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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FILIPINAS AUTO SALES
CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2340

HON. MISAEL P. VERA, as
COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - - x

4/18/83

D E C I S I O N

Petitioner herein Filipinas Auto Sales Corporation seeks by this appeal the reversal of the decision of respondent Commissioner of Internal Revenue dated August 6, 1971 assessing and demanding from it the sum of ₱13,449,347.93 as manufacturer's sales tax inclusive of surcharge and penalty for the years 1957 to 1963.

The pertinent facts are based basically on the records and the evidence submitted by the parties during the hearing of this case.

It appears that petitioner is a domestic corporation duly organized since April 13, 1953 primarily to engage, among others, whether as agent, principal or factor, in the sale and distribution of any and all kinds of motor vehicles. (See Exh. A-2, Amended Articles of Incorporation,

p. 108, CTA records.) Sometime in October 1957, petitioner was granted by the Chrysler Corporation of Detroit, Michigan, U.S.A., the exclusive right to purchase motor vehicles, and the non-exclusive right to purchase motor vehicle parts from the Company and/or from any assembler so designated in the Philippines, for distribution locally and not elsewhere. (See Par. 2, Distributor Agreement as Amended, p. 187, Folder I, BIR records.)

It also appears that on January 23, 1958, another domestic corporation known as the Consolidated Assembly, Inc. was granted by the Chrysler Corporation the exclusive right to assemble in the Philippines knocked down cars and trucks imported from Detroit, Michigan, U.S.A., and the right to import such vehicles on behalf of the Chrysler Corporation's Philippine distributors in accordance with the terms of their respective distributor's agreement. (See Clause 1, Agreement between the Chrysler Corporation Export Division of Detroit, Michigan, U.S.A., and the Consolidated Assembly, Inc. of the Philippines, Exhibit 4, pp. 271-274, Folder I, BIR records.) In turn, the Consolidated Assembly, Inc. undertook to supply only authorized

Chrysler distributorsin the Philippines the built-up cars and trucks assembled by it at terms and conditions previously agreed to. (See Clause 6, Ibid.)

Pursuant to the Agreement, the Consolidated Assembly, Inc. imported completely knocked-down (CKD) cars and trucks which it assembled into vehicles and transferred them to petitioner which in turn were sold to its (petitioner's) customers. As distributor, petitioner paid only the graduated fixed annual tax.

Believing that petitioner was depriving the government of substantial revenues, respondent on January 22, 1959 authorized examiners Lorenzo M. Leynes and Simeon Casingal to investigate petitioner's books of accounts and other accounting records for business tax purposes for 1958 and all unverified years. (Folder I, p. 27, BIR records.) After conducting an investigation, the two examiners submitted a memorandum dated April 30, 1959 to the provincial revenue office of Quezon City with a finding that petitioner is a contractee-manufacturer and, therefore, the sales to its customers were the taxable sales. They recommended that petitioner be required to pay a sales tax of

₱988,464.64 for 1957 and 1958 instead of the graduated fixed annual tax on the gross sales of cars. (See Exh. 1, pp. 43-44, Folder I, BIR records.)

Under the then Section 184 of the National Internal Revenue Code prior to its amendment by Presidential Decree No. 69, a percentage tax is levied, assessed and collected once only on every original sale, barter, exchange, or similar transaction for nominal or valuable considerations intended to transfer ownership of, or title to, manufactured articles which included, among others, automobiles. Accordingly, on July 12, 1960, respondent assessed and demanded from petitioner the amount of ₱1,036,341.72 as manufacturer's sales tax and surcharge for 1957 and 1958, exclusive of the amount of ₱10,000.00 as compromise penalty. (Exh. 2, p. 86, Folder I, BIR records.)

On August 22, 1960, petitioner protested the assessment contending that it was merely a distributor or dealer of Dodge automobiles and trucks purchased from the Consolidated Assembly, Inc., the authorized assembler of the Chrysler Corporation. (Exh. 3, pp. 91-92, Folder I, BIR records.)

On October 19, 1960, respondent required petitioner to accomplish a waiver of the statute of limitation as a condition to a reinvestigation. The waiver was executed by petitioner on November 3, 1960. (Exh. 4, p. 99, Folder I, BIR records.)

Thereafter, respondent ordered the continuation of the previous investigation of petitioner for the years 1957 and 1958 under Authority No. 0351-64 dated July 28, 1964. (p. 227, Folder I, BIR records.) In this connection, respondent in a letter dated November 18, 1964, requested the Consolidated Assembly, Inc. that senior revenue examiners Ernesto Victa and Reynoso Floreza of the Investigation Division of the Bureau of Internal Revenue be allowed access to the books of accounts and other records bearing on the business transactions of petitioner. (p. 262, Folder I, BIR records.) As a consequence thereof, in a memorandum for respondent dated November 10, 1964, group supervisor Pablito J. Enano, revenue examiner Ernesto Victa and supervising revenue examiner Reynoso Floreza recommended that, reference be made to the reports submitted on the 1959 to 1962 tax liability of petitioner, any and all appropriate actions concomitant to tax fraud be taken; petitioner be assessed the amount of ₱2,500,715.75 inclusive of surcharge and penalties for deficiency business tax; and immediate action for collection be pursued. (Exh. 5, pp. 275-285, Folder I, BIR records.)

On March 7, 1966, however, respondent issued a revised assessment against petitioner increasing the sales tax liability from ₱1,046,341.12 to ₱13,439,347.93 for the period from 1957 to 1963, computed as follows:

1957

	7%	75%	100%
Sales	₱321,627.55	₱259,818.00	₱1,573,890.00
Less: Deductible materials	189,407.20	171,837.99	1,139,122.23
Taxable Amount	₱132,220.35	₱ 87,980.01	₱ 434,767.77
Sales Tax Due	₱ 9,225.43	₱ 65,985.01	₱ 434,767.77

Total Sales Tax Due	₱510,008.21
Add: 25% surcharge thereon	127,502.05
50% surcharge thereon	255,004.10
Total Amount Due for 1957	₱892,514.36

1958

	7%	50%	75%	100%
Sales	₱155,690.00	₱253,500.00	₱297,763.75	₱1,698,722.50
Less: Deductible materials	113,670.00	108,183.12	167,799.36	902,697.34
Taxable Amount	₱ 42,020.00	₱145,316.88	₱129,964.39	₱ 796,025.16
Sales Tax Due	₱ 2,941.40	₱ 72,658.44	₱ 97,473.31	₱ 796,025.16
Less: Sales Tax already paid by Consolidated Assembly, Inc.	(785.70)	(6,005.28)	(13,637.36)	(29,679.42)
Balance	₱ 2,155.70	₱ 66,603.16	₱ 83,835.95	₱ 766,345.74

Total Balance Due	₱ 918,940.55
Add: 25% surcharge thereon	229,735.13
50% surcharge thereon	459,470.27
Total Amount Due for 1958	₱1,608,145.95

1959 to 1963

Sales	₱7,680,674.56	₱52,500.00	₱319,000.00	₱14,241,220.50
Less: Deductible materials	4,623,402.53	28,134.34	184,247.31	8,011,755.82
Taxable Amount	₱3,057,272.03	₱24,365.66	₱134,752.69	₱ 6,229,464.68
Sales Tax Due	₱ 214,009.04	₱12,182.83	₱101,064.52	₱ 6,229,464.68
Less: Sales tax already paid by Consolidated Ass	(25,522.58	(2,283.80)	(21,990.28)	(256,245.77)
Balance	₱ 188,486.46	₱ 9,899.03	₱ 79,074.24	₱ 5,973,218.91

Total Balance Due	₱6,250,678.64
Add: 25% surcharge thereon	1,562,699.66
50% surcharge thereon	3,125,339.32
Total Amount Due for 1959 to 1963	₱10,938,687.62

RECAPITULATION:

Sales tax and surcharges due for 1957	₱ 892,514.36
" " " " " " 1958	1,608,145.95
" " " " " " 1959 to 1963 . .	10,938,687.62
TOTAL SALES TAX & SURCHARGES DUE	₱13,439,347.93

Plus an additional sum of ₱10,000.00 as compromise penalty. (See Exh. 6, pp. 425-427, Folder I, BIR records.)

Again, petitioner protested the assessment in a letter dated April 30, 1966. (Exh. C; Exh. 7, pp. 452-457, Folder I, BIR records.) The protest was denied by respondent in a letter dated August 6, 1971. (Exh. 9, pp. 532-535, Folder I, BIR records.) Hence, the petition for review.

Is petitioner Filipinas Auto Sales Corporation a manufacturer pursuant to the then Section 184 of the National Internal Revenue Code and, hence, liable for the deficiency manufacturer's sales tax in question in the amount of ₱13,439,347.93 inclusive of surcharge and penalty?

There is no dispute that the term "manufacturer" as used in Section 184 of the National Internal Revenue Code applies not only to one who actually makes the manufactured articles, but also to one who causes the manufactured articles to be made. (Hancock v. Statch, 144 CA. 439, 40 S.E. 317; Gen. Cir. No. 509, Nov. 6, 1941.) Thus, a corporation having exclusive license to manufacture, sell and distribute finished articles is held to be a manufacturer or producer within the meaning of the excise tax laws even though the actual manufacturing was performed by others. (Warner Patterson Co. v. U.S., 68 Ct. Cls. 237, 1 USTC, par. 415.)

Petitioner contends that it is not a manufacturer but merely a dealer or distributor of Dodge motor vehicles, hence, it should only be subject to the graduated fixed annual tax on the gross sales thereof. To support this contention, petitioner maintains that it had never been engaged in actual manufacturing; that it did not have any participation in the importation except that it purchased said vehicles from the Consolidated Assembly, Inc., the authorized assembler, then sold them to its customers; and that petitioner and the Consolidated Assembly, Inc. are two distinct and separate entities, so that their transactions should be treated at arms length, and for all intents and purposes, bona fide. On the other hand, respondent answers the query in the affirmative.

We agree with respondent that petitioner is a manufacturer of said motor vehicles and not a mere dealer thereof. This conclusion is borne by the facts and circumstances of the case. As aptly and clearly detained by respondent (pp. 162-166, CTA records), which is competently and sufficiently supported by the evidence presented and the records of the case, and which petitioner failed to controvert:

(1) There was the agreement executed in Detroit, Michigan, U.S.A., on January 23, 1958, wherein it was stipulated in paragraph 1 thereof that the Consolidated Assembly, Inc. was appointed the exclusive assembler in the Philippines of the Chrysler Corporation CKD (completely knocked down)

cars and trucks for and on behalf of the Chrysler Corporation's distributors. Petitioner was at the time one of the distributors of the cars and trucks of the Chrysler Corporation. By virtue of such agreement, the Consolidated Assembly, Inc. imported CKD cars and trucks and assembled them for petitioner, which sold the assembled vehicles to the public under an agreement between the Chrysler Corporation and petitioner.

(2) Indeed, in 1956, 1957 and 1958, petitioner contributed the major working capital of the Consolidated Assembly, Inc.

(3) Then, the Consolidated Assembly, Inc., as assembler, received a fixed net income of ₱200.00 to ₱350.00 per unit car or truck delivered to petitioner as assembly fee. (Examiners' report dated April 30, 1959, Exhibit 1, pp. 43-44, BIR records, Folder I.) On the other hand, petitioner made a gross profit from the sales of the cars and trucks in question from ₱3,000.00 to ₱5,000.00 per unit. (p. 221, BIR records, Folder I.)

(4) Again, there is that letter of the Chrysler Corporation informing the Central Bank of the Philippines that Chrysler has approved its (Chrysler) distributors' choice of the Consolidated

Assembly, Inc. to undertake the job of assembling its cars and trucks in the Philippines <u>on behalf</u> of its distributors. One of the distributors on whose behalf the CKD parts were imported and assembled was petitioner herein. (Exhibits 17 & 17-A, pp. 269-270, BIR records, Folder I.)

(5) In addition, there is also a letter written by a key official of the Pacific Banking Corporation informing the Central Bank of the shipping arrangement governing the importations by the Consolidated Assembly, Inc. of the CKD parts. In brief, the shipping arrangement stated that the CKD parts will not be released to the Consolidated Assembly, Inc. without any authority from Chrysler's agent in the Philippines. (Exhibit 16, p. 266, BIR records, Folder I.)

(6) Then, too, the billing to petitioner is at actual assembly cost plus fixed and determined assembly fee or administrative expenses including sales tax paid by the Consolidated Assembly, Inc. for and on behalf of petitioner. There was no fixed selling price of the units - all the selling or transfer prices are determined by the actual cost plus assembly fee and sales tax per lot or as per letter of credit covered by the importation.

(Exhibit 5, pp. 283-285, BIR records, Folder I.)

An analysis of the gross profit earnings realized by Consolidated and petitioner shows the comparative report hereunder:

Consolidated		Filipinas	
Sales 1 Dodge Kingway 1958 to Filipinas	₱7,239.00	Sales to the Public	₱13,500.00
Cost	6,039.00	Cost	7,239.00
Gross Profit	₱1,200.00	Gross Profit..	₱6,261.00

(7) Further, the funds used by the Consolidated Assembly, Inc. for the payment of marginal deposits, taxes, duties and other importation expenses were found to have been advanced to the Consolidated Assembly, Inc. by petitioner thru the local banks by means of domestic letters of credit.

(8) Moreover, imported CKD parts released by banks to the Consolidated Assembly, Inc. under trust receipts were guaranteed by petitioner either as guarantor of the foreign trust receipts agreement executed by the Consolidated Assembly, Inc. or by means of letters of credit opened by petitioner.

(9) As a matter of fact, petitioner and other distributors of Chrysler's products in the Philippines were found to have opened a credit line in favor of the Consolidated Assembly, Inc. for the importation of the CKD parts. (Exhibit 5, pp. 275-285, BIR records, Folder I.)

(10) Last, but not least, petitioner failed to controvert during the hearing of this case the foregoing findings of respondent or to show the incorrectness of respondent's assessment.

Petitioner's contention is, in substance, that the Filipinas Auto Sales Corporation and the Consolidated Assembly, Inc. are entirely separate and distinct entities, with completely different stockholders and officers; and that the spare parts which were used in the assembly of cars and trucks were imported in the name of the latter. Respondent does not quarrel with these propositions. However, the applicable principles are clear and in the end the decision in this case must rest upon its own peculiar facts and circumstances. As already detailed above, these facts and circumstances, which were not disputed by petitioner, show beyond doubt that the CKD trucks and cars were imported and assembled by the Consolidated Assembly, Inc. for and on behalf of petitioner which was the real manufacturer of the vehicles and, therefore, liable to pay the manufacturer's sales tax in question. All these facts and circumstances, taken together, support the conclusion that the arrangement which made it appear that the Consolidated Assembly, Inc. was the manufacturer and petitioner was the dealer reselling the manufactured vehicles to the public was availed of for the purpose of minimizing the sales tax due on the assembled vehicles.

The conclusion reached is reinforced by the principle that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but that he (taxpayer) is right. (Lino Gutierrez vs. Collector of Internal Revenue, CTA Case No. 504, January 28, 1962; see also Tan Guan vs. Court of Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903.) And if no evidence is presented to substantiate the errors that are claimed to have been committed by the Commissioner in making the assessment, as in this case, conformably to the doctrine of the presumption in favor of the correctness of tax assessment (Inter-provincial Auto-bus Co., Inc. vs. Collector of Internal Revenue, L-6741, January 31, 1956, 98 Phil. 290; Collector of Internal Revenue vs. Bohol Land Transportation Co., L-13099 & L-13462, April 29, 1968, 107 Phil. 965), the Court of Tax Appeals will merely sustain the assessment against the taxpayer (Esso Standard Fertilizer & Agricultural Chemical Co., Inc. vs. Commissioner of Internal Revenue, CTA Cases Nos.

1862, 1879, 1888, 1893 & 1896, May 30, 1980.) It is incumbent upon the taxpayer clearly to show that the assessment was erroneous in order to relieve himself from it. (Inter-provincial Autobus Co., Inc. vs. Collector of Internal Revenue, supra.) This petitioner Filipinas Auto Sales Corporation failed to do so.

Petitioner having failed to dispute and controvert the facts and circumstances attendant to this case which support the finding of respondent that the CKD cars and trucks imported and assembled by the Consolidated Assembly, Inc. were for and on behalf of petitioner which caused the manufacture of the motor vehicles involved in this proceeding, or to show the incorrectness of respondent's assessment, the Court has no other alternative than to sustain the decision of respondent dated August 6, 1971 holding that petitioner is liable in the total amount of ₱13,439,347.93 as manufacturer's sales tax for the years 1957 to 1963, inclusive of surcharge, imposed under the then Sections 183, 184 and 186 of the National Internal Revenue Code. The compromise penalty of ₱10,000.00 suggested by respondent in his assessment should not be imposed or collected without the agreement and conformity of petitioner. And it does not appear that petitioner accepted the imposition of the compromise amount. (Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, L-22805 & 27858, June 30, 1975, 64 SCRA 555.)

Accordingly, petitioner Filipinas Auto Sales Corporation is hereby ordered to pay to respondent Commissioner of Internal Revenue the amount of ₱13,439,347.93 representing manufacturer's sales tax, inclusive of surcharge, for the years 1957 to 1963, plus interest at the rate of 14% per annum from January 1, 1973 to July 31, 1980 and at the rate of 20% per annum from August 1, 1980 until fully paid pursuant to Section 193 of the 1977 National Internal Revenue Code as amended by Presidential Decree No. 1705.

WHEREFORE, the decision under review is hereby modified in the sense that the compromise penalty should not be imposed and is affirmed in all other respects. With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, April 18, 1983.

Amante Filler

AMANTE FILLER
Presiding Judge

I CONCUR:

Alex Reyes

ALEX Z. REYES
Associate Judge

Associate Judge Constante C. Roaquin dissents in a separate opinion.

FILIPINAS AUTO SALES
CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2340

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - x

DISSENTING OPINION

I vigorously dissent against the majority decision dated April 18, 1983 reached by my colleagues in this case.

To set the records as clearly as possible, let me state the facts as truly reflected and which are gathered from the records of this case: It appears that petitioner Filipinas Auto Sales Corporation, herein referred to as FASCO, is a domestic corporation duly organized under the laws of the Philippines on April 13, 1953 (Report of Examiner, pp. 181-184, Folder 1, BIR rec.; Par. 2, Petition for Review, p. 1, CTA rec.; Exhs. "A", "A-2", Amended Article of Incorporation, pp. 107-113, CTA rec.) with its primary purpose as follows:

PRIMARY PURPOSE

"To conduct, engage in and carry on, whether as agents, principals, or factors, the business of importing, buying, selling, distributing and dealing in all kinds of automobiles, motor trucks, station wagons, motorcycles and all other kinds of mechanically propelled vehicles and means of transportation, as well as in car and truck spare parts, accessories, tires, inner tubes, batteries, tools and all other supplies, materials and appliances used in such motor vehicles." (Underlining mine.)

Also, the records show that the original incorporators of the said FASCO are as follows:

NAME	CITIZENSHIP	RESIDENCE
Frank R. Haling	American	1131 M.H. del Pilar, Mla.
Sibyle L. Haling	American	1131 M.H. del Pilar, Mla.
Lualhati V. Ferro	Filipina	1260 V. Concepcion, Mla.
Manuel C. Macatulod	Filipino	1222 Alfredo, Mla.
Pedro M. Syquia	Filipino	1131 M.H. del Pilar, Mla.

By virtue of distributor's agreement entered into between FASCO and Chrysler Corporation of United States, the former was appointed by the latter, hereinafter referred to as Chrysler for short, as the franchise distributor in the Philippines of Dodge automobiles and trucks. (Distributor's Agreement between Chrysler and FASCO, Folder 1, pp. 188-190, BIR rec.)

The first sentence of paragraph 2 of the said Distributor's Agreement (Folder 1, p. 187, BIR rec.) between Chrysler and petitioner (FASCO), as amended, provides that:

> "Except as set forth in this paragraph and subject to all the terms and conditions set forth in this Agreement, Company (Chrysler) grants to non-exclusive right to purchase motor vehicles parts from Company (Chrysler) and/or from any assembler or manufacturer (Consolidated Assembly, Inc.) in the Philippines designated by Company (Chrysler), for distribution and resale in the following described territory and not elsewhere." (Enclosed in parenthesis mine.)

Sometime on August 16, 1954, a domestic corporation known as Consolidated Assembly Incorporated, hereinafter referred to as Consolidated, was registered with the Security and Exchange Commission with the following individuals as stockholders or incorporators: Mr. Ignacio Jaotayag, Andrea V. Jaotayag, Ricardo S. Canlas, Juana J. Canlas and Leonidas J. Canlas.

By virtue of an Agreement dated January 23, 1958 (Folder 1, p. 280, BIR rec.) entered into between Chrysler and Consolidated, the latter was appointed by the former as its Assembler of Dodge cars and trucks in the Philippines with the following trade names: "Dodge," "Plymouth," "De Sotto," "Valiant," "Morris," "Simca," and "Fargo."

Consolidated was established with the primary purpose of engaging in the business of assembling and manufacturing motor vehicles, which assembled or manufactured motor vehicles, in turn, were sold and distributed to several duly authorized or licensed distributors, and one of which is the herein petitioner FASCO. (Rev. Examiner Pablito Enano, Folder 9, pp. 204-210, BIR rec.; underlining mine.)

On January 22, 1959, Authority No. 494-R was issued authorizing examiners Lorenzo M. Leynes and Simeon Casingal to examine and investigate the books of accounts and other accounting records for business tax purposes of petitioner for the years 1958 and all unverified years. (Folder 1, p. 27, BIR rec.) After the aforementioned investigation by respondent's examiners, a memorandum report was submitted by them dated April 30, 1959 to the Provincial Revnue Officer of Quezon City, finding petitioner liable for sales tax in the amount of ₱988,464.64 for the years 1957 to 1958. The examiners alleged that FASCO's sales of automobiles and trucks were original sales, and, therefore, the tax should be collected pursuant to Section 185 (should be Sec. 184) of the Tax Code. (Folder 1, pp. 38-39, BIR rec.) However, on July 12, 1960, respondent assessed and demanded from petitioner the higher sum of ₱1,036,341.72 as manufacturer's sales tax and surcharges for the years 1957 and 1958 pursuant to Sections 183, 184 and 186 of the Tax Code. (See Exh. "2", Folder 1, p. 86, BIR rec.).

This was protested by petitioner, thru the accounting firm of Sycip, Gorres, Velayo & Co., in its letter dated August 22, 1960, contending that petitioner is not a manufacturer of automobiles and trucks but is a mere distributor of such vehicles, and, therefore, it should pay only graduated fixed tax (C-13) for its sales of new and used automobiles and trucks purchased from Consolidated, which is the authorized manufacturer of said cars and trucks of Chrysler. (Exh. "3", Folder 1, pp. 91-92, BIR rec.).

In a memorandum addressed to the Revenue Operation Head, the Chief Litigation Division, Cesar L. Kierulf, recommended that a detailed investigation be conducted in order to ascertain the correct tax liability of the herein petitioner. (Folder 1, pp. 219-222, BIR rec.) As a consequence thereof, another authority No. 0351/64 to investigate was issued on July 28, 1964 authorizing Examiner Lorenzo M. Leynes to reinvestigate petitioner's business tax liability.

(Folder 1, p. 227, BIR rec.) Eventually, Examiners Ernesto Enano and Reynoso Floreza also investigated petitioner's tax liability. After the reinvestigation, respondent sent two letters to petitioner FASCO dated November 4 and 25, 1964 informing the latter that a conference will be held in order to give the latter an opportunity to present its evidence and to support its contention that it is not a manufacturer of said cars and trucks but merely a distributor. (Folder 1, pp. 286-287, BIR rec.) However, there is nothing in the records to show what transpired in the aforesaid conference.

On March 7, 1966, a revised assessment was issued increasing petitioner's sales tax liability from ₱1,046,341.12 to ₱13,439,347.93 covering the years 1957 to 1963. (Exh. "6", Folder 1, pp. 425-427, BIR rec.) This increased assessment was again protested by said petitioner, thru counsel, Carlos Valdez & Co., in a letter dated April 30, 1966. (Exh. "C", Folder 1, pp. 452-459, BIR rec.) The same was, however, denied by respondent in his letter dated August 6, 1971. (Exh. "9", Folder 1, pp. 532-535, BIR rec.) Hence, on October 23, 1971, petitioner appealed to this Court.

The only issue posed before this Court for determination is whether or not petitioner FASCO is a manufacturer pursuant to Sections 183-184 and 186 of the National Internal Revenue Code.

Respondent claimed that petitioner FASCO is a contractor-manufacturer of cars and trucks that were, as aforesaid, assembled by the Consolidated. Respondent presumed Consolidated to be under contract to assemble cars and trucks, for and in behalf of FASCO, hence, concludes that the latter is a manufacturer pursuant to Section 184 of the Tax Code.

Respondent, in arriving at the conclusion that petitioner is a manufacturer, relied on the following circumstances (pp. 163-164, Resp. Memo., CTA Rec.), to wit:

> 1. That there exist an agreement executed in America on January 23, 1958, wherein it was stipulated that Consolidated was appointed the exclusive assembler in the Philippines of Chrysler Corporation CKD cars and trucks for and in behalf of the Corporation's (Chrysler) distributors. Petitioner was at the time one of the distributors of the cars and trucks of Chrysler Corporation.
>
> 2. Petitioner herein contributed the major working capital of Consolidated Assembly for the years 1956, 1957 and 1958, the former as manufacturer and the latter as contractor.
>
> 3. The assembler received a fix income of ₱200.00 to ₱350.00 per unit of car or truck delivered to petitioner.

4. That there exist a letter of Chrysler Corporation informing the Central Bank of the Philippines that Chrysler has approved its (Chrysler) distributor's choice of Consolidated to undertake the job of assembling its cars and trucks in the Philippines <u>on behalf</u> of said distributors. One of the distributors on whose behalf the CKD parts were imported and assembled was the petitioner herein.

5. That there exist a letter that the CKD parts will not be released to Consolidated without any authority from Chrysler agents in the Philippines.

6. The selling price of the units to the petitioner is determined by the actual cost plus assembly fee and sales tax per lot or as per letter of credit covered by the importation.

7. The fund used by Consolidated for payment of marginal deposits, taxes duties and other importation expenses were advanced to Consolidated by the herein petitioner thru local banks by means of domestic letter of credit.

8. The CKD Parts released by banks to Consolidated under trust receipt were <u>guaranteed</u> by petitioner.

9. Petitioner and other distributors of Chrysler's product in the Philippines were found to have opened credit lines in favor of Consolidated for the importation of said CKD parts.

The provision of the law applicable at the time is Section 184 of the Tax Code which provides as follows:

"Sec. 184. <u>Percentage tax on sales of</u> x x x <u>automobiles</u> x x x.- There shall be levied, assessed and collected once

> only on every original sale, barter, exchange, or similar transaction for nominal or valuable considerations intended to transfer ownership of, or title to, x x x x x x such tax to be paid by the manufacturer or producer." (Underlining supplied.)

I believe that the circumstances found and asserted by respondent in arriving at the conclusion that petitioner FASCO is a manufacturer subject to sales tax under Section 184 of the Tax Code are not sufficient.

The records show that the petitioner FASCO and Consolidated are entirely separate and distinct corporations, with entirely separate stockholders and officers and performing separate and distinct transactions. In short, these two corporations have separate juridical personalities. It is worth noting that none of the stockholders and/or officers of petitioner FASCO are stockholders and/or officers of Consolidated and vice versa. FASCO is definitely governed by its articles of incorporation, which is the very source of its power and authority. The primary purpose in organizing the aforesaid corporation in 1953 is merely to engage in the sale and distribution of all kinds of motor vehicles. Nowhere can we find the basis for concluding that petitioner FASCO is vested with authority to engage in the business of manufacturing cars and trucks in order that it may be considered a manufacturer pursuant to Section 184 of the Tax Code.

Definitely, insofar as its corporate aims and purposes are concerned, petitioner FASCO can only exercise the powers that are expressly conferred by law and its articles of incorporation. It was in 1953 that petitioner, by virtue of a contract, was appointed as a franchise distributor in the Philippines by Chrysler. There is nothing in the records indeed that will show that these two corporations, petitioner FASCO and Consolidated, had any business affiliation or identical purposes. The only business relation between petitioner FASCO and Consolidated is when the former purchases the cars and trucks from the latter which manufactured them. The Supreme Court in the case of Manila Trading & Supply Co. vs. City of Manila, et al., G.R. No. L-12156, April 29, 1959; 105 Phil. 581., defined manufacturer as follows:

> "Manufacturer Defined. - One who imports raw materials and assembles them later to turn them into finished products is a manufacturer because the word "manufacturer" in its plain and ordinary meaning includes "the process of assembling articles which while complete and finished, have no independent utility but are designed to be used in combination as parts of some other articles, such as a typewriter, an automobile, or the like, but when so used,

> the process of assembling usually, if not always, involves the exercise of manual or mechanical skill and labor and the more or less extensive use of auxiliary machinery. (M. H. Rowe Co. vs. Beck, 131 A. 509, 511-512)."

Words and Phrases, Vol. 26, at pages 631 and 637, defines "manufacturer" as follows:

> "A 'manufacturer' is one who engages in the business of working raw materials into wares suitable for use, who gives new shapes, new qualities, new combinations to matter which has already gone through some artificial process. State v. Magnolia Packing Co., 35 So. 2d 422, 423, 424, 213 La. 661."

> "Motor company manufacturing and selling to an automobile dealer a motor-truck chassis with motor and cab, was a 'manufacturer' within Certificate of Title Act. Motor Inv. Co. v. City of Hamlin, 179 S.W. 2d 278, 280, 282, 142 Tex. 486.)

It is clear that, under the facts of this case, petitioner, since it merely purchased the trucks and cars assembled by Consolidated and resold the same to the public in general, as evidenced by the agreement between Chrysler and FASCO, is constituted by Chrysler only as one of its Philippine distributors.

There exist no doubt that the evidence in this case will show that Consolidated is the manufacturer and not the petitioner. The Sales Invoice of spare parts to be used in the assembly cars and trucks were in the name of Consolidated. (Exh. "D", Folder No. 2,

p. 42, BIR rec.) The Transfer Certificate (Exchange Quota) of the Central Bank will show that the import charges were made against the account of Consolidated Assembly Incorporated. (Exh. "E", Folder No. 2, p. 41, BIR rec.) The Application and Agreement for Commercial Letter of Credit was made by Consolidated Assembly Incorporated. (Exh. "F", Folder No. 2, p. 39, BIR rec.) Letter of Credit will show that the importer is Consolidated Assembly Incorporated (Exh. "G", Folder No. 2, p. 38, BIR rec.) Advice of Letter of Credit was opened to show that the importer is Consolidated Assembly Incorporated. (Exh. "H", Folder No. 2, p. 37, BIR rec.) The Statement of Charges were made by a Brokerage Firm against Consolidated Assembly Incorporated for brokerage services and on "MORRIS" importation (CKD). (Exh. "I", Folder No. 2, p. 31, BIR rec.) Central Bank Release Certificate No. 10064 was issued in favor of Consolidated. (Exh. "J", Folder No. 2, p. 27, BIR rec.) Santos Brokerage Receipt was from Consolidated Assembly Incorporated. (Exh. "K", Folder No. 2, p. 26, BIR rec.) Bill of Lading was in the name of Consolidated Assembly Incorporated. (Exh. "L", Folder No. 2, p. 25, BIR rec.) Delivery Receipts were in the name of Consolidated Assembly Incorporated by Santos Brokerage.

(Exhs. "M" to "M-4", Folder No. 2, pp. 18-23, BIR rec.) Notices of Shipment by Shipper were directed to Consolidated Assembly Incorporated. (Exhs. "N" to "N-2", Folder No. 2, pp. 13, 14 & 15, BIR rec.) Supplement to Amendment of Commercial Letter of Credit Import Department, Central Bank, in the name of Consolidated Assembly Incorporated. (Exh. "O", Folder No. 2, p. 9, BIR rec.) Notices made to Pacific Banking Corporation by Consolidated Assembly Incorporated, re: Amended Letter of Credit. (Exhs. "P" to "P-2", Folder No. 2, pp. 5 to 7, BIR rec.) Sales (Shipping) Invoice of Chrysler International directed to Consolidated Assembly Incorporated. (Exhs. "Q" to "Q-2", Folder No. 3, pp. 37-39, BIR rec.) Luzon Brokerage Corporation - Request for Government Taxes addressed to Consolidated Assembly. (Exh. "R", Folder No. 3, p. 36, BIR rec.) Import Entry and Internal Revenue Declaration were in the name of Consolidated Assembly Incorporated. (Exhs. "S", Folder No. 3, p. 35, BIR rec.) Notice of Consolidated Assembly Incorporated from Bank of Asia. (Exhs. "T" to "T-2", Folder No. 3, pp. 32-34, BIR rec.) Letter of Pacific Far East Lines, Inc. was addressed to Consolidated to the effect that its shipment will arrive on February 14, 1964 from New

York. (Exh. "U", Folder No. 3, p. 31, BIR rec.) Various Shipping documents in the name of Consolidated Assembly Inc. (Exhs. "V", "V-11", Folder No. 3, pp. 19-30, BIR rec.) Central Bank Release Certificate was issued to Consolidated which authorizes the release of imported spare parts of cars and trucks in its favor. (Exh. "W", Folder No. 3, p. 17, BIR rec.) Luzon Brokerage Corporation Way Bills, in the name of Consolidated Assembly Incorporated. (Exhs. "X" to "X-7", Folder No. 3, pp. 9-16, BIR rec.) Computation of Taxes which shall be paid by Consolidated in connection with its importation of 12 knock down units of Dodge 440 Sedan. (Exh. "Y", Folder No. 3, p. 8, BIR rec.) Application for Withdrawal from Internal Revenue Bonded Warehouse No. 2 by Luzon Brokerage Corporation for Consolidated Assembly Incorporated. (Exh. "Z", Folder No. 4, p. 14, BIR rec.)

With the aforesaid array of evidence, it is now very clear and conclusive that the manufacturer of the cars and trucks in the Philippines is Consolidated and not petitioner FASCO. As I said herefore, petitioner have merely purchased the cars and trucks assembled by Consolidated and distributed and resold the same to the public in general. The nature of petitioner's business transaction is merely that of a dealer and not a manufacturer.

Words and Phrases, Vol. 11, pp. 152-153, 1958 Ed., defined dealers as follows:

> "A person whose business is to buy and sell is a 'dealer'. State v. Silverman, 70 A. 1076, 1077, 1078, 75 N.H. 50."
>
> "A 'dealer' is not one who buys to keep, or makes to sell, but one who buys to sell again. He depends for his profit, not upon the labour he bestows on his commodities, but upon the skill and forsight with which he watches the markets. People v. Stevens, 51 P. 2d 1179, 1180, 10 Cal. App. 2d Supp. 763."

The allegation that petitioner FASCO contributed the major working capital of Consolidated during the years 1956, 1957 and 1958 is not substantiated by either documentary or testimonial evidence. Respondent relied entirely on the examiners' reports submitted by Simeon G. Casingal and Lorenzo M. Leynes. It is unfortunate that the said examiners were not presented as witnesses by respondent during the trial of the instant case in this Court. I cannot, therefore, give the appropriate credence, value and correctness to said reports.

While petitioner FASCO does not deny that it made financial advances to Consolidated, these advances were however applied against the deliveries of cars and trucks made by Consolidated which was the manufacturer of the cars and trucks. Advances made by purchasers like petitioner FASCO to Consolidated has been treated as part of the accepted business practice of the trade and/or business in order to insure deliveries of the merchandise on time as satisfactorily explained by petitioner FASCO in its letter of protest dated June 17, 1959, a portion of which reads:

> "With respect to advances made by Filipinas Auto Sales Corporation to Consolidated Assembly, Inc., we have to state that such advances were made on account of purchases made by the former from the latter. These advances were applied against deliveries of cars and trucks made by the manufacturer. In almost any trade or business the payment of advances on account of purchases has been treated as a part of the business practice of the trade to insure deliveries of merchandise on time. Even in the importation of merchandise from the United States it is not unusual for importers to pay a marginal deposit to suppliers in the United States before shipment can be made. (Underlining supplied; see petition protest dated June 17, 1959, Folder No. 1, pp. 45-46, BIR rec.)

As regards the allegation that Consolidated received a fixed net income of ₱200.00 to ₱350.00 per unit of car or truck manufactured and delivered to petitioner as assembly fee does not at all indicate or show that petitioner is the manufacturer. The aforesaid fixed income received by Consolidated is a reasonable income taking into consideration that in the years 1957-1963 the values of cars and trucks were actually very much less, and the corresponding peso value was then high compared to value of cars and trucks purchased and the corresponding purchasing power of the peso at present. Besides, the examiners, Simeon Casingal and Lorenzo Leynes, who originally investigated the petitioner and who made these findings were never presented as witnesses during the hearing of the instant case before this Court to substantiate or confirm their findings which altogether deprived petitioner the right to confront them on their report. Hence, the report, to my mind, is of no value.

Respondent also contends that he has come across a letter of Chrysler informing the Central Bank of the Philippines that Chrysler approved Consolidated as its choice to undertake the job of assembling its cars and trucks in the Philippines in behalf of all its distributors one of which is petitioner FASCO herein. Also, respondent insists that another letter shows that CKD parts will not be released to Consolidated without authority from Chrysler's agents in the Philippines. Respondent further contends that the funds used by Consolidated for payments of its marginal deposits, taxes, duties, and other importations, expenses, were advanced to Consolidated by petitioner, and that petitioner and other distributors were found to have taken a credit line in favor of Consolidated for importation of said CKD parts.

It is worth noting that these advances made by the distributors are merely trade or business arrangements in order to facilitate business transaction among corporations, and this arrangement does not the least draw a conclusion that petitioner is the manufacturer of the cars and trucks. There exist no direct evidence whatsoever linking petitioner and Consolidated as a single entity with regard to the production and manufacture of the cars and trucks. These two corporations, as I have said, are corporations having two separate and distinct personalities. There is no direct or clear evidence establishing the fact that Consolidated is a mere conduit, instrumentality or alter ego of petitioner FASCO for the purpose of perpetuating fraud against revenue. Where no direct evidence exist on this matter, disregard of the corporate entity of FASCO cannot be done. Moreover, disregard of corporate entity is the exception and not the general rule. In this connection, Merten's has this to say:

> "In conclusion it may be stated that the doctrine of corporate entity is one of

> substance and vitality and that the disregard of the doctrine is the exception instead of the rule. Some of the exceptions have been defined very clearly by the courts as shown above; however, many cases have arisen which were shadowed with doubt, and until the courts had decided the issue, no one could be reasonably certain as to just how the line would be drawn. (Merten's, Law on Federal Income Taxation; Vol. 7, Chap. 38, pp. 24-25, 1956 ed.)

Even assuming that Consolidated and petitioner FASCO have agreed as to the manner in which their business transactions are to be managed, and this arrangement was merely for the purpose of minimizing the taxes to which they are liable, by means which the law does permit, the Supreme Court in one case (Yutivo Sons Hardware Co. vs. Court of Tax Appeals and Coll. of Internal Revenue, 110 Phil. 759), held thus;

> "In the third place, Sections 184 to 186 of the said Code provide that the sales tax shall be collected "once only on every original sale, barter, exchange x x x to be paid by the manufacturer, producer or importer." The use of the word 'original' and the express provision that the tax was collectible 'once only' evidently has made the provisions susceptible of different interpretations. In this connection, it should be stated that a taxpayer has the legal right to decrease the amount of what otherwise would be his taxes or altogether avoid them by means which the law permits. (U.S. vs. Isham. 17 Wall. 496, 596; Gregory vs. Helvering, 293, U.S. 469; Comm. vs. Tower, 327 U.S. 280; Lawton vs. Comm. 194 F/2/ 380). Any legal means used by the taxpayer to reduce taxes are all right (Benny vs. Comm. 25 T. Cl. 78). A man may therefore, perform an act that he

> honestly believes to be sufficient to exempt him from taxes. He does not incur fraud thereby even if the act is thereafter found to be sufficient. Thus in the case of Court Holding Co. vs. Comm. 2 T. Cl. 531, it was held that though an incorrect position in law had been taken by the corporation there was no suppression of the facts, and a fraud penalty was not justified." (Underlining Supplied)

The enumerated contentions of respondent in his memorandum being merely inferences, and not based on actual facts, which points, in effect, that petitioner FASCO is a manufacturer cannot hold water. The presumption of correctness of an assessment by respondent can be maintained only when the said assessment is based on facts and not on mere inferences. The Supreme Court, in the case of the Collector of Internal Revenue versus Alberto Benipayo, G.R. No. L-13656, January 31, 1962, 4 SCRA 182, held thus:

> "In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption that the circumstances in 1952 and 1953 are presumed to be the same as those existing in 1949 to 1951 and July 1955. In the case under consideration there are no substantial facts to support the assessment in question. x x x."

In view of the foregoing, I register my dissenting vote against the majority decision with the view that petitioner should not be liable for taxes as a manufacturer under Section 184 of the National Internal Revenue Code.

Quezon City, Metro Manila, July 29, 1983.

CONSTANTE C. ROAQUIN
Associate Judge