

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION, DEPUTY CITY SHERIFF
CARMELO V. CACHERO, MARITIME COMPANY OF THE PHILIPPINES,
DOMINGO C. NI...**

G.R. No. 74965. November 09, 1994

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari to set aside the resolution dated April 4, 1986[1] of the National Labor Relations Commission in NLRC Case No. NCR-12-4233-84 (Domingo C. Niangar v. Maritime Company of the Philippines), affirming the denial by the Labor Arbiter[2] of petitioner's motion to annul the sheriffs sale of four barges or, in the alternative, to order him to remit the proceeds of his sale to the Bureau of Internal Revenue for the satisfaction of the tax liabilities of private respondent Maritime Company of the Philippines.

The facts are as follows:

On January 12, 1984 the Commissioner of Internal Revenue sent two letters[3] of demand to the respondent Maritime Company of the Philippines for deficiency common carrier's tax, fixed tax, 6% Commercial Broker's tax, documentary stamp tax, income tax and withholding taxes in the total amount of P17,284,882.45.

The assessment became final and executory as private respondent did not contest it. But as private respondent did not pay its tax liability either, the Commissioner of Internal Revenue issued warrants of distraint of personal property and levy of real property of private respondent. Copies of the warrants, both dated January 23, 1985, were served on January 28, 1985 on Yoly T. Petrache, private respondent's accountant.[4]

On April 16, 1985 a "Receipt for Goods, Articles, and Things Seized[5] under Authority of the National Internal Revenue Code" was executed, covering, among other things, six barges identified as MCP-1,2,3,4,5 and 6. This receipt is required by § 303 (now § 206) of the NIRC as proof of the constructive distraint of property. It is an undertaking by the taxpayer or person in possession of the property covered that he will preserve the property and deliver it upon order of the court or the Internal Revenue Commissioner.

The receipt was prepared by the BIR for the signature of a representative of respondent Maritime Company of the Philippines, but it was not in fact signed. Petitioner later explained that the individuals who had possession of the barges had refused to sign the receipt.

This circumstance has given rise to the question in this case as it appears that four of the barges placed under constructive distraint were levied upon execution by respondent deputy sheriff of Manila on July 20, 1985 to satisfy a judgment for unpaid wages and other benefits of employees of respondent Maritime Company of the Philippines. More specifically, the question in this case is the validity of the warrant of distraint served by the Revenue Seizure Officer against the writ of execution subsequently levied upon the same property by the deputy sheriff of Manila to satisfy the claims of employees in NLRC Case No. NCR-12-4233-84 (Domingo C. Niangar,

et al. v. Maritime Company of the Philippines) for P490,749.21.

The four barges were sold by respondent deputy sheriff at a public auction on August 12, 1985. The highest bidder, Daniel C. Sabino, subsequently sold them to private respondents Fernando S. Tuliao and Tulmar Trading Corporation.

On September 4, 1985, petitioner asked the Labor Arbiter to annul the sale and to enjoin the sheriff from disposing of the proceeds of the sale or, in the alternative, to remit them to the Bureau of Internal Revenue so that the amount could be applied to the payment of private respondent Maritime Company's tax liabilities.

In an order dated September 30, 1985, Labor Arbiter Ceferina Diosana denied the motion on the ground that petitioner Commissioner of Internal Revenue failed to show that the barges which were levied upon in execution and sold at public auction had been validly placed under constructive distraint.[6] The Labor Arbiter likewise rejected petitioner's contention that the government's claim for taxes was preferred under art. 2247, in relation to art. 2241(1) of the Civil Code, on the ground that under these provisions only taxes and fees which are due on specific movables enjoy preference, whereas the taxes claimed by petitioner were not due on the four barges in question.

The order was appealed to the NLRC, which in a resolution dated April 4, 1986, affirmed the denial of the Internal Revenue Commissioner's motion. Hence, this petition for certiorari.

For reasons to be presently stated, the petition is granted.

The National Internal Revenue Code provides for the collection of delinquent taxes by any of the following remedies: (a) distraint of personal property or levy of real property of the delinquent taxpayer and (b) civil or criminal action.

With respect to the four barges in question, petitioner resorted to constructive distraint pursuant to § 303 (now § 206) of the NLRC. This provision states:

Constructive distraint of the property of a taxpayer. — To safeguard the interest of the Government, the Commissioner of Internal Revenue may place under constructive distraint the property of a delinquent taxpayer or any taxpayer who, in his opinion, is retiring from any business subject to tax, or intends to leave the Philippines, or remove his property therefrom, or hide or conceal his property, or perform any act tending to obstruct the proceedings, for collecting the tax due or which may be due from him.

The constructive distraint of personal property shall be effected by requiring the taxpayer or any person having possession or control of such property to sign a receipt covering the property distrained and obligate himself to preserve the same intact and unaltered and not to dispose of the same in any manner whatever without the express authority of the Commissioner of Internal Revenue.

In case the taxpayer or the person having the possession and control of the property sought to be placed under constructive distraint refuses or fails to sign the receipt herein referred to, the revenue officer effecting the constructive distraint shall proceed to prepare a list of such property and in the presence of two witnesses leave a copy thereof in the premises where the property distrained is located, after which the said property shall be deemed to have been placed under constructive distraint.

Although the warrant of distraint in this case had been issued earlier (January 23, 1985) than the levy on execution in the labor case on July 20, 1985, the Labor Arbiter nevertheless held that there was no valid distraint of personal property on the ground that the receipt of property distrained had not been signed by the taxpayer as required above. In her order, which the NLRC affirmed in toto, the Labor Arbiter said:

It is claimed by the Commissioner of Internal Revenue that on January 23, 1984, he issued a warrant of

distrainment of personal property on respondent to satisfy the collection of deficiency taxes in the aggregate sum of P17,284,882.45 and a copy of said warrant was served upon Maritime Company on January 28, 1985 and pursuant to the warrant, the Commissioner, through Revenue Seizure Agent Roland L. Bombay, issued on April 16, 1985, to Maritime Company a receipt for goods, articles and things seized pursuant to authority granted to him under the National Internal Revenue Code. Such personal properties seized include, among others, "Six (6) units of barges MCI-6 x x". However, his own receipts for goods attached to his motions does not show that it was received by Maritime; neither does it show any signature of any of Maritime's Officers.

Apart from the foregoing, in his affidavit of 11 September 1985, Sheriff Cachero stated that before he sold the subject four barges at public auction, he conducted an investigation on the ownership of the said four barges. In brief, he found out that the said four barges were purchased by respondent through Makati Leasing and that the whole purchase price has been paid by respondent. In fact, the corresponding deed of sale has already been signed. He did not find any lien or encumbrance on any of the said four barges. Thus it cannot be true that the Commissioner effected a valid warrant of distrainment of personal property on the four barges in question.[7]

However, this case arose out of the same facts involved in *Republic v. Enriquez*,[8] in which we sustained the validity of the distrainment of the six barges, which included the four involved in this case, against the levy on execution made by another deputy sheriff of Manila in another case filed against Maritime Company. Two barges (MCP-1 and MCP-4) were the subject of a levy in that case. There we found that the "Receipt for Goods, Articles and Things Seized under Authority of the National Internal Revenue Code" covering the six barges had been duly executed, with the Headquarters, First Coast Guard District, Farola Compound, Binondo, Manila acknowledging receipt of several barges, vehicles and two (2) bodegas of spare parts belonging to Maritime Company of the Philippines.

Apparently, what had been attached to the petitioner's motion filed by the government with the Labor Arbiter in this case was a copy, not the original one showing the rubber stamp of the Coast Guard and duly signed by its representative. A xerox copy of this signed receipt was submitted in the prior case.[9] This could be due to the fact that, except for Solicitor Erlinda B. Masakayan, the government lawyers who prepared the petition in the prior case were different from those who filed the present petition. They admitted that the receipt of property distrained had not been signed by the taxpayer or person in possession of the taxpayer's property allegedly because they had refused to do so. What apparently they did not know is that the receipt had been acknowledged by the Coast Guard which obviously had the barges in its possession.

In addition to the receipt duly acknowledged by the Coast Guard, the record of the prior case also shows that on October 4, 1985, the Commissioner of Internal Revenue issued a "Notice of Seizure of Personal Property" stating that the goods and chattels listed on its reverse side, among which were the four barges (MCP-2, MCP-3, MCP-5, and MCP-6), had been distrained by the Commissioner of Internal Revenue.[10]

The "Notice of Seizure of Personal Property," a copy of which was received by Atty. Redentor R. Melo in behalf of Maritime Company of the Philippines together with the receipt of the Coast Guard, belies the claim of respondent deputy sheriff that when he levied upon the four barges there was no indication that the barges had previously been placed under distrainment by the Commissioner of Internal Revenue.

Accordingly, what we said in the prior case[11] in upholding the validity of distrainment of two of the six barges (MCP Nos. 1 and 4), fully applies in this case:

It is settled that the claim of the government predicated on a tax lien is superior to the claim of a private litigant predicated on a judgment. The tax lien attaches not only from the service of the warrant of distrainment of personal property but from the time the tax became due and payable. Besides, the distrainment on the subject properties of Maritime Company of the Philippines as well as the notice of their seizure were made by petitioner, through

the Commissioner of Internal Revenue, long before the writ of execution was issued by the Regional Trial Court of Manila, Branch 31. There is no question then that at the time the writ of execution was issued, the two (2) barges, MCP-1 and MCP-4, were no longer properties of the Maritime Company of the Philippines. The power of the court in execution of judgments extends only to properties unquestionably belonging to the judgment debtor. Execution sales affect the rights of the judgment debtor only, and the purchaser in an auction sale acquires only such right as the judgment debtor had at the time of sale. It is also well-settled that the sheriff is not authorized to attach or levy on property not belonging to the judgment debtor.

Nor is there any merit in the contention of the NLRC that taxes are absolutely preferred claims only with respect to movable or immovable properties on which they are due and that since the taxes sought to be collected in this case are not due on the barges in question the government's claim cannot prevail over the claims of employees of the Maritime Company of the Philippines which, pursuant to art. 110 of the Labor Code, "enjoy first preference."

In *Republic v. Peralta*[12] this Court rejected a similar contention. Through Mr. Justice Feliciano we held:

. . . [T]he claim of the Bureau of Internal Revenue for unpaid tobacco inspection fees constitutes a claim for unpaid internal revenue taxes which gives rise to a tax lien upon all the properties and assets, movable and immovable, of the Insolvent as taxpayer. Clearly, under Articles 2241 No. 1, 2242 No. 1, and 2246-2249 of the Civil Code, this tax claim must be given preference over any other claim of any other creditor, in respect of any and all properties of the Insolvent.

....

Article 110 of the Labor Code does not purport to create a lien in favor of workers or employees for unpaid wages either upon all of the properties or upon any particular property owned by their employer. Claims for unpaid wages do not therefore fall at all within the category of specially preferred claims established under Articles 2241 and 2242 of the Civil Code, except to the extent that such claims for unpaid wages are already covered by Article 2241, number 6: "claims for laborers' wages, on the goods manufactured or the work done;" or by Article 2242, number 3: "claims of laborers and other workers engaged in the construction, reconstruction or repair of buildings, canals and other works, upon said buildings, canals or other works." To the extent that claims for unpaid wages fall outside the scope of Article 2241, number 6 and 2242, number 3, they would come within the ambit of the category of ordinary preferred credits under Article 2244.

Applying Article 2241, number 6 to the instant case, the claims of the Unions for separation pay of their members constitute liens attaching to the processed leaf tobacco, cigars and cigarettes and other products produced or manufactured by the Insolvent, but not to other assets owned by the Insolvent. And even in respect of such tobacco and tobacco products produced by the Insolvent, the claims of the Unions may be given effect only after the Bureau of Internal Revenue's claim for unpaid tobacco inspection fees shall have been satisfied out of the products so manufactured by the Insolvent.

Article 2242, number 3, also creates a lien or encumbrance upon a building or other real property of the Insolvent in favor of workmen who constructed or repaired such building or other real property. Article 2242, number 3, does not however appear relevant in the instant case, since the members of the Unions to whom separation pay is due rendered services to the Insolvent not (so far as the record of this case would show) in the construction or repair of buildings or other real property, but rather, in the regular course of the manufacturing operations of the Insolvent. The Unions' claims do not therefore constitute a lien or encumbrance upon any immovable property owned by the Insolvent, but rather, as already indicated, upon the Insolvent's existing inventory (if any) of processed tobacco and tobacco products.

In addition, we have held[13] that art. 110 of the Labor Code applies only in case of bankruptcy or judicial liquidation of the employer. This is clear from the text of the law:

ART. 110. Worker preference in case of bankruptcy. — In the event of bankruptcy or liquidation of an

employer's business, his workers shall enjoy first preference as regards wages due them for services rendered during the period prior to the bankruptcy or liquidation, any provision of law to the contrary notwithstanding. Unpaid wages shall be paid in full before other creditors may establish any claims to a share in the assets of the employer.

This case does not involve the liquidation of the employer's business.

WHEREFORE, the petition for certiorari is GRANTED and the resolution dated April 4, 1986 of respondent NLRC in NLRC Case No. NCR-12-4233-84 is SET ASIDE insofar as it denies the government's claim for taxes, and respondent deputy sheriff Carmelo V. Cachero or his successor is ORDERED to remit the proceeds of the auction sale to the Bureau of Internal Revenue to be applied as part payment of respondent Maritime Company's tax liabilities.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Puno, JJ., concur.

[1] Rollo, p. 52.

[2] Rollo, p. 35.

[3] Letter of Demand No. SARD-79BT-84-02007 and Letter of Demand No. SARD--79IT-83, both dated January 12, 1984. Rollo, pp. 20-26.

[4] Rollo, pp. 27-28.

[5] Rollo, p. 29.

[6] Rollo, pp. 34-41.

[7] Rollo, pp. 39-40.

[8] G.R. No. L-78391, Oct. 21, 1988, 166 SCRA 608.

[9] G.R. No. L-78391, Rollo, p. 42.

[10] Id., pp. 43-44.

[11] Supra note 8 at 612.

[12] 150 SCRA 37, 51 (1987).

[13] Development Bank of the Philippines v. Secretary of Labor, 179 SCRA 630 (1989).

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