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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA FASHIONS INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4639

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

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

9/20/93

D E C I S I O N

This is an appeal from the decision of the respondent Commissioner of Internal Revenue requiring the documentary stamp under Sec. 196 of the National Internal Revenue Code on a sheriff's certificate of sale covering real property sold in an execution sale.

Petitioner Manila Fashions Inc, a corporation engaged in the business of manufacturing and exporting ready-to-wear garments, was able to obtain a favorable judgment against Econ Commercial and Industrial Co. (ECIC for brevity) in Civil Case No. C-13655 entitled "Manila Fashions Inc. vs. Econ Commercial and Industrial Co." rendered by Branch 125 of the Kalookan Regional Trial Court. In the said decision, Econ Commercial and Industrial Co.

(ECIC) was adjudged liable to the petitioner herein in the amount of more than P12,000,000.00. In partial satisfaction of the judgment, a factory building owned by ECIC was levied and sold to the petitioner in a public auction in the total amount of P5,000,000.00 with the corresponding certificate of sale being issued by the sheriff.

The petitioner presented the sheriff's certificate of sale to the appropriate Register of Deeds which, as a condition for its registration required the petitioner to pay the documentary stamp tax, if any is due thereon, or to secure a certificate of exemption duly issued by the respondent. However, the respondent's examiner assessed the petitioner the sum of P50,000.00 with an additional P12,500.00 as penalty for late payment of the tax based on the contention that the sheriff's certificate of sale is subject to the documentary stamp tax under Section 196 of the Tax Code.

In order to prevent any delay in the registration of the sheriff's certificate of sale, the petitioner paid under protest the total sum of P62,500. Thereafter, it sought for a reconsideration of the assessment made by the respondent's examiner based on the argument that the documentary stamp tax under Sec. 196 of the Tax Code does not apply to a sheriff's certificate of sale as it does not transfer any right of possession or ownership on the real property subject thereof and should not therefore be construed as a "sale" within the purview of the said provision. It is, however, submitted by the petitioner that the document is subject to the documentary stamp tax under Section 188 of the Tax Code.

In his final decision dated May 20, 1991, the respondent denied the petitioner's claim for refund stating that "with regard to conveyance and transfers of real properties, the time of accrual of the tax serves snugly as the decisive factor" in the determination of the liability to the documentary stamp tax under Section 196 of the Tax Code. This, according to the respondent is from the time of the execution of the certificate of sale by the sheriff.

Thus, the only issue to be resolved in this case is whether or not a sheriff's certificate of sale is subject to the documentary stamp tax under Section 196 of the Tax Code, or, stating it from the point of view of the respondent, when does the documentary stamp tax under Section 196 "accrue" or attach on a sheriff's certificate of sale?

We rule in favor of the petitioner.

Section 196 of the Tax Code provides:

> "Section 196. *Stamp tax on deeds of sale and conveyance of the real property.* - On all conveyances, deeds, instruments, or writings, other than grants, patents, or original certificates of adjudication issued by the Government, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax at the following rates:
>
> xxx xxx xxx
>
> (b) For each additional one thousand pesos, or fractional part thereof in excess of one thousand pesos of such consideration or value, ten pesos.
>
> xxx xxx xxx

A documentary stamp tax is in the nature of an excise tax. It is a tax on the privilege to enter into a transaction rather than on the document itself (Azarraga vs. Rodriguez, 9 Phil.637).

It is worth emphasizing that the particular transaction in the present case involves a sale, whereby a contracting party <u>obligates to</u> <u>transfer</u>

the ownership and to deliver a determinate thing for a price certain (Art. 1458, Civil Code).

It could be easily discerned that from the participial use of the words under Section 196 that the conveyance and document subject thereof must cover consummated sales, for in determining whether a particular transfer is covered by its provision, the law requires that the conveyance and deed must embody the following facts:

1. Lands, tenements, or realty sold;

2. The lands, tenements, or realty that has been sold be granted, assigned, transferred, or otherwise conveyed to the purchaser.

In the case of Gonzales vs. Calimbas (51 Phil. 355), the Supreme Court described a certificate of sale as follows:

xxx xxx xxx

> In this connection the American decisions call attention to the difference between the effects of the delivery of the certificate of sale which is given to the purchaser at the time the sale is made and the deed which is delivered to him at the expiration of the period of redemption. The certificate issued to the purchaser under Section 463 of the Code of Civil Procedure is intended to be a mere memorial of the fact that purchase was made by the person named as buyer in the certificate. This document is not intended to operate as an absolute

> transfer of the property, but merely to identify the property, to show the price paid, and the date when the right of redemption expired. The effective conveyance of the land is accomplished by the deed which is issued only after the period of redemption has expired. The transfer is not perfect until the execution and delivery of the sheriff's deed, though it must be understood that when the deed is executed it operates by relation, from the time when the lien of the judgement was acquired (Foorman vs. Wallace, 75 Cal., 552, 556). As is said in Pike vs. Halpin (188 Mich., 447, 450), the rights secured by an execution purchaser at the sale are inchoate before the deed, and it is necessary for the purchaser to procure his deed to complete his title. The mere purchase and certificate of sale alone do not confer any right to the possession of beneficial use of the premise". (Underscoring supplied)

The respondent himself had admitted the soundness of the above ruling. Accordingly, a simple analysis of the uncontested nature of a certificate of sale would readily provide Us with the conclusion that the said document does not satisfy the above-enumerated requisites of Sec. 196 of the Tax Code inasmuch as the mere execution of the sheriff's certificate of sale does not *ipso facto* convey or transfer any right of possession over the subject property, much less the ownership thereof. It is only upon the execution of the final deed of sale that the conveyance of the real property involved becomes effective or consummated. Parenthetically, it might as well be stated that Sec. 196 imposes its corresponding documentary stamp tax on both the conveyance and deed of sale of the real property involved. Consequently, the documentary stamp tax under Sec. 196 accrues only from the time that the conveyance becomes consummated or when the final deed of sale has been duly executed by the sheriff.

Furthermore, a thorough examination of Title VII of the Tax Code reveals that the only other provision therein which makes reference to a transaction of sale is Section 176 which provides:

> **Section 176.** *Stamp tax on sales,* *agreement to sell, memoranda of sales, deliveries or transfer of bonds, due-bills, certificates of obligation, or shares or certificates of stock.-*
>
> xxx xxx xxx

(Underscoring supplied)

A comparative circumspection of Sec. 196 of the Tax Code with the above-quoted provision confirms a legislative intent to impose the documentary stamp tax under Sec. 196 to transactions or documents involving consummated sales. The ommission of "agreement to sell" and "memoranda of sale" from the application of Sec. 196 could only be construed as a deliberate intention to exclude from its scope a memorandum of sale of a real property which is but an apt description of the sheriff's certificate of sale subject of this present case.

No less than Revenue Regulation No. 26 (Documentary Stamp Tax Regulations) duly issued by the respondent conforms to the foregoing conclusion, the pertinent provision of which provides:

xxx xxx xxx

> "Sec. 165. - Deed executed by sheriff, etc. - Deeds of final sale, executed by the sheriff after the period of one year of legal redemption had expired in accordance with the Code of Civil Procedure, are subject to the documentary stamp tax. (Underscoring supplied)

xxx xxx xxx

Finally, considering that the documentary stamp tax under Sec. 196 is already imposable on the final deed of sale, in no instance can We similarly impose the same documentary stamp tax on the sheriff's certificate of sale of the very same transaction. It is a settled rule in our jurisprudence that a documentary stamp tax, being in the nature of an excise tax, may only be collected once (CIR vs. Herald Lumber Co. 10 Phil. 372).

We hold, however, that the sheriff's certificate of sale is subject to the three (3) peso documentary stamp tax under Section 188 (Stamp tax on certificate) of the Tax Code.

WHEREFORE, judgment is hereby rendered ordering the respondent to refund to the petitioner the sum of P62,497.00 representing erroneously collected tax.

SO ORDERED.

Quezon City, Metro Manila, September 29, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

C E R T I F I C A T I O N

I hereby certify that the decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals