

THE COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. PHILIPPINES INTERNATIONAL FAIR, INC., AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. 12024. August 28, 1959

Ponente: LABRADOR, J.

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LABRADOR, J.:

Petition for review of the decision of the Court of Tax Appeals exempting, pursuant to Republic Act No. 722, the respondent Philippine International Fair, Inc. from the payment of amusement tax and surcharges, for the exhibition on the "Aquacade Show".

In 1953 the respondent Philippine International Fair, Inc., a corporation organized under the laws of the Philippines, sponsored an international fair and exposition in the city of Manila. In this fair and exposition, there were booths of various provinces and of foreign countries where their respective products were exhibited. There were also side shows and other attractions, among which was the show in question, which was brought from the United States by Mr. E. K. Fernandez, a showman, and exhibited during the months of February and March, 1953. After the "Aquacade Show" was shown, Mr. E. K. Fernandez wrote a letter dated April 6, 1953 addressed to the Collector of Internal Revenue, requesting that the said show be exempted from the payment of the amusement tax on the ground that it falls within the exemption provided for in Republic Act No. 722, but the latter denied the request in his answer dated May 2, 1953. Subsequently, a letter of demand dated May 22, 1953 for the payment of the sum of P29,633.62 as amusement tax and surcharge, as prescribed in Section 260 of the National Internal Revenue Code, was forwarded to the respondent.

After the receipt of the letter of demand, Mr. Arsenio Luz, the director-general of the respondent, requested a reconsideration of said ruling, thru a letter dated June 25, 1953, but the request was denied in petitioner's reply dated April 1, 1954. Another request for reconsideration was forwarded in a letter dated April 13, 1954; hence the case was referred to the Conference Staff of the Bureau of Internal Revenue where a hearing was held. The Conference Staff on November 3, 1954 recommended that the request for exemption be denied, and this action was approved by the herein petitioner. From this ruling, the respondent appealed to the Court of Tax Appeals.

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 witness, Miss Anita Kane a danseuse and ballet instructress, Mr. Arsenio Luz, a businessman 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 legal 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 phonograph 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 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 answers to the above contention, this Court has already decided that:

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

The conclusion is thus inevitable that ballet performance, besides being truly an art part 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 vs. Totoy Oteyza, G. R. No. L-10290, prom. May 28, 1958).

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

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Concepcion, Endencia, and Barrera, JJ., concur.

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