REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

January 20, 1960

RAMCAR, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 175

SILVERIO BLAQUERA, as
Collector of Internal
Revenue,
Respondent.

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D E C I S I O N

The petitioner herein, RAMCAR, Inc., seeks by this appeal to set aside for lack of legal and factual basis, a decision (Exhibits 20, 24 and 25, pp. 16, 17, 84 and 92 BIR rec.) of the respondent Collector (now Commissioner) of Internal Revenue, assessing against and demanding from it the sum of ₱18,592.93, as deficiency percentage sales tax due on its gross sales of twenty (20) "Hillman Minx" automobiles, during the period from 1953 to the first quarter of 1954, exclusive of the sum of ₱1,000.00 as compromise penalty, or a total amount of ₱19,592.93.

The pertinent facts which are based mostly on documentary evidence as well as the correctness of the mathematical computation made by the respondent of the deficiency percentage sales tax appealed from are not controverted.

As agreed upon by the parties, all that we are asked to decide in this appeal is whether the written contract, Exhibit C (pp. 104-108 CTA rec.) denominated and entitled "Agreement", executed by and between the petitioner and

Henderson-Trippe (Phil.), Inc. on February 1, 1953, is one of purchase and sale or one of agency.

It appears that the petitioner herein, RAMCAR, INC., is a domestic corporation (Exhibit A, pp. 85-91 CTA rec.) duly organized and existing since 1929 for the purpose, among others, of importing, manufacturing, selling and dealing in automobiles, trucks and spare parts. On July 1, 1953, the petitioner entered into a "Distributor Agreement", Exhibit I (p. 146 CTA rec.) presumably in lieu of another already existing the year before (Exhibit 19, p. 15 BIR rec.) with Rootes Limited of London, England, wherein the former agreed to assemble and sell locally for the latter, "Hillman Minx" automobiles.

On February 1, 1953, the petitioner in turn entered into a contract, Exhibit C (pp. 104-108 CTA rec.) denominated and entitled simply as "Agreement", with Henderson-Trippe (Phil.), Inc., a domestic corporation, (Exhibit B, pp. 93-102 CTA rec.), wherein the latter was designated by the former as its exclusive "Distributor" of "Hillman Minx" automobiles in the Philippines.

Clauses 4 and 5 of the "Agreement" between the petitioner and Henderson-Trippe (Phil.), Inc., read as follows:

> "CLAUSE 4. PRICES AND DISCOUNTS.
>
> "The COMPANY shall invoice the vehicles to the DISTRIBUTOR at list wholesale price established from time to time and prevailing at the time of delivery, and nothing in this AGREEMENT shall entitle the DISTRIBUTOR to any discount, rebate or other deduction from such price.

"CLAUSE 5. TERMS OF PAYMENT.

"The COMPANY agrees to deliver to the DISTRIBUTOR twelve (12) fully assembled vehicles per month, and the DISTRIBUTOR shall pay the COMPANY for twelve (12) vehicles per month, CASH ON DELIVERY, and shall take delivery as said vehicles are assembled by the COMPANY. Should it be mutually agreed by both the DISTRIBUTOR and the COMPANY that the DISTRIBUTOR shall take delivery of more than twelve (12) vehicles per month, such agreement in letter form shall be sufficient.

"The COMPANY warrants that all taxes, levies and all governmental local charges applicable to the importation, assembly and wholesaling of vehicles sold to the DISTRIBUTOR will be paid for in full prior to delivery of said vehicles to the DISTRIBUTOR."

Pursuant to the above-agreement, during the taxable period now in question, the petitioner sold twenty (20) locally assembled "Hillman Minx" automobiles to Henderson-Trippe (Phil.), Inc., at the wholesale price of ₱4,950.00 per unit, the sales invoices and receipts of payment of which, all made out in the name of Henderson-Trippe (Phil.), Inc. as buyer, are evidenced by Exhibits D to D-2; D-4 to D-12; E and E-1; E-3 to E-22; Exhibits 4 to 10 and Exhibits 2 to 2-T (pp. 109-111; 113-123; 125-144; 153-159 CTA rec.; pp. 27-47 BIR rec.).

The respondent admits (p. 247 CTA rec.) that the petitioner corporation, pursuant to Sections 184(a) and 185(a) of the National Internal Revenue Code, paid in full the corresponding sales tax on its sales of the cars in question to Henderson-Trippe (Phil.), Inc., at the rate of only 30% on the wholesale price of ₱4,950.00 per unit, the rate then prevailing at the time the transactions took place since the original selling price did not exceed

₱5,000.00. The petitioner presented Exhibits 13 to 13-B and 14 and 14-A (pp. 162-166 CTA rec.) as evidence of such payments. However, contrary to what is alleged in paragraph 8 of its petition for review, the petitioner never paid the tax corresponding to the difference between the selling price to Henderson-Trippe at ₱4,950.00 per automobile and the selling price to the ultimate buyers ranging from ₱5,670.00 to ₱6,300.00 per unit (pp. 52-56; 60-61 t.s.n.).

Believing that the petitioner was committing fraud upon the revenues, the respondent on February 27, 1954, through his Chief Legal Counsel ordered (Exhibit 15, p. 167 CTA rec.) the investigation of the sales tax liability of the petitioner on the sale of its assembled "Hillman Minx" cars to Henderson-Trippe (Phil.), Inc. For this purpose, BIR Special Agents Paragas and Mariazeta were assigned to the case. After conducting an investigation, the two agents submitted a written report, Exhibit 19 (pp. 13-15 BIR rec.) dated April 7, 1954, to the Commissioner of Internal Revenue with the finding and recommendation that the relationship between the two corporations is that of principal and agent, and therefore, the sales of Henderson-Trippe (Phil.), Inc. to the public ranging from ₱5,670.00 to ₱6,300.00 per unit and not that of the petitioner to Henderson-Trippe (Phil.), Inc., at the wholesale price of ₱4,950.00 per unit should be the basis in the computation of petitioner's sales tax liability. Hence, they recommended that a deficiency sales tax be imposed, assessed and collected from the petitioner under Section 184(a) of the National Internal Revenue Code on the basis of 50% of the selling price received by Henderson-Trippe (Phil.), Inc., on its sales to the public which ranged from ₱5,670.00 to ₱6,300.00 per automobile.

Under the law then prevailing in 1954 before the amendment of Sections 184 and 185 of the National Internal Revenue Code by Republic Act No. 1612, a sales tax of 50% on the original selling price of automobiles could be imposed if the amount involved exceeded ₱5,000.00 and 30% if the amount of the original sale did not exceed ₱5,000.00. Accordingly, the respondent, on April 28, 1954, sent to the petitioner an assessment, Exhibit 20 (pp. 16-17 BIR rec.) demanding for the payment of the amount of ₱18,592.93, as deficiency percentage sales tax due on the gross sales of twenty (20) "Hillman Minx" cars assembled locally, during the period from 1953 to the first quarter of 1954, exclusive of the sum of ₱1,000.00 as compromise penalty.

On May 21, 1954, the petitioner wrote a letter (p. 18 BIR rec.), protesting against and contesting the deficiency assessment. Hence, on June 17, 1954, the case was referred to the Conference Staff of the Bureau of Internal Revenue (C. S. Case No. 316) where the petitioner was given the opportunity to present its evidence in support of its protest against the disputed assessment. (Exhibit 21, p. 25 BIR rec.)

After due hearing held on July 20, and July 27, 1954 (Exhibit 22, pp. 49-57 BIR rec.; Exhibit 22-A, pp. 58-71

BIR rec.), the Conference Staff in a memorandum, Exhibit 23 (pp. 73-82 BIR rec.) dated April 16, 1955, to the Commissioner of Internal Revenue, recommended that the "assessment against Ramcar, Inc., be insisted upon and the original demand reiterated." The respondent approved the recommendation of the Conference Staff, and on May 5, 1955, wrote a letter, Exhibit 24 (p. 84 BIR rec.) to the petitioner reiterating his previous assessment with a demand for the immediate payment of the sum of ₱19,892.93 as deficiency sales tax and compromise penalty.

On May 12, 1955, the petitioner corporation, through its President, Mr. Ramon Caro, wrote a letter, Exhibit 2 (pp. 85-86 BIR rec.) to the respondent, requesting for the reconsideration of his decision and a reinvestigation of the case. On June 2, 1955, the respondent issued a warrant of distraint and levy against the properties of the petitioner which was served on June 17, 1955, and on August 3, 1955, the respondent wrote a letter, Exhibit 25 (p. 92 BIR rec.) to the petitioner denying its request for reconsideration and reinvestigation and again demanded for the immediate payment of the deficiency sales tax with the warning that if the petitioner fails to pay the deficiency assessment, the respondent will proceed with the execution of the warrant of distraint and levy.

After having exhausted all available administrative remedies and not being in conformity with the final decision of the respondent, the petitioner on August 18, 1955, interposed the present appeal within the reglementary period.

This case bears some similarity to the cases of Liddell & Company, Inc. vs. Collector of Internal Revenue (C.T.A. Case No.186 decided by this Court in favor of the respondent on August 11, 1955 and now pending decision on appeal in S. C. G.R. No. L-9687) and Yutivo Sons Hardware Co. vs. Collector of Internal Revenue (C.T.A. Case No. 64 decided by this Court in favor of the respondent on April 27,1957 and now pending decision on appeal in S. C. G.R. No. L-13203) in that the corporation that imported the automobiles or assembled them locally, sold or distributed the same through another corporation resulting in the payment of a lesser amount of percentage sales tax. However, the difference lies in the fact that in the present case, unlike the two other previous cases above-mentioned, there is not the least claim nor showing on the part of the respondent that the distributing corporation (Henderson-Trippe (Phil.), Inc.) is but a subsidiary, dummy or alter ego of the importing corporation (RAMCAR, Inc.); nor that the distributing corporation is capitalized entirely if not in great part by the importing corporation or the stockholders of the latter; nor, that the distributing corporation was purposely organized and capitalized by the importing corporation as a ruse aimed solely at tax evasion.

In the case at bar, the two corporations are separate and distinct from each other each having been organized, incorporated, capitalized and controlled by two different sets of persons (see Exhibits A and B, pp. 85-102 CTA rec.). The commercial link between the two corporations, if at all, was brought about with the execution of the contract, Exhibit C, on February 1, 1953, in the ordinary course of business for their mutual convenience and benefit. The genuineness and due execution of the contract, Exhibit C, between the two corporations is admitted by the respondent (p. 2, Answer; pp. 21 & 22 CTA rec.). There is not the least pretension on the part of respondent that the contract in question has transgressed any of our laws or that it was a mere concoction of the parties to defraud the Government of a legitimate revenue to which it is entitled.

As the parties have rightly condensed the issue in their respective memorandums (pp. 197 and 258 CTA rec.) all that we are asked to decide in this appeal is whether the contract, Exhibit C, denominated and entitled "Agreement", between the petitioner and Henderson-Trippe (Phil.), Inc., is one of agency or one of purchase and sale. Should we decide that it is one of agency as the respondent vigorously maintains, then the sales made by the agent, Henderson-Trippe (Phil.), Inc. to the ultimate buyers ranging from ₱5,670.00 to ₱6,300.00 per automobile and not that of the petitioner to Henderson-Trippe (Phil.), Inc. at the wholesale price of ₱4,950.00 per unit should be considered as the original sales for the purpose of imposing and computing the percentage sales tax provided in Sections 184 and 185 of the National Internal Revenue Code. Under Article 1910 of the Civil Code, "The principal must comply with all the obligations which the agent may have contracted within the scope of his authority".

Contrarily, should we find that the contract, Exhibit C, between the two corporations is a bona fide contract of purchase and sale as the petitioner contends, then the amount subject to sales tax is the original selling price of the petitioner to Henderson-Trippe (Phil.), Inc., which is at wholesale, ₱4,950.00 per automobile and not the selling price of the latter to the ultimate buyers ranging from ₱5,670.00 to ₱6,300.00 per automobile.

We have examined and analyzed all the provisions of the contract in question and, while it is true that there are some provisions which tend to mislead one into believing that it is one of agency such as for example Clause 6 which refers to the ultimate buyers of Henderson-Trippe (Phil.), Inc., as the "original purchasers", we believe and so hold that the contract in question, read as a whole, is substantially one of purchase and sale and not of agency.

Clause 5 of the contract which is quoted above at full length, requires the petitioner to deliver a minimum of twelve (12) fully assembled "Hillman Minx" automobiles every month to Henderson-Trippe (Phil.), Inc., and for the latter to pay for the same in cash on delivery. There is ample evidence on record consisting of numerous sales invoices and receipts of payments all made out in the name of Henderson-Trippe (Phil.), Inc. as buyer, to show that there has been on the part of both parties a substantial compliance with this term of the contract. The genuineness and due execution of these documents is not assailed by the respondent. This condition by itself which was complied with substantially by the parties, let alone the other provisions of the contract, is enough to hold, as we do, that the contract between the two corporations is one of purchase and sale and not of agency for these two contracts are incompatible with each other. In a contract of agency, one of the rights and obligations of the agent is to return to the principal the thing which has been delivered to him to be sold on consignment, if through no fault of his, he does not succeed in effecting its sale. (Article 1891, Civil Code.) Under the circumstances, the agent cannot be required by the principal to pay for the price of the consigned article from his own pocket unless the agent lost or destroyed the same through his negligence or if he misappropriated for himself the article consigned or by mutual agreement of the parties, it was agreed to terminate the contract of agency and convert it into a straight sale with the agent as the ultimate buyer of the consigned article (Articles 1896 and 1909, Civil Code).

The case of Quiroga vs. Parsons Hardware Co. 38 Phil. 501-507 is squarely in point:

> "In order to classify a contract, due regard must be given to its essential clauses. In the contract in question, what was essential, as constituting its cause and subject matter, is that the plaintiff was to furnish the defendant with the beds which the latter might order, at the price stipulated, and that the defendant was to pay the price in the manner stipulated. The price agreed upon was the one determined by the plaintiff for the sale of these beds in Manila, with a discount of from 20 to 25 per cent, according to their class. Payment was to be made at the end of

> sixty days, or before, at the plaintiff's request, or in cash, if the defendant so preferred, and in these last two cases an additional discount was to be allowed for prompt payment. <u>These are precisely the essential features of a contract of purchase and sale. There was the obligation on the part of the plaintiff to supply the beds, and, on the part of the defendant, to pay their price. These features exclude the legal conception of an agency or order to sell whereby the mandatory or agent received the thing to sell it, and does not pay its price, but delivers to the principal the price he obtains from the sale of the thing to a third person, and if he does not succeed in selling it, he returns it.</u> By virtue of the contract between the plaintiff and the defendant, the latter, on receiving the beds, was necessarily obliged to pay their price within the term fixed, without any other consideration and regardless as to whether he had or had not sold the beds." (Underscoring supplied.)

The respondent has endeavored to prove, in justification of his questioned deficiency assessment and in support of his conclusion that the contract, Exhibit C, between the two corporations is one of agency and not of purchase and sale, the fact that not all the terms of the contract in question were followed to the letter by the parties. Respondent claims that Clause 5 of the contract requires the petitioner to deliver to Henderson-Trippe (Phil.), Inc., a minimum of twelve (12) assembled "Hillman Minx" automobiles per month but that actually, during the months of February 1953 up to and including the month of March 1954, only 28 automobiles were delivered instead of 168. Respondent cites other instances of alleged violations of the terms and conditions of the contract such as the failure on the part of Henderson-Trippe (Phil.), Inc.

to provide for a showroom as required of it under Clause 9 of the contract; that Clause 5 of the agreement requires Henderson-Trippe (Phil.), Inc. to pay C.O.D. but that in some instances, the payments were made three (3) days, five (5) days or one (1) month and sixteen (16) days after delivery; and, that some of the payments were made directly to the petitioner corporation by the ultimate buyers as in the case of one Mario Guerrero who, according to the official receipt, Exhibit E-2 (p. 124 CTA rec.) paid ₱4,950.00 directly to the petitioner corporation.

The petitioner offered explanations for all of these alleged violations some of which we consider quite plausible and reasonable. For example, the petitioner imputes its failure to meet the minimum delivery requirement of twelve (12) assembled cars a month to the numerous restrictions imposed by the Central Bank. True indeed, considering the great demand and the exorbitant prices that imported cars command in the local market, who is the automobile dealer who would turn his back to the opportunity of realizing big profits by selling as many imported and locally assembled cars as possible were it not due to causes beyond his control?

Respondent claims, in partial support of its theory that the contract between the two corporations is one of agency, the fact that in some instances as in the case of one Mario Guerrero (Exhibit E-2, p. 124 CTA rec.) the ultimate buyers paid the purchase price directly to the petitioner corporation and not to Henderson-Trippe (Phil.), Inc. and that in some instances requests for extension of time to pay were made directly to the petitioner corporation and not to Henderson-Trippe (Phil.), Inc. (pp. 521, 522 t.s.n.). This is indeed no cause for suspicion on the part of respondent nor a ground to consider the contract between the two corporations different from that stipulated by them. Clause 8 of the contract gives the petitioner "the option and the right to keep and dispose at its convenience one (1) Hillman Minx Car for every twelve (12) assembled."

Be that as it may, we believe that any further discussion regarding the alleged violations of the contract and the merit of the explanations offered thereto by the petitioner, would be purely academic.

Apropos, we quote again from the case of Quiroga vs. Parsons Hardware Co., _supra_:

> "The plaintiff also endeavored to prove that the defendant has returned beds that it could not sell; that, without previous notice, it forwarded to the defendant the beds that it wanted; and that the defendant received its commission for the beds sold by the plaintiff directly to persons in Iloilo. _But all this, at the most only shows that, on the part of both of them, there was mutual tolerance in the performance of the contract in disregard of its terms; and it gives no right to have the contract considered, not as the parties stipulated it, but as they performed it._ Only the acts of the contracting parties, subsequent to, and in connection with, the execution of the contract, must be considered for the purpose of interpreting the contract, when such interpretation is necessary, but not when, as in the instant case, its essential agreement are clearly set forth and plainly show that the contract belongs to a certain kind and not to another." (Underscoring supplied.)

WHEREFORE, in view of the foregoing considerations, the decision appealed from is hereby reversed, and the disputed deficiency percentage sales tax assessment in the total amount of ₱19,592.93, inclusive of compromise penalty, is hereby ordered cancelled and withdrawn and the petitioner declared free from the payment thereof, without pronouncement as to costs.

SO ORDERED.

Manila, January 20, 1960.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

I ABSTAIN:

[illegible]. In view of my active participation as former Chief Counsel of the Bureau of Internal Revenue in the investigation of this case (Exhibit 15, p. 167 CTA rec.), I am constrained to inhibit myself from taking part in the decision of this case.

ROMAN M. UMALI
Associate Judge