REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DUPRO PHILIPPINES, INC.,
(Formerly Liddell & Co.,
Inc.),
Petitioner,

Dec. 16, 1968

versus CTA CASE NO. 1341

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue holding petitioner liable for the payment of ₱10,727.53 as deficiency advance sales tax and broker's percentage tax covering the period from 1954 to 1959.

Petitioner is a duly registered domestic corporation with business address at United Nations, Manila. It is engaged in the importation of trucks, automobiles, and spare parts and accessories thereof. It is also engaged in business as a commercial broker.

In 1959, petitioner's books of accounts and other records and papers were examined by Revenue Examiners Vicente de las Llagas and Dick Farrales for percentage tax purposes covering the period from 1954 to 1958. On October 22, 1959, respondent informed petitioner of the findings of said revenue examiners and invited the said taxpayer to a conference to air its objections against the proposed deficiency advance sales and 6% deficiency broker's tax assessment of ₱283,503.04 covering the period from 1954 to 1958.

The investigating revenue examiners reported to respondent that the Chevrolet panel delivery sedans imported by petitioner are subject to the 30% advance sales tax under Section 183(b), in relation to Section 184 of the National Internal Revenue Code, and not to the 7% advance sales tax imposed by Section 183(b), in relation to Section 186, of the same Code. Acceding to the invitation of respondent, petitioner's representatives conferred with respondent's revenue examiners, but the parties to the conference failed to settle amicably the proposed deficiency tax assessment. In the meantime, petitioner submitted a formal query to respondent Commissioner of Internal Revenue to find out whether the imported panel delivery sedans are classified as trucks or automobiles for advance sales tax purposes. In a ruling dated January 21, 1960, respondent held that the imported vehicle is a truck and, therefore, it is subject to the 7% advance sales tax and the corresponding mark-up under Section 183(b), in relation to Section 186 of the National Internal Revenue Code (Exh. D, p. 43, BIR rec.). Consequently, petitioner requested respondent that the proposed deficiency advance sales tax and the deficiency broker's percentage tax assessment be withdrawn and cancelled.

In 1959, another revenue examiner, Mr. Percival Ebbah, examined the books of account of petitioner and reported to respondent that the said taxpayer is liable for deficiency advance sales tax, deficiency broker's percentage tax and contractor's tax amounting to ₱376,031.73 covering the period from January 1 to June 30, 1959 (Exh. F, p. 20, BIR rec.). On October 14 and December 17, 1959, petitioner protested the proposed additional deficiency advance sales tax assessment and the deficiency broker's percentage tax assessment (Exhs. H and I, pp. 165-169, BIR rec.; and pp. 72-73, CTA rec.).

On December 4, 1961, respondent assessed petitioner the sum of ₱10,727.53 as deficiency advance sales tax and deficiency broker's percentage tax covering the period from 1954 to 1959. This formal assessment was received by petitioner on December 23, 1961. (Petitioner's Memo. and Respondent's Memo., pp. 81 and 111, CTA rec.) Thereafter, petitioner's auditors sought the details of respondent's assessment but the same were made available to petitioner sometime in May, 1962.

On May 16, 1962, petitioner disputed and contested the said deficiency tax assessment covering the period from 1954 to 1959 and alleged as a defense that the deficiency advance sales tax assessment of ₱5,790.60 covering the period from 1954 to 1956 had already prescribed under Section 331 of the Tax Code. Petitioner, however, admitted its liability for deficiency advance sales tax and deficiency broker's percentage tax for 1957 to 1959 (Exh. R, pp. 107-109, BIR rec.).

On December 22, 1962, petitioner received respondent's letter of December 10, 1962 denying the protest of the taxpayer and reiterated his demand for the payment of the full amount of ₱10,807.53 as deficiency advance sales tax and deficiency broker's percentage tax covering the period from 1954 to 1959 (pp. 155-156, BIR rec.).

On January 2, 1963, respondent received another letter of petitioner, dated December 31, 1962, requesting the cancellation and withdrawal of the deficiency advance sales tax assessment insofar as it involves the period from 1954 to 1956 (pp. 159-163, BIR rec.).

On February 9, 1963, petitioner received another letter of respondent, dated January 17, 1963, denying again the protest of the taxpayer. Consequently, on February 26, 1963, petitioner filed with this Court the instant petition for review.

(Pp. 180-181, BIR rec.; pp. 1-5, CTA rec.)

The issues submitted to this Court for resolution are the following:

1. Whether or not this Court has jurisdiction to take cognizance of the case under Section 11 of Republic Act No. 1125; and

2. Whether or not the right of respondent to assess petitioner for deficiency advance sales tax covering the period from 1954 to 1956 had prescribed under Section 331 of the National Internal Revenue Code, in relation to Section 332 of the same Code.

__First Issue:__

There is no dispute that respondent's letter of demand and/or assessment notice, dated December 4, 1961, was received by petitioner on December 23, 1961. The said formal tax assessment was contested and disputed in a letter of petitioner dated May 16, 1962, which was received by respondent on May 21, 1962. As the deficiency tax assessment in question was disputed by petitioner after the lapse of almost five months, respondent concluded that the petition for review was filed beyond the 30-day period prescribed by Section 11 of Republic Act No. 1125 and, therefore, this Court has no jurisdiction to take cognizance of the case.

Section 7(1) of Republic Act No. 1125, in relation to Section 11 thereof, provides, among others, that the Court of Tax Appeals has exclusive jurisdiction to review by appeal "decisions of the Commissioner of Internal Revenue involving disputed assessments." The word "decisions" has been interpreted to mean the decisions of the Commissioner of Internal Revenue on a disputed assessment or on the protest of the taxpayer against the assessment and not the assessment itself. (See Commissioner of Internal Revenue v. Villa, et al., G.R. No. L-23988, January 2, 1968; St. Stephen's Assn. v. Collector of Internal Revenue, 104 Phil. 314.) In other words, before a taxpayer can appeal to this Court within the 30-day period prescribed by Section 11 of Republic Act No. 1125, he should first file a protest against respondent's tax assessment, and the decision rendered by the Commissioner of Internal Revenue on the protest is the one appealable to this Court.

When petitioner questioned the legality and validity of respondent's assessment in its protest of May 16, 1962 and requested him to withdraw or cancel the same, it became a "disputed assessment." The decision of respondent on the disputed assessment was rendered on December 10, 1962 denying the protest of the taxpayer but said decision was received by petitioner on December 22, 1962. On January 2, 1963, petitioner requested a reconsideration of the said decision by questioning the inclusion of the deficiency advance sales tax covering the period from 1954 to 1956 in its letter to respondent dated December 31, 1962. Petitioner had, therefore, consumed eleven (11) days of the 30-day period within which to appeal the said decision. The period of appeal was suspended until February 9, 1962 when petitioner received another letter of respondent, dated January 23, 1962, denying again the protest of the petitioner. From February 9 to February 26, 1963 when the petition for review was finally filed in Court, petitioner had consumed an additional seventeen (17) days of the period of appeal, thereby consuming a total of twenty-eight (28) days. Consequently, the petition for review was filed within the 30-day period prescribed by Section 11 of Republic Act No. 1125 and, therefore, this Court has jurisdiction to take cognizance of the case.

Second Issue:

Petitioner contends that respondent's letter of demand and/or assessment notice dated December 4, 1961 was received by it on December 23, 1961 and, therefore, the deficiency advance sales tax assessment covering the period from 1954 to 1956 has prescribed under Section 331 of the National Internal Revenue Code which provides as follows:

SEC. 331. Period of limitation upon assessment and collection.—Except as provided in the succeeding section, internal-revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code.

Respondent contends otherwise and claims that prescription has not tolled against the assessment because petitioner either failed to file a return with the Bureau of Internal Revenue or failed to introduce in Court the corresponding import entries and revenue declarations filed with the Bureau of Customs, relying on Section 332(a) of the Tax Code which provides:

SEC. 332. Exceptions as to period of limitation of assessment and collection of taxes.—(a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission.

Section 183(a) of the National Internal Revenue Code requires every person subject to the percentage tax under Title V of the same Code to make a true and complete return of his gross monthly sales, receipts, or earnings and within 20 days after the end of each month, pay the tax due thereon. Consequently, an importer who is subject to the advance sales tax is not required by Section 183(a) of the same Code to make a return because he has no taxable gross monthly sales, receipts or earnings. (The advance sales tax, however, is paid by the importer before the release of the imported articles from customs custody and this Court can take judicial notice of the standard operating procedure in the Bureau of Customs that, before the imported articles could be released from customs custody, the importer thereof must invariably file the corresponding import entries and revenue declarations. The said declarations constitute a return within the meaning and scope of Section 331 of the Tax Code because the advance sales taxes due on petitioner were assessed and collected on the basis of the aforesaid declarations. Accordingly, we hold that the right of respondent to assess the deficiency advance sales tax for the years 1954 to 1956 had prescribed.)

Be that as it may, respondent invokes Section 333 of the National Internal Revenue Code which provides, among others, that the running of the statute of limitations on the making of assessments, in respect of any deficiency, shall be suspended for the period during which the Commissioner of Internal Revenue is prohibited from making the assessment, and for sixty days thereafter. It is claimed that in 1959 and sometime thereafter, respondent was prohibited from making the deficiency tax assessment because petitioner was given the full opportunity to contest and dispute the proposed deficiency tax assessment in various informal conferences held between the taxpayer's representatives and respondent's examiners. Respondent argues, therefore, that the deficiency advance sales tax assessment, dated December 4, 1961, covering the period from 1954 to 1959 has not prescribed on account of the suspension of the running of the prescriptive period of assessment under Section 333 of the Tax Code.

We cannot subscribe to the theory of respondent. In the first place, no provisions of law, orders of the court, or binding agreements were cited by respondent to show that he was prohibited from making the deficiency tax assessment in 1959 or sometime thereafter. In the second place, respondent issued in 1959 a proposed (tentative) deficiency tax assessment against petitioner instead of a formal (final) deficiency tax assessment which he could do to avoid prescription of assessment. Finally, the voluntary and unilateral act of respondent in inviting petitioner to air its objections to the proposed deficiency tax assessment cannot, by any stretch of the imagination, be considered beneficial to respondent in that it suspended the statute of limitations on tax assessment.)

WHEREFORE, the decision of respondent appealed from is modified. After deducting the deficiency advance sales tax for the years 1954 to 1956 amounting to ₱5,790.60 from the total deficiency tax assessment of ₱10,725.28 (instead of ₱10,727.53 as erroneously added), petitioner is hereby ordered to pay respondent or his authorized collection agent the total of ₱4,934.68 as deficiency advance sales tax and deficiency broker's percentage tax. Without pronouncement as to costs.

SO ORDERED.

Quezon City, December 16, 1968.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R M Umali
ROMAN M. UMALI
Presiding Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge