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CHURCH OF JESUS CHRIST
"NEW JERUSALEM",
Petitioner,

- versus -

C.T.A. CASE NO. 592

June 30, 1959

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal by the petitioner, a religious organization, from the decision of the respondent Commissioner of Internal Revenue holding the former liable for the payment of the specific tax on two crates of Chesterfield cigarettes which it received from abroad by way of donation. By agreement of the parties, the specific tax due on said cigarettes, if they are taxable, amounts to ₱6,336.00 at the rate of ₱52.80 per thousand cigarettes, in accordance with Section 137 (b), sub-paragraphs (2) and (4), of the National Internal Revenue Code. (See Joint Manifestation, May 25, 1959.)

Pending final determination of the case, and to secure the release of the cigarettes from the customhouse without prepayment of the tax, petitioner filed a surety bond to guarantee payment of the tax in case it should be held liable therefor. (Exh. 2.)

After the filing of respondent's answer, petitioner filed a motion for judgment on the pleadings, alleging:

"1. That petitioner received on December 9, 1958, respondent's answer dated December 8, 1958, and said answer fails to tender an issue, and instead admits the material allegations of the petition;

"2. That said admission, which fails to tender an issue refers to the following matters, to wit:

'(A) That petitioner, represented by its Bishop-representative, as a religious corporation for religious purposes, has been organized and existing under the laws of the Republic of the Philippines prior to the year 1921 (Annex 'D', petition). That sometimes in May, 1958, petitioner received from abroad, - Nedra Hansen, 527 Lexington Ave., New York, U.S.A., a letter (Annex 'A', petition) advising petitioner that she was donating in favor of the Church two (2) cases of cigarettes for free distribution among its poor and destitute members. Together with said letter, was the Bill of Lading (Annex 'B', petition) showing that the church was the consignee of the said shipment, which arrived on June 25, 1958 on board the S.S. 'Steel Chemist'. Subsequent thereto, petitioner filed a written request, wherein it was also certify that the said donation was for free distribution among its poor and destitite members, for the entry of said donation as tax-exempt under the provisions of Rep. Act No. 1916 (Annex 'C' petition).

'Together with said letter was also enclosed the Bill of Lading, letter of donation and registration with the Securities and Exchange Commission of your petitioner (Annexes 'A', 'B' & 'D', petition). That respondent denied the free entry of said donation (Annex 'E', petition). That BIR General Circular No. V-250, dated July 5, 1957, of the respondent implements Rep. Act No. 1916'.

"3. That the only questions now are pure questions of law, among which are: Whether or not the entry of donation of all articles from abroad as exempt from the payment of all taxes and duties, consigned to a religious institution for its use or for free distribution, and not for barter, sale, or hire, is mandatory or automatic upon the respondent, and the right of the latter to assess said donation for payment of taxes and duties at double the existing rate will only accrue if said donation is subsequently conveyed or transferred for a consideration;

"4. That the taxes due on said donation, if not tax-exempt, and as released under bond, is as follows:

(a) Duty	P 974.00
(b) Specific Tax	6,336.00
(c) Special Import Tax	204.00
	P7,514.00

"5. That herein petitioner-movant is entitled to a judgment as a matter of law in view of the above admissions, under Sec. 10, Rule 35, Rules of Court.

"WHEREFORE, it is respectfully prayed of this Honorable Court to issue an order granting judgment on the pleadings or the instant case be deemed submitted for decision upon the filing of the respective memorandum of the parties herein within ten (10) days from December 20, 1958, pursuant to Section 10, Rule 35, Rules of Court."

Counsel for respondent offered no objection to the submission of the case on the basis of the pleadings of the parties.

The material facts alleged in the petition for review are: (1) that petitioner is a religious corporation organized and existing under the laws of the Philippines, with principal chapel and address at the corner of Solis St. and Dagupan Extension, Tondo, Manila (Par. 1); (2) that sometime in May, 1958, petitioner received advice from one Nedra Hansen, 527

Lexington Ave., New York, U.S.A., that she was donating in favor of the church two (2) cases of cigarettes for free distribution among its poor and destitute members, which cigarettes arrived in Manila on June 25, 1958 (Pars. 3 and 7); and (3) that petitioner requested exemption from the payment of the specific tax in connection with said cigarettes under Republic Act No. 1916, which request was denied by respondent (Pars. 4, 5 & 6). These allegations are admitted by respondent in paragraphs 1, 2 and 3 of the answer. The only allegation of respondent to justify denial of the exemption is "that while under the rules and regulations promulgated by respondent implementing Republic Act No. 1916 (General Circular No. V-250, dated July 8, 1957) the item 'cigarettes' are not excluded as subject matter of donations, cigarettes have no relation with the religious activities of the petitioner." (Par. 3 of the Answer.)

The only issue to be resolved is, therefore, whether or not the cigarettes in question are exempt from the specific tax. Petitioner contends that it being a religious organization, that the cigarettes having been donated by one Nedra Hansen of New York, and that said cigarettes being intended for free distribution among its poor and destitute members and not for barter, sale or hire, they are exempt from specific tax by virtue of Republic Act No. 1916. On the other hand, respondent claims that since "cigarettes have no relation with the religious activities of the petitioner" the exemption provided in Republic Act No. 1916 does not apply.

Republic Act No. 1916 provides:

> "SECTION 1. The provision of existing laws to the contrary notwithstanding, all donations in any form and all articles imported into the Philippines, consigned to a duly incorporated or established international civic organization, religious or charitable society or institution for civic, religious or charitable purposes shall be exempt from the payment of all taxes and duties upon proof satisfactory to the Commissioner of Customs and/or Collector of Internal Revenue that such donations in any form and articles so imported are donations for its use or for free distribution and not for barter, sale or hire: Provided, however, That in case such articles are subsequently conveyed or transferred to other parties for a consideration, taxes and duties shall be collected thereon at double the rate provided under existing laws payable by the transferor: Provided, further, That rules and regulations shall be promulgated by the Department of Finance for the implementation of this Act."

In order that articles imported from abroad may be exempted from the payment of all taxes and duties, it is necessary (1) that the articles be donated; (2) that the articles be consigned to a duly incorporated or established international civic organization, religious or charitable society or institution for civic, religious or charitable purposes; and (3) that the articles donated to any of the organizations mentioned above be for its use or for free distribution and not for barter, sale or hire. All these requirements are present in the instant case. The cigarettes in question were donated by Nedra Hansen, 527 Lexington Ave., New York; they were donated and consigned to petitioner, a religious organization; and that they are for free distribution to the poor and destitute members of petitioner, and not for barter, sale or hire. Obviously, the said cigarettes are exempt from the specific tax under Republic Act No. 1916.

It is contended, however, that in order that donations from abroad for free distribution may be exempt from taxation, it is necessary that the articles be exclusively for civic purposes where the donee is a civic organization; that the articles must be for religious purposes where the donee is a religious organization; and that the articles must be for charitable purposes where the donee is a charitable organization. We quote from the memorandum of counsel for respondent:

> "Under Republic Act No. 1916, tax exemption is granted to (1) international civic organization in respect to articles donated and consigned to it for its use or for free distribution for civic purposes or in connection with its activities; (2) religious society or institution in respect to articles donated and consigned to it for its use or free distribution for religious purposes or in connection with its religious activities; and (3) charitable society or institition in respect to articles donated and consigned to it for its use or for free distribution for charitable purposes or in connection with its charitable activities. In the instant case, petitioner claims tax exemption under Republic Act No. 1916 as a religious corporation and, therefore, the donated articles for which tax exemption is being claimed should be for religious purposes or connected with the religious activities of the petitioner. How can cigarettes (the donated articles in the instant case) be considered for religious purposes or connected with

> the religious activities of the petitioner? We respectfully submit that the cigarettes in question do not come within the scope and extent of the tax exemption granted in Republic Act No. 1916." (Pp. 11-12, Memorandum for Respondent, March 4, 1959.)

We do not believe that the interpretation given by respondent to Republic Act No. 1916 is justified by the wording of the statute. The law clearly provides that "all donations in any form and all articles imported into the Philippines" consigned to civic, religious or charitable organizations "shall be exempt from the payment of all taxes and duties" if such articles are "for free distribution and not for barter, sale or hire." The law does not qualify what articles received from abroad as donation by a civic, religious or charitable organization for free distribution are to be exempt from taxes and duties. The exemption applies to "<u>all</u> donations" and "<u>all</u> articles". We can not read into the law what is not there.

Neither may the interpretation of respondent be justified by the intention of Congress in enacting Republic Act No. 1916. It will be recalled that after the end of World War II, donations from abroad began pouring into the country for the relief and rehabilitation of those who suffered during the war. Because of the limited exemption from taxation of articles received from abroad, whether the articles were for free distribution or for commercial purposes, complaints were heard from the donors that Philippine authorities were placing obstacles in the way of the poor and the needy receiving much needed help from those who were ready and willing to extend such assistance. As a consequence, the flow of donations from abroad for relief and rehabilitation were retarded. This is the reason why Congress saw fit to enact Republic Act No. 1916 to encourage such donations. The too stilted interpretation of respondent as to the meaning and scope of said Act would emasculate it and thereby thwart the purpose for which the law came into being.

Even granting that the opinion of respondent - that the articles coming from abroad by way of donation for charitable distribution in the Philippines must be donated and consigned to a charitable organization to be entitled to exemption - is correct, we believe that the articles in question, donated and consigned to and received by petitioner, a religious organization, qualify for the exemption. A religious organization is not limited to purely religious activities. It is by its very nature and purpose also a charitable organization. Acts of charity, ministering to the physical and spiritual needs of the poor and the sick, are of common knowledge, best handled and performed by religious organizations.

But, it may be asked, are cigarettes a proper subject for charitable distribution to the poor and the needy? To our mind, there is nothing basically wrong with giving cigarettes to the poor and the needy. The element of charity is not destroyed when cigarettes, instead of other articles, are given to the poor. Donations sent to our soldiers in Korea during the Korean War were nonetheless charitable notwithstanding that the donations were in the form of beer and cigarettes. The element of charity is not lost when a person gives cigarettes during Christmas to the inmates of Muntinglupa, or of the Tala Lepresarium, or of the charity wards of Government and private hospitals. That American cigarettes are highly prized in the Philippines does not alter the situation. They are ordinary commodities in the country of the donor, in this case, a resident of New York.

While the law exempts from taxation all articles received from abroad as donation to the organizations mentioned therein for free distribution in the Philippines, it has also provided for safeguards to prevent its abuse. Where it is shown that the articles have been subsequently transferred or conveyed to other parties for a consideration, the law requires collection from the transferor of the taxes and duties at double the rates provided under existing laws. The law also requires the Department of Finance to promulgate rules and regulations for its proper implementation.

The exemption from taxation of donations from abroad may not, therefore, be denied if all the requisites for their exemption are fully complied with. It is, however, the duty of respondent to see to it that the articles donated are distributed free to the intended recipients. If he finds that the donee has conveyed or transferred the articles for a consideration to other parties, he is authorized to collect the corresponding taxes at double the rates provided by existing laws.

It is contended that the donation of the cigarettes in question to petitioner does not meet the requirements of the regulations promulgated by the Department of Finance, issued pursuant to Republic Act No. 1916. He cites Section 2 of Department Order No. 18 of the Department of Finance (54 O. G. 7386-7388), which provides:

> "Sec. 2. Definition of terms. - For purposes of exemption from customs duties and taxes under Republic Act 1916 -
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> x x x
>
> "f. 'For its use' refers to any donated article for the exclusive use of the donee compatible and commensurate with the nature and extent of the donee's civic, religious or charitable activities.
>
> "g. 'For free distribution' refers to donated articles for distribution to the poor, indigent and the needy by the donee in connection with its civic, religious or charitable activities. The kind and quantity of the articles for free distribution shall be compatible and commensurate with the needs of the intended recipients."

We find, however, that Department Order No. 18 was issued on October 20, 1958, and was published in the issue of the Official Gazette of November 10, 1958. The cigarettes in question arrived in Manila on June 25, 1958, and the request for tax exemption and release from the customhouse was made on August 26, 1958. The decision of respondent denying the request for exemption is dated September 6, 1958, before the promulgation of the said Department Order. Therefore, the said Department Order can not be held applicable to the donation in question.

Assuming that the said Department Order is applicable to the donation in question, we find that the donation has met the requirements for exemption provided in said order. Paragraph (f) is not applicable as it refers to articles received by the donee for its use. Paragraph (g) is the pertinent provision. It defines articles for free distribution as those which refer to donated articles for distribution to the poor, indigent and the needy by the donee in connection with its civic, religious or charitable activities. It also provides that the "kind and quantity of the articles for free distribution shall be compatible and commensurate with the needs of the intended recipients."

With respect to the requirement that for the donated articles to be tax exempt they must be for distribution to the poor, indigent and the needy by the donee in connection with its civic, religious or charitable activities, the donation in question has met the requirement. It is admitted that the donation was received by petitioner, a religious corporation, for distribution to its poor and indigent members. And it can be said that giving to the poor and indigent is both a religious and charitable act, especially when it is done by a religious organization.

As to the requirement that the "kind and quantity of the articles for free distribution shall be compatible and commensurate with the needs of the intended recipients," there is no claim or pretense on the part of respondent that the kind and quantity of the cigarettes in question are not compatible and commensurate with the needs of the intended recipients, the poor and indigent members of petitioner.

FOR THE FOREGOING CONSIDERATIONS, we are of the opinion that the cigarettes in question are exempt from the specific tax under Republic Act No. 1916. Accordingly, the decision appealed from is reversed, and respondent is hereby ordered to cancel the surety bond which was filed by petitioner to guarantee payment of the specific tax on said cigarettes. No pronouncement as to costs.

SO ORDERED.

Manila, June 30, 1959.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge