TAXATION

TEODORICO C. TAGUINOD*

There was a paucity of Supreme Court decisions on taxation in 1973. In fact, the fingers of both hands can account for them with still three to spare. These were the cases: *Virata v. Aquino,* No. L-35027, September 10, 1973; *General Insurance & Surety Corporation v. Commissioner of Internal Revenue,* No. L-29895, April 30, 1973; *Flores v. Court of Tax Appeals,* No. L-24186, May 31, 1973; *San Miguel Corporation v. Municipal Council of Mandaue,* No. L-30761, July 11, 1973; *Nassr v. Hon. P. C. Perez and the Hon. City Fiscal of Baguio,* No. L-28779, February 28, 1973; *Commissioner of Internal Revenue v. Central Azucarera Don Pedro,* No. L-28467, February 28, 1973; *Philippine Fiber Processing Company v. Commissioner of Internal Revenue,* No. L-27212, August 31, 1973.

TAX ADMINISTRATION AND PROCEDURE

1. *Surcharge for failure to file return*

Under Supplement A (Withholding on Wages) of Title II (Income Tax) of the National Internal Revenue Code, taxes deducted and withheld by the employer, as therein required, from wages of employees shall be covered by a return and paid to the treasurer of the province, city or municipality in which, in case the employer is a corporation, its principal office is located. The return shall be filed and the payment made within twenty-five days from the close of each calendar quarter. In case of failure to make and file the return within the time thus prescribed, not due to willful neglect, the employer is made subject to a surcharge of 25% of the amount of the tax.[1]

In *General Insurance & Surety Corp. v. Commissioner of Internal Revenue,*[2] petitioner resisted payment of the 25% surcharge in the amount of ₱2,171.90 imposed by the respondent Commissioner of Internal Revenue because of the former's failure to file the returns on the withholding taxes due on the salaries of its employees as required by the National Internal Revenue Code. One of the grounds upon which petitioner based its action was the alleged existence of what petitioner considered a reasonable cause

* *Professorial Lecturer,* College of Law, University of the Philippines.

1 See Sec. 72 in connection with Art. 7 of Supplement A of the N.I.R.C.

2 G.R. No. L-29895, April 30, 1973, 50 SCRA 445 (1973).

for its failure to comply with the statutory duty to file the quarterly withholding income tax returns.

There was no question that petitioner had the duty under the law to make the proper returns for taxes deducted and withheld and that upon failure to do so it was subject to the 25% surcharge unless it could demonstrate that there was a reasonable cause that would excuse it for such an omission. The "reasonable and excusable cause" presented by the petitioner was that the withholding tax law was new and not everybody was already familiar with it then and also that due to the inadvertence and oversight on the part of the petitioner's accountant, aside from the pressure of work he had to attend to, the period to submit said returns passed unnoticed without his having filed the same. In making short shrift of such excuses, the Supreme Court stated that to justify disregard of the law for the reasons given by the petitioner was fraught with undesirable consequences. The disastrous effect on tax collection was not difficult to discern. Nor was it confined solely to revenue matters. For if such a defense were available, the state would not be in a position to carry out a statutory policy, to assure observance of which a penalty for noncompliance was imposed. All that the offending party had to allege for conduct contrary to its terms to be overlooked was the mere plea that something new had been added to the legal norms and, therefore, his infraction was to be forgiven. Nor was the attempt to place the blame on petitioner's accountant any more successful. Even in the case of members of the bar, the rule had been expressed tersely but emphatically that "[f]or the inexcusable negligence of counsel, his client has to bear the adverse consequences." There had been no deviation from this well-established principle, the Court observed, and "[i]t would be strange then and hardly logical as well as devoid of any policy justification if a more lenient rule will be applied to accountants."

2. *Prescription*

(a) *Assessment and collection*

In a long line of decisions, the Supreme Court has held that, in view of Sec. 51(d) of the National Internal Revenue Code[3], the government loses its right, after the lapse of three years from the time the taxpayer filed his income tax return, to make any summary collection of the

[3] Sec. 51(d), as amended, reads as follows:
"*Interest on deficiency.* — Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner and shall be collected as a part of the tax, at the rate of fourteen per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed: Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding."

deficiency income taxes by warrant of distraint and levy and that the remedy of the government is to collect by means of a judicial action.[4]

In *General Insurance & Surety Corporation*[5], the other ground on which the petitioner defended against the imposition of the 25% surcharge for failure to file the return for withholding taxes was that the disputed assessment was barred by prescription. The issue was whether the prescriptive period for the assessment of the surcharge was the three-year period established by Section 51(d) or the periods provided by Sections 331 and 332 of the National Internal Revenue Code. The Supreme Court ruled that pursuant to Section 332(a), which was the provision applicable, the Commissioner had a period of ten years to proceed against the petitioner and he did so well within that time. In thus holding for the Commissioner, the Court stated that the foregoing issue of prescription had long been settled. The dictum of an earlier case[6] that Sections 331 and 332 do not apply to "income taxes, the collection of which is specifically provided for under a different title to the same law", had been subsequently restricted to refer to the collection of income tax by *summary proceeding and not by court action.*[6a] In other words, as may be inferred from previous decisions[7], section 332 of the Revenue Code does not apply to income taxes if the collection of said taxes will be made by summary proceedings, because this is provided for by Section 51(d) aforementioned; but if the collection of income taxes is to be effected by court action, then section 332 will be the controlling provision." Or as stated in a more recent case[8]: "It is now settled that the three-year period provided in Section 51(d) refers to the summary remedy of distraint and levy . . . that said Section 51(d) did not bar an assessment as a step preliminary to collection by *judicial action* . . . that even after the lapse of the three-year period, the Government could still proceed to recover the taxes due by the institution of the corresponding civil action . . . and that the judicial action may be instituted at any time within ten (10) years after the discovery of the falsity, fraud or omission . . . pursuant to Section 332(a) of the Tax Code."

(b) *Refund of taxes*

The prescriptive period for refund or credit of internal revenue taxes is provided for in Sections 306 and 309 of the Internal Revenue Code. Pursuant to these provisions, a claim for refund or credit must first be

[4] Collector of Internal Revenue v. Avelino, 100 Phil. 327 (1956); Collector of Internal Revenue v. Haygood, 65 Phil. 520 (1938); Collector of Internal Revenue v. Reyes, 100 Phil. 822 (1957); Collector of Internal Revenue v. Zulueta, 100 Phil. 872 (1957); Collector of Internal Revenue v. Cuenco, 101 Phil. 239 (1957).

[5] *Supra*, note 2.

[6] Collector of Internal Revenue v. Avelino, *supra*, note 4.

[6a] Republic v. Ret, G.R. No. L-13754, March 31, 1962, 4 SCRA 783 (1962).

[7] Collector v. Solano, G.R. No. L-11475, July 31, 1958; Collector v. Bohol Land Transportation, 107 Phil. 965 (1960).

[8] Republic v. Tan, G.R. No. L-25483, May 23, 1969, 28 SCRA 325 (1969).

filed with the Commissioner of Internal Revenue but, in any case, no judicial action to recover such taxes may be instituted upon expiration of two years from the date of payment of the tax. These sections expressly refer to the recovery of any national internal revenue tax alleged "to have been erroneously or illegally assessed or collected" or "of any sum alleged to have been excessive or in any manner wrongfully collected."

At first, the Supreme Court ruled in one case that where the taxes (advance sales tax) became refundable not because they were erroneously or illegally collected as they were in fact legitimately payable at the time of their assessment and collection, but by reason of a supervening circumstance (re-exportation of the taxable raw materials), the prescriptive period applicable to the action for recovery was not Section 306 of the Tax Code but Section 11 of Republic Act No. 1125. Section 11 provides for an appeal to the Court of Tax Appeals within thirty days from receipt of the adverse decision or ruling of the Commissioner of Internal Revenue.[9] Subsequently, however, the Supreme Court overturned the foregoing ruling by holding that Section 306 would govern the recovery of taxes whether or not, at the time of payment of such taxes, the assessment and collection was lawful, since Sections 306 and 309 of the Tax Code were intended to govern *all kinds* of refunds of internal revenue taxes. To resolve the problem of when the two-year period would commence to run if at the time of payment the taxes were due and payable and not unlawful or erroneous, the Supreme Court stated that when the tax sought to be refunded was illegally or erroneously collected, the period of prescription of two years would start from the date the tax was paid; but when the tax was legally collected, the prescriptive period would commence to run from the date of occurrence of the supervening cause which gave rise to the right of refund.[10]

The case of *Commissioner of Internal Revenue v. Central Azucarera Don Pedro*[11] presented the Supreme Court with the same issue. The respondent Central, a domestic corporation engaged in the operation of a sugar mill and in the manufacture of alcohol and yeast from sugar cane, filed on 22 May 1963 an application with the Board of Industries for tax exemption privileges under Republic Act No. 3217 in connection with its importations of machineries, spare parts and other equipment to be used in its central. The amount of ₱294,705 was collected pursuant to Section 190 of the Internal Revenue Code as compensating tax on different shipments from abroad. One such shipment, which arrived in May, 1963, was subject to a compensating tax of ₱48,302.00 which was paid

[9] Muller & Phipps (Manila), Ltd. v. The Collector of Internal Revenue, 103 Phil. 145 (1958).

[10] Commissioner of Internal Revenue v. Insular Lumber Co., G.R. No. L-24221, December 11, 1967, 21 SCRA 1237 (1967); Commissioner of Internal Revenue v. Victorias Milling Co., Inc., G.R. No. L-24108, January 3, 1968, 22 SCRA 12 (1968).

[11] G.R. No. L-28467, February 28, 1973, 49 SCRA 474 (1973).

on May 29, 1963 when the Central's application for tax exemption under Republic Act No. 3127 was still pending before the Board of Industries. The Central did, however, advise the Commissioner of Internal Revenue of such fact on July 22, 1965, saying that it would submit the certificate of tax exemption as soon as its application was granted.

The application was approved by the Board of Industries on September 20, 1965 and the corresponding certificate of tax exemption was issued on October 5. On November 3, 1965, the Central informed the Commissioner of Internal Revenue of the approval of its application for tax exemption and claimed a tax credit for the entire amount of ₱294,705 which it had paid as compensating tax. Included therein was the amount of ₱48,302 which was collected on May 29, 1963.

The Commissioner informed the Central that he was allowing a tax credit of only ₱246,403 and disallowing the sum of ₱48,302 on the ground that the claim for tax credit with respect thereto was filed only on July 22, 1965 or more than 2 years after it was paid, and therefore under Section 309 of the Tax Code the right to recover the same had already prescribed. The Commissioner's ruling was appealed to the Court of Tax Appeals which rendered a judgment of reversal.

The Supreme Court, on the appeal by the government, affirmed the tax court decision. It explained that the basis for the claim for tax credit filed by the respondent Central was the tax exemption granted by the Board of Industries under Republic Act No. 3127. Before the application for such exemption was approved, there was absolutely no basis for the Central to file a claim with the Commission or to commence a suit in court. The petitioner's suggestion that the respondent could have refused to pay the tax in question if only to forestall the running of the 2-year prescriptive period while its application for tax exemption with the Board of Industries was still pending, was not only unrealistic because non-payment of the tax would prevent the release of the goods from customs custody, but altogether unjustified since the tax was due and payable and its collection was neither illegal nor erroneous. As a matter of fact, the petitioner admitted that "under Bureau of Internal Revenue policy, one who has merely filed with the Board of Industries an application for tax exemption privileges under Republic Act No. 3127, which is still being processed but not yet approved or granted by said board, is not allowed to withdraw the importation covered by said application from customs custody without the prepayment of the compensating tax thereon."

Under Republic Act No. 3127, Section 7, the granting of a tax exemption to an applicant engaged in a basic industry retroacts to the date of the filing of the application for exemption. If it is the grant of exemption by the Board of Industries that gives rise to the right to file a claim for tax credit or tax refund with the Commissioner of Internal Revenue, then the period within which the claim for refund should be filed com-

mences to run from the happening of the supervening cause which entitled the taxpayer to a tax refund.[12]

Considering that in the present case the supervening cause from which the right to the tax credit applied for arose was the issuance of the certificate of tax exemption by the Board of Industries on October 5, 1965, and the Central filed its claim for tax credit with the Commissioner of Internal Revenue in the following November 3 or well within the 2-year period, it was clear, the Court concluded, that the said claim had not yet prescribed.[13]

3. Authority of City special counsel to file information for violation of Tax Code.

In *Nassr v. Honorable P. C. Perez and the Honorable City Fiscal of Baguio*[14], three informations were filed against the petitioner for violation of a city ordinance, for violation of Section 10(c) in relation to Section 13 of Revenue Regulations No. V-57 (Revised Amusement Tax Regulations) and pursuant to Sections 338 and 352 of the National Internal Revenue Code, and for violation of Section 17, paragraph 3 in relation to Section 25 of Revenue Regulations No. V-1 (Bookkeeping Law and Regulations) and pursuant to Sections 338 and 352 of the National Internal Revenue Code. All these informations were signed by the special counsel of the City Fiscal's Office of Baguio, "For the City Fiscal" in the first two informations, and "For the Officer-in-Charge" in the third information. On a motion to quash on the ground, *inter alia,* that the officer who filed the informations had no authority to do so, the City Court directed that the informations be signed by a regular fiscal. Subsequently, amended informations were filed in the case of the last two violations abovementioned signed by the same special counsel of the City Fiscal's Office "For the Officer-in-Charge". No amended information was filed for the first violation. Upon an amended order issued by the City Court, criminal complaints with respect to the first two abovementioned violations were filed, signed by the Regional Director of the Bureau of Internal Revenue. Another motion to quash was filed by the petitioner, again on the ground, *inter alia,* that the officer who filed the information

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[12] Citing the case of Commissioner of Internal Revenue v. Insular Lumber Co., *supra,* note 10.

[13] By an amendment introduced by Presidential Decree No. 69, which took effect on November 24, 1972, the latter part of Section 306 of the N.I.R.C. now reads as follows: "In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty *regardless of any supervening cause that may arise after payment:* Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Italics supplied.)

[14] G.R. No. L-28779, February 28, 1973, 49 SCRA 508 (1973).

had no authority to do so. The court *a quo* denied the motion to quash and petitioner instituted the instant petition for *certiorari* and prohibition seeking to restrain respondents from proceeding with the trial of the criminal cases. At first the court *a quo* dismissed the petition but on a motion for reconsideration it changed its mind and granted the petition, dismissing without prejudice the informations abovementioned.

The issues were: (1) Whether informations filed by special counsels are valid, and (2) Whether fiscals or special counsels are authorized to file informations for violations of the Tax Code against persons charged with violation of its provisions without need of express approval of the Commissioner of Internal Revenue.

In upholding the validity of the informations and thus reversing the court *a quo*, the Supreme Court stated that the lower court's reconsideration order granting the petition for *certiorari* and ordering the dismissal of the three informations filed against petitioner—notwithstanding its own recitation of the background facts showing that the prosecution had faithfully complied with all the requirements imposed by the City Court to the extent of criminal complaints having been filed supplementarily over the signature of the regional director of the Bureau of Internal Revenue "and despite its express awareness of this Court's established jurisprudence recognizing the authority of duly designated special counsels under Section 1686 of the Revised Administrative Code to file criminal informations—was clearly contrary to law and whimsical."[15]

The Court added further that the authority of fiscals or special counsels to file informations for violations of the Tax Code against persons charged with violation of its provisions such as the petitioner, without need of express approval of the Commissioner of Internal Revenue, could not be questioned either. Parenthetically, in the case at bar, the Court pointed out that the regional director of the Bureau of Internal Revenue had signed the criminal complaints, pursuant to the city court's order. Hence, petitioner could not even raise "this unmeritorious and irrelevant question" that the criminal complaints against him should have been initiated by the Commissioner of Internal Revenue. For the regional director's act of filing the amendatory complaints must certainly be taken to have been done under the Commissioner's authority, absent any reprobation or showing to the contrary.

4. Exclusive jurisdiction of customs authorities over imported goods

It is settled that the customs authorities acquire exclusive jurisdiction over goods sought to be imported into the Philippines, for the purpose of the enforcement of Philippine customs laws, from the moment the goods come to their actual possession and control, even if no warrant for seizure

[15] The Court cited the recent case of People v. Sierra, Jr., G.R. No. L-27611 August 30, 1972, 46 SCRA 717 (1972).

or detention thereof has previously been issued by the collector of customs. This jurisdiction of the customs authorities over the goods ceases "only upon the payment of the duties, taxes and other charges upon the articles, or secured to be paid, at the port of entry and the legal permit for withdrawal shall have been granted."[16]

Does this exclusive jurisdiction of customs authorities mean that a court of general jurisdiction cannot reach imported goods by writ or process in connection with a litigation pending before it involving private litigants? This was the issue in *Virata v. Aquino*.[17]

In this case, a shipment of 2,523 cases of assorted foodstuffs arrived at the Port of Manila consigned as a donation to a religious corporation, the *"Los Hijos del Dios Vivo y Omnipotente."* Its application with the Department of Finance for a certificate of tax exemption under Republic Act No. 1916 was denied on the ground that the shipment was in commercial quantity. *Los Hijos* then sued for the release of the goods under a tax exemption certificate but subsequently offered to pay the duties and taxes on the shipment. With the concurrence of the Secretary of Finance, the trial court ordered the release of the goods upon payment of the corresponding duties, taxes and other charges due thereon.

Respondent Tinsay, claiming to be the purchaser from *Los Hijos* of the imported goods, sought through the Court of First Instance the delivery to him of such goods. While the court dismissed the complaint with respect to the customs officials, it granted Tinsay's *ex parte* petition for a writ of attachment against the goods in question upon the filing of a bond. The order of attachment was served on the customs officials. The latter disputed the authority of the respondent court to issue the said writ and thus instituted the instant special action of *certiorari* with preliminary injunction. The Supreme Court issued a writ of preliminary injunction enjoining the respondents from enforcing the writ of attachment until further orders and likewise enjoined petitioners from disposing of the goods in question. Subsequently, the respondent court lifted the writ of attachment subject of the present petition upon filing by *Los Hijos* of a counterbond. Among others, the respondent judge cited the perishable state of the goods in dispute and their probable loss if held any longer in the custody of the Bureau of Customs. The petitioners then asked the Supreme Court to dismiss the present petition as having become moot and academic and to dissolve the injunction against their disposition of the goods, paving the way to a delivery of the same to *Los Hijos* after payment of taxes, duties and other charges.

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[16] Papa v. Mago, G.R. No. L-27360, February 28, 1968, 22 SCRA 857 (1968).
[17] G.R. No. L-35027, September 10, 1973, 53 SCRA 24 (1973).

On the authority of the court *a quo* to quash the writ of attachment, the Supreme Court pointed out that such authority could only proceed from the authority to issue the same in the first place. But, precisely, this case squarely raised the issue of the jurisdiction of the Court of First Instance to reach, by the process of attachment, goods in the possession of the Bureau of Customs. To agree, continued the Court, that the case at bar had become moot and academic due to the subsequent developments cited would be to concede that the trial court had proceeded according to law. This was not the case, said the Court. The Court, after stating the rule on the exclusive jurisdiction of the Customs authorities on imported goods, explained why the validity of the regular court's writ of attachment, in particular, could not be recognized:

> "The placing of the goods under attachment as a result of an action commenced by a third party against the consignee, while the liabilities due on the said goods to the Government have not been fully settled and while they remain in the custody of customs authorities, undermines the efficacy of our customs laws and is void.
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> "A writ of preliminary attachment is a provisional remedy issued upon order of the court where an action is pending, to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching creditor against the defendant. On proper grounds, to be determined by the trial court in accordance with the Rules of Court, the writ will issue and be levied upon the property of the defendant. In the present case, however, the Government of the Philippines 'having a lien on the goods for the payment of the duties accruing thereon, and being entitled to a virtual custody of them from the time of their arrival in port until the duties are paid or secured, any attachment by [the sheriff] is an interference with such lien and right of custody."
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> "Moreover, although the Collector of Customs might have been properly served a copy of the writ of attachment, he cannot act as bailee over the goods under his custody for the benefit of third-party litigants because such office is incompatible with his duty under the Tariff and Customs Code to hold possession of the goods for the Government of the Philippines in the interest of revenue collection."

Accordingly, without prejudice to the "remedies which, at a proper time and on proper grounds, the trial court [may issue to protect] the interests of the parties pending final adjudication" of the case before it, the Court made permanent its order enjoining the lower court and the special sheriff of Rizal from enforcing the writ of attachment and lifted its injunction against the petitioner which enjoined them from disposing of the goods subject matter of the case.

Justice Teehankee dissented from (a) the permanent injunction against enforcement of the attachment writ and (b) the release of the goods by

the customs bureau to *Los Hijos,* since the goods fell under the category of prohibited importations.

Justice Teehankee did not dispute the premise that customs authorities acquire exclusive jurisdiction over goods imported into the Philippines from the moment the goods come to their actual possession and control "for the purpose of enforcement of Philippine customs laws." In his view, however, it did not follow from this that imported goods held by customs officials pending payment of the duties and all other charges thereon may not be the subject of an order of attachment and garnishment duly issued by a court of general jurisdiction such as the respondent court at the instance of respondent-plaintiff who claimed a better right to the goods as against the consignee thereof, defendant *Los Hijos,* and duly addressed by the sheriff to petitioners customs officials as the persons having such goods in their possession and under their control. He pointed out that what the court *a quo* issued was an order of garnishment which should be distinguished from attachment proper in that "in garnishment, usually there is *no actual seizure* of the property and *no specific lien* is acquired thereon; the property *remains* with the garnishee . . . garnishment merely *impounds* the property in the garnishee's *possession* . . ." The garnishment order in no way interfered with petitioner's exclusive customs lien upon the goods for payment of duties and charges nor in any way made it the bailee of the private parties-litigants disputing the right of ownership and possession of the goods once freed from customs lien upon the payment of all duties and charges thereon. Once the goods had been ordered released by the customs officials, as they actually did in the case at bar, upon payment of the corresponding duties and charges, no customs lien barred the goods from being taken *manual delivery* of and hence the sheriff could then properly execute respondent court's attachment order "by taking and safely keeping [such goods] in his capacity, after issuing the corresponding receipt therefor." Prior to discharge of the customs lien and payment of duties and charges, the said goods were, in the contemplation of sub-section (e) of Section 7, Rule 57 of the Rules of Court, "personal property not capable of manual delivery" and so the sheriff could not, as he did not, take possession and safekeeping thereof but merely left with the customs officials a copy of the attachment order and *notice* that the goods in their possession and under their control belonging or consigned to *Los Hijos* were attached in pursuance of such order. The customs officials thereby became obligated as *garnishees* under Rule 57, Section 8, once they had lost their customs lien over the goods with the payment of the duties and charges, not to release the goods to *Los Hijos* or any other person but to the sheriff or other proper officials of the court issuing the attachment.

To hold that customs officials may not in law be served attachment or garnishment orders for the retention and delivery in due course to the sheriff of the attached or garnished goods once freed of customs lien with

the payment of the duties and charges due thereon, or in short, to hold that the questioned attachment order was "not binding upon the officials of the bureau of customs" would be to make the customs officials a special class exempt from having to comply, as any other government officials or private citizens, with the legal processes of the courts.

On an altogether different ground, Justice Teehankee objected to the order of release of the goods to *Los Hijos*. He argued that the goods were apparently imported without compliance with the pertinent Central Bank circulars, since only an application for their exemption as a purported donation was made with the Department of Finance which denied the same on the ground that the shipment was in commercial quantity. The goods, therefore, fell under the category of prohibited importations which were subject to *forfeiture* under our tariff and customs code and not subject to redemption or release as stressed by the Court in *Geotina v. Court of Tax Appeals*.[18]

Justice Zaldivar concurred in the dissenting opinion of Justice Teehankee.

Justice Barredo wrote a separate dissenting opinion. In his view, there was no law or principle against allowing a notice of garnishment upon customs officials holding imported goods subject to tax, for the simple reason that a garnishment did not purport to withdraw the importation from the custody of the customs authorities without regard to the importer's duty to pay and the government's right to collect the corresponding duties and taxes, since it was understood that until these were paid, the importer did not become entitled to the possession of the goods, and garnishment could only affect properties that were unquestionably due to the party against whom the order of attachment had been issued. Indeed what bothered Justice Barredo about the main opinion was that Tinsay was being denied a reasonable and legal remedy that did no real violence and constituted no obstacle to the sovereign authority of the customs officials over collection of import duties and taxes, while at the same time fraud was given a chance to be perpetrated successfully against a party who had invoked the assistance of the court.

5. *Miscellaneous*

Judicial recognition was accorded Presidential Decree No. 68, dated November 24, 1972, granting amnesty to taxpayers with delinquent tax accounts, in the cases of *Flores v. Court of Tax Appeals*,[19] and *Philippine Fiber Processing Company v. Commissioner of Internal Revenue and Court of Tax Appeals*.[20] These cases, which involved deficiency income

[18] G.R. No. L-33500, August 30, 1971, 40 SCRA 362 (1971).
[19] G.R. No. L-24186, May 31, 1973, 51 SCRA 159 (1973).
[20] G.R. No. L-27212, August 31, 1973, 52 SCRA 379 (1973).

taxes, were dismissed as having become academic and moot by the availment on the part of the taxpayers concerned of the terms and conditions of the tax amnesty granted by the Presidential Decree.

MUNICIPAL TAXATION

Percentage or sales tax

Pursuant to Section 2 of Republic Act No. 2264 (The Local Autonomy Act), municipalities and municipal districts have no power to impose any "percentage tax on sales or other taxes in any form based thereon nor impose taxes on articles subject to specific tax." In an earlier case[21], it was held by the Supreme Court that a graduation of a municipal license tax based upon the taxpayer's volume of business, when the same is considered solely for purposes of classification, and there is no set ratio between said volume and the amount of the tax, does not render the latter invalid as a sales, percentage or specific tax.

In *San Miguel Corporation v. Municipal Council of Mandaue,*[22] the Municipality of Mandaue, Cebu, adopted an ordinance imposing "a graduated quarterly fixed tax based on the gross value of money or actual market value at the time of removal of the manufactured articles from their factories or other manufacturing or processing establishments" in accordance with a schedule which started at ₱5.00 per quarter where the quarterly gross value was less than ₱1,250.00 and reached ₱160.00 plus ₱0.30 for each ₱1,000.00 or fraction thereof in excess of ₱37,500.00 quarterly gross value.

Petitioner, a domestic corporation engaged in the business of manufacturing beer and other products with a subsidiary manufacturing plant in Mandaue, paid the taxes prescribed in the aforesaid ordinance, under protest thus: ₱309.40 on January 22, 1968 and ₱5,171.80 as of July 18, 1968, computed respectively on the basis of 70,412 and 2,203.070 cases of beer manufactured and removed from its Mandaue plant, multiplied by ₱7.60 which was the prevailing market price (wholesaler's price) per case of beer at the time of the removal.

In assailing the validity of the ordinance, the petitioner contended that (1) the phrase "gross value in money or actual market value" employed in the questioned ordinance clearly referred to "sales or market price" of the articles or commodities manufactured thereby indicating a manifest intent to impose a tax based on sales, and (2) that to impose a tax upon the privilege of manufacturing beer, when the amount of the tax was measured by the gross receipts from its sales of beer, was the same as imposing a tax upon the product itself.

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[21] Cebu Portland Cement Co. v. Municipality of Naga, Cebu, G.R. No. L-20496, February 26, 1972, 43 SCRA 275 (1972).

[22] G.R. No. L-30761, July 11, 1973, 52 SCRA 43 (1973).

Respondent, on the other hand, insisted that the tax imposed by the questioned ordinance (1) was not a percentage tax or a tax on the sales of beer but a tax on the privilege to engage in the business of manufacturing beer, and the phrase "actual market value" was merely employed as a basis for the classification and graduation of the tax sought to be imposed; and (2) that it was not a specific tax because it was not a tax on the beer itself, but on the privilege of manufacturing beer.

The Supreme Court found that the tax was a percentage or sales tax and therefore it was imposed by the municipality in excess of its authority under the law which prohibited municipalities from imposing such taxes.[23] Explained the Court:

> "Well settled is the rule that in the absence of legislative intent to the contrary, technical or commercial terms and phrases, when used in tax statutes, are presumed to have been used in their technical sense or in their trade or commercial meaning. Thus, the phrase '*gross value in money*' has a well-defined meaning in our tax statutes. For instance the term 'gross value in money' of articles sold, bartered, exchanged or transferred, as used in Sections 184, 185 and 186 of the National Internal Revenue Code, has been invariably used as equivalent to 'gross selling price' and has been construed as the total amount of money or its equivalent which the purchaser pays to the vendor to receive or get the goods. It must be noted that the ordinance specifically provides that the basis of the tax is the 'gross value in money or actual market value' of the manufactured article.
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> "The phrase 'actual market value' has been construed as the price which an article 'would command in the ordinary course of business, that is to say, when offered for sale by one willing to sell, but not under compulsion to sell, and purchased by another who is willing to buy, but under no obligation to purchase it, or the price which the property will bring in a fair market after fair and reasonable efforts have been made to find a purchaser who will give the highest price for it.' The 'actual market value' of property, for purposes of taxation, therefore means the selling price of the article in the course of ordinary business.
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> "Considering that the phrase 'gross value in money' is followed by the words 'or actual market value', it is evident that the latter was intended to explain and clarify the preceding phrase. For the word 'or' may be used as the equivalent of 'that is to say' and gives that which precedes it the same significance as that which follows it. It is not always disjunctive and is sometimes interpretative or expository of the preceding word. x x x
>
> "It is also significant to note, that there is a set ratio between the amount of the tax and the volume of sales. Thus if the 'gross value in money or actual market value' of the beer removed from the factory exceeds ₱37,500.00 per quarter, the taxpayer is required to pay a quarterly license tax of ₱160.00 plus ₱0.30 for every ₱1,000.00 or

[23] Republic Act No. 2264 (1959), section 2.

> fraction of the excess. In other words, in excess of ₱37,500.00, the taxpayer will pay to the municipality a certain amount of tax measured by a percentage of the sales. It is therefore evident that the challenged ordinance was a transparent attempt on the part of the municipality to impose a tax based on sales."

The Court further added that the circumstance that the tax was imposed upon petitioner at the time of removal from the factory of the manufactured beer, and not on the date of actual sale, was not of important consequence since petitioner would, in the end, sell the beer removed from the factory because by the nature of its business, it had no alternative but to sell what it had manufactured.[24]

The respondent also contended that the appeal had become moot in view of the conversion of Mandaue into a city on June 21, 1969, and the prohibition against the imposition of percentage or sales taxes applying to municipalities only. In rejecting the contention, the Supreme Court said that the legality of the questioned ordinance depended upon the power of the municipality at the time of its enactment. Since the municipality of Mandaue had no authority to enact the said ordinance, the subsequent approval of Republic Act No. 5519 which became effective on June 21, 1969, did not remove the original infirmity of the ordinance. Indeed there was no provision in the aforecited statute which invested a curative effect upon the ordinance of the municipality which when enacted was beyond its statutory authority.

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[24] Citing Laoag Producers' Cooperative Marketing Association, Inc. v. Municipality of Laoag, G.R. No. L-27498, February 24, 1971, 37 SCRA 594 (1971).