REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

CONSUELO P. BORJA,
Petitioner,

- versus - C.T.A. CASE NO. 213

February 11, 1957

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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D E C I S I O N

Petitioner Consuelo P. Borja is the grantee of a legislative franchise (Act No. 3810, approved on December 6, 1930) to maintain and operate an electric light, heat and power system in the municipality (now city) of Iligan, Province of Lanao.

During the years 1953 to 1955, the petitioner imported from Japan electrical equipment and materials which she used to connect the distribution system of her electric plant with the Maria Cristina Hydro-Electric Plant, and to improve the electric, heat and power service of her establishment. Upon demand by the Collector of Internal Revenue, the petitioner paid the compensating tax on the said importations in the amount of ₱4,104.25, and later, in her letter of April 21, 1955, requested for the refund of the amount of only ₱3,977.62. Inasmuch as the respondent did not act upon her request for refund after waiting for almost seven months, petitioner filed with this Court on Novem-

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ber 26, 1955, the instant petition for review to secure the refund of ₱3,972.62.

Since the claim for refund is only for the sum of ₱3,977.62, this Court acquired jurisdiction to order a refund, if the tax in question was erroneously or illegally collected, only up to the said amount. What is not covered by a claim for refund duly filed with the Collector of Internal Revenue, this Court has no jurisdiction. (Sec. 306, National Internal Revenue Code). The only effect of the evidence presented and admitted that the taxpayer herein actually paid the sum of ₱4,104.25 as compensating tax is that this Court could grant relief, if legally allowable, for more than what is alleged and prayed for in the complaint, i.e., ₱3,972.62, (Sec. 9, Rule 35, Rules of Court) but certainly not in excess of the amount stated in the jurisdictional claim for refund previously filed with Collector of Internal Revenue. Therefore, it is the amount of ₱3,977.62 which we shall presently determine to be refundable or not to the petitioner.

The only issue in this case is whether or not the petitioner, under the provisions of her legislative franchise, Acts Nos. 3810 and 3636, the Model Electric Light and Power Franchise Act, is exempted from the payment of the compensating tax prescribed by Section 190 of the National Internal Revenue Code on the electrical equipment and materials which she imported from Japan.

The pertinent portion of Section 190 of the Tax Code under which the compensating tax in question was collected provides as follows:

> "Sec. 190. Compensating tax. - All persons residing or doing business in the Philippines, who purchase or receive from without the Philippines any commodities, goods, wares, or merchandise, excepting those subject to specific taxes under Title IV of this Code, shall pay on the total value thereof at the time they are received by such persons, including freight, postage, insurance, commission, and all similar charges, a compensating tax equivalent to the percentage tax imposed under this Title on original transactions effected by merchants, importers, or manufacturers, such tax to be paid upon the withdrawal or removal of said commodities, goods, wares, or merchandise from the customhouse or the post office: x x x x "

And the taxpayer's franchise, Act No. 3810, which was approved on December 6, 1930, reads as follows:

> "Section 1. Subject to the rules and conditions established in Act Numbered Thirty-six hundred and thirty-six, there is hereby granted to Consuelo F. Borja, for a period of fifty years from the approval of this Act, the right, privilege and authority to construct, maintain, and operate an electric light, heat and power system for the purpose of generating and distributing electric light, heat and power, for sale within the limits of the municipality of Iligan, Province of Lanao, Philippine Islands.

The petitioner contends that Act No. 3636 was made a part of and incorporated by reference into her franchise, and under Section 10 of Section 1 of said Act which provides as follows:

> "Sec. 10. The grantee shall pay the same taxes as are now or may hereafter be required by law from other individuals, copartnerships, private, public or quasi-public associations, corporations, or

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> joint-stock companies, on his (its) real estate, buildings, plants, machinery, and other personal property, except property declared exempt in this section. In consideration of the franchise and rights hereby granted, the grantee shall pay into the municipal treasury of the (of each) municipality in which it is supplying electric current to the public under this franchise, a tax equal to two per centum of the gross earnings, from electric current sold or supplied under this franchise in said (each said) municipality. Said tax shall be due and payable quarterly and shall be in lieu of any and all taxes of any kind, nature or description levied, established, or collected by any authority whatsoever, municipal, provincial, or insular, now or in the future, on its poles, wires, insulators, switches, transformers and structures, installations, conductors and accessories, placed in and over and under all public property, including public streets and highways, provincial roads, bridges and public squares, and on its franchise, rights, privileges, receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted." (Underscoring supplied)

she claims that she is exempt from paying the percentage tax in controversy.

We find petitioner's contention untenable. It is true that her franchise is, by express provision of its charter, subject to the rules and conditions established by Act No. 3636. (Carcar Electric & Ice Plant Co., Inc. vs. Collector of Internal Revenue, G.R. No. L-9257, Oct. 17, 1956). However, we are of the opinion that under Section 10 of Section 1 of Act No. 3636 which is quoted above, the petitioner is not exempt from paying the compensating tax on its importations of electrical equipment and materials.

The case at bar is substantially on all fours with the case of Panay Electric Company vs. Collector of Internal Revenue (G.R. No. L-6753, July 30, 1955). In the said case, the taxpayer bought abroad and imported into the Philippines generators with auxiliaries and electric switch boards. The Supreme Court, in interpreting Section 8 of the taxpayer's franchise - Act No. 2983 as amended by Act No. 3665 which reads as follows:

> "SEC. 8. The written acceptance of this franchise by the grantee shall be filed with the Secretary of Commerce and Communications within one hundred and twenty days from the date of the approval of this Act, and in consideration of this franchise and rights hereby granted the grantee shall pay into the municipal treasury of each municipality, in which it is supplying electricity to the public under this franchise, a tax equal to one and one-half per centum of the gross earnings of his electrical business in the corresponding municipality during the first twenty years and two per centum during the remaining thirty years of the life of said franchise. Said percentage shall be due and payable quarterly and shall be in lieu of all taxes of any kind levied, established, or collected by any authority whatsoever, now or in the future, on its poles, wires, insulators, switches, transformers and other structures, installations, conductors, and accessories, placed in and over the public streets, avenues, roads, thoroughfares, squares, bridges, and other places and on its franchise, rights, privileges, receipts, revenues, and profits, from which taxes the grantee is hereby expressly exempted." (Underscoring supplied.)

held that the Panay Electric Company was not exempt from the payment of the compensating tax on its im-

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portations. Note the very close similarity between the tax exemption provisions in Section 10 of Section 1 of Act No. 3636 which is relied upon by the petitioner herein, and Section 8 of Act No. 2983 as amended by Act No. 3665, the Panay Electric Company's franchise.

The Supreme Court in denying the claim of the Panay Electric Company (supra) for exemption from the payment of the compensating tax, said:

> "It is contended, in the first place, that the above provision of its charter exempts petitioner from paying taxes on its installations, whether on a public or a private place, and in the second place, that the exemption extends to petitioner's alleged right or privilege to purchase abroad equipment needed by its electric plant.
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> "As to the first contention, it is enough to point out that the protested tax is not one upon installations, that is to say, upon the privilege of using public streets and other public places in a way different from the way they are used by the public in general. The protested tax is a compensating tax levied upon articles purchased abroad but used in the Philippines. The tax not being one upon installations, all discussion as to whether those articles are installed on a public or private place is immaterial.
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> "As to the second contention, the rights and privileges which the above provision exempts from taxation refer to those which are not enjoyed by the public in general, but only by the grantee of a franchise. They therefore do not include the common right or privilege of every citizen to make purchases anywhere.
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> "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,

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> 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 purchases equipment abroad. And it should be noted in this connection that petitioner is expressly required by its charter to pay on its 'real estate, buildings, plant, machinery, and other personal property the same taxes as are now or may hereafter be required by law from other persons. (Sec. 14, Act No. 2983 as amended by Act No. 3665.) The tax on personal property purchased or received from abroad, or the compensating tax comes quite clearly within the description." (Underscoring supplied.)

Conformably to the decision of the Supreme Court in the case cited and quoted above, we hold that the petitioner in the case at bar is not exempt from paying the compensating tax in question.

Moreover, with regard to the sum of ₱1,258.19 which is a part of the amount of ₱3,977.62 claimed by the petitioner to have been erroneously collected by the respondent, we find that the same was paid on November 2, 1953. (Exhibit "M") Since the present suit for its refund was filed with this Court only on November 26, 1955, or more than two years from the date of its payment, we have no jurisdiction to order its refund, even if it was illegally collected by the Collector of Internal Revenue. (Sec. 306, National Internal Revenue Code; Flora Roberson Co. vs. Collector of Internal Revenue, G.R. No. L-9352, Nov. 29, 1956; P. J. Kiener Company, Ltd. vs. Saturnino David, 49 O.G. 1852).

IN VIEW OF THE FOREGOING CONSIDERATIONS, the claim for refund of the petitioner for the sum of ₱3,977.62 should be, as it is hereby denied, for lack of merit. With costs against the petitioner.

SO ORDERED.

Manila, Philippines, February 11, 1957.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

I vote to dismiss the case for lack of jurisdiction, the claim for refund not having as yet been decided by the Collector of Internal Revenue.

ROMAN M. UMALI
Associate Judge

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