REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LIANGA BAY LOGGING
CO., INC.,
Petitioner,

versus CTA CASE NO. 1741

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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Oct 30/71

DECISION

This is an appeal from the decision of respondent Commissioner of Internal Revenue holding petitioner liable for the sum of ₱84,115.60, representing 25% surcharge for alleged failure to provide auxiliary invoices covering forest products cut and removed from its forest concession during the period from April, 1956 to December, 1961, plus the sum of ₱300 as "compromise penalty" for using commercial scale table in violation of Section 4(j) of Regulations No. 85 of the Department of Finance (Revised Internal Revenue Forest Products Regulations).

Petitioner is a domestic corporation which was issued an ordinary timber license in 1956 by the Bureau of Forestry, which timber license was converted into Timber License Agreement No. 49 on March

12, 1958. From April, 1956 to December, 1961, forest products were cut and removed by petitioner from its forest concession on which the sum of ₱336,462.40 was paid as forest charges. Respondent claims that removal of said forest products from the concession was not accompanied by auxiliary invoices; hence, petitioner is liable for the 25% surcharge under Section 267 of the National Internal Revenue Code amounting to ₱84,115.60. On the other hand, petitioner claims that as operator Class C Sawmill, it is not required to prepare and submit auxiliary invoices, pursuant to Section 28 of Regulations No. 85 of the Department of Finance. Having failed to secure a reconsideration of respondent's decision, petitioner has appealed.

Section 267 of the Revenue Code provides that if "forest products shall be removed without invoice . . . the charges shall be increased by twenty-five per centum." The law does not define or describe the term "invoice" the failure to issue which is penalized by a surcharge of 25% of the regular forest charges. The invoices and other documents which are necessary for the proper enforcement of the law on forest charges are described in Regulations No. 85 of the Department of Finance which was issued under the old Internal Revenue Law and continued in force under present law pending issuance of new regulations. It is unfortunate that up to this late date, no new regulations on forest charges have been promulgated despite the lapse of more than thirty years from the date the National Internal Revenue Code was enacted in 1939. We say it is unfortunate because some provisions of said Regulations are already obsolete giving rise to confusion in the administration and enforcement thereof.

Section 11 of Regulations No. 85 requires a forest concessionaire who is the holder of an ordinary license to list the forest products cut by him from his concession on blank forms of auxiliary invoices (B.I.R. Form No. 14.04 in the case of timber or B.I.R. Form No. 14.05 in the case of firewood or other minor forest products), which forms are furnished by deputy provincial treasurers where the forest products are cut. Upon accomplishment of the auxiliary invoices, the same are presented to the deputy provincial treasurer who collects the forest charges by issuing the corresponding official invoices. No forest product may be transported from the cutting area unless accompanied by an auxiliary invoice together with the corresponding official invoice.[1]

Separate provisions on invoicing and payment of forest charges are made in the case of owners or operators of sawmills who are forest concessionaires. Section 25 of the Regulations provides:

> SEC. 25. Classification of sawmills.—For the purpose of these regulations, sawmills are classified into Class A, B, C, and D, the definitions of which as well as the requirements to be observed by each of them as regards the payment of forest charges on timber sawn in and removed from them are set forth in the following sections.

Under the regulations, sawmills are classified into four (A, B, D, and D). Class A refers to those operated by holders of forestry licenses for the purpose of sawing timber cut under their licenses, irrespective of whether or not the sawmills are located within the licensed cutting area. These licensees are required to accomplish auxiliary invoices and to secure official invoices as provided in Section 11 of the Regulations in the same manner as ordinary licensees. (See Sec. 26, Regulations No. 85.)

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[1]Collection of forest charges were formerly made by issuance of official invoices to which were attached internal revenue stamps in the amount corresponding to the forest charges. At present, forest charges are collected by the issuance of official receipts without stamps. In other words, official invoices are no longer issued, but official receipts are issued by collection agents of the Bureau of Internal Revenue.

Class B sawmills are those operated by holders of forestry licenses, in or near the forest, without a forest officer being stationed therein, and for the operation of which a bond is filed with the Collector (now Commissioner) of Internal Revenue to guarantee the payment of all forest charges due from the concessionaires. Operators of Class B sawmills are required to keep and accomplish, in lieu of the auxiliary invoices, the Log Scale Record (B.I.R. Form No. 14.15); Daily Trimmer Tally (B.I.R. Form No. 14.11); Sawmill Invoice (B.I.R. Form No. 14.13); and Monthly Abstract of Sawmill Invoice (B.I.R. Form No. 14.14). Unlike in the case of ordinary licensees and operators of Class A sawmills who are required to accomplish auxiliary invoices and to pay forest charges for every shipment of forest products removed from the cutting area, Operators of Class B sawmills are required to accomplish the records mentioned above and to pay the forest charges due from them at the end of each month. What is required to be presented to the deputy provincial treasurer in effecting payment of forest charges is the Log Scale Record which is made the basis for the computation of the amount of forest charges. (See Sec. 27, Regs. No. 85.)

Class C sawmills are those operated by holders of forestry licenses, at which forest officers are permanently stationed for the purpose of scaling all logs felled, and for the operation of which a bond is filed with the Commissioner of Internal Revenue to guarantee payment of forest charges due from the concessionaires. As in the case of operators of Class B sawmills, operators of Class C sawmills are not required to accomplish auxiliary invoices, but in lieu thereof, the copy of the monthly scale report furnished operators of Class C sawmills by forest officers is the one which they are required to present to the deputy provincial treasurer for the purpose of paying the forest charges due from them. (See Sec. 28, Regs. No. 85.)

Class D sawmills are those operated by holders of forestry licenses who are permitted to measure their timber after being sawn. For this privilege, they are required to pay ₱10.00 for each 1,000 board feet of first and second group timber and ₱5.00 for other groups. For the purpose of paying the forest charges on forest products cut and removed from their concessions, operators of Class D sawmills are required to accomplish a monthly summary of lumber sawn (B.I.R. Form No. 14.12). They are also required to keep and use the records and forms prescribed for Class B or C sawmills according as to whether or not a forest officer is stationed at the mill. (See Sec. 29, Regs. No. 85.)

A careful examination of Regulations No. 85 implementing the law on forest charges will show that not all shipments of forest products require that they be accompanied by auxiliary invoices. These auxiliary invoices are required generally to be accomplished only by holders of ordinary forestry licenses and by operators of Class A sawmills. Operators of Class B, C and D sawmills are required to accomplish documents or records other than auxiliary invoices in consonance with the nature of their forestry operations, the primary purpose being to insure that forest products are cut only from licensed areas authorized by the Bureau of Forestry and that the correct amount of forest charges are paid by forestry concessionaires.

Section 267 of the Revenue Code imposes the penalty of 25% surcharge of the regular forest charges if forest products are removed from a forest concession "without invoice." Obviously, the word "invoice" mentioned in the law is not limited to auxiliary invoices. In fact, Section 41 of Regulations No. 85 has interpreted the word "invoice" to refer to "official invoice" or "commercial invoice." Section 41(f) of said Regulations reads, in part, as follows:

> (f) Forest products transported without official invoice, or commercial invoice, as the case requires, . . . are subject to an additional charge of fifty (now twenty-five) per centum of the regular forest charges, if any; . . .

Petitioner, operator of a Class C sawmill, has not been shown to have failed to keep or issue the documents required of it by Regulations No. 85. The presumption is that it has complied with the requirements regarding the keeping and use of the records and documents required of Class C sawmills, among which are the Daily Trimmer Tally and commercial invoices.[1] Consequently, we find no merit in the charge that petitioner is liable for the surcharge of 25% of the regular forest charges on forest products removed from its concession for transporting the same "without invoice" since said forest products were duly covered by commercial invoices. //

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[1]Sec. 28(d) of Regs. No. 85 reads: "(d) Operators of Class C sawmills shall keep and use the Daily Trimmer Tally (B.I.R. Form No. 14.11), and the commercial invoices and their register book in the manner provided for in paragraph 4 of section 27 and paragraph (c) of section 26, of these regulations. These forms shall be provided at the expense of the operators themselves." Obviously, the reference to paragraph (c) of Sec. 26 of the Regulations is with respect to the manner the commercial invoices and register book is to be kept and used.

The Director of Forestry, in a memorandum addressed to Forestry Regional Directors, District Foresters and Officers in Charge, dated September 6, 1956, also expressed the view that operators of Class C sawmills are not required to accomplish auxiliary invoices. The pertinent portions of said memorandum are quoted below:

> When the logs are scaled by the Bureau of Forestry in the cutting area of a Class C sawmill (a timber licensee with a sawmill) and the corresponding monthly scale reports are submitted for collection at the end of the month, under this condition and/or situation the logs in question may be transported without any corresponding auxiliary invoice. (Sec. 28 [b] of Regulations No. 85.)
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> Also, when the logs are being transported within the concession area, they need not be accompanied by an auxiliary invoice inasmuch as the Scaler of the Bureau of Forestry measures the logs at the point of discharge which is either at the sawmill or logyard. (See Exh. K, page 73, C.T.A. record.)

While the duties incident to measurement of forest products and the collection of forest charges are vested in the Bureau of Internal Revenue, the "duties incident to the measuring and invoicing of forest products" were, during the period in question, authorized to be performed by employees of the Bureau of Forestry. This is shown by the fact that under Regulations No. 85, the measurement of forest products of operators of sawmills was performed by forest officers who prepared the corresponding monthly scale reports.

In connection with the sum of ₱300 which is sought to be imposed upon petitioner as "compromise penalty" for violation of Section 4(j) of Regulations No. 85, it is enough to state that the imposition of the same without the conformity of the taxpayer is illegal and unauthorized. (Coll. v. U.S.T., 104 Phil. 1062; Phil. Int. Fair v. Coll., G.R. Nos. L-12928 & L-12932, March 31, 1962.)

IN VIEW OF THE FOREGOING, the decision appealed from is hereby reversed.

SO ORDERED.

Quezon City, October 30, 1971.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge