REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CANTILAN LUMBER COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 2879

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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3/27/87

D E C I S I O N

The question involved in this appeal is whether petitioner Cantilan Lumber Company, which is a domestic corporation duly organized under Philippine laws with forest concession at Carrascal, Surigao del Sur, should pay to respondent Commissioner of Internal Revenue the amount of ₱257,691.04 representing 25% surcharges for transporting forest products (logs) without auxiliary invoice and discharging the said products without permit.

The facts, as well as the law and regulations involved, as stated by respondent in his letter-decision dated March 17, 1977 to petitioner's accountant, Messrs. Sycip, Gorres, Velayo & Co., who protested the original assessment, are as follows:

It appears that this Office (Bureau of Internal Revenue) originally assessed against your client the amount of ₱47,726.74 under Letter of Demand BT-71-262 dated September 13, 1971 as 25% surcharges for transporting without auxiliary invoice and discharging without permit its logs for the period from November 13, 1964 to October 1, 1966. This assessment was protested by you in your letter dated October 30, 1971.

Thereafter, in a letter dated December 19, 1973, our Regional Office at Butuan City issued another assessment against your client in the amount of ₱103,982.15 as 25% surcharge for transporting without invoice and another amount of ₱103,982.15 as 25% surcharge for discharging without permit for the period from September 1, 1969 to June 30, 1973. Hence, the total assessment involved is ₱257,691.04 which includes the aforesaid assessment of ₱47,726.74 previously issued against your client. In your letter dated April 3, 1974, you have, likewise, protested against this latter assessment.

It appears also that this Office invited the attention of your client to Letter of Instructions No. 308 which will enable your client to settle this case by compromise. However, although in your letter of December 4, 1975, you informed this Office of your client's willingness to avail of LOI 308, in your letter of February 2, 1976, you informed this Office that your client decided to withdraw its offer of compromise and further requested that the protests filed by it "be now resolved".

Sections 11 and 13 of Regulations No. 85 are hereunder quoted for ready reference:

> "SEC. 11. Payment of charges on products cut under ordinary license. - Before transporting from the public forests or forest reserves or using within the cutting area forest products cut or gathered under an ordinary license issued by the Director of Forestry the licensee shall list such forest products on blank forms of auxiliary invoices (BIR Form No. 14.04 in the case of timber or BIR Form No. 14.05 in the case of firewood or other minor products) which may be secured from the deputy provincial treasurer of the municipality where the said forest products have been cut or gathered. xxx xxx xxx xxx.
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> "xxx xxx xxx xxx.
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> "SEC. 13. Payment of charges on forest products taken without license. - The possessor of forest products cut or gathered without license on which charges are payable is required to present auxiliary invoices. The procedure outlined in Section 11 of these regulations shall then be followed. Surcharges

shall be collected for cutting without license, for cutting in violation of the terms of the license, transporting without invoice, or discharging without permit." (Underscoring ours)

Sections 12(a) and 14 of Revenue Regulations No. 3-72 which took effect on October 16, 1972 provides:

"SEC. 12. (a) Payment of charges on products cut under license. - Upon felling and bucking the timber, and before yarding the logs, the license or his authorized agent/agents who shall be provided with special power of attorney, shall list such forest products on blank forms of auxiliary invoice (BIR Form No. 14.04); likewise holders of minor forest products licenses issued by the Bureau of Forestry; after cutting such products from the areas, shall list such products on blank form of auxiliary invoice (BIR Form No. 14.05) which may be secured from the offices of the local Collection Agents. Said auxiliary invoices when completed shall be sworn to before the Collection Agent concerned by the licensee or his agent/agents aforementioned.

"SEC. 14. Penalties in the form of surcharges. - The following penalties shall be imposed in addition to the regular forest charges due, as the case may require:

"(a) 300% surcharge for cutting without license, or if cut under license, in violation of the terms and conditions thereof; or cutting undersized timber or on damaged residuals;

"(b) 25% surcharge for failure to list the forest products in an auxiliary invoice after cutting;

"(c) 25% surcharge for discharging without permit, if removed from the geographical limits of the concession;

"(d) 25% surcharge for late payment as the case may be."

You contended that the auxiliary invoices and discharge permits prescribed by Sections 11 and 13 of Regulations No. 85 respectively, are not required in the case of your client for the reason that neither was there transportation nor removal of logs from the public forest or reserve or was there utilization of logs within the cutting area of the forest products cut or gathered; and that the log pond of your client is situated within its concession area. You also contended that you did not violate the above-quoted provisions of Revenue Regulations No. 3-72 requiring the listing of forest products in auxiliary invoices and securing discharge permits before removal of said products.

However, investigation conducted by this Office disclosed that the log pond of your client is actually outside its concession or cutting area as admitted in your letter dated August 1, 1975. There is, therefore, transportation or removal of logs from the public forest or reserves which require presentation of auxiliary invoice and discharge permits.

Furthermore, it is an admitted fact that your client did not accomplish any auxiliary invoice nor did it secure any discharge permit covering the removal of the logs from its forest concession. These were done by your client on the strength of the certification issued by the forestry officer concerned to the effect that it could remove said logs from the forest concession without auxiliary invoices and discharge permits, provided that your client maintains forestry bond. This certification is void, the same not being sanctioned by any internal revenue law or regulation. On the contrary, forest products may be shipped from the forest concession to their destination under bond provided that the same are accompanied by auxiliary invoices and discharge permits. (Section 12(3), Revenue Regulations No. 3-72).

In the light of the foregoing, this Office finds no legal and factual bases to warrant the cancellation of the abovementioned assessment representing surcharges for transporting without auxiliary invoices and discharging without permit against your client.

In view of all the foregoing, it is requested that you urge your client, Cantilan Lumber Company, to pay the aforesaid assessment in the total amount of ₱257,691.04 as surcharges for transporting without auxiliary invoice and discharging without permit immediately upon receipt hereof; otherwise, the collection thereof will be enforced by means of the remedies prescribed by law.

This constitutes our final decision on the matter, If you are not agreeable, you may appeal to the Court of Tax Appeals within thirty (30) days from receipt of this letter.

Hence, the present recourse.

As special and affirmative defenses, respondent thus alleges in his answer, among others, that:

For the period from November 13, 1964 to October 1, 1966, and September 1, 1969 to June 30, 1973, petitioner cut logs from its cutting area and removed and transported said logs to its log pond located outside its concession without the accompanying auxiliary invoices and discharge permits as required under Sections 11 and 13 of Revenue Regulations No. 85 and Sections 12(a) and 14 of Revenue Regulations No. 3-72, respectively.

The certification issued in favor of the petitioner by the forestry officer to the effect that petitioner could remove said logs from the concession area without auxiliary invoices and discharge permits is void, the same being contrary to Revenue Regulations No. 85 and 3-72.

And poses the issues of:

a) Whether or not petitioner violated Section 11 of the Revised Internal Revenue Forest Products Regulations No. 85 when petitioner transported logs from the cutting area to the log pond without auxiliary invoices and discharge permits; and

b) Whether or not it is liable for 25% for transporting logs without auxiliary invoices and 25% for unloading said logs without discharge permits.

Four square with the case at bar on these points, by reason of the identity of the parties; exact similarity of the factual settings, the laws and regulations involved; and the issues litigated, is Cantilan Lumber Company vs. The Commissioner of Internal Revenue, CTA

Case No. 2153, September 30, 1981, certiorari denied in G.R. No. 60769, September 21, 1982.)

This Court unequivocably sustained the right of respondent Commissioner of Internal Revenue to impose and collect from petitioner therein Cantilan Lumber Company, which is the same petitioner herein Cantilan Lumber Company, 25% surcharge for removing and transporting forest products (logs) without auxiliary invoice and another 25% for discharging said forest products without securing discharge permit from the Commissioner of Internal Revenue. Because of its controlling and decisive effects on the present case, we will quote at length from the decision.

> "We find no merit in petitioner's cause.
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> "Petitioner's submission that there was no removal of the logs within the contemplation of Section 11 of the Revised Internal Revenue Forestry Regulations No. 85 and, hence, there was no necessity to comply with the requirement of auxiliary invoices for purposes of transporting the logs from the cutting area to the log pond since the log pond is situated within the same municipality where the concession is located and there is only one logging road as an outlet of all logs hauled to the log pond is positively without merit.

"1. Referring to the terms of the law, it is quite clear that the right of the Government to impose surcharges for removal and transportation without invoice of forest products and for discharge of the same without permit is not planted upon the condition that the cutting area and the log pond of the licensee should be situated in the different municipalities where the licensee's concession area is located. The law speaks of 'If forest products shall be removed without invoice, or upon removal, shall be discharged without permit from boat, car, cart, or other means of transportation, the charges shall be increased by twenty-five per centum,' - without more. Nothing in the law is said of removal of the forest products from the cutting area and transporting of the same to a log pond situated in a different municipality where the concession area is located. Where the law does not exact the separate location in different municipalities of the cutting area and the log pond where the concession is situated, or there is only one logging road as outlet of the logs, as a condition for the issuance of auxiliary invoices and discharge permits, that condition should not be read into the law. The law is clear and free from ambiguity. It should therefore be enforced as written, devoid of judicial addition and subtraction. We are not to indulge in statutory construction.

x x x x x.

"4. And on the point that no auxiliary invoice was necessary on the ground that petitioner was authorized by local forestry employees to transport logs from the cutting area to the log pond without need of accompanying invoices, as well as to discharge the same without permit, no law or regulation has been pointed to us which authorizes forestry employees to dispense with such requirements. While petitioner attempts to draw support from Section 262

> of the then in force National Internal Revenue Code which simply states, insofar as pertinent hereto, that 'Employees of the Bureau of Forestry may be deputized by the Commissioner of Internal Revenue for the performance of duties incident to the measuring and invoicing of forest products x x x', nothing there may be considered as empowering forestry employees to dispense with the requirements of auxiliary invoices or discharge permits upon the removal or transportation of logs. Performance of duties incident to the measuring and invoicing of forest products cannot by any stretch of the imagination include the authority to grant dispensation from the requirements of auxiliary invoices and discharge permits. There is patently an absence of analogy or similarity between invoicing and dispensing with the invoice. And the absurdity is at once brought into bold relief when it is considered that under Section 262, as clearly and explicitly specified therein, it is only upon authority of the Commissioner of Internal Revenue that employees of the Bureau of Forestry may be deputized for the performance of duties incident to invoicing of forest products. It is therefore self-evident that the local forestry employees acted without any authority when they issued a certification authorizing the removal of logs from petitioner's forest concession without auxiliary invoices and discharge permits, as well as a certification that there is no necessity of preparing auxiliary invoices covering logs cut at the cutting area before said logs are brought down to the log pond."

We find no cogent and valid reason to modify, much less depart from the conclusion reached in the above-mentioned decision, as expressed in the afore-quoted opinion of the Court there, and the same should resolve the identical problem presented in this appeal. Accordingly, petitioner herein Cantilan Lumber Company is ordered to pay to respondent Commissioner of Internal Revenue the amount of ₱257,691.04 representing 25% surcharges for transporting forest products (logs) without auxiliary invoice and discharging the said products without permit, plus surcharge and interest incident to delinquency as provided for by law.

WHEREFORE, the decision appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, March 27, 1987.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge