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May 31, 1960

ANTONIO CO PO,
Petitioner,

- versus - C.T.A. CASE NO. 313

COLLECTOR OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - x

DECISION

This is an appeal from the various assessments and demands of the Collector (now Commissioner) of Internal Revenue against the petitioner for the total amount of ₱6,277.14 as advance sales tax, and the denial of his claim for refund of the sum of ₱2,008.83 alleged as illegally collected advance sales tax.

It appears from the stipulation of facts and the record of this case that petitioner Antonio Co Po is a merchant doing business under the name and style of St. Luke's Trading. On several occasions, the petitioner participated in bidding at auction sales of goods brought in from the United States to the U.S. Bases in the Philippines at Sangley Point, Clark Field and Olongapo, which were conducted by the U.S. authorities therein. The petitioner, through these auction sales, purchased various articles from the U.S. Bases from 1954 to 1956. On these purchases, and treating the same as importations from abroad, the respondent imposed against the petitioner the advance sales tax prescribed in Section 183 (B) of the

National Internal Revenue Code, and issued for each purchase made, a separate assessment and demand. The total assessment and demand for advance sales tax on these goods is in the sum of ₱6,277.14. Of this amount of ₱6,277.14, the petitioner paid on various occasions the sum of ₱1,782.72, not ₱2,008.83 as previously alleged to have been paid by him. (Par. 4, Stipulation of Facts)

After the preliminary hearing on respondent's affirmative defense of lack of jurisdiction over the various assessments and demands, this Court, in a resolution dated November 23, 1957, found it lacking of jurisdiction to review the assessments in the total amount of ₱6,277.14, the appeal therefrom having been made beyond the thirty-day period prescribed in Section 11 of Republic Act No. 1125. However, in the same resolution, this Court took cognizance of the claim for refund in the amount of ₱2,008.83, now admittedly to be only ₱1,782.72, paid by the petitioner as advance sales tax. Hence, this determination is limited to said claim for refund of ₱1,782.72.

The only issue in this case is whether or not the petitioner is liable for the payment of advance sales tax on his purchases of goods from the U.S. Bases under the provisions of Section 183 (B) of the National Internal Revenue Code.

It is contended by the petitioner that he is not liable for the payment of advance sales tax on his purchases from the U.S. Bases. He argues that he is not an importer, not having engaged in the business of importation, and that there was no importation inasmuch as the goods did not "come to the country from a foreign country", Sangley Point, Clark Field and Olongapo or any other U.S. Bases in the Philippines not being considered as foreign territory. Moreover, it is claimed that the sales by the U. S. authorities in these bases to the petitioner were the original sales and therefore the sales of the petitioner were not taxable. And finally, the petitioner contends that, before Republic Act No. 1612 came into effect, purchasers of tax-free articles were not the importers thereof and invoked in support thereof the decision of the Supreme Court in the case of Collector of Internal Revenue, et al. vs. Marcelino T. Viduya, et al., G.R. No. L-10808, promulgated on February 28, 1958.

Upon the other hand, the respondent maintains that the petitioner is an importer and is liable for the payment of advance sales tax on the strength of the decisions of the Supreme Court in the cases of Saura Import & Export Co., Inc. vs. Meer, G.R. No. L-2927, Feb. 26, 1951; A. Soriano y Cia. vs. Collector of Internal Revenue, G.R. No. L-5896, Aug. 31, 1955; and Bisaya Land Transportation Co., Inc. vs. Collector of Internal Revenue, G.R. Nos. L-12100 & L-11812, May 29, 1959.

Our Supreme Court has, in those cases cited by respondent, held in effect, that goods and materials while in the Army bases or installations in the Philippines are, in contemplation of law, on foreign soil; that anyone who acquires title to goods or equipments found in U.S. army bases within the Philippines by purchase, and then brought out of these bases is an importer; that the bringing out of such goods and materials, after acquiring title to such goods, are importations in the legal sense; and that the said materials removed from these bases and depots were purchased or received from "outside the Philippines".]

We find no material variance between the facts of this case and the cases cited by the respondent. With these decisions, obviously, it could not now be claimed that petitioner is not an importer subject to the payment of advance sales tax under Section 183 (B) of the Tax Code. Neither could petitioner claim that the sales by the U.S. authorities to him were the original sales. The petitioner, being the importer, is the one liable for the payment, in advance, of the sales taxes pursuant to the provisions of Section 183 (B) of the said Code.

However, it is argued that, before the amendment of Section 183 (B) of the Tax Code by Republic Act No. 1612, the purchasers of tax-free articles brought to the Philippines by persons, entities or agencies exempt from tax were not considered the importers of said tax-free articles. The petitioner then concludes that, having purchased the tax-free articles before Republic Act No. 1612 took effect on August 24, 1956, his purchases were not taxable as he was not then the importer thereof. The pertinent provision of Republic Act No. 1612, incorporated in Section 183 (B), reads as follows:

> "In the case of tax-free articles brought or imported into the Philippines by persons, entities or agencies exempt from tax which are subsequently sold, transferred, or exchanged in the Philippines to non-exempt private persons or entities, the purchasers shall be considered the importers thereof. The tax due on such articles shall constitute a lien on the article itself superior to all other charges or liens, irrespective of the possessor thereof." (Section 5, Republic Act No. 1612.)

It can never be inferred from this provision that, before its effectivity on August 24, 1956, the purchasers of articles which were brought to the Philippines by persons, entities or agencies exempt from tax were not considered importers, and hence, not liable for the payment of the advance sales tax.

As can be gleaned from the explanatory note of House Bill No. 5809, now Republic Act No. 1612, this amendment to Section 183 (B), is simply an adoption and recognition by Congress of the consistent ruling of the Bureau of Internal Revenue, which is in line with the decisions of the Supreme Court in those cases cited by the respondent, that purchasers of articles brought or imported tax-free into the Philippines, shall be subject to the payment of advance sales tax.

The decision in the case of Collector of Internal Revenue vs. Viduya, __supra__, can not be taken as authority to support petitioner's claim that he is not the importer and is not therefore liable for the payment of advance sales tax. The facts and the law involved in the said

Viduya case differ materially with the facts and the law involved in this case. Hence, we find no application of that case to the case at bar.

Under the foregoing considerations, we are of the opinion and so hold that the petitioner is liable for the payment of advance sales tax under Section 183 (B) of the National Internal Revenue Code for his purchases of goods from the U.S. authorities at Sangley Point, Clark Field and Olongapo.

WHEREFORE, it is hereby declared that the collection of the sum of ₱1,782.72 as advance sales tax by the respondent Commissioner of Internal Revenue from petitioner Antonio Co Po is in accordance with law. Consequently, the petition for refund should be, as it is hereby denied.

With costs against petitioner.

SO ORDERED.

Manila, May 23, 1960.

MARIANO NABLE
Presiding Judge

I concur in the result.

ROMAN M. UMALI
Associate Judge

Associate Judge Augusto M. Luciano
is on leave.