

**DOMINADOR P. CANLAS AND THE MANILA PENCIL CO., AS
SUCCESSOR OF THE PHILIPPINE CONSOLIDATED FREIGHT LINES,
INC., PETITIONERS, VS. THE REPUBLIC OF THE PHILIPPINES AND
THE HONS. AU...**

G.R. No. 11305. May 21, 1958

Ponente: FELIX, J.

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FELIX, J.:

The Manila Pencil Company, a corporation duly organized and existing under the laws of the Philippines with Dominador P. Canlas for its president and general manager, appears to be the successor in interest of the Philippine Consolidated Freight Lines, Inc., assuming all the obligations the latter had with third parties in connection with its past operation. From 1947 to 1951, the Philippine Consolidated Freight Lines, Inc., ran a bus and trucking service within the compound of the Clark Field Air Base in Pampanga pursuant to a license issued in its favor by the Philippine Ryukyus Command (PHILRYCOM). For income derived from said operation, the corporation filed its income tax returns and was assessed as follows: P4,285.74 for the fiscal year ending August 31, 1947; P21,733.66, for the fiscal year ending August 31, 1948; P7,933.57 and P3,332.00, for the fiscal years ending August 31, 1949, and August 31, 1951, respectively. It appears on record that of these assessments said company paid the amount of P4,000.00 as part payment of the income tax allegedly due for 1947;

On March 24, 1954, the Solicitor General filed a complaint with the Court of First Instance of Manila (Civil Case No. 22366) against the Manila Pencil Company, as successor-in-interest of the Philippine Consolidated Freight Lines, Inc., and Dominador Canlas as president thereof, contending that despite repeated demands, they had failed to pay the following amounts which were said to be due the Government as income taxes, to wit:

(1)

Deficiency income tax for fiscal year ending August 31, 1947 P1,084.97

(2)

Income tax for fiscal year ending August 31, 1947 285.74

(3)

Income tax for fiscal year ending August 31, 1948 21,733.65

(4)

Income tax for fiscal year ending August 31, 1949 7,933.57

(5)

Income tax for fiscal year ending August 31, 1951 3,332.00

It was thus prayed that defendants be ordered to pay the obligations so indicated plus the corresponding delinquency penalties and for costs. To this complaint, defendants filed a motion to dismiss based on prescription and for lack of jurisdiction, but before said motion could be resolved, Republic Act No. 1125 creating the Court of Tax Appeals was enacted and pursuant to Section 22 thereof, said case was elevated to the latter Tribunal for adjudication.

As the motion for the dismissal of the action was denied, defendants filed their answer claiming that the income on which plaintiff was trying to collect were received exclusively from the operation of its freight and passenger bus service within the Clark Field Air Base and therefore embraced within the exemption provided for by Article XVIII of the Military Bases Agreement concluded between the governments of the Philippines and the United States. Defendants prayed the Court that plaintiff be required to refund to defendant Manila Pencil Company the sum of P2,350.74 illegally collected; that AISCO Bond No. 4419 of the Associated Insurance & Surety Co., Inc., in favor of the Collector of Internal Revenue, which defendants filed to prevent the distraint of their properties pending the final disposition of the case, be cancelled; and in the event that the Court would find a case against the Manila Pencil Company, defendant Dominador P. Canlas be excluded therein.

The issues having been joined, the case was set for hearing and basing on the stipulation of facts agreed upon by the parties, the Court of Tax Appeals rendered judgment holding defendants liable for the payment of the deficiency income tax for 1947 and for income taxes for the years 1949 and 1951, although they were absolved of the liability with respect to the income taxes for the years 1947 and 1948 on the ground of prescription. Upon defendants' motion for reconsideration, said decision was modified so as to deduct from the amount said to be due the Government the sum of P3,526.47 secured by the AISCO Bond No. 4419 which was already received by the Collector of Internal Revenue. But as defendants' asseveration that they were totally exempted from the payment of said taxes was denied, the matter was brought to this Court by way of a petition for review, praying that the decision of the court a quo be declared erroneous and the Collector of Internal Revenue be required to refund the amount of P2,350.74 allegedly collected illegally from them and for such other relief as may be proper in the premises.

There is no dispute as to the fact that defendant Manila Pencil Company, as successor-in-interest of the Philippine Consolidated Freight Lines, Inc., was engaged in and duly licensed by the U. S. military authorities to operate a freight and bus service within the Clark Field Air Base, a military reservation established in conformity with the agreement concluded between the Governments of the Philippines and the United States on March 14, 1947 (43 Off. Gaz., No. 3, p. 1020). And as such grantee of a franchise, which this Court has held to be embraced within the meaning of the word "concession" appearing in the treaty and was declared exempted from the payment of the contractor's tax (Araneta vs. Manila Pencil Company, G. R. No. L-8182, June 29, 1957), defendant corporation also claimed exemption from the payment of income tax on earnings derived from such undertaking. In advancing such contention, defendants relied on the provisions of Article XVIII of the Bases Agreement the pertinent portion of which reads as follows:

"ARTICLE XVIII.-SALES AND SERVICES WITHIN THE BASES

"1. It is mutually agreed that the United States shall have the right to establish on bases, free of all licenses; fees; sales, excise or OTHER TAXES, or imposts; Government agencies, including concessions, such as sales commissaries and posts exchanges, messes and social clubs, for the exclusive use of the United States military forces and authorized civilian personnel and their families. The merchandise or services sold or dispensed by such agencies shall be free of all taxes, duties and inspection by the Philippine authorities. * * *."

While it may be argued that a tax on the income derived from the operation of a concession falls under the term "other taxes" included in the enumeration of the imposts from which a Government agency or private concessioner (of which defendant corporation is considered as one) is exempted, yet a careful perusal of the same would reveal that what is being exempted from the payment of such exactions is the establishment of the agency or concession designed for the exclusive use of the U.S. military forces and authorized civil personnel and their families. Considering- that the concession itself and the income accruing therefrom are subject to different taxes, and taking into account the sentence following the enumeration which specifies the "merchandise or services sold or dispensed by such agencies" to be free from taxes or duties, it becomes all too obvious that the privilege is intended merely to be confined to the latter and to no other. *Inclusio unius exclusio est alterius*. Moreover, exemption from income tax is treated separately under a different provision of the treaty which reads as follows:

"ARTICLE XII.-INTERNAL REVENUE TAX EXEMPTION

"1. No member of the United States armed forces, EXCEPT Filipino citizens, serving in the Philippines in connection with the bases and residing¹ in the Philippines by reason only of such service, or his dependents, shall be liable to pay income tax in the Philippines except in respect of income derived from Philippines sources.

"2. No national of the United States serving in or employed in the Philippines in connection with the construction, maintenance, operation or defense of the bases and residing in the Philippines by reason only of such employment, or his spouse, shall be liable to pay income tax in the Philippines except in respect of income derived from Philippine sources or sources other than the United States sources.

3. * * *.

4. * * *."

It is clear from the foregoing that if ever the signatories to the said treaty intended to grant exemption from income taxes collectible by the Philippine Government, said privilege was allowed only to members of the United States armed forces, nationals of said country, and their dependents and families, to the exclusion of Filipino citizens. And it dispels the least doubt, if there may be any as to the merit of defendant's claim, for the insertion of the phrase 'other taxes' is manifestly intended to cover imposts other than sales or excise taxes on the undertaking itself and not taxes on income which is specially taken care of by another provision of the same treaty. Wherefore, the appealed decision of the lower Court, as corrected by its resolution of September 10, 1956, is hereby affirmed, with costs against defendants. It is so ordered.

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

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