NORTHERN LINES, INC.,
Petitioner,

- versus -

C.T.A. CASES NOS. 955 & 960

COMMISSIONER OF CUSTOMS & COMMISSIONER OF INTERNAL REVENUE,
Respondents.

x - - - - - - - - - - - - x

D E C I S I O N

These are separate but jointly heard appeals from the decisions of respondent Commissioner of Internal Revenue, dated October 25, 1960 and October 28, 1960, holding petitioner liable for compensating tax on the vessels "Don Amando" and "Don Salvador", which were purchased from the Reparations Commission.

The facts, as stated in the parties' "Partial Stipulation of Facts," are as follows:

> 1. That petitioner is a corporation duly organized in accordance with Philippine laws, with office address at Chronicle Building, Aduana, Manila; respondent Commissioner of Customs holds office at the Bureau of Customs, Manila; and respondent Commissioner of Internal Revenue at the Bureau of Internal Revenue, Manila;
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> 2. That the vessel "Don Salvador" ex "Magsaysay" (subject-matter of CTA No. 960) and the vessel "Don Amando" ex "Estancia" (subject-matter of CTA No. 955) are both owned by and registered in the name of the Reparations Commission, Republic of the Philippines;
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> 3. That said vessel "Don Amando" was released to the petitioner as end-user thereof, since May, 1960, per Resolution No. 281 of the Reparations Commission dated May 19, 1960, and the Conditional Contract of Purchase and Sale, dated October 20, 1960; while said vessel "Don Salvador" was released to the petitioner as end-user thereof, since March 1960, per Resolution No. 239 of the Reparations Commission dated March 21, 1960, and the Conditional Contract of Purchase and Sale, dated September 12, 1960;

4. That the vessel "Don Amando" was issued a coastwise license dated September 29, 1960; while the said vessel "Don Salvador" was issued a coastwise license dated May 19, 1960;

5. That petitioner has been operating both vessels in accordance with the provisions of Republic Act 1789 known as the Reparations Law and the Rules and Regulations of the Reparations Commission implementing the same;

6. That both vessels "Don Amando" and "Don Salvador" ply between Manila (their port of registry) and the ports of Iloilo, Pulupandan, Zamboanga, Cotabato, Davao and Cebu, leaving Manila every other Saturday evening, and they operate exclusively in the Philippine waters;

7. That respondent Commissioner of Customs has assessed and demanded payment of compensating tax in the amount of ₱123,951.50 from petitioner on the vessel "Don Salvador", and in the amount of ₱122,332.99 on the vessel "Don Amando";

8. That petitioner has questioned the imposition of the compensating tax and requested respondent Commissioner of Internal Revenue to advise the respondent Commissioner of Customs to desist from collecting the said tax but respondent Commissioner of Internal Revenue decided that the compensating tax was due and demandable and that payment thereof should be made per assessment of the Commissioner of Customs;

9. That on March 10, 1966, the petitioner sent to the Reparations Commission the letter hereto attached as Annex "A";

10. That the petitioner did not execute, sign or file any renovated utilization contract with the Reparations Commission covering the vessels "Don Salvador" and "Don Amando" as required by Section 20 of Republic Act No. 3079 amending Section 14 of Republic Act No. 1789 in order to be exempted from the payment of compensating taxes on the aforesaid vessels;

11. That the parties hereby adopt, as evidence in the main cases, all evidence previously presented at the preliminary hear-

> ings of the above-entitled cases anent the petition for issuance of a writ of preliminary injunction; and, furthermore, the parties hereby reserve their respective rights to present any other and further evidence as they may deem necessary under the premises. (Pp. 100-102, CTA rec., CTA Case No. 955.)

Petitioner rested its case on the basis of the partial stipulation of facts. Section 14 of Republic Act No. 1789, which was amended by Republic Act No. 3079, and which took effect on June 17, 1969, provides thus:

> Sec. 14. Exemption from tax.- All reparations goods obtained by the government shall be exempt from the payment of all duties, fees and taxes. Reparations goods obtained by private parties shall be exempt from the payment of customs duties, compensating tax, consular fees and the special import tax.

