

PHILIPPINE ACETYLENE CO., PETITIONER, VS. SILVERIO BLAQUERA, AS COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. 13728. November 30, 1962

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from the decision of the Court of Tax Appeals in C.T.A. Case No. 324, dated January 10, 1958 upholding the legality of the assessment and demand issued by the respondent requiring the petitioner to pay the amount of P10,879.03 as deficiency sales tax and surcharge on the latter's sales of its manufactured oxygen and acetylene gases during the period from 1951 to the second quarter of 1955, and from its resolution dated March 24, 1958 denying petitioner's motion for reconsideration thereof.

Because of the importance of the question of law involved, Antonio T. Carrascoso, Jr. of the law firm of Ross, Selph & Carrascoso entered his appearance as attorney amicus curiae.

The facts of this case deemed pertinent to this appeal may be succinctly stated as follows:

Petitioner is a domestic corporation engaged in the manufacture and sale of oxygen and acetylene gases. In a letter dated June 8, 1956, and received by petitioner on July 5, 1956, respondent assessed the former a deficiency sales tax and surcharge amounting to P10,879.03 covering the period from 1951 to the second quarter of 1955. Petitioner was also asked to pay the sum of P500.00 in addition to the sum of P10,879.03 if it desired to settle extra judicially its violation of Sections 183 and 186 of the National Internal Revenue Code, penalized under section 209 of the same Code.

Petitioner sought a reconsideration of the assessment, and, upon denial thereof, he appealed to the Court of Tax Appeals and raised the following issues: (1) whether or not the appeal to the Tax Court was filed within the statutory period of 30 days prescribed in Section 11 of Republic Act No. 1125, and (2) whether or not the deficiency assessment is in accordance with law.

The Court of Tax Appeals found that the petition for review was filed within the statutory period.

As to the second issue, the Tax Court was of the opinion that the assessment made by respondent, except with respect to the sum of P500.00 was in order. Costs were correspondingly pronounced against the petitioner.

In its appeal before this Court, petitioner contends that respondent's procedure of computation in the questioned assessment is manifestly contrary to the provision of section 186 of the National Internal Revenue Code, as amended, as well as the procedure established by General Circular Nos. 431 and 440 of the Bureau of Internal Revenue. In effect, according to the petitioner, respondent's procedure amounts to double computation of the percentage tax; and that furthermore, the decision of the Court of Tax Appeals does not, in effect, give the petitioner the benefits of the provisions of General Circular No. 431 in that after the tax is billed as a separate item in the sales invoices, it is again added to the selling price from which total, the cost of raw materials is deducted.

The law, the application of which is involved, reads as follows:

"SECTION 186. Percentage Tax on Sales of Other Articles.—There shall be levied, assessed, and collected once only on every original sale, barter, exchange, and similar transaction either for nominal or valuable considerations, intended to transfer ownership of, or title to, the articles not enumerated in sections one hundred and eighty-four and one hundred and eighty-five a tax equivalent to seven per centum of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer, Provided, That where the articles subject to tax under this section are manufactured out of materials likewise subject to tax under this section and section one hundred and eighty-nine, the total cost of such materials as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles; * * *." (Sec. 186, National Internal Revenue Code)

The following B.I.R. Ruling and Illustration on how the seven (7) percentage tax provided in section 186 of the Revenue Code above quoted is assessed when the raw materials used in the manufacture of the product is deductible, is indeed enlightening:

"Cost of raw materials should first be deducted before computing sales tax.—Where the amount intended to cover the sales tax is billed to the customer as a separate item, or the invoice covering the sale bears the notation "tax included", in order to arrive at the correct amount subject to the tax, the cost of raw materials (in cases where the cost of raw materials is deductible for purposes of the sales tax) should first be deducted from the gross selling price of the article sold before the latter is divided by, assuming that the article is taxable at 7%, 107%, (Ruling, BIR 105.02, Oct. 30, 1956; Int. Rev. Bull., Vol I, No. 11).

Illustration of deductibility of materials used in the manufacture of article

Total landed cost of imported materials used

P1,000

Add: 25% mark-up (assuming that they are classified as ordinary articles under section 186 of the Tax Code)

P250

Total deductible cost of materials

P1,250

Gross selling price of the article manufactured out of above materials

P2,000

Less: Cost of materials are computed above assuming they were all used during the period

P1,250

Balance subject to the sales tax

P750

7% of P750 is P52.50 payable by the manufacturer. (ARAÑAS, Annotations and Jurisprudence on Business and Occupation Taxes, pp. 290-291.)

As correctly observed by the Tax Court, petitioner and respondent agree on the following figures, appearing on Exhibit "A" for petitioner, and Exhibit "1" for respondent:

Total selling price of oxygen and acetylene gases from 1951 to the second quarter of 1955, as indicated in the invoices, without the tax but including the value of tax-paid imported raw materials

P1,793,732.97

Tax billed to customers on the basis of the gross selling price of P1,793,732.97

P125,561.31

Gross amount billed to customers

P1,919,294.28

Cost of imported raw materials used

P334,465.74

7% tax actually paid by petitioner

P102,227.78

This is how the lower court reached the amount of P10,879.03:

Deficiency sales tax

P8,703.22

25% surcharge

P2,175.81

P10,879.03

It is not disputed that petitioner is subject to the percentage tax of 7% on its sale of oxygen and acetylene gases based on the "gross selling price or gross value in money of the articles so sold."

The only controversy hinges on the method of computation that should be adopted on the basis of the so-called "gross selling price." In fact, petitioner says in its memorandum in lieu of oral argument that "the only question here at issue is whether or not the petitioner's procedure is in accordance with the law and the provisions of General Circular No. 431 of the Collector of Internal Revenue."

It will be noted that the only difference between the two formulas or methods submitted by the parties is the

inclusion of the tax billed by the petitioner to its customers.

A perusal of the above figures reveals that petitioner received more by way of tax from its customers than what it has actually paid to the Government, because in the issuance of invoices to its customers, petitioner computed the 7% tax on the basis of the gross selling price of P1,793,732.97 without first deducting therefrom the cost of the raw materials used, while in its income tax returns, the 7% was computed on the amount of P1,793,732.97 minus the value of the raw materials. This method of computation employed by petitioner is certainly not fair, and not in accordance with law and General Circular Nos. 431 and 440 of the Bureau of Internal Revenue. Petitioner should not be allowed to enrich itself at the expenses of its customers who were misled as to the amount of tax that they had to pay. On this point, the Tax Court aptly said:

"It does not sit well on the lips of petitioner to contest the legality of the assessment which is actually less than what it had collected from its customers, by way of sales tax. Certainly, it has never been the intention of the law and General Circulars Nos. 431 and 440 to permit taxpayers to collect more from their customers by way of tax and at the same time to pay to the government an amount which is even less than what the law provides.

"It occurred to Us that petitioner might be justly required to pay not the sum of P10,879.03, as assessed by respondent, but the sum of P23,333.53, which is the difference between the amount petitioner collected from its customers as tax and the amount already paid to the Government, on the ground that petitioner should not be allowed to enrich itself at the expense of its customers who were misled as to the amount of the tax that they had to pay. Upon a careful consideration of the matter, we can not find any legal justification for requiring a taxpayer to pay more than what the law requires. * * *".

To ascertain the correct procedure, this Court looks into the provisions of General Circular No. 431 of the Bureau of Internal Revenue reading as follows:

" 'Gross selling price' or 'gross value in money' of the articles sold, bartered, exchanged, or transferred, as the term is used in the aforementioned sections of the National Internal Revenue Code, is the total amount of money or its equivalent which the purchaser pays to the vendor to receive or get the goods. However, if a manufacturer, producer, or importer, in fixing the gross selling price of an article sold by him, has included an amount intended to cover the sales tax in the gross selling price of articles, the sales tax shall be based on the gross selling price less the amount intended to cover the tax if the same is billed to the purchaser as a separate item. To illustrate: In case an automobile dealer fixes the price of an automobile at P2,400.00 and charges an additional of P120 to cover the sales tax which he bills as a separate item on the sales invoice, the tax of 5% prescribed in section 185 of the Code (the rate of tax then in force) shall be imposed on P2,400."

Pursuant to the above-quoted provisions of General Circular No. 431, to be excluded as part of the taxable gross selling price of the article, the sales tax should be billed as a separate item in the invoice issued to the customers. And of course, the "tax" mentioned in the General Circular No. 431 should be the correct amount of tax as rightly observed by the Tax Court. So, where the amount billed to the customers is not the correct amount of tax, the requirement of the circular is not fulfilled as in this case where the value of the raw materials used was not deducted from the total gross selling price of the oxygen and acetylene gases sold before billing the tax to the customers. In figures, the amount of P334,465.74 representing the cost of the raw materials should have, been subtracted first from P1,793,732.97 before the 7% tax was imposed and charged to the customers. (BIR Ruling 105.02, Oct. 30, 1956; Int. Rev. Bull., Vol. I, No. 11).

General Circular No. 440 of the Bureau of Internal Revenue provides that "unless billed to the purchaser as separate items in the invoice, the amount intended to cover the sale tax shall be considered as part of the gross selling price of the articles sold, and deduction thereof will not be allowed."

Conformably to the provisions of the Internal Revenue Code and General Circular Nos. 431 and 440 already

heretofore reproduced, the computation employed by respondent is the correct one.

The computation suggested by the amicus curiae, like the one used by petitioner, is not in accordance with law and General Circulars Nos. 431 and 440 for the simple reason that it treated the tax charged to the customers as having been validly billed separately and hence, he did not consider it for purposes of deducting the cost of the raw materials.

In view of all the foregoing, the decision appealed from is hereby affirmed, with costs against petitioner.

Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

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