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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATKINS, KROLL & CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 596

MELECIO R. DOMINGO, as
Commissioner of Internal
Revenue of the Philippines,
Respondent.

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August 7, 1964

D E C I S I O N

This is an appeal from the decision of respondent declaring petitioner a commercial broker as defined in Section 194(t) of the National Internal Revenue Code from 1951 to 1955 inclusive, in its business transactions with PHILCUSA, and holding said petitioner liable for commercial broker's tax of 6% imposed by Section 195 of the same Code in the amount of ₱4,719.54, plus ₱100.00 as suggested compromise penalty in extrajudicial settlement for violation of Section 209 of the Tax Code.

From 1951 to 1955, petitioner supplied the Philippine Council For United States Aid (PHILCUSA) with goods which the latter intended to give as aid to the Philippines. As a successful bidder for supplying the goods needed by PHILCUSA, petitioner imported the said goods in its own name. It opened the corresponding letters of credit in its name, executed the performance bonds in favor of PHILCUSA to answer for damages in case of failure to import the said goods, and received from the suppliers abroad the commercial invoices and other documents showing that it was the importer thereof. However, as importer of the said goods, the same were not delivered to the petitioner in the Philippines because the delivery time under the bid transactions means the delivery aboard the ship in foreign port provided that the goods were properly packed and labelled for export.

The imported goods were not paid by the petitioner because the suppliers abroad are paid in dollars by the MSA Washington (U.S.A.) thru the United States or foreign correspondent of the Philippine National Bank. The profit or compensation of petitioner in its business transactions with PHILCUSA consists of the difference between the quotation in Philippine currency submitted by petitioner to PHILCUSA and the equivalent of cost and freight (C & F) dollar cost which was paid in pesos to petitioner upon receipt of the documents by PHILCUSA, except as otherwise provided in the contract.

The only question at issue in this case is whether or not petitioner acted as a commercial broker in its business transactions with PHILCUSA covering the period from 1951 to 1955, inclusive.

Respondent contends that petitioner is neither an importer nor a merchant insofar as the goods sold to PHILCUSA are concerned, but a commercial broker as the same is defined in Section 194(t) of the National Internal Revenue Code as follows:

> (t) "Commercial broker" includes all persons, other than importers, manufacturers, producers, or bona fide employees, 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 consignors or consignees of freight carried by vessels or other means of transportation. The term includes commission merchants.

On several occasions subsequent to the filing of respondent's answer to the petition for review, this Court, upon motions of the parties, postponed the hearing of the case until such time as the Supreme Court shall have decided the case of The Collector of Internal Revenue vs. Tan Eng Hong, G.R. No. L-16893, the facts and issues of which, as admitted by the parties, are identical to the case at bar.

After the commercial broker's tax case of Tan Eng Hong was decided by the Supreme Court, petitioner filed a motion for summary judgment to which respondent interposed no objection.

In the case of THE COLLECTOR (now Commissioner) OF INTERNAL REVENUE vs. TAN ENG HONG, G.R. No. L-16893, October 22, 1966, the decision of which is pertinent to the case at bar, our Supreme Court held as follows:

> "It seems obvious from the facts of this case that Tan Eng Hong undertook the importation of the goods needed by PHILCUSA for himself and not for PHILCUSA. In effecting the importation of the said goods, he was discharging his own, personal obligation as the winner in the bidding called by PHILCUSA. He imported the commodities not because PHILCUSA had asked him to but because he had obligated himself to deliver the same to PHILCUSA when he participated and won in the public bidding called by the said agency. Tan Eng Hong would have been liable in damages to PHILCUSA if he had failed to import the said goods so that when he carried out the importation, he was, first and foremost, serving his own interest and no one else's.
>
> "Upon the records of this case, it appears that Tan Eng Hong signed and submitted his bids or proposals under his name and the corresponding letters of credit were sent to his business address. The letters of credit, performance bonds, invoices and all other documents relative to the transactions were in his name. The bid contracts were strictly between Tan Eng Hong and PHILCUSA just as the former's contracts with his foreign supplier were strictly between them alone, i.e., Tan Eng Hong and the foreign supplier only. The foreign supplier and PHILCUSA had no privity of contractual relations whatsoever to the end that neither of them could have had any claim against each other for whatever fault or breach Tan Eng Hong might have committed relevant to the transactions in dispute. It would indeed be quite difficult to sustain any assertion that Tan Eng Hong was acting for and in behalf of PHILCUSA or his foreign supplier or both.
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> "The broker must be the efficient agent or the procuring cause of the sale. The means employed by him and his efforts must result in the sale. He must find the purchaser,

and the sale must proceed from his efforts acting as a broker. (Reyes v. Mosqueda, G.R. No. L-8669, May 25, 1956; 53 O.G. 2158) This condition may not be said to obtain in the case on hand. Tan Eng Hong did not merely bring PHILCUSA and his foreign supplier to come to an agreement for the sale of certain commodities. It was he himself who contracted with his foreign supplier for the purchase of the said goods. If, for one reason or another PHILCUSA had refused to accept the delivery of the said goods to it by Tan Eng Hong, the foreign supplier could not have compelled PHILCUSA otherwise. Similarly, if somehow the foreign supplier had defaulted in the performance of its obligations to Tan Eng Hong, PHILCUSA could not have had any action or remedy against the said foreign supplier. All these indicate the distinct and independent personality of Tan Eng Hong as an importer and not a commercial broker."

WHEREFORE, in the light of the foregoing decision, we hold that petitioner is not a commercial broker and, therefore, the decision of respondent appealed from is hereby reversed. Consequently, the assessment of respondent against petitioner for commercial broker's percentage tax in the amount of ₱4,719.54, plus compromise penalty of ₱100.00, has to be, as it is hereby, cancelled and set aside.

SO ORDERED.

Quezon City, August 7, 1967.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R M Umali
ROMAN M. UMALI
Presiding Judge

Ramon L Avanceña
RAMON L. AVANCEÑA
Associate Judge