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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

January 25, 1963

PHILIPPINE ACE LINES, INC.,
Petitioner,

- versus -

C.T.A.
CASES NOS. 964
& 984

COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS,
Respondents.

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DECISION

The respondent Commissioner of Internal Revenue assessed against the petitioner the sums of ₱304,428.00, ₱256,275.00, ₱499,948.10, and ₱305,073.47 as compensating tax on four ocean going cargo vessels, MS "YAKAL", MS "NARRA", MS "TINDALO" and MS "MOLAVE", respectively, which were all acquired by petitioner from the Reparations Commission in 1959 and 1960. Petitioner contested the assessments on the ground that the legal title and ownership of the said vessels have been retained by the Reparations Commission which under the law is exempt from tax. The Commissioner of Internal Revenue refused to reconsider the assessments and threatened to collect the tax by distraint and levy. Petitioner has appealed.

While the case was pending trial, petitioner sought to enjoin the collection of the tax. After hearing, writs of preliminary injunction were issued in the above-entitled cases upon the filing of surety bonds to guarantee payment of the aforesaid amounts. (See Resolution dated November 8, 1960 in C.T.A. No. 964 and Resolution dated December 9, 1960 in C.T.A. No. 984.)

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In the meantime, Congress enacted Republic Act No. 3079, effective June 17, 1961, which amended Republic Act No. 1789 and providing for exemption from compensating tax of reparations goods acquired from the Reparations Commission. Claiming that the exemption provided in the new law applies to the vessels acquired by it in 1959 and 1960, petitioner filed a "Supplement to Petition for Review" in each of the above-entitled cases.

The sole issue presented for our consideration is whether or not petitioner is liable for the compensating tax on the four ocean going vessels in question. Petitioner claims that it is not liable on the grounds that said vessels are still owned by the Reparations Commission and that, assuming that it was liable therefor under Section 190 of the National Internal Revenue Code, in relation to Section 14 of Republic Act No. 1789 before its amendment, it is now exempt from said tax by virtue of Section 20 of Republic Act No. 3079 in relation to Section 14 of Republic Act No. 1789, as amended. On the other hand, respondent claims that petitioner is liable and that the latter's liability is not affected by the exemption provision of the new law.

Section 190 of the Revenue Code provides:

> "Sec. 190. Compensating tax.- All persons residing or doing business in the Philippines, who purchase or receive from without the Philippines any commodities, goods, wares, or merchandise, excepting those subject to specific taxes under Title IV of this Code, shall pay on the total value thereof at the time they are received by such persons, including freight, postage, insur-

> ance, commission and all similar charges, a compensating tax equivalent to the percentage taxes imposed under this Title on original transactions effected by merchants, importers, or manufacturers, such tax to be paid before the withdrawal or removal of said commodities, goods, wares, or merchandise from the customhouse, or the post office. x x x."

It is contended on behalf of petitioner that "the foregoing provision contemplates purchases and receipts of goods or merchandise from abroad where the title or ownership of the goods or merchandise so received is vested absolutely or transferred to the purchaser or recipient unconditionally." And since title to the said vessels is retained by the Reparations Commission until the whole purchase price shall have been paid (the purchase price of each vessel is payable in annual equal installments for a period of twenty years), it is not liable for the tax.

The law imposes the compensating tax upon commodities, goods, wares or merchandise, except those specifically exempted, purchased or received from without the Philippines. There is nothing in the law which requires that for the tax to accrue it is essential that absolute title to the property so imported or received from abroad be transferred from the person from whom it was acquired to the person who purchased or received it. It is enough for a person to be subject to the compensating tax that he purchased or received a taxable article from without the Philippines. (Cantilan Lumber Co. v. Coll. of Int. Rev., C.T.A. No. 269, Aug. 12, 1958, reversed on another ground in G. R. No. L-14393, Oct. 31, 1960.) To accept the correctness of petitioner's theory would nullify the purpose of the law in imposing the compensating tax on all articles imported or received from abroad for use in the Philippines. Goods could be imported from abroad under an arrangement whereby the purchase price shall be payable by installment, title to the goods remaining in the foreign supplier until the whole purchase price is paid, and thereby escape payment of the compensating tax. In such a situation, the Government would be at the mercy of scheming taxpayers. We are, therefore, of the opinion that a person who receives goods from abroad for use in the Philippines, except those specifically exempted by law, is subject to the compensating tax whether or not he has absolute title to the goods at the time of importation.

In this case, it is admitted-

> "That the abovementioned vessels were procured by the Reparations Commission for the end-use of the petitioner from Japan under the Philippines-Japanese Reparations Agreement of May 9, 1956; said vessels having been delivered to the petitioner while still in Japan; x x x." (Par. 3, Stipulation of Facts, dated June 2, 1962, page 101, C.T.A. records in C.T.A. No. 964; underscoring supplied.)

There is, therefore, no question that the said vessels were delivered by the Reparations Commission to petitioner in Japan and that they were sent to and were received by petitioner in the Philippines for its use. Undoubtedly, said vessels are subject to the compensating tax and petitioner is liable therefor under Section 190 of the Revenue Code for having purchased and received the same from without the Philippines for its own use. The fact that the vessels were registered in the Bureau of Customs in the name of the Reparations Commission as owner by virtue of the "Contract of Conditional Purchase and Sale of Reparations Goods" entered into between the Reparations Commission and petitioner does not affect the taxability of the vessels.

But it is contended that under Section 14 of Republic Act No. 1789, as amended by Republic Act No. 3079, in relation to Section 20 of the latter Act, petitioner is entitled to exemption from the compensating tax in respect to said vessels. On the other hand, respondent contends that the exemption from compensating tax of goods acquired from the Reparations Commission prior to the enactment of Republic Act No. 3079 has not been clearly defined, unlike the exemption of goods acquired from the Reparations Commission after the effectivity of said Act; and since exemptions from taxation are always strictly construed, it must be presumed that Congress did not intend to exempt from taxation reparations goods acquired by end-users before the approval of said Act.

Section 14 of Republic Act No. 1789, before its amendment by Republic Act No. 3079, reads as follows:

> Sec. 14. Exemption from tax.- All reparations goods obtained by the government shall be exempt from the payment of all duties, fees and taxes. Reparations goods obtained by private parties shall be exempt only from the payment of customs duties, consular fees and the special im-

port tax.

The same section, as amended by Republic Act No. 3079, reads:

> Sec. 14. Exemption from tax.- All reparations goods obtained by the government shall be exempt from the payment of all duties, fees and taxes. Reparations goods obtained by private parties shall be exempt from the payment of customs duties, compensating tax, consular fees and the special import tax. (As amended by Rep. Act No. 3079; emphasis supplied.)

And Section 20 of Republic Act No. 3079 provides that said Act shall take effect upon its approval (on June 17, 1961), except certain provisions thereof which were specifically made applicable to transactions effected prior thereto under the conditions laid down in said section. For convenience, Section 20 of said Act is quoted below in full:

> "Sec. 20. This Act shall take effect upon its approval, except that the amendment contained in Section seven hereof relating to the requirements for procurement orders including the requirement of down payment by private applicant end-users shall not apply to procurement orders already duly issued and verified at the time of the passage of this amendatory Act, and except further that the amendment contained in Section ten relating to the insurance of the reparations goods by the end-users upon delivery shall apply also to goods covered by contracts already entered into by the Commission and the end-user prior to the approval of this amendatory Act as well as goods already delivered to the end-user, and except further that the amendments contained in Sections eleven and twelve hereof relating to the terms of installment payments on capital goods disposed of to private parties, and the execution of a performance bond before delivery of reparations goods, shall not apply to contracts for the utilization of reparations goods already entered into by the Commission and the end-users prior to the approval of

> this amendatory Act: *Provided*, That any end-user may apply for the renovation of his utilization contract with the Commission in order to avail of any provision of this amendatory Act which is more favorable to an applicant end-user than has heretofore been granted in like manner and to the same extent as an end-user filing his application after the approval of this amendatory Act, and the Commission may agree to such renovation on condition that the end-user shall voluntarily assume all the new obligations provided for in this amendatory Act."

From the above quoted provisions of law, it appears that goods acquired by private parties from the Reparations Commission prior to the effectivity of Republic Act No. 3079 were subject to the compensating tax and that goods acquired thereafter are exempt from said tax. However, with respect to goods acquired prior to the approval of said Act, Section 20 thereof provides that any private party or end-user may apply for the renovation of his utilization contract with the Reparations Commission in order to avail himself of any provision of said Act which is more favorable to him than has heretofore been granted "in like manner and to the same extent as an end-user filing his application after the approval of this amendatory Act." And the Reparations Commission is authorized to agree to such renovation "on condition that the end-user shall voluntarily assume all the new obligations provided for in this amendatory Act."

Section 20 of Republic Act No. 3079 makes the provisions thereof favorable to end-users, among which is the exemption from compensating tax, applicable to transactions effected prior to its approval, provided that (1) the end-user applies for renovation of his utilization contract with the Reparations Commission and (2) the applicant end-user voluntarily assumes all the new obligations provided for in said Act.

The evidence shows that herein petitioner applied for the renovation of its utilization contracts covering the four ocean going vessels in question; that the Reparations Commissions agreed to the renovation of said contracts; and that the renovated contracts contain provisions favorable to the applicant as authorized in the law and the assumption by the applicant of all the new obligations provided in the amendatory Act. The following provisions appear in the renovated contracts:

> "WHEREAS, under the aforesaid Republic Act 3079 there are provisions therein more favorable to an end-user than as heretofore been granted, to wit:
>
> > The provision that in the case of vessels the procurement cost thereof shall be paid within the period provided for by Republic Act No. 1407 which, as adopted by the Commission is 20 years; the provision of Sec. 14 thereof which provides, among others, that Reparations goods obtained by private parties shall be exempt from, among others, the payment of the compensating tax; the provision giving an end-user right to select a qualified insurance company for the purpose of posting the requisite insurance coverage.
>
> "WHEREAS, under the provision of said Section 20 of the law above referred to herein Conditional Vender may agree to such renovation on condition that the end-user shall voluntarily assume all the new obligations provided for in the amendatory Act (Rep. Act No. 3079);

> "WHEREAS, the herein Conditional Veddee has volunarily assumed all the new obligations required to be assumed in the Amendatory Act and has otherwise complied with the requirements for the renovation of its contract with the Conditional Vender; x x x."

The Government does not deny the fact that petitioner has complied with all the requirements of law in order that it may avail itself of all the favorable provisions granted in Republic Act No. 3079. It is, however, contended that the favorable provisions mentioned in Section 20 of said Act which may be availed of by an applicant for renovation of his utilization contract with the Reparations Commission do not include exemption from compensating tax because such exemption is not expressly stated in the law. In providing that the favorable provisions of Republic Act No. 3079 shall be available to applicants for renovation of their utilization contracts, on condition that said applicants shall voluntarily assume all the new obligations provided in the new law, the law intends to place persons who acquired reparations goods before the enactment of the amendatory Act on the same footing as those who acquire reparations goods after its enactment. This is so because of the provision that once an application for renovation of a utilization contract has been approved, the favorable provisions of said Act shall be available to the applicant "<u>in like manner and to the same extent</u> as an end-user filing his application after the approval of this amendatory Act."

To deny exemption from compensating tax to one whose utilization contract has been renovated, while granting the exemption to one who files an application for acquisition of reparations goods after the approval of the new law, would be contrary to the express mandate of the law that they both be subject to the same obligations and that they both enjoy the same privileges in like manner and to the same extent. It would be a manifest distortion of the literal meaning and purpose of the law.

FOR THE FOREGOING CONSIDERATIONS, the decisions appealed from in both cases are hereby reversed. Accordingly, the surety bonds filed by petitioner to guarantee payment of the tax in question are ordered cancelled. No pronouncement as to costs.

SO ORDERED.

Manila, January 25, 1963.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge