UNITED ARTISTS CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 277

Oct. 16, 1957

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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DECISION

This is an appeal from a decision of the respondent Collector of Internal Revenue, dated March 13, 1956, assessing against, and demanding from, the petitioner United Artists Corporation, the amount of ₱2,550.80 as specific tax on six (6) imported cinematographic films, plus an additional sum of ₱600.00 as compromise penalty, or a total amount of ₱3,150.80.

For the sake of brevity we shall not quote hereunder in its entirety the partial stipulation of facts of the parties as appearing on pages 20 and 21 of the record, but will make mention only of those facts appearing therein which we believe are pertinent and necessary in the final adjudication of the case as well as the contents of the additional uncontested documentary evidence presented by both parties.

The petitioner herein is a domestic corporation duly organized and existing under the laws of the Philippines. It maintains an office at the State Building, Rizal Avenue, Manila, and is engaged in the distribution of cinematographic films for exhibition.

It appears that sometime in the year 1949, Alfred A. Boulle, Inc., another domestic corporation then owning, operating and maintaining a film exchange in Manila, and the distributor of the films produced in the United States of America, by Eagle Lion Films, Inc., received from the Motion Picture Service of the United States Army, six (6) cinematographic films with the following titles:

1. "Cannon City"
2. "He Walked by Night"
3. "Let's Live a Little"
4. "Northwest Stampede"
5. "Parole, Inc." and
6. "Unknown Island."

All these films, except the last one were produced and owned by Eagle Lion Films, Inc., and were distributed by Alfred A. Boulle, Inc., for exhibition in theaters in Manila and in the provinces, without the prepayment of the specific tax due thereon in the amount of ₱2,550.80. It appears further that Alfred A. Boulle, Inc., also imported directly from the United States several copies of the films mentioned above but it paid the corresponding specific tax due and payable thereon.

On May 11, 1951, the Eagle Lion Films, Inc., filed a civil complaint (Manila Civil Case No. 13791, Exh. "K", pp. 98-116 BIR rec.) against Alfred A. Boulle, Inc., for failure of the latter to remit to the former its share of the receipts from the exhibition of the cinematographic films in question. As a result of this civil action, Alfred A. Boulle, Inc., was dispossessed of all the films produced and owned by Eagle Lion Films, Inc. Pursuant to the instructions of its mother company, the United Artists Corporation in the United States, the petitioner took over all the films produced by Eagle Lion Films, Inc., including the six (6) cinematographic films received from the United States Army, and became the authorized distributor thereof in the Philippines. As regards the six (6) films which are the subject of the instant controversy, the same were not exhibited by the petitioner, but were immediately burned upon receipt thereof because they were found to be very much worn out, unfit for further exhibition and considered fire hazards.

On April 29, 1952, the Collector of Internal Revenue demanded from the petitioner the payment of the specific tax on the six (6) cinematographic films that originally came from the United States Army. The petitioner, believing that it is not liable for the specific tax in question, elevated its case to the Conference Staff of the Bureau of Internal Revenue. (C.S. Case No. 107.) After due hearing, the Conference Staff, in its memorandum for the Collector of Internal Revenue dated August 7, 1954, and by a unanimous decision of its members, recommended that "the assessment of ₱3,150.00 against the United Artists Corporation be withdrawn." It further recommended that the "papers should be forwarded immediately to the Business Tax Division for the prompt assessment of the same amount against Alfred A. Boulle, Inc." (Exh. "W", pp. 152-158 BIR rec.) However, the respondent Collector of Internal Revenue disapproved the recommendation of the Conference Staff, and now insists on the collection of the assessed specific tax and penalty against the petitioner herein. Hence, the petitioner filed the instant appeal with this Court on June 2, 1956.

Under the facts, as agreed by the parties and established by documentary evidence, which are stated above, is petitioner United Artists Corporation liable for the payment of the specific tax which the Collector of Internal Revenue seeks to collect? That is the only question to be decided in the present case.

Section 125 of the National Internal Revenue Code, which governs the case at bar, reads as follows:

> "Sec. 125. Payment of Specific Tax on imported articles.- Specific taxes on imported articles shall be paid by the owner or importer to the customs officers, conformably with regulations of the Department of Finance and before the release of such articles from the customhouse." (Underscoring supplied.)

Under the above-quoted provision of the Tax Code, it is very clear that as regards imported articles, the (1) owner or (2) importer is the one liable for the payment of the specific tax due thereon. If the United Artists Corporation is the owner or importer of the cinematographic films on which the specific tax was assessed, then it should pay the tax demanded. On the other hand, if said corporation does not fall within any of those two categories, i.e., owner or importer, then the respondent Collector of Internal Revenue should extend its collecting arm to those who are legally liable for the payment of the impost in question which from all indications should be Alfred A. Boulle, Inc. and not the petitioner United Artists Corporation.]

Now - is the petitioner herein the owner of the cinematographic films received from the United States Army? The "Stipulation of Facts" dated March 16, 1957, which was submitted by the parties gives us a positive and conclusive answer. The cinematographic "films were all produced and owned by the said Eagle Lion Films, Inc." (par. 2,Stipulation of Facts.) Petitioner United Artists Corporation, a domestic corporation which was organized and existing under the laws of the Philippines, is entirely separate, distinct and different from the Eagle Lion Films, Inc., which is a foreign corporation created under the laws of the United States. As certified to by the Assistant Treasurer of the petitioner corporation, the latter in no way controls nor is the absolute owner of the Eagle Lion Films, Inc. (Exh. "Z-1", p. 25 CTA rec.)

Let us now proceed to consider whether or not the petitioner is the importer of the six (6) cinematographic films in controversy. It is an established and well-settled rule in this jurisdiction that for purposes of collecting specific taxes on imported articles, the

United States Army bases and installations in the Philippines are considered foreign territory. (Go Cheng Tee vs. Meer, 47 O. G. 269, Supplement; No. 12, Dec., 1951; Saura Import & Export Co., Inc. vs. Meer, G. R. No. L-2927, Jan. 26, 1951.) Hence, when goods are removed from, and brought outside of a United States Army base or installation, there is importation in the eyes of the law, and the person causing such removal and transfer is considered the importer. In the present case, it is admitted by both parties that it was Alfred A. Boulle, Inc., and not the petitioner herein who received the six (6) cinematographic films in question from the United States Army, and caused the removal of the same from the jurisdiction of the latter. Hence, Alfred A. Boullé, Inc. is the importer, and as such, it should be required to pay the corresponding specific tax due thereon, and not the petitioner herein.)

And as regards the argument of the respondent that the petitioner should be held liable for the payment of the specific tax on the cinematographic films inasmuch as it succeeded to the possession of the said films, we quote with approval the opinion of Atty. Ubaldo Tabing, then Acting Chief, Law Division, Bureau of Internal Revenue, as appearing in his memorandum for the Collector of Internal Revenue dated October 8, 1955:

> "Likewise, the fact that the United Artists Corporation succeeded to the possession and distribution of the films in question did not render it liable for the payment of the specific tax due thereon. Under the aforesaid section 125 of the Tax Code, only importers or owners of imported articles are subject to specific tax. Consequently, the mere possession and distribution of the same, without being the importer or owner thereof, cannot fix responsibility for the payment of the specific tax due thereon." (Exh. "Y", pp. 188-189 BIR rec.)

And we may add that it is only as regards domestic products, when a person having possession of the same may be held liable for the specific tax due thereon. (Section 124, National Internal Revenue Code.)

There is therefore no law nor legal authority that can be cited to support the specific tax assessment of the Collector of Internal Revenue against the petitioner. However, it seems that the respondent would still like to collect the specific tax in question from the petitioner for the simple reason that Alfred A. Boulle, Inc., has gone out of business. (See p. 162, BIR rec.) On this point, we fully agree with the unanimous opinion of the Conference Staff, as embodied in its memorandum for the Collector of Internal Revenue, dated August 7, 1954, (Exh. "W", pp. 152-158 BIR rec.) wherein it was held that:

> "As regards the argument that the specific tax due on the motion picture films removed by Alfred A. Boulle, Inc., from the premises of the U. S. Army should be collected from the United Artists Corporation because Alfred A. Boulle, Inc., is already out of business, suffice it to say that our sense of fairness and justice would not consent that an innocent party be held liable

> <u>for the tax liability of another simply because the collection of the tax from the latter would be difficult.</u> To countenance such a practice would be tantamount to taking property without due process of law." (Exh. "W", pp. 152-158; underscoring supplied.)

WHEREFORE, in view of the foregoing considerations, the decision of the respondent Collector of Internal Revenue is hereby reversed, and the petitioner United Artists Corporation is hereby declared free from payment of the specific tax and compromise penalty in the total amount of ₱3,150.80 subject of the present appeal, on the six (6) cinematographic films received by Alfred A. Boulle, Inc. from the United States Army in 1949, without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, October 16, 1957.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

In the result.

ROMAN M. UMALI
Associate Judge