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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AMERICAN EXPRESS CO., INC.,
Petitioner

versus

Jan. 4, 1967

C. T. A. CASE NO. 1578

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from a decision of the Commissioner of Internal Revenue requiring petitioner to pay the sum of ₱2,861.10 as fixed and percentage taxes, surcharge and compromise penalty for the period from January 1, 1959 to December 31, 1959.

On or before December 9, 1958, the Aero Mayflower Transit Co., Inc. (hereinafter referred to as Mayflower for brevity), a non-resident foreign corporation, organized and existing under the laws of Indiana, U. S., entered into a contract with the government of the United States wherein the former, as a commercial carrier, obligated itself to handle the moving to and from the United States military bases in the Philippines, household and personal effects belonging to members of the United States Uniformed Services and United States Department of Defense sponsored personnel entitled to shipment of household and personal effects at U. S.

government expense, a system known as "Sea Van Tote.". The Mayflower, having no overseas organization and not being duly licensed to transact business in the Philippines, entered on December 11, 1958 into a contract with the petitioner, a resident foreign corporation organized and existing under the laws of the state of Connecticut, U. S. A., and duly licensed to transact business in the Philippines. Under said contract, petitioner bound itself to undertake the transporting and handling of household and personal effects of the members of the United States Uniformed Services within the Philippines. On December 18, 1958, petitioner in turn engaged the services of the Allied Brokerage Corporation, a local carrier, to do the physical operation (packing, hauling and shipment) of the services required in the "Sea Van Tote" shipments in the Philippines, petitioner merely handling the documentation, coordination, supervision and liason aspects of the activity. For the "Sea Van Tote" shipments, petitioner received from the Mayflower the sum of $33,614.66 as compensation.

On August 18, 1959, petitioner formally requested information from respondent as to how it should report its earnings from the aforesaid "Sea Van Tote" activity and, in a letter of September 19, 1959, petitioner claimed exemption from taxes thereof citing paragraph 4 of Article XII of the U. S.-P. I. Military Base Agreement. Subsequently, respondent, ruling against the exemption, demanded payment by petitioner of fixed and percentage taxes from January to December 1959, under sections 182(a) and 191 of the National Internal Revenue Code, in the total sum of ₱2,861.10, inclusive of 25% surcharge and ₱300.00 compromise penalty. Thereafter, petitioner paid said sum, filed a claim for refund and instituted the present Petition for Review.

Petitioner insists (1) that it is exempt from the taxes in question under paragraph 4 of Article XII of the U. S.-P. I. Military Base Agreement; (2) that it is an agent of the Aero Mayflower Transit Co., Inc. and not a contractor and is, therefore, not subject to the contractor's tax assessed against it by respondent; (3) that at least the gross payments to the Allied Brokerage Corporation made by petitioner should be deducted from petitioner's gross receipts in the computation of the contractor's tax; and (4) that it should not be made to pay surcharge for late payment nor compromise penalty.

Paragraph 4 of Article XII of the U. S.-P. I. Military Base Agreement provides as follows:

> "No national of the United States, or corporation organized under the laws of the United States, shall be liable to pay tax in the Philippines in respect to any profit derived under a contract made in the United States with the Government of the United States in connection with the construction, maintenance, operation and defense of the Bases or any tax in the nature of a license in respect of any service or work for the United States in

connection with the construction, maintenance and defense of the Bases." (underscoring supplied)

Needless to say, the tax exemption stipulated in the aforecited provision is subject to qualifying conditions, one of which is, that the national of the United States or the corporation organized under the laws of the United States must have derived the income "under a contract made in the United States with the government of the United States." It is fairly obvious from this language that the tax exemption operates only when the party claiming same is a direct party to a contract with the government of the United States. Those who have not directly contracted with the government of the United States but have entered the picture only because of contracts with the direct parties do not seem to be embraced by the exemption. To extend the exemption to petitioner that has not entered into a contract directly with the Government of the United States would seem to be stretching the exemption beyond the clear import of the treaty stipulation in violation of the well-settled rule that exemptions from taxations is highly disfavored in law and a claim for such exemption must be justified under the clearest grant (Asiatic Petroleum Co. v. Llanes, 49 Phil. 466; House v. Posadas, 53 Phil. 338; Collector v. Jockey Club, Inc. 98 Phil. 670, 676).

To the mind of the Court, petitioner is not a mere agent but a contractor within the accepted meaning of this term under Section 191 of the Tax Code. In the contract between Mayflower and petitioner, it is stipulated that the latter, with respect to outbound shipment, is to arrange and be responsible to the former, for necessary preliminary packing at owner's residence, transportation of household goods to American Express or American Express arranged facility, appropriate packing of household goods in governmentowned container, and moving them to wharf or dockside for ocean shipment by military sea transport service or other designated shipping facilities. With respect to inbound shipments, American Express is responsible for receipt of all such shipments at wharf or dockside, moving same to local facility for unpacking, and delivery of shipments by commercial van to owners residence. The exercise of discretion on all the details of packing, shipment, receipt and delivery of goods are obviously placed in the hands of petitioner under the aforesaid contract. And, in keeping with said exercise of discretion, petitioner assumed all liability to Mayflower for any and all loss or damage to inbound shipments to ultimate destination in the Philippines and for outbound shipments from the original port of packing to port facility in the United States. In fine, petitioner's authority was to do work according to his own method without being subject to Mayflower's control except as to the result of his work and is thus a contractor and not a mere agent (Pressel v. Uy Chaco and Sons, 34 Phil. 122).

> ". . . Although, in a general sense, every person who enters into a contract may be called a contractor, yet the word, for want of a better one, has come to be used with special reference to a person who, in the pursuit of an independent business, undertakes to do a specific piece or job of work for other persons, using his own means and methods without submitting himself to control as to the petty details. . . ." (Luzon Stevedoring Co. v. Trinidad, 43 Phil., 803, 807.)

We find no merit in the pretension that the gross payment paid by petitioner to the Allied Brokerage Corporation should be deducted from its gross receipts before computing its contractor's tax. In the case of P. J. Kiener Co., Ltd. v. Antonio J. Araneta, as Collector of Internal Revenue (C.T.A. Case No. 102, Nov. 2, 1959) this Court ruled that contractors and sub-contractors are liable for contractor's tax on their gross receipts as distinct, separate and independent taxpayers. Said this Court:

> "Hence, the gross receipts received by the petitioner from the Fortunato Concepcion, Inc. pursuant to a subcontract to construct the Gapan-Sta. Rosa Road are distinct and separate from the gross receipts received by the latter as principal contractor. While it is true that the petitioner and the Fortunato Concepcion, Inc., are engaged in the same business of contractor, still their individual gross receipts cannot be treated or merged as one for purposes of tax incidence, because they

are two different entities, and their activities for tax purposes are also different. The Fortunato Concepcion, Inc., derived its gross receipts as awardee of the contract for the construction of the Gapan-Sta. Rosa Road (Philippine Rehabilitation Project PR-8 [8]), while the petitioner received its gross receipts in question from the said Fortunato Concepcion, Inc., as sub-contractor. Consequently, the petitioner, as subcontractor, is liable for the contractor's tax prescribed by Section 191 of the Tax Code on the gross receipts realized by it, regardless of the source of the amount and the extent of the services performed. As aptly stated by the Supreme Court, in commenting upon a similar provision of law [Section 192, Tax Code], 'this percentage tax is based upon gross receipts of carriers, independly of the source of such receipts. Where the law does not distinguish, neither may we.' (Bisaya Land Transportation Co., Inc. vs. Collector of Internal Revenue, G. R. No. L-12100, and Collector of Internal Revenue vs. Bisaya Land Transportation Co., Inc., G. R. No. L-11812, May 29, 1959.)

"To our mind, the fact that the tax is imposed both on a principal contractor and a sub-contractor of a single and the same construction work, the subcontractor's tax liability being computed on the gross sum received by him from the principal contractor and the tax liability of the principal contractor being based on the total amount he received under the contract without deducting the amount paid to the subcontractor, does not amount to imposing and collecting the same tax on the same subject matter twice. The tax imposed under Section 191 of the National Internal Revenue Code is a tax on business and occupation and is, therefore, an excise tax. What is being taxed is the act of engaging in any of the occupations or businesses covered therein. In this particular case, it is a tax on the business as contractor. The gross receipt derived therefrom is made only as the basis for the computation of the amount of the tax which should be paid by the contractor. Hence, the tax of two (2%) per centum on gross receipts should

> be imposed on each and every contractor regardless of the source or sources of the gross receipts as long as the same are derived from his occupation as contractor."

Neither do we find merit in petitioner's claim that it should not be made to pay surcharge because it acted in good faith having first sought respondent's opinion to clarify its tax liability on the "Sea Van Tote" transactions.

> "The fourth issue refers to the 25% surcharge imposed upon petitioner for late payment of the miller's deficiency tax, pursuant to Section 183(a) of the Tax Code. Petitioner contends that it is not liable to the 25% surcharge because the facts and circumstances of their case are substantially the same as those obtaining in the case of 'Connell Bros. Co. (Phil.) vs. Collector of Internal Revenue,' G. R. No. L-15470, Dec. 26, 1963, where the Supreme Court eliminated the 25% surcharge. It is to be noted, however, that in the case at bar, there is no evidence whatsoever showing that petitioner's delayed payment of the percentage tax was brought about by respondent's ruling or opinion. <u>The mere fact that a controversy existed between petitioner and respondent as to the correct interpretation and application of the disputed provisions of the Tax Code does not warrant the elimination of the 25% surcharge for late payment; otherwise, the payment of the 25% surcharge for delinquency in the payment of the percentage tax would be left at the mercy of taxpayers by the simple expediency of contesting the interpretation given by respondent on any provisions of the Tax Code imposing a tax.</u> We think that the doctrine laid down in Lim Co Chui v. Possdas, 41 Phil. 460, has not been overruled by the decision in the case of Connell Bros. Co., <u>supra</u>. Accordingly, we find the petitioner subject to the 25% surcharge for late payment of the miller's deficiency tax of 2%." (Canlubang Sugar Estate v. Commissioner of Internal Revenue, CTA Case No. 1162, April 5, 1966; underscoring ours.)

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With respect to the ₱300.00 imposed by respondent as compromise penalty, the record does not reveal that there ever was any compromise or agreement between petitioner and respondent. There is, therefore, no legal justification for collecting the compromise penalty of ₱300.00 (Collector v. U.S.T., et al., G.R. Nos. L-11274 and 11280, Nov. 28, 1958; Collector v. Bautista, et al., G.R. Nos. L-18850 and L-12258, May 27, 1959; Philippine International Fair, Inc. v. Coll. of Int. Rev., G.R. Nos. L-12928 and L-12932, March 31, 1962).

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner American Express Co., Inc. the sum of ₱300.00, without pronouncement as to costs.

SO ORDERED.

Quezon City, January 4, 1967.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge