

**SILVERIO BLAQUERA, AS COLLECTOR OF INTERNAL REVENUE,
PETITIONER, VS. HON. JUDGE JOSE S. RODRIGUEZ, ET AL.,
RESPONDENTS.***G. R. No- L-11192. April 16, 1958*

Ponente: BAUTISTA ANGELO, J.

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This is a petition seeking to enjoin respondent Judge from enforcing his order of May 25, 1956 restraining the collection of the sum of P10,518.75 as deficiency percentage taxes and to set aside the order he has issued denying the motion to dismiss the action which gave rise to this incident on the ground of lack of jurisdiction over the subject-matter. This Court gave due course to the petition and issued the writ of preliminary injunction prayed for pending the determination of the case on the merits.

It appears that the Cebu Olympian Company, hereinafter designated as plaintiff, filed an action against the Collector of Internal Revenue, hereinafter designated as defendant, before the Court of First Instance of Cebu to enjoin the latter from collecting certain deficiency percentage taxes and, incidentally, to recover consequential and moral damages as an incident thereto. It is alleged that on November 12, 1955 defendant addressed to plaintiff a communication informing it that it was deficient in the payment of certain percentage taxes amounting to P8,375.00 which, in addition to the compromise fee of P50 and a surcharge of 25 percent, makes a grand total of P10,518.75; that on November 21, 1955, plaintiff, through counsel, answered defendant's letter to the effect that it is not deficient in the payment of any percentage tax as shown by certain official receipts it has in its possession; that on December 19, 1955, defendant wrote another letter to plaintiff informing it that it had employed a business agent in effecting the payment of the aforesaid taxes and, as a consequence, it must suffer for any irregularity that said agent may commit giving rise to the deficiency in the payment of its taxes; that considering said claim to be incorrect, plaintiff retorted on January 11, 1956 stating that it had never employed a business agent in effecting the payment of its taxes, the truth being that it had paid the same directly to the office of the city treasurer of Cebu by way of checks issued by the plaintiff; that notwithstanding the full payment made by plaintiff of the percentage taxes claimed by defendant, the latter has threatened, and is threatening, to levy on plaintiff's property thereby causing irreparable damage to plaintiff's business and goodwill; and that because of defendant's act in levying on the properties of plaintiff for the purpose of compelling it to pay taxes which had been already paid, plaintiff has suffered consequential and moral damages in the amount of P8,000.00. Plaintiff, therefore, prayed for a writ of preliminary injunction pending determination of this case on the merits, which was granted ex parte upon a bond in the amount of P10,518.75.

On June 18, 1956, defendant moved to dismiss the complaint on the ground of lack of jurisdiction, it being his contention that this case should have been taken to the Court of Tax Appeals which has exclusive jurisdiction to review on appeal all decisions of the Collector of Internal Revenue in cases of disputed assessments, refund of internal revenue taxes, fees, and other charges, penalties impose in relation thereto, and other matters arising under the National Internal Revenue Code, or other law or part of law administered by the Collector of Internal

Revenue, in accordance with Section 7 of Republic Act No. 1125. On July 6, 1956, the court denied the motion to dismiss and ordered defendant to enter his plea to the complaint within the reglementary period. And when his motion for reconsideration was denied, defendant interposed the present petition for certiorari.

The question for determination is whether the main case may be taken cognizance of by the court a quo or it should be brought on appeal to the Court of Tax Appeals under Section 7 of Republic Act No. 1125 in the exercise of its exclusive appellate jurisdiction. The section above referred to provides, among others, as follows:

"Sec. 7. Jurisdiction—The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided—

"(1) Decision of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue; *

* * "

From what appears in the complaint in the light of the provisions above quoted, there can be no question that this case comes within the exclusive appellate jurisdiction of the Court of Tax Appeals for undoubtedly its subject-matter comes within the purview of the words "disputed assessments," or of "other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue", specifically mentioned therein. This is inferable not only from the allegations of the complaint itself, but also from the writ of preliminary injunction granted by the court a quo on May 25, 1956, commanding the defendant, his agents, subordinates or persons acting in his behalf, to comply with the order of the court to refrain or desist from levying by way of distraint on plaintiff's properties. The power conferred by law upon the Collector of Internal Revenue to institute administrative remedies to collect taxes by means of distraint and levy on the property of any delinquent taxpayer is embodied in Chapter II, Sections 315-330, of the National Internal Revenue Code.

Indeed, plaintiff in the present case seeks not only to contest the collection of deficiency percentage taxes, surcharges or compromises demanded in the several letters addressed to it by defendant, but also to dispute the legality or propriety of the levy by distraint on the properties of the plaintiff by reason of its failure or refusal to meet the demand on the alleged reason that it has already fully paid the taxes demanded from it. The case is, therefore, an indirect appeal from the decision of the Collector of Internal Revenue on the assessment made by him with regard to certain deficiency percentage taxes, as well as from his decision to collect the same by the coercive summary measures prescribed by law, matters which come within the exclusive jurisdiction of the Court of Tax Appeals.

It is true that plaintiff claims that it has already fully paid the deficiency taxes demanded from it by the defendant, but this claim alone cannot take this case out of the jurisdiction of the Court of Tax Appeals, for the same still comes within the purview of the words disputed assessment. The correctness or incorrectness of a tax assessment is for that court to determine and not for the regular courts of justice. Nor can this case be placed beyond the jurisdiction of that court simply because certain consequential or moral damages are demanded, for they are but incidental to the main case. This can be passed upon by that court if and when the evidence so warrants.

This case comes squarely within the frame of the decision rendered in *Millares, et al., vs. Judge Amparo, et al.*,* 51 Off. Gaz., 3462. That was a case of mandamus to compel the Collector of Customs to surrender certain merchandise impounded by the latter for the failure of the importer to obtain the necessary certificate of release from the Central Bank. Upon petition ex parte, the court a quo granted the writ of preliminary mandatory injunction. The motion to dissolve the writ having failed, the case was taken to the Supreme Court by way of certiorari, and one of the questions raised was whether "since the creation of the Court of Tax Appeals by

Republic Act No. 1125, the Manila courts of first instance have lost jurisdiction over customs cases." The Court, in upholding the affirmative, made the following pronouncement:

"Republic Act No. 1125, section 7, effective June 16, 19B4, gave the Court of Tax Appeals exclusive appellate jurisdiction, to review on appeal, decisions of the Commissioner of Customs, involving 'seizure, detention or release of property affected * * * or other matters arising under the Customs law or other law administered by the Bureau of Customs'. In our opinion this provision necessarily has taken away the power of the Manila Courts of First Instance to 'review', decisions of the Customs authorities, 'in any case of seizure'—as in this case—under section 1383 et seq. of the Revised Administrative Code.

"Consequently, the respondent judge had no authority to entertain the complaints of Serree Investments, Lim Hu and Fructuoso Nepomuceno, which, although entitled Mandamus and Certiorari were in reality petitions to review the actuations of the proper customs authorities, now exclusively reviewable by the Court of Tax Appeals (R. A. 1125). Furthermore, conceding that the complaints were strictly mandamus or certiorari civil actions, still they were groundless, the petitioners having an adequate remedy by appeal, as stated to the Court of Tax Appeals. Neither certiorari nor mandamus, it will be recalled, is available where relief by appeal is provided. Therefore, the complaints having no merit, issuance of the preliminary mandatory injunctions was clearly erroneous, and the challenged writs should be annulled.

"This conclusion makes it useless to pass on the question whether Circular No. 45 of the Central Bank prohibits the importation of this garlic shipment, and whether it is valid under the law, because the above is sufficient to dispose of these litigations. Neither is it necessary to discuss the issue for guidance in connection with future importations, because Republic Act No. 1296, effective on the 18th of this month prohibits, with penal sanctions, the importation of garlic, potatoes, etc., except for seedling purposes, which is not the case.

"WHEREFORE, the preliminary writs of injunction heretofore issued are hereby made permanent. The writs complained of are annulled. Costs shall be paid by the respondents importers. So ordered." (31 Off. Gaz., pp. 3464-3465).

Wherefore, petition is granted. The orders involved herein are hereby set aside and the injunction issued by this Court made permanent, with costs against respondent Cebu Olympian Company.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

*97 Phil., 282

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