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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE SHELL REFINING COMPANY
(PHILIPPINES) INC.,
Petitioner

versus

C. T. A. CASE NO. 1394

JOSE B. LINGAD, Commissioner
of Internal Revenue,
Respondent.

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

Oct. 12/66

D E C I S I O N

Petitioner filed this action against respondent for refund of ₱60,222.00 and ₱37,985.40, or a total of ₱98,207.40, as alleged erroneous payment of compensating tax imposed by Section 190 of the National Internal Revenue Code, as amended, which provides as follows:

> "SEC. 190. Compensating tax.—All persons residing or doing business in the Philippines, who purchase or receive from without the Philippines any commodities, goods, wares, or merchandise, excepting those subject to specific taxes under Title IV of this Code, shall pay on the total value thereof at the time they are received by such persons, including freight, postage, insurance, commission and all similar charges, a compensating tax equivalent to the percentage taxes imposed under this Title on original transactions effected by merchants, importers, or manufacturers, such tax to be paid before the withdrawal or removal of said commodities, goods, wares, or merchandise from the customhouse or the post office: Provided, however, That merchants, importers, and manufacturers, who are subject to tax under sections one hundred eighty-four, one hundred eighty-five, one hundred eighty-six, or one hundred eighty-nine of this Title, shall not be required to pay the tax herein imposed where such commodities, goods, wares, or merchandise purchased or received by them from without the Philippines

> are to be sold, resold, bartered, or exchanged or are to be used in the manufacture or preparation of articles for sale, barter, or exchange and are to form part thereof: x x x"

The facts of this case may be gleaned from the partial stipulation of facts (pp. 30-98, CTA rec.) submitted by the party litigants to this Court and the additional evidences, oral and documentary, presented by them during the hearing of this case on the merits.

Petitioner entered into two (2) separate contracts with the Royal Netherlands Harbor Works of Asia and Bechtel International Corporation, both non-resident corporations, for the construction of its oil jetty and refinery at Tabangao, Batangas, Batangas, for and in consideration of the sums of ₱1,059,555.00 (p. 39, CTA rec.) and ₱3,569,000.00 (pp. 67-68, CTA rec.), respectively. By the provisions of both contracts, petitioner assumed the payment, among others, of the taxes related to the importation and/or exportation of the plants, materials, and machineries of the said foreign corporations (Exh. A, pp. 35, 37, CTA rec.; Exh. B, pp. 63, 67, CTA rec.) to be used in the construction projects.

Conformably with their respective contracts, the Royal Netherlands Harbor Works of Asia and Bechtel International Corporation brought into the Philippines the said plants, materials, machineries and equipment, on the total landed cost of which the herein petitioner paid compensating taxes amounting to ₱98,207.40.

After the completion of the construction of the oil jetty and the refinery of the petitioner, the Royal Netherlands Harbor Works of Asia and the Bechtel International Corporation exported back their respective construction plants, machineries and equipment (Exhs. R, R-1, S, S-1, S-2, T, T-1, T-2; pp. 12-15, 29-32, t.s.n.; Exhs. V, V-1, V-2, W, W-1, X, X-1, X-2; pp. 15-19, 31-34, t.s.n.)

On the theory that the construction plants, machineries and equipment brought into the Philippines by the said non-resident corporations are not subject to the compensating tax imposed by Section 190 of the National Internal Revenue Code, as amended, supra, petitioner filed with respondent its claims for the refund of ₱60,222.00 and ₱37,985.40 on September 28, 1962 and December 14, 1962, respectively, within the period prescribed by Section 309 of the Tax Code.

Before respondent could take final action on the said claims for refund, petitioner filed its petition for review with this Court on May 29, 1963 praying that respondent be ordered to refund to it the amounts of ₱60,222.00 and ₱37,985.40, or a total of ₱98,207.40.

The only issue submitted to this Court for resolution is whether or not petitioner is subject to the compensating taxes paid by it under the provisions of Section 190 of the National Internal Revenue Code, as amended.

Petitioner contends that, under Section 190 of the National Internal Revenue Code, as amended, supra, only persons residing or doing business in the Philippines, who purchase or receive from without the Philippines any commodities, goods, wares, or merchandise, excepting those subject to specific taxes, are subject to the compensating tax. It is claimed that, inasmuch as the Royal Netherlands Harbor Works of Asia and the Bechtel International Corporation were neither residents nor doing business in the Philippines, the construction plants, machineries and equipment brought by them into the Philippines are not subject to the compensating tax.

In support of the argument that Royal Netherlands Harbor Works of Asia and Bechtel International Corporation are neither residents nor doing business in the Philippines, petitioner cited as authority Section 84(h) of the Tax Code which provides as follows:

> "SEC. 84. Definitions.—When used in this Title—
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> x x x x x x
>
> "(h) The term 'nonresident foreign corporation' applies to a foreign corporation not engaged in trade or business within the Philippines and not having any office or place of business therein."

It is to be noted that the definition of the term "nonresident foreign corporation" cited above applies only to Title II of the National Internal Revenue Code dealing on Income Tax and has no application whatsoever to Title V of the same Code dealing on Privilege Taxes on Business and Occupation, under which the provisions on compensating tax (Sec. 190) were included. It is clear, therefore, that a mere definition of the term "non-resident foreign corporation" found in our income tax laws cannot be availed of to escape the burden of a tax legally due from the petitioner. J

It cannot be denied that when Royal Netherlands Harbor Works of Asia and Bechtel International Corporation entered into separate contracts with petitioner for the construction of its jetty and refinery at Tabangao, Batangas, Batangas, for and in consideration of the amounts of ₱1,059,555.00 and ₱3,569,000.00 and they rendered services to the petitioner under the terms of their respective contract, the said corporations engaged in business in the Philippines as construction work contractors within the purview of Section 191 of the National Internal Revenue Code.

It should be borne in mind that the purpose of the compensating tax is to place persons purchasing goods from dealers doing business in the Philippines on equal footing, for tax purposes, with those who purchase from abroad or import into the Philippines goods directly from foreign countries (Panay Electric Co. vs. Collector, G. R. No. L-6753, July 30, 1955; Manila Gas Corp. vs. Collector, G. R. No. L-11784, Oct. 24, 1958; International Business Machine Corp. vs. Collector, 98 Phil. 598, March 6, 1956; Masbate Consolidated Mining Co. vs.

Collector, 98 Phil. 442-446, Feb. 27, 1956). The compensating tax, therefore, is a sort of 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 (Borja vs. Collector, G. R. No. L-12134, Nov. 30, 1961). The said tax is levied, assessed and collected in lieu of the advance sales tax on imported articles which are not for sale, but for use in the Philippines (Victorias Milling Co., Inc. vs. Commissioner, CTA Case No. 685, March 11, 1963). Consequently, when Royal Netherlands Harbor Works of Asia and Bechtel International Corporation, which engaged in the construction business in the Philippines, received from without the Philippines the construction plants, machineries and equipment, which are not subject to specific taxes, they are liable for compensating tax on the total value or landed cost thereof (See Cantillan Lumber Co. vs. Collector, CTA Case No. 269, Aug. 12, 1958; Philippine Ace Lines, Inc. vs. Comm. of Int. Rev. & Comm. of Customs, CTA Cases Nos. 964 & 984, Jan. 25, 1963; Manila Electric Co. vs. Tabios, CTA Case No. 1493, Sept. 23, 1964).

Petitioner also contends that when the non-resident corporations re-exported abroad their construction plants, machineries and equipment, the compensating tax was erroneously collected from petitioner. As we have stated before, the compensating tax purports to categorize casual importers, who are not merchants, with established merchants who pay sales tax on articles imported by them. If foreign contractors were to be allowed to bring to this country their plants, machineries and equipment free from compensating tax for use in their construction jobs here, and then re-export them back, it would be discriminatory against local contractors who are made to shoulder the compensating tax when they receive or purchase from without the Philippines machineries and equipment to be used in their construction projects here, contrary to the spirit and purpose of Section 190 of the National Internal Revenue Code, as amended. The fact that the machineries and equipment were re-exported abroad does not militate against the taxability thereof because they were actually used in the Philippines. The compensating tax is a tax on the privilege of using imported articles, not a tax on the articles (See International Business Machines Corp. vs. Coll., supra, and Masbate Consolidated Mining Corp. vs. Coll., supra.)

Finally, petitioner claims that respondent, in a similar case, granted exemption from compensating tax on imported articles used in the "Kinoshita Circus" which were also re-exported abroad (See ruling dated March 28, 1957, Bulletin II, 3, 1957). However, this Court is not bound by the administrative rulings of the Commissioner of Internal Revenue in other cases.

WHEREFORE, petitioner's claims for refund of ₱60,222.00 and ₱37,985.40 as alleged erroneously paid compensating taxes should be, as they are hereby, denied. With costs against petitioner.

SO ORDERED.

Quezon City, October 12, 1966.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge