Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DINGALAN FOREST PRODUCTS
CORPORATION.,
Petitioner,

fale. 15, 1965

- versus -

C.T.A. CASE NO. 1194

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal involving the refund of the sum of ₱48,767.73, representing sales taxes alleged to have been paid erroneously by the petitioner to the respondent on the sale of forest products to its customers from April 1960 to January 1962, inclusive, plus interest from the date of payment until fully refunded.

The case was submitted for decision, partly on a written stipulation of facts submitted by the parties, and partly on the additional evidence adduced during the trial. For ready reference, the stipulated facts are hereby quoted, to wit:

> "1. That the petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with offices at the ground floor, Ledesma Bldg., Intramuros, Manila; while respondent is the Commissioner of Internal Revenue, duly appointed and acting as such, with offices at the Finance Building, Manila;
>
> "2. That petitioner has, since October 30, 1957, to date, been the holder of forest concession located in the Municipality of Dingalan, Gabaldon, and Baler, of the provinces of Nueva Ecija and Quezon, respectively;

"3. That during the period from January of 1960, to January 19, 1962, the petitioner cut and removed forest products from its aforementioned concession and paid the corresponding forest charges thereon to the Government pursuant to the applicable provisions of the National Internal Revenue Code;

"4. That petitioner sold the said forest products to its various customers who were billed in the sale invoices the corresponding sales tax but the latter assigned to the former, as shown by the attached annexes "A-1" to "A-50", whatever refund maybe due them by reason of the payment thereof to the respondent, except the amount of ₱27.92 representing the sales taxes billed to its customers who did not make the necessary arrangement;

"5. That out of the sum of ₱48,767.73 representing sales taxes paid and involved in this case, the amount of ₱3,065.86 represents taxes billed to petitioner's customers on its sales of hand-sawn lumber;

"6. That in the sale of said forest products by the petitioner, the latter paid the sum of ₱48,767.73 to the respondent in the concept of percentage or sales taxes for the period from April, 1960, to January 20, 1962, per Annex "B" hereto attached and incorporated herein as part of this Stipulation of Facts;

"7. That petitioner requested a refund of the said percentage or sales taxes but the respondent denied the same;

"8. That the parties confine the issue of this case on the question of whether or not the petitioner is entitled to the refund of the said amount of ₱48,767.73." (pp/ 40-41, CTA Records)

The only additional evidence presented during the hearing was the testimony of Mr. Deogracias Salud, Manager and Comptroller of petitioner corporation to the effect that the written assignments attached to the Stipulation of Facts, Annexes, "A-1" to "A-50", inclusive, were merely confirmations of previous verbal assignments given by the customers to the petitioner.

The only issue raised in this appeal for our consideration is whether or not the sum of ₱48,767.73, representing percentage or sales taxes, is refundable to the petitioner.

The facts appearing in evidence and the issue involved have placed the present case exactly on all fours with the previous case of Antonio Guerrero vs. Collector of Internal Revenue, C.T.A. Case No. 285, August 31, 1961, now on appeal before the Supreme Court, (G. R. No. L-19074) where we held that:

> "In connection with the sum of ₱1,192.51 representing the fixed and percentage taxes, petitioner contends that he is not liable therefor on the ground that his sale of the forest products to the Appari Lumber Co., were not original sales. It is, however, the position of respondent that petitioner is a producer with respect to the said forest products and is liable for the fixed and percentage taxes as such producers. The question to be decided is whether or not the sales of forest products by petitioner to the Appari Lumber Co., are the original sales which are taxable under section 186 of the National Internal Revenue Code, as amended.
>
> "Section 186 of the Revenue Code imposes 'once only on every original sale, barter, exchange, and similar transaction either for nominal or valuable considerations, intended to transfer ownership of, or title to, the articles not enumerated in Sections 184 and 185 a tax equivalent to seven (formerly five) percentum of the gross selling price or gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to

be paid by the manufacturer or producer ...' The phrase 'original sale, barter, or exchange' has been defined as follows:

> 'As used in sections 184, 185 and 186 of Commonwealth Act No. 466, the phrase 'original sale, barter, exchange' shall be construed to mean the first sale, barter or exchange of articles by every manufacturer, producer, or importer: Provided, however, That where the taxes prescribed in said sections have not been collected on articles, the original sales of which are subject to tax, in the possession of any merchant, the first sale, barter or exchange of said articles on or after the approval of this Act (October 1, 1939) shall be considered as the original sale, barter, or exchange and shall be subject to tax at the rates prescribed in sections 184, 185 and 186.' (Section 5, C.A. No. 503)

Following this definition of 'original sale, barter, or exchange,' if a person buys an article from a tax-exempt entity and resells the same article, the subsequent sale is not an original sale and is not subject to the sales tax although no sales tax was paid on the original sale by the tax-exempt entity. (See Op. Sec. of Justice, Nov. 14, 1946; People v. Pastor, 77 Phil., 1001)

"When a person cuts forest products from the public forests and is required to pay the forest charges prescribed in sections 264, et seq. of the Revenue Code, what is the nature of the transaction? There has been varying opinions on the question so that it may be pertinent in this connection to review the entire problem.

"In Hongkong & Shanghai Banking Corp. v. Rafferty, 39 Phil., 145, the question at issue was whether or not the Bureau of Internal Revenue was authorized to distrain forest products (railroad ties) acquired by plaintiff on which the forest charges had not been paid. The railroad ties were in the actual possession of plaintiff Bank and the Government contended that said railroad ties were subject to the tax lien for forest charges, pursuant to Section 1588 of the Administrative Code (now Section 315 of the Revenue Code), pertinent portion of which provides:

> 'Every internal-revenue tax on property or on any business or occupation, and every tax on resources and receipts, and increment to any of them incident to delinquency, shall constitute a lien superior to all other charges or liens not only on the property itself upon which such tax may be imposed, but also upon the property used in any business or occupation upon which the tax is imposed and upon all property rights therein.'

The Supreme Court in that case said that Section 1588 of the Administrative Code was applicable to forest charges, in effect holding that forest charges constitute 'internal revenue tax on property.' That forest charges were conceded to be internal revenue taxes is apparent from the portion of the decision which we quote:

> 'A businessman of ordinary prudence could not be expected to foresee that the personal property which he had taken in satisfaction of a debt was burdened by a tax. On this date, because no demand had been made and because the plaintiff had no notice of the tax, there was no valid subsisting lien upon the ties.'

"However, it was also held that in order that the lien for forest charges may follow the forest products in the hands of a third person who acquired the same from the concessionaire, it is necessary that there must have been a demand for the payment of the forest charges upon the concessionaire prior to acquisition of the forest products by the third person, and that in any case, such forest charges can not be a personal liability of the third person. The Hongkong & Shanghai Bank case was decided in 1918.

"Notwithstanding the Hongkong & Shanghai Bank case, some doubt must have been entertained in administrative circles about the nature of forest charges so that the question was referred to the office of the then Attorney General. In an opinion dated October

27, 1922, Attorney General Quintin Paredes expressed the view that forest charges were internal revenue taxes. This opinion of the Attorney General was accepted and applied without question until the advent of new and necessary industries established after the war which were granted tax exemption under Rep. Acts Nos. 35 and 901, among which are manufacturers of plywood.

"In Collector of Internal Revenue v. Mariano R. Lacson, G.R. No. L-12945, promulgated April 29, 1960, the Government vigorously opposed the claim for exemption of a new and necessary industry engaged in the manufacture of plywood from the payment of forest charges on the ground, among others, that forest charges are not taxes but the prices paid for the acquisition of forest products from the Government. The Supreme Court sustained the view that forest charges are internal revenue taxes but denied the exemption of the new and necessary industry from the payment of forest charges on the ground that they are taxes not directly payable by it in connection with the tax exempt industry. The highest Court expressly affirmed the concurring and dissenting opinion of a member of this Court which reads:

> 'With respect to the forest charges on logs cut and removed from petitioner's concession and used by him in the manufacture of plywood, I agree that forest charges are national internal revenue taxes. (Sec. 18, Nat. Int. Rev. Code.) There appears to be no legal basis for not considering forest charges as taxes when respondent considers them as taxes under Republic Act No. 304, as amended, this enabling holders of back-pay certificates to pay forest charges out of their backpay (B.I.R. ruling, November 22, 1955, Exhibit "B") and as internal revenue taxes under Chapter II, Title IX, of the Revenue Code, so as to authorize collection of said charges by distraint and levy (Op. Atty. Gen., Oct. 27, 1922). The argument that forest charges are not taxes because they are the price paid for the sale by the Government of forest products overlooks the fact that some forest charges are imposed on forest products cut and removed from unregistered private lands.

(See Sec. 266, Revenue Code) The Government cannot sell forest products which it does not own. From this it may be inferred that forest charges are not in reality the price paid for the sale by the Government of forest products; they are essentially taxes for the privilege of cutting and removing forest products from the public forests and from certain private lands. They stand on the same footing as the mining taxes imposed under Title VII of the Revenue Code. In the United States, forest charges and mining taxes are generally designated as production or severance taxes.

'Taxes which, although imposed under statutes containing many variations as to their precise phraseology, are directed generally against the production, or severance from the soil, of such natural resources as timber, oil, natural gas, ores, or the like, and are normally measured according to the quantity or value of the articles produced or severed, are usually, although not invariably, regarded as excise rather than property taxes.' (51,Am Jur. 1072)

"Barely a month after the promulgation of the decision in the Lacson case, specifically on May 31, 1960, the decision in Collector of Internal Revenue v. Pio Barretto Sons, Inc., G.R. No. L-11805, was promulgated wherein it was held that forest charges are not internal revenue taxes. Said the Court:

x x x x x x
x x x x x x

"The Court placed much reliance upon the above-quoted portions of the Report of the Tax Commission which undertook the codification of all national internal revenue tax laws. It is noteworthy, however, that the distiguished Chairman of that Commission, who was Secretary of Finance Manuel Roxas, later President of the Philippines, in enforcing the law on forest charges, adhered to and applied without reservation the doctrine laid down in the Hongkong & Shanghai Bank case.

x x x x x x
x x x x x x

"Surprisingly, after succeeding in the affirmance of its theory that forest charges are not taxes but the price paid for forest products, the Government now seeks to overrule the doctrine. It has advanced a new theory - that forest charges are regulatory fees which are imposed for regulatory purposes. In other words, it is now the position of respondent that forest charges are neither taxes imposed by virtue of the taxing power nor the prices paid or charged for forest products arising from the contractual relationship between the Government as seller and the cutter of forest products as buyer; they are, it is alleged, imposed by virtue of the police power. As authority for this proposition, Opinion No. 127, series of 1956, of the Secretary of Justice has been cited. It is to be noted that the Secretary of Justice had no opportunity to consider the opinion of the Supreme Court in the Barretto case which was promulgated only on May 31, 1960 inasmuch as he rendered his opinion No. 127 sometime in 1956.

"In support of the new theory, counsel for the Government states that the Supreme Court, in the Barretto case, really intended to hold that forest charges are regulatory fees. 'It is, therefore, not strange,' it is alleged, 'that the decision in said case dwelt lengthily on the regulatory nature of forest charges, quoting and analyzing in that connection Sections 11 and 13 of Regulation No. 85, of the forestry regulations.' (Page 2, Supplemental Memorandum for Respondent, dated July 6, 1961.) We regret we have been unable to find any portion of the decision in the Barretto case any indication that it was the intention of the Highest Court to hold that forest charges are regulatory fee. On the contrary, the Court further strenghtened its opinion in the resolution on the motion for reconsideration promulgated on August 31, 1960, when it stated:

'Moreover, as already stated in the decision, forest charges and surcharges are payments for timber taken from public forest, and they are considered as internal revenue

> taxes only in the sense that they are to be collected by the Collector of Internal Revenue Code. Forest products are obtained under licenses issued by the Government and forest charges are in a sense contractual in origin. No prescriptive period having been prescribed by law for this case, Sec. 47 of the Code of Civil Procedure should apply. (Emphasis supplied)'
>
> "If forest products are sold by the Government to whoever cuts and removes the same from the forest, it follows that the original sale is made by the Government, and the cutter who sells such forest products cannot be held subject to the percentage tax imposed by section 186 of the Revenue Code on his sale of such forest products because it is not the original sale within the meaning of said section. (See Op. Sec. of Justice, Nov. 14, 1946; People v. Pastor, 77 Phil., 1001) Accordingly the sales of forest products by petitioner to the Appari Lumber Co. are not subject to the fixed and percentage taxes imposed by sections 182 and 186 of the Revenue Code. That portion of the decision of respondent holding petitioner liable for the sum of ₱1,192.51 representing fixed and percentage taxes in connection with said sales, must have to be reversed." (Underlining Supplied)

In view of the ruling of this Court in the case above-quoted, and it appearing from the evidence of record that of the ₱48,767.73 sought to be refunded, the sum of ₱27.92 was not assigned to the petitioner, and the amount of ₱3,065.86 represents sales taxes on hand-sawn lumber, the sale of which manufactured products was properly treated as original sale effected by the petitioner, we hold that the petitioner is entitled to the refund of the sum of ₱45,673.95.

WHEREFORE, the respondent is hereby ordered to refund to the petitioner the sum of ₱45,673.95, without any pronouncement as to costs.

SO ORDERED.

Quezon City, February 15, 1965.

AUGUSTO M. LUCIANO
Actg. Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge