REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

AGUSAN STEVEDORING UNION,
Petitioner,

- versus - C.T.A. CASE No. 18

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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Nov. 14, 1955

DECISION

This is an appeal from a decision of the respondent Collector of Internal Revenue denying the claim of the petitioner Agusan Stevedoring Union, also known as ASU for short, for the refund of the sum of ₱11,712.77 alleged to have been illegally and erroneously assessed and collected by the former from the latter as stevedore's percentage tax, surcharge and penalties during the period from January 20, 1952 to October 20, 1953.

The appeal narrows down to the following issues:

(1) Whether or not this Court may entertain the petitioner's entire claim for refund so as to include those internal revenue taxes paid by the petitioner prior to October 6, 1952, in view of the provisions of section 306 of the Tax Code, which limits the right of the taxpayer to file a court action for the refund of taxes to 2 years from the date of payment; and

(2) Whether or not the Agusan Stevedoring Union or ASU is a "stevedore" within the contemplation of section 191 of the Tax Code which imposes a tax of 3% on the gross receipts of stevedores and other business occupations enumerated in in said provision.

It appears that petitioner, through counsel, sent a letter on April 6, 1954 to respondent requesting refund of the sum of ₱12,244.77, claimed to have been erroneously paid by the former as stevedore's percentage tax, surcharge and penalties during the period from January 20, 1952 to October 20, 1953, inclusive, which the respondent in paragraph 5 of his memorandum admitted to be ₱11,712.77 and not ₱12,244.77, itemized by him as follows:

RECEIPT NO.	DATE PAID	AMOUNT PAID
O.R. #A-0776108 (Exhs. 10-A, 17; Exh. U)	Jan. 20/52	₱ 1,158.65
O.R. #0958017 (M.T.R. #V-711514 Exhs. F to F-4, S, V)	Jan. 30/53	1,000.00
O.R. #6961325 (Exh. G; Exh. 17)	Jan. 20/53	1,385.00
O.R. #058549 (M.T.R. #V-775278 Exhs. 4-D to 4-G; Exh. H)	Mar. 30/53	2,310.13
O.R. #A-7684437 (Exh. I; Exh. 17)	Apr. 20/53	1,443.43
O.R. #A-7686284 (Exh. J; Exh. 17)	July 20/53	2,366.38
O.R. #B-408170	Oct. 20/53	2,048.47
	TOTAL AMOUNT CLAIMED —	₱11,712.77

On September 9, 1954, counsel for petitioner received a letter from respondent dated August 18, 1954, denying petitioner's request for refund. Consequently, petitioner on October 6, 1954, filed before this Court its petition for review of the respondent's decision denying said request for refund. On October 29, 1954, respondent filed his answer to said petition for review alleging among other things that the Court action of the petitioner with respect to those sums paid by the petitioner prior to October 6, 1952 has prescribed pursuant to the provisions of section 306 of the National Internal Revenue Code.

At the start of the hearing, counsel for respondent called the attention of the Court to a mathematical error in petitioner's computation of the amount sought to be refunded. Petitioner's counsel took heed by agreeing to reduce the amount sought to be refunded to ₱11,712.77 instead of ₱12,244.77 as previously claimed.

As to the first issue: May this Court acquire jurisdiction over the entire claim for refund subject of the present appeal considering that the petition for review of respondent's decision was filed within the 30-day period prescribed by section 11 of Republic Act 1125? We believe that altho the present appeal was filed within the 30-day period prescribed by section 11 of Republic Act No. 1125, yet, in order that this Court may acquire jurisdiction over the different items sought to be refunded, the additional requirements imposed by section 306 of the National Internal Revenue Code, need be complied with. This Court explained the seeming contradiction between section 306 of the Tax Code and section 11 of Republic Act 1125 in a resolution promulgated on March 30, 1955 in C.T.A. Case No. 83 entitled "Manila Electric Co. vs. Collector, C.T.A. Case No. 83," thus:

"Section 306 of the National Internal Revenue Code requires that a claim for refund of the tax alleged to have been erroneously or illegally collected be filed with the Collector of Internal Revenue before any suit is commenced. True indeed no such requirement is provided for under section 11 of Republic Act 1125 before any appeal from a decision or ruling of the Collector may be taken to the Court. Likewise, whereas section 306 makes it imperative the bringing of the action within two years from the payment of the tax, section 11 of Republic Act 1125 provides that an appeal from a ruling or decision of the Collector must be made within thirty days after the receipt of such decision or ruling.

"At first blush, it would seem that section 306 of the National Internal Revenue Code is in conflict with the provision of section 11 of Republic Act 1125. The conflict however, is more apparent than real. These two provisions could easily be reconciled, which is the function of statutory construction to give effect to enactments."

x x x x

"Before the passage of Republic Act 1125, the remedy provided by section 306 that the taxpayer should pay the tax first before he can sue the Collector was exclusive and no other remedy could be substituted for it. (Sarasola vs. Trinidad, 40 Phil. 257) With the approval of Republic Act 1125 a new remedy was given to the taxpayer, inaddition to that already provided in section 306 in the sense that he can question the assessment of the Collector before paying the tax by appealing to the Court of Tax Appeals within 30 days from receipt thereof. However, in case he should pay the tax first, and later on bring an action for its refund, section 306 still applies and the taxpayer must comply with the requirements therein provided. Having filed his request for refund and the Collector having had ample time to study it, the taxpayer should within the statutory period of two years proceed with his suit without awaiting for the Collector's decision. However, should the Collector within the statutory period of two years, deny the claim, the taxpayer is given thirty (30) days from receipt of the decision within which to file an appeal under section 11 of Republic Act 1125. In order to confer jurisdiction upon the Court it is necessary however, that in all cases the suit must be brought within the statutory period of two years and the requirements provided for in section 306 must have been complied with duly." (Underscoring supplied)

Inasmuch as the court action for refund in the present case was brought only on October 6, 1954, with the filing before this Court by the petitioner of his petition for review, we believe and so hold that this Court has no jurisdiction to entertain the claim for refund of the amount or amounts paid prior to October 6, 1952 (Wee Poco vs. Posadas, 64 Phil. 640; P. J. Kiener Co., Ltd. vs. David, G. R. L-5163, April 22, 1953; and, David vs. Ramos and Castro, G. R. L-4300, October 31, 1951). The evidence show that the only internal revenue tax sought to be refunded but which was paid prior to October 6, 1952, was that made on January 20, 1952 in the amount of ₱1,158.65. Thus, with respect to said amount, this Court has no jurisdiction to order its refund even if a refund were proper inasmuch as the same has been paid well beyond the two-year period prescribed in section 306 of the Tax Code.

As to the second issue: This leaves us to decide on the merit the remaining amounts sought to be refunded paid on or after October 6, 1952, totalling ₱10,554.12. In this respect, the issue is whether or not the ASU is a "stevedore" within the purview of section 191 of the Tax Code and as such liable to pay the 3% stevedore's percentage tax as provided therein.

From the evidence adduced, we gather that the ASU is a labor union duly registered with the Department of Labor since August 5, 1948 with main office at Nasipit, Agusan; that said union was organized to promote the material well-being of its members, to protect their rights and interests and to represent them as a sole collective bargaining unit; that the organization is engaged in the loading and unloading of logs, lumber and other cargoes on foreign vessels shipped by or consigned to the Nasipit Lumber Co. (hereinafter referred to as NALCO) at Nasipit Harbor Agusan; that the association was given the sole right to stevedore for the NALCO since November 3, 1951, and that for several years, the ASU has been paying the stevedore's fixed and privilege taxes [C-4 (39)] as required by section 191 of the Tax Code; and, that the ASU derives its income from the membership fees of its members and also from its 20% share of the gross compensation paid by the NALCO for stevedoring services rendered to the latter by the members of the ASU.

Based mainly on the testimony of its president, Olivio G. Ruiz, the petitioner would have us now believe that it is not a "stevedore" within the contemplation of section 191 of the Tax Code and therefore not liable to the percentage tax assessed and collected from it because the union was organized simply to protect its members and not for profit; that it is not an independent stevedoring contractor but a union of unskilled workers supplying unskilled labor without any stevedoring equipment of its own and working under the supervision and control of the ship's officers or the NALCO Yard Superintendent and that it should not be made to pay the tax in question considering that it simply leased the services of its members to the NALCO.

We find no merit in the arguments advanced by petitioner in support of its stand. The Board of Tax Appeals in B.T.A. Case No. 159 entitled "Cebu Arrastre Service vs. Collector of Internal Revenue" has aptly ruled, to which this Court fully agrees, that the purpose or purposes behind the organization of an association should not serve as the basis for determining its tax liability but the actual occupational activities in which it is engaged. (see also Union Obrera Makabayan vs. Collector, B.T.A. 177, promulgated by C.T.A., September 22, 1954). In the instant case, the weight of evidence submitted in the form of Exhibit "Q" for the petitioner, the testimony of its President, Olivio G. Ruiz, its books of accounts, the receipts for stevedoring services issued to the petitioner by the NALCO, and the corroborative testimonis of the BIR Agents who investigated the activities of the petitioner, undeniably point to the fact that the ASU was not merely a collective bargaining unit but an association actually engaged in the stevedoring work for the NALCO. If the ASU members who performed stevedoring work for the NALCO were, as alleged by petitioner, laborers or employees of the NALCO, then we may believe the pretension that the ASU acted merely as a collective bargaining unit for the benefit of its members when it entered into collective bargaining agreement with the NALCO. But such is not the case as may be gleaned from the very evidence presented by petitioner, Exhibit E to E-80, which show that the so-called union members of the ASU were actually laborers or employees of the latter and not of the NALCO. This conclusion is further bolstered by the fact that on the Ledger Book, Exhibit 11, of the petitioner may be seen that damages to the vessels caused by the laborers were paid for by petitioner not by the NALCO. The assertion by the petitioner that the gross receipts obtained by the ASU from the NALCO for stevedoring services was merely received by the ASU for and in behalf of its members is likewise unconvincing. Olivio G. Ruiz, President of the ASU, admitted that only 80% of the combined earnings of the members for stevedoring work were actually distributed to the members who participated therein, and that even the bonuses for deserving employees were deducted from this 80% share of the members. If the petitioner were really a labor union not organized for the purpose of realizing profits therefrom but for the social and material well-being of its members as claimed, then it should have been content with maintaining its existence as a labor organization from the fees it derives from its members without taking its 20% cut from the hard-earned labor of its members.

