

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. A. D. GUERRERO, SPECIAL ADMINISTRATOR, IN SUBSTITUTION OF NATHANIEL I. GUNN, AS ADMINISTRATOR OF THE ESTATE OF THE LATE PAUL I. ...

G.R. No. 20942. September 22, 1967

Ponente: FERNANDO, J.

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FERNANDO, J.:

A novel question, one of importance and significance, is before this court in this petition for the review of decision of the court of Tax appeals. For the first time, the Ordinance appended to the Constitution calls for interpretation, having been invoked to justify a claim for refund of taxes by the estate of an American national, who in his life-time was engaged in the air transportation business. More specifically, the issue is whether or not Section 142 of the National Internal Revenue Code allowing Filipinos a refund of 50 percentum of the specific tax paid on aviation oil, could be availed of by citizens of the United States and all forms of business enterprises owned or controlled directly or indirectly by them in view of their privilege under the Ordinance to operate public utilities "in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines"[1]

The Commissioner of Internal Revenue, now petitioner before this court, denied the claim for refund in the sum of P2,441.93 filed by the administrator of the estate of Paul I. Gunn, thereafter substituted by the present respondent A. D. Guerrero as special administrator under the above section of the National Internal Revenue Code.[2] The deceased operated an air transportation business under the business name and style of Philippine Aviation Development; his estate, it was claimed, "was entitled to the same rights and privileges as Filipino citizens operating public utilities including privileges in the matter of taxation." The Commissioner of Internal Revenue disagreed, ruling that such partial exemption from the gasoline tax was not included under the terms of the Ordinance and that in accordance with the statute, to be entitled to its benefits, there must be a showing that the United States of which the deceased was a citizen granted a similar exemption to Filipinos. The refund as already noted was denied. The matter was brought to the court of tax appeals to a stipulation of facts, no additional evidence being introduced. Viewing the Ordinance differently, it "ordered the petitioner to refund to the respondent the sum of P2,441.93 representing 50% of the specific taxes paid on 61,043.19 liters of gasoline actually used in aviation during the period from October 3, 1956 up to May 31, 1957." Not satisfied with the above decision, petitioner appealed.

We sustain the Commissioner of Internal Revenue; accordingly, the court of Tax Appeals is reversed. To the extent that a refund is allowable, there is in reality a tax exemption. The rule applied with undeviating rigidity in the Philippines is that for a tax exemption to exist, it must be so categorically declared in words that admit of no doubt. No such language may be found in the Ordinance. It furnishes no support, whether express or implied, to the claim of respondent administrator for a refund.

From 1906, in *Catholic Church v. Hastings*[3] to 1966, in *Esso Standard Eastern, Inc. v. Acting Commissioner of Customs*,[4] it has been the constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed strictissimi juris.[5] The state of the law on the subject was aptly summarized in the *Esso Standard Eastern, Inc.* by Justice Sanchez thus: "The drive of petitioner's argument is that marketing of its gasoline product" is corollary to or incidental to its industrial operations. But this contention runs smack against the familiar rules that exemption from taxation is not favored, and that exemptions in tax statutes are never presumed. Which are but statements in adherence to the ancient rule that exemptions from taxation are construed in strictissimi juris against the taxpayer and liberally in favor of, the taxing authority. Tested by this precept, we cannot indulge in expansive construction and write into the law an exemption not therein set forth. Rather, we go by the reasonable assumption that where the state has granted in express terms certain exemptions, those are the exemptions to be considered, and no more. * * *."

In addition to Justice Tracey, who first spoke for this court in the *Hastings* case in announcing "the cardinal rule of American jurisprudence that exemption from taxation not being favored," and therefore "must be strictly construed" against the taxpayer, two other noted American jurists, Moreland and Street, who likewise served this court with distinction, reiterated the doctrine in terms even more emphatic. According to justice Moreland: "Even though the complaint in this regard were well founded, it would have little bearing on the result of the litigation when we take into consideration the universal rule that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken"[6] from Justice Street: "Exemptions from taxation are highly disfavored, so much so that they may almost be said to be odious to the law. He who claims an exemption must be able to point to some positive provision of law creating the right. It cannot be allowed to exist upon a vague implication such as is supposed to arise in this case from the omission from act no. 1654 of any reference to liability for tax. The books are full of very strong expressions on this point."[7]

At the time then when the ordinance took effect in April, 1947, the strict rule against tax exemption was undisputed and undisputable. Such being the case, it would be a main departure from the terms of the Ordinance to predicate a tax exemption where none was intended. Well-settled is the principle * * * that a constitutional provision must be presumed to have been framed and adopted in the light and understanding of prior and existing laws and with reference to them. Courts are bound to presume that the people adopting a constitution are familiar with the previous and existing laws upon the subjects to which its provisions relate, and upon which they express their judgment and opinion in its adoption."[8]

Respect for and deference to doctrines of such undeniable force and cogency preclude an affirmance of the decision of the courts of Tax Appeals. This is not to say that the scope of the ordinance is to be restricted or confined. What it promises must be fulfilled. There must be recognition of the right of the "citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly by citizens of the United States" to operate public utilities "in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines."

If the language of the ordinance applies to tax refund or exemption, then the court of Tax Appeals should be sustained if it does not. Its terms are clear. Standing alone, without any franchise to supply that omission, it affords no warrant for the claim here made. While good faith, no less than adherence to the categorical wording of the ordinance, requires that all the rights and privileges thus granted to Americans and business enterprises owned and controlled by them be respected, anything further would not be warranted. Nothing less will suffice, but anything more is not justified.

This conclusion has reinforcement that comes to it from another avenue of approach, the historical background of the Ordinance. In public law questions, history many a time holds the key that unlocks the door to understanding. Justice Tuason would thus have courts "look to the history of the times, examine the state of things existing when the constitution was framed and adopted, * * * and interpret it in the light of the law then in operation,"[9] Justice Laurel earlier noted that while historical discussion is not decisive, it is valuable.[10] A brief resume then of the events that led to its being appended to the constitution will not be inappropriate.

Early in 1945, liberation primarily through the efforts of the American forces under general McArthur, assisted by Filipino guerrillas, heralded the dawn, awaited so long and so anxiously, ending the dark night of the Japanese occupation, which was only partly mitigated by a show of cooperation on the part of some Filipino leaders of stature and eminence. All throughout those years, the Japanese army in the Philippines enforced repressive measures, severe in character. What was even more regrettable, in the last few weeks, the few remaining Japanese troops in manila and suburbs made a suicidal stand. The scorched earth policy was followed. Guerrilla suspects paid dearly for their imaginary sins. There were recorded cases, not few in number, of the old and infirm, even those of tender years, not being spared. The Americans shelled Japanese positions unfortunately not always with precision, as would have been unavoidable perhaps in any case. The lot of the helpless civil-ians, already suffering from acts born out of desperation of a cornered prey, became even more unenviable. They were caught in the cross-fire.

The toll in the destruction of the property and the loss of lives was heavy; the price the Filipinos paid was high. The feeling then, and even now for that matter, was that it was worth it. For life during the period of the Japanese occupation had become unbearable. There was an intolerable burden on the spirit and the mind of man with all civil liberties wantonly disregarded. There was likewise a well-nigh insupport-able affliction on his health and physical well-being, with food, what there was of it, difficult to locate and beyond the means of even the middle-income groups. Medicine was equally scarce, what was available commanding prices unusually high. A considerable portion of the population were dressed in rags and lived under the most pitiable conditions in houses that had seen much better days. Moreover in a garrison state with the Japanese kempetai[11] and the contemptible spies and informers, there was ever present that fear of the morrow, the sense of living at the edge of an impending doom.

It was fortunate that the Japanese Occupation ended when it did. Liberation was hailed by all, but the problems faced by the legitimate government were awesome in their immensity. The Philippine treasury was bankrupt and her economy prostrate. There were no dollar-earning export crops to speak of; commercial operations were paralyzed; and her industries were unable to produce with mills, factories and plants either destroyed or their machineries obsolete or dismantled. It was a desolate and tragic sight that greeted the victorious American and Filipino troops. Manila, particularly that portion south of the Pasig, lay in ruins, its public edifices and business building lying in a heap of rubble and numberless houses razed to the ground. It was in fact, next to Warsaw, the most devastated city in the expert opinion of the then General Eisenhower. There was thus a clear need of help from the United States. American aid was forthcoming but on terms proposed by her government and later on accepted by the Philippines.

One such condition expressly set forth in the Philippine Trade Act of 1946 passed by the Congress of the United States was that: "The disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled directly or indirectly, by United States citizens."[12]

The above was embodied in an executive agreement concluded on July 4, 1946, the agreement being signed by the president of the Republic of the Philippines and the plenipotentiary of the President of the United States. The constitution being in the way, both the exploitation of natural resources and the operation of public utilities having been reserved for Filipino there was a need for an amendment. Such an amendment was duly forthcoming. It took the form of the Ordinance now under consideration, which took effect on April 9, 1947.

The Ordinance thus came into being at a time when the liberation of the Philippines had elicited a vast reservoir of goodwill for the United States, one that has lasted to this day notwithstanding irritants that man ever so often the relation-ship even among the most friendly of nations. Her prestige was never so high. The Philippines after hearing opposing views on the matter canceled parity rights. She adopted the Ordinance. To that grant she is committed. Its terms are to be respected. In view of the equally fundamental postulate that legal concepts imperatively calling for application cannot be ignored, however, it follows that tax exemption to Americans or to business owned or controlled directly or indirectly by American citizens, based solely on the language of the Ordinance, cannot be allowed. There is nothing in its history that calls for a different view had the parties been of a different mind, they would have employed words indicative of such intention. What was not there includes whether by purpose or inadvertence, cannot be judicially supplied.

One final consideration. The Ordinance is designed for a limited period to allow what the constitution prohibits; Americans may operate public utilities. During its effectivity, there should be no thought of whittling down the grant thus freely made. Nonetheless, being of a limited duration, it should not be given an interpretation that would wrench further on the plain constitutional mandate to limit the operation of public utilities to Filipino hands. That is to show fealty to the fundamental law, which, in the language of Story "was not intended to provide merely for the exigencies of a few years" unlike the Ordinance "but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence."^[13] This merely to emphasize that the constitution unlike an ordinance appended to it, to borrow from Cardozo "states or ought to state not rules for the passing hour, but principles for an expanding future,"^[14] what is transitory in character then should not be given an interpretation at war with the plain and explicit command of what is to continue far into the future, unless there be some other principle of acknowledged primacy that compels them contrary.^[15]

It would seem to follow from all the foregoing that the decision of the court of Tax Appeals enlarged the scope and operation of the Ordinance. It failed unfortunately to abide by what the controlling precedents require, namely, that tax exemption is not to be presumed and that if granted, it is to be most strictly construed. No such grant was apparent on the face of the Ordinance. No such grant could be implied from its history, much less from its transitory character. The Court of Tax Appeals went too far. That cannot be done.

Wherefore, the decision of the court of Tax Appeals is reversed and the case is remanded to it, to grant respondent Administrator the opportunity of proving whether the estate could claim the benefits of section 142 of the National Internal Revenue Code, allowing refund to citizens of foreign countries on a showing of reciprocity. With costs.

Concepcion, C.J., Reyes, Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.

[1] The ordinance appended to the constitution reads as follows: "Notwithstanding the provisions of section one, Article Thirteen, and section eight, Article Fourteen, of the foregoing constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six, pursuant to the provisions of Commonwealth Act Numbered Seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen hundred and

seventy-four, the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprises owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines."

[2] Section 142 of the National Internal Revenue Code as amended reads as follows: "Section 142.- Specific tax on manufactured oils and other fuels.- On refined and manufactured mineral oils and motor fuels, there shall be collected the following' taxes: (a) * * * ; (b) * * * ; (c) Naptha, gasoline, and all other similar products of distillation, per liter of volume capacity, eight centavos; and (d) * * *. Whenever any of the oils mentioned above are, during the five years from June eighteen, nine-teen hundred and fifty-two, used in agriculture and aviation, fifty-percentum of the specific tax paid thereon shall be refunded by the Collector of Internal Revenue upon their submission of the following; (1) * * *; (2) * * *; (3) In case of aviation oils, a sworn certificate satisfactory to the Collector proving that the said oils were actually used in aviation: Provided, That no such refunds shall be granted in respect to the oils used in aviation by citizens and corporations of foreign countries which do not grant equivalent refunds or exemptions in respect to similar oils used in aviation by citizens and corporations of the Philippines."

