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MACAIROG DE GUIA,
Petitioner,

versus CTA CASE NO. 1220

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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July 15, 1967

D E C I S I O N

On November 16, 1959, Pleridel M. Mingoa and Emilio C. Montoya, BIR examiners, submitted a memorandum to the Chief of the Investigation Division of the Bureau of Internal Revenue, a portion of which reads as follows:

> "Investigation conducted by the undersigned, pursuant to Authority No. 22-18 dated June 10, 1959 disclosed that Macairog de Guia of 2123 Sto. Niño, Pandacan, Manila represented himself as local representative of the following firms:
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> "1. Panda Williams & Co.
> 201 Locust St., San
> Francisco, California
>
> "2. Western Drugs
> 24 California St., San
> Francisco, California
>
> "3. Simon Distributing Co.
> 2831 West Pico Blvd.,
> Los Angeles 6, California
>
> "4. Wrentham Drug Distributing Co.
> 24 California St., San Francisco, California

"5. Sicking Distributing Co.
2835 Pico Blvd., Los
Angeles 6, California

He solicited business for these firms, and through his intermediation the following firms and individuals imported goods to this country:

"1. Ace Drughouse, Inc., Bambang, Manila.
"2. Francisca Herrera, Libertad, Pasay
"3. Virginia Quiambao, 1414 Tayabas, Manila
"4. Virginia Topacio, Pasig, Rizal
"5. Remedios Little Market
"6. Gonzales Trading, Legmay, San Juan, Rizal
"7. Urbana Sebastian, Hagonoy, Bulacan

During the year 1957 and 1958 the said M. de Guia was able to negotiate and consummate purchase orders (letters of credit) from the above-named individuals and firms in the total amount of ₱1,122,410.84 and ₱5,506,167.40. These acts, it is submitted make him a commercial broker. He failed to provide himself with the necessary privilege tax receipt as commercial broker, failed to file monthly returns of his commissions therefor, and failed to pay the 6% tax due thereon, in violation of sections 182, 183 and 195, penalized under sections 208 and 209, all of the Tax Code. Accordingly, there is due from Macairog de Guia the total amount of taxes and compromises shown below:" (pp. 13-14, BIR rec.)

On the bases of the aforesaid memorandum, the Acting Commissioner of Internal Revenue, on March 8, 1962, issued an assessment against petitioner Macairog de Guia for ₱14,220.11 computed as follows:

Total negotiated sales, 1957 to 1958	₱6,628,578.24	
2% commission thereon . .	132,571.56	
6% tax due on commission earned		₱7,954.29
50% surcharge for willful neglect to file monthly returns		3,977.25
25% surcharge for late payment		1,988.57
PTR, for 1957 and 1958 . .		300.00
T O T A L A M O U N T D U E . . .		₱14,220.11

(p. 35, BIR rec.)

The foreogoing assessment is now on appeal before this Court.

The evidence of the respondent consist of the testimony of Plaridel Mingoa, a supervising special investigator of the Bureau of Internal Revenue, and documents Exhibit 1, the witness' memorandum of November 16, 1959 for the Investigation Division of the same office; Exhibit 2, a letter dated February 5, 1960 requesting petitioner to appear before the Bureau of Internal Revenue and explain his tax liabilities; and Exhibit 3, an assessment for ₱14,220.11 against petitioner as a commercial broker dated March 8, 1962.

The testimony of Mingoa is to the effect that petitioner and some importers were investigated by the PCAPE for dollar salting; that in view thereof, Witness Mingoa was instructed to investigate the tax liabilities of petitioner; that from information that he had gathered, Mingoa found that petitioner presented himself to the Ace Drughouse, Inc., Francisco Herrera, Virginia Quiambao, Virginia Topacio, Remedios Little Market, Gonzales Trading, and Urbana Sebastian, all Filipino importers, as an agent of Pamela Williams and Company, Western Drugs, Simon Distributing Co., Wrentham Drug Distributing Company, and Sicking Distributing Company, which are foreign firms; that the records of the Central Bank showed that the aforesaid Filipino importers obtained letters of credit; that Mingoa later learned from the importers that said letters of credit were obtained through petitioner's intervention and were used to import drug from the United States; that the value of the imported drugs were subsequently discovered to be much less than the letters of credit sent abroad to cover the importations; that neither the letters of credit nor the importations were recorded in the books of the importers and petitioner for his part kept no books; that having no information as to the percentage of commission that petitioner received in the transactions in question, Mingoa canvassed the usual commission of indentors and he found that the ordinary rate was 2%, which he made the basis of the assessment now on appeal.

Petitioner for his part took the witness stand and presented records of the Court of First Instance of Manila showing that he has been charged for dollar salting with Virginia Topacio, Virginia Quiambao and other persons. On the stand he testified that he never had any relation with the foreign firms hereinabove mentioned but that he knew the Filipino importer mentioned further above. He went on to say that he came to know a certain Mr. Schlitz; that through him the importers hereinabove mentioned came to know Schlitz; that Schlitz used to give said importers money through petitioner, which money was used by the importers whenever they needed letters of credit for importing goods; that for every letter of credit obtained by the importers petitioner received ₱100.00 and all told he must have in this manner facilitated some 60 letters of credit; that the letters of credit involved in this case were not obtained by him but by the importers themselves.

There is hardly anything in the testimony of Mingoa or in the documentary evidence adduced by the respondent that can be considered reliable evidence to prove that petitioner acted as representative of the foreign firms hereinabove mentioned. On this point the said testimony is pure hearsay and so are the documents submitted by respondent. According to Mingoa he gathered the information in connection therewith from the record of the PCAPE and the importers; the importers told him that petitioner represented himself as an agent of said foreign companies. However, neither the records of the PCAPE nor the importers were made available to this Court. And what is significant is that Mingoa admits that there is nothing in the various letters of credit or the books of the importer to show that petitioner intervened in the transactions involved herein. Indeed, Mingoa further admits that the said transactions were not recorded in the books of the importers because they were anomalous transactions. There is really nothing to show petitioner's relation to the foreign firms aforesaid.

Equally significant is the admission of Mingoa that compared to the amount stated in the letters of credit involved in this case, the goods imported were negligible and the excess in dollars were kept abroad and petitioner and the importers were later charged in the courts of Manila for dollar salting. The discrepancy in the value of the letters of credit and the actual importation is best illustrated in Criminal Case No. 53442 of the Court of First Instance of Manila, entitled People of the Philippines v. Virginia Quiambao, Macairog de Guia and Natividad Cruz for falsification, one of the more or less 60 cases of dollar salting filed against petitioner, where the letter of credit was for $30,917.50 but the goods imported were found to be worth only $168.14 (Exh. G). The salting operation is best described in the following portion of the decision in that case:

> "On October 27, 1956 the accused Virginia Quiambao applied for a letter of credit for U. S. $30,917.50 for surgical Plain Gauze and surgical catguts described in the letter of application Exhibit B. Before this letter of credit could be opened, Virginia Quiambao conniving and conspiring with her co-accused Macairog de Guia and Natividad Cruz, submitted to the Central Bank thru its agent bank the Philippine Banking Corporation various commercial documents which are necessary to show that the importation is done in good faith and not one done as means of salting dollars in foreign countries.
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> "Among the documents submitted was a firm offer Exhibit F supplied by the accused Macairog de Guia. The letter of credit was actually opened and the U. S. $30,917.50 actually remitted to the U. S.
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> "The remission of this amount was financed by both Virginia Quiambao and Macairog de Guia. Just exactly how much came from Quiambao and how much came from de Guia can not be ascertained. The fact is both of them contributed to the payment of the amount needed to open the letter of credit and both of them paid for the liquidation of said letter of credit when the imported goods arrived.
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> "When the imported goods arrived in the Philippines, Virginia Quiambao was notified of their arrival and required by the Philippine Banking

Corporation to liquidate the letter of credit. The three accused went to said bank and paid the amount of the letter of credit. They received the shipping documents which were necessary in order that the goods which were imported under the name of Virginia Quiambao may be received by them.

"Actually, the accused did not have any intention of taking the goods imported by them. This is because the purchase by them of the U. S. dollars ostensibly to purchase hospital supplies was only a means of remitting dollars abroad and keeping it there, which at that time could not be done freely.

"An examination of the goods which arrived and were covered by and paid out of the letter of credit opened by the accused showed that the same consisted of absorbent wadding and low grade gauze valued at U. S. $158.14 thereby enabling the accused to salt away U. S. $30,749.36 to the prejudice of the Government of the Republic of the Philippines. Although they paid the Republic of the Philippines the equivalent of the U. S. $30,927.50 in Philippine currency, the amount paid was on the basis of Two (₱2.00) for every U. S. Dollar (U. S. $1.00)." (pp. 75-76 CTA rec.)

From the evidence of the parties it would appear that the letters of credit upon which the assessment in question is based were obtained not to cover an importation in good faith but to salt away dollars abroad and it would also seem that petitioner did not act as representative or agent of the foreign firms mentioned further above in the said importations.

Petitioner's admission that he acted as some sort of middleman between a certain Schlitz and the importers, that is, whenever a letter of credit was opened by the importers it was he who brought the money of Schlitz to the importers, is of no consequence. In the first place his testimony on this point does not deserve credence; even counsel for respondent questions its veracity. In the second place, even assuming arguendo the truth of said testimony, same is not an admission that petitioner acted as agent or representative of the foreign firms herein involved, a pretension which is on the other hand denied categorically by petitioner on the stand.

WHEREFORE, the decision of the Commissioner of Internal Revenue under review is hereby reversed, without pronouncement as to costs.

SO ORDERED.

Quezon City, July 15, 1967.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge