

SERGIO F. NAGUIAT, PETITIONER, VS. J. ANTONIO ARANETA, ETC., ET AL., RESPONDENTS.

G. R. No. 11594. December 22, 1958

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal from a decision of the Court of Tax Appeals, holding that the petitioner-appellant is not entitled to a refund of the tax paid by him on income derived from the operation of a taxi service within the Clark Field Air Base for the years 1950, 1951 and 1952.

The appellant invokes paragraph 1 of Article XVIII of the Military Bases Agreement between the United States and the Philippines which provides as follows:

"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 post 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. * * *"

It is contended that although the foregoing stipulation does not expressly mention income tax, exemption therefrom is necessarily included in or implied from either the term "excise" or the terms "other taxes or imposts"; and authorities have been cited holding that income tax is an excise tax. This contention is untenable.

The provision relied upon by the appellant plainly contemplates limiting the exemption from the licenses, fees and taxes enumerated therein to the right to establish Government agencies, including concessions, and to the merchandise or services sold or dispensed by such agencies. The income tax, which is certainly not on the right to establish agencies or on the merchandise or services sold or dispensed thereby, but on the owner or operator of such agencies, is logically excluded. The payment by the latter of the income tax is perfectly consistent with and would not frustrate the obvious objective of the agreement namely, to enable the members of the United States Military Forces and authorized civilian personnel and their families to procure merchandise or services within the bases at reduced prices. This construction is unmistakably borne out by the fact that, in dealing particularly with the matter of income tax, the Military Bases Agreement provides as follows:

"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 residing in the Philippines by reason only of such services, or his dependents, shall be liable to pay income tax in the Philippines except in respect of income derived from the Philippine sources.

"2. No national of the United States serving in or employed in the Philippines in connection with the maintenance, operation or defense of the bases and residing in the Philippines by reason only of such employment, or his spouses, and minor children and dependent parents of either spouses, 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 source.

"3. No person referred to in paragraph 1 and 2 of this article shall be liable to pay the Government or local authorities of the Philippines any poll or residence tax, or any import or export duty, or any other tax on personal property imported for his own use; provided that privately owned vehicles shall be subject to payment of the following only: when certified as being used for military purposes by appropriate United States authorities, the normal license plate and registration fees.

"4. No national of the United States, or corporation organized under the laws of the United States, resident in the United States, shall be liable to pay income tax in the Philippines in respect of any profits derived under a contract made in the United States in connection with the construction, maintenance, operation and defense of the bases, or any tax in the nature of a license in respect of any service or work for the United States in connection with the construction, maintenance, operation and defense of the bases."

None of the above-quoted covenants shield a concessionaire, like the-appellant, from the payment of the income tax. For one thing, even the exemption in favor of members of the United States Armed Forces and nationals of the United States does not include income derived from Philippine sources.

The appellant cannot seek refuge in the use of "excise" or "other taxes or imposts" in paragraph 1 of Article XVIII of the Military Bases Agreement, because, as already stated, said terms were employed with specific application to the right to establish agencies and concessions within the bases and to the merchandise or services sold or dispensed by such agencies or concessions. Wherefore, the appealed decision is affirmed with costs against the appellant. So ordered.

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

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