REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

WESTERN MINDANAO LUMBER
DEVELOPMENT CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 223

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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Oct. 27, 1956

D E C I S I O N

This is a case involving a contested assessment for sales tax including surcharge and penalty in the total amount of ₱77,238.58 against the Western Mindanao Lumber Development Co., Inc. covering the period 1949-1953.

The salient facts of the case are not disputed as they have in fact been admitted in the pleadings or in manifestations before the Court.

Petitioner, Western Mindanao Lumber Development Co., Inc. is a corporation organized and existing under Philippine laws, doing business as a producer of Philippine Mahogany logs and lumber. During the period from 1949 to 1953 petitioner sold logs and lumber to foreign buyers under terms "F.O.B., Philippine basis" (e.g. F.O.B. Basilan or Cotabato.) All the expenses incurred from the sawmill to the carrying vessels were borne by the petitioner, but the freight from the point of loading and insurance charges on these shipments were paid by the foreign buyers. Payment for the shipments were made against letters of credit through local banks. In the belief that these transactions were not taxable, petitioner did not pay any sales tax thereon. After investigation of the books of the corporation, the Collector of Internal Revenue, on June 29, 1955, assessed the amount of ₱75,238.58, as sales tax and surcharge on its gross sales of logs and lumber for the period in question (Annex A, Petition for Review, p. 31, BIR rec.), distributed as follows:

"Sales tax for 1949	₱ 8,145.64
" " " 1950	12,734.16
" " " 1951	17,137.71
" " " 1952	9,757.17
" " " 1953	12,416.18
Total sales tax due	₱60,190.85
25% surcharge thereon	15,047.72
TOTAL AMOUNT DUE AND COLLECTIBLE	₱75,238.58"

Respondent likewise sought to collect the sum of ₱2,000.00 compromise penalty in extrajudicial settlement of the alleged penal liability of the petitioner arising from the violation of the Tax Code.

In a letter dated July 9, 1955, petitioner submitted in relation to the above assessment, the following requests for the consideration of the Collector: (1) that the assessment for 1949-1950 be excluded as the same had already prescribed; (2) that the demand for payment of the assessments for the years 1951, 1952 and 1953, be held in abeyance until cases of similar nature pending before the Court of Tax Appeals are finally decided; and (3) that the imposition of the penalty of ₱2,000.00 be lifted. (Annex B, Petition for Review, p. 34, BIR rec.). Respondent, in his letter dated October 25, 1955, denied the above requests and reiterated his demand for the payment of the assessment (Annex G, Petition for Review, pp. 33-34, BIR rec.). On December 22, 1955, the herein petition was filed with this Court to review the aforementioned assessment of sales taxes.

The sole issue here is whether the sale by petitioner of its logs and lumber to foreign buyers under terms "f.o.b. Philippine basis" are domestic sales within the purview of section 186 of the National Internal Revenue Code, and therefore subject to the 5% sales tax then imposed therein or are foreign sales and therefore tax free.

The petitioner contends that its sales made to foreign buyers under "f.o.b." shipping arrangement from Philippine ports are exports and therefore exempt from the tax imposed by section 186 of the Tax Code, in view of the repeal by Republic Act No. 41, of the percentage tax on consignments abroad hereinbefore imposed by section 187 of the Tax Code. Petitioner argues that in repealing said section 187 it was the intention of Congress to encourage the export trade and the imposition of taxes on export under f.o.b. shipping arrangement nullifies such legislative intent. Petitioner further claims that the subsequent enactment of Republic Act No. 894 clarified all doubts of such intention by exempting from the said percentage tax all sales to foreign buyers irrespective of shipping arrangements in regard to the place of delivery.

The issue raised and the arguments advanced are not new. This Court had occasion to express its view on the matter in the case of Misamis Lumber Co., Inc. v. Collector of Internal Revenue (Civil Case No. 18424 (C.T.A.) December 1, 1955). In passing upon the nature of the sales transaction effected under "f.o.b." terms, this Court held that such sales constituted domestic sales which were therefore subject to the sales tax. We cited with approval the decisions of the defunct Board of Tax Appeals given in the case of Marsman Development Co. vs. Collector of Internal Revenue (B.T.A. Case No. 42, June 7, 1952) and that of the Misamis Lumber Co., Inc. vs. Collector of Internal Revenue (B.T.A. Case No. 97, November 24, 1952) and we quote from the latter case:

> "In the case of Marsman Development Company v. 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 and 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." (Misamis Lumber Co., Inc. vs. Collector of Internal Revenue, B.T.A. Case No. 97, Nov. 24, 1952.)

As regards the effect of the repeal of section 187 of the Tax Code upon the taxability of sales to foreign buyers, under f.o.b. terms the decision of the Supreme Court in A. Soriano y Cia vs. Collector of Internal

Revenue (G.R. No. L-5896, August 31, 1955, 51 O.G. No. 9, p. 4548) is decisive, and we quote:

"Finally, petitioner urges that the repeal of the consignment or 'export Tax' under Section 187 of the Internal Revenue Code shows the intention of the legislature to exempt all exports from tax.

"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 section 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. 834-855 where it held:

"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 consignment 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 the sales, in order to be taxable in the Philippines must be consummated there."

x x x

"Petitioner contends that to tax one whose goods are 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 therefor, 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 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 Nat. Int. Rev. Code, Vol. II, pp. 729-730)

With respect however to the compromise penalty of ₱2,000.00 in extra-judicial settlement of a penal liability for alleged violation of the Tax Code, suffice it to say that this Court has no jurisdiction to pass upon the matter nor to compel the taxpayer to pay the same, considering that by its very nature, a compromise implies mutual agreement by the parties (see Briñas vs. Collector, C.T.A. Case No. 16, September 14, 1955; Jai Alai Corporation vs. Araneta, C.T.A. Case No. 108, July 31, 1956).

WHEREFORE, the petition for review is hereby dismissed and the petitioner ordered to pay the sum of ₱75,238.58 as sales tax and surcharge, with costs against petitioner.

SO ORDERED.

Manila, October 27, 1956.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

AUGUSTO M. LUCIANO
Associate Judge
(On Leave)