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WHEREFORE, modified only to set aside and vacate the award of US $3,196.00 for attorney's fees made in the decision of the POEA and affirmed in the Resolution of the National Labor Relations Commission herein complained of, said Resolution is affirmed, with costs against petitioner NAESS.

SO ORDERED.

Teehankee (C.J.), Cruz, Paras, and *Gancayco, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-46644. September 11, 1987]

COMMISSIONER OF INTERNAL REVENUE, *petitioner*, *vs.* **ISLAND GARMENT MANUFACTURING CORPORATION and THE COURT OF TAX APPEALS**, *respondents*.

SYLLABUS

1. TAXATION; COMMISSIONER OF INTERNAL REVENUE; APPEAL TO THE COURT OF TAX APPEALS; TIMELINESS THEREOF; CASE AT BAR.— Being a valid request for reconsideration, the letter of 23 September 1969 suspended the running of the period for the perfection of an appeal. As stated in Section 11 of Rep. Act No. 1125, the period for the perfection of an appeal to the Court of Tax Appeals is thirty (30) days from receipt of an adverse decision or ruling of the Commissioner of Internal Revenue, Collector of Customs or any provincial or city Board of Assessment Appeals. In the instant case, the appealable decision is the letter of the petitioner dated 8 August 1969. The respondent corporation received this letter on 23

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September 1969, and, on 9 October 1969, or after the lapse of sixteen (16) days, the corporation filed the written request for reconsideration, also dated 23 September 1969. Since the time during which a motion for new trial or reconsideration has been pending, is deducted from the period for perfecting an appeal, the period to appeal began to run again on 18 February 1970, when the respondent corporation received a copy of the Final Notice Before Seizure, dated 20 November 1969. From 18 February 1970 to 26 February 1970, when the respondent corporation filed its petition for review with the Court of Tax Appeals, only eight (8) days had elapsed. Tacking these eight (8) days to the sixteen (16) days previously used, only twenty-four (24) days, out of the thirty (30) day period, had been consumed. The appeal was, therefore, timely filed.

2. ID.; ASSESSMENT; MUST BE BASED ON ACTUAL FACTS; REASON; CASE AT BAR. — The basis of respondent corporation's deficiency income and advance sales taxes for 1962 and 1963 was held by petitioner to be the overdeclaration of its re-exportation of finished embroidered goods. This discrepancy was arrived at by the petitioner after an inspection of the boxes in which the finished goods were packed and concluding through "mathematical computations" that it was impossible for respondent corporation to re-export back in said boxes the total number of pieces it claims to have manufactured. In disposing of petitioner's contention, respondent Court held that "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 . . . An assessment fixes and determines the 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. . ." We find respondent Court's reasoning to be well-taken.

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DECISION

PADILLA, *J.*:

This is a petition for review on *certiorari* of the decision* of the Court of Tax Appeals, dated 22 June 1977, in CTA Case No. 2070, reversing the decision of the Commissioner of Internal Revenue which found private respondent Island Garment Manufacturing Corporation liable for the payment of advance sales tax, deficiency income tax, surcharges, interest and compromise penalties, totalling ₱627,189.94.

Private respondent Island Garment Manufacturing Corporation (respondent corporation, for short), a corporation organized and existing under the laws of the Philippines, is duly licensed and operating under Republic Act No. 3137, commonly known as the Embroidery Law.[1] It imports raw materials, such as, textile fabrics and cotton piece goods for manufacture into finished garments which it then re-exports back to its foreign suppliers under the supervision of the Embroidery and Apparel Control and Inspection Board (Embroidery Board, for short) and the Bureau of Customs. In turn, it receives from its foreign suppliers an amount representing labor costs, overhead expenses and margin profits.[2]

Pursuant to Republic Act No. 3137, all importations of textile fabrics received by respondent corporation are exempt from duties and special import taxes. However, its net income as embroidery contractor consisting of payments received from foreign suppliers is subject to income tax.

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* Penned by Judge Amante Filler, with the concurrence of Judge Constante C. Roaquin.

[1] Rep. Act No. 3137 (1961), "An Act Creating an Embroidery and Apparel Control and Inspection Board Covering Control, Issuance of Embroidery Permits, and Inspection of Conditionally Tax-Free Raw Material Importations By Local Embroidery Apparel Manufacturers and the Corresponding Liquidation of Re-Exportations thereof as Philippine-Made Embroideries and Apparels."

[2] *Rollo*, p. 10.

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On 21 October 1964 and 24 February 1965, petitioner Commissioner of Internal Revenue, through his agents, had the respondent corporation investigated for tax liabilities for the years 1962 and 1963. Respondent corporation was subsequently assessed ₱335,787.93 representing deficiency income tax for 1962 and 1963, and ₱291,402.01 representing advance sales tax, for textiles allegedly sold in the local market instead of being re-exported back to respondent corporation's foreign suppliers as finished goods, in accordance with said Rep. Act No. 3137. The assessments were contained in demand letters dated 25 October 1965, and 27 October 1965.[3]

Respondent corporation protested the assessments in letters dated 11 November 1965 and 27 September 1966.[4] In view of the said protest, the case was heard by the Appellate Division of the Bureau of Internal Revenue, after which, the Hearing Officer recommended the cancellation of assessments against respondent corporation. The petitioner, however, denied the protests, despite this recommendation, and reiterated his demand for payment in a letter dated 8 August 1969.[5] The respondent corporation received a copy of said letter on 23 September 1969 and on 9 October 1969, the corporation wrote the petitioner a letter, disputing the letter dated 8 August 1969.[6] Then, on 18 February 1970, the respondent corporation received from the petitioner a Final Notice Before Seizure, dated 20 November 1969,[7] and on 26 February 1970, it filed with the respondent Court of Tax Appeals a petition for review, disputing the petitioner's assessments. After hearing, the respondent court reversed the petitioner's decision and absolved the respondent corporation from liability.[8] Hence, the present recourse.

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[3] *Id.*, pp. 47, 48.

[4] *Id.*, pp. 50, 52.

[5] *Id.*, p. 61.

[6] *Id.*, p. 65.

[7] *Id.*, p. 67.

[8] *Id.*, p. 75.

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The issues, for resolution, are:

1) whether or not respondent corporation filed its appeal with the Court of Tax Appeals within the thirty-day period prescribed in Section 11 of Rep. Act No. 1125, the Act Creating the Court of Tax Appeals; and

2) whether or not respondent corporation is liable to pay the sum of ₱335,787.93 and ₱291,402.01, or a total of ₱627,189.94, as deficiency income tax and advance sales tax on importations made in 1962-1963 allegedly not re exported back totally as finished garments and embroidered goods to its foreign suppliers, as required by law.

As to the first issue —

Sec. 11, Rep. Act No. 1125 provides:

"Sec. 11. Who may appeal; effect of appeal. — Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.

"No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: Provided, however, That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and or the taxpayer the court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court."

The parties do not disagree that the decision of the Commissioner of Internal Revenue from which an appeal can be taken to the Court of Tax Appeals is his letter dated 8 August 1969, received by respondent corporation on 23 September 1969, which denied respondent corporation's protest. They differ,

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however, as to whether respondent corporation's letter dated 23 September 1969 questioning, among other things, petitioner's use of "mathematical computation" to ascertain respondent corporation's re-exports and justify his assessments, amounted to a motion for reconsideration which interrupted the running of the thirty-day period for appeal. The letter is reproduced, as follows:

"September 23, 1969

The Honorable,
The Commissioner, Bureau of Internal Revenue
Manila

Dear Sir:

We have on hand today your letter of August 8th relative to the alleged Income Tax deficiency and penal liabilities inuring to our firm for the years 1962 and 1963 which have been a subject of proceedings in the Bureau of Internal Revenue since June 15, 1967.

The facts of this case have been well stated and the Legal Department of the Bureau of Customs have cleared us of liabilities for our importations during the years 1962 and 1963.

"The Examiners of the Bureau of Internal Revenue however contends that our exportations for those years above mentioned our overstated, it being impossible, based on mathematical computation to export those quantities of raw materials but that 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 from the complete papers and documents for our exports in the years 1962 and 1963. Their findings was never based on actual physical counting of stocks or occular inspection of representative stocks and its packaging in cartoons and boxes.

"There was no question however, that our exportation have been duly and regularly passed upon and have been done in the manner within the requirement of law, rules and regulations of the Embroidery Board, for short, and of the Bureau of Customs, in the course of the proceedings.

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"The question then that will arise is whether the Bureau of Internal Revenue, its agents or examiners, could question the prerogative and legitimate acts of the Embroidery and Apparel Control & Inspection Board especially as to exports of embroidery firms duly registered with it under the provisions of RA 3137. The last paragraph of Sec. 2, RA 3137 reads and we quote:

> "The Board shall have the overall control and shall administer the checks and counterchecks of consigned textiles, leather gloves raw materials and or supplies to Embroidery and Apparel manufacturers and corresponding checks for liquidate of goods prior to exportation. No other governments instrumentality or agency shall be authorized to qualify or question the validity of license so issued by the Board. Questions of legality and or questions of validity and interpretation of any license so issued shall be decided exclusively by the Board subject to appeal to courts of competent jurisdiction."

and Sec. 1603 of RA 3137 reads and we quote:

> "Finality of liquidation — When articles have been entered and passed upon free of duty or final adjustment of duties made, with subsequent delivery, such entry and passage free of duty or settlement of duties will, after the expiration of one year will, from date of final payment of duties in the absence of fraud or protest be final and conclusive upon all parties unless the Liquidation of the import entry was merely tentative."

"Viewed from the context of those two controlling legal provisions of law, it is clear that nowhere could it be said that the Bureau of Internal Revenue, its agents or examiners, have such authority to question the propriety of actions of the Embroidery Board and the Bureau of Customs, if the same were preceeded within their legitimate powers as in this instant case nor to question the validity of exportation if the same have been made after the expiration within the one year period have been made but which was never done in this instant case.

"From the foregoing therefore, with a heavy heart, much to our regret, we can not accede to your request under the rules of law. We have always been most vocal for a plea of developing this infant garment export trade among our national and we do believe as advocated by this administration that we deserve some encouragement, incentives but not harassment as we are in now.

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"We close with the hope that you will see our way clear and find this to merit your utmost consideration, we are.

Very truly yours,

(SGD.) ENRIQUEZ G. JOCSON
President"[9]

The petitioner contends that the afore-quoted letter is *pro forma*, while the respondent corporation maintains that it was a valid request for the reconsideration of the petitioner's letter dated 8 August 1969 and, therefore, suspended the period for the filing of an appeal.

We find the letter dated 23 September 1969 to the petitioner a valid request for the reconsideration of the letter dated 8 August 1969 since it raises new and valid issues. We quote with approval the following disquisition of the respondent Court of Tax Appeals:

"A request for reconsideration of the decision of respondent is *pro forma* if it merely reiterates the ground 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 6, 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 assessments 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 [sic] exportation of the finished products and liquidation of import entries pursuant to Section 1603 of the Tariff and Customs Code; (4) efficacy of the certification and or reports of the agents and or Examiners of respondent that raw materials imported in 1962 and 1963, the years

[9] *Id.*, p. 65.

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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 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." x x x 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 Embroidery and Apparel Control and Inspection Board and the Bureau of Customs in clearing petitioner of liabilities for its importations 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*

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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."

Being a valid request for reconsideration, the letter of 23 September 1969 suspended the running of the period for the perfection of an appeal. As stated in Section 11 of Rep. Act No. 1125, the period for the perfection of an appeal to the Court of Tax Appeals is thirty (30) days from receipt of an adverse decision or ruling of the Commissioner of Internal Revenue, Collector of Customs or any provincial or city Board of Assessment Appeals. In the instant case, the appealable decision is the letter of the petitioner dated 8 August 1969. The respondent corporation received this letter on 23 September 1969, and, on 9 October 1969, or after the lapse of sixteen (16) days, the corporation filed the written request for reconsideration, also dated 23 September 1969. Since the time during which a motion for new trial or reconsideration has been pending, is deducted from the period for perfecting an appeal, the period to appeal began to run again on 18 February 1970, when the respondent corporation received a copy of the Final Notice Before Seizure, dated 20 November 1969. From 18 February 1970 to 26 February 1970, when the respondent corporation filed its petition for review with the Court of Tax Appeals, only eight (8) days had elapsed. Tacking these eight (8) days to the sixteen (16) days previously used, only twenty four (24) days, out of the thirty (30) days period, had been consumed. The appeal was, therefore, timely filed.

As to the second issue —

The basis of respondent corporation's deficiency income and advance sales taxes for 1962 and 1963 was held by petitioner to be the overdeclaration of its re-exportation of finished embroidered goods, computed as follows:

(a) Overdeclared exportations in 1962 —657,076.66 yds.

(b) Overdeclared exportations in 1963 — 227,140.76 yds.

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(c) Unsupported exportations in 1963 — 494,223.40 yds.

TOTAL DISCREPANCY - - - - - 1,378,440.82 yds.[10]

This discrepancy was arrived at by the petitioner after an inspection of the boxes in which the finished goods were packed and concluding through "mathematical computations" that it was impossible for respondent corporation to re-export back in said boxes the total number of pieces it claims to have manufactured.

In disposing of petitioner's contention, respondent Court held:

"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 [in averring] that the raw material discrepancies in yards, [were] arrived at by mere inferences and presumptions, [and] 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 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). x x x" Likewise, it is already

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[10] *Rollo*, p. 23.

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a well established doctrine that fraud cannot be presumed but must be proven. (*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 feet to 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 227,140.75 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 channeled to the local market the discrepancy in yards between what was declared for export and what was *presumed* to be actually exported as finished products.

"Of importance here is the kind and nature of the garments manufactured and exported by petitioner. They consist, among others, of ladies blouses, ladies pajamas, children's dresses, men's and boy's polo shirts and neglegee, 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.

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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 bonds were 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 and 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."

We find respondent Court's reasoning to be well-taken. As held in *Collector of Internal Revenue vs. Benipayo*:[11]

"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, assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be x x x."

In order to stand the test of judicial scrutiny, 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 x x x."

WHEREFORE, the petition is dismissed. The decision appealed from is hereby affirmed. No costs

SO ORDERED.

Yap (Chairman), Melencio-Herrera, Paras, and *Sarmiento, JJ.*, concur.

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[11] G.R. No. L-13656, 31 January 1962, 4 SCRA 182, 185.