Library

Republic of the Philippines
COURT OF TAX APPEALS
Manila

February 28, 1958

HENG TONG TEXTILES CO., INC.,
Petitioner,

- versus -

B.T.A.
CASE NO. 188

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

DECISION

On March 25, 1952, the respondent assessed against the petitioner the sum of ₱86,819.90 as deficiency sales tax, including surcharges, for the year 1949 and from January to April, 1950. After re-investigation, the assessment was modified and in a letter dated August 12, 1953, respondent required petitioner to pay the sum of ₱89,123.58 as deficiency sales tax and surcharges. At the same time, petitioner was requested to pay the sum of ₱500.00 as compromise in extrajudicial settlement of its violation of Section 209 of the National Internal Revenue Code. Having failed to secure a reconsideration of the assessment, petitioner appealed to the former Board of Tax Appeals. The case was still pending in said Board when this Court was organized in 1954. Pursuant to Section 21 of Republic Act No. 1125, the case was remanded to this Court.

From the voluminous records of the case and the mass of evidence submitted by the parties, it appears that during the period in question importations of textiles from abroad were made in the name of petitioner, but the advance sales tax and the withdrawal of the goods from the customhouse were made by Pan-Asiatic Commercial Co., Inc., a sister corporation of petitioner. The goods were made to appear as having been sold by Pan-Asiatic Commercial Co., Inc. to petitioner so that no sales tax was paid by petitioner upon the sales of such goods. Neither was any sales tax paid on the supposed sales of said goods by the Pan-Asiatic Commercial to the petitioner as the sales were made apparently at cost. It may be stated that during the period in question the sales tax on sales of imported articles was based on the gross selling price thereof, the advance sales tax paid upon removal of the goods from the customhouse being credited against the tax on the actual gross selling price by the importer. (See Rep. Act No. 253; General Circular No. V-106, February 19, 1951.)

Respondent treated the said importations as having been made by petitioner itself through the Pan-Asiatic Commercial as indentor or broker, and, accordingly, he assessed the corresponding deficiency sales tax and surcharges, after deducting the advance sales tax previously paid on said importations. As petitioner did not have an accurate record of all its importations and the gross selling price thereof, respondent made the assessment by computing the total amount of the gross sales of imported articles on the basis of the percentage of profit as shown by its recorded sales, as indicated below:

Year 1949

Sales (1949) ------------	₱ 1,665,277.34
Less: Cost of sales ------	1,545,111.44
Gross profit ------------	₱ 120,165.90
Rate of gross profit -----	7.2%
Sales (1949) -------------	₱ 1,665,277.34
5% sales tax based on sales as reflected in company's books of accounts ---------------	83,263.87
Total importations for 1949 per bank records --	2,190,948.66
Net purchases per books --	1,626,826.24
Importations not entered in books of a/c --------	₱ 564,122.42
Plus gross profit based on 7.2% rate per books--	40,616.81
Selling price on importations not entered in the books of accounts---	₱ 604,739.23
5% sales tax on ₱604,739.23 -----------	30,236.96
Sales tax on sales reflected in books ------------	83,263.87
Sales tax on sales not reflected in the books of accounts -----------	30,236.96
T O T A L -	₱ 113,500.83
Less amount of advance sales tax paid per Accountant's report, dated Jan. 29, 1951 (herewith attached) --------------	₱ 69,739.11
Deficiency tax -----------	43,761.72
75% surcharge ------------	32,821.29
Amount due and collectible for 1949 -----------	₱ 76,583.01

January 1 to April 30, 1953

Advance sales tax paid per Accountant's report ---- dated Jan. 29, 1952	₱ 18,762.24
At 5% rate the cost of importation is ---------	135,244.80
Cost of imported merchandise ------------------	₱ 375,244.80
Sales January 1 to April 30 --------------------	529,148.66
Total purchases (import	

& local) -- ₱381,887.97

Computing the sales corresponding to imported merchandise:

$\frac{375,244.80}{381,887.97}$ x 529,148.66 equals - (sales) ----	₱ 518,565.69
5% sales tax on ₱518,-565.69 ----------------	25,928.28
Less amount paid as advance sales tax per Accountants report --	18,726.24
Tax Deficiency --------	₱ 7,166.04
75% Surcharge ---------	5,374.53
Amount due for 1950	₱ 12,540.57

S U M M A R Y

Amount due for 1949 --------	₱76,583.01
Amount due for 1950 --------	12,540.57
GRANT TOTAL ----	₱89,123.58

(See pages 120-121, BIR records.)

The correctness of the above computation is not disputed in this proceeding by petitioner. Consequently, the main issue to be decided is whether or not petitioner was the importer of the goods in question. Petitioner contends that it was not the importer of said goods and that the importer was Pan-Asiatic Commercial Co., Inc., which paid the advance sales tax and secured the release thereof from the customhouse. On the other hand, respondent contends that petitioner was the importer as evidenced by the shipping documents, insurance papers, and the records of the Bureau of Customs showing that the advance sales tax was paid by Pan-Asiatic Commercial in the name of petitioner.

We are convinced upon the evidence of record that the importer of the goods was petitioner. The commercial documents evidencing the importations all show that petitioner was the importer. The allegation that the documents covering the importations were made out in the name of petitioner solely for the purpose of introducing it to the suppliers in the United States of Pan-Asiatic Commercial is not entitled to much weight.

To further bolster the position of the Government, it was shown that petitioner certified in its applications filed with the former Import Control Commission that said importations were its own, and by virtue of such certifications it was able to secure the corresponding import allocations. After having benefited from such representations made openly and officially, it cannot now be heard to deny the veracity thereof in order to obtain another advantage, that of exemption from the sales tax.

Petitioner sought to prove through the testimony of an employee of Pan-Asiatic Commercial Co., Inc. that it was the latter which imported the goods and that petitioner merely purchased the same from the importer. This is belied by a letter written by Pan-Asiatic Commercial dated January 29, 1952 addressed to petitioner, the pertinent portion of which reads:

> "In compliance with your request regarding the 5% Sales Tax that we paid for you for the year 1949 and the first quarter of 1950 against the goods that you ordered from various United States suppliers, through us, we attach hereto a list giving a breakdown of this 5% Sales Tax, together with the correspond-

> ing Official Receipt Numbers and other details relative to the orders covered by these payments." (Exh. 3, page 112, B.I.R. records.)

The authenticity of this document has not been denied.

We note that the assessment includes a surcharge of 75%. This consists of the 25% surcharge for failure to pay the sales tax within the period prescribed by law, and the 50% surcharge for willful failure of petitioner to make a return of its sales of imported articles, in accordance with Section 183(A) of the National Internal Revenue Code. There can be no question as to the legality of the imposition of the 25% surcharge for late payment of the deficiency sales tax. (Koppel v. Coll. of Int. Rev., G. R. No. L-1977, Sept. 21, 1950.) With respect to the 50% surcharge, we are also of the opinion that the imposition of the same is proper. As already stated above, petitioner certified that it was the importer for purposes of securing import allocations from the former Import Control Commission. Notwithstanding this admission, it did not file a return of its sales as such importer. This is evidence of willfulness which justifies imposition of the fraud penalty.

The other issue relates to the right of the Government to collect the tax. It is contended on behalf of petitioner that the right to collect has prescribed.

Section 331 of the Revenue Code provides that an internal revenue tax may be assessed within five years after the return was filed, and Section 332 provides that if no return was filed or where the return filed is false or fraudulent, the tax may be assessed within ten years from the date of discovery of the ommission or of the fraud. Where an assessment has been made within the time prescribed, Section 332 provides that the tax may be collected by distraint or levy or by judicial action within five years from the date of assessment. In this case, it appears that the deficiency tax covers the period from 1949 to the first quarter of 1950. The first assessment was made on March 25, 1952 and the final assessment on August 12, 1953, obviously within the five-year or the ten-year period prescribed by law. The assessment having been made within the period prescribed by law, the tax may be collected by distraint or levy or by judicial action within five years from the date of the assessment.

The records show that distraint and levy proceedings were begun simultaneously with the first assessment on March 25, 1952, and the petition for review in this case was filed by petitioner with the defunct Boa rd of Tax Appeals on March 3, 1954. In fact the properties distrained were advertised by respondent for sale at public auction sometime in 1956, but this Court issued a writ of injunction upon the filing and approval by us of a surety bond for ₱90,000.00 with the Century Insurance Company, Inc. as surety. (See our Resolution of March 3, 1956.) Under these circumstances, we are of the opinion that the right of the Government to collect the tax in question has not prescribed. (Clara Diluangco Palanca v. Coll. of Int. Rev., C.T.A. No. 509, Nov. 29, 1959, affd. in G. R. No. L-16661, Jan. 31, 1962.) The validity of the warrant of distraint and levy issued by respondent has not been questioned. All that petitioner asked was to suspend its enforcement pending final decision on the legality of the assessment.

As regards the alleged "compromise penalty" of ₱500.00, respondent admits in his amended answer that the collection of the same, without a valid and binding compromise agreement, is unauthorized and illegal. Petitioner has not agreed to pay said compromise.

IN VIEW OF THE FOREGOING, the decision appealed from is hereby affirmed, except with respect to the compromise penalty. Accordingly, petitioner and its surety, Century Insurance Company, Inc., are ordered to pay the sum of ₱89,123.58, jointly and severally, within thirty days from the date this decision becomes final. With costs against petitioner.

SO ORDERED.

Manila, February 28, 1962.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge