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Republic of the Philippines
COURT OF TAX APPEALS
Manila

AMERICAN BISCUIT CO., INC.,
Petitioner,

August 27, 1963

- versus - C.T.A. CASE NO. 444

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of the Collector (now Commissioner) of Internal Revenue ordering the American Biscuit Co., Inc. to pay the sum of ₱24,211.79 as deficiency percentage tax, 25% surcharge thereon, documentary stamp tax, importer's and manufacturer's fixed taxes (C-14) and compromise penalty.

Petitioner, American Biscuit Co., Inc., is a domestic corporation engaged in the manufacture of bubble gum and chewing gum. Sometime in 1953 respondent caused the investigation of petitioner's liability for business taxes, and as a consequence thereof, he determined a deficiency of ₱7,852.10 as percentage tax for the period from April 1, 1952 to March 31, 1953, 25% surcharge thereon and fixed taxes as manufacturer of bubble gum and chewing gum (Exh. F, BIR rec. pp. 10-11). Inasmuch as petitioner did not keep regular books of accounts, respondent based his deficiency assessment on figures furnished by the former's accountant. And the cost of raw materials used in the manufacture of petitioner's bubble gum and chewing gum during the period under review was computed by respondent on the basis of the ratio of raw materials and total sales appearing in petitioner's sales tax return for the second quarter of 1952, that is, 67% of the gross sales (Exhs. E & 5, BIR rec. pp. 2-3).

Subsequently, after a reinvestigation, respondent revised his first deficiency assessment by increasing the same to ₱28,290.03, including surcharge and compromise penalties (Exhs. N & 14, BIR rec. pp. 43-44). This revised assessment covered the period from May 15, 1952 to June 30, 1953. Petitioner, through the accounting firm Sycip, Gorres, Velayo & Co., contested this assessment, contending that it should be liable only for the payment of ₱12,609.10 as deficiency percentage tax and fixed tax, and ₱750.00 as documentary stamp tax. This contention is predicated on the theory that the raw materials used during the period in question should be 58 per cent of the gross sales or equal to the ratio of the cost of raw materials used and the total gross sales obtaining in 1954 when petitioner was managed and operated by Operators, Inc. (Exhs. Q & 17, BIR rec. pp. 53-54; Exh. R & 18, BIR rec. pp. 57 & 58). Respondent rejected petitioner's computation.

After further reinvestigation, respondent revised his former assessment, resulting in the reduction of the total amount demanded to ₱1,157.50

as documentary stamp tax and ₱23,454.19 as deficiency percentage and fixed taxes, computed as follows:

Sales, (May 15, 1952 to June 30, 1953) --------		₱453,201.25
Less: Sales returns & donations -	₱21,127.80	
Inventory of finished goods, at market value, 6-30-53, per auditor's report -----	1,778.50	22,906.30
Net Sales ------------------		₱430,294.95
Less: Cost of materials used ---------	171,563.38	
Deduct: Cost of returned sales & donations and ending inventory: 37.85% of ₱22,906.30	8,570.03	162,993.35
Sales subject to tax -------		₱267,301.60
7% tax due thereon ---------		₱ 18,711.11
Less: Tax paid O.R. 5228234 dated 7-18-52 ----------------		1,171.76
Deficiency ----------------		₱ 17,539.35
25% surcharge thereon ------		4,384.84
C-14 (Importer) 1951 ---------	10.00	
C-14 (Mfg.) 1952 & 1953 -------	20.00	30.00
Compromise, per letter of Deputy Collector dated October 29, 1953 ---------		1,500.00
TOTAL AMOUNT DUE -----------		₱ 23,454.19

(Exhs. MM & 39, BIR rec. p. 94)

In a letter dated January 4, 1957 (Exhs. TT & 52, BIR rec. p. 129), respondent reduced his assessment for documentary stamp tax to ₱757.60.

Being dissatisfied with the final assessment, petitioner filed the original petition for review on November 16, 1957 which was subsequently amended to include the allegation that respondent's right to assess and collect the taxes in question has already prescribed. Respondent, in his answer alleged, among others, that this Court has no jurisdiction to take cognizance of the petition for the reason that the same was not seasonably filed.

Having failed to press and discuss the issue of prescription in their memoranda submitted in support of their stands, we take it that the parties have abandoned said issue.

The main question at issue is whether or not respondent's determination of the cost of raw materials deductible from the total gross sales for the purpose of computing the percentage tax is correct.

Petitioner contends that respondent's computation of the cost of deductible raw materials is erroneous in that it comprehends only the raw materials purchased locally and does not include those which were imported. To support its stand, petitioner presented bills of lading, import licenses and letters of credit covering the payment for said imported raw materials. These imported raw materials are itemized as follows :

109 cartons, gum base that arrived on SS Pres. Grant, B/L Exhs. ZZZ ------------	₱ 5,527.76
211 cartons, gum base that arrived on SS Pres. Monroe B/L Exh. AAAA ------------	11,693.37
33 cartons, gum base that arrived on SS Pres. Arthur, B/L Exh. BBBB ------------	2,171.42
4,102,500 pieces, ABC "6 CT" gum cartons or ABC small boxes for containing candy-	

coated chewing gum pieces. They are packaged in 547 cases. L/C Exh. DDDD --------	33,490.99
Oil of peppermint, 1,500 lbs. net. Contained in 4 drums, L/C Exh. DDDD --------	25,727.42
Glucose or corn syrup, 100,000 lbs. contained in 146 drums, L/C No.43802 covered by Import License No. 12404 ----------------	39,575.66
Carnauba Wax. L/C Exh. DDDD Landed Cost: $256.00	

But petitioner did not take into account the cost of the carnauba wax in its computation of the deductible cost of raw materials because of its insignificant amount. On the other hand, respondent maintains that the cost of the above-enumerated imported raw materials has not been fully established and, therefore, the deduction of the same from the gross selling price of the finished articles should not be allowed.

The importation of these raw materials and their cost are evidenced by import licenses, letters of credit and bills of lading. Copies of the import licenses and letters of credit were identified by a responsible employee of the Philippine National Bank from where the same were obtained. The bills of lading were testified to and identified by a responsible employee of the American President Lines from where the bills of lading were taken and on whose boats the materials in question were loaded. In view of this evidence, we believe and so hold that the cost of the imported raw materials tabulated above should be deducted from the total gross sales of finished articles.

However, the cost of the imported gum base which petitioner admitted to have used (about 100 lbs.) for experimental purposes and left unused (600 lbs.) should be excluded from the deductible cost because the same did not form part of the manufactured bubble gum and chewing gum that were sold. The landed cost of 17,801 lbs. of gum base is ₱19,392.55. Therefore, the cost of 700 lbs. of gum base is 700/17,801 of ₱19,392.55 or ₱762.59. The difference of ₱19,392.55 and ₱762.59 which is ₱18,629.96 should be the amount deductible as cost of the gum base.

Similarly, the cost of raw materials that went into the manufacture of the bubble gum and chewing gum which were returned unsold; of those that were donated to the Philippine Armed Forces; and of those in the ending inventory should not be deducted from the gross sales for the reason that these articles were not used in the manufacture of articles which were subsequently sold. The amount not deductible on this account is equivalent to the ratio of the sum of ₱453,201.25 (total gross sales) and ₱288,987.41 (total cost of raw materials).

In fine, the amount subject to percentage tax should be computed as follows:

Sales (May 15, 1952
  to June 30, 1953) -------- ₱453,201.25
Less: Sales returns &
  donations --- ₱21,127.80
  Inventory of
  finished goods
  at market value

6-30-53, per auditor's report --------	1,778.50	22,906.30
Net sales ---------------		₱430,294.95
Less: Cost of Materials used:		
As per finding of respondent as to materials purchased locally --------	171,563.38	
Imported gum base --------	18,629.96	
Imported 4,102,500 pieces, ABC "6CT" gum cartons -	33,490.99	
Imported 1,500 lbs. oil peppermint --	25,727.42	
Imported 100,000 lbs. glucose or corn syrup ---------	39,575.66	
Total cost or raw materials	₱288,987.41	
Deduct: Cost of returned sales, donations and ending inventory: 63.76% of ₱22,906.30	14,605.06	274,382.35
Sales subject to tax ------		₱155,912.60

Respondent contends that the 2% import license fee which was included by petitioner in the landed cost of the imported raw materials should not be thus included as said fee is not embraced in the phrase "all similar charges" which should be considered in determining the landed cost of an imported article under section 183(b) of the Revenue Code. We believe that said 2% import license fee should be included because said fee constitutes a part of the landed cost in procuring the imported raw materials. Section 186 of the Code permits the deduction from the gross selling price of the "total cost" of the raw materials subject to tax under said section. The term "total cost", as applied to imported raw materials, means the aggregate amount that goes into the procurement of the raw materials which is the basis for the imposition of the advance sales tax.]

Petitioner also maintains that it should not be required to pay the surcharge of 25% for late payment because said penalty applies only in case the taxpayer fails to pay the sales tax due as indicated in his original return as filed on or before the date that the payment thereon becomes due, as provided by Sec. 183 of the Revenue Code. This contention is without merit. Section 183(a) requires the taxpayer to make a true and complete return of the amount of his gross monthly (formerly quarterly) sales and pay the tax due thereon. By this requirement, it is incumbent upon the taxpayer to determine his true and correct tax liability, and if, by error or intention, he underpays and delays the payment of the correct amount of tax, he is required to pay a surcharge of 25%. The imposition of said surcharge for late payment of the percentage taxes is mandatory, and neither the Commissioner nor the courts may waive the same.] (Lim Co Chui v. Posadas, 47 Phil. 460; Koppel v. Collector, 87 Phil. 348; Rep. v. Luzon Ind. Corp., 54 O. G. 4037.)

With respect to the compromise penalty of ₱1,500.00, petitioner cannot be compelled to pay the same in the absence of an agreement between the parties (Collector of Internal Revenue v. U.S.T., G. R. Nos. L-11274 & L-11280, November 28, 1958).

IN LINE WITH THE FOREGOING OPINION, there is due from petitioner the sum of ₱12,965.25, computed as follows:

Sales subject to tax ----		₱155,912.60	
7% percentage tax due thereon ---------------		10,913.88	
Less: Tax paid (OR 5228234 dated July 18, 1952) ----------------		1,171.76	
Deficiency percentage tax-		9,742.12	
25% surcharge thereon for late payment ----------		2,435.53	
Percentage tax and surcharge ----------------		₱ 12,177.65	
Add: Fixed taxes (admitted)			
Importer, 1951---	₱10.00		
Manufacturer, 1952 & 1953 -----	20.00	30.00	
Documentary stamp tax (admitted) -----------		757.60	787.60
Total taxes due ----------		₱ 12,965.25	

Accordingly, the decision of the Commissioner of Internal Revenue appealed from is hereby modified, and petitioner is hereby ordered to pay the sum of ₱12,965.25 as deficiency percentage tax and surcharge for the period from May 15, 1952 to June 30, 1953, importer's fixed tax for 1951, manufacturer's fixed tax for 1952 and 1953 and documentary stamp tax. With costs against petitioner.

SO ORDERED.

Manila, August 27, 1963.

ROMAN M. UMALI
Associate Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge