

**P. J. KIENER CO. LTD., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.***G. R. No. 16417. January 31, 1963*

Ponente: DIZON, J.

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Petition filed by P. J. Kiener Co., Ltd., for the review of that portion of the decision of the Court of Tax Appeals in C.T.A. No. 102 holding it liable for the payment of the sum of P32,200.22 assessed against it by the Collector of Internal Revenue as contractor's tax and surcharge on the sum of P1,288,009.06 which, as subcontractor, it received from Fortunate Concepcion, Inc. for the construction of the Gapan-Sta. Rosa Road project, plus the sum of P200 as compromise penalty.

Petitioner, a duly registered limited co-partnership, was engaged in business as general contractor. In 1948 Fortunato Concepcion, Inc., a contracting firm, was awarded the contract for the construction of the Gapan-Sta. Rosa Road (Philippine Rehabilitation Project PR-B 87) for the price of P1,691,969.93. Pursuant to a subcontract with said awardee, petitioner constructed the road aforesaid, for which it was paid the sum of P1,288,009.06 upon which the Collector of Internal Revenue made the questioned assessment.

After a reinvestigation made upon petitioner's request, the Collector assessed against and demanded from it the total amount of P37,082.02 representing deficiency contractor's tax, surcharge and penalty allegedly due on gross receipts derived by it from various projects during the period from the first quarter of. 1949 to the second quarter of 1950, of which P32,200.22 represented the questioned assessment.

Petitioner appealed to the Court of Tax Appeals contesting the validity of the assessment of P32,200.22, alleging that, as sub-contractor, it was not subject to the percentage tax imposed under Section 191 of the National Internal Revenue Code, and that, furthermore, Fortunato Concepcion, Inc. had already paid in full the 2% contractor's tax amounting to P33,839.40 on the full contract price of P1,691,969.93.

After proper proceedings, the Court rendered the appealed decision upholding the assessment and requiring petitioner to pay the total sum of P37,032.02 as deficiency contractor's percentage tax, surcharge and penalty.

Section 191 of the Internal Revenue Code provides:

"Percentage tax on road, building irrigation, artesian well, water works, and other construction work contractors, proprietors or operators of dockyards, and others—Road, building, irrigation, artesian well, waterworks, and other construction work contractors; filling contractors; \* \* \* shall pay a tax equivalent to two (now three, as amended by Rep. Act No. 588) per centum of their gross receipts."

In the light of the above provision and the undisputed facts of this case, we find petitioner's appeal to be without merit.

It is true that Fortunate Concepcion, Inc. was the principal contractor in connection with the construction of the Gapan-Sta. Rosa road project, but it is equally undeniable that the construction job was actually done by petitioner

as sub-contractor for which the principal contractor paid it the total sum of P1,288,009.06. Petitioner, therefore, received this amount as gross receipts from the construction of the road aforesaid.

That Fortunato Concepcion Inc. paid in full the 2% contractor's percentage tax amounting to P33,889.40 can not in any way exempt petitioner from its own liability under the legal provision above quoted. Whether or not said company was liable for the payment of the tax on the gross price of the project is an entirely different matter which, in fact, is now the subject of a claim for refund filed by it with the Bureau of Internal Revenue.

The argument that it has always been the interpretation given to Section 191 of the National Internal Revenue Code by the Commissioner of Internal Revenue that the percentage tax therein, provided operates only once upon the same transaction or undertaking is of no avail to save petitioner from its own individual liability for the tax. If said construction or interpretation is correct and has been consistently and continuously adhered to by the Bureau of Internal Revenue, it could only work in the sense of exempting Fortunate Concepcion, Inc. from paying the percentage tax provided for in Section 191 aforesaid upon the amount it has paid to petitioner as its sub-contractor a matter which we do not decide for obvious reasons.

Wherefore, the decision subject of review is hereby affirmed, with costs.

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

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