REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA ELECTRIC COMPANY,
Petitioner,

versus

Nov. 28, 1968

CTA CASE NO. 1495

BENJAMIN N. TABIOS,
as Commissioner of
Internal Revenue,
Respondent.

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D E C I S I O N

This is a petition filed by petitioner seeking the refund of ₱62,335.00 paid as compensating tax on its importations of copper wires, transformers and insulators in 1962.

Petitioner, a domestic corporation, is engaged in the operation of an electric light, heat and power system in Manila and suburbs under a municipal franchise granted by the Municipal Board of the City of Manila in Ordinance No. 44 to Charles M. Swift and later assumed and taken over by petitioner. The authority of the said Board to grant a franchise for electric street railway and electric light, heat and power system is sanctioned by Section 1 of Act No. 484 of the Philippine Commission which was enacted on October 20, 1902 (CTA rec., pp. 80, 83 and 84; par. 2, Petition for Review). Under Section 2 of Act No. 484, the franchise to be granted by the Municipal Board of the City of Manila is "subject to necessary amendments to be fixed by the terms of the successful bid."

On various dates in 1962, petitioner imported articles consisting of net work protectors, solderless connectors, copper wires, transformers and insulators (Exhs. C and C-1, pp. 54-55, CTA rec.) which were used in the operation of its business, on which the Collector of Customs, as deputy of respondent, collected compensating tax amounting to ₱62,335.00 (Exhs. B, B-1 to B-15, pp. 38-53, CTA rec.; Exh. F, Vol. II, BIR rec., p. 33).

On February 20, 1964, within the two-year period provided by Section 306 of the National Internal Revenue Code, petitioner filed with respondent a claim for the refund of ₱62,335.00 paid by it as compensating tax based on its alleged tax exemption under the provisions of paragraph 9, Part Two, of Act No. 484 of the Philippine Commission (Exh. H, BIR rec., Vol. I, p. 4). No action having been taken by respondent on petitioner's claim for refund and in order to avoid the prescriptive period provided for under Section 309 of the Revenue Code, petitioner filed the instant petition for review on February 25, 1964.

The only issue submitted to the Court for resolution is whether or not petitioner is exempt from compensating tax on the wires, transformers and insulators imported by it in 1962.

The law cited by petitioner in favor of its exemption from the compensating tax imposed by Section 190 of the Revenue Code reads as follows:

> PAR. 9. The grantee shall be liable to pay the same taxes upon its real estate, building, plant (not including poles, wires, transformers, and insulators), machinery, and personal property as other persons are or may be hereafter required by law to pay. In consideration of Part Two of the franchise herein granted, to wit, the right to build and maintain in the City of Manila and its suburbs a plant for the conveying and furnishing of electric current for light, heat, and power, and to charge for the same, the grantee shall pay to the City of Manila, not less than _______ per centum of the gross earnings received from its business under this franchise in the City and its suburbs. Said percentage shall be due and payable at the time stated in paragraph nineteen of Part One hereof, and after an audit, like that provided in paragraph twenty of Part One thereof, and shall be in lieu of all taxes and assessments of whatsoever nature, and by whatsoever authority upon the privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted. [No bids shall be received from this franchise which do not provide for the payment of at least one and one-half per centum of the gross earnings received by the grantee from its business in the city and its suburbs.] (Act No. 484, Philippine Commission of 1902.)

Petitioner contends that the franchise tax payable under the foregoing provisions of its franchise, Act No. 484 of the Philippine Commission of 1902, is "in lieu of all taxes and assessments of whatever nature" which include the compensating tax on its imported copper wires, transformers and insulators. Petitioner argues, therefore, that the tax exemption under its franchise is broad and all-embracing as to include exemption from the compensating tax. Petitioner contends that nowhere in the tax-exemption granted under Paragraph 9, Part Two, of Act No. 484 of the Philippine Commission can it be inferred that petitioner's exemption is limited only for taxes upon its installations or upon the privilege of using public streets and other public places. It further argues that since Republic Act No. 901 grants new and necessary industries exemption from the compensating tax, it should not equally be liable for such tax inasmuch as its exemption under said Act No. 484 of the Philippine Commission of 1902 is broader in scope than the tax-exemption provisions of Republic Act No. 901.

Respondent contends otherwise and insists that petitioner is not exempt from the compensating tax on copper wires, transformers and insulators imported by it, in line with the ruling of this Court involving the same parties and the same legal issue.

At the outset it should be noted that the franchise granted by the Municipal Board of the City of Manila to Mr. Charles M. Swift and later assumed and taken over by petitioner (see Rep. Act No. 150, CTA rec. p. 84), is a <u>municipal franchise</u> and not a legislative franchise. While it is true that Section 1 of Act No. 484 of the Philippine Commission of 1902 authorizes the Municipal Board of the City of Manila to grant a franchise to the person or persons making the most favorable bid for the construction and maintenance of an electric street railway and the construction, maintenance, and operation of an electric light, heat, and power system in Manila and its suburbs, Section 2 of the same Act authorizes the said Municipal Board to make necessary amendments to be fixed by the terms of the successful bid; otherwise, the form of the franchise to be granted shall be in the words and figures appearing in Act No. 484 of the Philippine Commission, which includes Par. 9, Part Two, thereof, <u>supra</u>.

This Court is not aware whether or not the tax exemption provisions contained in Par. 9, Part Two of Act No. 484 of the Philippine Commission of 1902 was incorporated in the municipal franchise granted to Mr. Charles M. Swift by the Municipal Board of the City of Manila and later assumed and taken over by petitioner because no admissible copy of Ordinance No. 44 of the said Board was ever presented in evidence by the herein petitioner.

Neither is this Court aware of any amendment to the terms of the franchise granted by the aforesaid Municipal Board to the successful bidder in the absence of Ordinance No. 44 and the amendments thereto, if any. In the circumstances, we are at a loss to interpret and apply the tax exemption provisions relied upon by petitioner.

At any rate, the legal issue before us is not a case of first impression. It is the same issue controverted to by the same parties before this Court in the case of Manila Electric Co. v. Benjamin N. Tabios, CTA Case No. 1493, September 23, 1964, now on appeal, wherein this Court held as follows:

> A cursory perusal of afore-quoted paragraph brings to focus the fact that the exemption provision refers to those rights and privileges which are not enjoyed by the public in general, but only by the grantee of the franchise, and does not embrace the common right or privilege of every citizen to make purchases from abroad. Consequently, exemption from the payment of the compensating tax could not have been contemplated in the exemption granted to petitioner.
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> The Supreme Court aptly ruled in several cases, (Panay Electric Co. vs. Collector of Internal Revenue, G.R. No. L-6753, July 30, 1955; Manila Gas Corp. vs. Collector of Internal Revenue, G.R. No. L-11784, Oct. 24, 1958; Borja vs. Collector of Internal Revenue, G.R. No. L-12134, November 30, 1961) and we quote:
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> > "In this connection, we must not lose sight of the purpose for which the com-

pensating tax has been instituted. x x x

'The purpose of this proposal is to place persons purchasing goods from dealers doing business in the Philippines on an equal footing, for tax purposes, with those who purchase goods directly from without the Philippines. Under the present tax law, the former bear the burden of the local sales tax because it is shifted to them as part of the selling price demanded by the local merchants, while the latter do not. The proposed tax will do away with this inequality and render justice to merchants and firms of all nationalities who are in legitimate business here, paying taxes and giving employment to a large number of people.'

"If petitioner had purchased the equipment in question in the Philippines, there would be no question that it would have to bear the burden of the sales tax because the same would have to be added to the purchase price by the dealer and petitioner might not escape the burden by invoking the exemptions granted in its franchise. There would appear to be no good reason why petitioner should be allowed to elude that burden by exempting it from paying compensating tax when it purchased equipment abroad. x x x"

X x x x x

Furthermore, petitioner's claim for exemption from the payment of the compensating tax is not clear or expressed. It is a cardinal rule in

> taxation that "exemptions from taxation are highly disfavored in law, and he who claims exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications. (Coll. of Int. Rev. vs. Manila Jockey Club, G. R. No. L98755, March 24, 1956; House vs. Posadas, 53 Phil. 338; Asiatic Petroleum vs. Llanes, 49 Phil. 466).
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> In connection with petitioner's contention that the ruling in the case of Panay Electric Company, _supra_, is not controlling, we believe that even though there are dissimilarities in the two cases, yet the fundamental issue involved in both is the same - the question of exemption from compensating tax on imported goods or articles, not for sale, but for use in connection with their business. Consequently, pursuant to the legal principle of "_stare decisis et non quieta movere_," such previous pronouncement of the Supreme Court is binding upon this Court.

We see no justifiable reason to depart or deviate from the above-quoted decision. Consequently, we hold that petitioner is not exempt from the compensating tax on its imported articles consisting of copper wires, transformers and insulators.

With respect to petitioner's argument that it should be exempt from the compensating tax on its imported goods, in the same manner as a new and necessary industry under Republic Act No. 901, we find it to be without merit. No analogy could be made between petitioner and a new and necessary industry because the consideration that impelled

Congress to grant tax exemption to a new and necessary industry is distinct and different from that which motivated the Philippine Commission of 1902 in granting tax exemption to petitioner and its predecessor (Collector of Internal Revenue v. Industrial Textiles Co. of the Philippines, et al., 103 Phil. 1050-1051).

WHEREFORE, petitioner's claim for the refund of ₱62,335.00 as compensating tax on imported copper wires, transformers and insulators has to be, as it is hereby, denied. With costs against petitioner.

SO ORDERED.

Quezon City, November 28, 1968.

Estanislao R. Alvarez

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R M Umali

ROMAN M. UMALI
Presiding Judge

Ramon L Avanceña

RAMON L. AVANCEÑA
Associate Judge