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BISLIG BAY LUMBER COMPANY, INC.,
Petitioner,

- versus -

Oct. 9, 1957

C.T.A.
CASE NO. 155

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

The respondent assessed against the petitioner the sum of ₱182,345.00, itemized as follows:

1. Deficiency sales tax on sales of logs to buyers in Japan from June 14, 1951 to June 19, 1953, with an aggregate selling price of ₱2,810,900.00 ------	₱140,545.04	
25% surcharge ------	35,136.26	₱175,681.30
2. Deficiency sales tax on sales of lumber to buyers in Manila and Cebu from the first quarter of 1951 to the 1st quarter of 1954 ----	₱ 5,330.96	
25% surcharge ------	1,332.74	6,663.70
TOTAL -----		₱182,345.00

The assessment is based on Section 186 of the National Internal Revenue Code, as amended by Republic Acts Nos. 588 and 594, imposing a percentage tax of 5% on original sales of forest products, and Section 183, which imposes a surcharge of 25% for late payment of said tax. Contending that the assessment is contrary to law, petitioner has appealed from the decision of respondent.

We shall first take up the assessment in connection with the shipments of logs to Japan. The issue is whether or not the sales of logs to buyers in Japan were effected in the Philippines so as to be taxable here, or in Japan and, therefore, non-taxable.

From the stipulation of facts submitted by the parties and the evidence adduced during the hearing of the case, it appears that the contracts of sale were negotiated by petitioner's agent in Japan; that the contracts of sale were confirmed by said agent by means of purchase notes sent to the sellers and seller's notes to the buyers; that the logs were shipped either under terms F.O.B. Bislig, Surigao, or C. & I., Bislig, Surigao; that by the terms of the bills of lading the logs were "consigned to the order of the seller (notify respective buyers)"; that all freight charges were paid by the buyers; that in shipments under terms F.O.B. Bislig, the logs were insured by the buyers; that in shipments under terms C. & I. Bislig, the logs were insured by the seller, petitioner herein; and that the bills of lading, insurance policies taken in the name of the seller, and other commercial and shipping documents were indorsed in blank and presented to the bank in Manila for collection through whom the foreign buyers opened letters of credit.]

We agree with respondent that, in the circumstances stated above, title to the logs shipped abroad passed from the seller to the foreign buyers in the

Philippines, and therefore the transactions were domestic sales taxable under Section 186 of the Revenue Code. It is true that by the terms of the bills of lading the logs were "consigned to the order of the seller (notify respective buyers)", and this circumstance is an indication of an intention of the seller to retain ownership of the goods according to Article 1503 of the Civil Code, pertinent portion of which provides:

> "Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the ownership in the goods. But, if except for the form of the bill of lading, the ownership would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract."

It is to be noted, however, that the rule that where goods covered by a bill of lading are deliverable to the seller or his agent ownership in the goods is retained by the seller is not conclusive. The law itself provides for an exception. Although on the face of the bill of lading the goods are deliverable to the order of the seller or his agent, yet if the ownership in the goods passed to the buyer on shipment of the goods, the seller's property in the goods is "deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract." In the instant case, we have no doubt in our minds that ownership in the logs passed in the Philippines from the seller to the foreign buyers because the freight charges were paid by the buyers; the shipments were insured by the buyers (and in those cases where insurance was taken by the seller the policies were indorsed in blank and delivered to the agent in Manila of the foreign buyers, which has the same effect as if the insurance was taken by the buyers); and, what is more important, the bills of lading and other shipping documents were indorsed in blank by the seller and presented for collection to a local bank with whom the foreign buyers opened irrevocable letters of credit. Therefore, neither the fact that the bills of lading in this case provided that the logs were deliverable to the seller or its order, or that a draft was invariably attached to each bill of lading, is of no legal consequence.

It is argued that Republic Act No. 894, which amended Section 186 of the Revenue Code, providing exemption from taxation of articles shipped or exported abroad by the manufacturer or producer, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the articles so exported, is a declaratory statute and should be made to apply to transactions effected prior to the effectivity of said Act. This question has already been resolved in Misamis Lumber Co. v. Collector of Internal Revenue, Manila Civil Case No. 18424, decided by this Court on December 1, 1955,' wherein it was held:

"That the explanatory note accompanying the bill which later became Republic Act No. 894 expressed an opinion contrary to the interpretation given by the Bureau of Internal Revenue is no indication that the amendatory Act is declaratory in nature. The law imposing a percentage tax on sales of articles was formerly embodied in Section 1459 of the Revised Administrative Code. Later, Congress classified goods, wares or merchandise into three categories and imposed different rates of sales tax. The law imposing sales tax is now embodied in Sections 184, 185 and 186 of the Revenue Code. But the basis of the tax and the essential requisites for the taxability of sales of articles have remained the same. It is to be noted that the Supreme Court had occasion to apply Section 1459 of the Revised Administrative Code on sales of articles consummated in the Philippines and therefore subject to the sales tax. (See Vegetable Oil Corp. v. Trinidad, 45 Phil. 834-835, cited in A. Soriano y Cia. v. Collector, supra.) The interpretation given to Sections 184-186 by the Bureau of Internal Revenue merely follows the opinion of the Supreme Court. It is well settled that where a statute has received judicial construction, any interpretation of the law by Congress is not binding on the courts. x x x.

"It follows that Republic Act No. 894 amending Section 186 of the Revenue Code, exempting from tax sales of articles to foreign buyers, irrespective of the shipping arrangement for the delivery and exportation of the articles sold, cannot be held to apply retroactively. Only acts done or transactions had on and after the effectivity of said Act on June 20, 1953 may be given the benefit of the exemption. Also noteworthy is the fact that although the law imposing sales tax is embodied in three separate and independent sections

' Affirmed by the Supreme Court in G. R. No. L-10131, September 30, 1957.

(Sections 184, 185 and 186 of the Revenue Code), only Section 186 was amended by Republic Act No. 894. Accordingly, only sales to foreign buyers of articles classified under Section 186 may be exempted from the sales tax, while similar sales of articles classified under Sections 184 and 185 continue to be governed by the rules applicable to sales effected under 'f.o.b.' and 'c.i.f.' terms. We can not, therefore, view Republic Act No. 894 other than as an Act intended to exempt from taxation a special class of transactions under Section 186 of the Revenue Code which is designed to operate prospectively. It has absolutely no application to transactions effected before its enactment, as in the case of the sales of logs and lumber involved in the instant case."

Apparently in view of our observation that Republic Act No. 894 could not have the effect of a declaratory statute because said Act amended only Section 186, relating to the sales tax on ordinary articles, thereby leaving transactions in articles enumerated in Sections 184 and 185 unaffected by said Act, Congress eliminated the provision in Section 186 which was added by Republic Act No. 894 and instead added subparagraph (e) to the first paragraph of Section 188 containing a similar provision. (See Sec. 9, Rep. Act No. 1612.) As the law now stands, after the amendment of Section 188 by Republic Act No. 1612, all shipments abroad of articles classified under Sections 184-186 of the Revenue Code by the manufacturer or producer, irrespective of any shipping arrangement which may influence or determine the transfer of ownership of the articles exported, are exempt from the sales tax. It is argued that this action of Congress is a clear indication that the amendment is a declaratory statute. We do not think that the transfer of the amendatory provision from Section 186 to Section 188 of the Revenue Code has the effect of making the amendment a declaratory statute, specially so where the same has already received judicial construction.

We might state in this connection that if it were the intention of Congress to give the amendatory Act retroactive effect, it should have so provided in clear and unmistakable terms as it did in similar cases. A striking example of the attitude of Congress in matters of this nature is Republic Act No. 361 enacted sometime in 1949. There was some doubt whether vessels were classifiable as "goods, wares or merchandise", or personal property, within the meaning of Section 190 of the Revenue Code. The Collector of Internal Revenue ruled that vessels were "goods, wares or merchandise" and therefore subject to the compensating tax. Section 190 was amended by Republic Act No. 361 by providing that "The phrase 'commodities, goods, wares, or merchandise' as used in this title, shall not be construed as to include vessels, their equipment and/or appurtenances purchased or received from without the Philippines, before or after the taking effect of this Act." Note that in this case Congress expressly provided for the exemption of vessels, their equipment and/or appurtenances imported from abroad <u>before or after the taking effect of said Act</u>. Another example is Republic Act No. 227 which exempts from taxation any amount received by a taxpayer from the Governments of the Philippines or of the United States for or on account of damages or losses suffered during the last war, and "any such tax heretofore collected thereon shall be credited, if such tax credit is requested, within one year from the approval of this Act." These Acts clearly show that where Congress intends that an exemption statute is to operate retrospectively, it does not leave the matter to implication but makes an express provision to that effect.

Of the sum of ₱2,810,900.00, representing sales of logs to buyers in Japan, the sum of ₱140,678.88 represents the selling price of logs sold to the United States Army stationed in Japan sometime in 1952. The said logs were also shipped by petitioner to the U.S. Army in Japan under terms F.O.B. Bislig, Surigao (Exh. C, petitioner; Annex C, Stipulation of Facts). This shipment was made in like manner as F.O.B. shipments to private buyers in Japan. It is, however, contended that since the purchaser was the U. S. Army, the sale is exempt from the sales tax, citing Thirty-First Infantry Post Exchange v. Posadas, 54 Phil. 867, and Standard Oil Co. of New York v. Posadas, 55 Phil. 715. The rule laid down in said cases that the Philippine Government could not tax any instrumentality of the U.S. Government was predicated upon the principle that the Philippine Government, before our independence, did not have the power to tax "the instrumentalities of the very government which brought it into existence." That rule is no longer valid after our independence. Any exemption from taxation of transactions in the Philippines of private individuals or entities with an instrumentality of the U. S. Government must find sanction under express provision of law or treaty between the two countries.

We are not aware of any existing law which exempts transactions with the U. S. Army or Navy from taxation. However, by executive agreement and by treaty, the Philippine Government has agreed to grant a limited tax exemption to the United States Government and its Army and Navy in the Philippines. Paragraph 4, Article IV of the Executive Agreement between the Philippines and the United States provides:

> "No processing tax or other internal tax shall be imposed or collected in the United States or in the Philippines with respect to articles coming into such country for the official use of the Government of the Philippines or of the United States respectively, or any Department or agency thereof."

And Article V of the Bases Agreement provides:

> "No import, excise, consumption or other tax, duty or impost shall be charged on material, equipment, supplies or goods, including food stores and clothing, for exclusive use in the construction, maintenance, operation or defense of the bases, consigned to, or destined for, the United States authorities and certified by them to be for such purposes."

A cursory reading of paragraph 4 of Article IV of the Executive Agreement will reveal that the exemption from any processing or internal tax of the Government of the United States, or any department or agency thereof, applies to articles imported into the Philippines and intended for use here by such Govennment, or by any department or agency thereof. The exemption does not apply to articles sold in the Philippines to the U. S. Government for use of the latter elsewhere. The same is true with respect to the exemption provided in Article V of the Bases Agreement. The articles which are authorized to be exempt under said Agreement are those which are consigned to, or destined for, the United States authorities for exclusive use in the construction, maintenance, operation or defense of the bases here in the Philippines as described in Article I. Certainly, the Philippine Government cannot enter into a treaty agreement with the United States in connection with the operation of American bases in foreign countries. It follows that the sale of logs in the Philippines by petitioner to the U. S. Army for the use of the latter in Japan is not entitled to exemption from the sales tax.

The second item contested by petitioner relates to the deficiency sales tax on sales of lumber to buyers in Manila and Cebu from the first quarter of 1951 to the 1st quarter of 1954 in the sum of ₱5,330.96, plus 25% amounting to ₱1,332.74, or a total of ₱6,663.70.

During the hearing of the case, counsel for respondent admitted that there was an error in the computation of the deficiency sales tax and surcharge in connection with domestic sales. As admitted by respondent, the deficiency sales tax and surcharge amount to ₱6,626.65, instead of ₱6,663.70.

Evidence was presented by petitioner to show that in sales of logs and lumber to Manila and Cebu buyers, its office in Bislig merely loaded the logs and lumber and issued the corresponding provisional invoices indicating therein an estimate of the probable selling prices. The amounts appearing in the provisional invoices were entered in the books in Bislig and were used in filing its returns for sales tax purposes. The sales were actually made by the Manila office of petitioner which determined the actual selling prices and issued the final invoices. In most cases, the estimated selling prices indicated in the provisional invoices were in excess of the actual selling prices as shown in the final invoices. In some instances, the actual selling prices were in excess of the amounts shown in the provisional invoices. It appears that the differences in the amounts shown in the provisional invoices and those shown in the final invoices were due to errors in pricing and in measurements of the logs and lumber. During the entire period from the 1st quarter of 1951 to the 1st quarter of 1954, the excess of the amounts shown in the provisional invoices over the amounts shown as the actual selling prices amounted to ₱106,026.35, on which respondent is seeking to collect from petitioner the sum of ₱6,626.65 as deficiency sales tax and surcharge.

No evidence was presented by respondent to contradict the evidence presented by petitioner. Upon the evidence of record, we find that the taxable gross selling prices of the logs and lumber sold to Manila and Cebu buyers were those shown in the final invoices and not those shown in the provisional invoices. Petitioner did not, therefore, commit an error when it made the necessary adjustments in its books and records and in its sales tax returns so as to reflect the correct gross selling prices of its sales of logs and lumber. It was error for respondent to consider the sum of ₱106,026.35 as part of the gross selling prices of the logs and lumber sold by petitioner, and the assessment of the deficiency sales tax and surcharge on said amount cannot be validly sustained.

In their memorandum, counsel for respondent have asked the aid of this Court in requiring petitioner to pay the sum of ₱10,000.00 as compromise, in support of which they alleged:

> "(d) That petitioner is subject to the payment of the additional sum of ₱10,000.00 as penalty in extrajudicial settlement of its violation of sections 183 and 186 of the Tax Code, as penalized in section 209 of the same Code, no issue having been raised on the point."

We have examined the records of the case to determine whether or not there had been a compromise validly entered into between the parties in regard to the supposed violation by petitioner of the provisions of Sections 183 and 186, penalized under Section 209 of the Revenue Code. We have found none. In his decision of September 27, 1954 (Exh. A, Petitioner; Exh. 3, Respondent), this is what respondent stated:

> "Should you desire to extrajudicially settle the penal liabilities arising from your aforesaid violations, you may pay the penalty of ₱10,000.00 for failure to pay the sales taxes; x x x ."

We do not here find any decision of respondent in regard to the sum of ₱10,000.00 which is appealable to this Court. That portion of the letter of respondent dated September 27, 1954, quoted above, was merely an offer or a suggestion made to petitioner to compromise the latter's alleged "penal liabilities." It does not fall under the category of a decision of respondent within the meaning of Section 7 of Republic Act No. 1125 which may be appealed to this Court. (See Angel Saraos v. Bureau of Internal Revenue, C.T.A. No. 229, March 5, 1956; University of Sto, Tomas v. Collector of Int. Rev., C.T.A. No. 10, resolution on motion for reconsideration, September 10, 1956.) Therefore, petitioner was right in not including this matter in its appeal as it cannot be bound by an offer in compromise which is not acceptable to it.

FOR THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby modified, and petitioner is hereby ordered to pay the sum of ₱175,681.30, representing deficiency sales tax and surcharge on shipments of logs to buyers in Japan under terms F.O.B. and C. & I, Bislig, covering the period from June 14, 1951 to June 19, 1953. The deficiency assessment on domestic sales of logs and lumber amounting to ₱6,626.65 is set aside. With costs against petitioner.

SO ORDERED.

Manila, October 9, 1957.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge