

**CONNELL BROS. CO., (PHIL.), PETITIONER AND APPELLANT, VS.
COLLECTOR OF INTERNAL REVENUE, RESPONDENT AND APPELLEE.***G.R. No. 15470. December 26, 1963*

Ponente: MAKALINTAL, J.

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This is an appeal from the decision of the Court of Tax Appeals in CTA case No. 357 denying petitioner-appellant's claim for refund of the sum of P21,093.36 representing alleged deficiency (plus 25% surcharge thereon) in the sales tax paid by it for the period beginning January 18, 1948 thru January 31, 1949.

Appellant, a domestic corporation, is engaged in the importation of general merchandise. The original assessment for such tax was made on September 3, 1949, in the amount of P29,365.50, corresponding to the third quarter of 1946 and the period from the first quarter of, 1948 to the first quarter of 1949. It was later reduced to P21,716.54. Appellant contested the validity of the assessment, but deposited with appellee a check for the amount on September 8, 1950. On August 30, 1956 the deposit was converted into payment, which was followed by a formal request for refund on September 8, 1956. The request was denied on January 20, 1957 and so appellant filed a petition for review in the Court of Tax Appeals. On March 6, 1957, after some adjustment whereby appellee recognized appellant's right to a refund of P623.18, the amount involved in the petition was finally reduced to P21,093.36.

The controversy involves the application of Section 186 of the National Internal Revenue Code and of General Circulars No. 431 and 440 promulgated by the Bureau of Internal Revenue to implement the said provision of the tax statute.

The pertinent portion of section 186 is as follows:

"There is levied, assessed, and collected once only on every original sale, barter, exchange and similar transaction intended to transfer ownership of, or title to, the articles not enumerated in sections one hundred eighty four and one hundred eighty-five a tax equivalent to five per centum, of the gross selling price or gross value in money of the articles so sold, bartered, exchanged or transferred. * * *."

General Circular No. 431 states:

**** 'Gross selling price' or 'gross value in money' of the articles sold, bartered, exchanged, or transferred as the term is used in the aforecited 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 of money intended to cover the sales tax in the gross selling price of the articles, the sales tax shall be based on the gross selling price less the amount intended to cover the tax, if the same be billed to the purchaser as separate item. * * *."

General Circular No. 440, supplementing General Circular No. 431, provides:

“*** Unless billed to the purchaser as separate items in the invoice, the amounts intended to cover the sales tax shall be considered as part of the gross selling price of the articles sold, and deductions thereof will not be allowed.”

Up to January 17, 1948, every sales invoice issued by appellant, among those originally questioned by appellee, contained an itemization of the actual selling price and of the 5% sales tax thereon, which was then added to the selling price and shifted to the customer, who paid the total amount. This procedure, by stipulation of the parties in the court below, constituted full compliance with General Circulars 431 and 440. From January 18, 1948 to January 31, 1949, however, the sales invoices merely showed one single amount in each instance, namely, the total of the actual selling price and of the corresponding sales tax, with the notation of the phrase "5% sales tax included." The customer paid appellant for the goods purchased the amount thus indicated, and appellant in turn paid the sales tax to appellee as computed on the basis of the actual selling price alone, that is, without including the tax which had been shifted to the customer.

The alleged deficiency assessed against appellant and now subject of the instant case for refund is the difference between the amount resulting from the two methods of computation. Thus, for instance in a sale of goods priced at P100 without the tax, appellant computed the 5% tax to be P5.00, billing the customer for the amount of P105.00; while appellee's computation was P5.25, based on the sum actually paid by the customer, resulting in a difference of P0.25 for every such sale.

The sole issue in this case is whether or not the mere notation of the words "5% sales tax included" on the questioned invoices of appellant complies with the circulars aforequoted, which expressly require a separate billing to the customer of the amount intended to cover the tax in order that it may be deducted from the gross selling price for purposes of tax computation. What is gross selling price is defined in General Circular No. 431 as "the total amount of money or its equivalent which the purchaser pays to the vendor to receive or get the goods." The correctness of this definition is not disputed. The 5% sales tax under Section 186 of the Revenue Code is imposed on such gross selling price, including the tax itself when it is shifted to the customer, for that is the total amount that he pays to receive the goods purchased by him. The deduction that is allowed by the two circulars constitutes in effect an exception to the rule established by the statute, and may be availed of only if the amount intended to cover the tax is billed to the purchaser as a separate item. As correctly stated by the Court of Tax Appeals, the exception is merely a privilege granted to the taxpayer which, if he is to claim its benefits, must be complied with by him.

The idea of separate billing is too clear and specific to admit of different interpretations. It means that the amount of the tax must be stated as an item apart. The requirement is emphasized in General Circular No. 440, which states that "unless billed to the purchaser as separate items in the invoices, the amounts intended to cover the sales tax shall be considered as part of the gross selling price of the articles sold and deductions thereof will not be allowed." (*Italic supplied.*) Certainly a simple indication on the invoice that the 5% tax is already included in the aggregate sum charged to the customer cannot be a separate billing of the amount of such tax. It is purposeless to distinguish between substantial or strict compliance with the requirement, as the parties have essayed to do: the amount of the tax must appear as a separate item, and this is the only manner of complying that is possible. The intention, evidently, is to apprise the customer of the exact amount of the tax that is passed on to him for payment. It is suggested that he can determine the amount by simple mathematical computation. How many customers would have the ability or the patience to go through the process? And since after all the benefits of separately billing the amount of the tax accrue to the taxpayer, it is fair and logical that the task of computing and indicating it on the invoice should devolve upon him.

The resolution of the defunct Board of Tax Appeals in the case of Fred Wilson & Company, Inc. (T.A. No. 63),

dated December 11, 1952, is relied upon by appellant here. In that case, to be sure, the Board ruled that the notation of the words "tax included" on the sales invoices issued by a taxpayer constituted substantial compliance with General Circular No. 431, as amended. The ruling, however, binds neither the Court of Tax Appeals nor this Court. Nor could it have been a guide for appellant in connection with the sales covered by the instant case, for those sales took place in 1948 and 1949, before the Wilson case was decided. Appellant, therefore, is in no position to invoke said ruling as a contemporary administrative interpretation of the circulars in question. If appellee here, as the administrative authority concerned, subsequently adopted a different, and as we see it, correct, interpretation, appellant can claim no vested right in the error, not having been led to act on strength thereof.

The last question refers to the 25% surcharge imposed upon appellant, amounting to P4,343.31. Appellant seeks relief therefrom and cites the following applicable principles, from which the Solicitor General expresses no dissent:

"The question of whether the specific penalty in addition to the 25% surcharge will be enforced, in cases of delinquency in paying the percentage taxes is one of discretion with the Collector of Internal Revenue. In all cases where the delinquent has delayed the administration of the law or has intentionally violated the provisions of the law,, or has purposely delayed filing the return, the Collector of Internal Revenue will insist on enforcing the specific penalty for failure to make return within the time prescribed by law. Failure to make this return and pay the tax during the months in which the said taxes are payable will be considered as purposely delaying filing the return. The necessity of notifying the taxpayer of his delinquency or the discovery of such a delinquency by a revenue officer will be treated as delaying; the administration of the law." (Sec. 15 (c), Reg. No. 11, Formilleza, Commentaries on the National Internal Revenue Code, Vol. II, pp. 712-713, 1950 ed.)

We are convinced that appellant, in preparing its sales invoices as it did, was not guilty of an intentional violation of the law. It did not delay filing- the returns for the sales taxes corresponding to the period in question, let alone did so purposely. The delay was in the payment of the deficiency, which arose from a mistaken understanding of the regulations laid down by appellee. The ensuing controversy was, in our opinion, generated in good faith and should furnish no justification for the imposition of a penalty.

Wherefore, modified by eliminating the surcharge of 25% imposed upon appellant, the judgment appealed from is affirmed, without costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Paredes, Dizon and Regala, JJ., concur.

[G.R. No. L-15470, March 31, 1964]

RESOLUTION

MAKALINTAL, J.:

Respondent-appellee moves for reconsideration of our decision of December 28, 1963, and prays that the same be modified by declaring that petitioner-appellant is liable for the 25% surcharge for late payment of its deficiency sales tax for the period from January 18, 1948 to January 31, 1949.

In support of his stand, respondent-appellee cites Section 183 (a) of the Tax Code and the cases of *Lim Co Chui vs. Posadas*, 47 Phil. 460; *Jamora vs. Meer*, 74 Phil. 22; *Koppel (Philippines) Inc. vs. Collector of Internal Revenue*, 87 Phil. 348; *Republic of the Philippines vs. Luzon Industrial Corporation* 102 Phil., 189, *Lim Chai Seng vs. Trinidad* 41 Phil. 544; *Insular Lumber Co. vs. Collector of Internal Revenue*, L-7190, April 28, 1958;

Yutivo Sons Hardware Co. vs. Court of Tax Appeals and Collector of Internal Revenue, L-13203, January 28, 1961; Liddell and Co., Inc. vs. Collector of Internal Revenue, L-9687, June 30, 1961.

We do not think Section 183 (a) of the National Internal Revenue Code is applicable. The same imposes the penalty of 25% when the percentage tax is not paid on time, and contemplates a case where the liability for the tax is undisputed or indisputable. In the present case the taxes were paid, the delay being with reference to the deficiency, owing to a controversy as to the proper interpretation of Circulars Nos. 431 and 440 of the office of respondent-appellee. The controversy was generated in good faith, since that office itself appears to have formerly taken the view that the inclusion of the words "tax included" on invoices issued by the taxpayer was sufficient compliance with the requirements of said circulars. (See BIR Ruling 105.2, Aug. 3, 1953; BIR Quarterly Bulletin Vol. 7, Sept. 30 and Dec. 31, 1953; In re Fred Wilson Tax Appeal No. 63.)

The cases cited in the motion for reconsideration are likewise inapplicable. In every one of those cases the liability for the tax was not disputed, the only question being whether or not the delay in the payment thereof was justified under the particular circumstances relied upon by the taxpayer. Here the question is whether or not the deficiency sales tax in question was due at all. This question does not involve the power of respondent-appellee to condone the penalty, but rather the justifiability of its imposition in the first place. And where respondent appellee apparently had himself originally adopted an incorrect interpretation of its own circulars, it would not be just to penalize appellant for falling into the same error.

Wherefore, the motion for reconsideration is denied.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes J.B.L., Barrera, Paredes, Dizon and Regala, JJ., concur.

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