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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SEA-LAND SERVICE, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4202

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - x

9/3/92

D E C I S I O N

Petitioner filed the subject petition for review to toll the running of the two-year prescriptive period for the refund or tax credit of allegedly erroneously paid income taxes in the amount of P1,270,517.16 (P928,598.25 + P341,918.91); and carrier's taxes amounting to P2,541,034.33 (P1,857,196.51 + P683,837.82) in the total amount of P3,811,551.49, for the taxable years 1985 and 1986.

The facts in the opinion of the Court, follow:

Petitioner is a resident foreign corporation organized in Delaware, U.S.A., engaged in the business of international sea transport. It claims to have been contracted by the U.S. Government to transport military household goods and effects of U.S. military personnel in the US Military Bases in the Philippines (Clark Airbase and Subic Naval

Base). The services cover movement of the said household goods and effects in container vans from the South Harbor to load on the vessels of petitioner for shipment abroad.

In this connection, petitioner presented, among other things, "MSC Container Agreement and Rate Guide" (Container Agreement, for short; Exhibit "QQ-1"), as well as a "Memorandum of Agreement between Naval Supply Depo, Subic Bay, R.P. and Sea-Land Service, Inc." (Memorandum of Agreement, for short; Exhibit "QQ"),intended to "implement and further amplify" the Container Agreement, to support its allegations that the subject transactions were tax free.

For the taxable years 1985 and 1986, petitioner's gross Philippine billings from these services amounted to P61,906,550.33 and P22,794,594.54, respectively, for which it paid income taxes in the sums of P928,598.25 for 1985, and P341,918.91 for 1986, at 1.5% thereof, under Section 24 (2) (i) of the National Internal Revenue Code (NIRC), in relation to Article 9, 1(a) of the Convention between the Government of the United States of America and the Government of the Republic of the Philippines with respect to taxes on income. As carrier's taxes it paid 3% of said gross Philippine billings in the amounts of P1,857,196.51 for 1985, and P683,837.82 for 1986.

In claiming exemption from income tax for those years, petitioner cites Article XII, Paragraph 4 of the R.P.-U.S. Military Bases Agreement (MBA for short), which reads:

> "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 with the Government of 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."

Petitioner alleges that it can avail of the said exemption clause because a) It is a corporation organized under the laws of the U.S.; b) It entered into a contract in the U.S. with the U.S. government; and c) Revenue was derived by it "from transportation services provided to the U.S. Government for maintenance, operation, and defense of the bases." (See Petition, par. 6).

Petitioner cites Article XIII, Nos. 1 and 2 of the MBA in claiming exemption from carrier's tax, which are hereunder quoted:

"ARTICLE XVIII. - SALES AND SERVICES WITHIN 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 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. Administrative measures shall be taken by the appropriate authorities of the United States to prevent the resale of goods which are sold under the provisions of this Article to persons not entitled to buy goods at such agencies, and, generally, to prevent abuse of the privileges granted under this Article. There shall be cooperation between such authorities and the Philippines to this end. (Emphasis supplied.)

"2. Except as may be provided in any other agreements, no person shall habitually render any professional services in a base except to or for the United States or to or for the persons mentioned in the preceding paragraph. No business shall be established in a base, it being understood that the Government agencies mentioned in the preceding paragraph shall not be regarded as businesses for the purpose of this Article."[Emphasis supplied]

The issues raised are:

1) Whether or not the income derived from services rendered by petitioner in transporting U.S. Military personnel's household goods and

effects are exempt from income tax under Article XII, Paragraph 4 of the R.P.-U.S. Military Bases Agreement; and

2) Whether or not petitioner is a concessionaire, exempt from carrier's tax under the same provision, in relation to Article XVIII, Nos. 1 & 2 of the said Agreement.

Only the respondent filed a memorandum.

In regard to the first issue, petitioner's act of transporting household goods and effects of military personnel could hardly be considered as relating to the "maintenance" or "operation" of the bases, and much less will it fall under "construction" or "defense" of those bases. "To 'maintain' means to preserve or keep in an existing state or condition, and embraces acts of repair and other acts to prevent a decline, lapse or cessation from that state or condition, and has been taken to be synonymous with 'repair'..." (Words and Phrases, Permanent Edition, Vol. 26, p. 103, citing Norris v. American Liability & Surety Co., 185 A. 201,203,322 Pa. 91.) Further, "There is no substantial difference between 'maintenance' and 'maintaining' and operating" (Id., id, id, citing Roberts v. City of Los Angeles, 61 P. 2d. 323, 327, 7 Cal. 2d 477.)

Thus, even granting that J.M. Ellier, as well as Jorge E. Rieber, were indeed authorized by the U.S. government to sign the Memorandum of Agreement (Exhibit "QQ"), and the Container Agreement (Exhibit "QQ-1"), respectively, petitioner cannot still qualify for exemption from income tax under the MBA because the shipment of the household goods and effects had nothing to do with the "maintenance" or "operation" of Clark Airbase and/or Subic Naval Base, and much less was it related in any manner to the "construction" and "defense" of those bases. Exemptions are also strictly construed against the taxpayer. In view hereof, it is no longer necessary to expound on the merits of the documentary exhibits presented by petitioner.

Respecting the second issue, neither can the petitioner be considered as a concessionaire exempt from carrier's tax for the subject transport services. Article XVIII, No. 1, of the MBA, in regard to "Sales and Services <u>Within</u> Bases" (Emphasis supplied), specifically and clearly refers to "government agencies" established <u>"on bases"</u> in order to be "free of all licenses; fees; sales; excise or other taxes, or imposts..." and these "government agencies" include "<u>concessions</u>, 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." (Emphasis supplied).

The international sea transport business of petitioner was not established "on bases" and the services it rendered were not "for the exclusive use of the United States military forces and authorized civilian personnel and their families," granting that the services were indeed made available to them. It, thus, strains the imagination of this Court to believe petitioner's contention that its said services qualifies as a "concession" under the MBA. As already stressed, claims for exemptions are to be construed strictly against the taxpayer. Hence, the claim of exemption from carrier's tax will also have to be denied.

Canlas and Manila Pencil Co. v. Republic, et. al. (103 Phil. 712 [1958]) reinforces this view when it held 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". (Emphasis supplied.) It is also pertinent to point out that under Article XVIII, No. 2 of the MBA, cited by petitioner itself, "No business shall be established in a base, it being understood that the Government agencies mentioned in the preceding paragraph shall not be regarded as businesses for the purpose of this Article. In contrast, petitioner alleges in paragraph 3 of its petition that it is engaged in the business of "an international carrier in sea transport."

There being no legal or factual basis for petitioner's claims for exemption from income and carrier's taxes for the taxable years 1985 and 1986, the herein petition is hereby denied.

WHEREFORE, judgment is hereby rendered dismissing the herein petition, and this Court hereby denies petitioner's prayer for the refund or tax credit of income and carrier's taxes paid for the taxable years 1985 and 1986, with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, September 3, 1992.

STELLA DADIVAS-FARRALES
Acting Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals