



Republika ng Pilipinas
PANGASIWAAN NG DAUNGAN NG PILIPINAS
(PHILIPPINE PORTS AUTHORITY)
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23 November 1981

PPA MEMORANDUM CIRCULAR
NO. 28-81

T O : All Port Managers
Arrastre/Stevedoring Operators
Port Users and Others Concerned

SUBJECT : Arrastre/Stevedoring Operators'
Contractors Tax

For the information, reference and guidelines of all concerned, quoted hereunder is the full text of BIR Ruling No. 234-81 dated November 18, 1981, clarifying its former BIR Ruling No. 62-80 relative to 3% Contractor's Tax dated December 22, 1980, to wit:

"Philippine Ports Authority
5th Floor, BF Condominium
Aduana, Intramuros
Metro Manila

Attention: Mr. Maximo S. Dumlao, Jr.
Assistant Executive Officer

Gentlemen:

This refers to your letter dated August 27, 1981, requesting clarification on BIR Ruling No. 62-80 dated December 22, 1980 which states that an arrastre operator can legally pass on to its customer the 3% contractor's tax prescribed in Section 205 of the Tax Code of 1977, as amended.

In reply, I have the honor to inform you as follows:

1. Although this Office has ruled that the contractor can legally pass on the 3% contractor's tax to the customers, the latter is not obliged to absorb the tax. However, it is noted that the tax is a part

of the consideration which is fixed by the parties only.

"Many years ago, Mr. Justice Oliver Wendell Holmes expressed dissatisfaction with the use of the phrase 'pass the tax on'. Writing the opinion of the U. N. Supreme Court in Lash's Products v. United States, he said: The phrase 'passed the tax on' is inaccurate, as obviously the tax is laid and remains on the manufacturer and on him alone. The purchaser does not really pay the tax. He pays or may pay the seller more for the goods because of the seller's obligation, but that is all. *** The price is the sum total paid for the goods. The amount added because of the tax is paid to get the goods and for nothing else. Therefore, it is part of the price***." (Philippine Acetylene Co. vs. Commissioner, G.R. No. L-19707, August 17, 1967)

Consequently, whether or not the customer should absorb the tax is a matter which he and the contractor should decide between themselves.

2. In case the customer refuses to be billed on the 3% contractor's tax, that Authority cannot enforce the collection thereof from said party. This is so because, as herein abovestated, the billing of the tax to the customer is a matter which should be decided by the parties themselves (Underscorings supplied).


Very truly yours,

(Sgd.) RUBEN B. ANCHETA
Acting Commissioner"

This amplifies the previous guidelines on the treatment of the 3% contractor's tax contained in PPA Memorandum Circular No. 07-81 dated April 22, 1981.

Please be guided accordingly.

By authority of the General Manager


MAXIMO S. DUMLAOG JR.
Assistant Executive Officer

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