For - Technical Staff

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

VISAYAN ELECTRIC COMPANY, S.A.,
Plaintiff,

- versus -

C E B U
CIVIL CASE NO. R-898

BIBIANO L. MEER, Collector of
Internal Revenue,
Defendant.

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

August 22/55

D E C I S I O N

The above-entitled case was filed originally with the Court of First Instance of Cebu on March 8, 1949, and was pending trial therein when Republic Act No. 1125 — the law creating the Court of Tax Appeals — was approved on June 16, 1954.

Upon motion of plaintiff's counsel, the case was remanded to this Court for final disposition by the Court of First Instance of Cebu in an order dated December 11, 1954, pursuant to section 22 of Republic Act No. 1125, involving as it does a disputed assessment. We have, therefore, assumed jurisdiction and are now deciding this case on the merits after due hearing pursuant to the last cited provision of Republic Act No. 1125.

The plaintiff seeks in its complaint the refund of the amounts of ₱1,508.61 and ₱452.39, representing compensating and specific taxes, respectively, paid on March 31, 1947, to the Bureau of Internal Revenue on certain articles purchased by it from the United States Army in the Philippines. In paragraph 6 of his answer, the defendant has offered to refund a part of the amount claimed in the sum of ₱374.63 but not with respect the rest.

Here are the facts of the case as gathered from the admitted portions of plaintiff's complaint and the documentary evidence presented.

The plaintiff, Visayan Electric Company, S.A., is a sociedad anonima, organized and existing under the laws of the Philippines with head offices in the City of Cebu. The company is engaged in the business of operating electric plants for light, heat and power purposes in the City of Cebu and neighboring municipalities, by virtue of a franchise granted to it by the defunct Philippine Legislature under Act 3499, approved on December 8, 1928.

On April 25 and June 25, 1946, plaintiff purchased from the United States Army in the Philippines, certain articles for its electric plants which for better appreciation we are listing hereunder, with their respective value and the compensating and specific taxes paid thereon and the date of payment of such taxes.

GROUP "A"

Articles	Value	Compensating Tax Paid	Date of Payment
1. Hamilton Engine	₱16,055.49	₱ 561.91	March 31, 1947
2. High Voltage Electric Wire (for transmission system)	4,013.96	140.49	"
3. Low Voltage Electric Wires (for distribution system)	1,337.96	46.83	"
4. Line Transformer, etc.	5,351.83	187.31	"
5. Truck 2-1/2 tons	2,521.00	88.23	"
6. Weapons Carrier	1,671.00	58.49	"
7. Empty Drums	10,650.00	372.77	"
8. 1 Jeep	1,051.00	52.55	"
TOTAL TAXES PAID - - - - - - -		₱1,508.61	

GROUP "B"

Articles	Quantity	Specific Tax	Date of Payment
9. Lubricating Oil	7,087.50 liters	₱283.50	March 31, 1947
10. Gasoline	993.75 liters	49.69	"
11. Crude Oil	149. met. ton	119.20	"
TOTAL TAXES PAID - - - - - - -		₱452.39	

On May 7, 1947, March 9, 1948 and April 29, 1948, the plaintiff filed written claims to the defendant for the refund of the compensating and specific taxes paid amounting to ₱1,961.00 (Exhibit E; par. X Complaint, p. 5 Answer) on the ground (1) that it is not an "importer" within the purview of sections 123 and 190 of the National Internal Revenue Code which imposes a specific and compensating tax on things imported from the United States and (2) that it is likewise exempt from said taxes according to its franchise, section 8 of Act No. 3499, approved on December 8, 1928.

The defendant Collector of Internal Revenue on the other hand maintains that the assessment and collection of the amounts in question is in accordance with sections 123, 142 (b) (c), 145 and 190 of the National Internal Revenue Code and that plaintiff's franchise does not expressly exempt it from the payment of said taxes.

There being no dispute as to the facts, this case resolves itself into one of law.

As correctly summarized by counsel for the respondent in his memorandum, the issues boil down to the following:

1. Could the articles purchased from the United States Army in the Philippines by the plaintiff for the use of its electric plants be considered as "importations from without the Philippines" and therefore subject to the payment of compensating and specific taxes as provided for in sections 123, 142 (b) (c) and 190 of the National Internal Revenue Code?; and,

2. Are the articles in question exempt from said taxes under plaintiff's franchise, section 8 of Act No. 3499?

The first question has repeatedly been answered in the affirmative by the Supreme Court in Go Cheng Tee vs. Bibiano Meer, G.R. No. L-2825, July 17, 1950; Saura Import and Export Co., Inc. vs.

Bibiano Meer, G.R. No. L-2927, February 26, 1951 and PMP Navigation Co. vs. Bibiano Meer et al, G. R. No. L-4621, March 24, 1953, where it was held that purchases from the United States Army or Navy in the Philippines or any of the instrumentalities of the United States Government in the Philippines such as the Foreign Liquidation Commission and the United States Commercial Company are deemed to be "purchases from without the Philippines" and the original purchaser thereof an "importer" within the purview of sections 123 and 190 of the National Internal Revenue Code. We find no valid and justifiable reason to deviate from such well established precedents.

In this connection we should not lose sight of the purpose for which the compensating tax has been instituted. As explained by the Tax Commission, "the purpose is to serve as an equalizer, to place casual importers, who are not merchants on equal footing with established merchants who pay sales tax on articles imported by them." (p. 75, Vol. 1 Report of the Tax Commission of the Philippines). The fact, therefore, that plaintiff company did not re-sell the articles which it had purchased from the United States Army in the Philippines but instead utilized them in its electric light plants in Cebu will not exempt it from the payment of compensating and specific taxes collectible on the authority of sections 123 and 190 of the National Internal Revenue Code.

Coming now to the second question.

As heretofore stated, plaintiff also seeks exemption from, and refund of, the compensating and specific taxes levied against it under section 8 of its franchise (Act No. 3499) which reads as follows:

> "Sec. 8. The grantee shall pay the same taxes as are now or may hereafter be required by law from other persons, on its real estate, buildings, plant, 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 each municipality in which it is supplying electricity to the public under this franchise, a tax equal to two per centum of the gross earnings for electric current sold under this 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 franchises, rights, privileges, receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted."

Plaintiff's counsel seems to insinuate in his memorandum without stating so categorically, that under the abovequoted provision of its franchise, it is exempt from all kinds of taxes including the tax on its "poles, wires, insulators, switches, transformers and other structures, installations, conductors, and accessories", and that if at all it should pay only the 2% tax on its gross earnings as expressly provided in its franchise.

In interpreting a similar franchise under Act No. 2983, approved October 22, 1927, as amended by Act No. 3665, approved December 7, 1929, in favor of the Panay Electric Company of Iloilo, the Supreme Court, in a recent decision, held the following:

> "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 a 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.

"As to the first contention, it is enough to point out 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.

"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 therefore do not include the common right or privilege of every citizen to make purchases anywhere."

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"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.' (section 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." (Pansy Electric Company vs. Collector of Internal Revenue, G.R. No. L-6753, July 30, 1955; underscoring ours)

To summarize, in consonance with the decisions cited above, we are of the opinion and so hold (a) that plaintiff company is an "importer from without the Philippines" of the articles which it had acquired by purchase from the United States Army in the Philippines and therefore subject to the payment of the compensating and specific taxes provided for in sections 123 and 190 of the National Internal Revenue Code, and (b) that under section 8 of its franchise, (Act No. 3499) plaintiff company is not exempt from the payment of said taxes.

We note in paragraph 6 of defendant's answer, his offer to refund to the plaintiff the sum of ₱374.63, paid as compensating tax on the electric wires and line transformer (items 2, 3, 4, Group "A") forming part of the bulk of articles purchased by the plaintiff from the United States Army in the Philippines. Neither the defendant nor the plaintiff have advanced any legal basis for excluding these articles from the rest of the acquisition subject to compensating and specific tax. As far as we see it, for the purpose of applying section 190 of the National Internal Revenue Code, these articles stand in no different footing from the rest of the commodities bought by plaintiff from the United States Army in the Philippines, over which the defendant saw fit to assess compensating and specific taxes on the authority of sections 123 and 190 of the National Internal Revenue Code. For lack of legal basis, we cannot, therefore, sanction the refund of the amount of ₱374.63 paid by the plaintiff as compensating tax on these electric wires and line transformer forming part of the purchase from the United States Army in the Philippines notwithstanding the conformity of defendant to the refund of said amount. When exemption from taxation is claimed, it must be shown indubitably to exist (Molina vs. Rafferty, 37 Phil. 545).

WHEREFORE, upon the foregoing considerations, plaintiff's complaint for the recovery of the amounts of ₱1,508.61 and ₱452.39 paid as compensating and specific taxes, respectively, on certain articles bought from the United States Army in the

DECISION - CEBU
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Philippines, is hereby dismissed with costs against plaintiff.

SO ORDERED.

Manila, Philippines, August 22, 1955.

AUGUSTO M. LUCIANO
Associate Judge

I concur:

MARIANO NABLE
Presiding Judge

Associate Judge Roman M. Umali did not take part in the proceedings.