REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE AIR LINES,
INC.,
Petitioner,

Aug. 22, 1970

versus

CTA CASE NO. 1943

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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DECISION

This is a claim for refund of the sum of ₱3,005.00 collected by respondent as compensating tax on various articles imported by petitioner, Philippine Air Lines, Inc. (PAL for short).

The material facts of this case are not controverted. Petitioner, a duly organized corporation, is the grantee of a franchise to operate and engage in the business of carrying passengers, mail and property by air by virtue of Act No. 4271, as amended by Republic Act No. 2360.

Under Section 13 of abovesaid Act, PAL is required to pay a franchise tax of 2% of its gross receipts or gross revenue in lieu of all taxes of any kind, nature or description, levied, established or collected by any municipal, provincial or National authority.

In December, 1965, and in the months of January and April, 1966, PAL imported ten (10) air-conditioners, dental equipments and two typewriters. Of the ten air-conditioners imported, four (4) were installed in the storeroom where delicate aircraft engine and spare parts are kept; five (5) were installed in the PAL office in Fuente Osmeña Street and one (1) in the PAL's manager's office in Mactan. The dental equipments are being used in the dental clinic of PAL in Ayala Avenue, Makati to service the needs of PAL employees to comply with the requirements of Republic Act Nos. 1094, 3961 and 239 relative to free emergency and dental treatment for laborers and employees of commercial and industrial establishments. The two typewriters are being used in the Credit and Collections Office of PAL in Ayala Avenue, Makati, Rizal for typing bills, collection letters and other papers relative to invoicing and collection of indebtedness owing PAL for charge passengers and freight customers.

On August 2, 1966, respondent collected compensating taxes of ₱2,164.00 and ₱726.00 on PAL's importation of ten (10) air-conditioners and dental equipment, respectively. Again in April, 1966, respondent collected ₱115.00 as compensating taxes on PAL's importation of two typewriters.

Petitioner filed a claim for refund of the compensating taxes in the amount of ₱3,005.00 with respondent on June 16, 1967. Up to the present, no final action has yet been made by respondent on PAL's claim for refund. To comply with the two-year statutory period for court action in cases of tax refund, PAL filed the present petition for review with this Court on July 2, 1968.

The issues presented before us for resolution are:

1. Whether or not PAL, under the provisions of Section 13 of its franchise is exempt from the payment of compensating taxes on the ten (10) air-conditioning units, two (2) typewriters and dental equipment imported in 1965 and 1966.

2. Whether or not respondent is liable to pay interest on the refundable amount on the ground of unreasonable delay in the fulfillment of his legal obligation to refund taxes illegally or erroneously collected by him.

With respect to the first issue raised by the parties, the main point of controversy hinges on the interpretation of the phrase "in lieu of all taxes of any kind, nature or description, levied, established or collected by any municipal, provincial or National authority" incorporated in Section 13 of PAL's franchise, Act No. 4271 as amended by R.A. 2360 which reads as follows:

> "SEC. 13. In consideration of the franchise and rights hereby granted, the grantee shall pay to the National Government during the life of this franchise a tax of two per cent of the gross revenue or gross earning derived by the grantee from its operation under this franchise. Such tax shall be due and payable quarterly and shall be in lieu of all taxes of any kind, nature or description, levied, established or collected by any municipal, provincial or National authority: *Provided*, That if after the audit of the accounts of the grantee by the Commissioner of Internal Revenue, a deficiency tax is shown to be due, the deficiency tax shall be payable within ten days from the receipt of the assessment. The grantee shall pay the tax on its real property in conformity with existing law." (Underlining supplied.)

Whether the scope of a tax exemption covers taxes of a particular kind largely depends on the wording of the exemption:

> An exemption may be confined to ad valorem taxes as distinguished from franchise, occupation or license taxes. Whether a general exemption includes not only property taxes but also occupation, franchise or license taxes depends largely upon the wording of the exemption. An exemption of a corporation from "all taxation of every kind" includes exemption from a license or franchise tax. A fortiori, an exemption from any tax or "impost" whatsoever includes every kind of enforced contribution to the public treasury, and hence embraces a franchise tax. An exemption of the property of a corporation precludes taxation of its franchise as property; but an agreement for a payment of a percentage of gross receipts of a corporation "in lieu of all license, occupation or special tax or taxes" does not cover a tax on the franchise of the company as a property tax. (Cooley, pp. 1450-1451, Vol. 2.)

The phrase "in lieu of all taxes of any kind, nature or description" has been generally considered as a commutation tax, that is, it is a combination of two or more taxes as an excise or franchise tax, payment of which would give rise to privilege exemption from all other taxes. (Philippine Air Lines, Inc. v. Comm. of Internal Revenue, CTA Case No. 45, Feb. 8, 1956, citing 12 Corpus Juris 216.) Interpreting a similar provision in Philippine Railway Co. v. Nolting (34 Phil. 401), the Supreme Court said the following:

> . . . The phrase "all taxes of every name and nature" is a very in-

> clusive statement, especially when it names, in connection therewith, the only governmental entities who have a right to collect taxes. It is not only all-inclusive, but it is also as well exceedingly exclusive. It not only includes all payments which may be regarded as taxes, but it excludes everything which might, by any possibility, be denominated taxes, other than those expressly named in said Act No. 1497. . .

Interpretations showing the scope of petitioner's exemption are not wanting. The Court of Tax Appeals has considered duties on gasoline as included in the exemption. (Philippine Air Lines, Inc. v. Comm. of Customs, CTA Case No. 184, Sept. 14, 1954.) Under a franchise with the same tenor as the franchise in question, Filipinas Orient Airways obtained a ruling from the Secretary of Finance that imported aviation gasoline and other fuel oils used in domestic flights are exempt from specific tax (Indorsement dated July 25, 1966 of the Secretary of Finance, sustaining a Ruling of the Bureau of Internal Revenue) and another holding that its airplanes, including related spare parts and ground support equipment, are exempt from compensating taxes in the same manner as the Philippine Airlines, Inc. (1st Indorsement, May 10, 1965 of the Secretary of Finance). Again, respondent, in his letter of December 28, 1966 addressed to counsel for petitioner ruled that imported air conditioners to be installed in storehouses where aircraft spare parts and equipment have to be kept and maintained at a certain level of temperature are exempt from compensating tax (CTA record p. 120).

It is plain from a perusal of petitioner's exemption that same is a general exemption covering all payments which might be denominated as taxes. The only tax to which it is subject is the real property tax which is expressly stated as an exception to the general exemption. Needless to say, the compensating tax must of necessity be deemed included in the exemption. We are not at liberty to include in this exception taxes other than those provided by the law.

In an obvious change of opinion, respondent now urges that petitioner's tax exemption does not include the compensating tax, citing Borja v. Commissioner of Internal Revenue, G.R. No. L-12134, November 30, 1961 and Panay Electric Company v. Collector of Internal Revenue, G.R. No. L-6753, July 30, 1955, 97 Phil. 979 in support of this change. We are not persuaded that these two cases are in point.

The pertinent provision of the franchise in the Borja case reads as follows:

> "SEC. 10. The grantee shall pay the same taxes as are now or may hereafter be required by law from other individuals, copartnerships, private, public or quasi-public associations, corporations, or joint-stock companies, on his (its real estate, buildings, plants, machinery; and other personal property, except property declared exempt in this section. In consideration of the franchise and rights hereby granted, the grantee shall pay into the municipal treasury of the (of each) municipality in which it is supplying electric current to the public under this franchise, a tax equal to two per centum of the gross earnings from electric current sold or supplied under this franchise in said (each) municipality. Said tax shall be due and payable quarterly and shall be in lieu of any and all taxes of any kind, nature or description levied, established, or collected by any authority whatsoever, municipal, provincial or insular, now or in the future, on its poles, wires, insulators, switches; transformers and structures, installations, conductors, and accessories, placed in and over and under all public property, including public streets and highways, provincial roads, bridges and public squares, and on its franchise, rights, privileges, receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted."

It should be noted that the foregoing section 10 of Act 3636, The Model Electric Light and Power Franchise Act, opens with a positive prescription that the grantee is liable for the same taxes payable by all natural and juridical persons. The provision then continues with the commutation tax of two percent of the gross earnings from electric currents sold or supplied under the franchise, which shall be in lieu of any and all taxes of any kind, nature or description levied, established, or collected on its poles, wires, insulators, switches; transformers and structures, installations, conductors, and accessories, placed in and over and under all public property, including public streets and highways, provincial roads, bridges and public squares, and on its franchise, rights, privileges, receipts, revenue and profits, from which taxes the grantee is expressly exempted. The franchise plainly specify the kinds of taxes for which the commutation tax stands and from which the grantee is exempted, namely taxes on installations and on its franchise, rights, privileges, receipts, revenue and profits derived from the franchise. Thus, the kind of taxes for which the franchise owner is exempted is particularized, and Borja is deemed subject to all other taxes. It is hardly necessary to say that the compensating tax is not a tax on installations and, as for the rights and privileges of the franchise owner, the exemption clearly refers only to rights and privileges enjoyed by the franchise owner as such and not those enjoyed by the public in general such as the common privilege to make purchases. On the other hand, the compensating tax is within the description of the taxes for which the franchise owner is expressly held liable under the first sentence of section 10 aforesaid. Hereunder we quote the very language of the Supreme Court:

> "It is contended, in the first place, that the above provision of its charter exempts petitioner from paying taxes on its installations, whether on a public or private place, and in the second place, that the exemption extends to petitioner's alleged right or privilege to purchase abroad equipment needed by its electric plant.
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> "As to the first contention, it is enough to point that the protested tax is not one upon installations, that is to say, upon the privilege of using public streets and other public places in a way different from the way they are used by the public in general. The protested tax is a compensating tax levied upon articles purchased abroad but used in the Philippines. The tax not being one upon installations, all discussion as to whether those articles are installed on a public or private place is immaterial.
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> "As to the second contention, the rights and privileges which the above provision exempts from taxation refer to those which are not enjoyed by the public in general, but only by the grantee of a franchise. They

<u>therefore do not include the common right or privilege of every citizen to make purchases anywhere</u>.

"In this connection, we must not lose sight of the purpose for which the compensating tax has been instituted. That purpose is explained in the report of the Tax Commission that proposed the tax, as follows:-

> '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.

> <u>And it should be noted in this connection that petitioner is expressly required by its charter to pay on its 'real estate, buildings, plant, machinery, and other personal property the same taxes as are now or may hereafter be required by law from other persons' (Sec. 14, Act No. 1985, as amended by Act No. 3665). The tax on personal property purchased or received from abroad, or the compensating tax, comes quite clearly within the description</u>." (Underscoring supplied.)

It will be noted that in contrast to section 10 of Act 3636, section 13 of Republic Act 2360 does not stipulate that petitioner "shall pay the same taxes as are now or may hereafter be required by law from other individuals, x x x except property declared exempt in this section" as stipulated in the former. Its commutation tax is expressed in general and all encompassing terms, simply stating that it is "in lieu of all taxes of any kind, nature or description, levied, established or collected by any municipal, provincial or national authority x x x." It has no specific recital of the kinds of taxes that it covers or for which it stands as in the case of section 10 of Act 3636. And, it expressly provides for only one tax, payable by the petitioner to wit, the land tax. From all these it is hardly necessary to say that the Borja case is not in point. Were we to exclude the compensating tax from the exemption, we would then be adding the same to the clearly expressed exception which is, the land tax.

In the case of Panay Electric Company v. Collector of Internal Revenue, G.R. No. L-6755, July 30, 1955, the pertinent provision of the franchise reads as follows:

> SEC. 8. The written acceptance of this franchise by the grantee shall be filed with the Secretary of Commerce and Communications within one hundred and twenty days from the date of the approval of this Act, and in consideration of this franchise and rights hereby granted the grantee shall pay into the municipal treasury of each municipality, in which it is supplying electricity to the public under this franchise, a tax equal to one and one-half per centum of the gross earnings of his electrical business in the corresponding municipality during the first twenty years and two per centum during the remaining thirty years of the life of said franchise. Said percentage shall be due and payable quarterly and shall be in lieu of all taxes of any kind levied, established, or collected by any authority whatsoever, now or in the future, on its poles, wires, insulators, switches, transformers and other structures, installations, conductors, and accessories, placed in and over the public streets, avenues, roads, thoroughfares, squares, bridges, and other places and on its franchise, rights, privileges, receipts, revenues, and profits, from which taxes the grantee is hereby expressly exempted.

It is hardly necessary to say that the franchise of said case is fundamentally the same as that of the Borja case. What we have said in connection with the latter case is therefore applicable to the Panay Electric Company case.

Respondent further contends that at the very most the exemption should be applicable only to imported articles, materials or equipment that are indispensable and necessary and not merely incidental or convenient to the operation of the air transportation business of the petitioner. In distinguishing what is necessary and what is incidental, respondent divides the activities of petitioner in distinct parts, classifies the particular activity of air transportation as distinct from other necessary supporting activities, and declares it as the only operation that is covered by the exemption. Articles, materials or equipment used in this particular activity are covered by the exemption, so petitioner's thesis goes. Thus, a refrigeration unit used to preserve food that will be served during the flight (1st Indorsement, February 9, 1967, of the Acting Commissioner of Customs, page 114, rec.), and an air-conditioner used in a warehouse for aircraft spare parts that require a certain level of temperature for their preservation (letter of Commissioner of Internal Revenue dated December 28, 1966, p. 120, rec.), are covered by the exemption because they are allegedly necessary for the operation of the air transportation business of the petitioner. But if these appliances are used in the general office of the petitioner, they are not tax exempt, not being used directly for the transportation activities of petitioner.

// &c We cannot quite agree with respondent's concept of what is necessary in the operation of petitioner's air transportation business for the purposes of the tax exemption of petitioner. To our mind, articles, materials and equipment need not be necessary for the purely flying activities of petitioner to deserve the exemption; it is enough that they are used in the mass of activities involved in petitioner's operating transportation business. The fallacy of respondent's pretension is that it considers the particular activity of flying as separable from management and ground support operations, forgetting that one is the complement of the other. Petitioner cannot operate its transportation business without an office and ground officers and employees to manage and direct operations. And, petitioner needs facilities besides. Typewriters are necessary in petitioner's office, in any office of comparable size for that matter. The dental equipment are necessary under Republic Act 1094. Since petitioner has to meet competition it has to provide for comfortable appointments for passengers for better chances of survival. If maximum efficiency from employees and officers is attained with air-conditioners, these appliances may well be considered necessary particularly considering modern business management trend.

Respondent's interpretation of the scope of petitioner's tax exemption is not in accord with the accepted doctrines pertinent to the point. When property is exempt from taxation, it is almost universally held that the exemption covers only so much as are necessary to the operation of the business and the accomplishment of its purposes. But in order that property may come within the scope of the exempting statute, it need not be necessary, in the sense of indispensable to the carrying on of the business; it is enough if it is obviously appropriate and convenient.

> . . . However, in order that property of a corporation may come within a statute exempting the property of such a corporation from taxation, it need not be necessary, in the sense of "indispensable," to the carrying on of the business of the corporation. It is enough if it be "obviously appropriate and convenient" to enable the corporation to carry into effect the franchise granted. . . (Cooley, Vol. 2, 4th ed., pp. 1593-1594.)

> § 683.—Property actually necessary. Even if the exemption is based upon the use made of the property, it is not limitted to property actually indispensable, unless the statute so expressly provides, but instead also includes property obviously appropriate and convenient to carry out the purposes of the corporation. . . . (Cooley, Vol. 2, 4th ed., p. 1430.)

In fine, the air-conditioners in the warehouse is indispensable as admitted in the 1st Indorsement dated February 9, 1967 and the letter of respondent dated December 28, 1966; the dental equipment is necessary by provision of law; the typewriter is necessary considering the functions of petitioner's office; and the air-conditioners in the general office of petitioner are necessary because they are at the very least appropriate and convenient. Needless to say, the equipment and appliances in question are covered by petitioner's tax exemption.

With respect to the interests sought by petitioner in connection with the refund, the doctrine laid down by the Supreme Court on this point is as follows:

> ". . . On several occasions, we ruled that in the absence of a statutory provision clearly directing or authorizing the payment of interest on the amount to be refunded to the taxpayer, the National Government cannot be required to pay interest. Later,

> however, we held that when the collection of the tax sought to be refunded was attended with arbitrariness, the Commissioner of Internal Revenue is liable to pay interest." (Collector of Internal Revenue v. Binalbagan Estate, Inc., G.R. L-12952, Jan. 30, 1965.)

Petitioner admits that the collection of the compensating taxes was not done arbitrarily, hence, there is no reason for requiring respondent to pay interest.

WHEREFORE, the respondent is hereby ordered to refund to petitioner the sum of ₱3,005.00. Without costs.

SO ORDERED.

Quezon City, August 22, 1970.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge