

COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. JOSE COJUANGOO, RESPONDENT.

G.R. No. 13255. September 29, 1960

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

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

From the judgment of the Court of Tax Appeals (in CTA Case No. 74) reversing his decision of January 27, 1955, which holds respondent Jose Cojuangco liable for deficiency sales taxes, petitioner Collector of Internal Revenue interposed the present petition for review.

The case was submitted for decision of the Tax court on the basis of a "Stipulation of Facts" which incorporated, as annexes, certain records of the Bureau of Internal Revenue. The material facts may be briefly stated as follows:

At a public bidding held by the Surplus Property Commission on April 22, 1948, Fernando Villa-Abrille was the successful bidder for the purchase of all movable goods (except some items specified) found at CMD-3 Area, Samar Naval Base, Guiuan, Samar, priced at P94,500.00. The award of the bid was duly approved by the Government Enterprise Control Committee, and its terms and conditions were set forth in SPC-Invoice No. 7770, dated May 28, 1948 (Annex D). Villa-Abrille deposited the amount of P10,000.00 under Manager's Check No. 13040 (Philippine Bank of Commerce) to cover the required deposit of 5% of the purchase price, for which Official Receipt Np. 689017, dated April 22, 1948, (Annex A), was issued. Not having the necessary funds to cover the balance of the purchase price, the 5% compensating tax and the necessary expenses for labor and materials for the reconditioning of said goods for use or sale, he invited Cojuangco to provide said funds. The latter accepted the offer and on May 28, 1948, he and Villa-Abrille entered into an agreement (Annex B), which reads:

"AGREEMENT

"THIS AGREEMENT, made and entered into at the City of Manila, Philippines, this 28th day of May, 1948, by and between:

"FERNANDO F. VILLA-ABRILLE, Filipino of legal age, single, and a resident of and with postal address at Tarlac, Tarlac, Philippines, hereinafter to be known as the First Part,

—and—

"JOSE COJUANGCO, Filipino, of legal age, married to Demetria S. Cojuangco, and a resident of, and with postal address at 1959 Roberts, Rizal City, Philippines, hereinafter to be known as the Second Part.

WITNESSETH:

"WHEREAS, the First Part has been awarded the bid for the purchase of all the surplus properties situated at CMD-3 Area, Samar Naval Base, Guiuan, Samar, in the sum of Ninety Thousand Pesos (P90,000.00) plus (5%) compensating tax, or a total of Ninety Four Thousand Five Hundred Pesos (P94,500.00);

"WHEREAS, the First Part will also spend as a starting capital in repairing and putting to good condition all the surplus properties in the mentioned area, in the estimated sum of Fifteen Thousand Four Hundred and Fifty Pesos (P15,450.00) before sales could be made from the same;

"WHEREAS, the First Part is in need of capital as he can only furnish Thirty-Eight Thousand Four Hundred Eighty-two and Fifty Centavos (P38,482.50) or thirty-five (35%) percent of the purchase price plus the 5% compensating tax, and the further sum of Fifteen Thousand Four Hundred and Fifty (P15,460.00) as starting expenses of operations;

"WHEREAS, the First Part has invited the Second Part to furnish sixty-five percent (65%) of the total capital required or the sum of Seventy-One Thousand Four Hundred Sixty-Seven Pesos and Fifty Centavos (P71,467.50);

"WHEREAS, the Second Part has agreed to the offer of the First Part;

"NOW THEREFORE, for and in consideration of the premises, the parties hereto have agreed as follows:

"1. That the First Part acknowledges, by the signing of these presents, the receipt from the Second Part of the sum of SEVENTY ONE THOUSAND FOUR HUNDRED SIXTY-SEVEN PESOS AND FIFTY CENTAVOS (P71,467.50) as the Second Part's capital contribution to this particular business;

"2. That the First Part manifests by the signing of these presents the payment by him of his capital contribution which is in the sum of THIRTY-EIGHT THOUSAND FOUR HUNDRED EIGHTY-TWO PESOS AND FIFTY CENTAVOS (P38,482.50);

"3. That the First Part, after the signing of these presents, undertakes to pay to the Surplus Property Commission, Manila, the total sum of NINETY FOUR THOUSAND FIVE HUNDRED PESOS (P94,500.00) in full payment of the surplus properties situated in the base hereinbefore mentioned;

"4. The First Part undertakes to repair and recondition at the earliest possible date, all the surplus properties in the area and to sell them for profit at the best prevailing market price;

"5. That the First Part or any of his representatives or associates, if any, shall not be paid any salaries but will only be reimbursed the actual cost of transportation from Manila to Guiuan, Samar, and from Samar to Manila, as well as all expenses of board and lodging while in Samar, which expenses shall be paid from the sum of P15,450.00 herein-above set aside;

"6. That the First Part is authorized to engage employees and laborers necessary in prosecuting the business herein mentioned, the salaries and wages of whom shall also be taken from the mentioned sum of P15,450.00;

"7. The First Part is likewise authorized to buy spare parts necessary to replace worn out parts of any of the properties bought from the Surplus Property Commission;

"8. That the First Part promises and undertakes to use his best prudence in economizing expenses and in securing the best selling price possible with a view to realizing the greatest profit in the business;

"9. That in view of the confidence that the Second Part has with the First Part, the Second Part has agreed to give the First Part full authority to act on the premises, reserving, however, to himself the right to act on anything whenever necessary; and in case of conflict, the decision of the Second Part shall prevail;

"10. That the Second Part shall be furnished, as soon as practicable, by the First Part a complete and full inventory of the surplus properties found to be existing in the base at the time of the transfer of possession from the Surplus Property Commission to the First Part;

"11. That the First Part and the Second Part shall be in frequent consultation regarding the selling price to be set for any of the properties bought from the Surplus Property Commission;

"12. That the proceeds of the sale, as well as any funds that will not require immediate disbursements shall be deposited immediately thereafter with the Philippine Bank of Commerce in an account to be known as Fernando F. de Villa-Abrille and/or Jose Cojuangco and/or Demetria S. Cojuangco, and withdrawals from the said account can be made only under the signatures of Fernando F. de VillarAbrille, countersigned by Jose Cojuangco and/or Demetria S. Cojuangco;

"13. That out of the net profit that will be realized from the business herein mentioned, the First Part shall receive fifty percent (50%) and the Second Part the remaining fifty percent (50%).

"IN WITNESS WHEREOF, the parties hereto have signed these presents at the place and on the date first hereinabove written."

After the above agreement was signed by respondent and Villa-Abrille, the latter paid to the Surplus Property Commission the unpaid balance of the purchase price of the surplus goods in the amount of P84,400.00 which includes the compensating tax in the amount of P4,500.00, payment thereof being evidenced by Official Receipt No. A-690575 dated May 28, 1948 (Annex B), issued in the name of Villa-Abrille. Accordingly, SPC-Invoice No. 7770 (Annex C) was issued in the name of Villa-Abrille, to cover the sale in question.

Subsequently, Villa-Abrille sold a portion of the surplus goods to Hume Pipe & Asbestos Co. on August 11, 1949, and the rest to Ellin & Co. on February 2, 1951 and May 28, 1952. In accordance with the provision of Paragraph 12 of the aforequoted agreement, Villa-Abrille deposited with the Philippine Bank of Commerce the amount of P145,000.00 under Special Account and/or Trust Account, in the name of Fernando F. de Villa-Abrille and/or Jose Cojuangco, and/or Demetria S. Cojuangco. Due to the deficiency tax assessment (to be described later) made by petitioner on respondent, the amount of P37,531.38 was, on June 7, 1955, segregated from said account, and deposited in the name of petitioner, the disposition of which was made dependent on the final decision of the case.

The aforementioned purchase of the surplus goods from the Surplus Property Commission by Villa-Abrille was subsequently investigated by Provincial Revenue Agent H. I. Bernardo, who, on April 1, 1953, submitted his report (Annex E) to petitioner, on the basis of which report, petitioner made the following assessment against respondent on January 27, 1955:

Total sales subject to 5%

Sales from August, 1948 to Sept. 6, 1950 (with invoices).....

P133,653.42

Sales with deed of sales, 1949

27,000.00

Total

P160,655.42

5% on P160,655.42.....

P8,032.77

Total sales subject to 7%

Sales from Sept. 23, 1950 to March, 1952 (with invoices).....

P75,033.33

Sales with deed of sales, Feb., 1951 to June 1952.....

300,000.00

Total.....

P375,033.33

7% on P375.033.33

26,252.33

Total taxes due

P34,285.10

Less: Compensating Tax paid under O.R. No. A-690575, dated May 28, U948.....

P4,500.00

Tax still due.....

29,785.10

25%.....

7,446.23

Compromise penalty for violation of the Bookkeeping Regulations

300.00

Total tax liability still due

P37,531.33

As a consequence, Cojuangco filed with the Court of Tax Appeals a petition, which was later amended, praying that the Collector be ordered to cancel said assessment. To this petition, petitioner herein (respondent in the Tax Court) filed his answer on July 2, 1955. Based on the facts already stated, the lower court rendered judgment, dated October 30, 1957, reversing the Collector's stand, on the theory that only Villa-Abrille could be held liable for the deficiency percentage taxes.

Not agreeable with the decision, the Collector of Internal Revenue brought this petition for review.

The legal issues in the case may be boiled down to the following: (1) Whether or not liability for percentage (sales) taxes under Section 186 of the National Internal Revenue Code arose on account of the sale made to Villa-Abrille of the surplus goods in question by the Surplus Property Commission, and (2) whether or not respondent Jose Cojuangco could be held liable by the Collector for the payment of said taxes, should the same be held assessable.

Anent the first issue, we have already held in *Co Cheng Tee vs. Meer*, 87 Phil., 18; 47 Off. Gaz. (Supp. No. 12) 269[1], that a purchaser of certain commodities from the Surplus Property Commission and the Foreign Liquidation Office is an importer within the purview of the Tax Code. As such importer, the purchaser may be held liable either for compensating taxes or percentage (sales) taxes under Section 183 (B) of the Revised Internal Revenue Code in connection with Section 186 of the same code, depending on whether the things bought were acquired exclusively for personal use or for mercantile or commercial purposes. In the first case, the importer is liable for compensating taxes, and in the second, he is liable for percentage or sales taxes. In this instance, the tax liability is for percentage taxes, considering that the acquisition of the surplus goods in question was for commercial purposes or resale. This fact is not seriously disputed by the parties in this appeal.

The resolution of the second issue hinges principally on the question of who should be considered as the importer, and thus be held accountable for the percentage taxes. The Collector urges that the importation of the surplus goods was made for and in behalf of the association between Jose Cojuangco and Villa-Abrille, so that anyone of the members thereof may be held liable for the tax, while Cojuangco maintains that it was Villa-Abrille solely who caused the same. The respondent's position was sustained by the Court of Tax Appeals.

We find no reversible error in the decision appealed from. There is no provision in the agreement between Cojuangco and Villa-Abrille (which is the sole reliance of the collector) that indicates any joint interest in the acquisition of the goods from the Surplus Property Commission. It is not denied that the bid of Villa-Abrille was accepted (and the contract of sale in his favor thereby perfected) on April 22, 1948, more than one month before the contract with Cojuangco, and that in SPC Invoice No. 1770 wherein the conditions of the sale appear, only Villa-Abrille name is mentioned. Coincidentally, paragraphs 3 and 4 of the agreement with Cojuangco stipulate that "the First Part (Villa-Abrille) . . . undertakes to pay the Surplus Property Commission, Manila, the total sum of P94,500 in full payment of the surplus properties", and that the First Part undertakes to repair and recondition . . . all the surplus properties . . . and to sell them for profit at the best prevailing market price". Note that the express stipulation is that Villa-Abrille alone (and not the association) is to pay for the goods he bought; and only Villa-Abrille is to repair and sell the same, clearly implying that Cojuangco acquired no title to or direct interest in the goods themselves, and only Villa-Abrille was intended to deal with third persons in connection with the acquisition and disposition of said goods. The business was only Villa-Abrille's; and Cojuangco undertook no obligation in connection therewith.

These facts support the conclusion of the Tax Court that, at the most, Cojuangco was a mere contributor to a joint account enterprise with Villa-Abrille, and that the business remained exclusively the latter's, so that only Villa-Abrille became in law the buyer, importer, and seller of the goods, and the one liable for sales taxes thereon (*V. Aldecoa & Co. vs. Warner Barnes & Co.*, 30 Phil., 153).

The Collector calls attention to the agreement's provisions that "in case of conflict the decision of the Second Part (Cojuangco) shall prevail" (paragraph 9) ; that he was to be furnished an inventory of the goods acquired, and was to be consulted "regarding the sales price" (p. 11) ; that the proceeds of the sale were to be deposited in a joint "and/or" bank account, and to be withdrawn by checks under joint signature (p. 12). These conditions, when considered with paragraphs 3 and 4, heretofore quoted, appear to be mere measures designed to protect the investment of Cojuangco and secure proper payment of his fifty per cent of the net profit; but they do not establish that he had any joint interest in the surplus properties themselves, nor in the purchase, reconditioning[^] or sale thereof.

The Collector warns that agreements of this sort could be used to defraud the government of taxes due it. No such fraud is shown in this case, and the desire to forestall future deceit does not justify the imposition of a tax on the wrong person. There is no showing that the taxes sought to be recovered can not be collected from Villa-Abrille.

On the other hand, whether Cojuangco's right to half of the net profit involves prior deduction of all taxes as part of the costs of operation is, not in issue at present and need not be decided.

We agree with the Tax Court that respondent Jose Cojuangco is not personally liable for the sales taxes now sought to be recovered, and, therefore, affirm the decision under appeal. No costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

[1] See also *Saura vs. Meer*, 88 Phil., 199 and *A. Soriano y Cia, vs. The Collector of Internal Revenue*, 97 Phil., 505; 51 Off. Gaz. (9) 4548.

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