[3] 5 Phil. 701.

[4] G.R. No. L-21841, October 23, 1966. Some of the other cases follow: Govt. of the Phil. v. Monte de Piedad (1916) 35 Phil. 42; Asiatic Petroleum v. Llanes (1926) 49 Phil. 466; House v. Posadas (1929) 53 Phil. 338; Phil. Tel. & Tel. Co. v. Collector (1933) 58 Phil. 639; Greenfield v. Meer (1946) 77 Phil. 394; Collector of Internal Revenue v. Manila Jockey Club (1956) 98 Phil. 670; Phil. Guaranty Co. v. Commissioner, G.R. No. L-22074, Sept. 6, 1965; Abed v. Court of Tax Appeals, G.R. No. L-20834, October 19, 1966.

[5] Philippine Guaranty Co. v. Commissioner, G.R. No. L-22074, September 6, 1965, per Bengzon, J.

[6] Govt. of the Phil. v. Monte de Piedad (1916) 35 42, 48.

[7] Asiatic Petroleum Co. v. Llanes (1926) 49 Phil. 46 (47-472). He added: "As was said by the Supreme Court of Tennessee in *Memphis v. U. & P. Bank* (91 Tenn., 646, 550), 'The rights of taxation is inherent in the State. It is a prerogative essential to the perpetuity of the government; and he who claims an exemption from the common burden, must justify his claim by the clearest grant of organic or statute law.' Other utterances equally or more emphatic come readily to hand from the highest authority. In *Ohio Life Ins. and Trust Co. v. Debolt* (16 Howard, 416), it was said by Chief Justice Taney, that the right of taxation will not be held to have been surrendered, 'unless the intention to surrender is manifested by words too plain to be mistaken.' In the case of the Delaware Railroad Tax (18 Wallace, 206, 226), the Supreme Court of the United States said that the surrender, when claimed, must be shown by clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power. If a doubt arise as to the intent of the legislature, that doubt must be solved in favor of the State. In *Erie Railway Company v. Commonwealth of Pennsylvania* (21 Wallace, 492, 499), Mr. Justice Hunt, speaking of exemptions, observed that a state cannot strip itself of the most essential power of taxation by doubtful word. 'It cannot, by ambiguous language, be deprived of this highest attribute of sovereignty.'" (at pp. 472)

[8] *Gold Creek Mining Corp. v. Rodriguez* (1938) 66 Phil. 259, 265, per Abad Santos, J., citing: *Barry v. Truax*, 13 N. C., 131; 99 N.W., 769; 65 L.R.A., 762.

[9] De los Santos v. Mallare (1950) 87 Phil. 289, 295.

[10] Schneckenburger v. Moran (1936) 36 Phil. 249, 266.

[11] Japanese Military Secret Police.

[12] Section 341, Philippine Trade Act of 1946.

[13] Martin v. Hunter's Lessee (1816) 1 Wheat 304.

[14] Cardozo, The Nature of Judiciary Process (1921) 83.

[15] What is permanent and enduring, as long as the Constitution remains what it is, is the stress, both unmistakable and pronounced, on nationalism. So it has been declared repeatedly by this Court. We start with Justice Laurel, himself one of the foremost architects of the Constitution, who authoritatively noted the "nationalistic * * * traits" discoverable by "even a sudden dip into a variety of the provisions" embodied in our charter framed under "an intense spirit of nationalism." (Gold Creek Mining Co. vs. Rodriguez [1938] 66 Phil. 259, 270.) Justice Perfecto, another delegate, who gained deservedly a reputation as a civil libertarian, would have the guarantees of due process and equal protection yield to its nationalistic provisions, one of which "reserves to Filipino citizens the operation of public services or utilities." (Co Chiong v. Cuaderno [1949] 83 Phil. 242, 251.) From still another former member of the constitutional convention, who likewise sat on this court, Justice Labrador: "it would do well to refer to the nationalistic tendency manifested in various provisions of the Constitution. * * * The nationalization of the retail trade is only a continuance of the nationalistic protective policy laid down as a primary objective of the constitution. Can it be said that a law imbued with the same purpose and spirit underlying many of the provisions of the Constitution is unreasonable, invalid and unconstitutional?" (Ichong v. Hernandez [1957] 101 Phil. 1155, 1136.)

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