MANILA GAS CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 210

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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

November 29, 1956

# D E C I S I O N

Petitioner seeks the refund of the amounts of ₱107,125.80 and ₱81,703.09 representing compensating and sales taxes respectively, paid from November 1951 to October 11, 1955.

The parties submitted the case for decision on the following stipulated facts:

> 1. That the herein petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, the majority of the shares of stocks of which, are owned by the Philippine Government and the herein respondent is the duly appointed, qualified, and incumbent Collector of Internal Revenue of the Republic of the Philippines charged with the duty of administering and enforcing the provisions of the National Internal Revenue Code and other laws administered by the Bureau of Internal Revenue;
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> 2. That the petitioner is the grantee of a franchise authorizing it to construct, maintain, and operate gas systems for the furnishing of gas, heat and power in the City of Manila and the province of Rizal, as authorized in its charter, Act No. 2039 of the Philippine Legislature;
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> 3. That the herein petitioner has been and still is operating under said franchise, subject to the 2-1/2% franchise tax on its annual gross receipts or earnings, in accordance with the provisions of section 9 of said Act No. 2039, which read as follows:

> "Sec. 9. The grantee shall pay annually on the fifth day of January of each year to the City of Manila and to the municipalities in the Province of Rizal in which gas is sold, two and one-half per centum of the gross receipts within said city and municipalities, respectively, during the preceding year. Said payment shall be in lieu of all taxes, Insular, Provincial, and municipal, except taxes on the real estate, buildings, plant, machinery, and other personal property belonging to the grantee." (Section 9, Act No. 2039, enacted February 3, 1911.)

4. That the gas appliances and spare parts imported by the petitioner and sold to its customers are not covered by its franchise and whatever sales tax the petitioner has paid thereon was billed to its customers as part of the selling price thereof and the same was legally collected by respondent;

5. That the petition for review in the instant case was filed only on November 21, 1955;

6. That the compensating taxes paid by petitioner on imported machinery, equipment and materials within the two year period prior to the date of the filing of its petition for review or from November 21, 1953 to October 11, 1955 amounted to ₱40,407.89;

7. That all the payments of compensating taxes in the total sum of ₱40,407.89 were made under instant protest;

8. That the imported machinery, equipment and materials for which compensating taxes have been paid as shown in the attached list marked Annex "A" have not been sold but were used in connection with the petitioner's business of manufacturing and furnishing gas for heat, light and power in the City of Manila and the province of Rizal;

9. That the parties admit the correctness of the figures listed in detail in the attached list marked Annex "A" and made an integral part of this stipulation;

By virtue of the foregoing stipulation of facts, petitioner waived recovery of all compensating taxes paid beyond the two-year period prior to November 21, 1955, when the present petition for review was filed, as well as its claim for exemption from the reimbursement of the advance sales taxes paid on articles, materials, and gas appliances sold to its customers. (Pars. 4, 5, 6 & 7, Stipulation of Facts; pp. 1 and 2, Memorandum for Petitioner; pp. 1 and 2, Memorandum for Respondent). Consequently, the only issue to be determined is whether or not under the terms of its franchise (Act No. 2039) the petitioner is exempt from the payment of the compensating tax prescribed in section 190 of the National Internal Revenue Code on articles imported and used in relation with its business of manufacturing and furnishing gas for heat, light, and power.

The dispute hinges upon the proper interpretation of Section 9 of petitioner's franchise (Act No. 2039) which read as follows:

> "The grantee shall pay annually on the fifth day of January of each year to the City of Manila and to the municipalities in the Province of Rizal in which gas is sold, two and one-half per centum of the gross receipts within said city and municipality, respectively, during the preceding year. Said payment shall be in lieu of all taxes, insular, provincial, and municipal, except taxes on real estate, buildings, plant machinery, and other personal property belonging to the grantee." (Section 9, Act No. 2039)

The petitioner contends that the two and one-half (2-1/2%) per centum of the gross receipts paid to the City of Manila and to the municipalities in the province of Rizal where gas is sold, is in lieu of all taxes, insular, provincial, and municipal.

The theory of petitioner is that it is exempt from the payment of "all taxes", which should be construed to include not only property taxes, inheritance taxes or succession taxes but also excise taxes and "all other kinds of taxes the subject of which are susceptible of just and proper classification." (p. 3-4, Petitioner's Memorandum). Consequently, petitioner seeks the refund of the amount of ₱ 40,-407.89, which it paid as compensating tax.

Respondent, however, contends that petitioner is liable for the compensating tax on its imported articles even though used in connection with the business covered by the franchise. It is the theory of respondent that a compensating tax is a property tax, and that the phrase "in lieu of all taxes" as used in Section 9, of Act No. 2039, is limited to the taxes "that maybe imposed on the business covered by the franchise". Hence respondent contends that the petitioner is not exempt from the payment of other taxes, which is not similar to or in the nature of the franchise tax. Respondent further argues that, "the fact that its franchise (Act No. 2039) expressly provides that the petitioner shall be subject to 'taxes on real estate, buildings, plant, machinery, and other personal property belonging'" to it, sufficiently justifies this theory.

We find respondent's view meritorious. While section 9 of Act No. 2039 (petitioner's charter) states that the percentage tax it pays shall be "in lieu of all taxes" it is also expressly provided that "taxes on real estate, buildings, plant machinery and other personal property belonging to the grantee" are excepted therefrom. The effect of this exception from the tax commutation is that the petitioner shall nevertheless be subject to the payment of taxes on the real estate, buildings, plant machinery and other personal property belonging to it. Under such circumstances, the doctrine laid down in the case of Panay Electric Co. vs. Collector of Internal Revenue (G.R. No. L-6753, promulgated July 30, 1955) is controlling.

In that case, the taxpayer sought to claim exemption from the payment of compensating tax on the generators and switchboards imported from abroad which were subsequently used by it. Under section 8 of its franchise (Act No. 2983, as amended) Panay Electric Co. was required to pay a quarterly percentage tax which is "in lieu of all taxes" levied on the subjects enumerated therein. However, section 14 of Act No. 2983 provides that -

> "the grantee (Panay Electric Co.) shall pay on its (his) real estate, buildings, plant machinery, and other personal property the same taxes as are now or hereafter to be required by law from other persons".

In holding the Panay Electric Co. liable for compensating tax on the aforesaid imported articles, the Supreme Court holds:

"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. 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. 2983 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."(underscoring supplied)

Since in the instant case petitioner is not exempted from the taxes on the personal property belonging to it (Section 9, Act No. 2039) which includes the compensating tax on any such personal property purchased or received from abroad, we are constrained to hold that the petitioner is liable for the compensating tax on the gas appliances, spare parts and machinery involved in this case.

It is argued that the compensating tax is a tax on the use of goods (see International Business Machines Corp. vs. Collector, G.R. No. L-6732, March 6, 1956; Masbate Consolidated Mining Co. vs. Collector, G.R. No. L-7898, February 27, 1956) and therefore it is an excise tax from which the petitioner is exempted and not a property tax. However, in this case we are concerned with a tax exemption rather than a provision imposing a tax. Hence, we do not hesitate to construe the provision invoked by petitioner strictly against it for it is a settled rule that tax exemption clauses are not favored and unless it appears clearly and manifestly that an exemption is intended, the provision is to be construed strictly against the party claiming exemption.

> "Another factor that should be borne in mind in connection with the interpretation of the exemption clause under consideration is that by its very nature the law that exempts one from tax must be clearly expressed because the exemption cannot be created by implication. Thus, it was held that 'Exemptions from taxation are highly disfavored in law; and he who claims exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implication.'" (Collector of Internal Revenue vs. Manila Jockey Club, Inc.; G.R. No. L-8755, March 23, 1956, citing Asiatic Petroleum Co. v. Llanes, 49 Phil. 466; See also House v. Posadas, 53 Phil. 338.)

FOR ALL THE FOREGOING, the decision of the respondent Collector of Internal Revenue, denying the claim of petitioner to the refund of the compensating tax on the machinery, equipment and materials purchased by it from abroad is hereby affirmed and the petition for review hereby dismissed, with costs to petitioner.

SO ORDERED.

Manila, November 29, 1956.

MARIANO NABLE
Presiding Judge

WE CON-

DECISION -
C.T.A. CASE NO. 210



CUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge