REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

March 2, 1971

FELIPA NERI VDA. DE PELAEZ,
Petitioner,

versus

CTA CASE NO. 1477

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

Petitioner, Felipa Neri Vda. de Pelaez, in her capacity as administratrix of the estate of her late husband Gregorio Pelaez, Sr. appealed from the decision of respondent assessing him for sales tax amounting to ₱15,914.05, inclusive of 25% surcharge for late payment, plus compromise penalty of ₱2,560.00.

The late Gregorio Pelaez, Sr. was a forest concessionaire. On October 14, 1958, respondent assessed him as above-stated for sales tax on the logs sold by him covering the period from January 1, 1955 to October 31, 1957. On December 11, 1959, respondent issued a warrant of distraint and levy against the taxpayer to enforce the collection of his tax liability by the summary remedies prescribed by the Tax Code, but the said warrant was not executed. On October 10, 1963, respondent Commissioner of Internal Revenue filed with the Court of First Instance of Misamis Oriental a proof of claim seeking the recovery of the sales tax due from the estate of the late Gregorio Pelaez, Sr. A copy of the proof of claim was received by petitioner-administratrix on October 21, 1963.

On November 19, 1963, petitioner appealed the decision of respondent to this Court.

The issues to be resolved by this Court are as follows:

(1) Whether or not the sales of logs by the late forest concessionaire, Gregorio Pelaez, Sr., were original sales subject to sales tax under Sections 183 and 186 of the National Internal Revenue Code; and

(2) Whether or not the right of respondent to collect the sales tax and 25% surcharge incident to late payment has already prescribed.

First Issue -

Petitioner contends that respondent Commissioner of Internal Revenue cannot legally impose the sales tax in question, in line with the case of Collector of Internal Revenue v. Pio Barretto & Sons, Inc., G.R. No. L-11805, May 31, 1960 (108 Phil. 544), wherein it was held that forest charges are not taxes but the price paid for the sale by the Government of forest products. Petitioner argued, therefore, that inasmuch as the original sales of logs were made by the Government, the subsequent sales thereof by the decedent concessionaire were not original sales subject to the percentage tax imposed by Sections 183 and 186 of the Revenue Code.

The controversial question here at issue had been disposed of and finally decided by the Supreme Court in the subsequent cases of Cordero v. Conde, G.R. No. L-22369, October 15, 1966; Commissioner of Internal Revenue v. Dingalan Forest Product Corporation, G.R. No. L-24405, August 27, 1968; and Commissioner of Internal Revenue v. Guerrero, G.R. Nos. L-19074 and L-19089, Jan. 31, 1967. In reversing the initial ruling in the case of Collector of Internal Revenue v. Pio Barretto Sons case, supra, our Supreme Court ultimately decided that forest charges are internal revenue taxes and not the prices paid for the sales by the Government of forest products to the persons cutting and removing the same from public forests or forest reserves. To disentangle itself from the disastrous tax effect of the ruling in the case of Pio Barretto Sons, Inc., supra, we will quote the pertinent portions of the decision of our Supreme Court in the case of Antonio G. Guerrero, supra, wherein it was held as follows:

In other words, the National Internal Revenue Code makes a distinction between taxes, on the one hand, and fees or charges, on the other; but as used in Title IX of said Code, the term "tax" includes "any national internal revenue tax, fee or charge imposed by" the Code. And it is in this sense only that we sustained the view taken in the aforementioned concurring-dissenting opinion in Collector of Internal Revenue vs. Lacson (supra). Hence, in the Barretto case, it was held that the Government does not sell forest products, but merely collects charges on the privilege granted by it "for the exploitation of forest concessions, i.e., charges for the right to exercise the privilege granted by the Government to the licensee of cutting timber from a public forest or forest reserve". In line with this view, we stressed in Cordero vs. Conde, L-22369 (October 15, 1966), the declaration made in Cebu Portland Cement Co. vs. Commissioner of Internal Revenue, L-18649 (February 27, 1965), that a forest charge "is a tax not on the minerals, but upon the privilege of severing or extracting the same from the earth," although strictly a fee for something received is not a tax. As a consequence, the original sale, as contemplated in Section 189 of the Internal Revenue Code, is made by the concessionaire or whoever cuts or removes forest products from public forests or forest reserves—in the case at bar, Guerrero, who is accordingly, bound to pay said sum of ₱1,192.51.

The initial ruling of the Supreme Court in the case of Pio Barretto & Sons, Inc., supra, is now obsolete and without force and effect for sales tax purposes imposed by Sections 183 and 186 of the Revenue Code. Consequently, we hold that the logs produced and sold by the late forest concessionaire, Gregorio Pelaez, Sr., were original sales subject to the sales tax imposed by the Revenue Code.

Second Issue -

Petitioner's main defense is anchored on Section 331 of the Revenue Code by alleging that respondent's right to collect the sales tax and 25% surcharge for late payment has already prescribed because more than five years have already elapsed from the date of issuance of respondent's sales tax assessment on October 14, 1958 up to October 21, 1963, when petitioner furnished respondent with "Motion for Allowance of Claim and for an Order of Payment of Taxes" and "Proof of Claim" for the collection of the aforesaid sales tax liability of ₱15,914.05. It may be recalled that respondent Commissioner of Internal Revenue filed on October 10, 1963, in Special Proceedings No. 542 of the Court of First Instance of Misamis Oriental, entitled "Intestate Estate of the late Gregorio Pelaez, Sr.," the above-mentioned pleadings in order to effect the collection of the sales tax and surcharge in question. It was only on October 21, 1963, however, that petitioner received a copy each of the said pleadings.

Section 332(c) of the National Internal Revenue Code provides that respondent's action for collection of internal revenue tax should be enforced within five years only after assessment thereof. Petitioner, therefore, avers that after five years from the date of assessment, respondent's right to collect the sales tax of ₱15,914.05 from the estate of the deceased Gregorio Pelaez, Sr., is barred by the statute of limitation.

An examination of pages 62, 63 and 64 of the Bureau of Internal Revenue records shows that the "Motion for Allowance of Claim and for an Order of Payment of Taxes" and "Proof of Claim" were filed by respondent in Special Proceedings No. 542 of the Court of First Instance of Misamis Oriental on October 10, 1963. Counting from October 14, 1958, the date the tax assessment was issued, to October 10, 1963, the date the tax collection was begun with the filing in the CFI of Misamis Oriental of the claim of respondent, it is clear that the five-year period prescribed by Section 332(c) of the Revenue Code has not yet lapsed. The fact that petitioner was furnished with a copy each of respondent's pleadings on October 21, 1963 or 7 days beyond the five-year period of collection, did not make the action for collection instituted by respondent untimely and prescribed because under Article 1155 of the New Civil Code, the filing of the action in court interrupts or arrests the period of prescription. Said Article 1155 of the New Civil Code provides that a civil action is deemed legally commenced from the date of the filing in court of the claim with the clerk of Court of First Instance, without taking into account the issuance and service of the summons (Lichauco v. Soriano, 35 Phil. 203; and Sotelo v. Dizon, et al., 67 Phil. 537).

Petitioner argued that the date of the commencement of the action for collection of the sales tax and surcharge as shown by respondent's pleadings has no probative value because said pleadings were not formally presented or stipulated upon by the parties, much less were they identified for consideration of the Court. The undisputed fact reveals that respondent's pleadings were filed in the CFI of Misamis Oriental on October 10, 1963.

The present case was submitted for decision by the contending parties on the basis of their pleadings and the BIR records (see Minutes, Session of the Court, CTA records, p. 44). The contents of the court pleading found on pages 62, 63 and 64 of the BIR records were not controverted by the contending parties as well as their receipt by the CFI of Misamis Oriental on October 10, 1963. The stamp of receipt by the said court of the pleadings in question shows from the duplicate originals thereof that they were filed on October 10, 1963.

Respondent's special and affirmative defenses show that he filed on October 10, 1963, in Special Proceedings No. 542 of the CFI of Misamis Oriental, entitled "Intestate Estate of the late Gregorio Pelaez, Sr.", the aforementioned pleadings "in order to effect collection of the sales tax of ₱15,914.05." (Par. 16, Answer of respondent, p. 19, CTA records.) It is a settled doctrine that a party litigant who prays for judgment on the pleadings must be understood to have admitted the truth of all the material and relevant allegations of the opposing party in the absence of proof to the contrary. (Bauermann v. Casas, 10 Phil. 386, Evangelista v. De la Rosa, et al., 76 Phil. 115; Tanchico v. Ramos, 48 O.G. 654.) Consequently, we hold that, inasmuch as the collection of the tax and surcharge by court action was filed by respondent on October 10, 1963, his right to collect the aforesaid tax liability of petitioner has not prescribed under Section 332(c) of the Revenue Code.

As to the compromise penalty of ₱2,256.00, it is already well-settled that it is clearly illegal for respondent Commissioner of Internal Revenue to impose and collect said penalty without the concurrence of the taxpayer. If respondent believes that petitioner has incurred a criminal liability for violation of the National Internal Revenue Code, he is free to institute criminal proceedings against the taxpayer. (Collector of Internal Revenue v. University of Sto. Tomas, 104 Phil. 1062; Collector of Internal Revenue v. Bautista, 105 Phil. 1326; Phil. Int. Fair v. Collector of Internal Revenue, G.R. Nos. L-12928 & 12932, March 31, 1962.)

WHEREFORE, petitioner Felipa Neri Vda. de Pelaez, in her capacity as administratrix of the estate of the late Gregorio Pelaez, Sr., is hereby ordered to pay respondent or his duly authorized collection agent the amount of ₱15,914.05 representing sales tax and 25% surcharge on logs sold during the period from January 1, 1955 to October 31, 1957.

SO ORDERED.

Quezon City, March 2, 1971.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R. M. Umali
ROMAN M. UMALI
Presiding Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge

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