REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

PHILIPPINES INTERNATIONAL
FAIR, INC.,
Petitioner,

- versus - Dec. 29, 1956 C.T.A. CASE NO. 67

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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DECISION

This is an appeal from a decision of the respondent Collector of Internal Revenue, assessing and demanding from petitioner, Philippines International Fair, Inc., the amount of ₱29,633.62 as amusement tax and surcharge on the receipts derived from admissions to the Aquacade Show sponsored by it during the months of February and March 1953 at the International Fair grounds.

The following facts have been established. Petitioner, a corporation organized under the laws of the Philippines, sponsored in 1953 an international fair and exposition in the City of Manila. For this purpose, the Philippine government permitted the use of the United Nations Plaza and the golf links near the Sunken Garden by the petitioner, free of charge, for the site of the fair (Exhibit K). Booths were erected for the industrial and agricultural expositions of provinces together with booths of foreign countries displaying their respective products. There were also side shows and various attractions, among which was the much-publicized "Aquacade Show" (Par. 1, Petition for Review). This particular show was shown during the months of February and March 1953. It was brought all the way from the United States by Mr. E. K. Fernandez, a showman.

On April 6, 1953, Mr. Fernandez wrote a letter to the Collector of Internal Revenue requesting that the Aquacade Show be exempted from the payment of the amusement tax on the ground that it falls within the exemption provided for by Republic Act No. 722 (pp. 45-47, BIR Records). The Collector, on May 2, 1953, denied said request, saying:

> "While it is true that certain musical numbers were included in the program of the 'Aqua Thrills', still the aquatic shows rendered by bathing beauties, champion swimmers, and fancy divers represent the essence and principal feature of the program. The musical portions of the program were rendered to give color and life to the show but they were never intended to be the main attraction of the aqua show." (p. 52, BIR Records).

The matter of exemption was also taken up thru diplomatic channels including the claim that the Fernandez Show was discriminated against, while the Xavier Cugat Show, which also performed at the International Fair grounds, was exempted (p. 32, BIR Records). In this instance, our Department of Foreign Affairs endorsed the matter to the Collector of Internal Revenue through the Secretary of Finance for comment on the alleged discrimination (p. 35, BIR Records). In a letter dated July 31, 1953, the Deputy Collector of Internal Revenue informed the Secretary of Foreign Affairs through the Secretary of Finance that the matter of exemption had already been commented upon in the letter of the Collector to Mr. Fernandez dated May 2, 1953 (p. 36, BIR Records) cited above.

Meanwhile, respondent in a letter dated May 22, 1953, demanded from petitioner the payment of the sum of ₱29,633.62 (pp. 116-117, BIR Records, Exhibit 8) as amusement tax plus surcharge on the receipts of the Aquacade Show for the months of February and March 1953. On June 25, 1953, Mr. Arsenio Luz, as Director General of the Philippines International Fair, Inc., wrote a letter to respondent requesting for a reconsideration of the imposition of the amusement tax on the receipts of the Aquacade Show on the ground that the presentation was an artistic one and contended that it falls within the exemption provided for in Republic Act No. 722 (Exhibit D, pp. 124-125 BIR Records). On April 1, 1954, respondent denied said request for reconsideration (p. 123, BIR Records), but upon another request by petitioner dated April 13, 1954, the case was referred to the Conference Staff of the Bureau of Internal Revenue for rehearing. After due hearing thereof and submission of the case, the Conference Staff, on November 3, 1954, recommended that the request for exemption by petitioner be denied and the amount of ₱29,633.62 be collected fromitt (pp. 223-

229, BIR Records). Accordingly, on December 27, 1954, respondent reiterated the demand for payment of the above-stated assessment tax (p. 232, BIR Records), from which decision, petitioner interposed the present appeal.

During the hearing of this case, the parties entered into a partial stipulation of facts, viz:

1. That the sum of ₱29,633.62 is collectible from the petitioner in the event this Honorable Court should decide that the "Aquacade" performance is not exempt under Republic Act 722.

2. That the respondent admits that the petition for review was filed by the petitioner within thirty (30) days from the date of the decision of the respondent Collector of Internal Revenue.

3. That respondent admits the publication in the newspapers of the clippings marked as Exhibits "E", "E-1", "E-2", "E-4" and "E-5".

4. That petitioner admits that Exhibits "1","2", "3" and "4" appearing on page 48 of the BIR Records, Exhibit "5" appearing on page 3 of the BIR Records and Exhibit "6" appearing on page 129 of BIR Records were duly published in the newspapers concerned.

5. That the Philippine Women's University Aquacade Show (Exhibit F) was published in the Sunday Times issue dated February 27, 1955.

6. That the oral and documentary evidence submitted during the hearings before the Conference Staff of the Bureau of Internal Revenue form part of the records of the Bureau of Internal Revenue and that the evidence presented by each of the parties thereat may be admitted in evidence.

The only issue then is whether or not the Aquacade Show is exempt from the payment of the amusement tax pursuant to Republic Act No. 722.

The tax was imposed pursuant to section 260 of the Internal Revenue Code which reads:

> "Sec. 260. Amusement taxes. - There shall be collected from the proprietor, lessee or operator of theaters, cinematographs, concert halls, circuses, and other places of amusement the following taxes:
>
> (a) x x x x"

The petitioner claims exemption from the payment of amusement tax on the receipts from admission to the Aquacade Show under the provisions of Republic Act No. 722 approved on June 6, 1952 the pertinent portion of which reads as follows:

> "Section 1. The holding of operas, concerts, recitals, dramas, painting and art exhibitions, flower shows, and literary, oratorical or musical programs, except film exhibitions and radio or phonographic records thereof, shall be exempt from the payment of any national or municipal amusement tax on the receipts derived therefrom."

The contention of petitioner is premised on the claim that the aquacade presentation is an art and falls within the purview of Republic Act No. 722. To substantiate its stand, petitioner presented witnesses like Miss Anita Kane, an expert in her line, well known in local circles as a danseuse and ballet instructress, Mr. Arsenio Luz, a widely-travelled businessman and connoisseur of art, and also Mr. Enrique Davila, one of the country's veteran impressaries.

The issue centers upon the concept of the vocable "art" as used in Republic Act No. 722. For this purpose, we quote hereunder definitions of ballet and art, viz:

> "ART means 'skill, dexterity, or the power of performing certain actions, acquired by experience, study, or observation; knack. x x x Systematic application of knowledge or skill in effecting a desired result. x x x Application of skill and taste to production according to aesthetic principles; an occupation having to do with the theory or practice of taste in the expression of beauty in form, color, sound, speech, or movement.'" (Webster's International Dictionary, 2nd Ed. p. 155).

> "Ballet means a theatrical dance; specifically a pantomimic dance executed by a group, esp. women; a kind of artistic dancing marked by great variety, intricacy and expressiveness in movements. (Webster's International Dictionary). When used without any qualifying adjective or phrase, the term is frequently used to signify an art in its higher manifestation or art per-excellence, as it is represented in works of art by those who are distinctively denominated artists." (5 Corpus Juris, p. 588; underscoring supplied.)

> "A Ballet is a series of solo and concerted dances with mimetic actions accompanied by music and scenic accessories, all expressive of a poetic idea or series of ideas of a dramatic story provided by an author or choreographer." x x x x The Encyclopedia of Diderot and d'Alember (ca. 1772) tells us that 'Ballet is action explained by a dance.'" (Dance Encyclopedia by Anatole Chujoy, s-1949, p. 36).

The aquacade presentation of petitioner constitutes the rythmic swimming of several beautiful girls to the accompaniment of music. This performance is made in water and requires even more skill and training than a ballet dance presented on the stage, because in the former, the dancer should not only be an accomplished danseuse but must also be a skilled swimmer. In fact this performance is known as "water ballet". Ballet remains a ballet regardless of the media used in its presentation, whether presented on the stage or in water. The artistic essence remains and being a form of ballet is therefore an art. The evidence show that water ballet was not unknown among the early danseurs. From "The Dance Encyclopedia" by Anatole Chujoy (Exhibits G, G-1), in connection with the life history of Serge Diaghileff (1872-1929), we find this excerpt:

> "During the long 1911 season the following ballets were added to the repertoire: PETROUCHKA (Karsavina, Nijinsky, Bolm); LE SPECTRE DE LA ROSE (Karsavina, Nijinsky), Le Dieu Bleu (Karsavina, BRONISLAVA NIJINSKA, Nijinsky), Narcisse (Karsavina, Nijinsky), Aurora and the Prince (pas' de deux from the SLEEPING BEAUTY (MATILDE KSCHESSINSKA and Nijinsky) and the underwater ballet from the opera Sadko." (The Dance Encyclopedia by Anatole Chujoy, p. 152; Exhibits G and G-1).

Petitioner also presented numerous exhibits to show that the "aquacade show" at the International Fair was no different from the water ballet performances at the Malacañan Park in 1954 for the Peace and Amelioration Fund Drive and also from the Coral Aquacade of 1955 of the Philippine Women's University (Exhibits E, E-1, E-15, F, F-1, M). Petitioners claim (and respondent does not deny it) that the latter two presentations were not required to pay amusement taxes, whereas in the instant case no exemption was recognized. The fact that there were a few added attractions do not affect the water-ballet presentation for those were but mere incidents, and as respondent's only witness admits, the main attraction thereto was the aquacade presentation.

We note that respondent himself, considers ballet as a theatrical representation achieved through terms of dancing (see Respondent's Memorandum, pp. 10-11, November 7, 1956). In the case of Oteyza vs. Araneta (C.T.A. Case No. 89, January 3, 1956) we have held that ballet performance comes within the tax exemption provided by Republic Act No. 722. In that case we had occasion to state that the evident intention then of Congress was to promote arts and letters (Sec. 4, Art. XIV, Philippine Constitution) and to enhance our artistic and cultural development (Congressional Records, H. R. April 18, 1952, Vol. III No. 55, pp.1181-1182). Considering as we do, that the water ballet is but another form of ballet which requires an even more specialized training and skill than the ballet on the stage, we are therefore of the opinion and so hold that the aquacade show of petitioner fall within the purview of the presentations exempted from the amusement taxes under Republic Act No. 722.

IN VIEW OF THE FOREGOING, we find and so hold that the decision of respondent appealed from should be, as it is hereby reversed, and declare the petitioner, Philippines International Fair, Inc., exempt, pursuant to Republic Act No. 722, from the payment of the amount of ₱29,633.62 representing amusement taxes and surcharges, without pronouncement as to costs.

SO ORDERED.

Manila, December 29, 1956.

MARIANO NABLE
Presiding Judge

WE CON-

CUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge