REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EMBROIDERY AND GARMENTS INDUSTRIES, (PHIL.) INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 2334

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

Appealed by petitioner, Embroidery and Garments Industries (Phil.), Inc. is the final decision of respondent, Commissioner of Internal Revenue, holding petitioner liable for deficiency income and advance sales taxes for the years 1959 to 1962 in the amounts of P2,756,241.68 and P3,500,798.47, respectively, inclusive of surcharges and interests.

Petitioner is a corporation organized in accordance with Philippine laws, duly licensed and authorized under Republic Act No. 3137, otherwise known as the Embroidery Law, by the Embroidery and Apparel Control and Inspection Board to import textile fabrics and clothing materials tax-free from abroad and manufacture these into finished and embroidered goods which are then re-exported to the foreign suppliers and/or buyers in accordance with the agreements entered into by the parties.

Acting on the sworn report of an informer dated September 10, 1964 *(pp. 10-29, Folder No. 50, BIR records)*, agents of the then Anti-Technical Smuggling Unit of the Bureau of Internal Revenue (ATSU for short), with search warrants obtained from the Courts of First Instance of Manila and Bulacan, raided and seized business records and documents from petitioner's offices in Manila and Marulas, Valenzuela, Bulacan on September 22, 1964 on the basis of which, respondent conducted an investigation of petitioner's business operations. *(ATSU Report of Investigation, p. 20, Folder No. 78, BIR records.)*

As a consequence thereof, respondent assessed petitioner in a letter dated January 4, 1966, the sum of P436,846.44 representing advance sales tax for 1959 to 1961 inclusive of 75% surcharge and penalty and in a letter dated March 23, 1966 the sum of P4,799,641.95 as deficiency income tax for 1960 and 1961, inclusive of 50% surcharge and 1/2% monthly interest. *(par. 7, Petition for Review; Admitted par. 6 Answer.)*

Petitioner protested said assessments and requested for the reinvestigation thereof which was granted by respondent. The means employed by respondent to reinvestigate the tax case was to recompute the taxes due from the Company on the basis of the evidence seized by the ATSU in the raid it conducted on petitioner's business establishment. *(Examiners' Memorandum, p. 96, Folder No. 76, BIR records.)* As a result of the reinvestigation, revised assessment notices were issued by respondent to petitioner on December 9, 1970 requiring the payment of the sum of P2,756,241.68 as deficiency income tax for 1959 to 1962 inclusive of 50% surcharge and 1/2% monthly interest and on December 22, 1970 demanding the payment of the total amount of P3,500,798.47 as advance sales tax and 75% surcharge corresponding to the same years. *(Exh. 3, pp. 228-229; Exh. 2, pp. 225-226, Folder No. 76, BIR records.)*

On January 7, 1971, petitioner filed with respondent a letter-protest *(Exh. 4, p. 244, Folder No. 76, BIR records)* disputing the revised assessments and requesting that further investigation of the cases be conducted which protest was denied by respondent in a letter bearing the same date. *(Exh. 5, p. 245, Folder No. 76, BIR records.)*

In a letter dated January 20, 1971, petitioner requested for reconsideration of respondent's denial and further reinvestigation of the revised assessments *(Exh. 6, p. 257-258, Folder No. 76, BIR records)* which was granted by respondent on January 29, 1971 upon execution by petitioner of a waiver of the statute of limitations of the National Internal Revenue Code. *(Exh. 7, pp. 262-263, Folder No. 76, BIR records.)* The docket of the case was referred to the Regional Director of Revenue Region No. 5 who designated a committee to reinvestigate the case. The said committee in its report dated June 1, 1971 recommended that the case be referred to the Legal Department for further evaluation and final legal disposition. *(Exh. R, pp. 293-308, Folder No. 76, BIR records.)*

Meanwhile, warrants of distraint and levy were issued against petitioner on January 7, 1971 to enforce the summary collection of the advance sales tax in the amount of P3,500,798.47. *(pp. 238-239, Folder No. 76, BIR records.)* And on June 17, 1971, respondent issued Notices of Seizure and Sale of petitioner's real property located at Marulas, Valenzuela, Bulacan covered by TCT No. 10775 *(pp. 346-347, Folder No. 76, BIR records)*, which was subsequently put up for sale at public auction. However, for lack of bidders, it was forfeited in favor of the government. *(pp. 351-352, Folder No. 76, BIR records.)* But since the forfeited property was the subject of a first mortgage with the Government Service Insurance System (GSIS) on December 17, 1963 for a loan of P358,000.00, its title could not be transferred to the Republic of the Philippines. For failure of petitioner to pay its indebtedness which had accumulated to P751,582.00, the GSIS foreclosed the mortgage on March 15, 1974. Thereafter, the GSIS sold the said property at a public auction to Solid Industries Inc., the highest bidder, for the amount of P752,000.00. *(Respondent's memorandum, p. 249, CTA records.)*

In his final decision dated September 14, 1971, respondent denied petitioner's protest. *(Exh. 8, p. 359, Folder No. 76, BIR records.)* Hence the present recourse.

<u>Issues</u>

1. Whether or not petitioner is liable for deficiency income and advance sales taxes for 1959, 1960, 1961, and 1962 in the amounts of P2,756,241.68 and P3,500,798.47 respectively;

2. Whether or not the imposition of the 50% surcharge for fraud is legal and justified.

The record shows that the original tax assessment arose from the sworn report of an informer, Alfredo Perez, denouncing petitioner for alleged tax evasion. However, in the reinvestigation of this case, the disputed deficiency income tax and advance sales tax assessments were mainly based by respondent's examiners of the Audit Division and Fraud Investigation Division on the sworn statement of Felix Gareza, a friend of the informer and former General Manager of petitioner, whose information given to the informer actually led to the raid on the business establishment of petitioner by the ATSU and the seizure of its business records and other documents among which were 1,118 import invoices which constitute the evidence in this case.

In his declaration, Gareza stated that the dollar quotas for the years 1959 to 1962 alloted by the Central Bank to petitioner as embroidery contractor under Republic Act No. 3137 were sold to local Chinese textile merchants at an overprice or premium of 80% for suiting materials and 70% to 75% for women's clothing materials based on the invoice value in dollars. And that the Chinese buyers when placing their orders in the name of petitioner through the local indent agent in Manila, procured the dollars with which to pay the suppliers abroad. As soon as the materials thus imported are released from the customs warehouse, they are delivered to the said Chinese buyers who also pay the brokerage and other charges. Locally purchased materials are then processed in the factory into finished goods and these are the ones exported to the supplier who is only a front for the purpose of complying with the Embroidery Law. *(See Exh. 10, Sworn Statement of Felix Gareza, November 21, 1967, Answers No. 49-53, 74, 84-86, 93, 98-104, 109-111, pp. 51-66, Folder No. 77, BIR records; Exh. 1, Examiners' memorandum, pp. 92-96, Folder No. 76, BIR records.)*

Gareza further alleged in his sworn statement that the 1,118 invoices which the ATSU team took into custody when it raided petitioner's premises in 1965, had been tampered with by petitioner by reducing the quantities in order to make it easier to tally with the reduced quantities in the export invoices and also to reduce the bond requirements. *(Exh. 10, Answers, 16-43 & 54, pp. 67-72 & 64 supra.)* In support thereof, he pointed out the differences between the twelve (12) "genuine" invoices *(Folders No. 64-75, BIR records)* which he had earlier surrendered to the said ATSU team, and the corresponding "faked" invoices from the 1,118 invoices to show that the latter invoices have reduced amounts in dollar values and reduced quantities in yardage of the textile importations, *(Exh. 10, Answers 112-123, pp. 48-51, supra.)* Gareza also identified 16 "blacked out" importations in 1960 *(Folders No. 1-14, BIR records)* the documents of which he had furnished the informer who turned them over to the ATSU team, so-called because they were suppressed by petitioner from its official logbook and the records of the Bureau of Customs to eliminate from these records the big importations. *(Exh. 10, Answers 161-165, pp. 41-42, supra.)*

Relying heavily on the sworn statement of Gareza and using as basis the abovementioned 1,118 invoices and the 16 "blacked out" import entries, respondent's examiners computed the overprice on the dollar values of the textile importation of petitioner for the years 1959 to 1962, arriving at a total undeclared income of P5,564,305.74 as follows: *(Exh. 1, p. 93, Folder No. 76, BIR records)*

RE: ORDINARY CLOTHING MATERIALS

Year	Invoice Value (In U.S. Dollars)	70% Premium (In U.S. Dollars)	70% Premium (In Phil. Pesos) (At $1.00=P2.00)
1959	$ 131,071.12	$ 91,749.78	P 183,499.56
1960	1,481,094.57	1,036,766.19	2,073,532.38
1961	1,283,611.73	898,528.21	1,797,056.42
1962	346,540:04	242,578.02	485,156.04

RE: SUITING MATERIALS

Year	Invoice Value (In U.S. Dollars)	80% Premium (In U.S. Dollars)	80% Premium (In Phil. Pesos)
1959	$ ————	$ ————	P ————
1960	149,229.53	119,383.62	238,767.24
1961	122,659.60	98,127.52	196,255.04
1962	368,774.42	295,019.63	590,039.06

RESUME

Year	70% Premium	80% Premium	Total Undeclared Income
1959	P 183,499.56	P ————	P 183,499.56
1960	2,073,532.38	238,767.24	2,312,299.62
1961	1,797,056.42	196,255.04	1,993,311.46
1962	485,156.04	590,039.06	1,075,195.10
Totals	P 4,539,244.40	P 1,025,061.34	P 5,564,305.74

Adding this undeclared income of P5,564,305.74 to the net income per return for the years in question, the disputed deficiency income tax assessment of P2,756,241.68 was determined by the examiners, as follows: *(Exh. 3, pp. 228-229, Folder No. 76, BIR records)*

1 9 5 9

Net income per return	P 7,331.07
Add: Undeclared income from sale of dollar quota rights under the Embroidery Law (R.A. No. 3137).	P 183,499.56
Net income per investigation	P 190,830.63
Income tax due thereon	P 49,255.00
Less: Tax already paid	P 1,617.00
Balance	P 47,638.00
Add: 50% surcharge	P 23,819.00
1/2% mo. int. fr. 4-16-60 to 4-16-63	P 8,574.84
TOTAL AMOUNT DUE AND COLLECTIBLE ..	P 80,031.84

1 9 6 0

Net income per return	P 1,831.51
Add: Undeclared income from sale of dollar quota rights under the Embroidery Law (R.A. No. 3137).	P 2,312,299.62
Net income per investigation	P 2,314,131.13
Income tax due thereon	P 686,239.00
Less: Tax already paid	P 402.93
Balance	P 685,836.07
Add: 50% surcharge	P 342,918.00
1/2% mo. int. fr. 4-16-61 to 4-16-64	P 123,450.49
TOTAL AMOUNT DUE AND COLLECTIBLE ..	P 1,152,204.56

1 9 6 1

Net income per return	P 8,203.74
Add: Undeclared income from sale of dollar quota rights under the Embroidery Law (R.A. No. 3137).	P 1,993,311.46
Net income per investigation	P 2,001,515.20
Income tax due thereon	P 592,455.00
Less: Tax already paid	P 1,805.00
Balance	P 590,650.00
Add: 50% surcharge	P 295,325.00
1/2% mo. int. fr. 4-16-62 to 4-16-65	P 106,317.00
TOTAL AMOUNT DUE AND COLLECTIBLE ..	P 992,292.00

<u>1 9 6 2</u>

Net income per return	P	24,215.35
Add: Undeclared income from sale of dollar quota rights under the Embroidery Law (R.A. No. 3137).	P	1,075,195.10
Net income per investigation	P	1,099,410.45
Income tax due thereon	P	321,823.00
Less: Tax already paid	P	5,327.00
Balance	P	316,496.00
Add: 50% surcharge	P	158,248.00
1/2% mo. int. fr. 4-16-63 to 4-16-66	P	56,969.28
TOTAL AMOUNT DUE AND COLLECTIBLE ..	P	531,713.28

As to the advance sales tax of P3,500,798.47, it was assessed against petitioner on the theory that since petitioner sold to textile dealers its dollars quota rights for importations enjoying tax-free privileges, it should be made to shoulder the advance sales taxes due on all this importations. Thus, respondent's examiners computed the 7% and 30% advance sales taxes on the importations as follows: *(Exh. 2, p. 226, Folder No. 76, BIR records)*

<u>7% Advance Sales Tax</u>	<u>1959</u>	<u>1960</u>	<u>1961</u>	<u>1962</u>
Total Landed Cost	P 412,820.49	P5,572,724.24	P9,043,777.39	P4,986,371.50
Plus 25% mark-up	103,205.12	1,393,181.06	2,260,944.35	1,246,592.87
Taxable Value	P 516,025.61	P6,965,905.30	P1,304,721.74	P6,232,964.37
7% Advance Sales Tax due thereon	P 36,121.79	P 487,613.37	P 791,330.52	P 436,307.50
Add: 50% surcharge for willful neglect	P 18,060.40	P 243,806.68	P [illegible]	P [illegible]
25% surcharge for late payment	9,030.20	121,903.34	[illegible]	P [illegible]

<u>30% Advance Sales Tax</u>	<u>1959</u>	<u>1960</u>	<u>1961</u>	<u>1962</u>
Total Landed Cost	P None	P 84,849.49	P 218,979.45	P 249,690.00
Plus 50% mark-up	-	42,424.75	109,489.73	124,845.00
Taxable Value	-	P 127,274.24	P 328,469.18	P 374,535.00

30% Advance Sales Tax due thereon	-	P 38,182.27	P 98,540.75	P 112,360.50
Add: 50% surcharge for willful neglect	-	19,091.13	49,270.38	56,180.25
25% surcharge for late payment		9,545.57	24,635.19	28,090.12
Total Amount Due	None	P 66,818.97	P 172,446.32	P 196,630.87

GRAND TOTAL OF AMOUNT DUE AND COLLECTIBLE P3,500,7[illegible].47

Petitioner vehemently denies having sold to textile dealers its allocated dollar quotas for the 1,118 importations and the 16 allegedly "blacked out" ones, maintaining that all these importations were processed and re-exported to their suppliers in accordance with the Embroidery Law. As proof, petitioner adduced the following documentary evidence to account for these importations in question: *(p.p. 64-69, CTA records)*

a) Re: 16 "blacked out" importations

1. Storekeeper's bonded warehouse ledger entries showing the accounting and clearance by the Bureau of Customs of the 16 import entries *Exhs. S, S-1 to S-15, Folder No. 58, BIR records.*

2. Requisition and withdrawal certificates of petitioner to account for the existence of the 16 import entries *Exhs. T-1 to T-61, Folder No. 53, BIR records.*

3. Export documents, consisting of invoices, export entries, certificates of identification and examination and bills of lading showing the re-exportation of items covered by the 16 import entries *Exh. X-1 to X-45, Folder No. 59, BIR records.*

4. Additional export documents likewise showing re-exportation of items covered by the 16 import entries *Exhs. W-1 to W-4, Folder No. 54, BIR records.*

5. Letters of cancellation of warehousing bonds by the Chief, Law Division, Bureau of Customs, issued upon recommendation of the Appraiser's Division showing the re-exportation of the articles covered by the 16 import entries *Exhs. V-1 to V-12, Y-1 to Y-5, Folder No. 52 & 60, BIR records.*

b. Re: 1,118 importations

1. Letters of cancellation of warehousing bonds by the Chief, Law Division, Bureau of Customs, issued upon recommendation of the Appraiser's Division showing the re-exportation of the articles covered by the 1,118 import entries *Exhs. Z-1 to Z-93, Folder No. 61, BIR records.*

2. Worksheets of petitioner showing summary of the 1,118 import entries for 1959 to 1962, *i.e.*, Import entry nos., yardage imported, export nos., export entry nos., yardage exported and date bond was cancelled, *Folder No. 62, BIR records.*

3. Customs bond clerk reports for cancellation of bonds against export documents, *Folder No. 63, BIR records.*

It is argued that due to the failure of respondent to present the originals of the allegedly "genuine" import documents submitted by Gareza, petitioner could not verify their authenticity in order to rebut the accusation that it faked its invoices to reduce its importations, while the above evidence presented by petitioner shows that the allegedly fake documents related to the 1,118 importations in question are instead the true and genuine documents which were submitted to and cleared by the Bureau of Customs and that the 16 allegedly "blacked out" shipments were reported to the Bureau of Customs and accordingly cleared as having been re-exported.

To discredit the sworn statements of the informer and Felix Gareza, petitioner assails the integrity, truthfulness and character of both by producing the following personal letters written by them to Ramon Chuanico, the President of petitioner EGIP, revealing their "double dealing" and "blackmailing" activities:

> a) Letters of Felix Gareza to Ramon Chuanico, President of EGIP - *Exhs. A to D, pp. 38-42, Folder No. 51, BIR records.*
>
> b) Letters of Alfredo Perez (the informer) to Ramon Chuanico - *Exhs. E to Q, pp. 1-A, 1-14, Folder No. 51, BIR records.*

Petitioner avers that the above letters of Felix Gareza, whose sworn statement is the principal basis of the revised assessment, establish his motives in fabricating evidence against petitioner. Since Gareza was confirmed dead as so stated in open Court by respondent's counsel *(t.s.n., pp. 30-31, August 26, 1985)*, he could no longer be presented by respondent as his witness and petitioner could not cross examine him to disprove his accusations.

Finally, to bolster his stand, petitioner cites *Exh. R, (pp. 293-308, Folder No. 76, BIR records)* the report dated June 1, 1971 of the Committee created by the Regional Director of Revenue Region No. 5, Valenzuela, Bulacan to reinvestigate the tax case of petitioner, briefly stating their observations therein, to wit: *(Petitioners memorandum, pp. 220-222, CTA records)*

> "a. The fact was mentioned that the Commissioner approved the recommendation of the Chief, Prosecution Division, to forego the criminal tax phase of these tax cases for insufficiency of evidence but to proceed with the issuance of revised tax assessments as determined by the National Tax Fraud Unit and this was done *(Memo of Chief, Prosecution Division, dated November 17, 1970 and revised assessment notices issued dated December 9, 1970 and December 22, 1970)*;
>
> b. The so-called "black-out" import entries numbering sixteen (16) folders furnished by the informer presented as evidence of the respondent *(BIR Folder 'Y' - Report of Anti-Smuggling Unit (ATSU) dated January 3, 1966)* were properly accounted for and cleared by the Bureau of Customs supported by the evidence presented by the petitioner *(Exhs. Folder 2 (New) - EGIP, Folder X-2-BIR marked Exhs. 3 to 28-A EGIP, Exh. "RR" part of EGIP Folder 7 (New) re: ledger entries; EGIP Folder 1 (New) and BIR Folder "X-2" re: requisitions and withdrawals; EGIP Folder*

No. 3 with Exhs. "4" to "4-X" and BIR Folder "X-3" Exhs. "29 to 33-E" of EGIP re: re exportation of imports; EGIP Folder No. 4 (New) with Exhs. "5" to "D" and BIR Folder "X-1" marked EGIP Exhs. "1 to 12" re: cancellation of bonds after Customs liquidation);

c. The 1,118 import documents *(BIR Folders I, II, III, IV and V)* consisting allegedly of both genuine and fake invoices were likewise duly accounted for and cleared by the Bureau of Customs as supported by the evidence presented by the petitioner *(Exhs. EGIP Folders 5 (New), 6 (New) and 8 (New)*;

d. The petitioner presented evidence to impugn the competency, integrity, truthfulness and character of the informer - Alfredo Perez and his sole witness Felix V. Gareza *(Personal letters to Mr. Ramon Chuanico marked Exhs. A to Q)* showing their "double dealing" and "blackmail" efforts or activities as well as the fact that Mr. Perez was never an officer or employee or a person privy to EGIP business transactions and that Mr. Gareza, a former general manager of EGIP who resigned on September 20, 1962, was a disgruntled officer of EGIP as stated in the Memo-Report of the Prosecution Division referred to earlier;

e. The Committee, "relying on the rules of evidence and judicial reasoning, is of the opinion that the copies of properly identified government records and entries introduced by EGIP to overcome 'sweeping uncorroborated testimony of the sole witness, Mr. Gareza, are public documents and should be given full weight and credence.'

f. The "originals" of the alleged 'genuine' 1,118 import invoices or documents could not be produced as requested by petitioner and, therefore, "the Committee is not in a solid foundation to resolve the issue of authenticity and genuineness of the alleged documents considering that the

> BIR stand on this matter is based alone on the 'sweeping uncorroborated testimony of Mr. Villa Gareza whose competence as a witness has been questioned."

The position of petitioner is tenable.

We agree with the abovestated findings of the committee. The evidence presented by petitioner to assail the integrity and character of the informer and Felix Gareza, consisting of their personal letters to Ramon Chuanico, indeed disclose their "double dealing" and "blackmailing activities", casting doubt on their competency as witnesses, especially so in the case of Felix Gareza who was the only source of the information which gave rise to the tax assessments. It was Gareza who admittedly furnished the information against petitioner to the informer, including the supporting documents. *(Exh. 10, Question and Answer 161, pp. 42 & 43, supra.)* And it was on his sworn statement that the revised assessments were mainly based. *(See testimony of examiner, t.s.n., p. 16, July 7, 1983)*

Reproduced in full hereunder are the personal letters of Gareza to Ramon Chuanico, the President of EGIP, written after Gareza had resigned from the company: *(Exh. A, p. 42, Folder No. 51, BIR records)*

August 31, 1962

Mr. Ramon Chuanico
(Confidential)

Dear Monet:

A group of informers approached me yesterday and brought to me for my study and comments several documents which they claim to belong to and covering various importations of embroidery materials of Embroidery & Garments Industries. The documents consist of import entries, suppliers invoices, packing lists, etc. How they manage to produce the documents, I really don't know, although, I have my doubts about the genuineness of the documents. According to them they already consulted a close friend in the Bureau of Internal Revenue about their plan, but were advised that they need someone who can corroborate the correctness of the information against EGIP and you. Being the former Manager of EGIP, they feel that I am the most ideal and competent witness.

I know that what the group has in mind will definitely depend upon my acceptance of their proposal. Only they don't know that I cannot bear false witness against you even if you did not during the past shown your appreciation for my services. At any rate, don't worry because I can persuade the group not to proceed with their bad intentions. So it is very important that we confer as soon as possible for your own good. Please don't delay because, this group right or wrong, can cause you and EGIP all sorts of trouble. They are very notorious and has all the proper connection in almost all the offices in the government. (Underlining supplied)

(Signed) F. Villa Gareza

(Exh. D, p. 39, Folder No. 51, BIR records)

September 12, 1963

Mr. Ramon Chuanico
EGIP
VERY PERSONAL

Dear Monet:

I would like to remind you again of the P50,000.00 to help me start an electronic business in Q.C. The business I assure you is most profitable. In fact I did not hesitate to invest all my savings and many more. If you wish, you can be a partner in the venture.

If you will recall, I had been asking you for the P50,000.00 even when I was still with EGIP and if you cannot extend me the amount as gratuity pay, you may give it to me in the form of a loan payable in a years time.

Kindly let me know where you can be reached outside your office so we can confer on the manner of repayment of the P50,000.00 and what security you would want. Also more important is the denounciation being prepared against EGIP or you by the same group I was mentioning to you. In fact I wrote you a note about this people sometime last year and in several occasions I kept on calling your attention about it. It seems that I can no longer stop this group anymore. They are trying their very best to prevail upon me to go along with them in clarifying certain documents they alleged to have in their possession and according to them they had already consulted certain people in the government. All they need is someone who can execute a sworn statement, preferably one who is connected with EGIP. Do you think I would be so foolish to be used as their tool? <u>Besides, what they have in mind is without legal basis. I ought to know because as Manager of EGIP I did my very best to manage the business of EGIP in accordance with law and the investigations repeatedly conducted</u>

<u>against EGIP such as, those conducted by the Finance Agents, CRC, Bureau of Customs, Central Bank, CIS and other agencies can best attest to the regularity of the business operations of EGIP. To me, all this amounts to intrigues, petty jealousies and an attempt to extort money from you</u>. At any rate, you need not bother with the group. I can still take care of this group for you.

In closing, please wait for my call at around 12:00 noon today in Valenzuela. It is very very important that we arrange an appointment before it is too late. (Underlining supplied)

(Signed) F. Villa Gareza

(p. 38, Folder No. 51, BIR records)

November 10, 1963

Mr. Ramon Chuanico
Valenzuela, Bulacan

Dear Mr. Chuanico:

Inspite of my efforts to assist you in your business and personal problems, you did not even bother to talk to me nor answer my letter. Worst of all, I lost my business and with it all my savings because you did not extend me even a single peso to help me with my business. I was very right when I was suspecting since the beginning that you really have no intention to help me with the capital I need. Whatever happen, henceforth, is all your fault.

I had been talking to many of your business associates including certain people in your office to let you know what I think of you as an employer, as a friend and business associate. You don't deserve anything. All that is dear to you is money and nothing more. <u>If I</u>

> cannot ask you for help in friendly way, then I must do it the dirty way perhaps much more than P50,000.00. (Underlining supplied)
>
> (Signed) F. Villa Gareza

From the tenor of the above letters which were not challenged by respondent, there is no mistaking the intention of Gareza to blackmail petitioner. Undoubtedly, this impugns the credibility of his sworn statement. Thus the committee in its report aptly stated: *(Exh. R, p. 295, Folder No. 76, BIR records)*

> "In view of the foregoing, the committee has the strong belief that due to the character and propensities of Mr. Gareza, exposed in his own writings, the government faces the weakness of relying on his written declaration, especially so that his declarations have not been properly corroborated by other competent evidences."

With regard to the documentary evidence presented by petitioner to refute the claim of respondent that in the years in question it had sold all its dollar quotas for the 1,118 importations, the letters of the chief of the Law Division of the Bureau of Customs informing petitioner of the cancellation of the warehousing bonds filed to cover the above importations upon recommendation of the Appraiser's Division, is strong proof that contrary to respondent's claim, these tax-free importations have been re-exported to their suppliers in accordance with the Embroidery Law and cleared by the Bureau of Customs. *(Exhs. Z-1 to Z-93, Folder No. 61, BIR records)*

The same holds true in the case of the 16 so-called "blacked out" importations. Similar letters of cancellation of warehousing bonds covering these importations issued by the Chief of the Law Division, Bureau of Customs *(Exh. V-1 to V-12, Folder No. 52; Exh. Y-1 to Y-5, Folder No. 60, BIR records)* proffered by petitioner, indicate that said importations were processed and re-exported to their suppliers and therefore could not have been suppressed from the records and sold to local textile buyers as alleged by Gareza.

Under Republic Act No. 3137, the Embroidery Law, the rules and regulations governing the establishment, suspension, control and operation of bonded manufacturing warehouses with respect to the importation of embroidery and apparel raw materials to be processed and re-exported, provides for the liquidation of import entries as follows:

> Section 4. xxx Liquidation of import entries. When the manufacturer finds, through his records, that all the raw materials covered by any Import Entry has been manufactured and re-exported, he shall submit to the Board a "Statement of Liquidation." The statement shall contain a list of all export entries under which a particular Import Entry has been so liquidated and shall be accompanied by copies of as many "Certificates of Inspection" as there are export entries involved. <u>The Customs official up on finding that the statement of liquidation submitted for any particular Import Entry is correct, he shall certify to the closing and liquidation of that particular entry on the face of the certificate. This certificate shall be submitted to the Collector of Customs as proof for the cancellation of the bond on that corresponding Import Entry</u>. (Underlining supplied)

In line with the foregoing provision, the notification of the cancellation of the warehousing bond on an import entry by a Customs official evinces the manufacture and re-exportation of the materials covered by such import entry.

Respondent failed to controvert the veracity of the aforementioned letters from the Chief of the Law Division of the Bureau of Customs offered by petitioner to substantiate its stand. As official records, they are entitled to full weight and credence.

> "Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated." *(Section 38, Rule 130, Rules of Court.)*

The law reposes a particular confidence in public officers that it presumes they will discharge their several trusts with accuracy and fidelity; and, therefore, whatever acts they do in the discharge of their public duty maybe given in evidence and shall be taken to be true under such a degree of caution as the nature and circumstances of each case may appear to require. ***(Antillon v. Barcelon**, 37 Phil. 148, 152.)* There can be no question then, that as against the uncorroborated testimony of Gareza, the undisputed abovementioned official documents should be upheld.

As to the allegation that petitioner tampered with the import documents to reduce the importations, petitioner correctly argued that in the absence of the original documents which are in the possession of respondent, the authenticity of the alleged "genuine" invoices against the "fake" invoices entered in the official logbook can not be rebutted. It is so admitted in the memorandum report of the reinvestigating examiners dated

October 13, 1969 that the originals of the shipping documents are in the hands of respondent, as follows: *(Exh. I, p. 81, Folder No. 76, BIR records)*

> "The original and/or duplicate original and photostat copies of all the 1,118 import invoices and other shipping documents, genuine and fake invoices and supporting papers on the 12 import shipments, the official logbook of the EGIP, the books of accounts of EGIP for the years in question and other pertinent records are in the official custody of the Deputy Commissioner of Internal Revenue (Operations), the former ATSU coordinator under whose direction the EGIP was raided successfully.

Despite efforts on the part of respondent, however, the originals of the shipping documents in question could no longer be located. Only photostat copies can be found in the records of the case. In answer to the letter of the Assistant Revenue Service Chief (Legal Office) dated January 31, 1985 inquiring about the whereabouts of the originals of the documents involved in the case at bar, the revenue examiner who handled the reinvestigation of the case replied on August 21, 1985, as follows: *(Exh. 30, p. 192, CTA records)*

> "With respect to your letter of January 31, 1985 requesting me to trace the whereabouts of the original shipping documents and the official logbook of the Embroidery Garments Industries (Phil.) Inc. in connection with its 1959 thru 1962 internal revenue tax case now the

subject matter of C.T.A. Case No. 2334, please be informed of the following facts and circumstances -

1. My memorandum-report on the tax case of EGIP (for short) dated Oct. 13, 1969 was submitted on that date or thereabouts and it is so stated in my report that the original/duplicate original and photostat copies of 1,118 import invoices and other shipping documents, genuine and fake invoices and supporting papers on 12 import shipments, the official logbook of EGIP, books of accounts and other pertinent records were in the official custody of the Deputy Commissioner of Internal Revenue (Operations);

2. The report of the Committee of Messrs. Samuel A. Verzola as chairman, Mamerto Silangan, Jr., Leopoldo Bernabe, and Alfredo C. Sercado, then officials of Revenue Region No. 5, Valenzuela, Bulacan, dated June 1, 1971 states, among other things, that the aforementioned documents were not with the docket referred to them upon instruction of the Commissioner of Internal Revenue; and

3. The records on this tax case show that it was elevated to the Court of Tax Appeals in 1973. A good number of revenue officials (the former D.C.I.R., the former regional director of Rev. Reg. No. 5, committee members and others who may be expected to shed light on the whereabouts of the missing records) had already retired or had been separated from the service. There is no way now of tracing the whereabouts of the missing records."

Even during the original investigation of the case by the ATSU examiners, they could not verify the correctness of the informer's claim that the shipping documents for 1,118 importations were false, for lack of basis. Thus, their memorandum report dated January 3, 1966 reads: *(p. 17, Folder No. 78, BIR records)*

> "It maybe noteworthy to mention in passing that the undersigned are in possession of shipping documents covering ONE THOUSAND ONE HUNDRED EIGHTEEN (1,118) shipments which were seized from the different offices of the EGIP which are presumed to be fake. This could not be passed upon in this investigation for the reason that there is no evidence at hand to substantiate this claim. In this connection it is deemed necessary to verify that correctness of this claim by cross-checking these fake commercial invoices with those on file in the Philippine Consulate in Tokyo and/or source of origin of the raw materials in question. As, matter of fact, an authority to travel to Japan has been approved by the Secretary of Finance some months ago with a mission to cross-check the alleged fake invoices with those on file with the Philippine Consulate in Japan, but somehow the authority was help up in Malacanang and still pending up to the present." (Underlining supplied)

There is nothing in the record showing that such cross checking was made on the shipping documents in question. Under the circumstances, the allegation that these documents were faked can not stand.

The case of ***Bonifacia Sy Po vs. Commissioner of Internal Revenue**, CTA Case No. 3386, September 30, 1987 (affirmed in G.R. No. 81446, August 18, 1988, 164 SCRA 524)* cited by respondent has no application here. There, petitioner repeatedly refused and failed to present the pertinent accounting records and other related documents, while in the instant case, all the business records and shipping documents involved are in the possession of respondent.

In point is the case of *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation and the Court of Tax Appeals, G.R. No. L-46644, September 11, 1987 (153 SCRA 665)* wherein the Supreme Court reiterated the rule held in *Collector of Internal Revenue vs. Benipayo, L-13656, January 31, 1962, 4 SCRA 182* that:

> "An assessment fixes and determines the tax liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be x x x."
>
> "In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption."

After considering and weighing all the evidence, we here find petitioner not liable for the deficiency income and advance sales taxes assessed against it by respondent for the years 1959 to 1962. With this conclusion, the second issue as to whether the imposition of the 50%

surcharge for fraud is justified becomes moot and academic.

WHEREFORE, the decision appealed from is hereby reversed. No costs.

SO ORDERED.

Quezon City, Metro Manila, January 15, 1990.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals