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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MARCELINO T. VIDUYA,
Petitioner,

May 15, 1956

- versus -

C.T.A.
CASE NO. 150

COLLECTOR OF INTERNAL REVENUE,
DEPUTY COLLECTOR OF INTERNAL
REVENUE and MUNICIPAL TREASURER
OF SAN FERNANDO, LA UNION,
Respondents.

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D E C I S I O N

This is an action for refund under Section 306 of the National Internal Revenue Code of the sum of ₱943.20 paid by the petitioner under Official Receipt No. B-4464856 on October 8, 1954, alleged to have been erroneously and illegally collected by the respondent under Section 190 of the Tax Code as implemented by General Circular No. V-152 dated March 10, 1953, of the Bureau of Internal Revenue.

The parties submitted the case for decision on an agreed stipulation of facts, with the exception of the issue regarding the date of receipt by petitioner of the letter of the Collector of Internal Revenue dated May 4, 1955, denying the request for refund of the amount paid, on which the parties adduced evidence. The stipulated facts (hereinafter cited as STIFACTS), as agreed upon by the parties, are as follows:

I

That on November 7, 1952, David M. Sencindiver, Jr., a member of the staff of the American Embassy in the Philippines, brought from the United States a 1950 Model Buick Sedanet bearing Motor No. 59877524, which he had acquired for his personal use in the State of Virginia, U.S.A., and registered with the Motor Vehicle's Division of that State in his own name (Annex "B", petition).

II

That, upon its arrival in the Philippines, the vehicle was released to David M. Sencindiver, Jr., by Philippine Customs authorities without requiring him to pay the compensating tax prescribed under section 190 of the National Internal Revenue Code, he being a citizen of the United States and member of the staff of the American Embassy in the Philippines and therefore exempt from such tax.

III

That, on November 7, 1952, David M. Sencindiver, Jr., registered his automobile with the Motor Vehicles Office for which he was issued corresponding certificate of registration (Annex "D", petition), and a "SPL" plate reserved for members of the diplomatic corps and other agencies of the U. S. Government in the Philippines.

IV.

That, on December 4, 1953, Sencindiver sold the vehicle to the petitioner herein, Marcelino T. Viduya (Annex "D-1", petition) and the buyer immediately registered the transfer in his name by obtaining from the Motor Vehicles Office the certificate of registration (Annex "A", petition).

V

That pursuant to the provisions of section 190 of the National Internal Revenue Code as implemented by BIR General Circulars Nos. V-145 and V-152, dated November 20, 1952 and March 10, 1953, respectively, the Bureau of Internal Revenue on June 22, 1954 demanded from the petitioner the payment of ₱943.20 as compensating tax on the automobile which the latter had bought from David H. Sencindiver, Jr. The tax demanded, as computed and itemized in the letter, copy of which is appended as "Annex E" of the petition is as follows:

"Blue Book" value	$1,320.00
Less: 15% thereof	198.00
	$1,122.00
Add: Freight from the West Coast to the Philippines	450.00
	$1,572.00
Total landed cost	₱3,144.00
30% tax due thereon.	₱ 943.20

VI

That, on October 8, 1954, after an exchange of correspondence with the respondent Collector of Internal Revenue, the petitioner paid the amount demanded, under protest, as evidenced by Official Receipt No. B-4464856 issued by the respondent Municipal Treasurer of San Fernando, La Union, copy of which receipt is appended to the petition as Annex "H".

VII

That, in a letter to the respondent Collector of Internal Revenue dated March 7, 1955, and received by him on the same date (Annex "J", petition), the petitioner requested the refund of the aforementioned amount of ₱943.20.

VIII

That, the said request for refund was denied by the said respondent-addressee in his answer to the petitioner dated May 4, 1955 (Annex "K", petition).

IX

That petitioner reserves his right to present evidence purporting to establish the date when he received the letter of respondent dated May 4, 1955, adverted to in paragraph VIII of this Stipulation.

With reference to the exact date when the petitioner actually received from the respondent Collector of Internal Revenue, the letter-decision dated May 4, 1955 (Exhibit "A"), for the proper determination of the issue, whether or not this Court has jurisdiction to try this case, the only evidence presented by the petitioner was the lone testimony of his brother, and at the same time counsel, Atty. Jose T. Viduya, who testified that he received the said letter Exhibit "A" by ordinary mail at his residence at No. 115 Dimasalang, Manila, on May 31, 1955 and that upon receipt thereof, and after reading its contents, he placed his rubber stamp date thereon (Exhibit "A-1") as guide for future further action on the letter. The testimony of Atty. Viduya was not contradicted or rebutted by the respondent either by testimonial or documentary evidence.

It is true that the petitioner has the burden of proving his affirmative allegation to the effect that the petition for review was filed within the thirty-day reglementary period prescribed in Section 11 of Republic Act No. 1125, so as to confer upon this Court jurisdiction over this case. "Ei incumbit probatio qui dicit, non qui nigat", that is, he who asserts, not he who denies, must prove his allegation. In this regard we are not unaware of the procedural rule that each party must prove his own affirmative allegations. (Section 70, Rule

123, Rules of Court) However, with the uncontroverted testimony of witness Jose Y. Viduya to the effect that the petitioner received the letter-decision of the respondent on May 31, 1955, the burden of evidence is shifted to the respondent to prove otherwise, and having failed to do so, this Court cannot do otherwise but accept the established version of the petitioner that said decision was received on May 31, 1955, the bare allegation of the respondent to the contrary notwithstanding. This holding is bolstered by the fact that there is no evidence of record indicating when the decision in question was transmitted by mail to the petitioner, to afford a factual background for the court to gauge the reasonableness or unreasonableness of petitioner's version. Moreover, the transmittal by ordinary mail of the decision by the respondent, is not in accord with the provisions of Section 7, Rule 27, of the Rules of Court, which provides that in cases of such nature, service must be served either personally or by registered mail, and such defect of service by respondent in this case, can not be given judicial sanction to the prejudice of the petitioner. In this respect, considering the evidence on hand, we prefer in fairness to petitioner, to accord him the benefit of the doubt.

Having arrived at the conclusion that the letter-decision, Exhibit "A", was received by the petitioner on May 31, 1955, and it appearing of record that the petition for review was filed on June 28, 1955, it is therefore evident that it was filed well within the thirty-day period prescribed in Section 11 of Republic Act No. 1125, as to vest this Court with jurisdiction to try this case on the merits.

Having thus found as we do find that we have jurisdiction over this case, we shall now go into the merits of the case.

The main issue of whether the petitioner as purchaser of an automobile (Buick Sedanet) from David H. Sencindiver, Jr., who is tax exempt for being member of the U. S. Embassy, is entitled to the refund of the amount of ₱943.20 paid as compensating tax, revolves on the proper and correct interpretation of the provisions of Section 190 of the National Internal Revenue Code, in relation with Section 1948 of the Revised Administrative Code. For a clear understanding and analysis of the said provisions, we shall quote them hereunder.

Section 190 of the National Internal Revenue Code reads:

> "Compensating Tax.- All persons residing or doing business in the Philippines who purchase or receive goods from without the Philippines any commodities, goods, wares, or merchandise excepting those subject to specific taxes under Title IV of this Code shall pay on the total value thereof at the time they are received by such persons including freight, postage, insurance, commission, and all similar charges, a compensating tax equi-

> valent to the percentage tax imposed under this Title on original transaction effected by merchants, importers, manufacturers, such tax to be paid upon the withdrawal or removal of the said commodities, goods, wares, or merchandise from the customhouse or post office x x x x."

Section 1248 of the Revised Administrative Code states:

> "When importation by sea begins and ends.- Importation by sea begins when the importing vessel enters the jurisdictional waters of the Philippines with intention to unload therein, and is not completed until the duties due upon the merchandise have been paid or secured to be paid at a port of entry and the legal permit for withdrawal shall have been granted, or, in case said merchandise is free of duty, until it has legally left the jurisdiction of the customs."

Petitioner contends that the compensating tax provided in Section 190, supra, is only applicable to importers. He argues that he is not an importer, having purchased the vehicle in question from Mr. David H. Sencindiver, Jr., one year after the car was landed in the Philippines by the latter, for which reason the petitioner is not liable for the payment of the said tax. On the other hand, the respondent maintains that, viewed in relation with this particular transaction between Sencindiver Jr. and the petitioner, the latter is embraced within the term "importer" as employed in said Section 190 and as such subject to the payment of the compensating tax provided therein. In support of this argument, respondent cites the doctrine laid down by the Supreme Court in the case of Go Cheng Tee vs.

Bibiano Meer (G. R. No. L-2825, July 17, 1950) which was reiterated in the case of Saura Import and Export Co., Inc. vs. Bibiano Meer (G. R. No. L-2927, January 26, 1951).

The Go Cheng Tee and Saura cases cited by respondent are not controlling in the instant case. There is no dispute that David H. Sencindiver Jr., was already the exclusive owner of the car even before November 7, 1952, when he came to the Philippines as member of the staff of the American Embassy as evidenced by the certificate of registration (Annex "B", petition; par. 1 STIFACTS) issued by the Motor Vehicle's Division of the State of Virginia U. S. A.; that upon arrival in the Philippines, the car was released free of duty by the Philippine Customs authorities, Sencindiver Jr. being tax exempt as member of the staff of the American Embassy (par. 2, STIFACTS); that immediately on the same date, November 7, 1952, the same car was duly registered in the Office of the Motor Vehicles in Manila in the name of D. H. Sencindiver Jr., as owner with Plate SPL-156 NN (Annex "D", par. 3 STIFACTS); and that when on December 4, 1953, the car was sold and transferred to the petitioner, Marcelino T. Viduya (Annex "D-1"), the car continued to be in the exclusive name of Sencindiver Jr., under registration Plate No. SPL-157 II, until later when said registration was cancelled and in lieu thereof certificate of registration No. 167385, bearing

Plate No. 26-233 LU, (Annex "A") was issued to the petitioner.

Under the foregoing undisputed facts, it would be too much of a stretch to hold that the petitioner was an "importer" within the purview of Section 190 of the Tax Code, for the car as well as the vendor, Mr. Sencindiver Jr., were already in the Philippine territory, and had been here one year before the sale to the petitioner was effected. The car had been used already by Sencindiver Jr. as his personal property before and after it was landed in the Philippines. It has already suffered wear and tear as a natural consequence of its daily and long use by the previous owner before its purchase by the petitioner. Therefore, the compensating tax prescribed in Section 190 of the Tax Code, which is a tax on the privilege of use, would be unapplicable to the petitioner, because of the privilege for which the tax is sought to be imposed, was at least not enjoyed solely if not completely by him.

It is true, as theorized by the Tax Commission, that the purpose of instituting the compensating tax is "to serve as an equalizer, to place casual importers, who are not merchants on equal footing with established merchants who pay sales tax on articles imported by them." (p. 75 Vol. 1, Report of Tax Commission of the Philippines) But in the present case, we can hardly consider the petitioner as a casual importer belonging to the same class and category as Go Cheng Tee, Saura Import and Export Co., Inc., and P. M. Navigation Co., in cases No. G. R. No. L-2825, G. R. No. L-2927, and G. R. No. L-4621, respectively, the doctrine of which cases are invoked by the respondent, so as to make the purchase made by the petitioner herein of the Buick Sedanet from Sencindiver Jr., as a "purchase from without the Philippines", and therefore subject to the payment of the compensating tax prescribed in Section 190 of the National Internal Revenue Code. Comparatively speaking, the factual background of the present case, is different from the decided cases cited by respondent. In the cases cited, the purchases were made from the United States Army or Navy in the Philippines, or any of the instrumentalities of the United States Government in the Philippines, such as the Foreign Liquidation Commission, and the United States Commercial Company. Whereas, in the present case, the vendor is a private individual, who, although enjoying certain privilege of exterritoriality as a member of the United States Embassy, nevertheless executed the sale to the petitioner in his capacity as private individual. In other words, the petitioner bought the car from a private individual and not from the United States Army or Navy in the Philippines or any of the instrumentalities of the United States Government in the Philippines. A suggestion that the diplomatic privilege may be abused, if there be any, is beside the point, in that the curtailment of any such abuse is beyond the powers of this Court.

We therefore conclude that the petitioner is not liable for the payment of the compensating tax under Section 190 of the Tax Code, and consequently entitled to the refund of the sum of ₱943.20 paid under protest to the respondent under Official Receipt No. B-4464856 on October 8, 1954. (Annex "H", petition)

WHEREFORE, judgment is hereby rendered ordering the respondent to refund to the petitioner the amount of ₱943.20 without any pronouncement as to costs.

SO ORDERED.

Manila, Philippines, May 15, 1956.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

I hereby certify that Presiding Judge MARIANO NABLE concurred in the opinion.

AUGUSTO M. LUCIANO
Associate Judge