

KUENZLE & STREIFF, INC., PETITIONER, VS. THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

G.R. No. 17648. October 31, 1964

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from a decision of the Court of Tax Appeals, rendered in C.T.A. Case No. 522, declaring the "agency fees" and "husbanding fees" received by the petitioner's branch office in Zamboanga, during the period and for the amount in question, subject to the 6% commercial broker's tax under Section 195 of the National Internal Revenue Code.

As this case was submitted upon a stipulation of facts, we shall render judgment herein on the basis of that agreement, the pertinent portions of which are as follows:

"1. That the correct amount of gross compensation received by the petitioner's branch office, in Zamboanga for the period from January, 1951 to September, 1956, on which the respondent seeks to collect the 6% 'commercial broker' percentage tax is P110,452.05 and not P110,352.05 as alleged in paragraph 1 of respondent's answer.

"2. That the said sum of P110,452.05 consists of the following:

1951	P10,950.00	P4,549.99	P15, 499.99
1952	11,050.00	51,49.00	16,192.00
1953	11,130.00	9,675.00	20,805.00
1954	9,600.00	8,132.00	17,732.00
1955	12,000.00	11,764.00	24,364.00
Jan. to Sept.	9,450.00	6,409.00	15,859.06

P110,452.05

"3. That the amounts shown under the heading "Agency Fees" consist of fixed regular monthly fees received by petitioner's branch office in Zamboanga from the following firms:

- a. Philippine Rubber Project Co., Inc.
- b. Basilan Plantation Co., Inc.
- c. Basllan Lumber Company
- d. Manual Development Co., Inc.
- e. Yakan Plantation Company
- f. Pataion Coconut Estate

"4. That the amounts shown under the heading "Husbanding Fee's" consist of amounts received from time to time by the petitioner's branch office in Zamboanga, as compensation for services rendered to various vessels and/or shipping companies.

"5. That the services rendered by petitioner's branch office in Zamboanga, which is hereunder simply referred to as the petitioner, for which the 'Husbanding Fees' are paid to it are described as follows:

The Manila agents of the various shipping lines, which are represented by the petitioner in the port of Zamboanga, notify the petitioner of the arrival of their vessel at said port. On receipt of this advice, the petitioner gives a written notice to the Collector of Customs of the time of arrival of subject vessel. If the vessel comes from a foreign port, the petitioner notifies the Quarantine Officer, the Immigration Officer, Plant Quarantine Office and the Pilot station of the expected time of arrival. It sometimes happens that the petitioner receives notice of change of arrival hours; this is relayed to the abovementioned government officers and if the advice is received after office hours same is relayed to the government officers concerned at their respective residences. The petitioner also notifies the Port Pilot the arrival hour of the vessel. The petitioner contacts the shippers and inquires from them as to readiness of cargo, and such information is cabled by the petitioner to the Manila agents. If the shippers' cargo is not ready, the petitioner requests the Manila agents of the vessel to divert the vessel to other parts first in order to gain time to have the cargoes ready, and the petitioner urges shippers to rush preparation of their cargoes. The petitioner then notifies the stevedores of the expected arrival hour of the vessel and of cargoes to be loaded. In the expected hour of arrival, a representative of the petitioner is sent down to the pier to meet the vessel and check whether respective government officers are standing by. In the negative case, the petitioner calls for them. After Quarantine clearances have been accomplished, Customs and Immigration officers as well as petitioner's representative board the vessel.

The petitioner obtains data from the Master of the vessel regarding cargo for discharge if any, and inform him of cargoes to be loaded. The petitioner prepares the inward and outward foreign manifests for cargoes discharged and loaded, for the signature of the Master. The Petitioner also requires from the Master whether he requires any ship's provisions or cash and inquires from the Purser as to medical requirements of crew members. The petitioner's representative remains on board the vessel in order to attend to further requirements while vessel is in port and to supervise the loading with the purpose of giving the vessel prompt possible dispatch. If the vessel requires fresh water, the petitioner notifies the NAWASA and arranges for loading of same. If minor defects and breakdowns have been found, the petitioner arranges for the necessary repairs to be done. On request of the Master, the petitioner also assists passengers on a sight-seeing tour of the city.

Upon completion of loading, the petitioner presents to the Master, for approval of payment, the bills which are for account of vessel. The petitioner then notifies the Pilot of the sailing hour and arranges for stevedores to release mooring lines.

After the ship sails, the petitioner notifies the Manila Agents the time of departure and estimated time arrival at the next port. The petitioner also furnishes the Manila agent with data on cargo loaded, bunkers, fresh water aboard and drafts of the vessel. If crew members remain behind, the petitioner traces them with the assistance of Police and Immigration officers, and makes arrangements for such members to rejoin the vessel at the next port of call. Thereafter, for some of the shipping lines, the petitioner prepares a stowage plan of cargo loaded, schedule of daily movement of cargo loading and vessel's port performance report. Then all accounts in behalf of the vessel for the particular voyage which are paid by the petitioner in behalf of the Manila agents and on accumulative statement of all disbursements made is forwarded to the Manila agents together with the petitioner's comments of the loading. The petitioner prepares Bills of Lading covering cargoes shipped and turns them over to shippers against Mate's receipts.

"6. That the services rendered by petitioner's branch office in Zamboanga, which is hereunder simply referred to as the petitioner, for which the 'Agency Fees' are paid to it by the firms mentioned in paragraph 3 hereof are described as follows:

a. PHILIPPINE RUBBER PROJECT CO., INC. Kabasalan, Zamboanga del Sur:

"The Philippine Rubber Project Co., Inc. (PRPC) operates a motor launch which makes weekly trips from their rubber plantation, at Kabasalan, to Zamboanga. When the launch arrives, the petitioner requests the hauling contractors to discharge the rubber stocks, empty gasoline and diesel drums and other items which are forwarded to the petitioner. The petitioner receives various mails which are dropped at the Post Office. Requisitions received from the PRPC are being filled and supplies demanded by PRPC are ordered from various supplies in behalf of PRPC. These supplies are delivered directly to the launch by the suppliers. Such supplies are invoiced by the suppliers directly to the PRPC and copies thereof are forwarded by suppliers to the PRPC at Kabasalan which issues the corresponding checks in payment. These checks are forwarded to the petitioner for delivery to respective suppliers.

"Petty expenses such as clearance of launch thru Customs, stationeries, personal accounts of staff members, postage stamps, incidental expenses of employees and other small items are paid by the petitioner for the account of the PRPC; and at the end of each month, an accumulative statement of disbursement is made and corresponding expenses are reimbursed to the petitioner by the PRPC office. Incoming rubber stocks for the PRPC are checked with the delivery slips, received, and those are shipped to Manila. Transfer invoices are issued by and forwarded together with the bill of lading and accompanying letter to TRPC, Manila Payroll checks are received from the PRPC and funds are withdrawn from the bank and forwarded to the PRPC by the petitioner. The petitioner attends to any and all matters in the port of Zamboanga in behalf of the PRPC. The petitioner answers and responds to the PRPC and corresponds in their behalf with suppliers. The petitioner contacts government offices for licenses for PRPC and obtains permits required."

There is no appreciable substantial dissimilarity in the nature of the services rendered to the PRPC as above detailed and the services to the other firms mentioned in paragraph 3 of the "stipulation of facts."

As seen in the agreement with the PRPC, the petitioner cashed checks and made payments for the said firms; advanced petty or incidental expenses in their behalf thereafter claimer refund on them; received and attended to the procurement of spare parts and other needed supplies; prepared and answered correspondences, recorded invoices, statements of sales tax and other papers; represented the said firms in the various agencies of the government to which they were needed and called; etc.

On the basis of all the foregoing, the Court of Tax Appeals ruled. that the herein petitioner was "a commercial broker as defined in Section 191 (t) of the National Internal Revenue Code with regard to the 'agency fees' and 'husbanding fees' it received from certain companies." The sole issue before, this Court now is, therefore, the correctness of that conclusion.

We find for the respondent Collector of Internal Revenue. Section 194 (t) of the Revenue Code defines a commercial broker in the following manner:

"(t) 'Commercial broker' includes all persons, other than importers, manufacturers, producers, or bona fide employee, who, for compensation or profit sell or bring about sales or purchases of merchandise for other persons, or bring proposed buyers and sellers together, or negotiate freights or other business for owners of vessels, or other means of transportation, or for the shippers, or consigners or consignees of freight carried by vessels or other means of transportation. The term includes commission merchants."

There does not seem to be any room for doubt that the petitioner falls within the above definition. Under the said section, as well as by the rulings handed down in at least two cases by this Court, the essential feature of a broker is the fact that he acts not for himself, but, for a third person. (*Kerr and Co., Ltd., vs. Collector of Internal Revenue*, 70 Phil. 36; *Behn, Meyer and Co., Ltd. vs. Nolting and Garcia*, 35 Phil. 274) In the Behn Meyer case, We said:

* * * A broker is generally defined as one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name, but in the name of those who employed him; he is strictly a middleman and for some purposes the agent of both parties. (Italics ours)

This is exactly the situation that obtains in this suit. There is no instance in the various services extended by the petitioner to its clients that it acts for itself. With respect to the "Husbanding Fees," the petitioner performs the duty of notifying port and customs authorities regarding the arrival and departure of various ships for and in behalf of the Manila agents of the shipping lines. Similarly, the petitioner services ships on docks and provisions them for departure not for itself, but for the shipping agents. Insofar as the services rendered by the petitioner for which it is paid "Agency Fees" are concerned, it is likewise our finding that in all of them, the petitioner renders the services not in its name, but in the PRPC's and the other clients'.

It is urged, however, that the petitioner cannot be considered a "commercial broker" because all the services for which it was paid the agency fees in question were "merely those which the firms represented would ordinarily perform for themselves if each of them had its own branch office in Zamboanga" and that all its clients "simply paid a fixed, regular 'agency fees' to the petitioner, the amount of which remained the same per month, regardless of the volume of work performed during any particular month." In effect, the argument is that the petitioner is but an employee of its client-firms since it receives from them "fixed, regular" fees which are "in the nature of retainer fees or salaries." Additionally, it is contended that neither may the petitioner be so considered with respect to the "husbanding fees" because "the services performed by the petitioner's branch office in Zamboanga, as detailed hereinabove, for which it is paid such 'husbanding fees' are not connected in any way with negotiating 'freight or other business for owners of vessels'."

The foregoing arguments impress Us none at all. Indeed, the fact that the services rendered by one could have been performed by the principal thru its branches does not, by any logical inference, remove the nature of such services from those rendered by a broker. As correctly pointed out by the Solicitor General, if that were to be the basis or criterion, then brokerage will never arise since every act of a broker can be performed by the principal.

Neither do we find merit in the claim that petitioner is a mere employee or agent of its client-firms. An employee is "one who works exclusively for one person or firm and who has no office or place of business of his own and whose activities are under the exclusive direction and control of the person or firm employing him. (Ruling, BIR 110, September 12, 1939, Bull. 4th Atr. 1940; See. Formilleza, Commentaries on the NIRC, Vol. I, p. 764) Clearly, the petitioner does not satisfy the elements of this definition. On the other hand, the petitioner may not be considered merely as an agent either since agency presumes exclusiveness which does not obtain in the relationship between the petitioner and all its clients.

"The chief feature which distinguishes broker from other classes of agents is that he is the intermediary or middleman, and, in effecting a sale or exchange of property, acts in a certain sense as the agent of both parties to the transaction. Another distinction is that the idea of exclusiveness enters into an employment of agency, while in respect of a broker there is holding out of one's self generally for employment in matters of trade, commerce and navigation and on this principle, 'broker' is distinguished from a clerk. (12 C. J. S. pp. 8-9, citing cases. (Italics ours)

It is also suggested that the "agency fees" in question should not be considered as broker's compensation because it is fixed and regular. The suggestion, however, contradicts settled jurisprudence on the matter. Compensation in return which is given for something else; in other words a consideration. In its ordinary acceptation, the term applies not only to salaries, but to compensation by fees for specific services. (See Vol. 8, Words and Phrases, pp. 300-302.)

Lastly, it is patently self-serving to deny that the services for which petitioner receives the "husbanding fees" do not come within the scope of Section 194 (t) of the Tax Code. Petitioner's own brief recites that its husbanding services "consist, in general, of provisioning and servicing of vessels, securing docking space in the wharf, alerting stevedoring companies of ship arrivals, providing medical services to crew members, advancing funds for the payment of all expenses incurred by the vessel while in port, and securing port clearances and other documents." We do not see how the said services can be removed from the purview of Section 194 (t) which classifies as broker those "who, for compensation or profit * * * negotiates freights or other business for owners of vessels." Surely, the phrase "or other business for owners of vessels" is broad enough to comprehend the above transactions.

Wherefore, finding no error in the decision appealed from the same is hereby affirmed. Costs against the petitioner.

Bengzon, C. J., Baittista Angelo, Concepcion, Reyes, J. B. L. Paredes, Dizon, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

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