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TAN GUAN,
Petitioner,

- versus - C.T.A. CASE NO. 535

JOSE ARAÑAS, Commissioner
of Internal Revenue,
Respondent.
x - - - - - - - - - - - - - - - x

February 26, 1961

DECISION

This is an appeal from the decision of the Commissioner of Internal Revenue assessing and demanding from petitioner Tan Guan, as partner of the defunct Imperial Tobacco Company, a total of ₱201,250.00, later reduced to ₱200,250.00, as specific tax on cigarettes alleged to have been illicitly manufactured by said company.

Since the instant case involves two different assessments, and the circumstances and facts thereof are equally different, we shall discuss said assessments separately.

It appears that the defunct Imperial Tobacco Company, an unregistered partnership, was formed sometime in 1950 (pp. 9-10, t.s.n.) with Gonzalo Padua, as president and general manager, and Tan Guan, as Cashier (pp. 47 & 57, t.s.n.), whose contributions consist of 40% each of the total capital of the partnership (p. 59, t.s.n.). Preparatory to the manufacture of cigarettes, the company purchased 860 and 300 bobbins or rolls of cigarette paper from the Mabuhay Cigarette Factory and

Seng Kee & Company, respectively (see Exh. F, pp. 89-90, CTA rec.). Having been denied a municipal license to manufacture cigarettes, it was dissolved in 1951 (see Exhs. C & D, pp. 86-87, CTA rec.; Exh. Z, p. 77, Vol. I, BIR rec.).

ASSESSMENT OF ₱72,450.00 -

On July 30, 1951, the Imperial Tobacco Company wrote a letter to the respondent Commissioner of Internal Revenue, informing him of "the delivery of 300 bobbins, cigarette papers, 6,000 meters to the La Marikina Cigarette Factory, on July 28, 1951" (see Exh. 30, p. 12, Vol. II, BIR rec.). This letter was referred to the Supervisor of Tobacco Factories for investigation (see Exh. 30-A, p. 12, Vol. II, BIR rec.).

During the investigation, it was revealed that La Marikina Cigarette Factory is not registered with the Bureau of Internal Revenue (see Exh. 36, p. 13, Vol. II, BIR rec.; see t.s.n. pp. 141-143, 161-168, 190-191), and is fictitious (Exh. 27, pp. 197-199, Vol. I, BIR rec.); that the alleged permit of the Imperial Tobacco Company to sell bobbins of cigarette paper to La Marikina Cigarette Factory is a forged one (see Exh. 1, p. 125, Vol. II, BIR rec.); and that Jose de Dios, who allegedly acknowledged receipt of the 300 bobbins of cigarette paper as the representative of La Marikina Cigarette Factory, is a fictitious person (see Exhs. 2 & 33, p. 25, Vol. II, BIR rec.). Consequently, in a letter dated January 21, 1953 and addressed to

Gonzalo G. Padua, as manager of the Imperial Tobacco Company, the respondent Commissioner determined against and demanded from the company the payment of ₱72,450.00, as specific tax on the quantity of cigarettes that could be produced out of the 300 bobbins of cigarette paper (Exh. 27, pp. 197-199, Vol. I, BIR rec.).

In a letter dated February 9, 1953, Gonzalo G. Padua, as counsel for the Imperial Tobacco Company, wrote to the Commissioner of Internal Revenue, announcing his intention to appeal to the Conference Staff. (See Exh. 28, p. 200, Vol. I, BIR rec.) The appeal was granted on February 17, 1953 (see p. 59, Vol. II, BIR rec.), and the case was heard before the Conference Staff on March 3, 1953. (See Exh. 11, pp. 201-213, Vol. I, BIR rec.) However, after the first hearing neither counsel for the petitioner or any responsible official of the Imperial Tobacco Company appeared. Subsequently, on May 8, 1953, the respondent demanded of the Company the payment of ₱71,450.00 (the balance after deducting the ₱1,000.00 admittedly paid on the ₱72,450.00 on February 20, 1953) and ₱10,000.00, as specific tax and compromise penalty, respectively. (See Exh. 1, Motion, p. 28, CTA rec.)

On September 4, 1953, the respondent Commissioner issued a warrant of distraint and levy against the properties of Gonzalo G. Padua in order to enforce the collection of the assessment (p. 109, Vol. II, BIR rec.).

However, the same could not be executed because Padua did not own any property that could be levied upon (see pp. 107-108, Vol. II, BIR rec.). And on August 24, 1957, a criminal case was filed in the Court of First Instance of Rizal, Pasay City Branch, against Gonzalo Padua for violation of Section 137 of the National Internal Revenue Code (Exh. 42, pp. 130-131 Vol. II, BIR rec.), which case was dismissed on the ground of prescription (see pp. 173, 165-167, Vol. II, BIR rec.).

Upon failure of respondent to collect from Gonzalo G. Padua, he decided instead to collect from the petitioner herein, who, as above-stated, was a partner in the Imperial Tobacco Company. Accordingly, in a letter dated March 20, 1958 and addressed to the petitioner, the respondent assessed against and demanded from the former the payment of the respective sums of ₱72,450.00 and ₱128,800.00 or a total of ₱201,250.00, as specific tax (Exh. 25, p. 171, Vol. I, BIR rec.). This assessment was received by the petitioner on April 30, 1958 (Exh. 25; see also p. 177, Vol. I, BIR rec.).

To satisfy the amount of tax demanded from the petitioner, the respondent, on May 6,1958, issued warrants of distraint and levy and garnishment against the properties and salaries of the former (see pp. 170, 187, Vol. I, BIR rec.). And, on May 7, 1958, a civil case was filed in the Court of First Instance of Rizal against the Imperial Tobacco Company and/or Tan Guan, for the collection of the tax (see Exh. 2, Motion, pp. 29-31, CTA rec.).

On May 15, 1958, counsel of Tan Guan wrote a letter to the respondent Commissioner, requesting a rehearing of his client's case (see p. 167, Vol. I, BIR rec.). However, before this letter could be answered, the instant petition for review was filed before this Court on May 29, 1958. The respondent moved to dismiss the same on the ground of pendency of another action in the Court of First Instance of Rizal, but this Court denied said motion, and the petition for review to which petitioner answered on January 14, 1959 was heard on the merits.

ASSESSMENT FOR ₱128,800.00 -

On December 5, 1950, the Philippine Cigarette Manufacturing Company, Inc. wrote the Commissioner of Internal Revenue, advising him of its proposed sale of 800 bobbins of cigarette paper to the Imperial Tobacco Factory, and requested that the necessary permit for the transaction be issued. At the bottom of this request for permit was a confirmation, signed by the manager of the Imperial Cigarette Company, to the effect that this Company desired to buy said quantity of cigarette paper (Exh. 11, p. 48, Vol. I, BIR rec.). Pursuant to the request, the respondent, on December 6, 1950, issued a permit to the Philippine Cigarette Manufacturing Co., Inc. to sell 800 bobbins of cigarette paper to the Imperial Cigarette Co. (see p. 42, Vol. I, BIR rec.).

Upon investigation, the respondent, on September 5, 1952, determined against and demanded from the Philippine Cigarette Manufacturing Co. the payment of ₱128,800.00, as specific tax on the cigarettes that could have been manufactured out of the 800 bobbins of cigarette paper (Exh. X, p. 24, Vol. I, BIR rec.). A previous request for the reconsideration of the assessment having been denied by the respondent (Exh. Y, p. 44, Vol. I, BIR rec.), the company appealed to the Conference Staff (Exh. 9, p. 113, Vol. I, BIR rec.).

In connection with the hearing before the Conference Staff, it may be stated that several subpoena duces tecum were issued to the petitioner Tan Guan (see pp. 103 & 131, Vol. I, BIR rec.), but the same could not be served because he could not be located (see Exh. 10, p. 132, Vol. I, BIR rec.).

After the hearing, the Conference Staff recommended to the respondent that the assessment of ₱128,800.00 against the Philippine Cigarette Manufacturing Co., Inc. be withdrawn and corresponding action taken against the Imperial Tobacco Company on the ground that the sale of 800 bobbins of cigarette paper took place between these two companies (Exh. 12, pp. 133-136, Vol. I, BIR rec.).

Acting upon the recommendation of the Conference Staff, the respondent Commissioner, on May 7, 1953, assessed against and demanded from the Imperial Tobacco Co. the payment of the sum of ₱128,800.00 and also reiterated his previous demand for the satisfaction of the ₱72,450.00 heretofore adverted to as specific tax (Exh. 14, pp. 139-140, Vol. I, BIR rec.). Meanwhile, efforts have been exerted by agents of the respondent to locate the petitioner, whose whereabouts could not be ascertained for quite a long time (see Exhs. 15, 16, 17, 18, 19, & 21, pp. 142, 146-148, 150 & 172, Vol. I, BIR rec.).

On March 20, 1958, the respondent Commissioner assessed and demanded from Tan Guan the amounts of ₱128,800.00 and ₱72,450.00 or a total of ₱201,250.00, as specific tax on cigarettes alleged to have been illicitly manufactured by the Imperial Tobacco Company (Exh. 25, p. 171, Vol. I, BIR rec.). This letter was eventually delivered to and received by the petitioner on April 30, 1958 (Exh. 21, p. 172, Vol. I, BIR rec.). On May 7, 1958, a complaint was filed before the Court of First Instance of Rizal to collect the two assessments in question. Finally, on May 29, 1958, the petitioner filed before this Court the instant petition for review, to which petition the respondent filed his answer on January 14, 1959.

This case yields the following issues:

1. Whether or not the right of the Government to collect the tax in question has already prescribed; and if in the affirmative,

2. Whether or not the petitioner is liable for the payment of said tax.

It is contended on behalf of the petitioner that the right of the Government to collect both assessments has prescribed. We find this contention not well taken. It is to be noted that the assessments were made against the petitioner Tan Guan on March 20, 1958. Under the law, the tax thereunder may be collected by a proceeding in court within five (5) years after March 20, 1958 (see Sec. 332(c) of the Tax Code). The respondent's answer to the instant petition for review, which is considered as a judicial action for collection of the tax (Collector v. Solano, et al., G.R. No. L-11475, July 31, 1958; Collector v. Clement, et al., G.R. No. L-12194, January 24, 1959), was filed on January 14, 1959. Obviously, the judicial action to collect the assessments of ₱72,450.00 and ₱128,800.00 was seasonably filed.

We now come to the second issue. The assertion of petitioner's liability for the specific tax in question is based on Section 150 of the Tax Code and Section 10 of Revenue Regulations No. V-7, dated October 31, 1950. The pertinent provisions of said Section 150 of the Tax Code read:

"SEC. 150. Records to be kept by manufacturers—Assessment based thereon.- The Secretary of Finance is authorized to prescribe, by regulations, the records which shall be kept by manufacturers of articles subject to specific tax, and such records, whether of raw materials received into the factory or of articles produced therein, shall be deemed public and official documents for all purposes.

"The records of raw materials kept by such manufacturers may be used as a species of evidence by which to determine the amount of specific taxes due from them, and whenever the amount of raw materials received into any factory exceeds the amount of manufactured or partially manufactured products on hand and lawfully removed from the factory, plus waste removed or destroyed, and a reasonable allowance for unavoidable loss in manufacture, the Collector of Internal Revenue may assess and collect the tax due on the products which should have been produced from the excess."

And the pertinent provisions of Section 10 of Revenue Regulations No. V-7 say:

"x x x x

"Failure on the part of a cigarette manufacturer to report any loss or destruction of cigarette paper or the removal, withdrawal, or transfer of cigarette paper from the factory premises or place of business of the manufacturer without a written authority from the Collector of Internal Revenue shall be considered prima facie evidence that the cigarette paper alleged to have been lost or destroyed, or removed, withdrawn or transferred was used in the manufacture of cigarettes, which have been removed for sale or consumption without the prepayment of the specific tax. In such case, the corresponding specific tax shall be assessed and collected pursuant to the provisions of section 150 of the National Internal Revenue Code."

The petitioner does not challenge the legality of Revenue Regulations No. V-7, but contends that with respect to the assessment amounting to ₱72,450.00, he is not liable therefor because the 300 bobbins of cigarette paper were sold by the Imperial Tobacco Company to La Marikina Cigarette Factory. Hence, the liability of the petitioner turns upon the fact of this particular phase of the case.

The facts established during the trial argues against the verity of the alleged sale of the 300 bobbins or rolls of cigarette paper to La Marikina Cigarette Factory. It is to be noted that the alleged request of the Imperial Tobacco Co. for permission to sell bobbins of cigarette paper is not accompanied by a written confirmation of the supposed buyer or its duly authorized representative, contrary to the requirements of Section 4 of Revenue Regulations No. V-7. The alleged permit, which purports to authorize such sale, is fake for the reason that the signature appearing therein as that of Melecio R. Domingo, Acting Deputy Collector of Internal Revenue, is admittedly forged. We find it strange that this alleged permit is written on the same paper as and underneath the request for permission to sell. Moreover, Jose de Dios, who allegedly acknowledged receipt of the 300 bobbins of cigarette paper as representative of La Marikina Cigarette Factory, is fictitious. And above all, La Marikina Cigarette

Factory is equally fictitious and non-existent.

Upon the foregoing established facts, we believe that there was no sale of 300 bobbins or rolls of cigarette paper by the Imperial Tobacco Company. The Imperial Tobacco Company, of which the petitioner was a partner, failed to satisfactorily account for the said number of bobbins or rolls of cigarette paper. The removal of the same from the company's place of business without a written authority from the Commissioner of Internal Revenue is a prima facie evidence that the cigarette paper was used in the manufacture of cigarettes, which have been removed for sale or consumption without the prepayment of the specific tax. This prima facie evidence has not been successfully overcome by the petitioner. Consequently, the petitioner, as a partner in the Imperial Tobacco Co., is liable for specific tax on the cigarettes which could have been produced from the 300 bobbins or rolls of cigarette paper. But, inasmuch as it appears that the respondent, in his demand of May 8, 1953, has admitted a payment amounting to ₱1,000.00 on the ₱72,450.00, the petitioner is liable only for the amount of ₱71,450.00.

The petitioner maintains that an assessment must be based on actual facts, not on mere presumptions. It should be noted that Section 10 of Revenue

Regulations No. V-7 was issued pursuant to Section 338, in relation to Sections 4(j), 150 and 160 of the Tax Code. It merely recognizes the existence of a <u>prima facie</u> evidence. Therefore, it only creates a presumption of liability against the taxpayer, which presumption is not conclusive upon the taxpayer who can adduce evidence that he is not liable thereunder because the cigarette paper was not used in the manufacture of cigarettes. (See Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue, G.R. No. L-6741, January 31, 1956.) Precisely, this Court had this observation in mind, when it allowed petitioner to introduce evidence tending to negate his tax liability.

Likewise, the petitioner denies liability for the assessment of ₱128,800.00, as specific tax on the cigarettes which could have been produced from the 800 bobbins of cigarette paper. It is claimed on his behalf that the Philippine Cigarette Manufacturing Co., Inc. did not sell said bobbins to the Imperial Tobacco Company. To dispute this claim, the respondent points to Exhibits AA, CC and EE, which purport to be invoices issued by the Philippine Cigarette Manufacturing Co., Inc., for the sale to the Imperial Cigarette Factory (Co.) of 400, 210 and 190 bobbins of cigarette paper, respectively (see pp. 41, 39 & 37, Vol. I, BIR rec.); to Exhibits BB, DD, and FF, which consist of official receipts issued by the former company for payments made by the latter company in the respective amounts of ₱3,450.00, ₱2,100.00 and ₱550.00 (see pp. 40, 38 & 36, Vol. I, BIR rec.); and to the submission to the Conference Staff of the Bureau of Internal Revenue by the Philippine Cigarette Manufacturing Co., Inc. of its books which record the sale of the 800 bobbins of paper cigarette to the Imperial Tobacco Co. When considered with the evidence that the Philippine Cigarette Manufacturing Co., Inc. was issued a permit to sell bobbins of cigarette paper to the Imperial Tobacco Co. upon a written request, accompanied by a written confirmation of the latter company, these documentary exhibits, Exhibits AA to FF, and the fact that the books of the Philippine Cigarette Manufacturing Co., Inc. record the sale, compel the conclusion that the sale of the 800 bobbins of cigarette paper to the Imperial Tobacco Co. took place. For failure to account for these bobbins of cigarette paper, the petitioner, as a partner in the Imperial Tobacco Company, is liable for the payment of the sum of ₱128,800.00, as specific tax on the cigarettes that could have been produced from the 800 bobbins of cigarette paper in question.

WHEREFORE, the petitioner Tan Guan is hereby ordered to pay the Commissioner of Internal Revenue or his authorized representative the amount of ₱200,250.00, as specific tax, with costs against the petitioner.

SO ORDERED.

Manila, February 25, 1961.

MARIANO NABLE
Presiding Judge

I concur:

AUGUSTO M. LUCIANO
Associate Judge

I reserve my vote:

ROMAN M. UMALI
Associate Judge