REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KANEMATSU-GOSHO, LTD. -
MANILA BRANCH,
Petitioner,

- versus - C.T.A. CASE NO. 4531

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 27 1995

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DECISION

This case involves an assessment of alleged deficiency gross receipts tax (broker's tax) in the amount of P423,327.50, inclusive of increments for the first, second and third quarters of fiscal year ending March 31, 1988.

Petitioner is a resident foreign corporation organized and existing under the laws of Japan and doing business in the Philippines through a Branch with office located at the 4th Floor, Don Chua Lamko Bldg., Alfaro corner Dela Costa Streets, Salcedo Village, Makati, Metro Manila. It is engaged in general indenting activities in the Philippines and acts as a liaison office for and in behalf of its Head Office, Kanematsu-Gosho, Japan, and its local customers in the Philippines.

On January 10, 1990, respondent issued a Pre-Assessment Notice against petitioner by virtue of the report of investigation conducted on its books under Letter of Authority No. 0015814 NA regarding its income and business tax liability for the fiscal year ending March 31, 1988. On January 26, 1990, petitioner through its auditors protested the pre-assessment notice and requested for its cancellation and withdrawal.

Finally, on February 14, 1990 respondent issued a Deficiency Gross Receipts Tax Assessment against petitioner for the first three quarters of fiscal year ending March 31, 1988, in the sum of P423,327.50, computed as follows:

Deficiency Gross Receipts Tax
FY Ending March 31, 1988

1st Quarter-April 1/87 to June 30/87	
Gross Receipts	P 910,372.04
7% Gross Receipts Tax Due Thereon	P 63,726.04
25% Surcharge	15,931.51
Total	P 79,657.55
Add: 56% interest from 7/21/87 to 2/16/87	44,608.23
Compromise penalty (per RMO 26-86)	6,000.00
Total Amount Due	P 130,265.78
2nd Quarter-July 1.87 to Sept. 30/87	
Gross Receipts	P1,580,451.37
7% Gross Receipts Tax Due Thereon	P 110,631.59
25% Surcharge	27,657.90
Total	P 138,289.49
Add: 46% interest from 10/21/87 to 2/16/90	63,613.17
Compromise penalty (per RMO 26-86)	8,000.00
Total Amount Due	P 209,902.66

3rd Quarter-October 1/87 to December 31/87		
Gross Receipts	P	625,402.79
7% Gross Receipts Tax Due Thereon	P	43,778.19
25% Surcharge		10,944.55
Total	P	54,722.74
Add: 41 % interest from 1/21/88 to 2/16/90		22,436.32
Compromise penalty (per RMO 26-86)		6,000.00
Total Amount Due	P	83,159.06
Total Amount Still Due & Collectible	P	423,327.50

On March 2, 1990, a protest was filed by petitioner reiterating the same basis for the cancellation of the assessment. By and large, petitioner alleged that it cannot be held liable for the broker's tax on the service fees received by it from its Head Office in Japan for the reason that the fees correspond merely to its liasing for and in behalf of its Head Office where it acted as an agent thereof in looking for customers in the Philippines. The customer-buyer in the Philippines transacts business with the Head Office-Seller in Japan. Petitioner as agent acts for and in behalf of its principal (Head Office-Japan) and as such it acted as one entity when it transacts with its Philippine customers. Thus, the Seller is the Head Office and the Buyers are its customers in the Philippines. What petitioner did was merely to liason for its Head Office. The income received by petitioner as a Branch is reported by it as income in its Income Tax Return.

On December 5, 1990, petitioner received the decision of respondent, dated July 11, 1990, denying the request for cancellation of the assessment and instead reiterated the collection of the alleged deficiency gross receipts tax of P423,327.50. Respondent's decision relied basically on the findings of its examiner that the gross receipts were derived from sales consummated between Philippine customers and sellers and manufacturers abroad other than Kanematsu-Gosho (Japan), contrary to the allegations of petitioner that the sales were directly made by Kanematsu-Gosho (Japan) to its Philippine customers by virtue of the liasing made by Kanematsu Gosho, Ltd. Manila Branch.

On January 3, 1991, petitioner filed a petition for review with this Court contesting the decision of respondent, dated July 11, 1990.

On February 26, 1991, respondent served a copy of the Warrants of Garnishment on Citibank and Philippine Commercial International Bank (PCIB), petitioner's depository banks. Subsequently, on March 1, 1991, petitioner received a copy of the Warrant of Distraint and/or Levy issued by respondent to enforce by summary remedy the collection of said tax. A surety bond was filed by petitioner to lift the warrants issued as well as to guarantee payment of the tax assessed. The Court granted petitioner's urgent motion for preliminary injunction by virtue of the surety bond filed and there being no objections on the part of respondent.

The issue that confronts us is not legal but factual. Whether or not the sales transactions were entered into by petitioner's Head Office in Japan as direct seller of the goods or merchandise. If so, then petitioner acting as an agent of the principal is not liable for the commercial broker's tax under Section 174 of the National Internal Revenue Code.

It is the contention of petitioner that the sales entered into was made directly by the Head Office and not by another seller or manufacturer. Petitioner presented various commercial sales invoices issued by Kanematsu-Gosho Ltd. - Tokyo, Japan (Head Office) to prove that indeed it is the owner and seller of the goods sold to various customers in the Philippines. (See Exhs. D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and its respective submarkings). To show that its Head Office is a resident foreign corporation authorized to engage in business in the Philippines as a general exporter and importer, petitioner presented the license issued by the Securities and Exchange Commission (Exh. A). Likewise, the Articles of Association (Exh. B) of its Head Office basically showed the nature of business it is engaged in, that is, among others, to export/import, sales/purchases of commodities and technical services (Exh. B-1); and manufacturing, processing, wholesaling, brokering, acting as agent and leasing of the commodities (Exh. B-2).

Section 157(t) of the 1987 National Internal Revenue Code defines a commercial broker 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 consignee of freight carried by vessels or other means of transportation. The term includes commission merchants."

A broker is generally defined as one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name, but in the name of those who employed him; he is strictly a middleman and for some purposes, the agent of both parties (Behn Meyer & Co., Ltd. vs. Nolting and Garcia, 35 Phil. 274). The broker, unlike the commission merchant, has no relation with the thing he sells or buys. He is merely an intermediary between the purchaser and the vendor. He acquires neither the possession nor the custody of the things sold. His only office is to bring together the parties to the transaction (Pacific Commercial Co. vs. Yatco, 68 Phil. 398). The chief feature which distinguishes a broker from other classess of agents is that it is the intermediary or middleman and, in effecting a sale or exchange of property, acts in a certain sense as the agent of both parties to the transaction. Another distinction is that the idea of exclusiveness enters into an employment agency, while in respect of a broker there is a holding out of oneself generally for employment in matter of trade, commerce and navigation and on this principle, a broker is distinguished from a clerk (12 C.J.S. pp. 8-9, citing cases, italics supplied)" [Kuenzle & Streiff, Inc. vs. Commissioner of Internal Revenue, 12 SCRA 300; Collector of Internal Revenue vs. Tan Eng Hong, 18 SCRA 431].

From the above-definition of a broker, it can be gleaned that there are three parties involved in a transaction - the buyer, seller, and broker, who brings the two together and in turn earns a commission when the sale is consummated. In this case, there are only two parties involved, the buyer (Philippine customers) and the seller (Kanematsu-Gosho, Ltd., Japan). Petitioner as a branch merely acted as an agent of the Head Office in promoting its sales, delivering the samples and the quotation to the possible buyers. The Head Office is the actual seller (shipper) of the goods as indicated in the commercial invoices presented in evidence by petitioner. The Head Office as a trading office buys the goods from manufacturers in Japan and then sells the same to local buyers in the Philippines. No third party is involved in the transactions entered into by the Head Office - seller and the buyers in the Philippines. Petitioner merely facilitates the sale of the goods in behalf of the Head Office in Japan. For the liasing services performed by petitioner, its Head Office remitted to petitioner-branch service charges which are reported in the books of petitioner as income and were properly reflected in its Income Tax Return. The Financial Statements of petitioner for the years ended March 31, 1988 and 1987 (Exh. AA) showed that these service charges are reflected in the Income Statements (Exhs. AA-1, AA-2 and AA-3) as Note No. 6, which reads as follows:

> "6. <u>SERVICE CHARGE AGREEMENT</u>
>
> The income of the Manila Branch is derived mainly from services it renders in connection with the purchases and sales of goods in behalf of its Head Office. Various service charge rates agreed upon are applied on the invoice value of the goods sold or purchased. Service charges are

> recognized as income by the Manila Branch when the services are rendered and copies of the related invoices are received from the Head Office.
>
> Receivables arising from this service charge agreement and other miscellaneous charges against Head Office are shown as "Inter-office current accounts" in the accompanying statements of assets and liabilities."

These service charges cover the operational expenses of the branch. Petitioner's witness testified that no other service charges were received by petitioner from other manufacturing entities in Japan except that coming from the Head Office.

Respondent failed to present any evidence to support the findings of its examiners that the receipts were derived from sales transactions abroad between Philippine customers and seller or manufacturers other than Kanematsu-Gosho, Ltd. - Japan. Respondent merely submitted this case for decision based on the pleadings and the records thereof.

From all the undisputed facts, no other conclusion can be reached except that petitioner merely acted as an agent of the Head Office. Hence, the service charges received by petitioner cannot be construed to mean brokerage fees or commissions subject to the 7% commercial broker's tax. Petitioner had overcome the burden of proof on the presumption of the correctness of the assessment issued by respondent, therefore, the assessments stands on shallow grounds and cannot hold water.

WHEREFORE, in view of the foregoing, the petition for review is found to be meritorious and the same is hereby **GRANTED.** Respondent's decision dated July 11, 1990 is reversed and set aside. Accordingly, the Deficiency Gross Receipts Tax Assessment issued against petitioner for the period April 1, 1987 to December 31, 1987, in the total amount of P423,327.50, is hereby cancelled and withdrawn for lack of legal and factual basis. Respondent is permanently enjoined from collecting said assessment.

No costs of suits.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Court of Tax Appeals
Presiding Judge