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Sept. 23/64

MANILA ELECTRIC COMPANY,
Petitioner,

- versus -

C.T.A.
CASE NO. 1493

BENJAMIN N. TABIOS, as Commissioner of Internal Revenue,
Respondent.

x - - - - - - - - - - - - - - - x

D E C I S I O N

This is an appeal from the decision of the Commissioner of Internal Revenue denying petitioner's claim for refund of the sum of ₱6,587.00 paid as compensating tax on certain articles it purchased from abroad sometime in 1963.

Petitioner is a grantee of a legislative franchise, by virtue of Act No. 484, as implemented by Ordinance No. 44 of the City of Manila and extended by Republic Act No. 150, to maintain and operate an electric light, heat and power system in the City of Manila and suburbs. Sometime in 1963, petitioner purchased from abroad certain quantities of copper wires, transformers and insulators for use in connection with the operation of its business, on which compensating tax in the amount of ₱6,587.00 was paid. (See Exhibits "A," "A-1," "B," "B-1," "C," & "C-1," pp. 17, 18, 21, 22, 24 & 25 CTA rec.)

On December 19, 1963 petitioner filed with the Bureau of Internal Revenue a claim for refund and/or tax credit of the sum of ₱6,587.00 which claim was denied by respondent in his letter dated January 23, 1964. (See Exhibits "D" & "E," pp. 7-8, 11-12, BIR rec.)

On February 21, 1964 petitioner filed the instant petition for review with this Court.

The issue posed is whether or not petitioner is exempt from the payment of the compensating tax on the copper wires, transformers and insulators it purchased abroad, pursuant to paragraph 9 of Act No. 484, as implemented by Ordinance No. 44 of the City of Manila and extended by Republic Act No. 150. Petitioner contends it is. Respondent maintains otherwise.

Exemption from the tax is claimed by petitioner pursuant to Section 9 of its franchise which reads as follows:

> "PARAGRAPH 9. The grantee shall be liable to pay the same taxes upon its real estate, buildings, plant (not including poles, wires, transformers, and insulators), machinery, and personal property as other persons are or may be hereafter required by law to pay. In consideration of Part Two of the franchise herein granted, to wit, the right to build and maintain in the City of Manila and its suburbs a plant for the conveying and furnishing of electric current for light, heat, and power, and to charge for the same, the grantee shall pay to the City of Manila five per centum of the gross earnings received from its business under this franchise in the City and its suburbs; PROVIDED, That two and one-half per centum of the gross earnings received from the business of the line to Malabon shall be paid to the Province of Rizal. Said percentage shall be due and payable

> at the times stated in paragraph nineteen of Part One hereof, and after an audit, like that provided in paragraph twenty of Part One hereof, <u>and shall be in lieu of all taxes and assessments of whatsoever nature, and by whatsoever authority upon the privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted</u>." (Underscoring supplied.)

In view of the underlined portions of the paragraph just quoted, petitioner claims that it is exempt from any and all taxes, including compensating tax, on its poles, wires, transformers and insulators, upon payment of the franchise percentage tax and the taxes on its real estate. It further contends that the ruling in the case of Panay Electric Company (G.R. No. L-6753, July 30, 1955) cannot serve as a precedent in the resolution of the question at issue herein.

A cursory perusal of afore-quoted paragraph brings to focus the fact that the exemption provision refers to those rights and privileges which are not enjoyed by the public in general, <u>but only by the grantee of the franchise</u>, and does not embrace the common right or privilege of every citizen to make purchases from abroad. Consequently, exemption from the payment of the compensating tax could not have been contemplated in the exemption granted to petitioner.

The Supreme Court aptly ruled in several cases, (Panay Electric Co. vs. Collector of Internal Revenue, G.R. No. L-6753, July 30, 1955; Manila Gas Corp. vs. Collector of Internal Revenue, G.R. No. L-11784, Oct. 24, 1958; Borja vs. Collector of Internal Revenue, G.R. No. L-12134, November 30, 1961) and we quote:

> "In this connection, we must not lose sight of the purpose for which the compensating tax has been instituted. x x x
>
> > '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.'
>
> "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. x x x."

Bearing in mind, therefore, the fact that Section 190 of the Tax Code serves as an equalizer, to place casual importers, who are not merchants on equal footing with established merchants who pay sales tax on articles imported by them, we may safely conclude that it was not the intention of the law to exempt petitioner from the payment of the compensating tax on the articles in question.

Furthermore, petitioner's claim for exemption from the payment of the compensating tax is not clear or expressed. It is a cardinal rule in taxation that "exemptions from taxation are highly disfavored in law, and he who claims exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications. (Coll. of Int. Rev. vs. Manila Jockey Club, G. R. No. L-8755, March 24, 1956; House vs. Posadas, 53 Phil. 338; Asiatic Petroleum vs. Llanes, 49 Phil. 466).

In connection with petitioner's contention that the ruling in the case of Panay Electric Company, supra, is not controlling, we believe that even though there are dissimilarities in the two cases, yet the fundamental issue involved in both is the same - the question of exemption from compensating tax on imported goods or articles, not for sale, but for use in connection with their business. Consequently, pursuant to the legal principle of "stare decisis et non quieta movere," such previous pronouncement of the Supreme Court is binding upon this Court.

WHEREFORE, the decision denying the claim for refund is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, September 23, 1964.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge