

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. RAMCAR, INC., RESPONDENT.*G.R. No. 16691. July 31, 1963*

Ponente: BARRERA, J.

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This is an appeal by the Commissioner of Internal Revenue from the decision of the Court of Tax Appeals (in CTA Case No. 175), ordering the withdrawal and cancellation of the deficiency percentage sales tax assessment against RAMCAR, INC., during the period of from 1953 to the first quarter of 1954, in the total sum of P19,592.93. The facts of the case may be briefly stated, thus.

Ramcar, Inc., a domestic corporation organized for and engaged in the importation, manufacturing, selling and dealing of automobiles, trucks and spare parts, had a contract with Rootes Limited of London, wherein the former agreed to assemble and sell locally for the latter "Hillman Minx" automobiles. On February 1, 1953, RAMCAR, Inc., in turn entered into a contract with Henderson Trippe (Phil.) Inc., another domestic corporation, whereby the latter was designated the exclusive distributor of Hillman Minx automobiles in the Philippines. Pertinent provisions of said agreement are reproduced hereunder, to wit:

"AGREEMENT

"* * * WHEREAS, the Company (RAMCAR INC.) has granted to the DISTRIBUTOR (Henderson Trippe, Inc.) the exclusive distribution in Philippines of the Hillman Minx Cars, assembled by the company in the Philippines, and whereas the Distributor will take delivery of all Hillman Minx assembled here, and has accepted and agreed to establish and properly maintain Show Room, Sales Force, Agencies, or branches for the adequate distribution of the said Hillman Minx cars in the Philippines, NOW IT IS HEREBY AGREED between the parties hereto as follows:

* * * * *

"CLAUSE 2. TERRITORY.

"The COMPANY reserves the right to withdraw, by giving two months' notice any part of the Distributor's territory, if in their judgment the Distributor fails to maintain satisfactory representation therein, and on expiration of such notice and rights of the DISTRIBUTOR hereunder shall cease as regards the territory or the part thereof to which the notice relates.

* * * * *

"CLAUSE 4. PRICES AND DISCOUNTS.

"The company shall invoice the vehicles to the distributor at a list wholesale price established from time to time and prevailing at the time of delivery, and nothing in this agreement shall entitle the distributor to any discount, rebate or other deduction from such price.

* * * * *

"CLAUSE 5. TERMS OF PAYMENT.

"The Company agrees to deliver to the Distributor twelve (12) fully assembled vehicles per month, and the Distributor shall pay the Company for twelve (12) vehicles per month Cash on Delivery, and shall take delivery as said vehicles are assembled by the company, should it be mutually agreed by both the distributor and the company that the distributor shall take delivery of more than twelve (12) vehicles per month, such agreement in letter form shall be sufficient.

* * * * *

"CLAUSE 7. REPAIR AND MAINTENANCE SERVICE.

"It is also agreed that the Company will perform any repair or maintenance service which may be required on the Hillman Minx cars and on the products of ROOTES GROUP OF COMPANIES, at charges which are fair and reasonable.

* * * * *

"COMPANY 8. POLICY.

"(a) The company reserves the option and the right to keep and dispose at his convenience one (1) Hillman Minx car for every twelve (12) assembled.

* * * * *

Pursuant to the above agreement, for the period of from the first quarter of 1953 to the first quarter of 1958, RAMCAR sold to Henderson Trippe twenty locally assembled Hillman Minx automobiles at the wholesale price of P4,950.00 per unit. The latter, in turn, sold the said cars to third parties at prices ranging from P5,670.00 to P6,300.00 per unit.

For these transactions with Henderson Trippe, RAMCAR paid tax at the rate of thirty per centum (30%) of the wholesale price of P4,950.00 per unit, in accordance with Section 184 (a) of the National Internal Revenue Code. The Collector of Internal Revenue, however, ruling, after investigation, that Henderson Trippe acted merely as agent of RAMCAR, assessed and demanded of the latter a deficiency sales tax, based on 50% of the gross sales at from P5,670 to P6,300.00 per unit, the selling price paid by the ultimate buyers in the total sum of P18,592.83 exclusive of the compromise penalty of P1,000.00. RAMCAR'S petition for reconsideration of said assessment having been denied, the matter was appealed to the Court of Tax Appeals.

After due hearing, the Tax Court rendered a decision, as already stated, ordering the cancellation and withdrawal of the disputed assessment, for the reason that the contract between RAMCAR and Henderson Trippe being one of sale, and not of agency as claimed by the Commissioner of Internal Revenue, the percentage sales tax due from said taxpayer should be based on the wholesale price given to Henderson Trippe and not on the buying price paid by the ultimate purchasers. It is from this decision that the Commissioner of Internal Revenue interposed this appeal by way of a petition for certiorari. Petitioner claims in this instance that the agreement between RAMCAR and Henderson Trippe, Inc., is actually one of agency and not of purchase and sale. To this end, he points to RAMCAR'S failure to deliver a certain number of cars a month; the appointment of other distributors in Iloilo and Baguio City; the failure of Henderson-Trippe, to maintain a show room; the fact that although in the receipts and sales invoices the cars appeared to have been sold by Henderson-Trippe, the same were actually delivered by respondent RAMCAR direct to the ultimate buyers; that payments or deposits on account of the cars were made by the ultimate buyers direct to respondent RAMCAR; that the dates of the alleged sales by respondent to Henderson-Trippe of the cars in question are the same as the 1 dates of the alleged sales of the same cars by Henderson-Trippe to the ultimate buyers. It is thus contended, that the percentage tax should have been

impossible on the buying price of the third parties (which would be 50% thereof, said buying price being in excess of P5,000.00).

Even considering the foregoing contentions of petitioner, it is clear that the issue in this case hinges on the determination of the nature of the contract or agreement between RAMCAR and Henderson-Trippe. Taking into account the terms and conditions of the aforesaid contract, reproduced at the start of this opinion and the explanation given by respondent which was satisfactory to the Tax Court, we also find no reason to disturb the ruling made therein; For instance, with respect to respondent's failure to deliver 12 cars a month, this was explained to have been caused by the imposition of controls by the Central Bank on certain importations. Non-compliance of this term of the agreement on this point was therefore due to reasons beyond the control of the parties. As to the alleged direct deliveries of the cars made by RAMCAR to the ultimate buyers, what actually occurred was that because of the inability of Henderson-Trippe to put up its own showroom after the execution of the distribution contract, the parties had a temporary arrangement by which the cars purchased by Henderson-Trippe were displayed in the showroom of respondent. Consequently, the direct buyers of Henderson-Trippe had to take the cars from the compound of RAMCAR, and this took place for only six months. Mention was made, too, of the receipt by RAMCAR of some deposits made by the ultimate buyers, this, again, was satisfactorily explained by respondent by showing that the said deposits were made in 4 of the 20 transactions involved herein, and effected under special circumstances, because the buyers happened to be friends of Mr. Ramon Caro. The fact that 2 other distributors were appointed in Iloilo and Baguio City is not a violation of the contract, because it was made in the exercise of respondent's right to withdraw from the distributor's territory any part thereof under conditions authorized by Clause 2 of the same contract hereinabove quoted. As heretofore stated, these explanations were found satisfactory by the Tax Court and insufficient to justify the conclusion that the agreement in question which is one of purchase and sale was a mere subterfuge to avoid payment of higher taxes. And, we find no valid reason to disturb such ruling.

Wherefore, the decision appealed from is hereby, affirmed, without costs. So ordered.

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

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