And Section 20 of said Republic Act No. 3079 reads as follows:

> Sec. 20. This Act shall take effect upon its approval, except that the amendment contained in Section seven hereof relating to the requirements for procurement orders including the requirement of down payment by private applicant end-users shall not apply to procurement orders already duly issued and verified at the time of the passage of this amendatory Act, and except further that the amendment contained in Section ten relating to the insurance of the reparations goods by the end-users upon delivery shall apply also to goods covered by contracts already entered into by the Commission and the end-user prior to the approval of this amendatory Act as well as goods already delivered to the end-user, and except further that the amendments contained in Sections eleven and twelve hereof relating to the terms of installment payments on capital goods disposed of to private parties, and the execution of a performance bond before delivery of reparations goods, shall not apply to contracts for the utilization of reparations

> goods already entered into by the Commission and the end-users prior to the approval of this amendatory Act: Provided, That any end-user may apply for the renovation of his utilization contract with the Commission in order to avail of any provision of this amendatory Act which is more favorable to an applicant end-user than has heretofore been granted in like manner and to the same extent as an end-user filing his application after the approval of this amendatory Act, and the Commission may agree to such renovation on condition that the end-user shall voluntarily assume all the new obligations provided for in this amendatory Act.

The issue to be resolved is whether or not petitioner is liable for the payment of ₱122,332.99 and ₱123,951.50 as compensating tax on the vessels "Don Amando" and "Don Salvador" which were acquired from the Reparations Commission on October 20, 1960 and September 12, 1960, respectively, or prior to the amendment of Republic Act No. 1789 by Republic Act No. 3079.

The issue before us is not new. In a previous case involving a similar issue, this Court applying the aforesaid provisions of law ruled as follows:

> From the above quoted provisions of law, it appears that goods acquired by private parties from the Reparations Commission prior to the effectivity of Republic Act No. 3079 were subject to the compensating tax and that goods acquired thereafter are exempt from said tax. However, with respect to goods acquired prior to the approval of said Act, Section 20 thereof provides that any private party or end-user may apply for the renovation of his utilization contract with the Reparations Commission in order to avail himself of any provision of said Act which is more favorable to him than has heretofore been granted "in like manner and to the same extent as an end-user filing his application after the approval of this amendatory Act." And the Reparations Commission is authorized to agree to such re-

novation "on condition that the end-user shall voluntarily assume all the new obligations provided for in the amendatory Act."

Section 20 of Republic Act No. 3079 makes the provisions thereof favorable to the end-users, among which is the exemption from compensating tax, applicable to transactions effected prior to its approval, provided that (1) the end-user applies for renovation of his utilization contract with the Reparations Commission and (2) the applicant end-user voluntarily assumes all the new obligations provided for in said Act. (Philippine Ace Lines, Inc. vs. Comm. of Int. Rev. & Comm. of Customs, C.T.A. Cases Nos. 964 & 984, Jan. 25, 1963; <u>underlining supplied</u>.)

Similarly, it has been held by the Supreme Court that those who purchased reparations goods prior to June 17, 1961, the date Republic Act No. 3079 took effect, will not enjoy exemption from compensating tax, unless they comply with the provisions of Section 20 of said Act with respect to the renovation of their utilization contracts with the Reparations Commission. Said the Supreme Court -

It is true that Republic Act No. 3079 does not explicitly declare that those who purchased reparations goods prior to June 17, 1971, are exempt from compensating tax. <u>It does not say so, because they do not really enjoy such exemption, unless they comply with the proviso in Section 20 of said Act, by applying for the renovation of their respective utilization contracts, "in order to avail of any provision of the Amendatory Act which is more favorable to the applicant</u>. x x x. (Commissioner of Internal Revenue and Commissioner of Customs vs. Botelho Shipping Corporation and General Shipping Co., Inc., G.R. Nos. L-21633 & L-21634, June 29, 1967; <u>underlining supplied.</u>)

In a case where the end-user was found to be without any renovated contract, as it failed to adduce evidence relative thereto, this Court held that the end-user is subject to compensating tax under Section 190 of the National Internal Revenue Code, in relation to Section 14 of Republic Act No. 1789. (Liberation Steamship v. Commissioner of Internal Revenue, C.T.A. Case No. 976, June 3, 1970.)

In the cases at bar, there is no evidence that renovated utilization contracts were executed by and between petitioner and the Reparations Commission concerning the vessels "Don Amando" and "Don Salvador" pursuant to the amendatory law. Consequently, the vessels in question are not exempt from the payment of compensating tax.

WHEREFORE, the decisions appealed from are hereby affirmed. It appearing that petitioner's liability for the compensating tax on said vessels is guaranteed by surety bonds filed by Fieldmen's Insurance Co., Inc. (FICI Bonds Nos. 5011 and 5035 dated October 24 and October 28, 1960, respectively), petitioner and its surety, Fieldmen's Insurance Co., Inc., are ordered to pay respondent Commissioner of Internal Revenue, or his duly authorized representative, the amounts of ₱122,332.99 and ₱123,951.50 as compensating tax on the vessels "Don Amando" and "Don Salvador."

With costs against petitioner.

SO ORDERED.

Quezon City, November 29, 1971.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge

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