REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CIRIACO B. MENDOZA,
Petitioner,

versus

July 19, 1968

CTA CASE NO. 1353

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

This case involves an assessment by the respondent against petitioner for advance sales tax in the amount of ₱195,214.37, plus ₱10,000.00 as compromise, or a total sum of ₱205,214.37 on alleged importations of goods or articles (household appliances).

Pursuant to a search warrant issued by the Court of First Instance of Manila, a team composed of Constabulary, Revenue and Customs agents (CRC for brevity) raided and searched a bodega located at 137 Yakal st., Makati, Rizal on August 26, 1958 and owned by the herein petitioner. In the course of the said search, bundles of duplicate Informal Entry statements of duties evidencing importations of household electrical appliances and other goods or articles consigned to different persons, were confiscated or seized from the said bodega by the CRC team. Also confiscated were 13 crates of household electrical appliances which the team found loaded on a cargo truck parked in front of petitioner's bodega. The truck belonged to Yum Ping brokerage.

The subsequent facts are as stipulated by the parties thus:

> 2. That by a letter dated August 20, 1959, addressed to the Petitioner and deposited in the mail on Sept. 3, 1959, the Respondent assessed and demanded payment from the Petitioner of the sum of ₱205,214.37, as advance sales tax (in the sum of ₱195,214.37) and compromise (in the sum of ₱10,000.00) claimed to be due from the Petitioner on certain alleged importations of goods alleged to have been made in the years 1955 to 1957. Copy of said letter dated August 20, 1959, is hereto attached and made an integral part hereof as ANNEX "A".
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> 3. That by a letter dated September 15, 1959, and filed with the Respondent on September 17, 1959, the Petitioner, thru counsel, disputed the aforesaid assessment and requested for a re-investigation and reconsideration of the said assessment on the alleged ground that the said assessment was erroneously based on alleged importations which the Petitioner claimed he never made. Copy of said letter dated September 15, 1959, is hereto attached and made an integral part hereof as ANNEX "B".
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> 4. That the Respondent, by a letter dated October 1, 1959, addressed to and received by the Petitioner's counsel on October 22, 1959, denied the aforementioned request of the Petitioner for re-investigation and re-

consideration of the assessment, stating that the said assessment is correct and lawfully due from the Petitioner, it having been based on an examination of the books of accounts of the Petitioner. Copy of said letter dated October 1, 1959, is hereto attached and made an integral part hereof as ANNEX "C".

5. That the Petitioner thru counsel, by a letter dated October 23, 1959, and filed with the Respondent on the same date, requested again the Respondent for the reinvestigation and reconsideration of the assessment, on the ground that he did not import the goods upon which the Respondent made the assessment, and stating as further grounds that (a) the books of the Petitioner were not examined by the Respondent's investigating agents; (b) that the compensating tax on the goods in question have been paid by the respective importers thereof, of which the Petitioner is not one of them; (c) that assuming that the advance sales tax were the tax collectible, and assuming further that the goods in question are all subject to 100% mark-up, the deficiency advance sales tax would only amount to ₱36,442.73 instead of ₱195,214.37 as assessed by the Respondent; and that (d) the Petitioner is not the proper party liable for the advance sales tax on said importations. Copy of said letter dated October 23, 1959, is hereto attached and made an integral part hereof as ANNEX "D".

6. That on December 9, 1959, the Petitioner thru counsel, filed with the Respondent a memorandum dated December 8, 1959, reiterating the request for re-investigation and reconsideration of the assessment in question, stating as additional grounds for the request that the documents on which the questioned assessment was based do not belong to the Petitioner; that they (the documents) were used in a criminal case instituted against

the Petitioner and other persons, but the said criminal case was dismissed; and that the Petitioner had nothing to do with the aforesaid documents and with the goods therein referred to, as both said documents and said goods do not belong to him. Copy of said memorandum dated December 8, 1959, is hereto attached and made an integral part hereof as ANNEX "E".

7. That on March 1, 1963, a Complaint was filed by the herein Respondent, as plaintiff, against the herein Petitioner as defendant, with the Court of First Instance of Manila (Civil Case No. 53259), for the collection of the abovementioned assessment, and the Summons and the copy of said complaint were actually served on the herein Petitioner on March 7, 1963. Copy of said Complaint and Summons are hereto attached and made integral parts hereof as ANNEXES "F" and "F-1" respectively;

8. That in this collection suit, (CFI, Manila, Civil Case No. 53259) the herein Petitioner filed his Answer, in due time, alleging in substance that the suit for collection is premature. Copy of said Answer is hereto attached and made an integral part hereof as ANNEX "G".

9. The parties herein reserve their right to adduce such additional oral and documentary evidence they may deem proper.

The issues to be resolved by this Court are whether or not (a) the petition for review was seasonably filed, and (b) whether or not petitioner is the importer of the appliances mentioned in the duplicate informal entries seized by the CRC team in his bodega and as such liable for advance sales tax on their importations.

Respondent contends that this Court has no jurisdiction to entertain the present petition for review for the reason that the same was filed beyond the statutory 30-day period. Petitioner on the other hand contends otherwise.

As we have gathered from the stipulation of facts of the parties, the assessment dated August 20, 1959, was mailed by the respondent on September 3, 1959. Petitioner disputed the aforesaid assessment and requested a re-investigation and reconsideration thereof in his (petitioner) letter dated September 15, 1959 and filed with respondent on September 17, 1959. The said request for reconsideration and re-investigation was denied by respondent in his letter dated October 1, 1959 which was received by petitioner on October 22, 1959, and from this day the statutory 30-day period commenced. The running of said period was interrupted on October 23, 1959 when petitioner filed with respondent another request for reconsideration and re-investigation on grounds other than those stated in his first letter for reconsideration. On December 9, 1959, petitioner filed with respondent a memorandum in support of his second request for reconsideration and re-investigation. As to what transpired subsequently, that is in controversy.

Petitioner urges that the motion for reconsideration dated October 23, 1959 was never acted upon by respondent until the filing of a civil case in the Court of First Instance of Manila on March 1, 1963 for the collection of the assessment in question. Respondent, for his part, refers our attention to Exhibit 7, a copy of a letter dated April 12, 1960 (p. 64 of the BIR records) denying the motion for reconsideration aforesaid. It is claimed that said letter was sent to petitioner on April 29, 1960. Testifying on this point counsel for the petitioner stated that he never received the original copy of that said letter otherwise, as is his practice, he would have acted accordingly.

There is nothing in Exhibit 7 to show that the original thereof has been sent to petitioner. No notation thereon can reasonably bear this out. And if there were a notation to this effect the same, standing alone as it does, would not be sufficient proof of notice, following the established doctrine in the case of Gonzalo P. Nava v. The Commissioner of Internal Revenue (G.R. No. L-19470, Jan. 30, 1965) followed by this Court in the case of Margarita Soriano de S. de Vicuña, et al v. Commissioner of Internal Revenue (CTA Case No. 1517, September 6, 1966). The Court is therefore constrained to believe that the original of respondent's letter of April 12, 1960 was not sent to petitioner as testified to by petitioner's counsel.)

The denial of petitioner's motion for reconsideration of October 23, 1959 is the filing of the civil case in the Court of First Instance of Manila on March 1, 1963. The date of notice thereof should be the receipt of the summons on March 7, 1963. Needless to say, this petition was filed before this Court on March 21, 1963 and so it was seasonably filed.

And now we come to the validity of the appealed assessment. The same is based on duplicates of informal import entry statements, not in the name of petitioner but of different persons, which were seized by the CRC agents from petitioner's bodega. It is further based on the testimony of Fermin Redoblado, a BIR examiner who participated in the raid of said bodega in Yakal street, Makati, Rizal on August 26, 1958. As a witness, Redoblado testified that according to information subsequently gathered by the Constabulary and transmitted to him, most of the names appearing in the duplicates of said statements are of fictitious persons. From this evidence and the circumstance that petitioner did not produce his books of account, respondent advances the inference that petitioner is the importer of the items appearing in the aforementioned documents. This inference, solely on the basis of the evidence of respondent, is intrinsically inconclusive. When taken in the light of the evidence adduced by the petitioner explaining the presence in his bodega of the informal import entries in question, the inference becomes remote.

Redoblado's testimony that most of the names appearing in the duplicates of informal entry statements are fictitious, is pure hearsay. There is on the other hand substantial evidence to the contrary. Taking the stand, petitioner explained that the documents in question do not belong to him but to Marcial P. Enriquez and to GOMECO; that at the time of the seizure of the aforesaid documents GOMECO was using his bodega with his permission; that he allowed GOMECO to use said bodega because some of its owners whose names he mentioned were his friends; that the appliances seized by the CRC team during the same raid belong to GOMECO. On this point his testimony finds corroboration from Marcial P. Enriquez, an agent of a customs broker, who testified that the aforesaid documents belong to his personal file; that most of the appliances mentioned in said documents belong to GOMECO while the rest belong to Army and Navy personnel and other persons; that his personal files which were seized by the CRC team included GOMECO stock cards and GOMECO delivery receipts. Another witness, Martin Magante, then an employe of GOMECO, corroborated aspects of the testimony of petitioner. Indeed, Redoblado himself admitted that many whose names appear in the seized informal import entry statements acknowledged the ownership of the appliances mentioned therein and that the two truckloads of appliances seized in the premises of petitioner's bodega belong to GOMECO. Respondent, with the vast facilities at his command, with the Constabulary helping him, could have easily checked the truth of the testimony of petitioner, of Marcial P. Enriquez, and of Magante, especially, as they gave the names of some of the owners of GOMECO, and could have easily presented rebuttal evidence to destroy petitioner's version. That the same stands unrebutted leads us to believe that their statements are substantially true.

In fine, the Court is of the opinion and so holds that the appealed assessment cannot be sustained.

WHEREFORE, the decision appealed from is hereby reversed, without pronouncement as to costs.

DECISION -
CTA CASE NO. 1353

SO ORDERED.

Quezon City, July 19, 1968.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge