

THE PHILIPPINES INTERNATIONAL FAIR, INC., PETITIONER VS. THE COLLECTOR OF INTERNAL REVENUE, ET AL., RESPONDENTS.

G.R. Nos. L-12928 & L-12932. March 30, 1962

Ponente: DIZON, J.

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DIZON, J.:

The Philippines International Fair, Inc. — hereinafter referred to as the PIF — is a duly organized domestic corporation, domiciled in the City of Manila. The Philippine Government is its principal stockholder, controlling between 45% to 55% of its capital stock. One of its main purposes, according to paragraph 2 of its Articles of Incorporation, is the establishment, operation and management of international fairs and expositions depicting the social, political, cultural and economic life, history, progress and development of all countries, particularly the Philippines, and their trade, political, and other relations with one another.

During the months of February, March, April and May, 1953, the PIF held in Manila an international fair and exposition. Within its fair grounds were booths for the exhibition of the industrial and agricultural products of the different provinces of the Philippines as well as of foreign countries. Aside from side shows and various other attractions, the fair and exposition had an amusement zone divided into four compounds, the biggest attraction therein being the "Aquacade Show" and the "Xavier Cugat Show." In addition, there was a large auditorium where balls and dances were" held. Fees were charged for admission to the exposition and amusement grounds and the auditorium.

In 1954, it conducted in the same premises a National Fair where gate and auditorium entrance fees were likewise charged.

In his letters dated April 12, 1954, July 20, 1954 and June 28, 1954, the Collector of Internal Revenue demanded of the PIF the sum of P132,220.00 as amusement tax on its gross receipts derived from admission tickets to the exposition and amusement grounds, Aquacade Show, and benefit dances, from February to March 1953, and those derived from its gate and auditorium entrance fees from April 23 to May 9, 1954; the sum of P33,055.12 as 25% surcharge thereon for late payment; the sum of P13,200.00 as compromise penalty. The total demand amounted to P178,475.59.

A request for an investigation having been made by the PIF, the Collector of Internal Revenue referred the case to the Conference Staff. After a hearing before the latter it recommended the enforcement of the assessment. Notice of the adverse decision was received by the PIF on April 20, 1956, and on May 19, 1956, the latter appealed to the Court of Tax Appeals which rendered on April 29, 1957 the decision subject matter of this review.

In G. R. No. L-12928, the PIF appeals from the following portion of the decision of the Court of Tax Appeals:

"The petitioner is ordered to pay to the respondent the amounts of P97,972.65 and P24,493.16 as amusement tax and surcharge, respectively, on its gross receipts from admission tickets to the exposition ground and auditorium during the months of March, April and May, 1953; and, P1,370.16 and P342.54, as amusement tax and surcharge, respectively, on its gross receipts from admission tickets to the benefit dances held at the

National Fair Auditorium from April 23 to May 9, 1954, or a total sum of P124,178.51."

In G. R. No. L-12932, the Collector of Internal Revenue, in turn, appeals from the following portion of said decision:

"The petitioner is hereby held exempt from the payment of the amounts of P32,877.66 and P8,219.42 or a total of P41,097.08 representing amusement tax and surcharge, respectively, on its receipts from admission tickets to the Aquacade Show for the month of February, 1953.

"Likewise, the petitioner is not liable for the payment of the compromise penalty in the total sum of P13,200.00 on the three basic assessments."

The PIF, petitioner in G. R. No. L-12928, contends that it is not subject to the amusement tax on the ground that its activities were sponsored by the Philippine Government, and further claims that the exemption in its favor is inferable from the spirit of Republic Act No. 722 which exempts operas, concerts, recitals, dramas, painting and art exhibitions, flower shows, and literary, oratorical or musical programs, except film exhibitions and radio or phonographic records thereof, from the payment of any national or municipal amusement tax on the receipts derived therefrom.

In G. R. No. L-12932, the Collector of Internal Revenue contends that the Court of Tax Appeals erred in holding that the Aquacade Show is a water ballet and therefore within the term "art exhibition" which falls under the exemptions provided for in Republic Act No. 722, and in exempting the respondent from the payment of the sum of P13,200.00 as compromise penalty.

The PIF admits that there is no legal provision expressly exempting it from paying the amusement tax prescribed in Section 260 of the Tax Code, but argues that its case for exemption is inferable from the spirit of the exemptions provided for in Republic Act 722; from the fact that the fairs in question were undertaken officially and actually formed part of the activities of the government; that the government had consistently refrained from collecting any tax from the Philippine Carnival Association whenever the latter held expositions of national character; and lastly, that it had an understanding with the Secretary of Finance that no amusement tax would be levied against and collected from the admission fees during the 1953 International Exposition. We find these contentions to be without merit.

The well settled rule is that legal provisions providing for tax exemptions are to be construed strictly against the grant and liberally in favor of the taxing power (Sutherland, Statutory Construction, Vol. 3, pp. 183-190; *House vs. Posadas*, 53 Phil., 338; *Asiatic Petroleum Co. w. Llanos*, 49 Phil., 466). It is not denied that the fairs held by the PIF mentioned heretofore had amusement zones with stateside side shows, auditorium for dances and balls and other features of a similar nature. While this circumstance amply justifies considering the PIF as a proprietor and operator of a place of amusement and, as such, subject to the amusement tax on all its gate receipts, it cannot be denied that some of the activities and performances inside the fair grounds, for which separate admission fees were charged, are clearly covered by the exemption clause of Republic Act No. 722. In view of these circumstances, the Court of Tax Appeals was of the opinion—with which we agree—that—

"x x x the most reasonable and logical course of action to take under the circumstances would be to consider separately each particular entertainment, performance or exhibition for which a corresponding admission fee was charged for the purpose of determining a whether the receipts derived therefrom are exempt or not from amusement tax.

"It appears that the vast exposition and amusement grounds operated and managed by the petitioner during the International Fair in 1953, had several gates and entrances a few of which led directly to special attractions particularly the big ones. In most instances, however, the minor attractions and side shows were within the

exposition ground itself without any direct connection to the outside area for which the customers were required to pay a gate fee to gain entrance to the main exposition and amusement grounds and another admission fee to the particular attraction or side show.

"We take it that not all of the millions of persons who flocked to the International Fair in 1953 and the National Fair in 1954, went there and paid the corresponding admission fee to gain entrance to the main grounds of the fair, solely for cultural purposes or for the sake of art. The thousands of children who patronized the fair must have gone there principally to frolic in the compound of Pedro Taguba and Company where thrill rides of all sorts were offered for their entertainment. The pickpockets must have gone there principally to ply their trade within the premises. The disciples of Bacchus, to patronize and make merry in the Beer Garden of concessionaire J. Ponce de Leon where all kinds of drinks and beverages were served. And the devotees of the muse Terpsichore, to tread the light fantastic at the Fair Auditorium with their partners.

x x x x

"Following the literal interpretation as well as the spirit behind the enactment of Republic Act No. 722, we hold, therefore, that the petitioner is not exempt from payment of amusement taxes and surcharges in the amounts of P97,972.65 and P24,493.16, respectively, on its receipts from admission tickets sold to the exposition ground and auditorium during the months of March, April and May, 1953. "Likewise, the petitioner is not exempt from payment of amusement tax and surcharge in the amounts of P1,370.16 and P342.54, respectively, on its receipts from admission tickets to the benefit dances held at the National Fair Auditorium from April 23 to May 9, 1954."

The PIF is a private stock corporation organized for profit by business elements in the Philippines. While it is true that its organization was encouraged by the government and some activities of the fairs organized and held under its auspices were cultural, educational or artistic in nature, these circumstances did not make its activities and purposes official, much less governmental in character. In this regard the PIF's contention stretches the real meaning of the terms "official" and "governmental" beyond the bounds of logic, particularly if applied to a case like the present where, as already stated, many other features of the fairs were purely for amusement.

That the Philippine Carnival Association had never been made to pay taxes as an operator of an amusement center, is no reason to hold the PIF exempt, considering that when Congress enacted Republic Act 722 it expressly enumerated the performances that should enjoy exemption from the payment of the amusement tax prescribed under Section 260 of the Tax Code. Many features of the fairs held by the PIF did not fall under the exemptions thus enumerated. On the other hand, the alleged verbal assurances of certain government officials that the PIF would not be required to pay amusement tax cannot bind the State, it being well known that tax exemption can be granted only by the Legislative Branch of the Government.

The above would seem to be sufficient to dispose of the appeal of the PIF.

The appeal of the Collector (G. R. No. L-12932 is also without merit. Whether the "Aquacade Show" is within the purview of the legal exemptions established by Republic Act No. 722 or not was already decided by us in Collector, etc. vs. The Philippine International Fair, Inc. et al. (106 Phil., 107) promulgated August 28, 1959, where among other things, we said:

"In the Court of Tax Appeals, the following questions of fact were resolved: that the main or predominant feature of the show in question was the "water ballet" performance and that "water ballet" falls within the concept of art. In support of its claims, respondent presented as expert witnesses, Miss Anita Kane, a danseuse and ballet instructress, Mr Arsenio Luz, a business-man and newspaperman, and Mr. Enrique Davila, a veteran impresario, who testified favorably to the facts resolved above. On December 26, 1956 the Court of Tax Appeals rendered a decision in which it declared that the "Aquacade Show was principally a "water ballet"

performance, and therefore, an art; and that being an art, it is within the purview of the presentations exempted from the amusement tax under Republic Act No. 722. From this decision, the Collector of Internal Revenue has appealed to this Court.

"The sole question at issue centers on whether "ballet" or in this particular case "water ballet" is covered within purview of the 5legal exemption under Republic Act No. 722, section 1 of which provides that the "holding of operas, concerts, recitals, dramas, painting and art exhibitions, flower shows, and literary, oratorical and musical programs, except film exhibitions and radio or phonographic records thereof, shall be exempt from the payment of any national or municipal tax on the receipts derived therefrom."

"It is contended by the petitioner that ballet performance is not expressly enumerated as one of the presentations entitled to tax exemption and applying the principle of "expressio unius est exclusio alterius", the enumeration in Republic Act No. 722 should be considered exclusive and that grants of tax exemption should be construed liberally in favor of the government and strictly against the taxpayer.

"In answer to the above contention, this Court has already decided that:

'It is conceded that ballet is an art; that under our Constitution (Article XXV, Sec. 4) arts are under the patronage of the State; that Republic Act No. 722 seeks to implement the constitutional provision x x x x.

'The conclusion is thus inevitable that ballet performance, besides being truly an art par excellence, is in fact included in the terms "concert", "opera" or "recital" and therefore exempted" from the payment of amusement tax.' (Collector of Internal Revenue V8. Totoy Oteyza, G. R. No. L-10290, prom. May 28, 1958).

"The decision of the Court of Tax Appeals is hereby affirmed, without costs."

But the Collector also contends that the Court of Tax 4 Appeals erred in not holding the PIF liable for the payment of the sum of P13,200.00 as compromise penalty. Regarding this matter, the decision appealed from says:

"However with respect to the compromise penalty in the total sum of P13,200.00, we have repeatedly held that this Court has no jurisdiction to compel a taxpayer to pay the same because by its very nature it implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised. (Brifias vs. Collector of Internal Revenue; C. T. A. Case No. 16, September 14, 1955; Central Azucarera de Tarlac vs. Collector of Internal Revenue, C. T. A. Case No. 90, July 9, 1956) and the choice of paying or not paying it distinctly belongs to the taxpayer. (Cosmos Kapok Factory vs. Araneta, C. T. A. Case No. 125, March 29, 1957)."

In support of his contention, the Collector points to Section 309 of the Tax Code which gives him authority to compromise any civil or other case arising under the Tax Code or other law or part of law administered by the Bureau of Internal Revenue, and to the decisions rendered in Macondray vs. Collector, 90 Phil., 123 and Sanchez vs. Collector, G.R. No. L-7521, Oct. 18, 1955.

In the brief submitted by the Solicitor General (p. 34) it is stated that the sum of P13,200.00 was the "compromise fee x x x suggested in extrajudicial settlement of the taxpayer's violation of Section 260, in relation to Section 352 of the Tax Code".

The present is not a criminal action instituted against the PIF or its officers for having violated the provisions of Section 260, in relation to Section 352 of the Tax Code, but a tax assessment or demand made by the Collector of Internal Revenue upon the PIF, from which the latter appealed to the Court of Tax Appeals and ultimately to this Court. It is clear, therefore, that the PIF resisted the assessment. Consequently, the result of the proceedings can not be considered as a "compromise", because the decision of the Court of Tax Appeals as well as the present decision constitute an adjudication upon the issue arising from the assessment made by the Collector of Internal

Revenue, on the one hand, and the PIF's refusal to pay the same, on the other.

Furthermore, the brief submitted by the Solicitor General in behalf of the Collector (p. 34) also admits that the alleged "compromise" is really a "penalty for violation of the provisions of the Tax Code". The present not being a criminal case charging the PIF with having violated the provisions of the Tax Code, we agree with the Court of Tax Appeals that the payment of the alleged compromise cannot be imposed upon the taxpayer in the present proceedings. The cases relied upon by the Collector of Internal Revenue are not applicable to the present because the taxpayer involved in the Macondray case voluntarily paid the "multas" demanded or imposed on him to avoid further imposition of "multas". In the Sanchez case the taxpayer paid the tax demanded of her plus the sum of P50.00 as compromise, under protest, but does not appear to have specifically raised any objection against the said compromise either in the lower court or in this Court. Our decisions affirming those rendered by the lower court in said cases cannot, therefore, be cited to support the proposition that in proceedings like the present the Court of Tax Appeals or this Court may render judgment in favor of the government and against the taxpayer for the payment of the alleged "compromise" which, as the Solicitor General admits, is really a "penalty" to avoid prosecution for violation of the provisions of the Tax Code—unless, of course, the taxpayer gives his consent thereto.

WHEREFORE, the decision appealed from is affirmed in toto without costs.

Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, and De Leon, JJ., concur.

Bengzon, C.J., took no part.

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