REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MISAMIS LUMBER CO., INC.,
Plaintiff,

- versus -

Dec. 1/55

MANILA CIVIL
CASE NO. 18424

THE COLLECTOR OF INTERNAL
REVENUE, Defendant.

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D E C I S I O N

Plaintiff is seeking recovery of P60,153.11, representing sales tax paid on its sales of logs to foreign buyers from the second quarter of 1951 to the second quarter of 1953. The case was first filed with the former Board of Tax Appeals sometime in 1952. As the legality of the constitution of the Board of Tax Appeals was raised, plaintiff filed another case with the Court of First Instance of Manila for the recovery of the same amount. The hearing of the case in the Court of First Instance was deferred pending final decision by the Supreme Court of the issue of the legality of Executive Order No. 401-A creating the Board of Tax Appeals.

The case before the Board of Tax Appeals was decided on November 24, 1952, against the plaintiff, which appealed the decision to the Supreme Court. The appeal was later dismissed by the Supreme Court in G. R. No. L-6385, March 30, 1954, without prejudice, following the decision in University of Sto. Tomas v. Board of Tax Appeals, G. R. No. L-5701, June 23, 1953. The case should have been set for hearing in the Court of First Instance but for the enactment of

Republic Act No. 1125, Section 22 of which requires all cases involving disputed assessments of internal revenue taxes pending in the Courts of First Instance on the date of the approval of said Act on June 16, 1954, to be remanded to the Court of Tax Appeals. Upon being remanded to this Court, the parties submitted a stipulation of facts, as follows:

> "1. That the plaintiff during the period from the 2nd quarter, 1951 to the 2nd quarter, 1953, shipped for export under terms F.O.B., Ozamis City Port on board foreign commercial vessels flying foreign flags at different times to foreign buyers in foreign countries, Philippine Mahogany -Logs and Lumber with a value of ₱1,263,215.31;
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> "2. That all the freight and insurance charges on the above-mentioned shipments were paid for by the foreign buyers;
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> "3. That the expenses incurred from the sawmills up to the time of loading of the lumber and logs on the said foreign vessels were borne by the Misamis Lumber Company;
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> "4. That payments for the aforesaid shipments were effected in Manila upon the presentation of the corresponding invoices, bills of lading and other commercial documents to the local banks where the buyers have opened Letters of Credit, after the various shipments have been made;
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> "5. That the defendant collected and the plaintiff paid the percentage tax of 5% under Section 186, Internal Revenue Code, amounting to ₱60,153.11 on the shipments made by the plaintiff mentioned in paragraph 1;
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> "6. That the plaintiff filed with the defendant requests for refund of the amount of taxes paid mentioned in paragraph 5 in letters dated May 19, 1952 and September 9, 1954;
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> "7. That the defendant has denied the requests of the plaintiff for refund in letters dated October 31, 1952 and January 7, 1955." (p. 6, Memorandum for the Plaintiff.)

In the case before the Board of Tax Appeals, (Misamis Lumber Co., Inc. v. Collector of Internal Revenue, B.T.A. Case No. 97, Nov. 24, 1952), Plaintiff raised two issues, to wit: (1) the logs sold to foreign buyers were delivered (F. O. B.) on board Japanese vessels, flying the Japanese flag, at the port of Ozamis City, hence the sales were consummated in Japanese territory and not subject to the taxing jurisdiction of the Philippines; and (2) the repeal of Section 187 of the National Internal Revenue Code, which imposed a percentage tax on consignments abroad, in order to encourage exports, was indicative of the intention of Congress to exempt from taxation all export sales.

On the first issue, the Board held -

> "In the case of Marsman Development Company vs. The Collector of Internal Revenue, B.T.A. Case No. 42, we have ruled that, in shipments based on F. O. B. terms, the right of ownership is transferred from the seller to the buyer once the goods are placed on board a vessel and we have concluded that the sale was a domestic sale, subject to the 5% sales tax. The above cited case is similar to this case at bar with the sole difference that in the former one, the question of the extra-territoriality of the foreign vessel was not raised. We do not assail the well-established doctrine of international law, that foreign vessels in transit are considered an extension of the territory of the country whose flag they fly. But it is also equally true that the jurisdiction of a state extends three nautical miles into the sea from the low water mark. A foreign merchant ship voluntarily entering the territorial limits of another country subjects itself to the jurisdiction of the latter. A foreign vessel and its occupants, upon entering port, become subject to the operation of the civil as well as criminal laws of the state. Therefore, when the Japanese vessels entered the port of Ozamis City, the owners, agents and occupants thereof have submitted themselves to the operation and enforcement of local laws. They could no longer assert

> their extra-territorial right in order to escape from the operation of local laws, one of which, in this particular case, is section 186 of the Tax Code. x x x"

The second issue in regard to the effect of the repeal of section 187 of the Revenue Code was resolved by the Board thus -

> " x x x The argument of the petitioner with respect to the intention of Congress to exempt exports from all kinds of taxes as indicated in the repeal of the provisions of section 187 of the Tax Code, in order to encourage export business, is indeed very strong but the petitioner cannot deny the fact that when it delivered the logs on board the vessels it was no longer the exporter. It will not be amiss to quote a portion of our decision in the case of Marsman Development Company, B.T.A. Case No. 42, thus:
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> > 'As we have said, we examined with all sympathy the arguments presented by the petitioner, supported by the Philippine Lumber Producers' Association, for we fully realize that illegal or excessive tax might hinder the expansion of the Philippine lumber industry, but the law seems to be clear in this particular case, and the remedy lies in securing a clearer enactment from Congress, exempting lumber even from local sales (tax) whenever it is intended for exportation, or modify the procedure of exporting the lumber.'
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> "If the petitioner continued to be the owner of the logs until their delivery in a Japanese territory beyond the three mile limit of Philippine jurisdiction, then the sale would be considered a foreign sale, not subject to sales tax, but under the conditions as stated herein we are constrained to state that the sale of the logs in question was a local sale subject to tax."

We find no justification to disagree with the opinion of the Board of Tax Appeals on both issues. In this case, however, counsel for plaintiff laid special emphasis on the intention of Congress in exempting consignments abroad from the consignment tax by repealing section 187 of the Revenue Code (Republic Act No. 41), and in exempting from the sales tax sales to foreign buyers irrespective of the shipping arrangements in regard to the place of delivery. (Section 186, as amended by Republic Act No. 894).

With respect to the effect of the repeal of section 187 of the Revenue Code upon the taxability of sales of articles to foreign buyers under terms "f.o.b." or "f.a.s.", we find the decision of the Supreme Court in A. Soriano y Cia v. Collector of Internal Revenue (G. R. No. L-5896, August 31, 1955, 51 O.G. No. 9, p. 4548) in point. Said the Supreme Court:

> "Finally, petitioner urges that the repeal of the consignment or 'export tax' under Sec. 187 of the Internal Revenue Code shows the intention of the legislature to exempt all exports from tax.
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> "It should not be forgotten that the consignment tax formerly imposed on exports by section 187 of the Tax Code (now repealed by R. A. 41) is different from the sales tax imposed by Sec. 186, which has not been repealed. The distinction between the two kinds of tax was pointed out by this Court in the case of Vegetable Oil Corp. vs. Trinidad, 45 Phil., 834-835, where we held:
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> > 'That the consignment tax is not a sales tax is, however, too obvious for argument; the fact that it is provided for in the same section as the sales tax does not necessarily make it so. There is all the difference in the world between a consignment and a sale. As stated by counsel for the appellee, the tax on consignments is a privilege tax pure and simple; it is a tax on the business of consigning commodities abroad from these islands. x x x If the tax were one on sales we would readily agree that the sales, in order to be taxable in the Philippines must be consummated there.'

"When the above case was decided, the sales tax and the consignment tax were both provided for in section 1459 of the administrative Code. Later, obviously to avoid confusion, the legislature separated the two taxes, the sales tax having been provided under sections 184,185 and 186 of the Internal Revenue Code, while the consignment tax was placed under Sec. 187. The latter section was subsequently repealed by Republic Act No. 41, so that the consignment tax on exports no longer exists, while the sales tax remains.

"Petitioner contends that to tax one who sells goods intended for export would be to nullify the legislative intent behind the repeal of the tax on consignments abroad, which is to encourage exports. The argument is fallacious. The law subjects to the payment of the sales tax not the buyer who intends to export what he buys, but the seller, because such sale is domestic and therefore liable for the payment of sales tax in this country.

> "Domestic and foreign sale distinguished.— The sales tax liability of a person consigning his timber abroad depends upon where the title to the timber consigned passes from the seller to the buyer. If the title to the timber consigned abroad passes to the buyer within the jurisdiction of the Philippines, the transaction is domestic and is subject to the sales tax; otherwise, the transaction will be considered a foreign sale and is exempt from the sales tax prescribed in section 186 of the tax Code.' (Formilleza, Commentaries on the N. I. R. C., Vol. II, pp. 729-730.)" (51 O.G. at pp. 4553-4554.)

But counsel for plaintiff maintains that the doctrine laid down in the Soriano case is not applicable to this case as the articles involved in the former were surplus equipment while the articles involved in this case were logs and lumber. It is enough to say in this connection that the law makes no distinction between surplus articles and logs and lumber. The law is the same as regards all articles taxable under Sections 184-

tinction, courts are not authorized to make any.

It is argued that Republic Act No. 894, effective June 20, 1953, which amended Section 186 of the Revenue Code providing that "with respect to goods or products shipped or exported abroad, no percentage tax shall be levied thereon irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods or products abroad" is a declaratory statute. The purpose of Congress, it is alleged, in the enactment of Republic Act No. 894 is to do away with "this anomalous interpretation of the law" in which the Bureau of Internal Revenue made a distinction between sales to foreign buyers under terms "f.o.b." (which, before the amendment, were held taxable) and sales under terms "c.i.f." (which were exempt from tax).

That the explanatory note accompanying the bill which later became Republic Act No. 894 expressed an opinion contrary to the interpretation given by the Bureau of Internal Revenue is no indication that the amendatory Act is declaratory in nature. The law imposing a percentage tax on sales of articles was formerly embodied in Section 1459 of the Revised Administrative Code. Later, Congress classified goods, wares or merchandise into three categories and imposed different rates of sales tax. The law imposing sales tax is now embodied in Sections 184, 185 and 186 of the Revenue Code. But the basis of the tax and the essential requisites for the taxability of sales of articles have remained the same. It is to be noted that the

Supreme Court had occasion to apply Section 1459 of the Revised Administrative Code on sales of articles consummated in the Philippines and therefore subject to the sales tax. (See Vegetable Oil Corp. v. Trinidad, 45 Phil. 834-835, cited in A. Soriano y Cia v. Collector, supra.) The interpretation given to Sections 184-186 by the Bureau of Internal Revenue merely follows the opinion of the Supreme Court. It is well settled that where a statute has received judicial construction, any interpretation of the law by Congress is not binding on the courts.

> "'The rule is recognized elsewhere that the legislature cannot pass any declaratory act or act declaratory of what the law was before its passage, so as to give it any binding weight with the courts. A legislative definition of a word as used in a statute is not conclusive of its meaning as used elsewhere; otherwise, the legislature would be assuming a judicial function in defining a term.' (11 Am. Jur., 914, underscoring supplied.)" (Quoted in Pastor M. Endencia and Fernando Jugo, G. R. Nos. L-6355 and L-6356, August 31,1953.)

It follows that Republic Act No. 894 amending Section 186 of the Revenue Code, exempting from tax sales of articles to foreign buyers, irrespective of the shipping arrangement for the delivery and exportation of the articles sold, can not be held to apply retroactively. Only acts done or transactions had on and after the effectivity of said Act on June 20, 1953 may be given the benefit of the exemption. Also noteworthy is the fact that although the law imposing sales tax is embodied in three separate and independent sections (Sections 184, 185 and 186 of the Revenue Code), only Section 186 was amended by Republic Act No. 894. Accordingly, only sales to foreign buyers of articles classified under Section 186 may be exempted from the sales tax, while similar sales of articles classified under Sections 184 and 185 continue to be governed by the rules applicable to sales effected under "f.o.b." and "c.i.f." terms. We can not, therefore, view Republic Act No. 894 other than as an Act intended to exempt from taxation a special class of transactions under Section 186 of the Revenue Code which is designed to operate prospectively. It has absolutely no application to transactions effected before its enactment, as in the case of the sales of logs and lumber involved in the instant case.

IN VIEW OF THE FOREGOING, we are of the opinion that the sum of ₱60,153.11 was paid in accordance with law, and the claim for refund thereof must be, as it is hereby, denied with costs against plaintiff.

SO ORDERED.

Manila, Philippines, December 1, 1955.

ROMAN M. UMALI
Associate Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Presiding Judge MARIANO NABLE did not take part.

169 affd L-10131 = 9/30/53