REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

CONNELL BROS. CO. (Phil.),
Petitioner,

- versus - C.T.A. CASE NO. 357

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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# D E C I S I O N

This is an appeal interposed by the petitioner Connell Bros. Co. (Phil.), from the decision of the respondent Collector (now Commissioner) of Internal Revenue, denying its claim for refund of the amount of ₱21,716.54 which it claims to have been illegally collected by the respondent as deficiency sales tax for the period comprised between January 1, 1948 to January 31, 1949, inclusive.

The petitioner herein is a domestic corporation duly organized and existing under the laws of the Philippines with principal place of business in Manila. It is engaged principally in business as an importer of general merchandise.

In a letter (p. 17, BIR rec.) dated September 3, 1949, the respondent assessed against and demanded from the petitioner the payment of the sum of ₱29,365.50 representing alleged deficiency sales tax corresponding to the third quarter of 1946 and the period from the first quarter of 1948 to the first quarter of 1949.

However, upon further reinvestigation, the assessment was subsequently modified and reduced by the respondent from ₱29,365.50 to ₱21,716.54 exclusive of the sum of ₱50.00 as penalty covering the year 1948 and the month of January, 1949 as appearing in respondent's letter (p. 73, BIR rec.) to the petitioner dated March 24, 1950.

Notwithstanding its non-conformity to the entire assessment though it was reduced substantially, the petitioner on September 8,1950, sent National City Bank of New York Check No. 5281 to the respondent by way of deposit covering the amount demanded (p. 77, BIR rec.). Upon petitioner's request, the respondent, on August 30, 1956, converted the deposit of ₱21,716.54 into payment and issued Business Occupation Tax Receipt No. 1294117 (p. 104, BIR rec.). A formal request for refund of said amount was made by the petitioner to the respondent in its letter of September 8, 1956 (p. 103, BIR rec.) which however was denied by the respondent on January 30, 1957 (pp. 122-123 BIR rec.). Hence, the petitioner on March 6, 1957 filed its "Petition for Review" with this Court, questioning on purely legal ground the assessment, its collection and refusal on the part of the respondent to entertain favorably its claim for refund of the amount of ₱21,716.54.

On March 14, 1958, the petitioner and the respondent agreed in open court (1) that during the period from January 1, 1948 to January 17, 1948, the petitioner fully complied with General Circulars Nos. 431 and 440; (2) that the petitioner is therefore entitled to a refund of ₱623.18 which amount represents the illegally collected deficiency sales tax for the same period; and (3) that during the period from January 18, 1948 to January 31, 1949, all the invoices issued by the petitioner, including the customer's copy, contained the words "5% Sales Tax Included" but without any itemization or breakdown of the amount of sales tax actually paid by each customer (pp. 81-87, t.s.n.).

As heretofore stated, the present appeal involves purely a question of law: Whether or not the annotation of the phrase "5% Sales Tax Included" in the sales invoices issued by the petitioner to its numerous customers was a sufficient compliance of General Circulars Nos. 431 and 440 in relation to Section 186 of the Tax Code, so as to entitle it to deduct the amount of the sales tax from the gross selling price in computing its sales tax liability?

The pertinent provision of Section 186 of the National Internal Revenue Code in force during the taxable period under review, states:

> "Sec. 186. Percentage tax on sales of other articles.- There is levied, assessed, and collected once only on every original sale, barter, exchange and similar transaction intended to transfer ownership of, or title to, the articles not enumerated in sections one hundred eighty-four and one hundred eighty-five a tax equivalent to five *per centum* of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer, producer, or importer: x x x"

and those of General Circulars Nos. 431 and 440 respectively provide:

> "x x x 'Gross selling price' or 'gross value in money' of the articles sold, bartered, exchanged, or transferred as the term is used in the aforecited sections of the National Internal Revenue Code, is the total amount of money or its equivalent which the purchaser pays to the vendor to receive or get the goods. However, if a manufacturer, producer, or importer, in fixing the gross selling price of an article sold by him, has included an amount of money intended to cover the sales tax in the gross selling price of the articles, the sales tax shall be based on the gross selling price less the amount intended to cover the tax, if the same is billed to the purchaser as a separate item. x x x" (General Circular No. 431, July 29, 1939; Underscoring supplied.)

> "x x x Unless billed to the purchaser as separate items in the invoice, the amounts intended to cover the sales tax shall be considered as part of the gross selling price of the articles sold, and deductions thereof will not be allowed." (General Circular No. 440, October 12,1939. Underscoring supplied.)

The petitioner contends that it has substantially complied with the provisions of General Circulars Nos. 431 and 440 in relation to Section 186 of the Tax Code when it noted on its sales invoices the phrase "5% Sales Tax Included" and argues that to require merchants to itemize and bill the sales tax as a separate item on its invoices issued to customers as required by General Circulars Nos. 431 and 440 is much too unreasonable and would just involve unnecessary loss of time. The petitioner claims that the only purpose of the requirement is to advise the customers that the invoice price includes the sales tax which the seller is shifting to him.

and that this purpose is equally served by the annotation on its invoices of the words "5% Sales Tax Included." If a customer, the petitioner concludes, would really want to know the actual amount of sales tax which he paid, the same could easily be determined by a simple arithmetical computation.

The respondent on the other hand, contends that if a seller of merchandise as the petitioner herein wishes to pass on or shift the sales tax liability to his customer or buyer, which is a mere privilege or concession accorded the seller by law, the requirements imposed by standing rules and regulations as a condition precedent to the granting of such privilege or concession should be complied with strictly. The respondent cites as authority in support of his stand our decision in Philippine Acetylene Co. vs. Blaquera, C.T.A. Case No. 324, promulgated on January 10, 1958, wherein we cited with approval and applied the decision of the Supreme Court of the United States in the analogous case of Lash's Products Co. vs. U.S. 278 U.S. 175.

In Philippine Acetylene Co. vs. Silverio Blaquera, C.T.A. Case No. 324, promulgated on January 10, 1958, wherein we interpreted and applied the same General Circulars Nos. 431 and 440 now at issue in the instant case, we held that:

> "<u>In order that the sales tax may not be considered as part of the taxable gross selling price of an article, it is essential that the tax be billed as a separate item in the invoice issued to the customer</u>. 'The tax', as used in General Circular No. 431, means ... the correct amount of tax. If the amount

> billed to the customers does not represent the correct amount of the tax, the requirement of the circular is not complied with because what has been billed is not the tax within the meaning of said circular and Section 186 of the Revenue Code (in case of an article taxable under that section), but a different amount. In the instant case, the total amount that should have been billed to its customers by petitioner, as authorized by General Circular No. 431, is ₱103,673.83. Instead, it billed to its customers the total amount of ₱125,561.31. The amount of the tax (₱103,673.83) not having been billed as separate items in the invoices issued to its customers, the total taxable gross selling price of the articles sold by petitioner on which the sales tax must be imposed is the total sum paid by the customers for the goods, which is ₱1,584,728.54 including the tax but exclusive of the value of the deductible raw materials, as the 'amount added because of the tax is paid to get the goods and for nothing else.' (Lash's Products Company vs. U.S., 278 U.S. 175)"
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> And we concluded that:
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> "The requirement that the tax be billed as a separate item in the invoices being merely a privilege granted to the taxpayers, the same must be strictly complied with. Failure to do so results in the denial of the privilege." (Underscoring supplied.)

We are for the respondent. We find no valid and convincing reason to deviate from our previous ruling in the above-quoted case which is supported on all fours by a decision of the Supreme Court of the United States in Lash's Products Company vs. United States 278 U.S. 175-177. The contrary ruling in the case of Cliquot Club Co. vs. U.S. 13 F. 2d 655, 5 AFTR 6097 (decided by the District Court of Massachusets on June 3, 1926) cited by petitioner in its favor, cannot prevail over the ruling of the Supreme Court of the United States in the Lash's Products case (decided January 2, 1929) considering that the former case was decided previous to the latter by a Court of inferior jurisdiction.

The case of Standard Oil Co. vs. State Tax Commissioner, 71 ND 146, 299 NW 447, 135 ALR 1481, cited by petitioner in support of its stand, is not applicable to case at bar. It was held in that case that the two kinds of taxes (federal excise tax and state tax on the sale of gasoline) attached at the same time. Consequently, the Court ruled that the federal excise tax could not be said to be a part of the gross receipts of the gasoline dealer for purposes of determining the state gasoline tax. In the instant case, there is only one tax involved.

It is however contended by the petitioner that the decision of this Court in the case of Philippine Acetylene Co. vs. Blaquera, <u>supra</u>, is not applicable to the case at bar on the ground that said "case involved a situation where the taxpayer deceived its customers as to the amount of sales taxes being shifted to them" by charging and billing as separate items in the invoices, sales taxes much larger in amounts than what were actually due to the Government. (Memorandum for the Petitioner, p. 47 CTA rec.) In answer to this contention, it shall suffice to state that the taxpayer herein is not in a better position since it did <u>not</u> only <u>not</u> bill the correct it did not bill any amount of tax whatsoever as a separate item in its sales invoices issued to its customers.

The petitioner does not impugn the right of the Collector (now Commissioner) of Internal Revenue to promulgate General Circulars Nos. 431 and 440 in order to implement and give force and effect to the provisions of Sections 184-186 of the National Internal Revenue Code. The dispute centers on the reasonableness and practicability of said circulars with respect to the requirement of separate itemized billing of the sales tax on the invoices issued to purchasers.

The petitioner maintains that it has substantially complied with said requirement when it wrote down the phrase "5% Sales Tax Included" on the 25,757 invoices issued by it to its customers covering the period from January 18, 1948 to January 31, 1949. In order to justify its failure to comply strictly with the requirement in question, the petitioner counters with the proposition that "if the customer were really interested in determining the actual amount of the sales tax shifted to him, a simple arithmetical computation would have given him the answer" (Memorandum for the Petitioner, p. 46 C.T.A. rec.). Indeed, if it is just that easy as depicted by counsel, irrespective of the intelligence and educational background of the different customers of his client, it ought to its invoices the impost in order to entitle it to shift the burden to its purchasers. As a matter of fact, it is admitted by both parties (p. 81 t.s.n.) that during the first seventeen (17) days of the taxable years now in controversy, the petitioner complied with the requirement. It is relieving enough for the petitioner to pass on to its customers said tax burden without having to impose upon them the additional burden of having to compute themselves the exact amount of sales tax that was added to the selling price of the commodity purchased and how much they actually had contributed to the coffers of the Government. What the said circulars require is not that the purchaser be merely informed that he is paying the tax as a part of the selling price. What is required is that he be informed of the actual amount of the tax, which should be billed as a separate item in the invoice. Nothing short of this will satisfy the requirement.

The privilege granted to every manufacturer, producer or importer of deducting the amount of the tax for purposes of the sales tax payable by them under Sections 184, 185 and 186 of the National Internal Revenue Code is limited to those who actually comply with the requirement that the tax be billed as a separate item in the invoice issued by them. Those who are unwilling or are otherwise unable to comply with the requirement for one reason or another should not be entitled to the privilege. One cannot have his cake and eat it too. We would be rendering worthless and ineffective the requirement imposed by the General Circulars Nos. 431 and 440, the wisdom and practicability of which is beyond quespletely or comply with it in the manner it pleases and at the same time accord it with all the corresponding privileges. It is a well-settled rule that "Exemptions from taxation are highly disfavored in law; and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law." (Asiatic Petroleum Co. vs. Llanes 49 Phil. 466; House vs. Posadas 53 Phil. 338; Collector of Internal Revenue vs. Manila Jockey Club, Inc., G. R. No. L-8755, March 23, 1956.)

The petitioner complains that the requirement of separate itemized billing of sales tax on invoices or receipts issued by merchants to their customers as provided by General Circulars Nos. 431 and 440, is burdensome and entails unnecessary loss of time. This may be so. However, the burden is more than compensated with the privilege given to merchants of shifting the payment of the sales tax on the purchase to their customers after complying strictly with the requirement. Moreover, equity demands that a particular law, rule or regulation be interpreted in such a manner as to do justice to all parties concerned and not just to suit the convenience or stubborn resistance of one of the parties. In this particular case, the interest of the Government as well as the customers of petitioner should also be considered.

The questioned requirement is not new. In the United States, after which our tax laws are patterned, it has been adopted and enforced for several years in the past with beneficial and practical results. The validity and wisdom of the requirement was sustained by the Supreme Court of the United States in Lash's Products Company vs. U. S. 278 U.S. 175-177. Our Department of Finance has on more than one occasion in the past sustained the validity of General Circulars Nos. 431 and 440 (see Opinions of Secretary of Finance Pio Pedrosa and Undersecretary of Finance Sixto B. Ortiz, dated September 10, 1951 and December 26, 1951, respectively). The main purposes for the requirement are: (1) to compel merchants to issue invoices; (2) to apprize the buying public of the exact amount of sales tax being shifted to them by merchants for its moral satisfaction thereby arousing tax consciousness; (3) to give the buyers an exact estimate of the basic cost of the merchandise purchased in order to know what kind of bargain, good or bad, they are getting; and (4) to mitigage the sharp increase in the rates of sales tax which under the old Tax Code was only 1-1/2% but subsequently increased in 1939 from a minimum of 3-1/2% to a maximum of 10%.

WHEREFORE, in view of the foregoing considerations, the decision of the respondent dated January 30, 1957, denying petitioner's claim for refund with respect to the amount of ₱21,093.36 (original claim for refund was ₱21,716.54) is hereby affirmed. However, the respondent is ordered to refund to the petitioner the balance of the amount claimed in the sum of ₱623.18 representing deficiency sales tax collected for the period from January 1, 1948 to January 17, 1948, inclusive, the respondent having admitted in open court (pp. 81, 82, t.s.n.) that during said period the petitioner complied strictly with the requirements imposed by General Circulars Nos. 431 and 440 and, therefore, entitled to the refund of the amount of ₱623.18 with interest thereon at the legal rate from August 30, 1956. With costs against petitioner.

SO ORDERED.

Manila, April 29, 1959.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge
Did not take part