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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE CASINO OPERATORS CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4597

COMMISSIONER OF CUSTOMS,
Respondent.

Promulgated:
MAY 28 1997

x - x

D E C I S I O N

This is an appeal from the Decision of the Commissioner of Customs, dated 12 February 1991, in Seizure Identification No. 89-092, the dispositive portion of which reads as follows:

> "WHEREFORE, finding no reversible error in the Decisions appealed from, the decree of forfeiture against the importations subject of this proceedings should be, as it is hereby AFFIRMED.
>
> SO ORDERED."

The facts surrounding this case are as follows:

Petitioner, Philippine Casino Operators Corporation (PCOC for brevity), is a private domestic corporation duly organized and existing under the laws of the Philippines. On 5 July 1977, petitioner entered into a Contract to Operate, with the Philippine Amusements and Gaming Corporation (PAGCOR for short), as concessionaire in charge of the management of the casinos in the country.

Sometime in 1981, a certain Mr. Constancio D. Francisco, allegedly representing PAGCOR, wrote a letter to the Minister of Finance on 12 June 1981, requesting for an authority to secure the release of various equipment, tax-free and duty-free, under the provisions of P.D. No. 1067-B, and at the same time requested for an endorsement addressed to the Commissioner of Customs and the Collector of Customs, South Harbor, Manila, to allow the release of said goods.

For the periods 1982 to 1984, petitioner made various importation of goods, equipments and vehicles with the authority and approval of PAGCOR for the sole and exclusive use of the casinos. The subject shipments were classified as tax-free importation by the Chief of the Finance Revenue Service and by the Chief of the Tax Exempt Industries Division, acting for the Commissioner of Customs, and therefore the imported articles were released from the Bureau of Customs without the need of paying any tax and duties.

In 1988, the Bureau of Customs received an Affidavit executed, on 13 May 1988, by one Proebel A. G. Cafe (p. 66, Folder 5, Customs records), whose name and signature was later erased for unknown reasons, informing the Bureau of his alleged personal knowledge regarding various importation of goods, equipments and vehicles made by PAGCOR. The ownership was allegedly transferred to PCOC, herein petitioner, a private entity which is not exempt from taxes and duties.

On the basis of this Affidavit, an investigation was conducted by the Customs Intelligence and Investigating Service of the Bureau of Customs and a Memorandum Report, dated 27 February 1989, with the attached "Building Machineries & Equipments Inventory", was prepared recommending the issuance of a Warrant of Seizure and Detention for the approval of the Commissioner of Customs, pertinent portion of which reads as follows:

> "The Vice-President was a certain Mr. Constantino Francisco, whose name apparently does not appear in the roster of PAGCOR Executives. However, taking a close scrutiny of all available records/evidences in our possession, it turns out that his signature appears in all transactions which have something to do with PAGCOR, specifically on these very vital importations. The truth of the matter is that the PCOC, which is a private entity contracted by PAGCOR to handle the operations of the casino, was the real consignee of the said importations.
>
> It is, therefore becoming evident from the foregoing that the PCOC, being a private entity and appearing to be sole and real consignee of said

> importations, was not authorized by law to avail of tax-free importations for such articles. It is indeed, unfortunate that the anomalous importations of the said articles by PCOC have deprived the government of its much needed revenues to enhance its economic development or specifically to be utilized for other productive activities.
>
> In addition thereto, the Provident Internal Resources Corporation (PIRC), another entity which was also headed by Mr. Edward Marcelo, with Mr. Constancio Francisco acting in the capacity as Mr. Marcelo's assistant, is the owner of the land and building where the said casino building is now. It could be adduced that about 90% of such importations are housed/installed in the said building.
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> x x x x x x x x x.
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> In view hereof, it is respectfully prayed that a Warrant of Seizure and Detention be issued against the unauthorized importations of the Philippine Casino Operators Corporation (PCOC)."

As a result thereof, a Warrant of Seizure and Detention No. 89-092 was issued by the District Collector of Customs, Port of Manila, on 6 March 1989, it appearing that the articles imported were allegedly subject to forfeiture under Section 2530(f) and (l)1, 3, 4 and 5 of the Tariff and Customs Code, as amended. The Warrant of Seizure and Detention was served on petitioner on 8 March 1989 in the Provident International Resource Corporation [PIRC] (Old Casino) Building situated along the Ninoy Aquino, Sucat, Parañaque were said articles are located. Majority of the items consist of heavy equipments so instead of confiscating them the same were merely sealed of inside the premises. Some items in the Inventory Lists have been ordered dropped or excluded for they have already been consumed and/or no longer in its possession.

Several hearings were conducted by the Bureau of Customs regarding Seizure Identification No. 89-092 entitled Republic of the Philippines v. Various importations allegedly of PAGCOR located inside PIRC Building, Philippine Casino Operators Corporation, Claimant.

It is the position of the prosecution that the importations were never authorized by PAGCOR and therefore the ownership thereof does not belong to PAGCOR. Moreover, the tax exemption privileges of PAGCOR does not extend to PCOC who is the real owner of the articles imported. To support its claim, the prosecution pointed that the alleged representative of PAGCOR, Mr. Constancio Francisco, Officer in Charge of PAGCOR, who made representations for and in behalf of PAGCOR in requesting for tax and duty free exemptions in the Ministry of Finance, is not actually an officer or employee of PAGCOR nor was he in anyway connected with the firm. A Certification to this effect, dated July 8, 1987, was signed by Mrs. Florencia B. Aguas, Managing Head, Personnel and Administration Department of PAGCOR. To show that the various importation were for PCOC and not PAGCOR, the prosecution presented documents to prove that it was PCOC who moved for the release of the articles seized by the Presidential Commission on Good Government (PCGG). In sum, the prosecution wants to show that the imported articles were released through fraudulent means and by misrepresentation without the proper payment of taxes and duties by PCOC thus warranting the forfeiture of the articles. Moreover, the exemptions of PAGCOR does not extend to PCOC a private entity.

The claimant (PCOC) on the other hand, averred that the importations were authorized by PAGCOR by virtue of the Contracts to Operate between PAGCOR and PCOC which provides in par. 2(e) - that "(t)he CONCESSIONAIRE shall be authorized in behalf of the FRANCHISEE to acquire, lease personal property and to procure either local or imported equipment and facilities from foreign sources as may be required in the casino operations;" for the sole and exclusive use of the casinos operated and managed by PCOC.

After hearing the sides of both parties, the District Collector of Customs, Port of Manila, rendered a Decision, dated 22 February 1990, finding the articles imported either belonging to PCOC or PIRC and not to PAGCOR. The exemption of PAGCOR as franchise holder does not extend to its concessionaires even though the articles imported are to be used exclusively for the casinos it operates. The claimant failed to present the specific grant of exemption to confer to it the same privileges given by law to PAGCOR. The Contract to Operate did not in any way transfer these privileges to PCOC since tax exemptions are intransferrable and unassignable. Thus, the articles sealed in the premises of PIRC were ordered forfeited in favor of the government.

On appeal to the Commissioner of Customs, the respondent Commissioner rendered a Decision, dated 12 February 1991, confirming the order of forfeiture and affirming the decision of the District Collector of Customs, Port of Manila. PCOC was served a copy of the respondent's Decision on 13 March 1991. On 19 March 1991 PCOC filed a Motion for Reconsideration which was later amended on 1 April 1991. Without waiting for the resolution of its motion for reconsideration as amended, petitioner filed its appeal with this Court on 12 April 1991 seeking for the reversal of the Decision of respondent, dated 12 February 1991, and declaring the forfeiture to be null and void.

The issue to be resolved is whether or not the imported articles forfeited by respondent in favor of the government are exempt from the payment of taxes and duties.

Respondent maintains that the tax exempting privileges of PAGCOR as provided for under its Franchise is intransferable and unassignable because exemptions from taxes are strictly construed and an exemption cannot be claimed unless granted by the express provision of law.

Petitioner contends that by virtue of its Contracts to Operate with PAGCOR, the tax exemption privileges of PAGCOR extend to it pursuant to P.D. No. 1067-B, as amended by P.D. No. 1399, 2 June 1978, pertinent portion of which provides as follows:

"Section 4. EXEMPTIONS. -

(1) ***Duties, taxes and other imposts on importations.*** - All importations of equipment, vehicles, automobiles, boats, ships, barges, aircraft and such other gambling paraphernalia, including accessories or related facilities, for the sole and exclusive use of the casinos, the proper and efficient management and administration thereof, and such other clubs, recreation or amusement places to be established under and by virtue of this Franchise shall be exempt from the payment of duties, taxes and other imposts, including all kinds of fees, levies, or charges of any kind or nature.

x x x x x x x x x.

(2) ***Income and other taxes.*** -

(a) Franchise Holder: x x x x x x x x x.

(b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation/s, association/s, agency/ies, or individual/s with whom the Franchisee has any contractual relationship in connection with the operations of the casino/s authorized to be conducted under the franchise and to those receiving compensation or other remuneration from the Franchise Holder as a result of essential facilities furnished and/or technical services rendered to the Franchise Holder." (Emphasis Ours.)

We agree with petitioner. As a matter of fact, the subsequent codification and amendments of P.D. Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632, relative to the franchise and powers of PAGCOR, enacted under P.D. No. 1869, 11 July 1983, the following tax exemption privileges of PAGCOR and its concessionaires still remain, as provided under Section 13 thereof, to wit:

"SEC. 13. ***Exemptions.*** -

(1) ***Customs duties, taxes and other imposts on importations.*** - All importations of equipment, vehicles, automobiles, boats, ships, barges, aircraft and such other gambling paraphernalia, including accessories or related facilities, for the sole and exclusive use of the casinos, the proper and efficient management and administration thereof, and such other clubs, recreation or amusement places to be established under and by virtue of this Franchise shall be exempt from the payment of all kinds of customs duties, taxes and other imposts, including all kinds of fees, levies, or charges of any kind or nature, whether National or Local.

x x x   x x x   x x x.

(2) ***Income and other taxes.*** - **(a) Franchise Holder:** x x x   x x x   x x x.

(b) ***Others.*** The exemption herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or

> other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.
>
> The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax."

In a precedent case, involving the same parties, the Court had the occasion to rule that the tax exemption privileges of PAGCOR extends to corporations having contractual relations with PAGCOR, thus it was held:

> "It was not disputed that petitioners, Philippine Casino Operators Corporation (PCOC) and Provident International Resources Corporation (PIRC), had contractual relations (Exhs. A and D for PCOC's Contracts to Operate and Exhs. B, C and E for PIRC's Contracts of Leases) with PAGCOR. It was also not disputed that under P.D. Nos. 1399 and 1869, PAGCOR was exempted from any kind or form of tax, except a franchise tax of 5% of the gross revenues derived by PAGCOR. Such exemption was also extended to those entities having 'contractual relationship in connection with the operations of the casino/s...' x x x" **(Philippine Casino Operators Corporation v. Commr. of Internal Revenue, CTA Case No. 4341; Provident International Resources Corporation v. Commr. of Internal Revenue, CTA Case Nos. 4341 and 4342, 12 April 1995.)**

While it is a fact that the articles imported were consigned in the name of petitioner still the same are not subject to taxes and duties for the tax exempting privileges of PAGCOR apply and extend to PCOC and PIRC since both have contractual relations with PAGCOR. There is no doubt that the imported articles seized are solely and exclusively used in the operations of the casinos. In view thereof, the articles imported by petitioner, as consignee of PAGCOR, are deemed exempt from taxes and duties. Hence, the importation thereof are valid and legal.

WHEREFORE, finding the petition to be meritorious the same is hereby **GRANTED**. Respondent's Decision dated 12 February 1991 is hereby set aside and the Decree of Forfeiture against the imported articles seized is reversed and considered void. Respondent is hereby ordered to release in favor of petitioner all articles previously sealed and forfeited by the former under Seizure Identification No. 89-092 (Customs Case No. 91-04). No cost of suit.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals