

CONSUELO P. BORJA, PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-12134. November 30, 1961

Ponente: PAREDES, J.

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PAREDES, J.:

Petitioner Consuelo P. Borja is a grantee of a legislative franchise, by virtue of Act No. 3810, approved on December 6, 1930, to maintain and operate an electric light, heat and power system in the municipality (now City) of Higan, Province of Lanao. During the years 1953, 1954 and 1955, the petitioner imported from Japan electrical materials and equipment such as wires, insulators, transformers, conductors, etc. on which compensating tax in the amount of P4,104.25 was paid to respondent Collector of Internal Revenue. In her letter of April 21, 1955, petitioner sought the refund of the amount of P3,977.62 only. Before the claim for the refund could be acted upon by the respondent Collector, the petitioner, on November 26, 1955, filed with the Court of Tax Appeals, a petition for review. On December 20, 1955, said respondent filed his answer. The Court of Tax Appeals rendered a decision, denying petitioner's claim for refund of the said amount, against which, the petitioner interposed the present appeal.

The dominant issue posed is: Whether or not petitioner is exempt from the payment of the compensatory tax prescribed in section 190 of the Tax Code, on the electrical transmission materials and equipment she imported and used in connection with her business of furnishing electric light in Iligan City, under the provisions of her franchise, Act No. 3810 and Act No. 3636, incorporated thereto by reference. Petitioner contends she is. Respondent says otherwise.

Section 1, of Act No. 3810, provides —

"SEC. 1. Subject to the rules and conditions established in Act Numbered Thirty-Six hundred and thirty-six, there is hereby granted to Consuelo P. Borja, for a period of fifty years from the approval of this Act, the right, privilege and authority to construct, maintain and operate an electric light, heat and power system for the purpose of generating and distributing electric light, heat and power, for sale within the limits of the municipality of Iligan, Province of Lanao, Philippine Islands."

The pertinent portion of Act No. 3636 (Model Electric Light and Power Franchise Act), provides as follows:—

"SEC. 10. The grantee shall pay the same taxes as are now or may hereafter be required by law from other individuals, copartnerships, private, public or quasi-public associations, corporations, or joint-stock companies, on his (its) real estate, buildings, plants, machinery; and other personal property, except property declared exempt in this section. In consideration of the franchise and rights hereby granted, the grantee shall pay into the municipal treasury of the (of each) municipality in which it is supplying electric current to the public under this franchise, a tax equal to two per centum of the gross earnings from electric current sold or supplied under this franchise in said (each) municipality. Said tax shall be due and payable quarterly and shall be in lieu of any and all taxes of any kind, nature or description levied, established, or collected by any authority whatsoever,

municipal, provincial or insular, now or in the future, on its poles, wires, insulators, switches; transformers and structures, installations, conductors, and accesories, placed in and over and under all public property, including public streets and highways, provincial roads, bridges and public squares, and on its franchise, rights, privileges, receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted."

In view of the last portion of the section just quoted, petitioner claims that she is exempt from any and all taxes, compensating tax inclusive, upon payment of the franchise tax.

The case of the Panay Electric Co. vs. Collector of Internal Revenue, G. R. No. L-6753, July 30, 1955 would help Us in resolving the point in controversy. The franchise of the Panay Electric Co. (Act No. 2983, as amended by Act No. 3665), is identical with the franchise of petitioner herein, and was also subject to the terms and conditions of Act No. 3636. Speaking thru Mr. Justice Alex. Reyes, this Court in said case, declared—

"* * * Exemption from the tax is claimed by petitioner by virtue of section 8 of its franchise—Act Ho. 2983, approved October 22, 1921, as amended by Act No. 3665, approved December 7, 1929— which reads:

'SEC. 8. * * * Said percentage shall be due and payable quarterly and shall be lieu of all taxes of any kind levied, established, or collected by any authority whatsoever, now or in the future, on its poles, wires, insulators, switches, transformers and other structures, installations, conductors, and accessories placed in and over the public streets, avenues, roads, thoroughfares, squares, bridges, and other places on its franchise, from which taxes the grantee is hereby expressly exempted.'

"It is contended, in the first place, that the above provision of its charter exempts petitioner from paying taxes on its installations, whether on a public or private place, and in the second place, that the exemption extends to petitioner's alleged right or privilege to purchase abroad equipment needed by its electric plant.

As to the first contention, it is enough to point that the protested tax is not one upon installations, that is to say, upon the privilege of using public streets and other public places in a way different from the way they are used by the public in general. The protested tax is a compensating tax levied upon articles purchased abroad but used in the Philippines. The tax not being one upon installations, all discussion as to whether those articles are installed on a public or private place is immaterial.

As to the second contention, the rights and privileges which the above provision exempts from taxation refer to those which are not enjoyed by the public in general, but only by the grantee of a franchise. They therefore do not include the common right or privilege of every citizen to make purchases anywhere.

In this connection, we must not loss sight of the purpose for which the compensating' tax has been instituted. That purpose is explained in the report of the Tax Commission that proposed the tax, as follows:—

'The purpose of this proposal is to place persons purchasing goods from dealers doing business in the Philippines on an equal footing, for tax purposes, with those who purchase goods directly from without the Philippines. Under the present tax law, the former bear the burden of the local sales tax because it is shifted to them as part of the selling price demanded by the local merchants, while the latter do not. The proposed tax will do away with this inequality and render justice to merchants and firms of all nationalities who are in legitimate business here, paying taxes wid giving employment to a large number of people.'

"If petitioner had purchased the equipment in question in the Philippines, there would be no question that it would have to bear the burden of the sales tax, because the same would have to be added to the purchase price by the dealer, and petitioner might not escape the burden by invoking the exemptions granted in its franchise. There would appear to be no good reason why petitioner should be allowed to elude that burden by exempting it from paying compensating tax when it purchases equipment abroad. And it should be noted in this connection that petitioner is expressly required by its charter to pay on its 'real estate, buildings, plant, machinery, and other personal property the same taxes as are now or may hereafter be required by law from

other persons' (Sec. 14, Act. No. 2985, as amended by Act No. 3665). The tax on personal property purchased or received from abroad, or the compensating tax, comes quite clearly within the description."

Considering, therefore, the fact that section 190 of the Tax Code is a sort of an equalizer, to place casual importers, who are not merchants on equal footing with established merchants who pay sales tax on articles imported by them (I Report of the Tax Commission, p. 75; II same Report, p. 205; see also Alejandro's *The Law on Taxation*, 1961 Ed., 435). We may conclude that it was not the intention of the law to exempt the payment of compensating tax on the personal properties in question. The principle and legal philosophy underlying the imposition of compensating tax, as enunciated in the above case, are fundamentally correct and no plausible reason is advanced for their non-application to the case at bar.

Petitioner, however, alleges that the Panay Electric Company case, is not controlling, there being, according to her, some instances of dissimilarity, between said case and the one at bar. She argues that since the generators and switch boards imported by the Panay Electric Company were installed in its electric plant, said company's application for refund was properly denied and that since what was imported by herein petitioner, which were taxed by the respondent, were articles expressly enumerated in the exempting proviso of the franchise, the taxes in question should be refunded. What was expressly exempted in the present case, was the taxes for installations; not the taxes for importation (compensating tax). The two cases may vary to a certain degree but the legal principles treating on similar points of controversy in both, remains stable and settled. To hold otherwise, is to infringe the deeply rooted legal principle of *stare decisis*. The issue involved in both cases is the same; that is—the question of exemption from compensating tax on imported goods or articles. The case of *Carcar Electric & Ice Plant Co. vs. Coll. of Int. Rev.* (100 Phil., 50; 53 Off. Gaz., [4] 1068), relied upon by herein petitioner, treats of income tax and has no bearing whatsoever on the issue involved herein. This Court therein declared; "The case of *Panay Electric Co. vs. Collector of Internal Revenue* (G. R. No. L-6753, July 30, 1955), also invoked by the Collector involved compensating taxes that could not affect receipts, revenues and profits expressly exempted from taxation in the case before us" (Resolution on the motion for reconsideration (53 Off. Gaz., 1068, Jan. 28, 1957). Moreover, the petitioner's alleged exemption from the payment of compensating tax in the present case is not clear or expressed; unlike the exemption from the payment of income tax which was clear and expressed in the *Carcar* case. Unless it appears clearly and manifestly that an exemption is intended, the provision is to be construed strictly against the party claiming exemption. It is held that "exemptions from taxation are highly disfavored in law; and he who claims exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implication (*Asiatic Petroleum Co. vs. Llanes*, 49 Phil., 466; see also *House vs. Posadas*, 53 Phil., 338)". (*Collector of Int. Revenue vs. Manila Jockey Club, Inc.*, 98 Phil., 670).

The statement that a franchise being in the nature of a private contract, can not be impaired, once accepted, is, indeed, a familiar rule. It is a fact, however, that the imposition of the compensating tax in the present case, is more of an implementation of the petitioner's franchise than an impairment thereof; it is in consonance with the logical interpretation of the principles underlying the general Rules of Taxation, as heretofore expounded.

In view hereof, the petition for review is dismissed, and the decision appealed from, hereby, is affirmed en toto, with costs against the petitioner.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Dizon and De Leon, JJ., concur.

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