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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SMIT-LLOYD B.V.,
Petitioner,

-versus -

C.T.A. CASE NO. 3189

THE ACTING COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

11/27/91

D E C I S I O N

This is a claim for tax credit involving the amount of P422,058.94 representing alleged overpaid 8% final tax withheld from petitioner by Philippine-Cities Service, Inc. for the quarters ended December 31, 1978 and March 31, 1979.

Petitioner, Smit-Lloyd B.V., is a foreign corporation organized under the laws of the Netherlands. It is engaged in the business as a resident international carrier in the Philippines with business address at Mary Bachrach Building, 25th Street, Port Area, Manila. It operates a fleet of vessels of foreign registry that calls on Philippine ports at regular schedule. These vessels are generally chartered principally to international oil companies to service the needs of their offshore oil drilling activities.

Sometime on September 13, 1978, petitioner entered into a charter party to provide supply vessels to Philippine-Cities Service, Inc. which is engaged in petroleum exploration and development in the Philippines. The services include as follows:

(a) Carrying supplies on behalf of Philippine-Cities Service, Inc. principally from overseas ports to offshore platforms and drilling rigs to Mabini, Batangas;

(b) Carrying personnel from overseas ports to offshore platforms and drilling rigs and vice-versa.

In accordance with said charter party agreement, payments were made to petitioner for the respective quarters ended December 31, 1978 and March 31, 1979. The total amounts of P456,467.10 and P410,430.65, representing the 8% final tax under P.D. 1354 were withheld from petitioner by Philippine-Cities Service, Inc. and paid to the BIR on January 25, 1979 and April 23, 1979, respectively.

However, on June 28, 1979, petitioner through its external auditor, SGV & Company, filed a formal claim for tax credit covering the above internal revenue tax payments, alleging that it had overpaid the above-mentioned internal revenue tax payments by three and one-half (3-1/2) per centum. It cited as legal basis BIR Ruling No. 023-79 dated April 27, 1979 holding Smit-Lloyd B.V., as an international carrier subject to the income tax of 2-1/2% on its gross Philippine billings and to the 2% common carrier's tax pursuant to Sections 24(b)(2) and 207 of the National Internal Revenue Code of 1977.

It appearing from the records that respondent does not dispute the aforementioned facts and in fact failed to file his objection to the formal offer of evidences by petitioner, parties decided to submit this case for decision on the basis of the pleadings already submitted. In view thereof, the issue to be resolved in this particular case is whether or not petitioner is liable to the 8% final tax under P.D. 1354, or to the 2-1/2% income tax on its gross Philippine billings and to the 2% common carrier's tax under Sections 24(b)(2) and 207 of the Tax Code of 1977.

Respondent maintains the applicability of the provisions of P.D. 1354, as follows:

Presidential Decree No. 1354

Imposing Final Income Tax on Subcontractors and Alien Employees of Service Contractors and Subcontractors

Engaged in Petroleum Operations in the Philippines Under Presidential Decree No. 87

xxx xxx xxx

SECTION 1. Tax on sub-contractors.- Every subcontractor, whether domestic or foreign, entering into a contract with a service contractor engaged in petroleum operations in the Philippines shall be liable to a final income tax equivalent to eight percent (8%) of its gross income derived from such contract, such tax to be in lieu of any and all taxes, whether national or local: x x x.

On the other hand, petitioner cited Section 24(b)(2) and 207 of the National Internal Revenue Code, as follows:

Sec. 24. Rates of tax on corporations.-(a) x x x.

(b) x x x. (1) x x x.

(2) Resident corporations.- A corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be taxable as provided in subsection (a) of this section upon the total net income received in the preceding taxable year from all sources within the Philippines: **Provided, however,** That international carriers shall pay a tax of two and one-half per cent on their gross Philippine billings x x x.

Sec. 207. Percentage tax on carriers and keepers of garages.- Keepers of garages, cars for rent or hire driven by the lessees, transportation contractors, person who transport passengers or freight for hire, and common carriers by land, air, or water, except owners of bancas and owners of animal-drawn two-

> wheeled vehicles, shall pay a tax equivalent to two **per centum** of their monthly gross receipts.
>
> xxx xxx xxx.

Basic is the principle that in case of conflict between a special law and a general law the provision of the former shall prevail over that of the latter. ***Generalia Specialibus Non Derogant.*** Where a later special law on a particular subject is repugnant to, or inconsistent with, a prior general law on the subject, a partial repeal of the latter will be implied to the extent of the repugnancy or an exception grafted upon the general law. A special law must be intended to constitute an exception to the general law in the absence of special circumstances forcing a contrary conclusion. (***National Power Corporation*** vs. ***Hon. Presiding Judge, Province of Misamis Oriental***, G.R. No. 72477, October 16, 1990.)

An examination of the two laws will show that the National Internal Revenue Code is a general law compared to Presidential Decree No. 1354. While the former governs in general taxation of all types of individuals and corporate entities, the latter takes exception and treats especially the manner of taxing subcontractors and alien employees of service contractors and subcontractors engaged in petroleum operation. Therefore, based on the afore-mentioned doctrine, the provision of Presidential Decree No. 1354 should prevail.

This conclusion becomes more apparent if we will take note of the fact that Presidential Decree No. 1354 recognizes in its opening paragraph that "foreign subcontractors involved in petroleum operations in the Philippines are taxable as resident foreign corporation". In other words, the lawmaker was aware that foreign subcontractors engaged in petroleum operations were taxed as resident foreign corporation under Section 24(b)(2) of the Tax Code including entities engaged in international carriage when the subject presidential decree was promulgated. The purpose therefore of the law is to take away from the provision of said section of the National Internal Revenue Code, foreign subcontractors involved in petroleum operations by holding them liable to a special rate of 8% of its gross income derived from its contract with a service contractor engaged in petroleum operation. Had the intention been to exclude international carriers, this should have been specified but the law remains silent and in fact did not distinguish. Also, nowhere under said presidential decree was it the intention of the lawmaker to give preferential treatment to foreign subcontractor. The intention was merely "to simplify the method of taxing the said foreign subcontractors x x x so as to insure the collection of whatever tax is due from them." (5th paragraph of the Whereas Clause). Another purpose is to place domestic subcontractor on equal footing with foreign subcontractor which we shall discuss below.

Furthermore, please take note that one of the main purpose for the issuance of P.D. 1354 is "To place local or domestic subcontractors on equal footing and to make them competitive with foreign subcontractors, they should similarly be taxed as foreign subcontractors". (6th paragraph of the Whereas Clause.) In accordance with the objective, Section 1 of P.D. 1354 provides that "Every subcontractor, whether domestic or foreign, entering into contract with a service contractor engaged in petroleum operations in the Philippines shall be liable to a final income tax equivalent to eight percent (8%) of its gross income derived from such contract, such tax to be in lieu of any and all taxes, whether national or local" (Underscoring supplied). If we will follow the position taken by the petitioner and concur with the cited BIR opinion holding petitioner liable to pay only 2-1/2% tax on gross Philippine billings plus 2% common carrier's tax, the purpose of the law will be defeated because domestic subcontractor engaged in similar subcontract of lease or charter of vessel can never be subject to the lower 2-1/2 tax on gross Philippine billings. This lower tax rate applies only to resident foreign corporations. Clearly, the intention of the law, P.D. 1354 in applying a similar 8% tax on both, domestic and foreign, is to place them on equal footing in terms of winning a subcontract agreement with a contractor engaged in petroleum operations. To rule otherwise is to place a domestic subcontractor at a disadvantage vis-a-vis a foreign subcontractor.

Moreover, if we will examine closely the activities of the vessels of the petitioner employed in the operation which we quote as follows:

> 1. Carrying supplies on behalf of Philippine-Cities Service, Inc. principally from overseas ports to offshore platforms and drilling rigs and to Mabini, Batangas which is the supply base of companies engaged in oil exploration and development and related activities. These supplies consist only of those items which are necessary to sustain an offshore

petroleum exploration or production operation. Supplies include but are not limited to: food, water, fuel, bulk cement and drilling fluids, drilling and logging tools and equipment; and

2. Carrying personnel from overseas ports to offshore platforms and drilling rigs and vice-versa.

We can conclude that these activities are not covered by the phrase "gross Philippine billings" being taxed at 2-1/2% under Section 24(b)(2) of the Tax Code. The law defines "Gross Philippine Billings" as gross revenue realized from uplifts anywhere in the world by any international carrier doing business in the Philippines of passage documents sold therein, whether for passenger, excess baggage or mail, provided the cargo or mail originates from the Philippines. The gross revenue realized from the said cargo or mail includes the gross freight charge up to final destination. Gross revenue from chartered flights originating from the Philippines shall likewise form part of "Gross Philippine Billings" regardless of the place of sale or payment of the passage documents. For purposes of determining the taxability of revenues from chartered flights, the term "originating from the Philippines" shall include flight of passengers who stay in the Philippines for more than forty-eight (48) hours prior to embarkation".

(Underscoring supplied) Please note that while the service activities of the vessels of petitioner speaks of carrying supplies and personnel from overseas ports to offshore platforms and drilling rigs and to Mabini, Batangas, the gross revenue contemplated under the phrase "gross Philippine billings" speaks of cargo, mail or chartered flights originating from the Philippines, a complete reverse of the aforementioned activities.

Considering all the above jurisprudence and objectives of the law, the Court concludes that what the petitioner has done in paying the 8% tax pursuant to P.D. 1354 is in order.

WHEREFORE, the instant Petition for Review is hereby dismissed. The claim for tax credit is consequently denied.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, November 27, 1991.

ERNESTO D. ACOSTA
Associate Judge

I CONCUR:

CONSTANTE C. ROAQUIN
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 between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals