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MANUEL DY,
Petitioner,

August 29, 1957

- versus -

C.T.A.
CASE NO. 341

SILVERIO BLAQUERA,
Collector of Internal
Revenue,
Respondent.

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DECISION

This is an appeal from a decision of respondent Collector of Internal Revenue, dated November 15, 1956, issued thru the Cebu Regional Office, assessing and demanding payment from petitioner herein of the sum of ₱720.00 as specific tax on twenty (20) dozen packs of American Playing Cards plus the amount of ₱2,160.00 as penalty for possession thereof or a total of ₱2,880.00, pursuant to sections 147 and 174 of the National Internal Revenue Code.

From the record of the case and the evidence submitted, the undisputed facts of the case follow. In the morning of April 18, 1956, two Cebu City Customs Agents and a Secret Service man from the same city, accompanied by a guide or informer, found in the Good Year Trading, a store dealing in general merchandise owned by petitioner, Manuel Dy, and located at 643 Manalili Street, Cebu City, a box (carton) which was marked as Exhibit "1", containing twenty (20) dozen packs of American Playing Cards No. 888 marked as Exhibit "1-A" to "1-T". The aforementioned packs of playing cards did not have internal-revenue stamps attached thereto as required by law to indicate that the same were tax paid. Consequently, they were detained and seized pursuant to a warrant of seizure (p. 8, B.I.R. Record) and subsequently declared forfeited in favor of the Government of the Republic of the Philippines (p. 33, C.T.A. records).

Respondent then issued thru the Cebu Regional Office of the Bureau of Internal Revenue on November 15, 1956 an assessment and demanded from petitioner the amount of ₱720.00 as specific tax on the aforesaid twenty (20) dozen packs of playing cards pursuant to section 147 of the Tax Code, plus the sum of ₱2,160.00 as penalty for possession thereof imposed by section 174 pf the same Code, or a total of ₱2,880.00.

In view of respondent's denial of petitioner's request for reconsideration of the aforementioned assessment, petitioner filed the instant appeal on January 10, 1957.

There is no dispute that the playing cards in question were found in petitioner's store and that the specific tax thereon had not been paid. The correctness of the amount of specific tax and penalty sought to be collected has not been assailed by petitioner, and at the hearing of this case petitioner adduced only evidence aimed to free himself from liability for the specific tax and penalty sought to be collected from him by respondent. This evidence consisted of oral testimony, his (petitioner's) own and that of four other witnesses, to establish that the playing cards involved herein were not owned by him.

The gist of petitioner's explanation follows. A few days prior to April 18, 1956, a certain ship officer, who introduced himself as Pedro Reyes and casually known to petitioner as a customer of the Good Year Trading, left in the temporary custody of petitioner at said store, a carton box (Exhibit 1) which although closed was not properly sealed but merely tied with a rope. This box was left by the said Pedro Reyes on the cement floor of the store at the back of the "estante", not visible from outside the store although easily seen by anyone who may enter the store to make purchases. Petitioner, at the time, did not know the contents of the said box, Exhibit "1". In the morning of April 18, 1956, a stranger, alleging to be a companion of Pedro Reyes, wanted to get the box, but petitioner did not give it to him. Upon insistence of the stranger, petitioner allowed the former to open the box to examine its contents. Petitioner saw and for the first time knew that the box contained American Playing Cards without any internal-revenue stamp affixed thereto as required by law to indicate that the specific tax thereon had been paid. Petitioner then told the stranger to call the latter's companion, Pedro Reyes, to get the box away from the former's store. The stranger left and came back several minutes later accompanied by two Customs Agents and one Secret Service man of the Cebu City Police Department. The box was seized and subsequently forfeited in favor of the government. With the foregoing allegations petitioner sought to negate the presumption of his ownership of the playing cards which were found in his possession by Customs Agents.

The only issue involved is whether or not petitioner Manuel Dy is liable for the payment of specific tax, including the penalty, on the twenty (20) dozen packs of the American playing cards in question.

We do not believe the evidence adduced by petitioner satisfactorily rebuts the presumption of ownership created by his possession of the playing cards in question. The incredible explanation offered by petitioner, coupled with the vital flaws in his testimony and that of his corroborating witnesses, particularly, Faustino Abellar and Li Sion, constrains us to reject petitioner's claims.

We find it quite unnatural that an owner (Pedro Reyes in this case) of twenty (20) dozen packs of American Playing Cards, the specific tax on which has not been paid, would imprudently leave the same in the temporary though indefinite custody of a virtual stranger (Manuel Dy). But even granting that such an eventuality did happen, it would be straining the imagination beyond its limits to believe that the said playing cards packed in a mere carton box, which was thusly closed and merely tied with a rope that could be easily untied, would be carelessly left unattended for an indefinite period by its alleged owner on the cement floor of a store owned by a stranger. Moreover, the reaction of the petitioner at the moment he, allegedly, found out that the box contained "contraband" playing cards was contrary to the natural, instinctive reaction of a man not motivated with an animus possidenti or "intent to possess" with respect to the playing cards herein involved. If petitioner was not the owner of the aforesaid playing cards, he would have taken either one of two logical and natural courses of action which common sense and the instinct of self-preservation would have compelled him to pursue, that is, yield the box of "contraband" goods to the alleged companion of Pedro Reyes who was claiming the same, or, as a law-abiding and civic-spirited citizen, take it upon himself to notify the proper authorities of the presence of such "contraband" goods in his store. Petitioner, however, did neither despite the lapse of time from the discovery thereof and the seizure of the cards. The only logical explanation for this, is that, he must have been the owner of the aforementioned playing cards and his conduct was motivated or impelled by an "animo lucrandi."

With respect to the alleged owner Pedro Reyes, we are not convinced that the said person even exists. In his declarations before the Port Patrol Officers (Exhibit 2, p. 11 BIR rec.), petitioner said that the box, Exhibit 1, "was left by one of the officers of one of the boats", who told him (petitioner) that his name is Pedro Reyes and he is going to take that back after a few days." Realizing the incredibility of said statement, because one will not entrust to a virtual stranger a package as valuable as Exhibit 1, petitioner in open court changed this and declared that he has known Pedro Reyes for several months already and that the latter has had two or three transactions with petitioner's store. But considering that petitioner had been in business only a year when he testified in open court on April 22, 1957 (t.s.n. p. 2) we find it difficult to believe that he had known the alleged Pedro Reyes several months before April 18,1956 and that he has had several transactions with the latter.

We likewise can not give much weight to the corroboration of Faustino Abellar regarding the identity of Pedro Reyes and the latter's depositing the box, Exhibit "1", in the store of petitioner. How can we give credit to witness Abellar's testimony on this fact when by his own admissions he does not even remember important dates in his own life such as the approximate date of his marriage or the date of birth of any of his five children? (t.s.n. pp. 28-29.) No particular reason has been pointed out to show why witness Abellar could remember this particular common-place transaction. Moreover, witness Abellar, in his sworn statements before BIR Chief Investigator Marcelo Insilay of the Cebu Regional Office on September 21, 1956, positively declared that he was in the store of petitioner in the morning of April 18, 1956. In open court, however, this statement was reversed and he positively declared that he was not in the store of petitioner on that date. Again, before investigator Insilay, he said that the last time he saw Pedro Reyes in the store of petitioner, he did not know the latter deposited any box in said store, much less did he see Pedro Reyes carry a box. In open court, however, he made a complete turn about and declared that he saw Pedro Reyes carrying a box and depositing the same in petitioner's store sometime in April 1956. In the face of such material contradictions, how can we accept Abellar's statements as true?

It should likewise be noted that when witness Abellar was asked a simple question on how many occasions he had transacted business with Pedro Reyes, the former parroted a long and unresponsive answer (t.s.n. p. 24) indicating that his testimony must have been previously rehearsed and memorized.

In view of the foregoing circumstances we are of the opinion and so hold that petitioner Manuel Dy is the owner of the twenty (20) dozen packs of American playing cards which were found in his possession by Customs agents in the morning of April 18, 1956. Having thus found petitioner Manuel Dy to be the owner of the playing cards herein involved, the Court finds petitioner liable for the payment of specific taxes assessed against the playing cards in question.

With respect however to the imposition of the penalty in the amount of ₱2,160.00, the same being purely penal in nature, the Court is without jurisdiction to enforce the same (Ollada v. Court of Tax Appeals, G.R. No. L-8878, July 24, 1957). However, in our opinion, it appearing that petitioner has violated a penal provision of the Tax Code, specifically section 174 of the same, we are, pursuant to section 17 of Republic Act No. 1125, referring this matter to the City Fiscal of Cebu for investigation and the institution of criminal action if the facts and circumstances of the case may warrant.

WHEREFORE, the decision appealed from is modified in the sense that petitioner should be, as he is hereby, ordered to pay to the Collector of Internal Revenue or his authorized representative the sum of ₱720.00 as specific tax on the playing cards herein involved, with costs against petitioner.

Let a copy of this decision be furnished the City Fiscal of Cebu, for his information and guidance.

SO ORDERED.

Manila, Philippines, August 29, 1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

I concur in the result:

ROMAN M. UMALI
Associate Judge