REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CEBU MAINTENANCE CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3060

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

3/28/83

D E C I S I O N

This is a petition to review the decision of respondent Commissioner of Internal Revenue dated September 27, 1979 requiring petitioner Cebu Maintenance Corporation to pay the sum of ₱32,641.14 representing deficiency percentage tax, surcharge, interest and penalty for 1974, on its gross receipts as independent contractor as provided for under Sections 183(a) and 191 of the then in forced National Internal Revenue Code.

There is no dispute as to the facts, the case having been submitted by the parties on the basis of the pleadings and the records of the Bureau of Internal Revenue on this proceeding. Petitioner Cebu Maintenance Corporation is a corporation duly organized and existing under the laws of the Philippines, with principal office and address at

No. 34 Plaridel Street, Cebu City. It appears that on July 9, 1973, petitioner represented by its General Manager, Luis V. Velez, and the City of Cebu, through its Acting Mayor, Eulogio E. Borres, entered into a contract, the provisions of which are quoted as follows:

> 1. That the PARTY OF THE FIRST PART shall supply fuel (Premium or Special Gasoline), lubrication, all spare parts, tires and batteries and shall service or maintain fifteen (15) Holden Police Cars of the Cebu Police Department, including the supply of civilian drivers on a 16-hour per day basis, at the following prices, to wit:
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> | (a) Supply of fuel and lubrication, spare parts, and supply of tires and batteries . . | ₱40,000.00 |
> | (b) Servicing or maintenance of the fifteen (15) Holden Police Cars and the supply of drivers . . . . | 5,000.00 |
> | TOTAL MONTHLY RATE . . . . | ₱45,000.00 |
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> The above-quoted prices shall be indivisible and inseparable; and, shall constitute the monthly payments for the supply of fuel and lubrication, spare parts, tires and batteries and servicing or maintenance of the fifteen (15) Holden Police Cars, including the supply of Drivers, shall be payable by the PARTY OF THE SECOND PART to the PARTY OF THE FIRST PART at the beginning of each month starting on July 1, 1973.
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> 2. The PARTY OF THE SECOND PART shall use each of the fifteen (15) police vehicles mentioned above for not more than sixteen (16) hours per day. In case of unavailability of

any of the fifteen (15) police vehicles by reason of any uncontrollable events, circumstances and calamities, such as labor strikes, unavailability and shortage in the market of spare parts, fuel and oil; conflagration, floods and typhoons, shall not be considered as grounds for the rescission of this contract or for any claim for damages.

3. The PARTY OF THE FIRST PART shall provide mechanics on 24-hours duty daily to attend to the mechanical or electrical problems of each of the above-mentioned police vehicles.

4. This contract shall terminate after a period of three (3) years starting from July 1, 1973. However, the parties have agreed that during the life of this agreement, the price of fuel and lubrication and the salaries of drivers shall be adjusted monthly as the prevailing price of fuel and lubrication and minimum wage go up or down based on the average of the recommended pump prices of all oil companies in Cebu City; provided that the above-quoted prices are based on the Peso to Dollar exchange rate of SIX PESOS and FORTY-FIVE CENTAVOS (₱6.45) to the U.S. Dollar ($1.00), and that therefore, for any further devaluation of the Peso with respect to the Dollar, shall warrant an immediate corresponding and proportionate adjustment of the above prices.

5. In case any or all of the Police cars are used for more than sixteen (16) hours per day, there shall be a corresponding proportional additional hourly charge based on the monthly rate per police car (which is the total monthly price divided by 15) to be divided 30 to give the daily rate per car and to be divided further by 16 to give hourly rate per police car.

6. The above-mentioned 15 police cars, when not being used by the Cebu Police Department shall be kept at the premises of the PARTY OF THE FIRST PART for purposes of repair and maintenance. However, the safety

> and security of said vehicles shall be guaranteed by the Cebu Police Department by assigning a guard or guards at the premises of the PARTY OF THE FIRST PART.
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> 7. The PARTY OF THE FIRST PART shall cause each of the fifteen (15) police vehicles to be covered by comprehensive insurance policy at no extra cost of the PARTY OF THE SECOND PART.

After investigation of petitioner by agents of the Bureau of Internal Revenue for business tax purposes covering the year 1974, it was ascertained that it failed to pay, on the basis of the aforementioned contract, the correct amount of percentage tax on its gross receipts as independent contractor as provided for in Sections 183(a) and 191, penalized under Section 209, all of the then in forced National Internal Revenue Code. Respondent therefore assessed petitioner the sum of ₱32,641.14 as deficiency percentage tax for the year 1974, inclusive of surcharge, interest and penalty.

Petitioner requested a reconsideration of the assessment contending that for purposes of computing the three percent (3%) contractor's tax, the fixed sum of ₱40,000.00 monthly paid to it by the City of Cebu, as cost of fuel, lubricants, tires and other supplies for the up-keep and maintenance of the fifteen (15) Holden police cars should not be included in the total gross receipts realized during the year in question because they are sales to the City; hence, not subject to the contractor's tax of three (3%) percent. Consequently, the monthly payment of ₱5,000.00 as compensation for the servicing and supply of drivers to the fifteen (15) Holden police cars is the only amount subject to the said tax.

In a letter dated September 27, 1979, respondent however denied petitioner's request for reconsideration and reiterated the deficiency percentage tax assessment of ₱32,641.14. Hence, the present recourse.

Is the entire fee of ₱45,000.00 per month stipulated in the contract the gross receipt of petitioner subject to the three percent (3%) contractor's tax as provided under the then Section 191 of the National Internal Revenue Code?

It is not disputed that the deficiency assessment arose from respondent's imposition of the three percent (3%) contractor's tax on petitioner's entire monthly gross receipts of ₱45,000.00 derived from its contract of services and supply (Annex "D", pp. 16-18, CTA records) with the City of Cebu dated July 19, 1973, the pertinent provisions of which, for ready reference, are as follows:

> 1. That the PARTY OF THE FIRST PART shall supply fuel (Premium or Special Gasoline), lubrication, all spare parts, tires and batteries and shall service or maintain fifteen (15) Holden Police Cars of the Cebu Police Department, including the supply of civilian drivers on a 16-hour per day basis, at the following prices, to wit:
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> |---|---|---|
> | (a) | Supply of fuel and lubrication, spare parts, and supply of tires and batteries . . | ₱40,000.00 |
> | (b) | Servicing or maintenance of the fifteen (15) Holden Police Cars and the supply of drivers . . . . | 5,000.00 |
> | | TOTAL MONTHLY RATE . . | ₱45,000.00 |
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> The above-quoted prices shall be indivisible and inseparable; and, shall constitute the monthly payments for the supply of fuel and lubrication, spare parts, tires and batteries and servicing or maintenance of the fifteen (15) Holden Police Cars, including the supply of Drivers shall be payable by the PARTY OF THE SECOND PART to the PARTY OF THE FIRST PART at the beginning of each month <u>starting on July 1, 1973</u>.

As stated earlier, petitioner avers that for purposes of the contractor's tax, only the monthly sum of ₱5,000.00 as compensation for the servicing or maintenace of cars and supply of drivers is subject to the contractor's tax of three percent (3%), the ₱40,000.00 fixed monthly contract fee for supplying fuel, lubrication, spare parts, tires and batteries being the costs of such supplies or products and should not therefore form part of the gross receipts as these are proceeds from their sales to the City of Cebu.

On the other hand, to sustain his assessment, respondent lays stress on the second portion of paragraph 1 of the contract which provides that the quoted prices of ₱40,000.00 and ₱5,000.00 shall be indivisible and inseparable. Petitioner would not be able to comply with its contractual obligation to service and maintain the cars were it not for the use of fuel, lubricants, spare parts, tires and batteries; hence, the supply thereof is an integral part of the contract of service. As alleged by respondent as special and affirmative defenses in his answer to the petition for review:

The agreement between petitioner and the City of Cebu was to maintain and keep in good serviceable and running condition the latter's police cars for a fixed fee of ₱45,000.00 a month;

Petitioner would not have been able to comply with its obligation were it not for the use of lubricants, fuel and spare parts, hence, an integral part of the contract for service which is taxable as independent contractor under Section 191 (now

Sec. 205) of the Tax Code, as amended;

The contract fee of ₱45,000.00 per month was fixed, inclusive, indivisible and inseparable for the maintenance, service and operation of the government cars for police use and no specific price for a given quantity of fuel lubricants and spare parts was tagged nor were said products delivered and received by the City Government of Cebu;

The gross quarterly receipts of petitioner for the transaction in question were substantially the same as distinguished from receipts of ordinary sales which vary daily.

In refuting respondent's arguments that the contract of ₱45,000.00 was fixed, inclusive, indivisible and inseparable, petitioner maintains that its contract with the City of Cebu contains two subject matters: one for the supply of goods or things, and the other for services. That the supply or sale of goods on one hand, and the servicing of cars on the other are too patently distinct transactions taxable under different provisions of the Tax Code. And that as far as its contract of supply is concerned, it is more of a seller of fuel, etc, than an independent contractor. (p. 6, petitioner's memorandum.)

The allegation of petitioner that its contract of supply with the City of Cebu was actually a contract of sale is not supported by the evidence and the records. As correctly observed by respondent, there were no specific prices agreed upon by both parties for a given quantity of the products supplied. There were no sales made by petitioner to the City of Cebu, and the tires, lubricants and supplies were used by petitioner to put the cars in their proper order in consideration of the monthly payment of ₱40,000.00. Control and possession of the goods remained with petitioner. Neither do the records show that petitioner was engaged in general merchandising as it claims.

If evidently under its contract of supply with the City of Cebu petitioner was not a seller of goods, was it then an independent contractor?

The term "independent contractor" as defined in Section 191 of the Tax Code includes persons whose activity consists essentially of the sale of any kind of services for a fee regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractors or their employees. As aptly cited by respondent (pp. 106-107, CTA records), "the term 'services' involves more than mere labor and signifies much more than merely act of performing labor, and may include, as well <u>expenditures, materials and things furnished</u>". (Addison Nutler, Inc. v. Commissioner of Taxation, 81 N.W. 2d, 89, 91, 92, 249, Minn. 24, cited in Words and Phrases, Vol. 38A, page 543; underscoring supplied.) "Service" is defined as to perform services of maintenance, supply, repair, installation, distribution, etc. for or upon, as to service a car, radio set, a ship, a territory." (Humble Oil & Refinery Co., v. State, Tax. Civ. App. 158, S.W. 2d 338, 339, cited in Words and Phrases, Vol. 38A, page 548.) Under the aforestated definitions of services, a contract of supply could indeed be an integral part of a contract of service especially so, where, as in the instant case, it is explicitly specified in the contract that the stipulated prices for both obligations shall be "indivisible and inseparable."

Other accepted definitions of a "contractor" which would apply to petitioner are as follows:

> "One who agrees to do anything for another; one who executes plans under a contract; one who contracts or covenants, whether with a government or other public body or with private parties, <u>to furnish</u>

> supplies, or to construct works, or to erect buildings, or to perform any work or service, at a certain price or rate, as a paving contractor, or a labor contractor; one who contracts to perform work, or supply articles on a large scale, at a certain price or rate, as in building houses or provisioning troops or constructing a railroad. (Vol. 13, Corpus Juris, p. 211, cited in Luzon Stevedoring Co. v. Trinidad, 43 Phil. 803; Underscoring supplied.)
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> "Contractor" is one who, in the pursuit of an independent business undertakes to do a specific piece of work or job for other persons; one who contracts or covenants with a public body or private party to either construct works or erect buildings at a specified price or rate; one who contracts with another to furnish supplies, or construct works or erect buildings or to perform any work or service at a fixed price or rate; one who, as an independent business, undertakes to do specific jobs of work without submitting himself to control as to the petty details." (42 Okl. St., Amn. 143, Standard Accident Ins. Co. v. Basolo, 68 P 2d 804, 806, 180 Okl. 261 cited in Words and Phrases, Vol. 9, page 340; Underscoring supplied.)

Based on the foregoing, it seems clear that petitioner was an independent contractor within the meaning of Section 191, thus the entire monthly fees of ₱40,000.00 and ₱5,000.00 received under its Contract of Services & Supply with the City of Cebu should be considered as its gross receipts subject to the 3% contractor's tax.

Accordingly, the decision of respondent under review assessing petitioner deficiency percentage tax, inclusive of surcharge and interest, should be sustained. The compromise penalty of ₱200.00 suggested by respondent in his assessment should not however be imposed or collected without the agreement and conformity of petitioner. And it does not appear that petitioner accepted the imposition of the compromise amount. (Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, L-22805 & 27858, June 30, 1975, 64 SCRA 555.) Petitioner Cebu Maintenance Corporation is therefore ordered to pay to respondent Commissioner of Internal Revenue the amount of ₱32,441.14 as deficiency percentage tax for the year 1974, inclusive of interest and surcharge, plus interest at the rate of 14% per annum from March 22, 1977 to July 31, 1980 and at the rate of 20% per annum from August 1, 1980 until fully paid pursuant to Section 193 of the 1977 National Internal Revenue Code as amended by Presidential Decree No. 1705.

WHEREFORE, the decision appealed from is hereby modified in the sense that the compromise penalty should not be imposed and is affirmed in all other respects. With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, March 28, 1983.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge