REPUBLIC OF THE PHILIPPINES,
Plaintiff,

- versus -

LIMACO & DE GUZMAN COMMERCIAL CO., INC. and VISAYAN SURETY & INSURANCE CORPORATION,
Defendants.

July 20, 1957

MANILA
CASE NO. 18859

x- - - - - - - - - - - - - - - -x

D E C I S I O N

This is a case involving liability for specific taxes of defendant Limaco & de Guzman Commercial Company, Inc. (hereinafter referred to as Limaco) by reason of its importation of cigarettes. Two Importer's Official Bonds were filed in favor of plaintiff Republic of the Philippines (formerly Commonwealth of the Philippines) by defendants Limaco and Visayan Surety & Insurance Company (hereinafter referred to as Visayan Surety).

This case was originally filed with the Court of First Instance of Manila on February 18, 1953, but was remanded to this Court for final disposition pursuant to Republic Act No. 1125/

According to the records, defendant Limaco was engaged in the business of importing cigarettes and was thereby subject to the corresponding revenue taxes. To guarantee the payment of the revenue taxes that might be due and payable to plaintiff, defendants Limaco, as principal, and Visayan Surety, as surety, on July 12, 1946 and June 29, 1946, executed two Importer's Official

Bonds holding themselves jointly and severally liable to pay the sums of ₱1,000.00 and ₱2,000.00 respectively, in favor of the Commonwealth of the Philippines (now plaintiff Republic of the Philippines) under the following terms and conditions:

> "x x x or as long as the above-bounden principal shall faithfully comply with all the provisions of the National Internal Revenue Code, and amendments thereto and revisions thereof, and with all the regulations issued in accordance therewith and with all orders, rules, interpretations, and directions made in accordance with law by the Collector of Internal Revenue, and shall make prompt and complete payment of the taxes lawfully accruing on the business of the principal as IMPORTER OF CIGARETTES - - - - and all other taxes directly or indirectly connected with, or arising from the said business, and of all fines and penalties imposed in accordance with the National Internal Revenue Code; otherwise, it shall remain in full force and effect."

Thereafter, on June 27, 1946, defendant Limaco filed with the Bureau of Customs entry papers covering a shipment of two millions "spud" cigarettes from New York, U.S. on board the S.S. "Steel Ranger" (see Importers Declaration, pp. 17-18, BIR rec.) on which importation the amount of ₱6,000.00 was assessed as specific taxes. The assessment of ₱6,000.00 was paid in cash in the sum of ₱1,000.00 and by check (PNB Check No. 601580-K) in the sum of ₱5,000.00. Upon payment of the said ₱6,000.00, the cigarettes were released from customs custody to defendant Limaco. However, the check was dishonored by the bank for lack of funds and was returned to the maker. Due to the fact that the aforesaid check was dishonored, the Collector of Internal Revenue tried to collect the same from the customs broker of Limaco and from Limaco itself, but the amount remained uncollected. Upon request of the Collector of Internal Revenue, the Solicitor General wrote Visayan Surety on July 19, 1950 (Exhibit 1, p. 126, C.T.A. rec.) to the effect that unless the payment of the unpaid taxes was made within 10 days from receipt thereof, a complaint for the confiscation of the bond would be filed with the courts. In view of the failure of Visayan Surety to pay as demanded, the instant complaint was filed before the Court of First Instance of Manila on February 18, 1953. On February 1, 1955, the Deputy Collector of Internal Revenue requested Visayan Surety to pay the sum of ₱3,000.00 within 5 days from date of the request, otherwise he (Deputy Collector) "will be constrained to disapprove all surety bonds which you (Visayan Surety) may filed in this office in the future" (Exhibit 4, p. 144, BIR rec.). In reply thereto, the latter requested (Exhibits 5 and 5-A), that the intended order suspending the Visayan Surety from transacting further business be held in abeyance. That the Collector of Internal Revenue had in fact placed the name of Visayan Surety in its blacklist and refused to accept the bonds of the latter after it had failed to pay the tax obligation is admitted by plaintiff (pars. 2 and 3, Answer to Counterclaim). In view of the refusal of the Collector to lift the order of "blacklisting", defendant Visayan Surety on March 14, 1955 tendered payment of ₱3,000.00, the amount covered by the bonds in question. At the time of such tender, Visayan Surety reserved its right to have the instant case "given due course" and that it would avail of all its defenses in said case including that of a claim for the refund of the payment so made. In fact Visayan Surety stated that the purpose of the tender was to have its name removed from the Bureau's blacklist of surety companies (Exhibits 6 and 6-A, pp. 152-153, BIR rec.). Upon such payment, the Collector of Internal Revenue notified its subordinate offices of the lifting of the blacklist as regards Visayan Surety (Exhibits M and N; pp. 157 and 162, BIR rec.). Subsequently, plaintiff moved to dismiss the complaint at bar on the ground that the amount claimed for specific taxes had been fully satisfied. Defendant Visayan Surety however, in its second amended answer allowed by leave of Court, interposed a counterclaim against plaintiff for the refund or recovery of the said sum of ₱3,000.00. As payment in this case was made during the pendency of this suit, we stated in our Resolution dated January 16, 1956 that Visayan Surety was not required to file a claim for refund prior to instituting its counterclaim.

Since plaintiff moved to dismiss the action, it is deemed to have abandoned its claim for the forfeiture of the bond or at least the question has become academic with its receipt of the sum of ₱3,000.00.

Hence, the principal question involved here is whether or not the collection of the amount of ₱3,000.00 from Visayan Surety was a legal payment or collection of specific taxes, and if in the negative, whether or not Visayan Surety was entitled to a refund of the said amount which allegedly has been illegally or erroneously collected.

Under Section 125 of the National Internal Revenue Code, imported articles subject to specific tax (and the cigarettes here admittedly subject thereto) cannot be removed from the customs house without the prepayment of said specific taxes. The correctness of the assessment of ₱6,000.00 as specific taxes due from defendant Limaco and De Guzman is not in dispute, and as a matter of fact, Visayan Surety raises no issue on the correctness thereof. However, defendant Visayan Surety contends that the assessment and collection of the tax from Limaco as the taxpayer and principal debtor has been barred by the statute of limitations provided by section 332 (c) of the Tax Code, which bars collection of the tax within five years after it is assessed. The taxes in question must have been assessed at the earliest on June 27, 1946 when a return (Importer's Declaration) was filed or at the latest on July 15, 1946 when payment was made on the basis of said Importer's Declaration. If as in this case, the check used in partial payment of the tax assessment was dishonored, there is deemed to be no payment made and the remedy of the Collector of Internal Revenue in such a case is to enforce col-

353

lection thereof. Pursuant to the foregoing section of the National Internal Revenue Code, an action for the collection of the assessment should have been instituted within five years after the said assessment otherwise, the collection of the tax shall have been barred. Is defendant Visayan Surety entitled to this defense? As an incidental question, it may also be asked: is Visayan Surety a proper party to claim for a tax refund?

Visayan Surety had under the bonds in question obligated itself jointly and severally to answer for the taxes that would accrue from the business of defendant Limaco and had thereby bound itself as a principal party thereto. As such, the government is entitled to proceed against anyone of the solidary debtors or some or all of them simultaneously (Art. 1216, Civil Code). The obligation of the Visayan Surety in this case therefore is the same as an original promisor and like the taxpayer, its obligation to pay the tax is primary (Articles 1222 and 2081, Civil Code; Castellvi vs. Sellner, 41 Phil. 145). However, where the creditor here (Republic of the Philippines) exercises its right of action against any of the solidary debtors as in this case, Visayan Surety is entitled to avail itself of all defenses which are derived from the nature of the obligation as well as those which are personal to the surety (Art. 1222, Civil Code).

Having bound itself solidarily as regard the liability for taxes, Visayan Surety became also a party

352

primarily liable thereto and any payment made thereon was effected in the same character as the taxpayer, Limaco itself would have done. Having paid the tax in question, in pursuance of its primary responsibility, Visayan Surety was not only subrogated into the rights of Limaco to question the legality or correctness of the assessment, collection and payment, but the defense of illegality (including prescription) thereof was one available not only to Limaco, but also to Visayan Surety (Arts. 1222 and 2081, Civil Code; see also Chinese Chamber of Commerce vs. Pua Te Ching, 16 Phil. 406). Thus, it has been held that:

> "x x x. Having as surety paid a liability of the taxpayer, the plaintiff became subrogated to all of his rights in the matter.
>
> "The right of subrogation extends not only to the rights and remedies of the creditor but also to those of the principal on the bond. 60 C.J., sec. 81, p. 771, citing numerous cases. By reason of the payment of the bond, the plaintiff became subrogated to all the rights of the taxpayer with reference to a refund of the taxes." (Maryland Casualty Co. vs. United States, 32 F Supp. 746, 753-754.)

We are therefore of the opinion and so hold that Visayan Surety has the right not only to raise the defense of prescription against the collection of the tax, but also to claim the refund of the tax which may have been erroneously or illegally collected and paid.

We now proceed to consider the question of whether or not the same has in fact prescribed. In line with the facts stated earlier, the right of plaintiff to collect the taxes would prescribe in accordance with section 332 of the Tax Code at the latest on July 15, 1951 or five years from July 15, 1946. The instant action having been instituted in the Court of First Instance only on February 18, 1953, it becomes apparent that the right to collect the tax in question has been barred by the statute of limitations.

The remaining question to determine is whether or not the payment made by Visayan Surety on March 17, 1955 constitutes a waiver of prescription or constitute a natural obligation so as to bar recovery thereof. For a waiver to be valid like any other juridical transaction, it must be voluntary. Moreover, such waiver must be express or there must be at least indications of a clear intent to effect such waiver (Provincial Sheriff vs. Philippine Trust Co., G.R. No. L-4083, August 31, 1953). And in order that a payment made on a debt or obligation which has prescribed shall constitute a natural obligation, the payment must likewise be voluntary. (Art. 1424, Civil Code). From the circumstances attending this case, it is apparent that the payment made by Visayan Surety would constitute neither a waiver nor a voluntary payment. It was in essence involuntary, inasmuch as it was effected to avoid the continued blacklisting of Visayan Surety from doing business as such considering that the Collector of Internal Revenue had refused to accept any of its bonds unless the tax in question was paid without waiting for the outcome of this case then pending in court. The blacklisting therefore would have resulted in the loss of business to Visayan Surety. Thus, it had been held that payment made in order to continue the operation of the taxpayer's business is deemed to be an involuntary payment (Seaboard Airline R. Co. v. Allen, 1921, 82 Fla. 191, 89 So. 555). In effect, Visayan Surety was coerced into making the payment for unless it did, it would remain in the Bureau of Internal Revenue's "blacklist" of surety companies, from which the former had no other means of immediate relief than by making the payment in question (see Weir vs. McGrath, 1929, 52 F 2d 201). Where a payment is effected by a person in order that it would avoid a loss or would not be compelled to discontinue his business and where said person has already resisted or attempted to resist the collection, there is a sufficient showing that he was not making a voluntary donation in favor of the taxpayer Limaco (see Parsons vs. Anglim, 143 Fed. 2d 534). In view of the fact that the only reason of the Visayan Surety in making the payment on the alleged taxes was to continue the operation of its business and to prevent the continued blacklisting of its transaction with government offices such as the Bureau of Internal Revenue, which blacklisting would be detrimental not only to its actual but also to its future business, the Visayan Surety was in fact compelled, under the duress, to make a payment on the alleged tax liability. It may further be added that at the time of payment Visayan Surety had expressly reserved its right to contest the legality of the assessment and/or collection to the extent that the payment may not be deemed a valid waiver. This case should be distinguished from Sambrano vs. Collector (G.R. No. L-8652, March 30, 1957) which involved a novation by acknowledgment of a debt and a waiver of prescription by abandonment of a right acquired, whereas, in the instant case, Visayan Surety expressly reserved such right. The payment by Visayan Surety having been involuntary, the same may not constitute a waiver of prescription or of the statute of limitations nor constitute a voluntary payment in the nature of a natural obligation.

In fine, the collection of the tax in question was then barred by the statute of limitations and pursuant to the provisions of section 14, Republic Act No. 1125, there is determined to be no tax deficiency in respect of such tax. And as there was no longer a tax deficiency and that payment has been made under duress or at least involuntarily, there was on the part of the Collector of Internal Revenue an illegal or erroneous collection of the amount of ₱3,000.00. Under the circumstances, the amount paid should therefore be subject to refund to the party entitled thereto.

WHEREFORE, the action of plaintiff for the forfeiture of importer's bond is hereby dismissed and the counterclaim of defendant being legally justified, the

Collector of Internal Revenue should be, as he is hereby ordered to refund to the Visayan Surety and Insurance Corporation the sum of ₱3,000.00 with interest from date of payment. Without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, July 20, 1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI
did not take part.

Reversed in G.R. No. 13081 - Aug. 31, 1962.