

HOA HIN CO., INC., PETITIONER, VS. SATURNINO DAVID, AS COLLECTOR OF INTERNAL REVENUE, RESPONDENT. HOA HIN CO., INC., PETITIONER, VS. SILVERIO BLAQUERA, AS COLLECTOR OF INTERNAL ...*G.R. Nos. L-9616 and 11783. May 25, 1959*

Ponente: PADILLA, J.

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These are petitions, under section 18, Republic Act No. 1125, for review of two judgments rendered by the Court of Tax Appeals on 11 August 1955 (Cebu civil case No. R-3213) and 17 November 1956 (C.T.A. case No. 215) upholding the decisions of the Collector of Internal Revenue which denied the petitioner's claims for refund of taxes paid under the provisions of section 259, Commonwealth Act No. 466, as amended by Republic Acts Nos. 39 and 418. As the two petitions refer to the same franchise taxes the refund of which is sought by the petitioner, the two petitions will be disposed of in a single decision.

G.R. No. L-9616

On 17 July 1953 the petitioner filed a complaint in the Court of First Instance of Cebu seeking the refund of P189,573.36 paid to the defendant in excess of the franchise taxes due on its gross receipts for the period from the last quarter of 1946 to the second quarter of 1953, inclusive (civil No. R-3213), for the reason that under and pursuant to section 7 of its franchise, Act No. 1256, it was bound to pay the Government one-half of one per cent only of the gross receipts derived from the operation of its slipway or marine railway. The respondent filed an answer setting up the defense that the petitioner's claim for refund with respect to any overpayment of such taxes made before 17 July 1951 already had prescribed, because as provided for in section 306 of the National Internal Revenue Code " * * * no such suit or proceeding shall be begun after the expiration of two years and from the date of payment of the tax or penalty;" and that the petitioner's claim for refund as to any overpayment of such taxes from 1 April 1952 to 30 June 1953 cannot be maintained, because as provided for in the same section of the Code "No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, * * *, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; * * *." As counterclaim the respondent prayed that the petitioner be ordered to pay the Government the sums of P4,613.90 as 5 per cent compensating tax due on F92,278, the value of materials purchased and/or received by the petitioner from the United States Army, P245.14 as franchise tax due on gross earnings up to 3 July 1946 and 25 percent surcharge, and P103.06 as franchise tax due on gross earnings from 4 July to 30 September 1946 and 25 per cent surcharge. The petitioner filed an answer to the counterclaim, claiming that although on 15 May 1951 it had paid the compensating and franchise taxes claimed by the respondent to be due from it, as evidenced by Official Receipt No. 19842186, yet the materials it had purchased from the United States Army were not subject to any compensating tax and the franchise tax referred to in paragraph two (2) of the counterclaim is not due the Government or payable by it (the petitioner).

On 28 October 1954 the respondent filed a motion praying that, pursuant to section 7, paragraph 1, and section 22 of Republic Act No. 1125 which took effect on 16 June 1954, the case be certified to the Court of Tax Appeals. On 6 November 1954 the Court of First Instance of Cebu certified the case to the Court of Tax Appeals.

After the parties had submitted their respective evidence and memoranda, on 11 August 1955 the Court of Tax Appeals rendered judgment holding that it did not have jurisdiction to hear and determine the petitioner's claim for refund of franchise taxes paid before 17 July 1951, or beyond the prescriptive period of two years provided for in section 306 of the National Internal Revenue Code; that it could not entertain the petitioner's claim for refund of franchise taxes paid during the period subsequent to 17 July 1951, because it had not filed with the Collector of Internal Revenue a written claim for refund of the said taxes; and that the petitioner was taxable by 5 per cent on its gross earnings derived from the operation of its slipway or marine railway under the provision of section 259 of the National Internal Revenue Code, as amended; denying its claim for refund of the total sum of P189,573.36; and dismissing its petition with costs. Hence this appeal.

G.R. No. L-11783

On 6 October 1955, after rendition of the judgment and appeal in the first case, the petitioner filed with the respondent a written claim for refund of the sums paid by it under section 259 of the National Internal Revenue Code, as amended, in excess of one-half of 1 per cent of its gross earnings derived from the operation of its slipway or marine railway, to wit: P26,752.72 for 1952, P24,500.40 for 1953 and P24,537.25 for 1954, or a total of P75,790.37 (Exhibit A). Without waiting for the respondent's answer to his claim or a written decision on the matter, on 1 December 1955 the petitioner filed a petition in the Court of Tax Appeals under the provisions of section 11, Republic Act No. 1125, for a review of the decision of the Collector of Internal Revenue.

After the petitioner had submitted its evidence and the parties their respective memoranda, on 17 November 1956 the Court rendered judgment holding that it did not have jurisdiction to hear and determine the petitioner's claim for refund of taxes paid before 1 December 1953, or beyond the prescriptive period of two years provided for in section 306 of the National Internal Revenue Code; and reiterating its previous judgment that the petitioner was taxable by 5 per cent on its gross earnings derived from the operation of its slipway or marine railway; denying its claim for refund of the total sum of P75,790.37; and dismissing its petition, with costs. From this judgment the petitioner also appealed.

On 1 November 1904 the then Philippine Commission granted unto Juan Bautista Fernandez of Cebu a license to construct, operate and maintain a slipway or marine railway on a tract of land situated in barrio Canghana, municipality of Opon, Mactan Island, province of Cebu (Act No. 1256). After a successive transfer of the original grantee's rights and interests therein to Urrutia & Company and to Novo & Company, the petitioner Hoa Hin Company, Inc., doing business under the name of Cebu Shipyard & Engineering Works, finally became the owner of the slipway or marine railway. Act No. 1256 provides:

SECTION 1. Juan Bautista Fernandez, of the municipality of Cebu Province of Cebu, his successors and assigns, is hereby granted a license to construct, operate, and maintain a slipway or marine railway for the period of fifty years, consisting of one or more slips, in that portion of the waters lying between the Island of Cebu and the Island of Mactan which constitutes the water front of a tract of land owned by the said Juan Bautista Fernandez in the barrio of Canghana, in the municipality of Opon, in the Province of Cebu.

SEC. 7. The grantee of this license, his lessees, grantees, or successors in interest, shall pay annually to the Government of the Philippine Islands one-half of one per centum per annum of the gross receipts derived from the operation of said slipway or marine railway from and after the date of the acceptance of this license. Said payment shall be made on the fifteenth day of January of each and every year or the year preceding, and any accredited

officer of the Insular Government shall, upon demand, have the right to examine and inspect the books of the grantee, his successors or assigns, for the purpose of ascertaining the gross receipts of the said slipway or marine railway for any year; but nothing in this section shall be construed to interfere with the rights of the municipal, provincial, or Insular Government to assess taxes upon the land in question or improvements thereon, nor shall it affect the right of the Government to assess and collect any business or income tax on his business. (Italics supplied.)

SEC. 8. The license granted herein is subject to amendment, alteration or repeal by the Congress of the United States * * *. Section 259 of the National Internal Revenue Code, as amended by Republic Act No. 39 on 1 October 1946 and later on by Republic Act No. 418 on 18 June 1949, provides:

There shall be collected in respect to all existing and future franchises, upon the gross earnings or receipts from the business covered by the law granting the franchise a tax of five "per centum" or such taxes, charges, and percentages as are specified in the special charters of the grantees upon whom such franchises are conferred, whichever is higher, unless the provisions thereof preclude the imposition of a higher tax. For the purpose of facilitating the assessment of this tax, reports shall be made by the respective holders of the franchise in such form and at such times as shall be required by the regulations of the Department of Finance. (Italics supplied.)

While the then Philippine Commission fixed the yearly tax to be paid to the Government by the original grantee, his successors and assigns at the rate of one-half of 1 per cent of the gross earnings derived from the operation of the slipway or marine railway, the grantor reserved its right to assess and collect other business or income tax on the grantee's business. Section 259 of the National Internal Revenue Code, as amended, provides that "whichever is higher" between the rate imposed by the special charter of the grantee and the National Internal Revenue Code, shall apply to and be imposed upon, and paid by, the grantee of the franchise. The rate imposed by section 259 of the National Internal Revenue Code, as amended, being higher than that imposed in the petitioner's charter, Act No. 1256, the petitioner has to pay the rate imposed by section 259 of the National Internal Revenue Code; as amended.

The rule in *Manila Railroad Company vs. Rafferty*, 40 Phil., 224; *Philippine Railway Company vs. Collector of Internal Revenue*, 91 Phil., 35; *Visayan Electric Company vs. David*, 49 Off. Gaz., 1385; and *Carcar Electric & Ice Plant m Collector of Internal Revenue*, 53 Off. Gaz., 1068, cannot be invoked by the petitioner, because in the grantee's respective franchises there is a provision that "Such annual payments, when promptly and fully made by the grantee, shall be in lieu of all taxes of every name and nature—municipal, provincial or central—upon its capital stock, franchises, right of way, earnings, and all other property owned or operated by the grantee under this concession or franchise."

The petitioner's franchise, Act No. 1256, does not embody such exemption clause.

Whether the failure of the petitioner to file with the Collector of Internal Revenue a written claim for the refund of a part of the franchise tax paid by it and the fact that the Collector of Internal Revenue has not yet rendered a decision on the petitioner's claim for refund of a part of said tax, both as a condition precedent to be complied with before a suit may be brought for the refund of a part of said tax, preclude the petitioner from recovering: part of the franchise tax, need not be passed upon, because the tax imposed and assessed upon, collected from, and paid by, the petitioner upon its gross earnings is authorized by law.

The fact that part of the petitioner's claim for refund of franchise taxes alleged to have been illegally imposed and assessed upon, collected from, and paid by, the petitioner is already barred by the statute, does not divest the Court of Tax Appeals of jurisdiction to hear and determine the petition for such refund. It has jurisdiction over all "cases involving disputed assessments, refund of internal revenue taxes, fees or other charges, penalties imposed

in relation thereto, or other matters arising under the National Internal Revenue Code, etc. as provided for in section 7 in connection with section 22 of Republic Act No. 1125. When the Court of Tax Appeals holds that the claim for refund of a tax is barred by statute, such holding is but an exercise of its jurisdiction over such claim submitted to it for determination.

The judgments under review are affirmed, with costs against the petitioner.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

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