact that the petitioner's motion for reconsideration of the

Auditor General's decision suspended the running of the period for appeal. The Solicitor General in his brief reiterates his motion for dismissal of the appeal, contending that a motion or petition for reconsideration of the Auditor General's decision does not suspend the running of the period for appeal; and in support of his contention, He cites I Moran, Rules of Court, 1952 Ed., p. 949, citing the case of Jalandoni vs. Sison, G. R. No. 48884. Unless we set aside our resolution of May 29, 1957, denying the motion to dismiss the appeal which we see no reason or occasion for doing, the present appeal stands. And because of the view we take of this case and the conclusion which we have arrived at, the result would be the same. However, for the satisfaction of counsel for the Government, we wish to say that in the relatively recent case of Pedro M. Libuet vs. The Auditor General, G. R. No. L-10160, June 28, 1957, the same legal point was involved, and even this case of Jalandoni vs. Sison was cited. There we decided that a petition for reconsideration of the decision of the Auditor General suspends the running of the period for perfecting an appeal. Through Mr. Justice Labrador, we said:

"A point raised by the company is that the appeal is late, because petitioner had filed a motion for reconsideration of the decision of the Auditor General, and such motion does not suspend the period for perfecting an appeal to this Court. A decision of this Court (Jalandoni vs. Sison, G. R. No. 48884) cited in I Moran's Comments on the Rules of Court p. 949, has been cited by the respondent in support of the argument. We have tried to check up the supposed source of the supposed ruling but have not been able to find that the ruling has been laid down by us. On the other hand, we find that in proceeding before the courts as well as in those before administrative officials, the constant practice has been to permit motions for reconsiderations and to deduct the time used in the consideration thereof from the period for perfecting an appeal. We have found no reason for deviating from this practice in matters coming from the Auditor General; as a matter of fact the practice is in consonance with the principle of exhaustion of administrative remedies. The claim of the respondent that the appeal was perfected out of time can not, therefore, be sustained."

On the basis of the facts of the case narrated by us, particularly those based on the documents presented in evidence as exhibits, the case appears to us quite clear as to require no extended discussion. From the very beginning, petitioner was given to understand in clear and unmistakable terms, and he expressed his conformity thereto, that all combat materials found in the depot were to be excluded from the sale. Those materials were not only those that had been removed from the depot by the AFP before the negotiated sale before the vendee took possession of the depot but also those materials which were later removed by the AFP as being combat materials. As a matter of fact the AFP, with the conformity of petitioner, has reserved the right to even open the boxes and cases in which the materials were contained before they were hauled away by the vendee in order to examine the contents and remove therefrom all combat materials. In all probability, the reason why the vendee had agreed to this was the relatively low price at which the sale was made: materials which had a procurement cost of over a million pesos, sold at the price of about P44,000 including compensating tax. In this connection, we reproduce with favor pertinent portions of the well written and well-prepared decision of the Auditor General:

"The records show that the original procurement cost of the depot in question was P3,620,568.00 but inasmuch as 70% of the items therein were found to be combat materials and reserved for the AFP, said procurement cost was revised and lowered (for purposes of determining the selling price) to P1,086,170.00 which is approximately 30% of the original procurement costs. It is noteworthy that the negotiated sale of said depot to the claimant was deemed acceptable and same was awarded to him by the GEC because his offer of P42,000.00 would yield a recovery of 3.86%. (Resolution of the SPC dated June 20, 1949, marked as Exhibit "R" and letter of the Chairman, GEC, supra). By simple mathematical computation, we arrive at the incontrovertible fact that the amount of P42,000.00 paid by the claimant is approximately 3.86% of P1,086,170.00, the revised procurement costs representing 30% of the contents of the depot. In other words, in determining whether the offer of the claimant would be a satisfactory selling price of the depot in question, the Surplus Property Commission took into consideration the fact that 70% of the contents of the depot was already reserved for the AFP and cannot be included in the sale. The inescapable inference flowing from these

circumstances is that during the negotiation of the sale it was understood and believed by the parties that the Surplus Property Commission was selling and the claimant was buying only non-combat materials which comprised more or less 30% of the original contents of Ordnance Sub Depot No. 6, because the combat materials or the remaining 70% were already reserved for the AFP."

"Finally, it seems incredible that the Surplus Property Commission would sell the depot in question for only P42,000.00 if it were its intention to include in such sale the materials in question, for if we were to believe the claimant, said materials would command a price of P2,919,000.00, the amount he is claiming from the AFP. Such a deal would be patently unreasonable and against the provision of Republic Act No. 38 directing the Surplus Property Commission to sell or dispose of the surplus properties 'under such terms and conditions as may be deemed advantageous' (Sec. 2, supra). Thus, the Supreme Court in the similar case of Celestino M. Dizon vs. the Board of Liquidators, Etc., (G. R. No. L-8416, Feb. 17; 1956) stated:

"\* \* \* but what makes the claim of the plaintiff unconscionable and unreasonable is the fact that said materials are worth more than P60,000.00, without including the other machineries, or, if we are to believe what plaintiff himself said, they could have been sold for P281,250.00, and yet he only paid for the whole deal the paltry sum of P9,450.00. Such a deal defies reason and common sense. We doubt if the officials in charge of liquidating the surplus property would have countenanced such deal knowing it to be not only unreasonable but in contravention of the purpose for which that property was turned over to our Government."

As to the 7,926 boxes of ordnance materials, as shown by the tally sheets, they contained among other things magazine accessories for carbines, garands, grease guns, Thompsons; brush bore; staff cleaning rods; assorted spare parts for carbines, garands, grease guns; stock butts; sight launcher grenade; oil accessory for Cal. .30 M-I, etc., articles, which were purely combat materials; and as to the 20 radial engines which were used for tanks, we are convinced that they can be considered war materials. We also reproduce pertinent portions of the decision of the Auditor General on this same point:

"The term 'combat materials' as used in the aforesaid conditions and in the Sales Invoice (Exhibit "T") was given a definite meaning. It was deemed to include military weapons, gun parts and accessories'. Guided by this concept, a perusal of the list submitted (Annex B-3) by the claimant describing the ordnance items with drawn by the AFP, would readily show that said items fall within the category of combat materials excluded from the sale. Likewise, the radial engines in question would fall within the purview of combat materials contemplated in the contract of sale since as represented by the AFP, and this has not been impugned by the claimant, they are spare parts of tanks. One can hardly doubt that a tank is a military weapon.

"The claimant seems to rely on the information given to this Office of Senator Zulueta, former Chairman of the Surplus Property Commission, to the effect that combat materials are classified into 'essentially combat materials and non-essentially combat materials and that what has been reserved for the AFP are only essentially combat materials (t.s.n. Conference on April 17, 1956, pp. 9-11). With all due respect to the Senator, and without necessarily holding that the materials in question are 'non-essentially combat materials'. We cannot apply this classification to the instant case. Apart from the fact that such classification is only his personal opinion—it is not backed up by authorities nor by existing rules and regulations of the Surplus Property Commission, at the time—the stipulations in the award of sale and in the sale invoice of what are deemed included in the phrase 'combat materials' are quite clear and need no further interpretation."

In view of the foregoing, the appealed decision of the Auditor General is hereby affirmed, with costs.

Paras, C. J., Reyes, A., Labrador, Concepcion, and Endencia, JJ., concur.

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