

MANILA GAS CORPORATION, PETITIONER VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G. R. No. 11784. October 24, 1958

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Petitioner Manila Gas Corporation is appealing from the decision of the Court of Tax Appeals, affirming the ruling or decision of the Collector of Internal Revenue denying its claim for refund of compensating taxes assessed against it and paid by it on machinery, equipment and materials purchased from abroad and used in connection with its business.

Petitioner is the grantee of a franchise, authorizing it to construct, maintain and operate a gas system for the furnishing of gas, heat and power in the City of Manila and the Province of Rizal, as provided in its charter, Act No. 2039. Under its charter, petitioner is required to pay annually to the City of Manila and to the municipalities of Rizal served by it, 21/2 per centum of its gross receipts, said payment to be in lieu of all taxes, insular, provincial and municipal, "except taxes on its real estate, buildings, plant, machinery" and other personal properties. The amount of taxes involved in the appeal was by stipulation of the parties, limited to P40,407.89, paid within the two-year period from November 21, 1953 to October 11, 1955.

Respondent Collector of Internal Revenue made the assessment and collected the amount involved as a compensating tax, under Section 190, National Internal Revenue 1 Code, reading as follows:

"SEC. 190. Compensating tax.—All persons residing or doing business in the Philippines, who purchase or receive from without the Philippines any commodities, goods, wares, or merchandise, excepting those subject to specific taxes under Title IV of this Code, shall pay on the total value thereof at the time they are received by such persons, including freight, postage, insurance, commission, and all other similar charges, a compensating tax equivalent to the percentage tax imposed under this article on original transactions effected by merchants importers, or manufacturers, such tax to be paid upon the withdrawal or removal of said commodities, goods, wares, or merchandise from the customhouse or the post office * * *."

on the theory that it is a property tax not covered by the exemption "in lieu of all taxes, insular, provincial and municipal," which exemption refers to taxes "that may be imposed on the business covered by the franchise." On the other hand, petitioner contends that the compensating tax, far from being a property tax is an excise tax or tax on the business from which it is exempt under its charter; that as evidence that it is an excise tax, while the taxes on personal property are the specific taxes provided for under Title IV of the National Internal Revenue Code, the compensating tax provided for in Section 190 of the same code comes under Title V of the said code under the heading "Privilege Taxes on Business and Occupation". This same question has been raised before the Court of Tax Appeals and decided by it against the theory of petitioner in the case of *Central Azucarrera de Tarlac vs. Collector of Internal Revenue*, C. T. A. Case No, 206, promulgated October 15, 1956, the pertinent portion of which we quote with approval:

"Furthermore, it is not true as contended by petitioner that for an article to be taxable under Chapter I of Title V of the Revenue Code entitled 'Tax on Business' it is essential that such article be the subject or object of a business. Section 190, which comes under the same chapter, imposes the compensating tax on articles imported from abroad for use by the importer himself and not for sale. It is not a tax on business and yet the validity of said tax has been sustained by the Supreme Court in *International Business Machines Corp. vs. Collector of Internal Revenue*, 98 Phil., 593; 53 Off. Gaz., 3465. The taxability or non-taxability of an article or a transaction under Chapter I of Title V of the Revenue Code is determined not by the title of the chapter but by the particular provision of law involved."

We are convinced that contrary to the claim of the petitioner, the present case is similar to the case of *Panay Electric Company vs. Collector of Internal Revenue*, G. R. No. L-6753, July 30, 1955. The similarity lies in the fact that both the petitioner and the Panay Electric operated under a charter or franchise under which the payment by them of the franchise tax was to be in lieu of all taxes of any kind, except taxes on real and personal properties. Both companies imported machinery not for sale but for use in connection with their business. In the *Panay Electric Company* case, we held that the rights and privileges which the law exempts from taxation are those which are not enjoyed by the public in general, but only by the grantee of the franchise, consequently, they do not include the common right or privilege of every citizen to make purchases anywhere; and that the purpose for which the compensating tax has been instituted is explained in the report of the Tax Commissioner that proposed said tax, as follows:

"The purpose of this proposal is to place persons purchasing goods from dealers doing business in the Philippines on an equal footing, for tax purposes, with those who purchase goods directly from without the Philippines. Under the present, tax, law, the former bear the burden of the local sales tax because it is shifted to them as part of the selling price demanded by the local merchants, while the latter do not. The proposed tax will do away with this inequality and render justice to merchants and firms (of all nationalities who are in legitimate business here, paying taxes and giving employment to a large number of people."

We further said in that case:

"If petitioner had purchased the equipment in question in the Philippines, there would be no question that it would have to bear the burden of the sales tax, because the same would have to be added to the purchase price by the dealer, and petitioner might not escape the burden by invoking the exemptions granted in its franchise. There would appear to be no good reason why petitioner should be allowed to elude that burden by exempting it from paying compensating tax when it purchases equipment abroad. And it should be noted in this connection that petitioner is expressly required by its charter to pay on its 'real estate, buildings, plant, machinery, and other personal property' the same taxes as are now or may hereafter be required by law from other persons. (Sec. 14, Act No. 2983 as amended by Act No. 3665.) The tax on personal property purchased or received from abroad, or the compensating tax, comes quite clearly within the description."

We fail to note the alleged difference or differences between the case of *Panay Electric Company* and that of the petitioner, pointed out by the latter. We repeat that the two cases are similar and consequently the ruling laid down in the *Panay Electric Company* is controlling. In view of the foregoing, the appealed decision of the Court of Tax Appeals is hereby affirmed, with costs.

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

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