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JOSE COJUANGCO,
Petitioner,

- versus - C.T.A. CASE NO. 74

J. ANTONIO ARANETA,
Collector of Internal
Revenue,
Respondent.

Oct. 30, 1957

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DECISION

This is an appeal from the decision of respondent Collector of Internal Revenue dated January 27, 1955 (Annex "D", p. 77, BIR rec.) assessing the amount of ₱37,531.38 as alleged deficiency sales tax, surcharge and compromise penalty, due from the unregistered partnership composed of petitioner and Fernando F. de Villa-Abrille doing business under the name of the latter alone.

The parties submitted the case for decision on the basis of a stipulation of facts ("Stifacts" for short) which incorporated by way of annexes certain portions of the record of the Bureau of Internal Revenue. These facts are herewith summarized.

At a public bidding conducted by the Surplus Property Commission on April 22, 1948, Mr. Fernando Villa-Abrille was the successful bidder for the purchase of all movable goods located at CMD-3 Area, Samar Naval Base, Guiuan, Samar, for the sum of ₱94,500.00 excluding the following:

"20 tons of Iron Sheets

11 Road Rollers

54 Trucks, Cargo and dump taken by the Bureau of Public Works and Communication on memorandum receipts." (Annex "C", p. 58 BIR records)

The award was duly approved by the Government Enterprise Control Committee, and its terms and conditions contained in SPC-Invoice No. 7770, dated May 28, 1948 (Annex "D"). The successful bidder deposited the sum of ₱10,100.00 under Manager's Check No. 13040 (Philippine Bank of Commerce) to cover the required deposit of 5% of the purchase price, for which Official Receipt No. 689017 dated April 22, 1948 (Annex "A", p. 56 BIR rec., par. 3 Stifacts), was issued. Since Mr. Villa-Abrille did not have the necessary funds to cover payment of the purchase price, the 5% compensating tax, as well as the labor and materials for reconditioning the goods for use or sale, he invited petitioner to provide the necessary capital required. The offer was accepted and on May 28, 1948, petitioner and Mr. Villa-Abrille executed an agreement (Annex "B", petition; Annex "1" Answer; par. 10, Stifacts) embodying the terms and conditions thereof the pertinent portions we quote hereunder:

"WHEREAS, the First Part has been awarded the bid for the purchase of all the surplus properties situated at CMD-3-AREA, Samar Naval Base, Guiuan, Samar, in the sum of NINETY THOUSAND PESOS (₱90,000.00) plus five percent (5%) compensating tax, or a total of NINETY FOUR THOUSAND FIVE HUNDRED PESOS (₱94,500.00);

"WHEREAS, the First Part will also spend as a starting capital in repairing and putting to good condition all the surplus properties in the mentioned area, in the estimated sum of FIFTEEN THOUSAND FOUR HUNDRED AND FIFTY PESOS (₱15,450.00) before sales could be made from the same;

"WHEREAS, the First Part is in need of capital as he can only furnish THIRTY-EIGHT THOUSAND FOUR HUNDRED EIGHTY-TWO AND FIFTY CENTAVOS (₱38,482.50) or thirty-five (35%) percent of the purchase price plus the 5% compensating tax, and the further sum of FIFTEEN THOUSAND FOUR HUNDRED AND FIFTY PESOS (₱15,450.00) as starting expenses of operations;

"WHEREAS, the First Part has invited the Second Part to furnish sixty-five percent (65%) of the total capital required or the sum of SEVENTY-ONE THOUSAND FOUR HUNDRED SIXTY-SEVEN PESOS AND FIFTY CENTAVOS (₱71,467.50);

"WHEREAS, the Second Part has agreed to the offer of the First Part;

"NOW THEREFORE, for and in consideration of the premises, the parties hereto have agreed as follows:

"1. That the First Part acknowledges, by the signing of these presents, the receipt from the Second Part of the sum of SEVENTY ONE THOUSAND FOUR HUNDRED SIXTY SEVEN PESOS AND FIFTY CENTAVOS (₱71,467.50) as the Second Part's capital contribution to this particular business;

"2. That the First Part manifests by the signing of these presents the payment by him of his capital contribution which is in the sum of THIRTY-EIGHT THOUSAND FOUR HUNDRED EIGHTY TWO PESOS AND FIFTY CENTAVOS (₱38,482.50);

"3. That the First Part, after the signing of these presents, undertakes to pay to the Surplus Property Commission, Manila, the total sum of NINETY FOUR THOUSAND FIVE HUNDRED PESOS (₱94,500.00) in full payment of the surplus properties situated in the base area hereinbefore mentioned;

"4. The First Part undertakes to repair and recondition at the earliest possible date, all the surplus properties in the area and to sell them for profit at the best prevailing market price;

"5. That the First Part or any of his representatives or associates, if any, shall not be paid any salaries but will only be reimbursed the actual cost of transportation from Manila to Guiuan, Samar and from Samar to Manila, as well as all expenses of board and lodging while in Samar, which expenses shall be paid from the sum of ₱15,450.00 hereinabove set aside;

"6. That the First Part is authorized to engage employees and laborers necessary in prosecuting the business herein mentioned, the salaries and wages of whom shall also be taken from the mentioned sum of ₱15,450.00;

"7. The First Part is likewise authorized to buy spare parts necessary to replace worn out parts of any of the properties bought from the Surplus Property Commission;

"8. That the First Part promises and undertakes to use his best prudence in economizing expenses and in securing the best selling price possible with a view to realizing the greatest profit in the business;

"9. That in view of the confidence that the Second Part has with the First Part, the Second Part has agreed to give the First Part full authority to act on the premises, reserving, however, to himself the right to act on anything whenever necessary; and in case of conflict, the decision of the Second Part shall prevail;

"10. That the Second Part shall be furnished, as soon as practicable, by the First Part a complete and full inventory of the surplus properties found to be existing in the base at the time of transfer of possession from the Surplus Property Commission to the First Part;

"11. That the First Part and the Second Part shall be in frequent consultation regarding the selling price to be set for any of the properties bought from the Surplus Property Commission;

"12. That the proceeds of the sale, as well as any funds that will not require immediate

> disbursements shall be deposited immediately thereafter with the Philippine Bank of Commerce in an account to be known as Fernando F. de Villa-Abrille and/or Jose Cojuangco and/or Demetria S. Cojuangco, and withdrawals from the said account can be made only under the signatures of Fernando F. de Villa-Abrille, countersigned by Jose Cojuangco and/or Demetria S. Cojuangco;
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> "13. That out of the net profit that will be realized from the business herein mentioned, the First Part shall receive fifty percent (50%) and the Second Part the remaining fifty percent (50%).

Upon the signing of the foregoing agreement, Mr. Fernando Villa-Abrille paid to the Surplus Property Commission the remaining balance of the purchase of the goods in the sum of ₱84,400.00 inclusive of the compensating tax of ₱4,500.00, payment thereof being evidenced by Official Receipt No. A-690575 dated May 28, 1948 (Annex "B", par. 4, Stifacts) was issued in the name of the former. Accordingly SPC-Invoice No. 7770 (Annex "C" p. 58 BIR rec., par. 5, Stifacts) issued in the name of the bidder to cover the sale in question. Subsequently, Mr. Villa-Abrille sold a portion of the goods to Hume Pipe & Asbestos Co., on August 11, 1949, and the rest to Ellin & Co. on February 2, 1951, and May 28, 1952 (par. 3, Amended Petition, par. 2, Answer). Pursuant to paragraph 12, of the aforesaid agreement, there was deposited in the Philippine Bank of Commerce by Villa-Abrille under Special Account and/or Trust account the sum of ₱145,000.00 in the name of Fernando F. de Villa-Abrille and/or Jose Cojuangco, and/or Demetria S. Cojuangco. By virtue of the deficiency tax assessment hereinafter to be mentioned, the amount of ₱37,531.38 has been segregated on June 7, 1955 from said accounts and deposited in the name of the Collector of Internal Revenue subject to the final decision in this case (Annexes "G", "H", and "J", pp. 76, 79 & 81, BIR rec.).

The aforementioned purchase from the Surplus Property Commission under SPC-Invoice No. 7770 (Annex "C") was subsequently investigated by Provincial Revenue Agent H. I. Bernardo who, on April 1, 1953, submitted his report (Annex "E", pp. 20-23 BIR rec.; par. 8, Stifacts), on the basis of which report the assessment against petitioner dated January 27, 1955 (Annex "D", p. 77 BIR rec.) was issued.

As per report and recommendation of Agent H. I. Bernardo dated April 1, 1953 (Annex "E"), the assessment of ₱37,531.38 (Annex "D") is detailed as follows:

Total sales subject to 5%

Sales from August 27, 1948 to Sept. 6, 1950 (w/invoices) ------------	₱133,655.42	
Sales with deed of Sales 1949 --------------------	27,000.00	
TOTAL	₱160,655.42	
5% on ₱160,655.42 --------------------		₱ 8,032.77

Total sales subject to 7%

Sales from Sept. 23, 1950 to March 1952 (w/ invoices) --------------	₱ 75,033.33	
Sales with deed of Sales Feb. 1951 to June 1952 --	300,000.00	
TOTAL	₱375,033.33	

7% on ₱375,033.33 ----------------------	₱26,252.33
Total taxes due ------------------------	₱34,285.10
Less: Compensating tax paid under O. R. No. A-690575 on May 28, 1948 ----------------------	₱ 4,500.00
Tax Still Due --------------------------	₱29,785.10
25% ------------------------------------	7,446.28
Compromise for violating of the Bookkeeping Regulation -----------	300.00
TOTAL	₱37,531.38

On the basis of the foregoing facts the issues in this case are briefly stated as follows:

(1) Whether or not the sales of the surplus goods made by Mr. Villa-Abrille to Ellin & Co. and to the Hume Pipe & Asbestos Co. are subject to sales tax under Sec. 186 of the National Internal Revenue Code; and

(2) In case the answer is in the affirmative, whether or not the petitioner as partner of the unregistered partnership, "Fernando F. de Villa-Abrille" is liable for said tax liability and the extent of said liability.

On the first issue, petitioner contends that the "original sale" subject to tax under section 186 of the Tax Code is the transfer of the aforesaid goods by the United States Government to the Surplus Property Commission. Petitioner argues that the latter is a corporation or agency subject to tax under the provisions of Republic Act No. 104, which provides that, "all corporations, agencies, or instrumentalities, owned or controlled by the government shall pay such duties, taxes, fees, and other charges upon their transaction, business, industry, sale or income as are imposed by law upon individuals, associations, or corporations engage in any taxable business, industry, activity, except on goods or commodities imported or purchased and sold or distributed for relief purposes as maybe determined by the President of the Philippines". Accordingly, even if the transfer from the United States Government to the Surplus Property Commission was gratuitous, the same is nevertheless subject to the sales or transfer tax and should be treated as the original sale. Granting arguendo that the acquisition from the United States Government is not the "original sale" petitioner further contends that at least the transfer from the Surplus Property Commission to Fernando Villa-Abrille, is the original sale or at most the latter's transfer to the association should be treated as the "original sale" and not the transaction between the latter and Ellin & Co. and Hume Pipe & Asbestos Co.

We find the first contention of petitioner untenable. In the first place, the Surplus Property Commission is not a taxable institution. This Commission was created by Executive Order No. 27, dated December 18, 1946, pursuant to the provisions of Section 2 of Republic Act No. 33, and amended by Executive Order No. 61, dated June 20, 1947, was merely a custodian or administrator of the surplus goods acquired by the Republic of the Philippines from the United States of America. The Commission was merely an agency of the government for the safe keeping and/or disposal of properties transferred to it. Therefore when the surplus goods were sold or disposed of, it was the Philippine Government that was in fact the vendor thereof. Considering that it would be superflous for the government to tax itself, it becomes apparent that said sale of the surplus goods is not the "original sale" taxable within the purview of section 186 of the Tax Code.]

Consequently, following the jurisprudence related thereto (Go Cheng Tee v. Meer, 47 O.G. Supp. No. 12, p. 269, Saura Import & Export Co. v. Meer, G. R. No. L-2927, February 26, 1951; P.M.P. Navigation Co. v. Meer, G. R. No. L-4621, March 24, 1953) the importer of the said surplus goods in question for purposes of the payment of the corresponding sales tax provided in Section 186 of the Tax Code, is Fernando F. de Villa-Abrille, the first purchaser thereof.

In the Go Cheng Tee case, supra, the Supreme Court held that the importation was not completed with the delivery by the Foreign Liquidation Commission of the surplus goods to the plaintiff (Go Cheng Tee). Rather, the importation was completed only after the corresponding duties or taxes imposed upon said goods has been paid. This view was made on the theory that while the goods were under the control of the American forces for military purposes, the goods should not pay any taxes to the Government of the Philippines. Accordingly, the taxes accrued on the surplus goods there in question, only upon the transfer of the goods to Go Cheng Tee for commercial purposes.

Following this doctrine Fernando F. de Villa-

Abrille is the importer of the surplus goods herein as contemplated by Section 186 of the Tax Code. It follows that the obligation to pay the sales taxes arose immediately upon the transfer or sale of the surplus goods in this case to Fernando Villa-Abrille by the Surplus Property Commission.

We shall now proceed to the next issue as to whether or not petitioner is liable for the deficiency sales tax demanded by respondent, and if so, what is the extent of the former's liability. The resolution of this issue revolves upon two subordinate questions, to wit: (1) What is the nature of the relation established in the agreement (Annex "B" of Petition for Review) entered into by and between petitioner and Fernando Villa-Abrille? and (2) if this relation is an unregistered partnership or association, what is the character of the petitioner's participation or membership therein. In making this determination, it should be borne in mind that the law enforced prior to August 30, 1950 should be applied in this case, in view of the fact that the circumstances thereof transpired prior to said date.

From a careful analysis of the provisions and stipulations of the afore-quoted agreement entered into by and between Fernando Villa-Abrille and petitioner on May 28, 1948 (Annex "B", Petition for Review) we find that the same was in the nature of a cuenta en participacion (joint account) governed by Articles 239-243, inclusive of the Code of Commerce. Article 239 thereof provides as follows:

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"Merchants may interest themselves in the transaction of other merchants, contributing thereto the part of the capital they may agree upon, and participating in the favorable or unfavorable results thereof in the proportion they may determine." (Article 239, Code of Commerce.)

The afore-quoted agreement contemplates the mercantile transactions of Fernando de Villa-Abrille as the successful bidder of surplus goods, in which petitioner became interested in and by virtue of which the latter contributed the sum of ₱71,467.50 which constitutes 65% of the capital required by the former to finance his purchase of the goods in question. The rest of the capital (35% thereof) or ₱38,482.50 was furnished by Fernando de Villa-Abrille who appears to be the party in whose name the purchase of goods was to be made and who was to effect the subsequent sale thereof. However, the parties agreed to divide the net profits realized from the sale of the surplus goods in equal proportion. The above features can be easily deduced from paragraphs 5 to 13, inclusive of the agreement. Being a cuenta en participacion, all transaction are made in the name of Villa-Abrille and under his own individual responsibility (Article 241, Code of Commerce). Those contracting with Mr. Villa-Abrille have a right of action against him only, and not against petitioner who might be secretly interested in the transaction and likewise petitioner would have no right of action against the third persons who contracted with

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Villa-Abrille unless the latter formally ceded his rights to them. (Article 242, Code of Commerce.)

It may however be argued that the amount demanded by respondent against petitioner represents tax liabilities for the disposal or sale of the goods, and does not arise from contract but from a statute. However, obligations derived from law cannot be presumed and only those expressly provided in the Civil Code or in special laws are of enforceable. In this case, the evidence shows that the goods were purchased by Villa-Abrille alone in his own name. They were also sold and disposed of in the same manner and for tax purposes he was the only merchant (see Sections 178-179, Tax Code). In all the transactions affecting the said goods, the name, identity, interest, and participation of petitioner were never disclosed. In other words, the petitioner was only a secret partner while Fernando Villa-Abrille was the apparent or ostensible partner, a peculiarity of a "cuenta en participacion". Consequently, the obligation to pay the corresponding sales taxes rests alone upon Fernando Villa-Abrille who purchased the goods and subsequently disposed of them in his own name. Considered from these facts therefore, it is Fernando Villa-Abrille and not petitioner who should be required to pay the corresponding sales tax, without prejudice to whatever rights the former may have against the latter by virtue of their agreements.

It becomes apparent that although a tax liability exists, the assessment thereof should have been directed against Fernando de Villa-Abrille the ostensible merchant in whose name the transactions have been made. The fact that the assessment was against petitioner renders the same unlawful.

Although it may be perhaps argued that the agreement might provide a means of defrauding the government of its lawful revenues by conducting business in the name of others (we are not necessarily deciding this point), nevertheless there is no evidence on record that fraud was resorted to in this case as to permit us to make a finding accordingly.

Moreover, even if we assume that a partnership was formed in this case, it would necessarily follow that Fernando de Villa-Abrille sold and transferred title of the surplus goods to the partnership. Consequently such transfer must be treated as the taxable "original sale" within the purview of Section 186 of the Tax Code. It would therefor follow that the sale by such partnership to Ellin & Co. and Hume Pipe and Asbestos Co. would not be a taxable transaction under Section 186 of the Tax Code.

Treated as a "joint account", (cuentas en participacion) only Fernando Villa-Abrille, in whose name the transaction was effected, is the party liable. Considered also as a partnership, only Fernando Villa-Abrille, the managing partner, or the partnership operating under the name and style, "Fernando F. de Villa-Abrille", should first be sued. From all angles therefore, petitioner is not the proper party to be assessed nor held liable for the taxes in question. It obviously follows that petitioner cannot be held liable for the compromise penalty. At any rate, in view of the essence of a compromise, and petitioner not having agreed thereto, he cannot be held liable for any compromise penalty.

FOR ALL THE FOREGOING CONSIDERATIONS, the decision of respondent Collector of Internal Revenue dated January 27, 1955, holding petitioner liable for the deficiency sales taxes should be as it is hereby reversed, without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, October 30,1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI
did not take part.