Library
Finish

Dec. 28/63

PHILIPPINE TOBACCO FLUE CURING
AND REDRYING CORPORATION,
Petitioner,

C.T.A.
CASE NO. 942

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x- - - - - - - - - - - - - - - - - ex

D E C I S I O N

This is an appeal from the decision of the respondent holding the petitioner liable for the payment of the sum of ₱2,507,693.17, representing the advance sales tax on 9,997,772 pounds of Virginia leaf tobacco allegedly imported by petitioner from the United States. Contending that it was not the importer of said leaf tobacco but the cigarette manufacturers to whom the corresponding bills of lading were indorsed and who actually withdrew the same from the customhouse, petitioner sought a reconsideration of said decision. The request for reconsideration having been denied, petitioner has appealed to this Court.

The records show that on August 13, 1957, the president of petitioner corporation, Harry S. Stonehill, applied for a barter permit to export 14 million pounds of locally produced leaf tobacco and to import 10 million pounds of high grade, flue-cured Virginia tobacco. The pertinent portions of said application are as follows:

> This corporation, in an effort to develop an export market, has been able to evince some interest in the foreign market for our

> sun-dried B and sun-dried C grades of tobacco as purchased by yourselves. We would, however, have to work out a barter arrangement of low grade tobaccos against high grade tobaccos.
>
> Since the ACCFA owns a substantial amount of these sun-dried grades of tobacco, we herewith suggest that you sell to this corporation approximately 14 million pounds of the two above-mentioned grades on condition that you secure for us a barter permit to import approximately 10 million pounds of high grade, flue-cured Virginia tobaccos. (Page 187, CTA records.)

The application was favorably indorsed to the President of the Philippines by the ACCFA (1st Indorsement, January 2, 1958). The recommendation expressly states that a barter permit be issued to petitioner to export 14 million pounds of locally grown leaf tobacco and to import 10 million pounds of better quality foreign Virginia and/or Burley leaf tobacco. (Page 217, CTA records.)

The Office of the President, by 2nd Indorsement of January 13, 1958, approved the application of petitioner for a barter permit, <u>subject to the conditions embodied in the 1st Indorsement of the ACCFA of January 2, 1958</u>. The pertinent portion of said indorsement of the Office of the President reads:

> Respectfully referred to the Secretary of Commerce and Industry, Manila, with the information that the President has approved, subject to the conditions embodied in the 1st indorsement hereon, the importation of 10 million pounds of foreign Virginia type leaf tobacco to be allocated and distributed by the Philippine Tobacco Flue Curing & Redrying Corporation (PTFCRC) in accordance with a schedule of equitable allocation furnished by the Agricultural Credit and Coopera-

tive Financing Administration (ACCFA).
(Page 189, CTA records.)

Conformably to the order of the President, the Department of Commerce and Industry, through its No-Dollar Import Office, issued Permit No. BT-1380 (SPECIAL) on January 21, 1958, the pertinent provisions of which are as follows:

> This PERMIT is hereby granted to PHIL. TOBACCO FLUE-CURING & REDRYING CORPORATION with business address at 332 A. Bonifacio, Balintawak, Quezon City, to EXPORT . . . and IMPORT . . . into the Philippines the commodities listed herewith a total value of FOUR MILLION NINE HUNDRED THOUSAND DOLLARS ($4,900,000.00) for export; and FOUR MILLION NINE HUNDRED THOUSAND DOLLARS ($4,900,000.00) for imports, in accordance with Section 1 (d) of Republic Act 1410.
>
> The barter transaction will be effected on a commodity-to-commodity basis.
>
> All export documents must be presented to this Office prior to the shipment of any exportation, and import documents prior to the issuance of a Release Certificate for the imports, and in both cases this Office must be furnished copies of said documents.
>
> This PERMIT, without a Release Certificate issued by this Office, is not by itself a clearance to export nor an authority for the release of imported goods upon arrival.
>
> This PERMIT shall be valid only until January 21, 1960 unless otherwise revoked by this Office.
>
> This PERMIT cannot be transferred, assigned, or negotiated.

Pursuant to the said barter permit, 9,997,772 pounds of Virginia and/or Burley leaf tobacco were imported into the Philippines. All the shipments were consigned to petitioner but the corresponding bills of lading were indorsed to various cigarette manufacturers who effected the withdrawal of the leaf tobacco from the customhouse. It is for this reason that petitioner contends that it is not the importer of said leaf tobacco but the cigarette manufacturers, and therefore not subject to the advance sales tax assessed against it by respondent.

The sole issue to be decided is whether or not petitioner is the importer of said leaf tobacco. If it is the importer, it is liable for the tax. On the other hand, if the cigarette manufacturers are the importers, the leaf tobacco in question is not subject to the advance sales tax in view of the exemption provision of Section 183(B) of the National Internal Revenue Code.

Section 183(B) of the Revenue Code imposes an advance sales tax on goods, wares or merchandise enumerated in Sections 184-186, at the rates of tax prescribed therein, when imported into the Philippines, such tax being payable by the importer. However, articles to be used by the importer himself in the manufacture or preparation of articles subject to specific tax are exempt from the advance sales tax. If the cigarette manufacturers are the importers of the tobacco leaf in question, as alleged by petitioner, the same would not be subject to the advance sales tax because it was used in the manufacture of cigarettes subject to the specific tax under Section 137 of the Revenue Code.

For purposes of the internal revenue taxes on imported articles, who is an importer? The long standing practice in the Bureau of Internal Revenue considers the owner of the goods at the time of the last act of importation, withdrawal of the goods from the customhouse, as the importer.

> Articles are deemed imported into the Philippines after they have been legally withdrawn from the custom's custody. The owner of the goods at the time of the withdrawal is deemed the importer thereof and the sale effected by him is an original sale subject to the merchant's sales tax. (BIR Ruling, January 2, 1940.) Any transaction made before the merchandise is removed from the custom's custody cannot be considered a taxable transaction under the National Internal Revenue Code. The said merchandise before removal from the custom's custody, is not yet merged with merchandise in the general commerce of the country. (BIR Ruling, March 18, 1940.) (Alejandro, The Law on Taxation, 1961 Edition, pp. 311-312.)

This rule is in accord with Customs Law. Section 1204 of the Tariff and Customs Code provides that the importer shall be personally liable for the duties, taxes, fees and other charges due on imported goods. The importer, under Section 1203, is the person to whom the goods are consigned, or the holder of the bill of lading duly indorsed by the consignee therein named. (See also Sec. 1301.) This principle has also been sustained in a number of decisions of the Supreme Court (Go Cheng Tee v. Meer, 87 Phil. 18; Saura Import & Export v. Meer, G. R. No. L-2926, Feb. 26, 1951; PMP Navigation v.

Meer, G. R. No. L-4621, March 24, 1953; A. Soriano y Cia. v. Collector, 51 O.G. 4551) the latest of which is Tan Tiong Bio v. Commissioner, G. R. No. L-15778, April 23, 1962.

The principle that the owner of imported goods at the time of the withdrawal of the same from the customhouse is the importer is a sound one. But the principle applies only to transactions entered into in good faith in the ordinary course of business. Were the transactions involved in this case entered into in good faith in the ordinary course of business?

Petitioner applied for a permit to export locally grown leaf tobacco and to import Virginia leaf tobacco from abroad. Its application was approved. The barter permit issued to it provided that it shall be the exporter of local tobacco and it shall be the importer of the Virginia leaf tobacco to be secured abroad under the barter license. The privilege to import under the license or permit naturally carries with it the obligation to pay the corresponding duties, taxes and other charges incident to importation. We think that the obligation of petitioner to be the importer of the leaf tobacco to be secured from abroad was one of the principal undertakings of petitioner imposed by the Government and embodied in the barter permit in view of the substantial revenue to be derived by the Government from the importation by petitioner, so that it was expressly provided that said permit cannot be transferred, assigned, or negotiated. Upon arrival of the Virginia leaf tobacco, the bills of lading covering the shipments were indorsed by petitioner, as consignee, to various manufacturers of cigarettes who effected the withdrawal of the tobacco from the customhouse. To recognize the validity of the indorsement of the bills of lading in such case would be to make the indorsees the importers of the tobacco. The rights granted to and the obligations imposed upon petitioner as importer under the barter permit would thereby be transferred to the indorsees of the bills of lading, admittedly a violation of the terms of the barter permit. It is contended that what is prohibited is the transfer, assignment or negotiation of the barter permit, and the indorsement of the bills of lading in question does not constitute a transfer, assignment or negotiation of the barter permit. We think that the assignment by petitioner of its rights and obligations as importer by indorsement of the bills of lading is in effect an assignment of the barter permit. What cannot be done directly, cannot be permitted by indirection.

As the indorsement of the bills of lading covering the leaf tobacco in question consigned to petitioner was a violation of the terms of the barter permit, and, therefore, not done in good faith, the Government may rightly disregard the transaction and consider said tobacco leaf as having been imported by petitioner. Being the importer, petitioner is liable for the advance sales tax on said importation, pursuant to Section 183(B) of the Revenue Code.

Finding no error in the decision appealed from, the same is hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, December 28, 1963.

ROMAN M. UMALI
Associate Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Presiding Judge Mariano Nable did not take part.