

COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. JUNIOR WOMEN'S CLUB OF THE PHILIPPINES, RESPONDENT.*G.R. No. L-6992. February 28, 1956*

Ponente: BAUTISTA ANGELO, J.

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The Junior Women's Club of the Philippines, a subsidiary unit of the National Federation of Women's Club of the Philippines a registered, charitable organization, held a cultural pageant at the Fiesta Pavilion of the Manila Hotel on September 20, 1952. The pageant which was advertised as "Malayan Festival" included as a main feature a benefit dance and as a privilege to take part in its admission tickets were issued to the public at the rate of P5 each. The amount collected as admission fees was ₱1,355 and the Collector of Internal Revenue assessed thereon the sum of ₱150.42 as amusement tax pursuant to the provisions of the first paragraph of section 260 of the National Internal Revenue Code, in relation to section 261 of the same Code, as amended by Republic Act No. 586. The Junior Women's Club paid the tax as assessed but later on it requested for the refund of the amount of ₱82.67 claiming it to be an overpayment. This claim having been denied, the Junior Women's Club elevated the case to the Board of Tax Appeals (now Court of Tax Appeals), which rendered a decision in favor of the club. The Collector of Internal Revenue interposed the present appeal.

The amusement tax in question was collected under section 260 in relation to section 261, of the National Internal Revenue Code. Section 261 provides that "Where the admission fees or charges are collected by or for and in behalf of a duly registered charitable institution or association, the tax on such admission fees or charges shall be fifty per centum of the rates provided in section two hundred and sixty of this Code." And section 260 provides that an amusement tax shall be collected from a proprietor, lessee, or operator of theaters, cinematographs, concert halls, circuses, boxing exhibitions and other places of amusement, fixing the rates to be paid upon the amounts paid for admission to said places. Said section also provides for a similar tax to be paid by the proprietor, lessee or operator of cockpits, cabarets and night clubs, and the rates are to be fixed on the gross receipts from the admission to said places. For ready reference, we are quoting hereunder the pertinent provisions of section 260:

"Sec. 260. Amusement taxes.—There shall be collected from 'the proprietor, lessee, or operator of theaters, cinematographs, concert halls, circuses, and other places of amusement the following taxes:

"(i) When the amount paid for admission exceeds ninety-nine centavos, the tax will be thirty per Centum.

In the case of cockpits, cabarets, and night clubs, there shall be collected from the proprietor, lessee, or operator a tax equivalent to ten per centum, and in the case of race-tracks, twenty per centum of the gross receipts, irrespective of whether or not any amount is charged or paid for admission: * * *."

Appellant contends that when appellee held its Malayan Festival at the Fiesta Pavilion of the Manila Hotel charging certain fees for admission to the show, it became taxable under the aforequoted first paragraph of section 260 because it comes within the purview of the phrase "lessee ... of ... other places of amusement." Appellee on the other hand contends that it comes under the third paragraph of the aforequoted section because in holding such

festival it became a lessee of a night club. The Board of Tax Appeals, in upholding the view of appellee, went further by saying that it was not merely a lessee but an operator of a night club run in the form of "a cabaret style party" and ordered the refund of the amount claimed.

We agree with the Secretary of Justice in his opinion on the nature and character of the Manila Hotel rendered on December 10, 1951 to the Administrator of the Economic Cooperative Administration to the effect that "hotel is one which furnishes a traveler with lodging in addition to food and drinks", and that a night club is a "place or establishment selling to the public food or drinks, where the customers are allowed to dance", following the definition given to said club in Executive Order No. 319, series of 1941, issued in connection with the operation of different places of amusement in the Philippines. We also agree ' to the conclusion that the dancing pavilion of the Manila Hotel squarely comes within said definition bec&use it sells food or drinks to the public and its customers are allowed to dance therein. But we disagree with the contention of appellee that it stepped into the shoes of the Manila Hotel as an operator of a night club when it contracted the use of the Fiesta Pavilion for the celebration of its Malayan Festival and, therefore, at should be considered as a lessee or operator of a night club within the purview of the third paragraph of section 260. Evidently, said paragraph contemplates the operation of a certain place of amusement as of business or for profit and not merely for special occasions more or less casual' or circumstantial. In other words, to come under the purview of said paragraph, the place must be used and operated as a night club in Us true sense and not merely for some occasional celebration. Otherwise, the subject of the lease would be merely a place of amusement and in that case it would come under the first paragraph of the same section. In fact, it was only for this specific purpose that the Fiesta Pavilion was leased by appellee, and certainly not for profit . but for charitable purpose. It is therefore erroneous to hold that appellee became the lessee or operator of a cabaret or night club when it leased the Fiesta Pavilion for the celebration of its Malayan Festival on September 20, 1952. The decision appealed from is reversed. The case is dismissed without pronouncement as to costs.

Parás, C. J., Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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