Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE ACETYLENE COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 703

September 20, 1965

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

X - - - - - - - - - - - - - - - - X

DECISION

This is an appeal from a decision of respondent, dated February 20, 1959 (Exh. 1, p. 130, BIR Records), assessing against petitioner the sum of ₱4,326.31, as deficiency sales and advance sales taxes, including surcharge and compromise penalty, for the period covering July 1955 to June 1956.

Stripped of non-essentials, the facts pertinent to the issues raised are as follows:

Petitioner is a domestic corporation engaged in the manufacture and sale of oxygen and acetylene gases. Upon examination of petitioner's books used in the operation of its business, respondent discovered that the former billed, as sales tax, to its customers the amount of ₱45,824.12, but the sales tax it paid on the basis of its sales tax returns was only ₱37,943.64. (p. 75, 99-100; 123-124, BIR Records.) Based on these findings, respondent, on August 15, 1957, assessed and demanded from petitioner the sum of ₱3,626.47, representing deficiency sales and advance sales taxes, plus the sum of ₱200.00, as compromise penalty, or a total amount of ₱3,826.47. (pp. 11-12, BIR Records; par. 2, Petition; par. 2, Answer) In reply to the demand-letter, petitioner, in a communication dated February 5, 1958, stated that pursuant to BIR Ruling 105.02, it was liable for sales tax only in the amount of ₱2,194.65, plus 25% surcharge, which amount it was willing to settle. However, it contended that it was not liable for deficiency advance sales tax.

Meanwhile, petitioner paid the amounts of ₱2,743.30 and ₱519.53, as deficiency sales tax and surcharge and deficiency advance sales tax, respectively.

Subsequent to the promulgation of our decision in a similar case between the parties at bar (Philippine Acetylene Company vs. Silverio Blaquera, Commissioner of Internal Revenue, CTA Case No. 324, January 10, 1958), respondent redetermined the sales tax due from petitioner in accordance with the method of computation of sales tax adopted by this Court in the aforesaid decision. Consequently, a new demand-letter was issued against petitioner, on February 20, 1959, for the sum of ₱4,126.31, as deficiency sales tax and surcharge, plus the further sum of ₱200.00, as compromise penalty, or the total amount of ₱4,326.31, computed as follows:

Taxable sales ----------------	₱614,624.32
7% tax due thereon -----------	43,023.70
Less: Amount paid ------------	37,943.64
Deficiency sales tax due ------	5,080.06
25% surcharge ----------------	1,270.02
Total tax due ----------------	6,350.08
Less: Amount paid under O.R.No. 119770 dated February 6, 1958 -------------------	2,743.30
Total tax due ----------------	3,606.78

Deficiency advance sales tax under Demand No. 4741 -----	519.53
Total tax due & Collectible ----	4,126.31
Compromise penalty ------------	200.00
TOTAL AMOUNT DEMANDED ----------	₱4,326.31

(See Exhibit "1", p. 130, BIR Records)

Upon receipt of said new demand, petitioner, in a letter dated March 11, 1959, (Exhibit "4", p. 137, BIR Records) informed respondent that it could not pay the amount of ₱4,126.31, representing deficiency sales tax, in view of their appeal before the Supreme Court in the aforementioned CTA Case No. 324.

Replying to respondent's letter of May 25, 1959 (Exhibit "2", p. 143, BIR Records) insisting on the collection of the sum of ₱4,326.31, petitioner, in a letter dated June 8, 1959 (Exhibit "5", p. 148, BIR Records), reiterated his stand that until his appeal to the Supreme Court in the said CTA Case No. 324 is finally decided, the formula, adopted by this Court in the computation of the sales tax in question, cannot be binding on it and requested that the deficiency assessment be set aside. On August 7 and September 15, 1959, respondent again demanded the payment of the deficiency assessment. Hence, this appeal, which was filed on October 16, 1959. And, on November 30, 1962, the Supreme Court rendered its decision in the said appealed case (G.R. No. L-13728), affirming <u>in toto</u> the decision of this Court.

It must be noted that, in computing the sales tax, petitioner deducted the sum of ₱1,006.87 (which should be ₱1,082.13, as per findings and computation of respondent), representing the cost of caustic soda used in 1955 to 1956 in purifying the oxygen gas, from the value of the oxygen gas, pursuant to Sec. 186 of the National Internal Revenue Code, as amended by Republic Act No. 2025. However, respondent disallowed this deduction.

The issues raised are: (a) Whether the method used by the respondent in computing the sales tax in question is in conformity with law; (b) Whether the amount of ₱1,082.13, representing the cost of caustic soda, is deductible; and (c) Whether the imposition of ₱200.00 compromise penalty is legal.

The first issue is no longer debatable. In the previous case of Philippine Acetylene Company vs. Silverio Blaquera, Commissioner of Internal Revenue, G. R. No. L-13728, November 30, 1962, the Supreme Court held:

> "The only controversy hinges on the method of computation that should be adopted on the basis of the so called 'gross selling price'. In fact, petitioner says in its memorandum in lieu of oral argument that 'the only question here at issue is whether or not the petitioner's procedure is in accordance with law and the provisions of General Circular No. 431 of the Collector of Internal Revenue.'
>
> "It will be noted that the only difference between the two formulas or methods submitted by the parties is the inclusion of the tax billed by the petitioner to its customers.
>
> "A perusal of the above figures reveals that petitioner received more by way of tax from the customers than what it has actually paid to the Government, because in the issuance

of invoices to its customers, petitioner computed the 7% tax on the basis of the gross selling price of ₱1,793,732.97 without first deducting therefrom the cost of the raw materials used, while in its income tax returns, the 7% was computed on the amount of ₱1,793,732.97 minus the value of the raw materials. This method of computation employed by petitioner is certainly not fair, and not in accordance with law and General Circulars Nos. 431 and 440 of the Bureau of Internal Revenue. Petitioner should not be allowed to enrich itself at the expense of its customers who were misled as to the amount of the tax that they had to pay.] On this point, the Tax Court aptly said:

> 'It does not sit well on the lips of petitioner to contest the legality of the assessment which is actually less than what it had collected from its customers, by way of sales tax. Certainly, it has never been the intention of the law and General Circulars Nos. 431 and 440 to permit taxpayers to collect more from their customers by way of tax and at the same time to pay to the Government the amount which is even less than what the law provides'.
>
> 'It occurred to us that petitioner might be justly required to pay not the sum of ₱10,879.03 as assessed by respondent, but the sum of ₱23,333.53, which is the difference between the amount petitioner collected from its customers as tax and the amount already paid to the Government, on the ground that petitioner should not be allowed to enrich itself at the expense of its customers who were misled as to the amount of the tax that they had to pay. Upon a careful consideration of the matter, we cannot find any legal justification for requiring a taxpayer to pay more than what the law requires. x-x-x-'

"To ascertain the correct procedure, this Court looks into the provisions of General Circular No. 431 of the Bureau of Internal Revenue reading as follows:

> 'Gross selling price' or 'gross value in money' of the article sold, bartered, exchanged, or transferred, as the term is used in the aforementioned sections of the National Internal Revenue Code, is the total amount of money or its equivalent which the purchaser pays to

the vendor to receive or get the goods. However, if a manufacturer, producer, or importer, in fixing the gross selling price of an article sold by him, has included an amount intended to cover the sales tax in the gross selling price of articles, the sales tax shall be based on the gross selling price less the amount intended to cover the tax, if the same is billed to the purchaser as a separate item. To illustrate: In case an automobile dealer fixes the price of an automobile at ₱2,400.00 and charges an additional of ₱120 to cover the sales tax which he bills as a separate item on the sales invoice, the tax of 5% prescribed in section 185 of the Code (the rate of tax then in force) shall be imposed on ₱2,400.'

"Pursuant to the above-quoted provisions of General Circular No. 431, to be excluded as part of the taxable gross selling price of the article, the sales tax should be billed as a separate item in the invoice issued to the customers. And of course, the 'tax' mentioned in the General Circular No. 431 should be the correct amount of tax as rightly observed by the Tax Court. So, where the amount billed to the customers is not the correct amount of tax, the requirement of the circular is not fulfilled as in this case where the value of the raw materials used was not deducted from the total gross selling price of the oxygen and acetylene gases sold before billing the tax to the customers.-x-x (BIR Ruling 105.02, Oct. 30, 1956; Int. Rev. Bull., Vol. 1, No. 11)

"General Circular No. 440 of the Bureau of Internal Revenue provides that 'unless billed to the purchaser as separate items in the invoice, the amount intended to cover the sales tax shall be considered as part of the gross selling price of the articles sold, and deduction thereof will not be allowed.

"Conformably to the provisions of Internal Revenue Code and General Circulars Nos. 431 and 440 already heretofore reproduced, the computation employed by respondent is the correct one."

Respondent's disallowance of the claimed deduction of ₱1,082.13, representing the cost of caustic soda, is proper. It appears in evidence that when purchased by petitioner, the caustic soda in question was already a finished product, and was used during the period from July 1955 to June 1956, that is, before Republic Act No. 2025, amending Section 186 of the Tax Code, took effect on June 22, 1957. This law can not be given a retroactive effect. The Supreme Court, in the case of Pacific Oxygen and Acetylene Co., v. Commissioner of Internal Revenue, G. R. No. L-17708, April 30, 1965, held:

> " x x x x There is nothing in that statute to indicate that it was meant to have retrospective effect. Like other statutes, tax laws operate prospectively, whether they enact, amend, or repeal, unless the purpose of the legislature to give retrospective effect is expressly declared or may be implied from the language used. (Lorenzo v. Posadas, 64 Phil., 353; Commissioner of Internal Revenue v. Filipinas Compania de Seguros, 58 O.G. No. 3, p. 460)"

The imposition of ₱200.00 compromise penalty can not be sustained. The cases (Collector of Internal Revenue v. Ellen Wood McGrath; Ellen Wood McGrath v. Collector of Internal Revenue, et al., G.R. Nos. L-12710 & 12721, February 28, 1961; and Collector of Internal Revenue v. University of Visayas, G.R. No. L-13554, Resolution dated October 30, 1964), cited by respondent to justify the imposition and collection of compromise penalty, are inapplicable to the present case. In the case at bar, unlike in the cited cases and contrary to the claim of the respondent, the imposition of penalty is squarely put in issue. We believe that the doctrine enunciated in the earlier cases of Ollada v. Court of Tax Appeals, G.R. No. L-8878, July 24, 1957; Collector of Internal Revenue v. University of Sto. Tomas, G. R. Nos.L-11274 & 11280, November 28, 1958; and Collector v. Pedro Bautista et al., G.R. No. L-12259, May 27, 1959, holding the imposition of the penalty illegal and unauthorized, is controlling.

It appearing that petitioner has already paid the sum of ₱519.53 as deficiency advance sales tax, this amount, together with the ₱200.00 compromise penalty, or a total of ₱719.53, should be deducted from the amount of ₱4,326.31, leaving a balance of ₱3,606.78 still due the Government.

PREMISES CONSIDERED, judgment is hereby rendered ordering the petitioner to pay the respondent the sum of ₱3,606.78, as deficiency sales tax, including surcharge, for the period from July 1955 to June 1956, with costs against the petitioner.

SO ORDERED.

Quezon City, September 20, 1965.

TEOFILO D. REYES, SR.
Presiding Judge

WE CONCUR:

ROMAN M. UMALI
Associate Judge

ALEJANDRO B. AFURONG
Associate Judge