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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ROYAL INTEROCEAN LINES,
Petitioner

versus

CTA CASE NO. 1570

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - x Sept. 24/66

D E C I S I O N

This is an appeal from the decision of respondent assessing petitioner the amount of ₱1,471.39 representing deficiency common carriers tax plus surcharge for the period from February to May 1962.

Petitioner is a foreign corporation duly licensed to do business in the Philippines with head office in Amsterdam, Holland. It is the operator of ocean-going vessels plying between the Philippines and European ports transporting passengers and freight. It is also the agent and representative of the Holland East Asia Lines, a Dutch shipping company with offices in Amsterdam, from which it receives compensation in the form of commissions for services rendered. Its gross earnings were officially expressed in dollars although it is actually paid in European currencies depending upon the nationality of a particular customer. In other words, in all its transactions involving the various currencies in use in continental Europe whether it be the English pound sterling, the Italian lira or the German mark, the dollar has been and is invariably and consistently used as the common medium of exchange and measure of value.

During the months of February to May 1962, petitioner collected abroad a total freight valued at $37,501.50 which it declared for tax purposes in Philippine currency at the parity rate of ₱2.00 to $1.00 and paid the corresponding common carriers tax in the sum of ₱1,500.04.

Respondent found that under the conversion rate of the dollar in the free market, the gross receipt of petitioner was ₱163,776.38; wherefore, respondent demanded the sum of ₱2,219.35 as deficiency common carriers tax plus surcharge and penalty. Subsequently, however, in a conference hearing, respondent and petitioner agreed that the gross receipt at such conversion rate was actually ₱133,855.88 and not ₱163,776.38 for the latter figure entered an item of ₱29,920.50 twice. With this reduction, petitioner's liability for deficiency taxes went down to ₱1,471.39 including surcharge. Petitioner entered a protest to this deficiency assessment claiming that the conversion rate should be the parity rate and not the free market rate since it is not controverted that the "collect" freight fees in question were never remitted to petitioner but remained abroad, and whatever sums petitioner received from its head office in Amsterdam were only for operating expenses. Respondent ruled against petitioner and so the latter brought this case on appeal to this Court.

The issues raised in this case are as follows:

(1) Whether or not the fees collected by petitioner abroad from freight accepted here should be converted to Philippine currency at the parity rate of ₱2.00 to $1.00 or at the rate existing in the free market;

(2) Whether or not petitioner is subject to 25% surcharge for late payment; and

(3) Whether or not petitioner is liable to pay the compromise penalty.

In connection with the first issue, petitioner urges that the conversion of its "collect" freight fees to the peso should be based on the parity rate although they were earned in the Philippines since they were actually paid in foreign currencies abroad and no remittances thereof were made to the Philippines nor were they converted to and received in Philippine peso. In support of this view, petitioner quotes the rule laid down by the Supreme Court in the case of Commissioner of Internal Revenue vs. United States Lines (G.R. No. L-16850, May 30, 1962) that runs as follows:

> "The ruling by the lower court that the conversion of the 'collect' freight fees (or those earned in the Philippines <u>but actually paid in the United States in dollars</u>) should be at the rate of ₱2.00 to $1.00 as established by law (Sec. 48,

> Rep. Act No. 265), and not the rate of exchange of ₱2.00375 to $1.00, as fixed by the Monetary Board, must be upheld. No evidence was presented rebutting the positive allegation of respondent taxpayer, which was sustained by the Tax Court, that the 'collect' freightage fees were not remitted to the local office of the U. S. Lines Company (in the Philippines) nor actually converted to and received in Philippine pesos. In other words, no foreign exchange operations were involved here. x x x" (Commissioner of Internal Revenue v. United States Lines Co., G.R. No. L-16850, May 30, 1962; underscoring supplied.)

Respondent for his part contends that since the aforequoted doctrine was enunciated before the launching of our decontrol program and the adoption of the free market rate in Circulars Nos. 105, 106, 111 and 133 of the Central Bank, as our rate of foreign exchange, the advent of the latter abrogated said doctrine. It is suggested that the free market rate of exchange should now be the rate of conversion of collect freight fees paid abroad in foreign currency even when no remittance to the Philippines requiring foreign exchange takes place.

It is well to note that the rate of ₱2.00 to $1.00 mentioned in the U. S. Lines case is the rate set in Section 48 of Republic Act No. 265, commonly known as the Central Bank Act, which section governs the parity rate of the peso as regards the dollar. In the last analysis, therefore, the doctrine in said case is that in the conversion of 'collect' freight fees, earned in the Philippines but paid in dollars abroad, the parity rate and not the current rate of exchange should be used if no remittance is made to the local office and no foreign exchange is involved. By the same token, the parity rates of the peso as regards foreign currencies other than dollar, which rates are governed by Section 50 of the same Act, and not the prevailing rate of exchange between the Philippine peso and said currencies, should be applied. under parallel situations. Apropos of this, said Section 50 provides that the legal parities mentioned therein "shall be recognized as the legal parities for all purposes." The reason for the rule was expressed in the decision of this Court in said U. S. Lines case as follows:

> "We fully agree with the contention of the petitioner. The gold value of the Philippine peso is seven and thirteen-twenty firsts (7-31/21) grains of gold, ninetenths (0.900) fine, which is equivalent to one half (½) of a United States dollar. This is the legal international par value of the Philippine peso as established by law (Sec. 48, Rep. Act No. 265) which must be 'recognized x x x for all purposes,' (Sec. 50, Rep. Act No. 265) and the Government, as represented by the respondent Commissioner of Internal Revenue in this case, should be the last to disregard it. On the contrary, it is the duty and responsibility of the Government 'to preserve the international value of the peso and the convertibility of the peso into other freely convertible currencies.' (Sec. 2/b/, Rep. Act No. 265.)

Central Bank Circulars 105, 106, 111 and 133 that launched partial and then full decontrol, both of which adopted the free market rate of exchange, first for limited and selected transactions and later generally, govern only our rates for foreign exchange transactions or transactions involving foreign exchange. They do not touch or govern our parity rates with other countries, or convert the fluctuating free market rate of exchange into our parity rate, or ordain the applicability of the free market rate to all situations whether they involve foreign exchange transactions or not. And indeed, under Section 49 of Republic Act 265, the Central Bank does not have the power to change the par value of the peso. This can only be done by the President upon proposal of the Monetary Board and with the approval of Congress (Bacolod Murcia Milling Co. vs. Central Bank of the Philippines, G. R. No. L-12610, Oct. 25, 1963) or, in case of emergency, by the President alone, subject to be reported to Congress at the earliest opportunity (Section 49, Rep. Act No. 265). The following excerpts from the Annual Reports of the Central Bank aptly convey the significance and latitude of Circulars 105, 106, 111 and 133 aforesaid:

> "A system of multiple rates based on an official rate and a free market rate (plus the 15 per cent margin fee, whenever applicable) existed for imports and invisible payments and export and invisible receipts. The par value and the official rate was two Philippine pesos (₱2.00) equal one United States dollar ($1.00). The free market rate, which was determined by the Monetary Board of the Central Bank, had been set at ₱3.00 per U. S. $1.00 since September 12, 1960. The buying and selling rates during the third phase of the decontrol program

consisted of: x x x" (Annual Report, 1961, p. 108.)

"Since January 22, 1962, a virtually free foreign exchange market has existed. Aside from special advance time deposit requirements on certain imports, practically all quantitative restrictions on foreign trade and payments, including capital movements, have been withdrawn. Except for twenty per cent of proceeds from major exports which continue to be sold to the Central Bank at the par value of ₱2 to $1, and certain outstanding foreign exchange commitments of the Central Bank which are still amortized at rates of ₱2.00, ₱3.00, ₱3.20, depending on the terms of Monetary Board approval, all foreign exchange receipts and payments are transacted at a fluctuating rate essentially determined by the workings of the free market. On December 1, 1964, the 20 per cent surrender requirement scheme was modified to exempt exports with 1962-1963 average annual values of $2 million or less. The structure of effective buying and selling rates for 1964 is thus as follows: x x x" (Annual Report, 1964, pp. 104-105; underlining supplied.)

The Court cannot quite see how, under the foregoing premises, partial and total decontrol and the adoption of the free market rate for our foreign exchange, abrogated or affected or modified the doctrine in the United States Lines case. Notwithstanding our adoption of the free market rate for foreign exchange, we still have our parity rates with other countries apart from our current rate of exchange and these parities have to be honored in the proper situation as stated by this Court in the United States Lines case.

We do not find the cases of Manuel Fortich Celdran vs. Commissioner of Customs and Commissioner of Internal Revenue (C. T. A. Case No. 1209, July 15,

1964) and Atlas Consolidated Mining Co. vs. Commissioner of Customs (C. T. A. Case No. 1161, June 4, 1962) to be in point. The Celdran case refers to import taxes required by Section 204 of the Tariff Code which expressly provides that assessments under same should be based on the "current rate of exchange or value specified or published, from time to time, by the Central Bank of the Philippines." Although there was no foreign exchange involved the value of the imported goods had to be based on the current rate of exchange by express provision of law. On the other hand, in the case of "collect" freight fees that involves no remittance to the Philippines, there is no particular provision in the Tax Code requiring conversion to peso on the basis of the current rate of exchange, while Section 50 of Republic Act No. 265 categorically states that the parities mentioned therein "shall be recognized as the legal parities for all purposes."

The Atlas Consolidated Mining Co. case also involved Section 204 of the Tariff Code in connection with imports of tractor spare parts. Under Central Bank regulations, tractor spare parts could then be imported with dollars procurable at the "preferred rate" of ₱2.00 to $1.00. Republic Act No. 2609, however, imposed a margin levy of 25% for foreign exchange and thus, under Circular 117 of the Central Bank, dollars could be purchased at par, plus 25%, and this was of course the current rate or prevailing rate of exchange then. As Section 204 of the Tariff Code expressly provided that imports pay taxes on the "current rate of exchange or value specified or published, from time to time, by the Central Bank of the Philippines," the Court had to rule that the tax base for imports should include the 25% margin fee. When in the said case the Court spoke of interpretation or construction "that breathes the life of time, and reflects the actual circumstances of events prevailing" it simply meant that the 25% margin fee had to be included on the tax base because it was part of the current rate of exchange of the time, which should be the tax base for imports according to law.

This Court reopened this case in order to determine the currencies with which the freight in question were paid so it could determine the parities between said currencies and our peso. During the hearing in connection therewith, the parties manifested that said parities are correctly reflected in the accounting of petitioner. Needless to say, petitioner has no deficiency tax to pay. Having reached this conclusion, it is unnecessary to discuss the two remaining issues posed before us.

WHEREFORE, the decision of the Commissioner of Internal Revenue under review is hereby reversed, without pronouncement as to costs.

DECISION -
CTA CASE NO. 1570

SO ORDERED.

Quezon City, September 24, 1966.

RAMON L. AVANCEÑA
Associate Judge

I CONCUR:

ROMAN M. UMALI
Presiding Judge

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DISSENTING OPINION

I find myself unable to concur in the decision of this Court that, in assessing and collecting the common carrier's tax imposed by Section 192 of the National Internal Revenue Code in relation to Section 183 of the same Code, the percentage tax of 2% should be based on the legal parity rate of exchange of ₱2.00 to $1.00 (Sec. 48, Rep. Act No. 265) on "collect" freight revenues earned by petitioner in the Philippines but paid by its customers abroad in various European currencies and converted into U. S. dollars which were not remitted to the Philippines. The sole justification for the use of the legal parity rate of exchange was the absence of any foreign exchange transaction, that is, the "collect" freightage fees were not remitted to the local office of the petitioner in the Philippines nor actually converted to and received in Philippine pesos (Commissioner of Internal Revenue vs. United States Lines, G.R. No. L-16850, May 30, 1962).

Petitioner, a foreign corporation doing business in the Philippines, is the operator of ocean-going vessels plying between the Philippines and European ports transporting passengers and freight. Its gross earnings as a common carrier were officially expressed in U. S. dollars although they were paid in various European currencies by its customers. During the months of February to May 1962, petitioner collected abroad its freight charges and converted them to U. S. dollars which it declared for percentage tax as a common carrier in Philippine currency at the parity rate of ₱2.00 to $1.00 (U.S.) and paid the 2% tax due thereon. However, before February 1962 but after the launching of the partial and full decontrol, petitioner declared its gross earnings in U. S. dollars as a common carrier, in Philippine currency at the free market rate of exchange (Report of the revenue examiner, BIR rec. p. 12).

Section 22(1) of Article VI of our Constitution provides that "the rule of taxation shall be uniform." The constitutional mandate, which is of American origin, simply means that there must be "geographic uniformity" in taxation. In other words, a taxpayer engaged as a common carrier in the Philippines, whether operating foreign ocean-going vessels or Philippine flag vessels, should be subject to the same burden of taxation. This view is bolstered by the provisions of Section 183 of the National Internal Revenue Code, in relation to Section 192 of the same Code, which require taxpayers "to make a true and complete return of the amount of his, her or its gross monthly sales, receipts or earnings."

The majority opinion, if pursued to its logical conclusion, will violate the uniformity rule of taxation embodied in our Constitution, result in inequality of taxation, and contravene the requirement of Section 183 of the National Internal Revenue Code, in relation to Section 192 of the same Code.

To illustrate my point, let me take as example the case of the petitioner and a taxpayer operating a Philippine flag vessel. The gross earnings of the latter as a common carrier for services rendered in the Philippines to points abroad are paid in Philippine peso. Naturally, the 2% tax imposed by Section 192 of the Tax Code is fixed or determined in accordance with the free market value of the Philippine peso. The same is true if the services of the taxpayer are paid in U. S. dollars and the same are remitted to the Philippines. On the other hand, if the same services of the taxpayer are rendered by petitioner and the latter was paid in U. S. dollars which were not remitted to the Philippines, the free market value of the Philippine peso will be very much less on the basis of the legal parity rate of exchange adopted in the majority opinion.

I will use figures to clarify my illustration. If ₱3,900.00 is paid to a taxpayer operating a Philippine flag vessel for services rendered which is taxable in the Philippines, there is not the slightest question that the tax base for imposing the 2% tax is ₱3,900.00. By using the free market rate of the Philippine peso (e. g., ₱3.90 to $1.00) and the taxpayer was paid $1,000.00 and the same was remitted to the Philippines, the tax base for imposing the 2% tax is still ₱3,900.00. However, in the case of the petitioner, the $1,000.00 paid for the same services taxable in the Philippines is likewise subject to 2% tax but the tax base is ₱2,000.00 instead of ₱3,900.00, by using the legal parity rate of exchange.

In the case at bar, the use of the free market rate of exchange in converting the U. S. dollars to Philippine peso is in consonance with the provisions of Section 183 of the National Internal Revenue Code, in relation to Section 192 of the same Code, which require taxpayers "to make a true and complete return of the amount of his, her or its gross monthly sales, receipts or earnings." After all, the use of the free market rate of exchange does not involve foreign exchange transaction which may be considered a violation of the Central Bank Law (Secs. 48 and 50, Rep. Act No. 265). Moreover, taxation is a practical matter (Borland v. Commissioner, F/2d/ 358, 28 AFTR 317) and, therefore, Section 192 of the National Internal Revenue

Code should be construed and enforced in a sound and practical manner consistent with the uniformity rule of taxation embodied in our Constitution; otherwise, we will be paving the way for tax avoidance by shielding taxpayers behind the decisional law of the majority of this Court.

I am fully aware and cognizant of the decision of the Supreme Court in the case of Commissioner of Internal Revenue v. United States Lines, supra, upon which the majority opinion relied in deciding the question here at issue. However, the points discussed herein have not been brought to the attention of the Supreme Court, probably because the United States Lines case involves an assessment covering the years 1950 to 1955 when the free market rate of exchange of the Philippine peso was not yet in operation; while the period involved in the instant case covers an assessment from February to May 1962, after the government has launched the decontrol program and adopted the free market rate of exchange of the Philippine peso in Central Bank Circular Nos. 105, 106, 111 and 133.

In effect, the majority opinion will be harsh and discriminatory against resident taxpayers using Philippine flag vessels whose receipts from the shipping business are paid in Philippine pesos or in U. S. dollars which are remitted to the Philippines. On the other hand, a non-resident taxpayer like the petitioner, whose receipts from the same business are paid in U. S. dollars but not remitted to the Philippines or converted to Philippine peso at the free market rate of exchange, will pay less taxes prescribed by Section 192 of the National Internal Revenue Code. Such an injustice cannot be sanctioned by our laws.

> "ART. 10. In case of doubt in the interpretation or application of laws, it is presumed that the law-making body intended right and justice to prevail." (Civil Code of the Philippines.)

As regards the imposition of the 25% surcharge for late payment of the 2% tax prescribed by Section 192 of the National Internal Revenue Code, it is a settled doctrine in this jurisdiction that the imposition thereof is mandatory under facts or circumstances similar to this case (Lim Co Chui vs. Posadas, 47 Phil. 460; Koppel vs. Collector, 87 Phil. 348; American Biscuit Co., Inc. vs. Collector, C. T. A. Case No. 444, August 27, 1963.)

As regards the compromise penalty of ₱200.00, respondent does not have any power to impose the same without the consent of petitioner (Collector vs. UST, et al., G.R. Nos. L-11274 & 11280, Nov. 28, 1958; Collector vs. Bautista, et al., G.R. Nos. L-18850 & 12258, May 27, 1959; Philippine International Fair, Inc. vs. Collector, G.R. Nos. L-12928 & 12932, March 31, 1962).

FOR THE FOREGOING CONSIDERATIONS, I am constrained to dissent from the majority opinion. I sustain, therefore, the decision of respondent appealed from, except the compromise penalty.

ESTANISLAO R. ALVAREZ
Associate Judge