PHILIPPINE MANUFACTURING COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 309

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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Nov. 29/1957

D E C I S I O N

This is an appeal from a decision of respondent, dated August 6, 1956, assessing and demanding from petitioner payment of the sum of ₱6,782.70 representing specific tax on cinematographic films, plus an additional sum of ₱500.00 as compromise penalty for alleged violation of Section 124, in relation to Section 146, penalized under Section 174, all of the National Internal Revenue Code.

The following facts have been established in this case. Petitioner, Philippine Manufacturing Company (PMC for brevity), a corporation duly organized under Philippine laws, is engaged in the manufacture and sale of soap, lard and other similar products. From May 19, 1951 to December 29,1954, it ordered from the Smith Sound System Laboratories (Smith Laboratories, for short), of San Juan, Rizal, thirty-two thousand six hundred ninety three (32,693) lineal meters of cinematographic films, but of this quantity, it rejected one thousand seven hundred and seventythree (1,773) lineal meters. Hence, for that same period, petitioner actually accepted, retained and paid for only thirty thousand nine hundred and twenty (30,920) lineal meters of films, which were and still are being exhibited to the general public throughout the Philippines free of charge. In a letter, dated April 14, 1956 (pp. 46-47, BIR rec.), petitioner assumed responsibility for the payment of the specific tax, if there be any due and owing, on said 30,920 lineal meters of films.

On July 28, 1956, petitioner admitted having ordered, received and accepted from the Smith Laboratories another 12,525 lineal meters of films from December 30, 1955 to July 28, 1956 (see p. 50, BIR rec.). While not expressly admitting liability for specific tax thereon, it however did not contest its liability therefor, if the said films were legally subject to specific tax. In fact, petitioner in the aforementioned letter stated, "We believe that the circumstances and considerations cited in our letter of April 14, 1956 apply with equal force to these latter films". Consequently, it may be safely presumed that like the first 30,920 lineal meters of films it ordered, received and accepted from the Smith Laboratories, it has assumed liability for specific tax, if any be legally due, on the said 12,525 lineal meters of films. However, petitioner contends that the cinematographic films in question are exempt from the payment of specific tax. Consequently, although the films in question were produced by the Smith Laboratories, respondent, on August 6, 1956, issued an assessment and demand for payment from petitioner of the sum of ₱6,782.70 as specific tax on the films in question, computed at the rate of ₱0.15 per lineal meter and itemized as follows:

For 32,693 lineal meters ordered from May 19, 1951 to December 29, 1954 ----------------------	₱4,903.95
For 12,525 lineal meters ordered from December 30, 1954 to July 28,1956 ----------------------	1,878.75
TOTAL DEMANDED --------------	₱6,782.70

In addition to the above sum, respondent demanded payment of the sum of ₱500.00 as compromise penalty for alleged violation of Section 124, in relation to Section 146, penalized under Section 174, all of the Tax Code. (Exh. 3, p. 56, BIR rec.) From this assessment, petitioner appealed to this Court on August 24, 1956.

The instant appeal is mainly anchored on the contention that the cinematographic films in question, being "educational films or cinematographic films for visual education", are exempt from the payment of specific tax pursuant to the provisions of Section 146 of the Tax Code. To buttress this contention, petitioner at the hearing presented oral evidence, consisting of the testimonies of its Creative Advertising Manager, Benjamin T. Ildefonso, and its Public Relations Manager, Enrique Garrido; as well as documentary evidence, consisting of letters of Municipal Mayors and various heads of civic organizations requesting and/or thanking petitioner for free shows in their respective communities, and several rolls of films picked at random from the cinematographic films in question, which petitioner projected on an improvised screen before the Court. There is no dispute that the rest of the films in question were of the same kind and tenor as those which were exhibited before the Court for its appreciation. Similarly, the mathematical correctness of respondent's assessment is not disputed. At this juncture, however, it should be emphasized that petitioner has assumed responsibility for the payment of specific tax, if legally due, on the 30,920 lineal meters of films purchased from May 19, 1951 to December 29, 1954, and on the 12,525 lineal meters of films obtained from December 30, 1955 to July 28, 1956, which films were and still are exhibited to the general public.

From the foregoing recital of facts, we gather the following main issues: (1) whether or not the cinematographic films in question are subject to the specific tax under section 146 of the Tax Code; (2) and if the same is in affirmative, whether or not petitioner may be compelled to pay the compromise penalty of ₱500.00.

Before proceeding to discuss the main questions given above, we shall first dispose of the minor question raised by respondent relative to petitioner's liability for specific tax on the 1,773 lineal meters of films, which the latter ordered but rejected and returned to the Smith Laboratories.

According to the Tax Code, payment of specific tax on domestic products upon which such tax is imposed shall, except as otherwise especially allowed, be paid immediately before removal from the place of production by "the manufacturer, producer, owner or person having in possession of the same". (Section 124, National Internal Revenue Code.) Not being the manufacturer, producer, owner or person having in possession of the 1,773 linear meters of films, which it returned to the Smith Laboratories, petitioner, should not, therefore, be held liable for payment of specific tax thereon.

Moreover, considering the fact that petitioner assumed liability for the payment of specific tax, if legally due, on the cinematographic films ordered and accepted from May 19, 1951 to July 28, 1956, we find it unnecessary to determine whether or not it is the manufacturer, producer, owner or person having in possession of said films in order to resolve the first main question.

The controversy between the parties on this score hinges on the proper application of the law involved. Section 146 of the National Internal Revenue Code, the pertinent portions of which we quote hereunder, provides:

> "Sec. 146. Specific taxes on cinematographic films.—There shall be collected, once only, on cinematographic films, except educational films or cinematographic films used for visual education, imported into or manufactured in the Philippines, the following taxes:
> (a) On films of more than eight but not more than 16 millimeters in width, fifteen centavos per linear meter; and x x x x x" (Underscoring ours.)

The above-quoted provision of law is clear. It subjects to specific tax cinematographic films, but expressly and specifically exempts therefrom "educational films or cinematographic films used for visual education". Consequently, only films which are primarily educational in nature or which have been produced or manufactured principally for visual education may be exempted from specific tax. The clarity of the phraseology and terms used by the legislature in enacting the excepting and tax-exempting clause of Section 146 of the Tax Code is such as to render unwarranted any construction of said clause that goes beyond the language of the statute. However, we are aware of the duty of the courts to search for and ascertain the true meaning of enactments granting tax exemptions, notwithstanding the absence of ambiguity in the language of the tax exempting statute (see 51 Am. Jur. 531-532). In order to obviate the possibility of mistaking the true legislative meaning of the excepting and tax-exempting clause, in the event the same is not the same as the clear language thereof, we have delved into the antecedents of the afore-quoted Section 146, and found that the clear language of the statute comports with the legislative intent.

Thus, we discover, that prior to the amendment of section 146 of the Tax Code, there was no distinction between educational films or cinematographic films used for visual education and those otherwise. It was only on June 16, 1948, when Republic Act No. 295 amending section 146 of the Revenue Code took effect, that "educational films or cinematographic films used for visual education" were exempted from said tax. The motive or intent of Congress in enacting the amendment may be gleaned from a perusal of the records of the House proceedings which took place during the consideration of House Bill No. 1889 (now known as Republic Act No. 295). We quote:

> "EXPLANATORY NOTE
>
> It is a fact that cinematographic films play no small part in the shaping of one's education. The advent of visual education by the use of cinematographic films has advanced further scientific methods in imparting knowledge into the minds of the student. This should be encouraged and cinematographic films by which visual instruction is carried should be exempted from the payment of any tax whatsoever. Approval, therefore, of this measure is earnestly requested.
>
> (Sgd.) Domingo Paguirigan
> Congressman for Isabela
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> x x x x x
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> BRIEF STATEMENT OF THE SPONSOR, MR. PAGUIRIGAN) - -
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> Mr. Paguirigan: Mr. Speaker, this bill seeks to exempt from the payment of specific taxes educational films for visual education.
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> Mr. Veloso: Mr. Speaker, will the Gentleman yield?

The Speaker Protempore: The gentlemen may yield if he so desires.

Mr. Paguirigan: With pleasure.

Mr. Veloso: When is a film considered educational and when is it not educational?

Mr. Paguirigan: They are so properly marked.

Mr. Veloso: Who will mark them?

Mr. Paguirigan: The manufacturer of educational films.

Mr. Veloso: Does not the gentleman think that if we approve this bill, every film manufacturer or film producer will mark his film as educational so as to take advantage of the benefit of this film tax exemption?

Mr. Paguirigan: They are intended for visual education."

(Congressional Record, House of Representatives, 1st Congress, Third Session, Vol. III, No. 71, Thursday, May 20, 1948, pages 2695-2696). (Underscoring supplied.)

From the above-quoted record of the proceedings, it is evident that Congress did not intend to exempt from specific tax just any film endowed with some incidental educational value. For a film to be exempt from specific tax, it is not enough that the same possess some educational value. The main requisite for exemption is that the film has been produced or manufactured principally for an educational purpose, that is, intended for visual instruction or education. As the sponsor of the subject amendment, Congressman Paguirigan has said, "Republic Act No. 295, seeks to exempt from the payment of specific tax <u>educational films for visual education</u>," and that a film is considered educational when the same is "<u>intended for</u>

visual education." Thus, we find that the Congressional records relative to the passage of the amendment confirms our view that only cinematic films which are primarily educational or intended for visual education may receive the blessings of exemption bestowed by section 146 of the Tax Code, as amended. Conversely, therefore, cinematographic films which are primarily manufactured or produced for entertainment or for advertising, although they incidentally possess some informative or educational value, may not be considered as "educational films" falling within the purview of the exemption contemplated by section 146 of our Revenue Code. Take for example the ordinary films which are daily shown in downtown theaters or places of amusement. Each particular film has a moral lesson or message to convey, and in that sense it has incidental educational value. Similarly, newsreels and travelogues exhibited with ordinary films have incidental educational value for enriching one's background with informations on events, places and things therein depicted. However, the ordinary films, newsreels and travelogues are produced primarily for entertainment. And again, take the case of films primarily produced for advertising which nowadays are popularly and appropriately denominated "commercials". They have informative or educational value for the reason that they furnish information regarding the quality and utility of the product or products advertised. But such informative or educational value is eclipsed by the cardinal objective behind the production of commercial films, which objective is to advertise and thereby generate a desire for the product or products advertised. All these films cannot properly be classified as "educational films or cinematographic films used for visual education" within the pale of the exemption allowed by section 146 of the Tax Code. To hold such films exempt from specific tax, would render nugatory and meaningless the legislative intention to limit the grant of exemption only to that particular class of films which is intended for visual education. To consider "educational", and as such exempt from specific tax, any film which imparts some information, altho not produced primarily for educational purpose or intended for visual education, but mainly for entertainment or advertisement, would unduly expand the field of statutory exemption beyond the boundaries delimited in section 146 of the Tax Code and thereby render all films exempt from such tax. For it is well-nigh impossible to conceive of any cinematographic film which is completely devoid of informative or educational value. We believe and so hold that only cinematographic films which are produced or manufactured and intended purely for visual instruction or education should reap the benefit of exemption granted by section 146 of the Tax Code.

It is a well settled rule that he, who claims exemption, must satisfactorily justify his claim by the clearest grant of organic or statute law (Collector vs. Manila Jockey Club, G.R. No. L-8755, March 23, 1956). We shall now determine whether or not petitioner has satisfactorily justified his claim to the exemption provided for by law (Section 146 of the Tax Code, as amended).

To justify its claim for exemption, petitioner, as above-stated, exhibited before the Court samples of the films in question, which were picked at random. One film, entitled "How to Wash with Lava", showed a woman washing clothes with "Lava" soap, a produce of petitioner. Another film, entitled "Cooking is Fun", depicted a woman demonstrating cooking techniques before a group of women. It emphasized the advantages of using "Purico" lard, a produce of petitioner. The other films portrayed young people engaged in recreational activities such as picnics and outings. These films were subtly produced to induce the unschooled mind to inextricably associate the happy atmosphere obtaining in those gatherings with the utility of "Star Margarine", another product of petitioner.

At this juncture, we would like to make a few observations. The vehicles, media and methods of commercial advertising today, is decidedly far more advancedthan those of yesteryears. From the crude method of directly exhibiting the products to potential buyers, it evolved into an undreamed of technique. Nowadays, advertisers incessantly feed the public with information regarding the existence, quality and utility of products thru the media of billboards, newspapers, radios, televisions and cinemas. However, of these various media, the use of cinemas is currently exploited to the fullest extent in order to create a desire and demand for such products among the greatest number of consumers. Thus, the unwary public is subjected to high-pressure sales talk while it views the commercial cinematographic films, which are represented under the guise of either entertaining or educational.

We find that the sample films exhibited by petitioner before the Court were produced primarily to advertise petitioner's products, and thereby create in the viewing audience a desire and demand for such products. The informational or educational aspect, if there is any, of the subject films is subordinated to the main motive, which is to advertise or sell the products of petitioner.

Petitioner's own exhibits (Exhibits A to L), which are purportedly letters from Municipal Mayors and various heads of different civic organizations requesting and/or thanking petitioner for free shows in their respective communities, bolster the court's findings that the subject films are not principally for educational purpose. Nowhere in said exhibits can we single out any indication, confirmatory of the contention that said films are educational. On the contrary, these exhibits lead to the observation that the free exhibition of the films in question was requested and petitioner was thanked for the entertainment derived from the films.

Inasmuch as the rest of the cinematographic films in question concededly follow the main motif or pattern of those exhibited before the Court, we are of the opinion, and so hold, that the cinematographic films ordered and accepted during the period from May 19, 1951 to July 28, 1956 are not educational films or cinematographic films used for visual education which should enjoy the exemption granted by section 146 of the Tax Code, *ergo*, the same should pay specific taxes. Petitioner, having voluntarily assumed liability for payment of the same, should, therefore, pay the specific tax collectible on said films. In view however, of our earlier findings that petitioner should not be held liable for specific tax on the 1,773 linear meters of films which it rejected and returned to the Smith Laboratories, respondent's finding on this score is accordingly modified, and the petitioner should be made to pay only the sum of ₱6,516.75 as specific tax on 43,445 linear meters of cinematographic films, computed at ₱0.15 per linear meter.

We shall now proceed to consider the last issue as to whether or not the petitioner may be compelled to pay the compromise penalty. We have repeatedly held that a compromise essentially contemplates an agreement. It follows that, as we have repeatedly and uniformly held, this Court is without jurisdiction to compel a taxpayer to pay the compromise penalty. (Soledad Briñas v. Collector of Internal Revenue, C.T.A. No. 16, Sept. 14, 1955; see also Bohol Land Transportation Co. v. Collector of Internal Revenue, C.T.A. 261, Sept. 25, 1957 and all the cases cited in Ellen Wood McGrath v. Collector of Internal Revenue, C.T.A. No. 289, July 5, 1957.)

IN VIEW OF THE FOREGOING, the decision of respondent appealed from is hereby modified, and petitioner should be, as it is hereby, ordered to pay to the Collector of Internal Revenue or his authorized deputies the sum of ₱6,516.75 as specific tax on the cinematographic films it ordered and accepted from the Smith Laboratories from May 19, 1951 to July 28, 1956, inclusive, with costs against petitioner.

SO ORDERED.

Manila, Philippines, November 29, 1957.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

[Note: appealed in G. R. No. L-13355 by petitioner. - not yet decided.)

ROMAN M. UMALI
Associate Judge