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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SEA-LAND SERVICES, INC.,
Petitioner,

- versus -

C.T.A CASE NO. 4149

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated :
FEB 21 1995

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DECISION

This is a judicial claim for refund or tax credit of alleged erroneously paid income tax on petitioner's gross Philippine billings for 1984 in the amount of P870,093.12.

Petitioner is a corporation organized and existing under and by virtue of the laws of the United States and conducts its business here in the Philippines through its branch office located in Ermita Center Building, Roxas Boulevard, Manila.

It is engaged in the business of international sea transport and it is in this capacity that it entered into a contract with the US government to transport household goods and effects of US military personnel to and from the military bases in the Philippines (Clark Airbase and

Subic Naval Base). It is mentioned in petitioner's letter claim for refund that the services cover movement of military household goods in container vans belonging to military personnel assigned to these military bases from the South Harbor for loading to the vessels of Sea-Land for shipment abroad.

For the calendar year 1984, petitioner's reported gross Philippine billings derived from the services it rendered to the US government amounted to P58,006,207.54 and paid the amount of P870,093.12 as income tax pursuant to Section 24(2)(i) of the 1984 Tax Code, in relation to article 9, 1(a) of the convention between the Government of the United States of America and the Government of the Philippines, computed as follows:

Gross Philippine Billings	P58,006,207.54
Multiply by tax rate	1.5%
Total income paid	P 870,093.12

It is the contention of the petitioner that as an entity engaged in the business of international sea transport it is exempt from the payment of income tax on its gross Philippine billings in accordance with a specific provision included in the Military Bases agreement entered into between the United States and the Philippines. Working on this assumption, petitioner filed a claim for refund with the BIR on April 15, 1987 and on the same day filed a petition for review with this Court in an apparently frantic move to beat the two-year prescriptive period provided by Section 230 of the Tax Code for claiming a refund.

Respondent in his answer, adduced the following special and affirmative defenses, thus:

> 6. The services rendered by petitioner for taxable year 1984 were not "in connection with the construction, maintenance, operation and defense" of the United States military bases in the Philippines as provided for in paragraph 4, Article XII of the RP-US Military Bases Agreement;
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> 7. Any amount of tax claimed to have been paid must be shown to have been actually remitted to respondent's Bureau of Internal Revenue;
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> 8. The amount of P870,093.12 sought to be refunded or tax credited to petitioner is presumed to have been paid in accordance with law and pertinent BIR regulations;
>
> 9. Courts do not look with favor on tax exemptions. Hence, he who seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (Reagan vs. Commissioner of Internal Revenue, L-26379, Dec. 27, 1969, 30 SCRA 968.

The issue presented to Us for determination is whether or not income derived from services by petitioner in transporting U.S. Military personnel's household goods and effects fall within the tax exemption provided by article XII, Paragraph 4 of the RP-US Military Bases Agreement.

Petitioner anchors its claim on the aforementioned Article XII, Paragraph 4 of the RP-US Military Bases Agreement (MBA for short) which provides as follows:

> 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 is firm in his belief that the nature of the services it rendered in 1984 has met all the requirements outlined in the aforecited provision of the MBA, to wit:

a) Petitioner is a corporation organized under the laws of the U.S.;

b) Petitioner has entered into a contract in the U.S. with the U.S. government; and

c) Revenue is derived by petitioner from transportation services provided to the U.S. government for maintenance, operation and defense of the bases.

To support its claim for refund, petitioner offered as evidence its corporate quarterly income tax returns filed for the calendar year 1984, the MSC containers Agreement and Rate Guide and the depositions of its two witnesses, Cmdr. Rodney M. Thompson and Capt. J.K. Fyfe who are both officers of the U.S. Navy. These two officers testified among other things that the "lifting of US Military servicemen's household goods to their assigned posts in the Philippines was not only a matter of entitlement but we considered it an integral part of the maintenance and operation of the facilities because without these conveniences and effects the morale of the sailors and their dependents would be adversely affected".

In its memorandum, petitioner emphasizes that the transportation of the military personnel's household goods to be used by them in their assigned areas fall within the concept of "maintenance" and "operation" of the bases. It is the idea of the petitioner that the word "maintenance" as used in the MBA is synonymous with "sustenance", or to sustain the military personnel by providing for their personal needs such as food, clothing and shelter when they are assigned in places away from home. It stretched out this argument further by reasoning that the "supply of goods and services to military personnel is inherent in the operation and defense of the bases because for obvious reasons, the military personnel cannot function effectively without the said goods and services (p. 330, CTA records).

Respondent did not present any controverting evidence and expressed his intention not to file a memorandum as he finds that the memorandum he submitted in CTA Case No. 4202 will suffice.

The petition for review lacks merit.

In a similar case involving the same parties, this Court has already ruled that "the 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. (Sea Land Service Inc. vs Commissioner of Internal Revenue, CTA Case No. 4202, September 3, 1992). This ruling was later affirmed by the Court of Appeals in a decision dated October 18, 1994; CA-G.R. SP No. 30131, when it declared that:

> "We agree with the CTA that petitioner's act of transporting household goods and personal effects of the U.S. military personnel has nothing to do with the "maintenance" or "operation" of Clark Air Base and Subic Naval

Base nor is it related in any manner with the "construction" and "defense" of the bases.

The main purpose of the tax exemption is to lower the cost of construction; maintenance operation and defense of the U.S. bases. Does the removal of the used household goods and personal effects of the U.S. military personnel from their bases and transporting them abroad contribute to the reduction of the costs of the construction, maintenance, . operation and defense of the bases. Obviously, it does not. In fact, those items were removed from the bases and transported outside the country because the military personnel to whom they belonged already completed their mission. Hence, there were no longer military personnel to be maintained or kept. Indeed, we cannot imagine how an isolated act of transporting those stuffs could in any way relate to "maintenance or operation" of the military bases."

WHEREFORE, finding the instant petition for review without merit, the same is hereby dismissed and the claim for refund is hereby denied.

SO ORDERED.

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge

DECISION -
C.T.A Case No. 4149

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals