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Aug. 31, 1960

RATTAN ART & DECORATIONS,
INC.,
Petitioner,

- versus -   C.T.A. CASE NO. 567

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

The respondent assessed against the petitioner the sum of ₱77,087.28, as alleged deficiency sales tax, surcharge and penalty, itemized and computed as follows:

Deficiency sales tax, 1949	₱ 440.93
Deficiency sales tax, 1950	15,376.82
Deficiency sales tax, 1951	18,928.38
Deficiency sales tax, 1952	22,298.89
Total deficiency sales tax	₱ 57,045.02
25% surcharge thereon	14,261.26
Fixed tax, C-13, 1952	6.00
Fixed tax, C-13, 1953	75.00
Total taxes and surcharge due .	₱ 71,387.28
Penalty	5,700.00
TOTAL AMOUNT DUE	₱ 77,087.28

Not satisfied with the assessment, petitioner has appealed to this Court.

Petitioner is engaged in the manufacture and sale of articles made of rattan. Sales were made by petitioner locally and to foreign buyers. From 1949 to 1952, it filed sales tax returns and paid the corresponding sales tax due on the sales reported in its returns. However, upon investigation, it was disclosed that it did not include in its returns the sales to foreign buyers shipped abroad under terms F.O.B. at the port of Manila. It was mainly for this reason that the assessment referred to above was made against petitioner.

The issues raised in this appeal are (1) whether or not the sales to foreign buyers during the period in question are domestic sales subject to the sales tax; (2) assuming that said sales are taxable, whether or not the right of the Government to assess the tax on sales made from 1949 to the second quarter of 1950 has prescribed; and (3) the legality of the imposition of the alleged penalty in the sum of ₱5,700.00.

Under Section 186 of the National Internal Revenue Code, manufacturers (other than manufacturers of articles enumerated in Section 184 and 185) are subject to the sales tax of 7% of the gross selling price of the articles sold. The tax is imposed only on sales consummated in the Philippines. (Taligaman Lumber Co. v. Collector of Internal Revenue, C.T.A. No. 161, Jan. 31, 1959.) A sale is deemed made or consummated at the place where title to the article sold passes from the seller to the buyer. (The Shell Co. of the Phil. v. Municipality of Sipocot, G. R. No. L-12680, March 20, 1959.)

It appears that the articles sold by petitioner to foreign buyers were shipped abroad under terms F.O.B. Manila; that the expenses of packing and preparing the articles for shipment were charged to the buyers; that the freight charges were paid by the buyers at destination; that the shipments abroad were insured by the buyers; that in those cases were the shipments were insured by petitioner, the insurance premiums were charged to the buyers and the insurance policies were indorsed to the buyers; and that payments for said shipments were made through drafts or letters of credit drawn against local banks.

From the facts stated above, it is clear that title to the articles sold by petitioner to the foreign buyers was transferred to the latter from the moment they were placed on board the carrying vessels. The sales were, therefore, consummated in the Philippines and must be treated as domestic sales subject to the sales tax. (Misamis Lumber v. Collector, G. R. No. L-10131, Sept. 30, 1957; Western Mindanao Lumber v. Court of Tax Appeals, G. R. No. L-11710, June 30, 1958; Bislig Bay Lumber v. Collector, C.T.A. No. 155, Oct. 9, 1957; Taligaman Lumber Co. v. Collector, C.T.A. No. 161, Jan. 31, 1959.) The fact that the price of the articles were paid for in dollars or in any other foreign currency will not alter the result. Accordingly, we are of the opinion that petitioner is subject to the sales tax on its sales to the foreign buyers under the circumstances mentioned above.[1]

In connection with the second issue, it is contended on behalf of petitioner that, assuming that

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[1] Beginning June 20, 1953, however, shipments abroad by manufacturers or producers, irrespective of shipping arrangements affecting the place of transfer of title to the articles shipped, are exempt from sales tax by virtue of Rep. Act No. 893.

its sales to the foreign buyers are domestic sales and are subject to the sales tax, the right of the Government to assess the deficiency tax corresponding to the period from 1949 to the second quarter of 1950 has prescribed. On the other hand, respondent claims that no evidence was presented by petitioner as to the date when petitioner filed its returns so that the defense of prescription can not be invoked; that petitioner waived the statute of limitation provided in Sections 331 and 332 of the Revenue Code; and that assuming that the waiver is without effect as to the period already prescribed when the waiver was signed, the deficiency tax corresponding to the second quarter of 1950 was assessed within the period authorized by law.

Under Section 183-A of the Revenue Code, prior to its amendment by Rep. Act No. 1612, effective August 24, 1956, manufacturers subject to tax under Section 186 were required to file a return of their gross quarterly sales and to pay the tax due thereon within twenty days after the end of each calendar quarter.

It appears from the stipulation submitted by the parties dated July 28, 1960 that petitioner filed its quarterly returns for the year 1950 within the period prescribed by Section 183-A, that is, on or before April 20, 1950 with respect to petitioner's return for the first quarter of that year, and on or before July 20, 1950 as regards the return for the second quarter of the same year.

Section 331 of the Revenue Code provides that internal revenue taxes may be assessed within five years after the return was filed. For this purpose, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. Where no return was filed or if the return filed is false or fraudulent, the tax or deficiency tax may be assessed within ten years after the discovery of the omission or of the fraud, pursuant to Section 332.

In the instant case, it is admitted that petitioner filed its quarterly returns within the period prescribed by law. There is no claim or pretense that the returns were false or fraudulent. Therefore, the statute of limitation properly applicable is Section 331. (Central Azucarera de Tarlac v. Collector, G. R. Nos. L-11760 and L-11761, July 31, 1958.)

The evidence shows that the assessment was made on June 22, 1950, more than five years after the return was filed for the first quarter of 1950. Accordingly, the deficiency sales tax for the year 1949 and the first quarter of 1950 had already prescribed when the assessment was made on June 22, 1950. With respect to the deficiency sales tax for the second quarter of 1950, since the last day for filing the return was July 20, 1950, the five-year period within which to assess said deficiency tax had not yet terminated when the assessment was made.

But it is alleged that petitioner expressly waived the statute of limitation prescribed in Sections 331 and 332 on September 19, 1955. Section 332(b) provides:

> "(b) Where before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Collector of Internal Revenue and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon." (Underscoring ours.)

It will be observed that the period of limitation upon assessment may be suspended under Section 332 (b) if the agreement is made before the expiration of the period fixed in Section 331. In this case, the agreement was entered into between petitioner and the Commissioner of Internal Revenue on September 19, 1955, after the period for assessment of the deficiency sales for the year 1949 and first quarter of 1950 had already lapsed. The agreement is, therefore, ineffective as to such period. It has the effect of suspending the running of the period which had not yet expired on said date.

The last issue relates to the legality of the imposition of the alleged penalty in the sum of ₱5,700.00. This amount was sought to be collected from petitioner by way of compromise for alleged violations of certain penal provisions of the National Internal Revenue Code. Respondent now concedes that the imposition of said compromise penalty is unauthorized and illegal. (University of Sto. Tomas v. Collector of Internal Revenue, G. R. Nos. L-11274 and L-11280, November 28, 1958.)

FOR THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby modified and petitioner is ordered to pay to the Government the sum of ₱68,582.23, computed as follows:

Deficiency sales tax, 1950 --	₱13,573.71
Deficiency sales tax, 1951 --	18,928.38
Deficiency sales tax, 1952 --	22,298.89
Total ----------------------	₱54,800.98
25% surcharge --------------	13,700.25
Total deficiency tax & surcharge ----------------	₱68,501.23
Fixed tax, 1952 ------------	6.00
Fixed tax, 1953 ------------	75.00
Total amount due -----------	₱68,582.23

with costs against petitioner.

SO ORDERED.

Manila, August 31, 1960.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge