REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ISLAND GARMENT MANUFACTURING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 2070

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

Appeal from the decision of respondent Commissioner of Internal Revenue assessing and demanding from petitioner Island Garment Manufacturing Corporation (now Riverside Products Industries) the amounts of ₱291,402.01 as advance sales tax and ₱335,787.93 as deficiency income tax for the years 1962 and 1963, inclusive of surcharges, interests and compromise penalties, or a total of ₱627,189.94.

Petitioner is a corporation organized and existing under the laws of the Philippines with office and business address at 2609 Old Panaderos St., Sta. Ana, Manila. It is an embroidery firm duly licensed and operating under Republic Act No. 3137, and is engaged in the importation of raw materials such as textile fabrics and cotton piece goods from abroad. Under its agreement with the foreign suppliers, petitioner is required to process and manufacture the imported textile materials into finished garments in accordance with the sketches and patterns of the suppliers. The finished articles are then exported back to the foreign suppliers under the direct supervision of the

Embroidery and Apparel Control and Inspection Board (EACIB or simply Embroidery Board for short) and the Bureau of Customs. These foreign suppliers in turn remit to petitioner the labor cost plus certain percentage representing overhead expenses and profit of the latter.

By virtue of Republic Act No. 3137, all importations of textile fabrics received by petitioner are exempt from duties and special import taxes. However, its net income as embroidery contractor consisting of the remittances received from foreign suppliers is subject to income tax. (Exh. "1", pp. 66-70, BIR records.)

It appears that on October 21, 1964 to February 24, 1965 respondent, thru his agents, conducted an investigation of petitioner's tax liabilities for the years 1962 and 1963. As a result thereof, respondent issued assessment-demand letters dated October 25, 1965 (Exh. "2", p. 78, BIR records) and October 27, 1965 (Exh. "3", pp. 80-81 BIR records) requiring petitioner to pay the amounts of ₱335,787.93 and ₱291,402.01, representing deficiency income tax for 1962 and 1963 and as advance sales tax also for the same years, respectively, computed as follows:

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Net income per return - - - - - - - - -	₱	2,126.83
Add: Additional income: Undeclared income from sales of embroidery textile materials - - - - - - - - - - -		627,858.29
Net income per investigation - - - - -		₱629,985.12
Tax due thereon - - - - - - - - - - - -		180,995.53
Less: Amount already assessed - - -		468.00
Balance - - - - - - - - - - - - - - - - -		₱180,528.00
Add: 50% surcharge - - - - - - - - - -		90,264.00
1/2% monthly interest from 4-17-63 to 10-27-65 - - - - - - -		27,512.47
Compromise under Section 73 of the Tax Code - - - - - - -		1,000.00
TOTAL AMOUNT DUE & COLLECTIBLE - -		₱299,304.47

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Net income per return - - - - - - - -	₱	2,721.56
Add: Additional income: Undeclared income from sales of embroidery textile materials - - - - - - - - -		101,265.33
Net income per investigation - -	₱	103,986.89
Tax due thereon - - - - - - - - -		23,196.00
Less: Amount already assessed - -		599.00
Balance - - - - - - - - - - - - - - - - -	₱	22,597.00
Add: 50% surchage - - - - - - - - -		11,298.50
1/2% monthly interest from 4-16-64 to 10-27-65 - - - - - -		2,087.96
Compromise under Section 73 of the Tax Code - - - - - - -		500.00
TOTAL AMOUNT DUE & COLLECTIBLE - -	₱	36,483.46

Total Landed Cost	₱1,837,727.38
Add: 25% Mark-Up	459,431.85
Amount Subject to Tax	₱2,297,159.23
7% Advance Sales Tax Due Thereon - - - - -	₱ 160,801.15
Add: 75% Surcharge - - - - - - -	120,600.86
TOTAL AMOUNT DUE AND DEMANDABLE	₱ 281,402.01

(Exhs. 2 & 3, pp. 78-81, BIR rec.)

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Petitioner protested the assessments in its letters dated November 11, 1965 (Exh. "AA", pp. 87-88, BIR records) and September 27, 1966 (Exh. "BB", pp. 179-182 BIR records.) Pursuant to said protests, the case was investigated and heard by respondent, thru the Appellate Division of the Bureau of Internal Revenue, from May 16, 1967 to February 12, 1969, but not until petitioner has waived the statute of limitations up to December 31, 1971. (P. 204, BIR records.) The records show that after the administrative hearing before the Appellate Division, Atty. Alicia Tomacruz, Hearing Officer, recommended to the Chief, Appellate Division, the cancellation of the assessments against petitioner for failure of respondent's examiners to substantiate the assessments. (Exhs. "E" & "E-1", p. 426, BIR records.) Atty. Zoilo R. Zandoval, Assistant Chief of the same Division, likewise recommended the cancellation and withdrawal of the assessments. (Exh. "E-2", p. 426, BIR records.)

Notwithstanding these recommendations, respondent in a letter dated August 8, 1969, received by petitioner on September 23, 1969, denied petitioner's protest (Exhs. "BB-1", & "11", p. 430, BIR records.), and reiterated his request for payments of the amounts of ₱335,787.93 and ₱291,402.01 as deficiency income tax and advance sales tax, respectively, for the years 1962 and 1963. Upon receipt of respondent's decision denying its protest, petitioner, on the same day (September 23, 1969), replied to respondent's denial requesting (according to petitioner) reconsideration thereof, although respondent claims that the reply merely acknowledged receipt of such denial. (Exhs. "BB-2" & "BB-2-a", pp. 194-195, CTA records.) This letter of petitioner was received by respondent on October 9, 1969. On February 18, 1970 petitioner received from respondent a Final Notice Before Seizure dated November 20, 1969. (Exh. "BB-3", p. 444, BIR records.)

Hence, this instant appeal filed by petitioner on February 26, 1970.

The issues raised by the parties for determination by this Court are as follows:

1. Whether or not the appeal was filed within the thirty-day period prescribed in Section 11 of Republic Act No. 1125, and

2. Whether or not petitioner is liable to pay the sums of ₱335,787.93 and ₱291,402.01, representing deficiency income tax and advance sales tax for 1962 and 1963, respectively, or a total of ₱627,189.94.

The parties do not quarrel that the appealable decision of the Commissioner of Internal Revenue from which an appeal can be taken to this Court within thirty (30) days from receipt thereof, under the provisions of Sections 7 & 11 of Republic Act No. 1125, is the letter of respondent dated August 8, 1969 and received by petitioner on September 23, 1969. As stated earlier, petitioner was assessed for deficiency income tax and advance sales tax on October 25 and 27, 1965, respectively. These assessments were protested by petitioner in its two letters dated November 11, 1965 and September 27, 1966. Pursuant to said protests, respondent heard the case from May 16, 1967 to February 12, 1969, after which a decision was rendered by respondent in his letter dated August 8, 1969 denying the protest and reiterating his request for payment of the amounts of ₱335,787.93 and ₱291,402.01 as deficiency income tax and advance sales tax, respectively, for the years 1962 and 1963. Since such letter of August 8, 1969 denied the request of petitioner for the reconsideration, cancellation or withdrawal of the original assessments, it is the decision of the Commissioner of Internal Revenue appealable to the Court of Tax Appeals. (Villamin vs. Court of Tax Appeals and Collector of Internal Revenue, L-11536, October 31, 1960, 109 Phil.896; Filipinas Investment and Finance Corporation vs. Commissioner of Internal Revenue, L-23501, May 16, 1967, 20 SCRA 50; Surigao Electric Co. Inc. vs. Court of Tax Appeals, L-25289, June 28, 1974, 57 SCRA 523.)

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The collision occurs, however, at the proposition whether the letter of petitioner dated September 23, 1969, disputing the "mathematical computation" employed by respondent in ascertaining petitioner's quantity of manufactured and exported finished garments and requesting, for the reason stated therein, to "see our way clear and find this to merit your (respondent's) utmost consideration" (Exh. "BB-2"), interrupted the running of the thirty-day period of appeal fixed under Section 11 of Republic Act No. 1125. Respondent contends that said letter of September 23, 1969 pf petitioner is pro-forma, hence, it did not interrupt the period of appeal to this Court. Petitioner avers, on the other hand, that it is not pro-forma, hence, it suspended the period of appeal from October 9, 1969, when it was filed with respondent to the date of receipt by petitioner of the Final Notice of Seizure on February 18, 1970, which for all intents and purposes amounted to an implied denial of its request for reconsideration. (Republic vs. Lim Tian Teng, L-21731, March 31, 1966, 16 SCRA 584.) Consequently, when the petition for review was filed with this Court on February 26, 1970, according to petitioner, only 24 days have been consumed of the thirty-day period of appeal, computed as follows:

	Number of Days Consumed
Sept. 23, 1969 - receipt by petitioner of respondent's denial of the protest	16
- to -	
Oct. 9, 1969 - filing of a motion for reconsideration of said denial	
Oct. 10, 1969 - Feb. 17, 1970 (period for appeal suspended during pendency of motion for reconsideration)	
Feb. 18, 1970 - receipt of Final Notice Before Seizure	
- to -	8
Feb. 26, 1969 - filing of Petition for Review	
TOTAL NUMBER OF DAYS CONSUMED - - -	24 Days

A request for reconsideration of the decision of respondent is pro forma if it merely reiterates the grounds already stated in the first request for cancellation or withdrawal of the assessment. (Filipinas Investment and Finance Corporation vs. Commissioner of Internal Revenue, No. L-23501, May 16, 1967, 20 SCRA 50) In the instant case, it will be noted that in requiring petitioner to pay alleged advance sales tax and deficiency income tax for 1962 and 1963, respondent in his original letter-assessments of October 25, 1965 and October 27, 1965 merely stated that upon investigation, the former willfully failed to export all its finished articles and willfully neglected to declare the income from the sale thereof. In contesting and disputing the said assessements

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in his letters of November 11, 1965 and September 24, 1966, petitioner raised the issues of : (1) correctness of the figures or amounts appearing therein; (2) authority of respondent to question the validity or propriety of the official acts of the Bureau of Customs and the Embroidery and Apparel Control and Inspection Board; (3) finality of the cancellation of all the bonds filed to guaranty exportation of the finished products and liquidation of import entries pursuant to Section 1603 of the Tariff and Customs Code; (4) efficacy of the certifications and/or reports of the agents and/or Examiners of respondent that raw materials imported in 1962 and 1963, the years under question, were all accounted for; (5) failure of respondent's examiner to find evidence showing violation of the provisions of the National Internal Revenue Code, after a search of petitioner's premises pursuant to a search warrant issued by Judge Amado G. Roan of the City Court of Manila was conducted; and (6) regularity of petitioner's inventories of raw and finished materials. After a protracted hearing of the case, respondent in his letter of August 8, 1969 rendered a decision denying petitioner's protest and unwrapped for the first time the "mathematical computation" theory as the method employed by his examiners in ascertaining the quantity of finished products manufactured and exported by petitioner. Respondent also

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adduced for the first time the issue that since the documents presented by petitioner to prove liquidation of its import entries were only photostatic or carbon copies of originals, the same did not constitute evidence to prove actual exportation.

On September 23, 1969 petitioner disputed for the first time the "mathematical computation" theory of respondent on the ground that it "is based merely on incomplete copies of our export papers which we then have on our office files, those they were able to secure from the Bureau of Customs and from the Embroidery Board, which taken together does not reflect the complete papers and documents for our exports in the years 1962 and 1963. Their (examiners of the Bureau of Internal Revenue) findings was (were) never based on actual physical counting of stocks in occular inspection of representative stocks and its packaging in cartons and boxes." (Exh. "BB-2", p. 196, CTA records.) While petitioner also reiterated in this request for reconsideration the issue it raised in its petition for the cancellation or withdrawal of the original assessments as to whether respondent could still question the prerogative of the Embfoidery and Apparel Control and Inspection Board and the Bureau of Customs in clearing petitioner of liabilities for its importations

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in 1962 and 1963, and the finality of the liquidations of its import entries pursuant to Section 1603 of the Tariff and Customs Code, the same were disregarded, if not completely ignored, by respondent in its decision on the disputed assessments dated August 8, 1969.

Since petitioner's request for reconsideration of September 23, 1969 did not merely reiterate the grounds stated in its first request for cancellation of the assessments but also called attention to those facts or arguments which have been disregarded in the decision of respondent dated August 8, 1969, it can not be considered pro forma. (Filipinas Investment & Finance Corporation vs. Commissioner of Internal Revenue, supra; Surigao Electric Co. Inc. vs. Court of Tax Appeals, No. L-25289, June 28, 1974, 57 SCRA 523.) Consequently, considering that petitioner consumed only a total of twenty four (24) days out of the thirty (30) days prescribed under Sections 7 and 11 of Republic Act No. 1126, the instant petition for review was filed seasonably with this Court.

Having reached the conclusion that this Court has jurisdiction to take cognizance of this case, the next question is whether or not petitioner is liable to pay the amounts of ₱335,787.93 and ₱291,402.01 representing deficiency income tax and advance sales tax, respectively, for the years 1962 and 1963, or a total of ₱627,189.94.

The basis of respondent's assessments is the alleged over-declaration of petitioner's exportation of embroidered goods computed as follows:

(a)	Overdeclared exportation in 1962	657,076.66 yards
(b)	Overdeclared exportation in 1963	227, 140.76 yards
(c)	Unsupported exportation in 1962 and 1963	494,223.40 yards
	TOTAL DISCREPANCY	1,378,440.82 yards

In arriving at this discrepancy, respondent alleges that:

1. With respect to the overdeclared exportation in 1962 of 657,076.66 yards of textiles, his investigating examiners found that on the basis of twenty (20) invoices issued in 1962, petitioner claimed to have exported in said year 37,973.33 dozens of finished garments contained in 636 cartons consuming 817,444.10 yards of imported fabrics. However, actual inspection conducted by examiners of respondent of the boxes containing the exported finished garments showed that it was physically impossible for the said 636 cartons with a total volume of only 2,200 cubic feet to contain the alleged exportation of 37,973.33 dozens of finished garments.

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By mathematical computations, respondent claims to have ascertained that with the use of the said 636 cartons, petitioner could have actually manufactured and exported not more than 6,925 dozens of finished garments, consuming not more than 160,367.44 yards of imported textiles. Hence, the above-stated discrepancy of 657,076.66 yards representing the difference between 817,444.1 yards, allegedly exported and 160,367.44 yards of fabrics used in the manufacture of 6,925 dozens of finished garments. (Exh. "BB-1", pp. 190-191, CTA records.)

2. As regards the overdeclared exportation in 1963 of 227,140.76 yards of imported textiles, respondent states that his examiners likewise ascertained by mathematical computation that it was physically impossible for petitioner to have manufactured and exported 13,564.75 dozens of finished garments, using 313,576 yards of imported fabrics and packed them in only 260 cartons with a total volume of only 985 cubic feet. A physical inspection of the boxes in which the exported products were supposedly contained, according to respondent, showed that the 260 cartons could have accommodated not more than 2,573.1 dozens of finished garments, requiring not more than 86,435.25 yards of imported fabrics. Respondent's examiners, therefore, reported a discrepancy

of 227,140.76 yards of imported textiles, which is the difference between 313,576 yards, allegedly consumed to make the finished garments, and 86,435.24 yards, the quantity of raw materials needed to manufacture the 2,573.1 dozens of finished products. (Exh. "BB-1", supra.)

3. And as regards the alleged exportation in 1962 and 1963 of 494,223.40 yards of imported fabrics, respondent merely states that petitioner could not present to his examiners the corresponding shipping documents evidencing exportation of the finished goods (Exh. "BB-1", supra)

The aforestated raw material discrepancies aggregating 1,378,440.82 yards subsequently became the basis of the two (2) assessments - one for advance sales tax and another for income tax in the sums of ₱291,402.01 and ₱335,787.93, respectively. (Exh. "BB-1", pp. 190-193, CTA records) As petitioner succintly stated it, based on the findings of respondent's examiners that petitioner overdeclared its exportations for the years 1962 and 1963, respondent concluded that the discrepancy in yardage between what was declared for export and what was actually exported was not manufactured into finished garments but channelled or sold illegally in the local market. Hence, the assessments for advance sales tax and deficiency income tax on the alleged income realized from the sale thereof.

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By alleging that he employed mathematical computations in ascertaining the quantity of finished products actually manufactured and exported by petitioner, respondent concedes at least that his assessments were based on mere inferences and presumptions. Likewise, by stating that it was physically impossible for such number of cartons with such volume capacity to contain such exportation, or for petitioner to have manufactured and exported such finished garments, respondent admits that his assessments were not based on actual facts but merely on approximations and calculations. And avering that the raw material discrepancies in yards, arrived at by mere inferences and presumptions, subsequently became the basis of the assessments for advance sales tax and for income tax, respondent failed to indicate his nebulous position how the advance sales tax or the undeclared income from sales of embroidery textile materials in pesos and centavos were arrived at. Moreover, since fraud is imputed to petitioner, fraudulent intent was deduced from surmises and conjectures, unsupported by clear and convincing proof to this effect.

An assessment fixes and determines the tax liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. 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. (Collector of Internal Revenue vs. Benipayo, L-13656, January 31, 1962, 4 SCRA 182). While it is true that all presumptions are in favor of the correctness of tax assessments, such presumption is proper only if the assessment is based on actual facts but does not arise if it is based merely on mere inferences. (Medina vs. Commissioner of Internal Revenue, CTA Case No. 1245, December 27, 1971; Herrera vs. Commissioner of Internal Revenue, CTA Case No. 2060, June 27, 1972; Samson vs. Collector of Internal Revenue, CTA Case No. 232, June 30, 1958; Viterbo vs. Collector of Internal Revenue, CTA Case No. 363, December 26, 1950.) Likewise, it is alreqdy a well established doctrine that fraud cannot be presumed but must be proven. (Jose B. Aznar vs. Court of Tax Appeals, L-20569, August 23, 1974, 58 SCRA 519.)

Assuming that it was physically impossible for the 636 cartons with a total volume of only 2,200 cubic feettto contain exportation of 37,973.33 dozens of finished garments, the same does not give rise to the inference, even by mathematical computation, that with the use of said 636 cartons, petitioner has actually manufactured and exported not more than 6,925 dozens of imported textiles, consuming not more than 160,367.44 yards of imported fabrics. Likewise, granting that it was physically impossible for petitioner to have manufactured and exported 13,564.73 dozens of finished garments, using 313,576 yards of imported fabrics and packed them in only 260 cartons with a total volume of only 985 cubic feet, the same does not give rise to the presumption that the 260 cartons could have accommodated not more than 2,573.1 dozens of finished garments, requiring not more than 86,435.25 yards of imported fabrics, and resulting in a discrepancy of 227,140.76 yards of imported textiles, which is the difference between 313,576 yards, and 86,435.35 yards. And based on these presumptions and inferences, the same will not bring forth the conclusion that the Government was cheated and defrauded of advance sales tax and income tax in the sums of ₱291,402.01 and ₱335,787.93, respectively, because petitioner channelled to the local market the discrepancy in yards between what was declared for export and what was <u>presumed</u> to be actually exported as finished products.

Then, of importance here is the kind and nature of the garments manufactured and exported by petitioner. They consists, among others, of ladies blouses, ladies pajamas, children's dresses, men's and boy's polo shirts and negligee, of different sizes and, of course, consuming per piece varying number of yards of imported textiles. And by their very nature, these clothing apparels are generally flimsy and can be compressed. The fact that a dozen of the same or similar finished garments consumes so much number of yards of imported textiles and occupies a certain volume of space in a carton does not therefore provide a sufficient inference that a dozen of other or different kind or kinds of finished apparels also consumes the same number of yards of imported textiles and occupies the same volume of space inside the same carton.

At any rate, it bears emphasis that the import entries covering the importations of textiles of petitioner in 1962 and 1963, the years in question, had already been completely and finally liquidated. Petitioner was granted on February 8, 1962 by the Embroidery and Apparel Control and Inspection Board authority to manufacture embroidery apparels and garments for export under Republic Act No. 3137. It made a total of 32 importations in 1962 and 54 importations in 1963 consisting of 1,174,021 yards and 1,423,426.25 yards, respectively, of various textile materials. For these importations, surety bondswere filed by various surety firms in the total amounts of ₱2,020.563.00

for 1962 and ₱3,981,008.00 for 1963 to guarantee their exportations. (Exhs. "A" & "B", pp. 134-136 & 137-138, CTA records; pp. 389-392, BIR records.) Subsequently, the warehousing entries covering said importations were finally and fully liquidated and cancelled.

In the absence of any showing to the contrary, and none has been presented by respondent, there is no valid reason for this Court not to believe that the imported textile materials were all manufactured into embroidery apparels and garments and actually exported to the foreign suppliers as proven by the following evidence presented by petitioner:

Documentary Evidence:-

1. Exhibit "A" - Certification by Segundo Javier, Special Investigator, Legal Department, concurred with by Isauro C. Garcia, Chief, Ruling & Research Division, Apolinario A. Ramos, Chief, Litigation Division, and Vicente A. Feria, Chief, Appellate Division, all of the Bureau of Customs, that petitioner made a total of 32 importations in 1962, consisting of various textile materials to be manufactured for exportations and a total amount of ₱2,020,563.00 was filed by various surety firms to guarantee their exportations; and the warehousing entries covering said importations were fully liquidated and cancelled; and the importations considered fully exported.

2. Exhibits "B", "B-1", "B-2" - Certification made by the same officials mentioned in Exhibit "A" above regarding the 54 importations in 1963 by petitioner of various textile materials to be manufactured for exportations, the total amount of ₱3,981,008.00 surety bonds filed to guarantee their exportations, the full liquidation and cancellation of the warehousing entries covering the importations, and considering the importations fully exported.

3. Exhibit "C" - Indorsement dated October 24, 1968 of the Chairman of the Embfoidery and Apparel Control and Inspection Board to the Head, Legal Department, Bureau of Customs, of the certification dated October 23, 1968 of Teresita A. Costa, Trade Control Examiner on the full liquidation and cancellation of the 32 import entries of various textile materials imported by petitioner during the year 1962.

4. Exhibits "C-1" & "C-2" - The certification of Teresita A. Costa, Trade Control Examiner of the Embroidery and Apparel Control and Inspection Board, on the full liquidation and cancellation of the 32 import entries of various textile materials imported by petitioner during the year 1962.

5. Exhibit "D" - Indorsement of the Chairman, Embroidery and Apparel Control and Inspection Board to the Head, Legal Department, Bureau of Customs, of the certification dated February 10, 1969 of Teresita A. Costa, Trade Control Examiner, on the full liquidation and cancellation of the 54 import entries of the various textile materials imported by petitioner during the year 1963.

6. Exhibits "D-1" and "D-2" - The certification of Teresita A. Costa, Trade Control Examiner, Embroidery and Apparel Control and Inspection Board, on the full liquidation and cancellation of the 54 import entries of various textile materials imported by petitioner during the year 1963.

7. Exhibits "F" to "Q" - Certificates issued by the Collector of Customs, Manila, of the cancellation of the surety bonds posted by petitioner on its importations for 1962 and 1963, it appearing that the articles covered therein have already been re-exported.

8. Exhibits "R" & "S" - Certificates of Inspection, Identification and Loading of the finished garments exported by petitioner in 1962 and 1963.

9. Exhibits "U" & "U-1" - Certifications by the Embroidery and Apparel Control and Inspection

Board dated September 21, 1966 that all importations by petitioner during 1962 and 1963 were fully liquidated.

10. Exhibit "V" - Application to export products manufactured from bonded materials under Republic Act No. 3137 to the Embroidery and Apparel Control and Inspection Board accomplished by petitioner for the exportation of imported materials.

Testimonial Evidence.-

And in this backdrop, we do not see any plausible reason to question or doubt the oral evidence presented by petitioner, to wit:

1- Ricardo Bringas, Customs Storekeeper of the Embroidery and Apparel Control and Inspection Board, assigned to petitioner's warehouse from August 1962 to November 1967, whose principal duty was to see to it that the textile raw materials impoted by petitioner were duly manufactured under his supervision into finished garments and actually exported, testified that:

> At the time the raw materials is transferred to the warehouse there is the boat note that I sign stating the fact that that kind of raw materials with import entry is transferred to the warehouse. Then, I record the raw materials by import entry, the vessel, the registry number, and the date of arrival and the invoice of that import

entry. After that, I inform the Embroidery Board that that kind of raw materials I received on a certain date. After informing the Embroidery Board, the operator will apply for the release of that raw materials to the Chairman of the Embroidery Board, together with the specified patterns of that kind of raw material or that kind of import entry. After the Chairman of the Embroidery Board approves the release certificate, which is called Form 6 of the Certificate of Raw Materials, then the operator will present a copy of Form 6 - which is the duplicate. The original copy is retained by the operator, and the duplicate is given to me by the operator.

Then, the operator begins to withdraw certain quantities of that raw material for cutting and processing specified with the patterns, which is at the back of Form 6. Then, I supervise the cutting of that raw material. After it is already cut, it is processed, it is turned into finished products. Then the finished products are packed in bundles of one dozen each. And when there are many finished products then the operator applies with the Embroidery Board for the exportation of that finished product. After the Board approves the exportation of the finished products then the examiner will go to the factory to identify the finished product with the samples in the import entry that is attached with the import entry of the examiner. Then the examiner begins counting the finished products in boxes according to the packing list. After counting the number of dozens in the boxes that tally with the packing list then the examiner signs Form 7, that is, the Certificate of Inspection, identification and loading, and I also sign Form 7. After signing Form 7, the examiner seal the boxes . . . closes the boxes and seal them. After sealing the boxes, we write our name in every box that is exported. Then the broker will get the boxes and then go to the pier, to export.

> In the pier, the Form 15 which I have accomplished, that means the accompaniment of the export shipments from the factory to the pier, will be verified by the agent of the Customs. He will count the exportation by boxes. After counting the boxes then the exportation will be loaded in the ship.
>
> In the ship, the Customs inspector will count again the number of boxes that are loaded in the ship.
>
> (Pp. 237-241, t.s.n.)

He also testified that his principal duty was to see to it that the quantities of raw materials withdrawn from petitioner's warehouse were actually re-exported in finished products, and, he, together with an examiner of the Embroidery and Apparel Control Inspection Board, computed the consumption of raw materials with the finished products. (Pp. 280-282, t.s.n.) Mr. Bringas likewise stated that before the finished garments were brought to the pier for re-exportation, an examiner from the Bureau of Customs had first to inspect and examine the shipment in the warehouse and together they will count each bundle and the number of pieces contained therein. (Pp. 286-288, t.s.n.) After the bundles have been counted and the boxes sealed, the customs storekeeper had to accomplish the (a) Packing List, (b) EACIB Form No. 7, Certificate of Inspection, Identification and Loading, and (c) export invoices. (p. 288, t.s.n.) Thereafter, the shipment, accompanied by the customs storekeeper, will be brought to the pier where inspections and examinations will again be made by the customs boarding officer in the presence of the customs storekeeper and customs examiner. (pp. 290-291, t.s.n.)

2. Toribio Perez, Examiner of the Embroidery Section of the Bureau of Customs, collaborated in all material aspects the testimony of Mr. Bringas. He testified that he was the customs examiner assigned to examine all import entries of petitioner; upon receipt of the entry papers, he examined the imported materials and his findings were reflected in the entry; once the embroidery materials have been processed and ready for exportation, he will identify them by comparing the raw materials with the finished articles for export; after the finished products were already re-exported and cancellation of the bonds was requested, he examined the commercial invoices, bills of lading and export entries; and if he found them out to be in order, he would make recommendation to the Collector of Customs for cancellation of the bond. (Pp. 178-187, 190; 201-202, 213, t.s.n.) Upon completion of his examination, he accomplished the Certificate of Inspection, Identification and Loading (Exh. "R" - "7", p. 223, BIR records.), where he certified as to the quantity of the articles exported after actual physical count.

3. Segundo Javier, Special Investigator, Legal Department of the Bureau of Customs, testified that petitioner had complied with Republic Act No. 3137 by re-exporting the articles previously consigned to it for manufacture; that all importations of petitioner in 1962 and 1963 were re-exported as shown by his certifications marked as Exhibits "A" & "B"; that the entries covering said importations had been fully liquidated. (Pp. 8-34, t.s.n.)

4. On the basis of the records of the Embroidery and Apparel Control and Inspection Board, Teresita A. Costa, Trade Control Examiner I of said Board certified on October 23, 1968 (Exhibits "C-1" & "C-2", pp. 141-142, CTA records) and February 10, 1969 (Exhibits "D-1" & "D-2"; pp. 144-145, CTA records), and also testified, as to the full and complete liquidation of the import entries on all importations made by petitioner in 1962 and 1963. (Pp. 409-412, t.s.n.)

5. Melecio Franco, Customs Bond Supervisor, Law Division of the Bureau of Customs, testified that before an embroidery firm, like petitioner, could operate, it must first file a bond to guarantee exportation of its manufactured products. Upon being informed by the Appraiser's Division and the Embroidery and Apparel Control and Inspection Board that petitioner had re-exported all the articles consigned to it, the Chief

of the Law Division, Bureau of Customs, ordered the cancellation of all the bonds filed by petitioner to cover all importations in 1962 and 1963. (Pp. 160-178, t.s.n.)

All the above-mentioned witnesses are officials and/or employees of either the Embroidery and Apparel Control and Inspection Board or the Bureau of Customs, the government offices called upon to enforce, execute and implement the provisions of Republic Act No. 3137 by virtue of which petitioner was authorized to operate. And it will be noted that most, if not all of their testimonies, were based or taken from official records of these government agencies. Since these testimonies proceed from officials of the Government in charge with the proper implementation and enforcement of the provisions of Republic Act No. 3137, they are given, in the absence of evidence to the contrary, and none has been presented by respondent, much weight and respect. In this setting, and in the light of the principle of regularity in the performance of official functions, it can hardly be said that petitioner over-declared its exportations in 1962 and 1963.

It may not be amiss to mention here in passing, as correctly pointed out by petitioner, that:

1. On March 3, 1966 the Bureau of Internal Revenue, South Manila, issued a certification attesting to the fact that "BIR Examiners Honorio Gabriel and Oscar Liwanag have verified the Inventory filed by Island Garment Manufacturing Corporation of 2609 Old Panaderos, Sta Ana, Manila, for the period ending December 31,

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1965 and found to be in accordance with Revenue Regulations as provided for in the provisions of the National Internal Revenue Code." (Exh. "W-3", p. 172, BIR records; pp. 324-325, t.s.n.) The phrase "for the period ending December 31, 1965 was explained during the hearing of this case before this Court to refer to the start of petitioner's operation in 1962 up to December 1, 1965.

2. On July 14, 1965 a certification was made by Bureau of Internal Revenue Examiner Oscar Liwanag of Regional District No. 6, South Manila, to the effect that a search has been made and conducted in the residence, offices and bodegas of petitioner pursuant to a Search Warrant issued by Judge Roan of the City Court of Manila dated July 14, 1965, it appearing that there was probable cause to believe violation of the Tax Code and that in the residence, bodega or offices of petitioner there were certain business records and documents evidencing violation of said Code, which should be seized (p. 117, BIR records.) The return of the warrant officer, however, stated "that none of those mentioned in the search warrant was found despite diligent efforts exerted." (Exh. "Y", p. 145, BIR records.)

3. A clearance certificate was issued by Bureau of Internal Revenue Examiner Honorio C. Gabriel, upon inspection of petitioner on February 17, 1967, that there is nothing wrong with its business operations. (Exh. "Z", p. 159, CTA records.)

4. If it is true that Island Garment Manufacturing Corporation made all these overdeclarations, as observed by petitioner, how come that none of its foreign suppliers ever complained of being short changed up to this time? It appears that the agreement between petitioner and its foreign suppliers, before the former exports the finished articles, is to first notify the latter and requests payment of costs of labor. It is only after said payment is received that petitioner ships the finished articles. If there was actually overdeclaration of exports, the very first to complain should naturally be the foreign suppliers because they would be receiving less than what they should actually received based on their payments for the labor cost of processing the raw materials.

5. And as earlier stated, the decision of respondent appealed from denying the protest of petitioner and reiterating the payment of the amounts of ₱335,787.93 ahd ₱291,402.01 as deficiency income tax and advance sales tax, respectively, for the years 1962 and 1963, was issued by the Commissioner of Internal Revenue notwithstanding the recommendation of his Appellate Division,

which heard this case, that the assessments against petitioner be cancelled and withdrawn for failure of the BIR examiners to substantiate their assessments (Exhs. "E" & "E-1", p. 426, BIR records.)

As regards item (c) of the assessment (Exh. "BB-1)":

(c) Unsupported exportation in
1962 and 1963 . . . . 494,223.40 yards

respondent included it as part of the over-declared exportation of embroidered goods of petitioner because of the latter's alleged failure to present to his examiners the corresponding shipping documents evidencing exportation of the finished goods. While the documentary andoral evidence, discussed earlier, show that all of petitioner's importations of textile fabrics have been properly and duly accounted for, the reason why the shipping documents evidencing exportation of finished goods, as testified to by Enrique Jocson, President and General Manager of petitioner, is that the records of importations and exportations in 1962 and 1963 could no longer be located. This was due to the fact that these shipping documents were either submitted to the Embroidery and Apparel Control and Inspection Board in connection with its application for exportation or with the Bureau of Customs for the liquidation of the import entries. (Pp.

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297-298, 314, 387-389, t.s.n.) Copies of these papers and documents were also furnished the Committee on Ways and Means of the Senate on August 25, 1967 which were duly receipted by its Chairman, Rodolfo Ganzon. These shipping documents, among others, were: the storekeeper's book, 1962-1967; import invoices for the period 1962-1967; export invoices for export shipments for the period 1962-1967; copies of all bonds filed with the Bureau of Customs; liquidation papers of all imported entries exported up to August 1967; boat notes for every shipment made; delivery receipts for 1962-1966; and approved licenses with foreign suppliers. (Exh. "T", p. 158, CTA records.) Mr. Jocson also testified that in filing the application for exportation with the Embroidery and Apparel Control and Inspection Board, petitioner was required to attach the import entries, export entries and bills of lading and these papers were also forwarded to the Bureau of Customs for purposes of liquidation. (Pp. 396-399, t.s.n.)

We see no possible ground to ignore or disregard this explanation of petitioner considering that no proof was presented by respondent to contradict the same, and the exportations in 1962 and 1963 have all been duly proven by petitioner by documentary and oral evidence.

Petitioner having satisfactorily shown that all of its importations of textile raw materials during the years 1962 and 1963 had been exported to its foreign suppliers, pursuant to Republic Act No. 3137, there could be no sale of such raw materials subject to the sales tax. It follows that petitioner did not derive any undeclared income from the sale of such textile materials which is subject to income tax. Accordingly, the assessments of respondent Commissioner of Internal Revenue against petitioner Island Garment Manufacturing Corporation in the amounts of ₱291,402.01 as advance sales tax and ₱335,787.93 as deficiency income tax for the years 1962 and 1963, inclusive of surcharges, interests and compromise penalties, or a total of ₱627,189.91, cannot be sustained.

WHEREFORE, the decision appealed from should be as it is hereby reversed. No costs.

SO ORDERED.

Quezon City, June 22, 1977.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

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