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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ORMOC ELECTRIC COMPANY, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2185

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

10/15/79

D E C I S I O N

At bar is a suit for recovery of alleged compensating tax in the amount of ₱557.00 claimed to have been paid by petitioner Ormoc Electric Company, Inc., on its importations of accessories, equipment and spare parts to be used in its enfranchised business of operating and maintaining an electric light, heat and power system within the City of Ormoc.

After the issues were joined with the filing of respondent's answer, the case was set for trial on the merits but the hearings were always postponed or cancelled on the ground, generally, that petitioner's claim for refund was still being processed by the Bureau of Internal Revenue, and the case might be settled administratively by the parties. During the hearing on February 26, 1979, however, petitioner submitted this case for decision on the basis of the pleadings and the records of the Bureau of Internal Revenue pertaining to this proceeding despite, or in spite of, the denial by respondent in his answer of the averments of facts in its petition for review that:

> 2. Petitioner is the transferee of the franchise together with all the rights and property acquired under said franchise granted under Republic Act No. 769 to Ormoc Electric Company to operate and maintain an electric light, heat and power system within the City of Ormoc for a period of 25 years from the date of approval of the Act on June 20, 1952.
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> 3. Sometime in 1968, petitioner imported on two occasions from Hamburg, West Germany, accessories for a M-A-N Diesel Generating Set and a M-A-N Diesel Generating Set, Type G8V23, 5/33 MAL, with other equipment and spare parts. Petitioner imported these to be used in the business covered by its franchise.
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> 4. On the aforesaid importations, the Collector of Customs, for and in behalf of respondent Commissioner of Internal Revenue, collected from the petitioner the 7% compensating tax allegedly due thereon under Section 190 of the Tax Code.
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> 5. Payments of the said compensating tax were made by petitioner on such importations during the year 1968 amounting to ₱557 as evidenced by Central Bank of the Philippines Official Receipts Nos. 262571 and 055814, dated November 19, 1968 and December 13, 1968, respectively.
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> 7. The aforesaid 7% compensating tax in the total amount of ₱557 was erroneously and illegally collected from the petitioner because it is exempt from the payment of such tax under the peculiar provision of its franchise. Republic Act No. 3485 which was enacted into law on June 16, 1962, approving the sale, transfer and conveyance of the franchise including all the rights and property acquired thereunder of Ormoc Electric Company to petitioner provides for the payment of 2% tax on

> its gross earnings. The law further provides that this "shall be the only tax levied or collected by any authority whatsoever, municipal, provincial, city or national, now or in the future" and "no other tax upon its x x x privileges x x x and all other property owned or operated by the transferee under this franchise shall be levied or assessed on the herein transferee except the two per centum of the gross earnings."
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> 8. Petitioner has filed the instant petition for review to avoid the expiration of the two-year prescriptive period within which to file a judicial claim for the refund of tax illegally or erroneously collected.

and the affirmative and special defense of respondent that:

> 4. If ever the subject compensating tax was actually paid by the petitioner for the year 1968 in the total amount of ₱557.00 as alleged, said amount was collected in accordance with law and, therefore, the same is not refundable.

It seems already well settled that in an action for recovery of taxes alleged to have been erroneously or illegally assessed or collected, the taxpayer or petitioner has the burden of proof to show that it is entitled to the refund of the amount claimed because taxes are presumed to have been assessed or collected in accordance with law. As a matter of fact, the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue or the Commissioner of Customs is wrong but that he (taxpayer) is right. (Lino Gutierrez vs. Collector of Internal Revenue, CTA

Case No. 504, January 28, 1962; See also Tan Guan vs. Court of Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903.) And if the taxpayer fails to appear and present evidence or proof in support of his allegations in his petition for review, conformably to the doctrine of the presumption in favor of the correctness of tax assessment (Inter-provincial Auto-bus Co., Inc. vs. Collector of Internal Revenue, L-6741, January 31, 1956, 98 Phil. 290; Collector of Internal Revenue vs. Bohol Land Transportation Co., L-13099 and L-13462, April 29, 1960, 107 Phil. 965), the Court of Tax Appeals will merely sustain the assessment against the taxpayer. And more so in this case when petitioner has already paid the alleged compensating tax assessed against it, and this proceeding is a suit for refund of such tax based on petitioner's claim that it is exempt under its franchise.

It bears emphasis that he who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. Tax exemptions are strictly construed against the taxpayer, they being highly disfavored and may almost be said "to be odious to the law." He who claims an exemption must be able to point to some positive provision of law creating the right; it cannot be allowed to exist upon a mere vague implication or inference. (Asiatic

Petroleum vs. Llanes, 49 Phil. 466, 471; Union Garment Co., Inc. vs. Court of Tax Appeals, L-16809, January 31, 1962, 4 SCRA 304; Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, L-19707, August 17, 1967, 20 SCRA 1056; Republic Flour Mills, Inc. vs. Commissioner of Internal Revenue, L-25602, February 18, 1970, 31 SCRA 520; Commissioner of Customs vs. Philippine Acetylene Co. & Court of Tax Appeals, L-22443, May 29, 1971, 39 SCRA 71; Davao Light and Power Co., Inc. vs. Commissioner of Customs, L-28902, March 29, 1972, 44 SCRA 122.) The right of taxation will not be held to have been surrendered unless the intention to surrender is manifested by words too plain to be mistaken (Ohio Life Insurance & Trust Co. vs. Debolt, 60 Howard, 416), for the state cannot strip itself of the most essential power of taxation by doubtful words; it cannot, by ambiguous language, be deprived of this highest attribute of sovereignty. (Erie Railway Co. vs. Commonwealth of Pennsylvania, 21 Wallace, 492, 499). So, when exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim (Farrington vs. Tennessee & County of Shelby, 95 U.S. 679, 686). (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466, 471; Manila Electric Company vs. Commissioner of Internal Revenue L-29987 & L-23844, October 22, 1975, 67 SCRA 351.)

This Court can not, therefore, look with favor on petitioner's claim for tax exemption, and related action for refund, when it did not even present evidence or proof in support of its allegations of facts in its petition for review which have been denied by respondent in his answer, much less justified its exemption by words too plain to be mistaken and too categorical to be misinterpreted. (Reagan vs. Commissioner of Internal Revenue, L-26379, December 27, 1969, 30 SCRA 968; Commissioner of Internal Revenue vs. P.J. Kiener, Company, Ltd., L-24754, July 18, 1975, 65 SCRA 142.)

And against this backdrop, it has already been ruled that the purpose for the imposition of compensating tax 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 compensating 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. (Manila Gas Corporation vs. Collector of Internal Revenue, L-11784, October 24, 1958, 104 Phil. 727; Borja vs. Collector of Internal Revenue and Court of Tax Appeals, L-12134, November 30, 1961, 113 Phil. 568.)

If petitioner had purchased the accessories, equipment and spare parts 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 exemption 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 purchases accessories, equipment and spare parts abroad. (Panay Electric Company vs. Collector of Internal Revenue, L-6753, July 30, 1955, 97 Phil. 979, unreported; Borja vs. Collector of Internal Revenue and Court of Tax Appeals, L-12134, November 30, 1961, 113 Phil. 561; See also Manila Electric Company vs. Commissioner of Internal Revenue, L-29987 & L-23844, October 22, 1975, 67 SCRA 351.)

Petitioner having failed to prove that under its franchise it is provided, on the assumption that it does exist as worded, what may be considered as plain and unambiguous terms declaring Ormoc Electric Company,Inc., exempt from paying compensating tax on its imports of accessories, equipment and spare parts, its claim for refund of alleged compensating tax in the amount of ₱557.00 allegedly paid on importations of accessories, equipment and spare parts used in its enfranchised business must, accordingly, be denied.

WHEREFORE, finding no merit in the Petition for Review, the same is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, October 15, 1979.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge