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COURT OF TAX APPEALS
MANILA

November 12, 1959

BERNARDO L. DIAZ,
Petitioner,

- versus -

C.T.A.
CASE NO. 558

November 12

COLLECTOR OF INTERNAL REVENUE,
THE PROVINCIAL TREASURER OF
CEBU, AND THE MUNICIPAL TREASURER
OF SIBONGA, CEBU,
Respondents.

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DECISION

This is an appeal from the decision of the Collector (now Commissioner) of Internal Revenue assessing against and demanding from petitioner the sum of ₱5,275.49 as deficiency percentage tax and surcharge on his sales of corn from July 11, 1932 to April 15, 1938.

Petitioner, a merchant, bought corn in Mindanao and shipped the same to Sibonga, Cebu thru the La Naviera Filipina, a local shipping firm whose "consignatorio" in Sibonga was one Gonzalo Uytico, now deceased.

Sometime in 1938, agents of the Bureau of Internal Revenue conducted an investigation of the corn merchants of Sibonga, Cebu, for the purpose of ascertaining if they were paying the correct percentage taxes on their sales of corn. Upon examination of the books and records seized from Uytico, it was determined that, during the period from July 11, 1932 to April 15, 1938, petitioner received various shipments consisting of a total 223,406 sacks of corn, the freight of which was paid by him.

Only a portion of the shipments was accounted for in petitioner's books of accounts. Consequently, respondent Commissioner, on September 29, 1938, assessed against petitioner the sum of ₱9,580.79 as deficiency percentage tax and surcharge on the difference between the quantity of corn appearing in the books and records of Uytico to have received by petitioner and that accounted for in his books of accounts (Exhibit "2", pp. 7-8, BIR rec.).

On October 7, 1938, petitioner requested respondent Commissioner for an opportunity to inspect the books of Uytico upon which the assessment was made and to explain whether the entries therein attributed to him were true or not (Exhibits "F" & "3", pp. 9 & 23, BIR rec.), which request was granted (Exhibits "5" & "6", pp. 27-30, BIR rec.). On May 29, 1939, respondent reiterated his demand for the payment of the tax and surcharge (Exhibit "8", p. 41, BIR rec.).

On July 18, 1939, respondent Commissioner issued a warrant, levying and distraining properties of petitioner, to satisfy the amount of ₱9,580.79 as merchant's sales tax and surcharge (Exhibits "C" & "9", p. 43, BIR rec.). However, the execution of this warrant of distraint and levy was suspended (Exhibit "10", p. 45, BIR rec.), in compliance with petitioner's request (Exhibits "I" & "13", pp. 49-51, BIR rec.).

On August 16, 1939, petitioner wrote respondent Commissioner, requesting for an opportunity to face Uytico when the latter would testify on the matter (Exhibits "J" & "14", pp. 52-53, BIR rec.).

Upon further investigation, respondent Commissioner, on August 24, 1939, redetermined the tax and surcharge due from petitioner in the sum of ₱5,275.49, and at the same time denied petitioner's request for an opportunity to face Uytico (Exhibit "15", pp. 54-57, BIR rec.).

On August 29, 1939, petitioner appealed the assessment to the Secretary of Finance (Exhibits "K" & "16-B", pp. 59-61, BIR rec.), who ordered the reinvestigation of the assessment (Exhibits "L" & "16", p. 65, BIR rec.).

There are no records to show that any decision was rendered by the Secretary of Finance. On July 10, 1947, the Collector informed the Secretary that in the light of the findings of his office in the reinvestigation of the tax case of Bernardo Diaz and his fellow merchants, the taxes assessed against them were found to be just and proper (Exhibits "20" & "C", pp. 96-97, BIR rec.). Thus, on September 1, 1947, the Bureau reiterated the demand for ₱5,275.49 as percentage tax and surcharge from Bernardo Diaz (Exhibits "21" & "A", p. 100, BIR rec.), which was followed by another demand dated October 7, 1947 (Exhibits "22" & "8", p. 101, BIR rec.).

In his letters dated October 14, 1947 and June 2, 1948, respectively, petitioner requested for a reinvestigation of his tax liability (Exhibit "22-A", p. 102; Exhibit "23", p. 104, BIR rec.), which requests were denied on October 22, 1947 and June 5, 1948 (Exhibit "22-B", p. 103; Exhibit "24", p. 105, BIR rec.).

Again, on November 16, 1951, respondent Commissioner issued a warrant of distraint and levy against the properties of petitioner to satisfy the amount of ₱5,275.49 as percentage tax and surcharge. (Exhibit "25-A", p. 109, BIR rec.) The properties were advertised for sale at public auction (Exhibit "29", pp. 124-125, BIR rec.). On December 18, 1951, petitioner requested for the suspension of the warrant of distraint and levy (Exhibit "26", p. 111, BIR rec.). And, on January 9, 1952, petitioner requested for the cancellation of the assessment on the ground of prescription under Section 354 of the National Internal Revenue Code (Exhibit "27", p. 112, BIR rec.). On March 16, 1953, respondent Commissioner denied the request for cancellation, contending that Sections 331 and 332 of the Tax Code should be applied in determining the period of limitation on the right of the Government to assess and collect taxes, and that since the instant case was investigated prior to the approval of the Internal Revenue Code, the right of the government to collect the tax has not yet prescribed. He reiterated the demand for the payment of the tax in order that no summary proceedings would be resorted to effect the collection (Exhibit "28", pp. 116-117, BIR rec.).

On November 5, 1956, a notice of seizure of properties was sent to petitioner (Exhibit "D", p. 5, CTA rec.). On March 13, 1957, petitioner again requested for the dismissal of the case for lack of cause of action on the ground of prescription. (Exhibit "E", p. 138, BIR rec.) In the meantime, on December 18, 1956, respondent Commissioner suspended the scheduled auction sale of petitioner's properties, but maintained the embargo thereon (Exhibits "29", "31", pp. 124-125, 137, BIR rec.).

On July 16, 1958, the present petition for review was filed before this Court. And, on September 4, 1958, respondent Commissioner filed his answer to the petition for review.

The issues to be resolved are:

1. Whether or not the instant petition for review was seasonably filed in accordance with Section 11 of Republic Act No. 1125;

2. Whether or not the right of the Collector (now Commissioner) of Internal Revenue to collect the deficiency percentage tax in question has prescribed; and

3. Whether or not petitioner is liable for the said deficiency percentage tax.

Section 11 of Republic Act No. 1125 provides:

> "Sec. 11. Who may appeal; effect of appeal - Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling."

From the afore-quoted statutory section, it is evident that an appeal from a decision or ruling of the Collector (now Commissioner) of Internal Revenue should be instituted within thirty days after petitioner's receipt of such decision or ruling. We shall now determine whether or not the instant appeal was seasonably filed before this Court.

Respondents, in their answer filed on September 4, 1958, alleged that petitioner's right to appeal Collector's decision has already prescribed. Petitioner, on the other hand, without squarely meeting respondent's contention, argues that this Court has jurisdiction over the subject matter of the petition for review. To support this stand, he cites the case of Collector vs. Rodriguez, et al., (G. R. No. L-11192, April 16, 1958; O.G. December 29, 1958) wherein the Supreme Court ruled that a case which disputes the legality or propriety of the levy by distraint on the properties of a taxpayer comes within the exclusive jurisdiction of the Court of Tax Appeals.

Upon the findings of facts, it appears that the final demand for the payment of ₱5,275.49 as deficiency percentage tax and surcharge was made on March 16, 1953. This demand was made before the creation of the Court of

Tax Appeals on June 16, 1954. We have held, in a long line of decisions, that where the final decision of the Collector was rendered prior to the creation of this Court, the taxpayer should interpose his appeal therefrom within thirty days from and after July 21, 1954 when this Court was already functioning with the appointment of its two Judges and its Clerk of Court and with the adoption by it in the interim of the Rules and Regulations of the defunct Board of Tax Appeals. (Sta. Clara Lumber Co. vs. Collector of Internal Revenue, C.T.A. Case No. 91, September 20, 1955; Ipekdjian Merchandising Co. vs. Collector of Internal Revenue, C.T.A. Case No. 107, October 1, 1955; Rizal Cement Co. vs. Collector of Internal Revenue, Manila Civil Case No. 23419, January 4, 1956; Lim Tio, Dy Heng & Dee Hue vs. Collector of Internal Revenue, C.T.A. Case No. 126, January 31, 1956; Ampang Tan vs. Commissioner of Customs, C.T.A. Case No. 92, April 2, 1956.) It appearing that the instant petition for review was filed on July 16, 1958 or more than three years from July 21, 1954, it is obvious that the appeal was filed far beyond the statutory period prescribed in Section 11 of Republic Act No. 1125.

Having ruled that the instant appeal was not seasonably filed, we find it unnecessary to pass upon the other two issues.

DECISION -
C.T.A. CASE NO. 558

WHEREFORE, the petition for review filed by petitioner on July 16, 1958 is hereby dismissed for lack of jurisdiction, with costs against petitioner.

SO ORDERED.

Manila, November 12, 1959.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge