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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

March 10, 1960

UNITED STATES LINES COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 556

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from a decision of the respondent Commissioner of Internal Revenue, dated June 6, 1958, assessing against and demanding from the petitioner the payment of common carrier's and commercial broker's percentage taxes in the amount of ₱26,436.17, covering the period from January 1, 1950 to September 30, 1955, plus the sum of ₱2,000.00 as compromise penalty allegedly for violation of Sections 192 and 195 of the National Internal Revenue Code, or a total amount of ₱28,436.17. (Exh. E, pp. 147-149, BIR rec.; also marked as Exh. 34.)

The petitioner herein, United States Lines Company, is a foreign corporation duly licensed to do business in the Philippines, with a branch office in the City of Manila. It operates, under the trade name of "American Pioneer Line", ocean-going vessels which transport passengers and freight to and from the Philippines. It is also the sole agent and representative of the Pacific Far East Line, Inc., another foreign shipping company engaged in business in the Philippines as a common carrier by water.

On November 27, 1951 and April 29, 1952, respectively, the S/S "Portland Trader", owned and operated by West Coast

Trans-Oceanic Steamship Lines Company, also a non-resident foreign corporation, transported chrome ores from Masinloc, Zambales, Philippines, to the United States. From these two voyages, freight revenue in the total amount of $272,470.00 was realized but the 2% common carrier's tax was not paid. The petitioner acted as the "husbanding agent" while the Lavino Shipping Company was the agent for the charterers of the vessel. (Exhs. 1, 10-A, & 29, pp. 50-56, 41, and 98-99, BIR rec.; Exh. 29 also marked as Exh. M.) It may also be stated here that most of the vessels that belong to, or are being represented by the petitioner as general agent, are freighters so that its principal source of revenue is derived from outgoing freights. The income derived from passage fares is minimal compared to its freight revenue.

It appears that in 1955, pursuant to an office memorandum, Messrs. Bienvenido Y. Boado and Pampilo M. Tuazon, examiner and agent, respectively, of the Bureau of Internal Revenue, examined and verified the books of accounts and other accounting records of the petitioner, for fixed, percentage and documentary stamp tax purposes, covering the period from January 1, 1950 to September 30, 1955. After more than one month of investigation and examination of petitioner's tax liability, Messrs. Boado and Tuazon, submitted on November 28, 1955, their report, Exhibit 1, which contains their findings and recommendations. (Pp. 50-56, BIR rec.)

With regard to petitioner's liability for the payment of documentary stamps, the BIR examiners reported that "documentary stamps were affixed and duly cancelled on all documents subject to said tax, except in some instances wherein no documentary stamps had been affixed due to erroneous belief that same are not subject to said tax". (Exh. 1, p. 56, BIR rec.) The two agents found and computed petitioner's deficiency in documentary stamps to be ₱320.43, and plus a proposed compromise penalty of ₱110.00, or a total sum of ₱430.43. However, before the two examiners could submit their report, the petitioner paid its documentary stamp tax liability, including the compromise penalty. Hence, there is no question over any deficiency in the payment of documentary stamp in the present case.

With regard to the other aspects of petitioner's tax liability, the BIR examiners reported that the petitioner was not paying the correct amount of common carrier's and commercial broker's percentage taxes, and recommended that a deficiency tax assessment be issued against it. Accordingly, on June 28, 1956 (Exh. A, pp. 84-85, BIR rec.; also marked as Exh. 26), the respondent demanded from the petitioner for the payment of the sum of ₱25,769.41 as deficiency tax, computed as follows:

AMERICAN PIONEER LINE

Deficiency tax on common carrier	₱ 3,322.32
Deficiency tax on commercial broker	1,815.77
Deficiency percentage tax	₱ 5,138.09
25% surcharge	1,284.52
	₱ 6,422.61
Deficiency residence tax	215.00
25% surcharge	53.75
AMOUNT DUE AND COLLECTIBLE...............	₱ 6,691.36

PACIFIC FAR EAST LINE

Deficiency tax on common carrier	₱ 4,319.20	
25% surcharge	1,079.80	
Deficiency percentage tax ..	₱ 5,399.00	
Deficiency residence tax ...	24.00	
25% surcharge	6.00	
AMOUNT DUE AND COLLECTIBLE		₱ 5,429.00

WEST COAST TRANS-OCEANIC STEAMSHIP LINES CO.

Deficiency tax on common carrier	₱10,919.24	
25% surcharge	2,729.81	
AMOUNT DUE AND COLLECTIBLE		13,649.05
TOTAL AMOUNT DUE AND COLLECTIBLE		₱25,769.41

On July 12, 1956, the petitioner requested for a detailed statement showing the basis of the deficiency assessment. At the same time, the petitioner also requested for the cancellation and withdrawal of said assessment advancing reasons in support of its request. (Exh. 8, pp. 86-87, BIR rec.; also marked as Exh. 27.) In view of the discrepancies between the figures as reported by the BIR agents and those of petitioner's accountant, the petitioner, on July 25, 1956, sent to the respondent another letter enclosing therewith working papers containing the summaries of the agency fees, commissions, and passage and freight revenues realized by the petitioner and the Pacific Far East Line, Inc., during the period under review. (See Exhs. 35, 36, and 37, pp. 88-91, BIR rec.)

On August 2, 1956, the petitioner informed the respondent that in order to expedite the settlement of the case, it "is amenable to the payment of a deficiency assessment based on the item 'prepaid freight', which refers to the gross revenue collected in the Philippines on the basis of the bank's selling rate of exchange", i.e., at $1.00 to ₱2.015. It also stated that it "has not declared its gross receipts for tax purposes on the basis of ₱2.015 to $1.00 for the reason that it believed in good faith that the excess is not part of its gross receipts as it is intended to be applied to expenses incident to the remittance of the dollars to its home office." However, the petitioner reiterated its objections to all the other items in the deficiency assessment. (Exh. C, pp. 92-93, BIR rec.; also marked as Exh. 28.)

On November 3, 1956, the petitioner wrote another letter to the respondent explaining further its objections to the disputed deficiency assessment. (Exh. 31, pp. 103-105, BIR rec.) And still in another letter dated December 19, 1956 (see p. 108, BIR rec.), the petitioner manifested that it was willing to pay the corresponding deficiency tax based on the amount it actually collected in the Philippines, and requested that the case be re-investigated. Hence, on January 7, 1957, the case of the petitioner was referred to the City Revenue Agent for further investigation, report and recommendation. (Exh. D, pp. 109-110, BIR rec.)

On March 7, 1958, the petitioner requested for a hearing of the case before the Appellate Division of the Bureau of Internal Revenue. (Exh. 33, p. 120, BIR rec.) After due hearing, the Chief of the Appellate Division, Bureau of Internal Revenue, submitted on April 25, 1958, his report and recommendation to the respondent Commissioner of Internal Revenue (pp. 132-143, BIR rec.) which however was not approved by the latter.

On June 6, 1958, the respondent Commissioner of Internal Revenue rendered his decision on the disputed assessment and demanded from the petitioner the payment of a deficiency assessment in the amount of ₱26,436.17, exclusive of a compromise penalty of ₱2,000.00 in extrajudicial settlement of its alleged violations of Sections 192 and 195 of the Tax Code, or a total amount of ₱28,436.17. (Exh. E, pp. 147-149, BIR rec.; also marked as Exh. 34.) This new assessment was based on the report and recommendation of BIR Agent Isidro A. Esguerra (Exh. 32, pp. 113-116, BIR rec.), and was computed and itemized as follows:

UNITED STATES LINES COMPANY:

(a) Total freight and passage revenue prepaid.

$10,958,049.98	₱22,030,470.71	
2% tax thereon	₱ 440,609.41	
Less: 2% tax paid	438,321.91	
Balance due	₱ 2,287.50	
25% surcharge	571.87	
TAX DUE		₱ 2,859.37

(b) Total agency and commission prepaid.

$723,858.36	₱ 1,458,574.00	
Less: Total exemption (Sec. 195 in effect up to 3rd quarter, 1950) ..	1,500.00	
Net amount subject to tax	₱ 1,457,074.60	
6% tax thereon	₱ 87,424.48	
Less: 6% tax paid	83,488.21	
Balance tax due	₱ 3,936.27	
25% surcharge	984.07	
Total		4,920.34

PACIFIC FAR EAST LINE:

(a) Total freight & passage revenues prepaid.

$12,754,836.03	₱25,710,989.60	
2% tax thereon	₱ 514,219.79	
Less 2% tax paid	510,193.42	
Balance tax due	₱ 4,026.37	
25% surcharge	1,006.59	
Balance tax due and surcharge		₱ 5,032.96

WEST COAST TRANS-OCEANIC STEAMSHIP LINES CO.:

2% common carrier's tax plus surcharge	13,623.50
TOTAL DEFICIENCY TAX DUE	₱26,436.17

On June 25, 1958, the petitioner filed with the respondent its request for the reconsideration of the deficiency assessment (Exh. F, pp. 1952-156, BIR rec.), and without waiting for the decision of the respondent on said request for reconsideration, the petitioner filed with this Court its "Petition for Review" on July 15, 1958.

The issues to be decided in this case are as follows:

(1) At what rate of exchange should the freight and passage revenues, and the commissions and agency fees which were earned in the Philippines but paid in the United States in United States currency be converted to Philippine currency for purposes of the common carrier's and commercial broker's percentage taxes?; and,

(2) Is the petitioner liable for the 2% common carrier's tax on the freight revenues derived from the voyages in the Philippines of S/S "Portland Trader", a ship owned and operated by West Coast Trans-Oceanic Steamship Lines Company?

Let us now consider the first issue. At the outset, we would like to state that the petitioner and the respondent have agreed that for purposes of the percentage tax in question, the "prepaid" freight revenues should be converted from the United States currency to the Philippine currency at the rate of $1.00 to ₱2.015, and the "prepaid" passage revenues at the rate of $1.00 to ₱2.02. (Par. 8, Petition for Review and par. 3, Answer; Exhs. F, F-1, F-2, and G, also marked as Exh. 28, pp. 153-156 and 92-93, respectively, BIR rec.; see also p. 16, Memorandum for the Respondent.) It should also be noted that all these "prepaid" receipts refer to the revenues collected by the petitioner in the Philippines and remitted to its home office in the United States. The parties are in full accord with respect to the rates of conversion mentioned above because the petitioner admittedly fixed the freight charges and the passage fares in United States dollars but the actual amounts collected in Philippine pesos were computed at said conversion rates. (See p. 108, BIR rec.) This agreement as to the application of the rates of conversion is, we believe, in order, and must be enforced between the parties in the present case.

The controversy between the petitioner and the respondent <u>centers</u> on the rate of conversion that should be applied to "collect" revenues, or those freight and passage receipts, and the commissions and agency fees which were earned in the Philippines but paid in the United States in United States currency. (See p. 2, Memorandum for the Petitioner, and p. 7, Memorandum for the Respondent.) The petitioner contends that for purposes of computing the percentage tax, the "collect"revenues should be converted from the United States currency to the Philippine currency at the rate of \$1.00 to ₱2.00. On the other hand, the respondent maintains that these "collect" revenues should be returned for tax purposes at the rate of \$1.00 to ₱2.00375.

We fully agree with the contention of the petitioner. The gold value of the Philippine peso is seven and thirteen-twenty firsts (7-13/21) grains of gold, ninetenths (0.900) fine, which is equivalent to one half (1/2) of a United States dollar. This is the legal international par value of the Philippine peso as established by law (Sec. 48, Rep. Act No. 265) which must be "recognized x x x for all purposes", (Sec. 50, Rep. Act No. 265) and the Government, as represented by the respondent Commissioner of Internal Revenue in this case, should be the last to disregard it. On the contrary, it is the duty and responsibility of the Government "to preserve the international value of the peso and the convertibility of the peso into other freely convertible currencies". (Sec. 2(b), Rep. Act No. 265.)

We wish to make it clear that from the records of the case, it appears that all the "collect" revenues, or those freight charges, passage fares, commissions and agency fees, collected in the United States in United States currency belong to petitioner's home office in the United States, and were not remitted to petitioner's local office in the Philippines. In short, the United States dollars collected abroad were not actually converted to and received in Philippine pesos, and therefore, there is no occasion nor reason to use a conversion rate aside from the legal rate of exchange, i.e., $1.00 to ₱2.00. If we have placed the judicial stamp of approval on the agreed conversion rates of $1.00 to ₱2.015 and $1.00 to ₱2.02 with regard to the "prepaid" freight and passage revenues, respectively, we did so in order to arrive at the actual amounts collected by the petitioner in Philippine pesos - the correct taxable gross receipts.

On the second issue, Section 192 of the Tax Code under which the respondent seeks to collect the 2% common carrier's tax on the gross receipts received by the West Coast Trans-Oceanic Steamship Lines Company, as owner and operator of the vessel S/S "Portland Trader", reads as follows:

> "Sec. 192. Percentage tax on carriers and keepers of garages.- Keepers of garages, transportation contractors, persons who transport passengers or freight for hire, and common carriers by land, air, or water, except owners of bancas, and owners of animal-drawn two-wheeled vehicles, shall pay a tax equivalent to two per centum of their gross receipts: Provided, That those whose gross receipts do not exceed two hundred pesos each quarter shall be exempt from the payment of the tax provided for in this section."

The defunct Board of Tax Appeals, in a unanimous decision interpreting and applying Section 192 of the Tax Code in relation to the issue of whether or not a shipping agent is responsible for the payment of the tax obligations of his principal said:

> "We agree with the petitioner that it is not personally responsible for the payment of the tax obligations of its principal. There is no law constituting it a withholding agent of the taxes due by its principals. The terms of the agreement provide under No. 3 that the agents shall pay 'for all fuel, water, provision, emergency repair, port charges, etc.', and in our opinion this cannot be stretched

to include the advancing of the fixed and percentage taxes incurred by the Japanese shipping companies."

And the Board of Tax Appeals concluded:

"The Collector of Internal Revenue is directed to make proper assessment for the balance that may remain unpaid against the Japanese companies operating the ships that carried the mineral ores and logs as it appears in the records of this case." (Manila Steamship Co. vs. Collector of Internal Revenue, B.T.A. Case No. 138, July 30, 1953.)

We are in full conformity with the above ruling of the defunct Board of Tax Appeals. A mere reading of Section 192 of the Tax Code will readily show that it is the person or company that operates or owns the common carrier that is liable for the payment of the 2% tax on the gross receipts of common carriers, and not merely his or its shipping agents. And as alluded to by the defunct Board of Tax Appeals, a shipping agent can only be held liable for the payment of the common carrier's percentage tax if the said obligation is assumed in the agency agreement entered into by and between the shipping agent and the owner or operator of the common carrier, or the agent voluntarily assumes the tax liability and questions only the correctness of the assessment but not the right of the Commissioner of Internal Revenue to assess and collect the disputed tax from said agent.]

In the instant case, the evidence is conclusive that the obligation to pay the common carrier's percentage tax liability of West Coast Trans-Oceanic Steamship Lines Company, as owner and operator of S/S "Portland Trader", was not one of those assumed by the petitioner. As a matter of fact, this alleged obligation to pay the 2% tax was not even mentioned nor even hinted in the agreement between the two companies as can be gathered from the communications coursed between the two. (Exh. N, p. 102, BIR rec.; Exhs. 19, 20, 21, 22, & 23, pp. 59-64, BIR rec.) And moreover, to hold that the petitioner in the case at bar is liable for the payment of the 2% common carrier's tax which is in the total amount of ₱13,623.50 would be unjust and unreasonable considering that it only received from West Coast Trans-Oceanic Steamship Lines Company, the flat fee of $250.00 or ₱500.00 for each voyage, or only a total of $500.00 or ₱1,000.00 for the two voyages in question. (Exh. 1, pp. 50-56, BIR rec.) Therefore, we are of the opinion and so hold that petitioner United States Lines Company is not liable for the payment of the 2% common carrier's tax on the gross receipts derived by West Coast Trans-Oceanic Steamship Lines Company from the two voyages in the Philippines of its vessel S/S "Portland Trader."

We note that the Chief of the Law Division and the Chief of the Appellate Division, both of the Bureau of Internal Revenue, share with us the same opinion, i.e., that the petitioner is not liable for the payment of the common carrier's percentage tax on the gross receipts realized in the Philippines, by West Coast Trans-Oceanic Steamship Lines Company.

On this point, the Chief of the Law Division of the Bureau of Internal Revenue ruled that:

"With respect to the other issue involved regarding the liability of the company taxpayer for payment of the common carrier's percentage tax as a result of its acting as a 'husbanding agent' for the S/S 'Portland Trader', it appears in the Charter Party that the general agent of said steamship or vessel called the 'Portland Trader' is the Lavino Shipping Co. U.S. Lines Co. is merely responsible for certain minor details such as those enumerated in its letter dated March 26, 1956 to the master of the S/S 'Portland Trader'. Inasmuch as the existence of the relationship of principal and agent between the West Coast Trans-Oceanic Steamship Lines Co. and the Lavino Shipping Co. cannot extend to the U.S. Lines Co., it being merely a 'husbanding agent' of the former company, it is believed that this Office cannot bind the latter Company (U.S. Lines Co.) to withhold the equivalent sum of 2% tax prescribed under Section 192 of the Tax Code." (Exh. D, pp. 109-110, BIR rec.)

On the same issue, the Chief of the Appellate Division of the Bureau of Internal Revenue, commented that:

"As the evidence gathered by our agents on this point is weak, it is believed that the contents of the Charter Party is still controlling. Moreover, it is evident that the general agent of S/S 'Portland Trader' is Lavino Shipping Company and not the U. S. Lines who in this case acts merely as the husbanding agent of said vessel. It is, therefore, believed that the relationship of principal and agent between West Coast Trans-Oceanic Steamship Lines Company and Lavino Shipping Company do not extend to the U. S. Lines Company and cannot bind the latter to withhold the equivalent sum of 2% tax prescribed under Section 192 of the Tax Code." (Memorandum for the Commissioner, pp. 138-143, BIR rec.)

In resume, petitioner United States Lines Company is liable for the payment of the sum of ₱502.75 as deficiency common carrier's percentage tax and surcharge, computed as follows:

<u>AMERICAN PIONEER LINE</u>

Total taxable revenue .... <u>₱21,831,845.75</u>

Percentage tax due	₱ 436,636.92	
Less: Taxes paid	436,542.51	
Deficiency tax due	₱ 94.41	
25% surcharge	23.60	
Deficiency tax and surcharge due		₱118.01

PACIFIC FAR EAST LINE, INC.

Total taxable revenue	₱25,525,060.35	
Percentage tax due	₱ 510,501.21	
Less: Taxes paid	510,193.42	
Deficiency tax due	₱ 307.79	
25% surcharge	76.95	
Deficiency tax and surcharge due		384.74
TOTAL DEFICIENCY TAX AND SURCHARGE		₱502.75

WHEREFORE, in view of the foregoing considerations, the decision appealed from is hereby modified, and petitioner United States Lines Company is hereby ordered to pay to the respondent Commissioner of Internal Revenue the amount of ₱502.75 as deficiency common carrier's percentage tax and surcharge for the period from January 1, 1950 to September 30, 1955, without pronouncement as to costs.

SO ORDERED.

Manila, March 10, 1960.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge