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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CASIMIRO C. OCAMPO, As Assignee
In Insolvency for National Mer-
chandising Corporation,
Petitioner,

- versus -

C.T.A. CASE NO. 2579

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

10/29/82

D E C I S I O N

Petitioner-assignee for insolvent National Merchandising Corporation (NAMERCO) so declared on February 27, 1973 in Civil Case No. 88448 by the Court of First Instance of Manila, Branch IV, comes on appeal for the review of respondent's assessments of advance sales and withholding taxes.

Respondent Commissioner of Internal Revenue on February 18, 1972, assessed and demanded the payment of ₱355,624.50 representing the 7% advance sales tax on petitioner's importation of "50 units of Front End Loaders 'Trojan' Model 204-A Tractor Shovels complete with accessories" from Yale & Towne, Inc., New York, U.S.A., and, on June 5, 1972, the amount of ₱529,302.74 as withholding tax inclusive of incidental increment on the payments of interest and fees to the Export Credit Corporation of New York, a non-resident foreign corporation, both for the year 1966.

Petitioner protested both assessments in letters dated March 24, 1972 and July 3, 1972 respectively, denying liabilities of the said advance sales tax and withholding tax and claiming as the importer of record, the Bureau of Public Highways a tax exempt government entity.

As a consequence, respondent on October 16, 1972 issued warrants of distraint and levy on petitioner's properties for the enforcement of the collection of the taxes assessed, acknowledged by petitioner on March 28, 1973; subsequently followed on November 16, 1973 by respondent's denial of the protests with a reiteration of the demand for the payment of the amounts due. Petitioner filed a reconsideration on January 9, 1974 grounded on the same defenses and prescription.

Meanwhile, the respondent Commissioner of Internal Revenue filed his motion for allowance of claim and order of payment of taxes with the Insolvency Court on January 21, 1974.

Petitioner filed this petition for review on January 30, 1974 but amended on February 18,

1974. Respondent moved for the dismissal of the appeal invoking the jurisdictional 30-day period for appeal prescribed in Section 11 of Republic Act No. 1125, which was set aside by this Court as "it would be more expedient and proper to pass upon the said question in connection with the consideration of the case on the merits." (CTA Resolution dated June 26, 1974).

The appeal presents the propositions of whether or not 1) petition for review is barred for having been filed out of time, 2) petitioner is liable for the 7% advance sales tax on the importation and withholding tax on remittances of interest and fees, and 3) respondent's right to collect has prescribed.

The first issue involves the jurisdiction of this Court over the disputed assessments, as interposed by the respondent, that commencing from the service of the warrants of distraint and levy the petition for review was filed beyond the prescribed statutory period, i.e., "a person, association or corporation adversely affected by a decision of the Commissioner of Internal Revenue may file an appeal in the Court of Tax Appeals within thirty days after receipt of such decision or ruling." (Sec. 11, R.A. No. 1125). The settled rule in this respect is that failure to comply with the thirty-day statutory period within which to appeal would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment (Collector of Internal Revenue v. Western Pacific Corporation, L-18864, May 27, 1965, 14 SCRA 105; Republic v. Manila Port Service, L-18208, November 27, 1964, 12 SCRA 384; Republic v. Lim Tian Teng Sons & Co., Inc., L-2173, March 31, 1966, 16 SCRA 584; PhilAm Mining Inc. v. Court of Tax Appeals, L-23198, August 31, 1970, 34 SCRA 498), as the period to appeal from the decision of the Commissioner of Internal Revenue is jurisdictional and non-extendible (Filipinas Investment & Finance Corporation v. Commissioner of Internal Revenue, L-23501, May 16, 1967, 20 SCRA 50; Actg. Collector of Internal Revenue v. Joseph, L-14034, August 30, 1962, 5 SCRA 895), the Court of Tax Appeals may motu propio dismiss an appeal filed out of time (Morales v. Collector of Internal Revenue, L-16759, August 31, 1966, 17 SCRA 1018).

The precise question raised is nothing more than whether the subject warrants of distraint and levy taken as they must, in connection with the contested assessments to which they expressly referred, constitute a sufficient denial of the protests and determinative of the decision/ruling of the respondent upon which to toll the statutory period for appeal.

We do think so. A warrant of distraint and levy is such a purposeful device neither intended simply to mollify nor to be resorted to as a mere bargaining ploy. It must be understood in the context of its unequivocal tenor and explicit terms in collecting the taxes due, encapsulating the finality of the assessment and stamping a definite resolve on the protest, as in the case of petitioner at bar. The peremptoriness of the demand in the subject warrants no longer excites a queasy sense of speculation of what respondent might yet do but incites a tickling urgency of critical concern upon which petitioner's right to judicial review must be exercised or lost. Petitioner should nor further expect the unexpected towards flirting to a volte-face ruling. As sustained by subsequent events respondent remained unperturbed in his denial. As readily attested by a host of decisions, a taxpayer should display more alertness in the protection of his rights (Koppel (Phil) Inc. v. Collector of Internal Revenue, L-10550, September 19, 1961, 3 SCRA 17; Ker & Co., Ltd. v. Court of Tax Appeals & Collector of Internal Revenue, L-12396, January 31, 1962, 4 SCRA 160), and, the matter required the timely availment as fully as possible of the more effective means of adjudication on the merits by an appeal. Surely, it is not beyond the wit and wisdom of this Court to play a catalytic and constructive role in extruncating and if necessary reversing the alleged unwarranted assessments. But this Court has to take the hard choice of applying the basic rule that the running of the 30-day period mandated in Section 11 of R.A. No. 1125 did commence from the service of the warrants on March 28, 1973 and the petition for review came only on January 30, 1974, clearly time-barred. Petitioner cannot pry itself loose from the legal constraint.

It may be necessary to repeat what so often may have been said and what so plainly apply to the petitioner in the case at bar that where the warrant of distraint and levy was issued, this Court held that such issuance is proof of the finality of the assessment (Philippine Planters

Investment Co., Inc. v. Actg. Commissioner of Internal Revenue, CTA Case No. 1266, November 11, 1962) because a warrant of distraint and levy, which is the most drastic of action of all media of enforcing the collection of tax, renders hopeless a request for reconsideration or is tantamount to an outright denial thereof, and makes the request deemed rejected. (Hilado v. Commissioner of Internal Revenue, CTA Case No. 1256, October 20, 1956; Algue, Inc. v. Commissioner of Internal Revenue, CTA Case No. 1620, January 16, 1968; Hahn v. Commissioner of Internal Revenue, CTA Case No. 1937, October 30, 1969; Gepte v. Commissioner of Internal Revenue, CTA Case No. 1571, October 29, 1970; Gonzales v. Domingo, CTA Case No. 1135, November 27, 1961 Advertising Associates, Inc. v. Commissioner of Internal Revenue, CTA Case No. 3017, June 17, 1981; cited in Enage v. Commissioner of Internal Revenue, CTA Case No. 2094, April 15, 1 1982). We hesitate to further fashion an issue into a satisfactorily settled legal situation.

For reasons obvious, the reconsideration filed by petitioner on January 9, 1974 was no longer a prospect that could easily be reconciled with the evident needs of the situation. It must, as it did, end in a note of ineffectuality. But such an old and familiar mode of temporizing, more so often pro-forma and protracted, seriously and unjustifiably fetters perfectly legitimate methods of enforcement. (Manila Banking Corporation v. Commissioner of Internal Revenue, CTA Case No. 2993, October 30, 1981). Consideration of the convenience of the petitioner or any taxpayer for that matter, stands as an aberration from the otherwise intended imperative. We cannot substitute and indulge in any amorphous rule as to leave solely to the petitioner's will the determination of the commencement of the statutory thirty-day period and delay at will the finality of the tax assessments (Roman Catholic Archbishop of Cebu v. Collector of Internal Revenue, L-16683, January 31, 1962, 4 SCRA 279; Bull v. U.S. 79 US 247; Ker & Co., Inc. v. Court of Tax Appeals & Collector of Internal Revenue, L-12396, January 31, 1962, 4 SCRA 163; cited in Advertising Associates, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 3017, June 17, 1981), and suffer the cornerstone of effective collection to petrify at the cost of the animating principles tinged with strong issues of public policy that taxes are the lifeblood of government and their prompt and certain availability are an imperious need (Commissioner of Internal Revenue v. Pineda, L-22734, September 15, 1967, 21 SCRA 105; Collector of Internal Revenue v. Goodrich International Rubber Co., L-22265, March 27, 1968, 22 SCRA 1256), and being the chief source of revenue for the Government to keep it running, must be paid immediately and without delay. (Collector of Internal Revenue v. Yuseco, L-12518, October 28, 1961, 3 SCRA 313). We do not think any different conclusion ought be reached in the case at bar.

The apparent quibble on the restraining force in the institution of insolvency, all that we need to state after what has been said heretofore is that petitioner corporation had the tax assessments under notice and demand of February 18, 1972 and July 5, 1972, pending at the time of the commencement of the voluntary insolvency proceedings on September 30, 1972. The comprehensiveness of the coverage of the matters required to be stated explicitly in the schedule annexed to the petition, as prescribed by Section 15 of the Insolvency Law (Act No. 1956, as amended), is such that even an outline of the facts giving rise or which might give rise to a cause of action against the insolvent debtor must be included. "The importance of rendering a true and complete statement of the matters called for in the schedule cannot be over-emphasized; if the name of a creditor is omitted, he stands to be deprived of personal notice of the proceedings, apart from publication, and of his right to vote in the selection of an assignee." (In re; Estate of Mindanao Motor Line, Inc., L-27944, May 28, 1974, 57 SCRA 103). As had happened in the case at bar the insolvent corporation acted in blank incomprehension of what it should have infused valid cognizance in its petition as regards the tax liabilities. Such a patent omission is bereft of any good faith and could well have vitiated the proceedinas or discharge. (Small v. Graves, 7 Barg. N.Y. 576).

Be that as it may, in an Order dated December 27, 1974, the Insolvency Court held in abeyance respondent's motion for allowance of claim and for order of payment of taxes filed on January 21, 1974, until after the amended petition for review of the questioned assessment had been finally disposed by this Court. No less unexpected as "the assessment, collection and recovery of taxes, as well as the matter of prescription thereof are governed by the provisions of the National Internal Revenue Code, particularly Sections 331 and 332 thereof, and not by other provisions of law." (Commissioner of Internal Revenue v. Ilagan Electric & Ice Plant, et al. G.R. No. L-23081, December 30, 1969; Lim Tio, Dy Heng and Dee Jue v. Court of Tax Appeals & Collector of Internal Revenue, G.R. No. L-10681, March 29, 1958; cited in Vera v. Fernandez, L-31364, March 30, 1979, 89 SCRA 203).

Thus, under the view which we have taken of the first question raised in this appeal, we deemed it unnecessary to resolve the other issues presented. We therefore hold that the order to enforce collection by warrants of distraint and levy served petitioner on March 28, 1973 for the payment of advance sales tax and withholding tax assessments for the year 1966 were the appealable decision or ruling of the respondent Commissioner of Internal Revenue, such that when the petition for review was filed with this Court on January 30, 1974, the statutory 30-day period for appeal ordained in Section 11 of R.A. No. 1125 had long lapsed as to take the case out of the jurisdiction of this Court.

WHEREFORE, the petition for review is hereby dismissed with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, October 29, 1982.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge