January 7, 1963

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

A. D. GUERRERO,
Special Administrator,

In substitution of NATHANIEL I. GUNN, as Administrator of the Estate of the late Paul I. Gunn,
Petitioner,

- versus -

C.T.A. CASE NO. 586

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

X - - - - - - - - - - - - - - - - X

DECISION

This is an appeal from the decision of the Commissioner of Internal Revenue denying petitioner's claim for refund of the amount of ₱2,882.95, representing 50% of the specific taxes paid on 72,198.875 liters of aviation (high octane) gasoline used in aviation by the petitioner during the period from August 1, 1956 to May 31, 1957.

There is no question as to the facts in this case. The parties submitted this case for determination based solely on the "Stipulation of Facts" (pp. 38-40, CTA rec., hereinafter referred to as Stifacts) which they filed with this Court on April 4, 1962.

The petitioner is the Special Administrator of the Estate of Paul I. Gunn, an American citizen who, during his lifetime and since 1951, owned and operated an air transportation business rendering domestic services under the business name and style of Philippine Aviation Development (hereinafter referred to as PAD). (Par. 1, Stifacts).

During the period from August 1, 1956 to May 31, 1957, PAD purchased a total of 19,075 gallons or 72,198.875 liters of aviation (high octane) gasoline from its principal supplier, Caltex (Phil.) Inc. (Par. 2, Stifacts; See p. 1, BIR rec.) Prior to the purchases by PAD, the specific taxes on the said 72,198.875 liters of gasoline were paid by Caltex (Phil.) Inc. at the rate of ₱0.08 per liter of volume capacity, pursuant to Section 142 in relation to Section 124 of the National Internal Revenue Code, so that the price at which PAD bought the gasoline, included the corresponding specific taxes. (Par. 3, Stifacts)

It also appears that the gasoline purchased from Caltex (Phil.) Inc., were exclusively used by the petitioner for aviation purposes. (Par. 4, Stifacts; See p. 2, BIR rec.) However, of the 72,198.875 liters of aviation gasoline, the petitioner used 11,150.685 liters, during the period from August, 1956 to October 2, 1956. (Par. 5, Stifacts)

On August 1, 1958, the petitioner filed a claim with the respondent for the refund of the amount of ₱2,882.95 representing 50% of specific taxes paid on the 72,198.875 liters of aviation (high octane) gasoline, under the provisions of Republic Act No. 755.

In support of his application for tax refund, the petitioner submitted a certification issued by Caltex (Phil.) Inc., of the purchase by PAD of 72,198.875 liters of aviation gasoline and the affidavit of the then Administrator, Nathaniel I. Gunn, to the effect that all of said gasoline were used by PAD for aviation purposes only. (Par. 6, Stifacts; See pp. 3-5, BIR rec.)

The respondent, in a ruling dated August 29, 1958 which was received by the petitioner on September 4, 1958, denied the application for refund of specific taxes. (Par. 7, Stifacts; See p. 6, BIR rec.) Hence, the present appeal.

The petitioner contends that pursuant to the provisions of Republic Act No. 755, and under the parity amendment to the Philippine Constitution, the Philippine Aviation Development (PAD) which was owned by an American citizen, enjoyed and still enjoys the same rights as Filipino citizens as to the conditions - including privileges in the matter of taxation - under which a public utility may be operated. On the other hand, the respondent contends that this Court has no jurisdiction over this case insofar as it concerns the gasoline used prior to October 3, 1956; that a claim for refund of specific taxes on aviation gasoline does not fall within the parity rights provisions of our Constitution; and that the petitioner failed to comply with the requirements prescribed by Republic Act No. 755 under which he filed the present action for refund.

The pertinent provisions of Section 142 of the National Internal Revenue Code, as amended by Republic Act No. 755, provide as follows:

> "Sec. 142. Specific tax on manufactured oils and other fuels.- On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes:
>
> x x x x x x
>
> "(c) Naphtha, gasoline, and all other similar products of distillation, per liter volume capacity, eight centavos; and
>
> x x x x x x
>
> "Whenever any of the oils mentioned above are, during the five years from June eighteen, nineteen hundred and fifty-two, used in agriculture and aviation, fifty per centum of the specific tax paid thereon shall be refunded by the Commissioner of Internal Revenue upon the submission of the following:
>
> x x x x x x
>
> "(3) In the case of aviation oils, a sworn certificate satisfactory to the Commissioner proving that the said oils were actually used in aviation: Provided, That no such refunds shall be granted in respect to the oils used in aviation by citizens and corporations of foreign countries which do not grant equivalent refunds or exemptions in respect to similar oils used in aviation by citizens and corporations of the Philippines." (Underscoring supplied.)

And the "Ordinance Appended to the Constitution", more commonly known as the "Parity Amendment", reads in part as follows:

"Notwithstanding the provisions of section one, Article Thirteen, and section eight, Article Fourteen, of the foregoing Constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six, pursuant to the provisions of Commonwealth Act Numbered Seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen hundred and seventy-four, x x x x the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States, in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines. (Underscoring supplied.)

Before going into the merits of the case, let us first consider the question of jurisdiction over a part of the amount claimed in the present petition for refund.

We find that, as correctly contended by the respondent, this Court has no jurisdiction over this case insofar as it concerns the gasoline used prior to October 3, 1956. The instant petition for review was filed with this Court on October 3, 1958. Therefore, with regard to the claim for refund of specific taxes on the gasoline used prior to October 3, 1956, and pursuant to Section 306 of the National Internal Revenue Code, this Court has no jurisdiction over the same inasmuch as more than two years had already elapsed when the present appeal was filed. (In re Claim for Refund of Specific Tax - Qantas Empire Airways, Ltd., and Cathay Pacific Airways, Ltd., BTA Tax Appeals Nos. 105 & 106, Aug. 11, 1953)

It is an admitted fact that out of the 72,198.875 liters of aviation gasoline in question, 11,150.685 liters were used prior to October 3, 1956. (Par. 5, Stifacts) Therefore, from October 3, 1956 to May 31, 1957, the petitioner used 61,048.19 liters of aviation gasoline. The amount of specific tax thereon, computed at the rate of ₱0.08 per liter, is ₱4,883.86, 50% of which is ₱2,441.93, which is the only amount over which this Court has jurisdiction to determine whether or not it should be refunded to the petitioner under the provisions of Republic Act No. 755 in relation to the Ordinance appended to the Philippine Constitution.

Now - interpreting and applying the above-quoted provisions of Section 142 of the Tax Code, as amended by Republic Act No. 755, and the ordinance appended to the Constitution, to the case at bar, we are of the opinion and so hold that the petitioner herein is entitled to the refund of the specific taxes in question in the total amount of ₱2,441.93. In the present case, there is no question that the petitioner has submitted a sworn certificate satisfactory to the Commissioner of Internal Revenue proving that the 61,048.19 liters of gasoline were actually used in aviation during the period under review. (Par. 4, Stifacts) Note also that the petitioner is admittedly a citizen of the United States of America. (Par. 1, Stifacts)

Under Section 142 of the Tax Code, as amended by Republic Act No. 755, Filipino citizens operating an air transportation business - a public utility - are entitled to a fifty per cent (50%) exemption from the payment of the specific tax on the gasoline actually used in aviation. Inasmuch as pursuant to the Ordinance appended to the Constitution, "the operation of public utilities, shall, if open to any person, be open to citizens of the United States x x x in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines", we see no valid reason to deny the petitioner herein the benefit of partial exemption from the payment of specific tax on aviation gasoline. As correctly contended by the petitioner, American citizens enjoy the same rights and privileges as Filipino citizens in the operation of a public utility, like an air transportation business, including exemptions in the matter of taxation.

WHEREFORE, in view of the foregoing considerations, the decision appealed from is hereby modified, and the respondent is hereby ordered to refund to the petitioner the sum of ₱2,441.93 which represents fifty percent (50%) of the specific taxes paid on

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the 61,048.19 liters of gasoline actually used in aviation, without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, January 7, 1963.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge