

BUTUAN SAWMILL, INC., PETITIONER, VS. COURT OF TAX APPEALS, ET AL., RESPONDENTS.

G.R. No. 20601. February 28, 1966

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from a decision of the Court of Tax Appeals, in its CTA Case No. 965, ordering petitioner herein, Butuan Sawmill, Inc., to pay respondent Commissioner of Internal Revenue the sum of P36,107.74 as deficiency sales tax and surcharge due on its sales of logs to buyers in Japan from January 31, 1951 to June 8, 1953.

The facts, as found and stated by the lower court in its decision, are in full accord with the evidences presented therein; hence, we quote hereunder :

"* * * that during- the period from January 31, 1951 to June 8, 1953, it sold logs to Japanese firms at prices FOB Vessel Magallanes, Agusan (in some cases FOB Vessel, Nasapit, also in Agusan); that the FOB prices included costs of loading-, wharfage stevedoring and other costs in the Philippines; that the quality, quantity and measurement specifications of the logs were certified by the Bureau of Forestry; that the freight was paid by the Japanese buyers; and the payments of the logs were effected by means of irrevocable letters of credit in favor of petitioner and payable through the Philippine National Bank or any other bank named by it.

"Upon investigation by the Bureau of Internal Revenue, it was ascertained that no sales tax return was filed by the petitioner and neither did it pay the corresponding tax on the sales. On the basis of agent Antonio Mole's report dated September 17, 1957, respondent on August 27, 1958, determined against petitioner the sum of P40,004.01 representing sales tax, surcharge and compromise penalty of its sales of logs from January 1951 to June 1953 pursuant to section 183, 186 and 209 of the National Internal Revenue Code (Exhibit "E". p. 14, CTA rec. & p. 14, BIR rec). And in consequence of a reinvestigation, respondent, on November 11, 1958, amended the amount of the previous assessment to P38,917.74 (Exh. 1 "F", p. 52, BIR rec.), Subsequent requests for reconsideration of the amended assessment having been denied (Exh. "G", p. 55; BIR rec; Exh. "H", pp. 75-76, BIR rec.; Exh. "I", pp. 79-80, BIR rec. Exh. "J", p. 81 BIR rec), petitioner filed the instant petition for review on November 7, 1960."

On the bases of the above-quoted findings and circumstances, the lower court upheld the legality and correctness of the amended assessment of the sales tax and surcharge, ruling that the sales in question, in the light of our previous decisions[1], were domestic or "local" sales, and, therefore, subject to sales tax under the provision of section 186 of the Tax Code, as amended by Republic Acts Nos. 588 and 594: and that the assessment thereof was made well within the ten year period prescribed by Section 332 (a) of the same Code since petitioner herein omitted to file its sales tax returns for the years 1951, 1952 and 1953, and this omission was discovered only on September 17, 1957. The imposition of the compromise penalty was, however, eliminated therefrom for want of agreement between the taxpayer and the Collector (now Commissioner) of Internal Revenue. A motion to

reconsider said decision having been denied petitioner herein interposed the present appeal before this Court.

The issues presented in this appeal are: whether or not petitioner herein is liable to pay the 5% sales tax then prescribed by Section 186 of the Tax Code on its sales of logs to the Japanese buyers; and whether or not the assessment thereof was made within the prescriptive period provided by law therefor.

On the first issue, petitioner herein insists that the circumstances enumerated in the above finding, which this Court had, in previous decisions (Cf. Footnote (1), considered as determinative of the place of transfer of ownership of the logs sold, for purposes of taxation, are hot in themselves evidentiary indications to show that the parties intended the title of the logs to pass to the Japanese buyers in Japan. Thus, it points out that the "FOB" feature of the sales contract was made only to fix its price and not to fix the place of delivery; that the requirement of certification of quality, quantity and measurement specifications of the logs by local authorities was done to comply with local laws, rules, and regulations and was not a part of the sales arrangement; that the payment of freight by the Japanese buyers is not an uncommon feature of "FOB" shipments; and that the payment of prices by means of irrevocable letters of credit is but a common established business practice to secure payment of the price to the seller. It also insists that even assuming that the "FOB" feature of the disputed sales determines the situs of transfer of ownership, the same is merely a prima facie presumption which yields to contrary proof such as that the logs were made deliverable to the order of the shipper" and the logs were shipped at the risk of the shipper, which circumstances, if considered, would negate the above implications. Hence, petitioner herein contends that the disputed sales were consummated in Japan, and, therefore, not subject to the taxing jurisdiction of our Government.

The above contentions of petitioner were devoid of merit. In a decided case with practically identical set of facts obtaining in the case at bar, this Court declared:

"* * * it is admitted that the agreed price was "F.O.B. Agusan", thus indicating, although prima facie, that the parties intended the title to pass to the buyer upon delivery of the logs in Agusan, on board the vessels that took the goods to Japan. Moreover, said prima facie proof was bolstered up by the following circumstances, namely:

1. Irrevocable letters of credit were opened by the Japanese buyers in favor of the petitioners.
2. Payment of freight charges of every shipment by the Japanese , buyers.
3. The Japanese buyers chartered the ships that carried the logs they purchased from the Philippines to Japan.
4. The Japanese buyers insured the shipment of logs and collected the insurance coverage in case of loss in transit.
5. The petitioner collected the purchase price of every shipment of logs by surrendering the covering letter of credit, bill of lading, which was indorsed in blank, tally sheet, invoice and export entry, to the corresponding bank in Manila of the Japanese agent bank with whom the Japanese buyers opened letters of credit.

6. In case of natural defects in logs shipped to the buyers discovered in Japan instead of returning such defective logs, accepted them, but were granted a corresponding credit based on the contract price.

7. The logs purchased by the Japanese buyers were measured by a representative of the Director of Forestry and such measurement was final, thereby making the Government of the Philippines a sort of agent of the Japanese buyers.

"Upon the foregoing facts and the authority of *Bislig Bay Lumber Co., Inc. vs. Collector Internal Revenue*, (G.R. No. L-13186 January 28, 1961) *Misamis Lumber Co., Inc. vs. Collector of Internal Revenue* (56 Off. Gaz. 517) and *Western Mindanao Lumber Development Co., Inc. vs. Court of Tax Appeals, et al.* (G.R. No. L-11710, June 30, 1958), it is clear that said export sales had been consummated in the Philippines and were accordingly, subject to sales tax therein." (*Taligaman Lumber Co., Inc. vs Collector of Internal Revenue*, G.R. No. L-15716, March 31, 1962)

With respect to petitioner's contention that there are proofs to rebut the prima facie finding and circumstances that the disputed sales were consummated here in the Philippines, we find that the allegation is not borne out by the law or the evidence.

That the specification in the bill of lading to the effect that the goods are deliverable to the order of the seller or his agent does not necessarily negate the passing of title to the goods upon delivery to the carrier is clear from the second part of paragraph 2 of article 1503 of the Civil Code of the Philippines (which appellant's counsel improperly omit from his citation).

Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent the seller thereby reserves the ownership in the credit. But, if except for the form of the bill of lading, the ownership could have passed to the buyer on shipment of the goods the sellers property in the goods shall be deemed to be only for the purpose of securing- performance by the buyer of his obligations under the contract."

Moreover, it has been "a settled rule that in petitions to review decisions of the Court of Tax Appeals, only questions of law may be raised and may be passed upon by this Court" (*Gutierrez vs. Court of Appeals & Collector of Internal Revenue vs. Gutierrez*, 101 Phil. 713, May 21, 1957, cited in *Sanchez vs. Commissioner of Customs*, 102 Phil., 37) and it having been found that there is no proof to substantiate the foregoing contention of petitioner, the same should also be ruled as devoid of merit.

On the second issue, petitioner avers that the filing of its income tax returns, wherein the proceeds of the disputed sales were declared, is substantial compliance with the requirement of filing a sales tax return, and, if there should be deemed a return filed, Section 331, and not Section 332, (a), of the Tax Code providing for a five year prescriptive period within which to make an assessment and collection of the tax in question from the time the return was deemed filed, should be applied to the case at bar. Since petitioner filed its income tax returns for the year 1951, 1952 and 1953, and the assessment was made in 1957 only, it further contends that the assessment of the sales tax corresponding to the years 1951 and 1952 has already prescribed for having been made outside the five-year period prescribed in Section 331 of the Tax Code and should, therefore, be deducted from the assessment of the deficiency sales tax made by respondent.

The above contention has already been raised and rejected as not meritorious in a previous case decided by this Court. Thus, we held that an income tax return cannot be considered as a return for compensating tax for purposes of computing the period of prescription under Section 331 of the Tax Code, and that the taxpayer must file a return for the particular tax required by law in order to avail himself of the benefits of Section 331 of the Tax Code; otherwise, if he does not file a return, an assessment may be made within the time stated in Section 332 (a) of the same Code (*Bisaya Land Transportation Co., Inc. vs. Collector of Internal Revenue & Collector of Internal Revenue vs. Bisaya Land Transportation Co., Inc.* G.R. Nos. L-12100 & 11812. May 29, 1959). The principle enunciated in this last cited case is applicable by analogy to the case at bar.

It being undisputed that petitioner failed to file a return for the disputed sales corresponding to the year 1951, 1952 and 1953, and this omission was discovered only on September 17, 1957, and that under Section 332(a) of the Tax Code assessment thereof may be made within ten (10) years from and after the discovery of the omission to file the return, it is evident that the lower court correctly held that the assessment and collection of the sales tax in question has not yet prescribed.

Wherefore, the decision appealed from should be, as it is hereby, affirmed, with costs against petitioner.

Bengzon, C. J., Bautista Angelo, Concepcion, Barrera, Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar and Sanchez, JJ., concur.

Decision affirmed.

[1] *Taligaman Lumber Co., vs. Collector of Internal Revenue*, 114 Phil. 773; *Bislig Bay Lumber Co., Inc., vs. Collector of Internal Revenue*, 110 Phil. 746; *Western Mindanao Development Lumber Co., Inc. vs. CTA et al.*, L-11710, June 30 1958; and *Misamis Lumber Co., Inc. vs. Collector of Internal Revenue*, 102 Phil. 116; 66 Official Gazette 517.

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