REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

BUTUAN SAWMILL, INC.,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 965

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D E C I S I O N

This is an appeal from an assessment for sales tax, surcharge and compromise penalty amounting to ₱38,917.74 on sales of logs effected by petitioner Butuan Sawmill, Inc. from January 1951 to June 1953.

The Butuan Sawmill, Inc., a corporation organized and existing under and by virtue of the laws of the Philippines, is a duly licensed timber concessionaire.

From the evidence adduced in the hearing, it appears that during the period from January 31, 1951 to June 8, 1953, it sold logs to Japanese firms at prices FOB Vessel Magallanes, Agusan (in some cases FOB Vessel Nasipit, also in Agusan); that the FOB prices included costs of loading, wharfage stevedoring and other costs in the Philippines; that the quality, quantity and measurement specifications of the logs were certified by the Bureau of Forestry; that the freight was paid by the Japanese buyers; and payments of the logs were effected by means of irrevocable letters of credit in favor of petitioner and payable through the Philippine National Bank or any other bank named by it.

Upon investigation by the Bureau of Internal Revenue, it was ascertained that no sales tax return was filed by the petitioner and neither did it pay the corresponding tax on the sales. On the basis of agent Antonio Mole's report dated September 17, 1957, respondent, on August 27, 1958, determined against petitioner the sum of ₱40,004.-01 representing sales tax, surcharge and compromise penalty on its sales of logs from January 1951 to June 1953 pursuant to sections 183, 186, and 209 of the National Internal Revenue Code (Exhibit "E", p. 14, CTA rec. & p. 14, BIR rec.). And in consequence of a reinvestigation, respondent, on November 6, 1958, amended the amount of the previous assessment to ₱38,917.74 (Exhibit "F", p. 52, BIR rec.). Subsequent requests for reconsideration of the amended assessment having been denied (Exhibit "G", p. 55, BIR rec.; Exhibit "H", pp. 75-76, BIR rec.; Exhibit "I", pp. 79-80, BIR rec.; Exhibit "J", p. 81, BIR rec.), petitioner filed the instant petition for review on November 7, 1960.

The issues involved in this case are: (1) Whether or not petitioner is liable for payment of the 5% sales tax prescribed in section 186 of the

Tax Code on its sales of logs to Japanese buyers during the period under review; and (2) whether or not the right of respondent Commissioner to assess the tax in question has already prescribed.

It is petitioner's contention that the sales in question were foreign sales because title to the logs passed from the seller to the buyers in Japan and not in the Philippines, and as a consequence, are not subject to the sales tax imposed by the Tax Code. Respondent, on the other hand, maintains a contrary view.

We find petitioner's contention to be without merit. Upon the foregoing finding of facts, we are convinced that the sales of logs in question were consummated within the Philippines, not without. It is to be noted that the agreed prices were FOB Vessel Magallanes (or Nasipit), Agusan. This agreement is an evidentiary indication that the parties intended the title to the logs to pass to the buyers upon the delivery of the logs in Agusan on board the vessels (Taligaman Lumber Co., Inc. vs. Collector of Internal Revenue, G. R. No. L-15716, March 31, 1962). Although, this indication is merely <u>prima facie</u>, we find the following circumstances as lending credit to the thesis that it is the intention of the parties to consummate the sales at bar in the Philippines. These circumstances are: (1) The certification of the quality, quantity and measurement specifications of the logs by Philippine authorities; (2) the payment of freight by the Japanese buyers (Taligaman Lumber Co., Inc. vs. Collector of Internal Revenue, G. R. No. L-15716, March 31, 1962; Western Mindanao Lumber Development Co., Inc. vs. Court of Tax Appeals, et al., G. R. No. L-11710, June 30, 1958); and (3) the payment of the logs by means of irrevocable letters of credit in favor of petitioner and payable through the Philippine National Bank or any other bank chosen by it (Bislig Bay Lumber Co., Inc. vs. Collector of Internal Revenue, G. R. No. L-13186, January 28, 1961; Misamis Lumber Co., Inc. vs. Collector of Internal Revenue, G.R. No. L-10131, September 30, 1957, 56 O.G. 517; Western Mindanao Lumber Development Co., Inc. vs. Court of Tax Appeals, et al., supra).

In connection with the second issue, petitioner maintains that the right of the government to assess the sales tax in question had prescribed pursuant to section 331 of the Tax Code, the pertinent provision of which follows:

> "Except as provided in the succeeding section, internal-revenue taxes shall be assessed within 5 years after the return has been filed, x x x x ".

Respondent, however, contends that the instant case falls under section 332 (a) of the Revenue Code, which provides in part:

> "In the case of a false or fraudulent return with intent to evade tax or <u>of a failure to file a return</u>, the tax may be assessed, x x x x, at any time within ten years after the discovery of the falsity, fraud, or <u>omission</u>." (Underscoring supplied.).

Section 332 (a) is the law applicable to this case. Petitioner admitted that it did not file a return for the sales in question upon advise of counsel (Exhibit "I", pp. 78-80, BIR rec.). Under this circumstance, the sales tax may be assessed within ten (10) years from and after the discovery of the omission to file the return. It appearing that the omission was discovered on September 17, 1957, when agent Antonio Mole submitted his report, which is the basis of the assessment, we find that respondent's right to assess the sales tax in question has not prescribed as the assessment was made well within the 10-year period.

Relative to the claim for payment of compromise penalty amounting to ₱2,810.00, it has become well-settled that the respondent Commissioner has no power to enforce the same in the absence of an agreement between the parties. (See Collector of Internal Revenue vs. Pio Barretto & Sons, Inc., G. R. No. L-11805, May 31, 1960; Collector of Internal Revenue vs. Bautista, et al., G. R. No. L-12256, May 27, 1959; Collector of Internal Revenue vs. U.S.T., G. R. Nos. L-11274, 11280, Nov. 28, 1958.)

WHEREFORE, the decision appealed from is hereby affirmed and petitioner Butuan Sawmill, Inc. is ordered to pay respondent the sum of ₱36,107.74 as sales tax and surcharge on its sales of logs from January 1951 to June 1953, with costs against petitioner.

SO ORDERED.

Manila, Philippines, September 18, 1962.

MARIANO NABLE
Presiding Judge

WE CONCUR:

~~AUGUSTO M. LUCIANO~~
Associate Judge

ROMAN M. UMALI
Associate Judge

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