As to the second argument advanced by petitioner, we repeat what we have said in the analogous case of Union Obrera Makabayan vs. Collector of Internal Revenue, supra, wherein we held the following:

> "Bouvier's Law Dictionary, p. 3137 Vol. 2, 3rd edition, defines stevedore as a person employed in loading or unloading vessels. Section 191 of the National Internal Revenue Code makes specific mention of stevedores in the enumeration of those occupations and business enterprises subject to percentage tax. One will note that the word stevedore is used in said provision in its general sense according to its common and accepted meaning without any restriction or qualification. The occupational activities of petitioner organization as described by its President and Mayor Sulit, fall clearly within the accepted definition of stevedore. The fact, therefore, that petitioner simply loads the cargoes on the dock of ships and not inside its hold; that it does not use mechanical equipments in the job of loading and unloading; and, that the work is done under the supervision of the officers of the vessel and the shippers or consignees of the cargoes makes it nonetheless a stevedore. It is enough, following the accepted definition of a stevedore, that petitioner organization be employed to load and unload vessels. Conspicuously important to the interpretation of tax measures is the rule that words are to be given their common and ordinary meaning. (Sutherland Statutory Construction, Vol. 3, p. 313 citing several American cases)."

Moreover, we believe that the petitioner is, notwithstanding its claim to the contrary, an independent stevedoring contractor supplying for this purpose skilled laborers under its control and supervision in its contract with the NALCO. Our conclusion in this respect is borne out by petitioner's book of accounts, Exhibit 11, page 25, which show that it owned stevedoring equipment with a total value of ₱165.00 in 1950 and ₱747.50 in 1951. Petitioner's president, Olivio G. Ruiz, admitted on the witness stand that the members of his union are men who have been engaged in stevedoring work even long before the organization of the union in 1948. If this be so, it is highly inconceivable, and for that matter it would be preposterous to assert, that these same men are inexperienced and unskilled laborers in a field of endeavor to which they have devoted many years of their lives.

While it is to be admitted that to a certain degree, ships' officers exercise supervision over stevedores, yet we believe that such supervision is more of the nature of an exercise of an obligation imposed by law (Art. 612, Code of Commerce) for the proper stowing of cargoes, because whatever damage may be caused to the vessel is the responsibility of the ship officers from the moment the cargoes are attached to the ship's tackle to be deposited in the hold. Again, the ships' officers have the duty to direct the stevedores who are on the deck of the ship to receive the cargo so that said cargo may properly be unloaded from the ship's tackle. These acts of supervision and control by the ship's officers or their representatives over the stevedores do not to our mind render it incompatible on the other hand for an independent stevedoring contractor to exercise control and supervision over its laborers. In other words, the intervention exercised by the ship officers over petitioner's laborers being merely an exercise of a legal obligation does not *ipso facto* exempt petitioner from its liability as a contractor to the payment of the stevedore's percentage tax prescribed in section 191 of the Tax Code. To hold otherwise would render nugatory and meaningless the provision of said section of the Tax Code. Following petitioner's theory in this regard, no stevedore will ever be subject to the stevedore's percentage tax because all of them have to be supervised to a certain degree in the loading and unloading of vessels by the ships' officers under article 612 of the Code of Commerce.

Another circumstance that has led us to believe that petitioner exercises control and supervision over its laborers is the admitted fact that the Union is the one which designates them as "foreman", "assistant foreman", "tallyman", "checker", etc. Olivio G. Ruiz, witness for petitioner, in an unguarded moment admitted himself on the witness stand that the petitioner had "somebody to manage the boys." This additional fact corroborates the report of the BIR Agents who investigated this case that the loading and unloading of logs and lumber was done under the supervision and control of the petitioner. On this point, we find no valid reason for discrediting the declaration of BIR Agents, Rosendo Gayas and Pedro Cabigao.

WHEREFORE, we find and so hold that the petition for review should be as it is hereby dismissed, with respect to the amount of ₱1,158.66 for lack of jurisdiction of this Court, and with respect to the rest of the amount claimed for refund totalling ₱10,554.12 for lack of merit, and the decision of the respondent appealed from should be as it is hereby affirmed, with costs against the petitioner.

SO ORDERED.

Manila, Philippines, November 14, 1955.

AUGUSTO M. LUCIANO
Associate Judge

We concur:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge