

COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. TOTOY OTEYZA, ET. AL., RESPONDENTS.

G.R. No. L-10290. May 28, 1958

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is a petition for the review of the decision of the Court of Tax Appeals exempting the respondent, Totoy Oteyza, from the payment of amusement taxes including surcharge and penalties prescribed in Section 260, in connection with Section 558, of the National Internal Revenue Code. Said court held that the ballet performances sponsored by respondent Oteyza came within the following provisions of Republic Act No. 728:

"SECTION 1. The holding of operas, concerts, recitals, dramas, painting and art exhibition, and literary, oratorical or musical programs, except film exhibitions and radio or phonographic records thereof, shall be exempt from the payment of any national or municipal amusement tax on the receipts therefrom."

The petitioner maintains that ballet performance is not expressly exempted from the payment of the amusement tax and, under the principle of "expresio unius est exclusio alterius", the enumeration in Republic Act No. 732 should be considered exclusive.

Ballet means a theatrical dance; specially a pantomimic dance executed by a group, especially women; a kind of artistic dancing, marked by a great variety, intricacy, and expressiveness in its movements. (Webster's International Dictionary.) When used without any qualifying adjective or phrase, the term is frequently used to signify art in its higher manifestations, or art par excellence, as it is represented in works of art by those who are distinctively denominated artists. (5 Corpus Juris, p. 568.)

It is conceded that ballet is an art; that under our Constitution (Art. XIV, Sec. 4) arts are under the patronage of the State; that Republic Act No. 722 seeks to implement the constitutional provision. Miss Jovita Fuentes, whose qualification as an expert witness was admitted by counsel for the petitioner, testified that "recital" includes violin, piano, songs and ballet, and that "concert" includes symphony and ballet. Mrs. Trinidad Fernandez-Legarda, another expert witness, in effect testified that an opera, concert or recital refers to a group of people interpreting a story and employing, for instance, a ballet presentation with orchestral accompaniment as the medium of expression or interpretation.

The conclusion is thus inevitable that ballet performance, besides being truly an art, an art par excellence is in fact included in the terms "concert", "opera" or "recital" and therefore exempted from the payment of the amusement tax.

Wherefore, the appealed decision is hereby affirmed without costs. So ordered.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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