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F. F. HAMLIN,
Petitioner,

- versus -

C.T.A.
CASE NO. 233

August 26/57

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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

DECISION

This is an appeal from a decision of respondent Collector of Internal Revenue assessing and demanding from petitioner a deficiency compensating tax in the amount of ₱2,164.31 on the latter's importation into the Philippines of one automobile.

Petitioner, F. F. Hamlin, brought into the Philippines one (1) Mercury Sedan automobile which arrived in Manila on September 17, 1950 on board the S/S "PRESIDENT WILSON". The vehicle was transhipped to Cebu via the F/S "ALBERT" arriving at said port on September 21, 1950. It was actually withdrawn from customs custody on September 23, 1950, after the compensating tax thereon had been paid by petitioner at the rate of 15% of the total value thereof or ₱927.95 as evidenced by Official Receipt No. 160010 marked as Exhibit "B". (p.138, CTA rec.) In view of the fact that the compensating tax on automobiles of the category to which petitioner's car belonged had been increased from 15% to 50% of the total value thereof by Republic Act No. 588 which took effect on September 22, 1950, petitioner was assessed a deficiency compensating tax in the amount of ₱2,164.31 (Exh. "D-1", p. 56, CTA rec.). Petitioner took exception to this assessment, but despite the exchange of communications between petitioner and respondent on the matter, the latter reiterated his demand for the payment thereof. Hence, on January 26, 1956, petitioner filed with this Court his petition for review of respondent's decision.

At the start of the hearing before this Court, respondent moved to dismiss the instant petition for review for lack of jurisdiction on the ground that the same was not seasonably filed. However, in its Resolution of January 28, 1957, this Court denied respondent's "Motion to Dismiss", holding that the appeal was timely interposed.

At the hearing of this case on the merits petitioner presented evidence which was mainly intended to show that the amount of ₱927.95 was presented at the cashier's office of the Cebu customhouse during office hours, but after 3:00 p.m. of September 21, 1950. Although the receipt for the said amount is dated September 22, 1950, this was so in view of the alleged practice that the cashier's receipts for each day are closed at 3:00 p.m. Hence, the receipt of the payment by petitioner was deemed as part of the collections for the next succeeding day and the official receipt (Exhibit B) issued therefor was accordingly dated on September 22, 1950. Respondent, however, disputed this fact.

It is the theory of petitioner that the determination of his liability for the compensating tax should be based on the date of actual payment. Accordingly, on the proposition that the payment was in fact effected on September 21,1950, the rate of compensation tax prevailing on this date should apply to petitioner's car. An examination of the official receipt (Exhibit B) covering the payment by petitioner of the compensating tax, more particularly its date of issue, shows that the second figure "2" in September 22, 1950 had apparently been superimposed over the figure "1". While there is some evidence to show that the cashier's office has long followed the practice of treating cash collections received after 3:00 p.m. of each day as collections received for the next succeeding day, nevertheless, we doubt that in view of the many years that have passed since the date of the alleged payment, petitioner's witnesses could still remember and single out petitioner's payment as having been made in accordance with such practice. In fact, in the testimony by deposition given prior to the principal hearing, the receiving teller had stated he had no special reason to remember the particular payment herein referred to as having been actually received by him on September 21, 1957.

It has been satisfactorily established that before an importer or customs broker could secure the release from customs custody of any shipment coming from abroad the following steps had to be followed in the order mentioned. First, the importer or customs broker must accomplish the importer's entry and declaration on Bureau of Customs Form No. 479-B (Exhibit "2", p. 145, C.T.A. rec.) and Bureau of Internal Revenue Form No. 372, (Exhibit 1, p. 144, C.T.A. rec.), and affix thereto the corresponding customs stamps, with the date thereof duly noted thereon. Second, the aforesaid declarations, together with the other pertinent papers such as consular invoice, bills of lading, Central Bank release certificate and permit to deliver the goods, are then forwarded to the Bureau of Internal Revenue for estimate and computation of taxes. Third, after the taxes have been computed and the date of such computation duly stamped on BIR Form No. 372 (Exhibit 1), the documents and all the pertinent papers attached thereto are forwarded to the Marine Division for processing and the date of filing thereof duly stamped on the entry. Fourth, from the Marine Division the entry form and declaration, together with the supporting pertinent papers, are brought to the Office of the Collector of Customs for the designation of the goods for which an examination is to be made by an examiner in the Appraiser's

Division. And fifth, the papers are then brought to the Cash Division where deposits are made of the Customs and Internal Revenue charges on the basis of the estimates and computations previously made. It is to be observed that deposit and payments for customs duties and internal revenue taxes are not done and accepted by the customs cashier until the last step is accomplished and only upon a showing that the import entry declarations bear the stamp of the Bureau of Internal Revenue indicating that the tax computations therein have been passed upon by the revenue officers and that the papers have been processed by the Marine Division.

Considering that all the papers in this importation have been processed only on September 22, 1950, we can not give weight to petitioner's evidence that presentment of payment was in fact made on September 21, 1950. On the basis of all the attendant circumstances, it clearly appears that the payment was effected only on September 22, 1950. But even if we were to give credence to petitioner's evidence that presentment of the ₱927.95 was effected on September 21, 1950 the same would not alter the result of the case on the legal issue here.

The main issue here is legal — is petitioner liable for the compensating tax on the basis of the old rate of 15% or on the new rate of 50%?

The compensating tax is levied, assessed and collected pursuant to section 190 of the National Internal Revenue Code, which provides -

> "All persons residing or doing business in the Philippines, who purchase or receive from without the Philippines any commodities, goods, wares, or merchandise, ...shall pay on the total value thereof at the time they are received by such persons, including freight, postage, insurance, commission, and all similar charges, a compensating tax equivalent to the percentage tax imposed under this Title ......, such tax to be paid upon the withdrawal or removal of said commodities, goods, wares, or merchandise from the customhouse or the post office ......" (Underlining supplied)

Republic Act No. 588 which took effect on September 22, 1950 did not alter the foregoing phraseology of the law, but had the effect of increasing the rates of taxes due on imported cars.

Petitioner contends that he should not be made to pay the tax on the basis of the amended rate prescribed by Republic Act No. 588 because the compensating tax due is determined as of the date of payment and not on the date actual withdrawal of the shipment from customs custody. Hence, petitioner argues, inasmuch as the tax on the importation in question was paid on September 21, 1950, the rate of 15% enforced on said date was controlling.

On the other hand, respondent contends that the compensating tax is computed as of the date of actual withdrawal from customs custody, but further argues that even if he were to concede arguendo that the date of actual payment of the tax is the determinative factor in the applicable rate of the tax, the rates of tax enforced on said date (Republic Act No. 588 took effect on said date) should be applied because the tax in question was actually paid on September 22, 1950.

As we have stated earlier, the evidence of petitioner is insufficient to show that payment had been effected actually on September 21, 1950, rather than on September 22, 1950. At any rate, this has no bearing on the outcome of this case.

The tax in question is an ad valorem tax, that is, "a tax of a fixed proportion (or percentage) of the value of the property (vehicle) with respect to which the tax is assessed, and requires the intervention of assessors or appraisers to determine the value of such property before the amount due from each taxpayer can be determined" (51 Am. Jur. Sec. 26, p. 53). Hence, since the computation of the tax in this case were passed upon by the revenue officers only on September 22, 1950 and even assuming arguendo that petitioner presented payment on September 21, 1950, the same should be treated as a mere deposit on said date and not as a valid payment made according to law, which, at the earliest, was made on September 22, 1950 when, by the intervention of the revenue officers, the tax was determined by multiplying the value as certained by the rate of tax at 15%. However, since the rate of taxes had already been increased as of such date, the determination could be validly fixed only on the basis of rates prescribed by the amendatory law Republic Act No. 588, which took effect on said date.

But the fact of such determination alone does not govern the applicable rates. According to Section 190 of the Tax Code, the compensating tax is "to be paid upon withdrawal or removal of the commodities ..... from customs custody". Hence the payment to be made should be determined upon such withdrawal or removal. As the removal was actually effected on September 23, 1950, the tax should have been paid immediately before such withdrawal and the tax rate of 50% then enforced as of such time would be applied.

> "Briefly, then, the time for the payment of the internal-revenue tax on the merchandise, from the date of arrival in the port until just before it is withdrawn from the customhouse depending upon the will of the importer or owner, the law in force at the time payment is made must prevail;"(Luzon Brokerage Co., Inc. v. Juan Posadas, as Collector of Internal Revenue, 51 Phil. 305, at 309, underlining supplied.)

Consequently, we believe that in the instant case it is the tax law enforced at the time of lawful payment thereof which determines the rate of tax to be paid. Since in the case at bar the tax rate as of September 23, 1950 must control, the petitioner should be liable for the compensating tax at the increased rate of 50% of the total value thereof as prescribed by Republic Act No. 588 and we so hold accordingly.

DECISION -
C.T.A. CASE NO. 233

PREMISES CONSIDERED, the decision of respondent Collector of Internal Revenue appealed from is hereby affirmed and the petitioner ordered to pay to the Collector of Internal Revenue or his authorized representative the sum of ₱2,164.31 as deficiency compensating tax, with costs against petitioner.

SO ORDERED.

Manila, Philippines, August 26, 1957.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge