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SECOND DIVISION

[G.R. No. L-50466. May 31, 1982]

CALTEX (PHILIPPINES) INC., petitioner, *vs.* CENTRAL BOARD OF ASSESSMENT APPEALS and CITY ASSESSOR OF PASAY, respondents.

SYNOPSIS

Petitioner installed underground tanks, elevated tanks, elevated water tanks, water tanks, gasoline and computing pumps, car washers, car and tire hoists, air compressors and tireflators in its gasoline stations located on leased land. They were attached to the pavement covering the entire lot. The said machines were loaned by petitioner to gas station operators under lease contracts to be returned to petitoner upon demand. The city assessor of Pasay City treated the said machines as taxable realty and imposed real tax thereon. The city board of tax appeals ruled that they are personalty not subject to realty tax, but the Central Board of Assessment Appeals reversed the ruling and found that the machines and equipment were real property within the meaning of Section 3 (k) and (m) and 38 of the Real Property Tax Code, Presidential Decree 464, and that the definitions of real property and personal property in Articles 415 and 416 of the Civil Code are not applicable to this case. Hence, this petition.

The Supreme Court, on review, held that the equipment and machinery necessary to the operation of a gas station and which are attached or affixed permanently thereto or embedded therein are taxable improvements and machinery within the meaning of the Assessment Law and the Real Property Tax Code.

Petition dismissed and the questioned decision and resolution of the Central Board of Assessment Appeals are affirmed.

SYLLABUS

1. ADMINISTRATIVE LAW; TAXATION; REALTY TAX; EQUIPMENT AND MACHINERY PERMANENTLY AFFIXED TO GAS STATION SUBJECT THEREOF AS IMPROVEMENT.— The said equipment and machinery, as appurtenances to the gas station building or shed owned by Caltex (as to which it is subject to realty tax) and which fixtures are necessary to the gas station, for without them the gas station would be useless, and which have been attached or affixed permanently to the gas station site or embedded therein,

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are taxable improvements and machinery within the meaning of the Assessment Law and the Real Property Tax Code.

2. ID.; ID.; PROPERTY SUBJECT THERETO; IMPROVEMENTS ON LAND COMMONLY TAXED AS REALTY.— Improvements on land are commonly taxed as realty even though for some purposes they might be considered personalty (84 C.J.S. 181-2, Notes 40 and 41). It is a familiar phenomenon to see things classed as real property for purposes of taxation which on general principle might be considered personal property (Standard Oil Co. of New York *vs.* Jaramillo, 44 Phil. 630, 633).

APPEARANCES OF COUNSEL

Siguion Reyna, Montecillo & Ongsiako for petitioner.
Eduardo Z. Gatchalian for respondents.

DECISION

AQUINO, *J.*:

This case is about the realty tax on machinery and equipment installed by Caltex (Philippines) Inc. in its gas stations located on leased land.

The machines and equipment consist of underground tanks, elevated tank, elevated water tanks, water tanks, gasoline pumps, computing pumps, water pumps, car washer, car hoists, truck hoists, air compressors and tireflators. The city assessor described the said equipment and machinery in this manner:

"A gasoline service station is a piece of lot where a building or shed is erected, a water tank if there is any is place in one corner of the lot, car hoists are placed in an adjacent shed, an air compressor is attached in the wall of the shed or at the concrete wall fence.

"The controversial underground tank, depository of gasoline or crude oil, is dug deep about six feet more or less, a few meters away from the shed. This is done to prevent conflagration because gasoline and other combustible oil are very inflammable.

"This underground tank is connected with a steel pipe to the gasoline pump and the gasoline pump is commonly placed or constructed under the shed. The footing of the pump is a cement pad and this cement pad is imbedded in the pavement under the shed, and evidence that the gasoline

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underground tank is attached and connected to the shed or building through the pipe to the pump and the pump is attached and affixed to the cement pad and pavement covered by the roof of the building or shed.

"The building or shed, the elevated water tank, the car hoist under a separate shed, the air compressor, the underground gasoline tank, neon lights signboard, concrete fence and pavement and the lot where they are all placed or erected, all of them used in the pursuance of the gasoline service station business formed the entire gasoline service station.

"As to whether the subject properties are attached and affixed to the tenement, it is clear they are, for the tenement we consider in this particular case are (is) the pavement covering the entire lot which was constructed by the owner of the gasoline station and the improvement which holds all the properties under question, they are attached and affixed to the pavement and to the improvement.

"The pavement covering the entire lot of the gasoline service station, as well as all the improvements, machines, equipments and apparatus are all owned by Caltex (Philippines) Inc. . . ..

"The underground gasoline tank is attached to the shed by the steel pipe to the pump, so with the water tank it is connected also by a steel pipe to the pavement, then to the electric motor which electric motor is placed under the shed. So to say that the gasoline pumps, water pumps and underground tanks are outside of the service station, and to consider only the building as the service station is grossly erroneous." (pp. 58-60, Rollo).

The said machines and equipment are loaned by Caltex to gas station operators under an appropriate lease agreement or receipt. It is stipulated in the lease contract that the operators, upon demand, shall return to Caltex the machines and equipment in good condition as when received, ordinary wear and tear excepted.

The lessor of the land, where the gas station is located, does not become the owner of the machines and equipment installed therein. Caltex retains the ownership thereof during the term of the lease.

The city assessor of Pasay City characterized the said items of gas station equipment and machinery as taxable realty. The realty tax on said equipment amounts to ₱4,541.10 annually (p. 52, Rollo). The city board of tax appeals ruled that they are

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personalty. The assessor appealed to the Central Board of Assessment Appeals.

The Board, which was composed of Secretary of Finance Cesar Virata as chairman, Acting Secretary of Justice Catalino Macaraig, Jr. and Secretary of Local Government and Community Development Jose Roño, held in its decision of June 3, 1977 that the said machines and equipment are real property within the meaning of Sections 3(k) & (m) and 38 of the Real Property Tax Code, Presidential Decree No. 464, which took effect on June 1, 1974, and that the definitions of real property and personal property in Articles 415 and 416 of the Civil Code are not applicable to this case.

The decision was reiterated by the Board (Minister Vicente Abad Santos took Macaraig's place) in its resolution of January 12, 1978, denying Caltex's motion for reconsideration, a copy of which was received by its lawyers on April 2, 1979.

On May 2, 1979 Caltex filed this certiorari petition wherein it prayed for the setting aside of the Board's decision and for a declaration that the said machines and equipment are personal property not subject to realty tax (p. 16, Rollo).

The Solicitor General's contention that the Court of Tax Appeals has exclusive appellate jurisdiction over this case is not correct. When Republic Act No. 1125 created the Tax Court in 1954, there was as yet no Central Board of Assessment Appeals. Section 7(3) of that law in providing that the Tax Court had jurisdiction to review by appeal decisions of provincial or city boards of assessment appeals had in mind the local boards of assessment appeals but not the *Central* Board of Assessment Appeals which under the Real Property Tax Code has appellate jurisdiction over decisions of the said local boards of assessment appeals and is, therefore, in the same category as the Tax Court.

Section 36 of the Real Property Tax Code provides that the decision of the Central Board of Assessment Appeals shall become final and executory after the lapse of fifteen days from the receipt

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of its decision by the appellant. Within that fifteen-day period, a petition for reconsideration may be filed. The Code does not provide for the review of the Board's decision by this Court.

Consequently, the only remedy available for seeking a review by this Court of the decision of the Central Board of Assessment Appeals is the special civil action of certiorari, the recourse resorted to herein by Caltex (Philippines), Inc.

The issue is whether the pieces of gas station equipment and machinery already enumerated are subject to realty tax. This issue has to be resolved primarily under the provisions of the Assessment Law and the Real Property Tax Code.

Section 2 of the Assessment Law provides that the realty tax is due "on real property, including land, buildings, machinery and other improvements" not specifically exempted in Section 3 thereof. This provision is reproduced with some modification in the Real Property Tax Code which provides:

"SEC. 38. *Incidence of Real Property Tax.*— There shall be levied, assessed and collected in all provinces, cities and municipalities an annual *ad valorem tax* on real property, such as land, buildings, machinery and other improvements affixed or attached to real property not hereinafter specifically exempted."

The Code contains the following definitions in its Section 3:

"k) *Improvements*— is a valuable addition made to property or an amelioration in its condition, amounting to more than mere repairs or replacement of waste, costing labor or capital and intended to enhance its value, beauty or utility or to adapt it for new or further purposes."

"m) *Machinery*— shall embrace machines, mechanical contrivances, instruments, appliances and apparatus attached to the real estate. It includes the physical facilities available for production, as well as the installations and appurtenant service facilities, together with all other equipment designed for or essential to its manufacturing, industrial or agricultural purposes." (See Sec. 3[f], Assessment Law).

We hold that the said equipment and machinery, as appurtenances to the gas station building or shed owned by Caltex (as to which it is subject to realty tax) and which fixtures are

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necessary to the operation of the gas station, for without them the gas station would be useless, and which have been attached or affixed permanently to the gas station site or embedded therein, are taxable improvements and machinery within the meaning of the Assessment Law and the Real Property Tax Code.

Caltex invokes the rule that machinery which is movable in its nature only becomes immobilized when placed in a plant by the owner of the property or plant, but not when so placed by a tenant, a usufructuary, or any person having only a temporary right, unless such person acted as the agent of the owner (Davao Saw Mill Co. *vs.* Castillo, 61 Phil. 709).

That ruling is an interpretation of paragraph 5 of Article 415 of the Civil Code regarding machinery that becomes real property by destination. In the *Davao Saw Mill case* the question was whether the machinery mounted on foundations of cement and installed by the lessee on leased land should be regarded as real property for *purposes of execution of a judgment against the lessee*. The sheriff treated the machinery as personal property. This Court sustained the sheriff's action. (Compare with Machinery & Engineering Supplies, Inc. *vs.* Court of Appeals, 96 Phil. 70, where in a replevin case machinery was treated as realty).

Here, the question is whether the gas station equipment and machinery permanently affixed by Caltex to its gas station and pavement (which are indubitably taxable realty) should be subject to the realty tax. This question is different from the issue raised in the *Davao Saw Mill* case.

Improvements on land are commonly taxed as realty even though for some purposes they might be considered personalty (84 C.J.S. 181—2, Notes 40 and 41). "It is a familiar phenomenon to see things classed as real property for purposes of taxation which on general principle might be considered personal property" (Standard Oil Co. of New York *vs.* Jaramillo, 44 Phil. 630, 633).

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This case is also easily distinguishable from Board of Assessment Appeals *vs.* Manila Electric Co., 119 Phil. 328, where Meralco's steel towers were considered poles within the meaning of paragraph 9 of its franchise which exempts its poles from taxation. The steel towers were considered personalty because they were attached to square metal frames by means of bolts and could be moved from place to place when unscrewed and dismantled.

Nor are Caltex's gas station equipment and machinery the same as tools and equipment in the repair shop of a bus company which were held to be personal property not subject to realty tax (Mindanao Bus Co. *vs.* City Assessor, 116 Phil. 501).

The Central Board of Assessment Appeals did not commit a grave abuse of discretion in upholding the city assessor's imposition of the realty tax on Caltex's gas station and equipment.

WHEREFORE, the questioned decision and resolution of the Central Board of Assessment Appeals are affirmed. The petition for certiorari is dismissed for lack of merit. No costs.

SO ORDERED.

Barredo (Chairman), Guerrero, De Castro and *Escolin, JJ.*, concur.

Concepcion, Jr. and *Abad Santos, JJ.*, did not take part.

SECOND DIVISION

[G.R. No. 52038 . May 31, 1982]

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, *vs.* CRISPIN ROYO and MARIANO MAGLENTE, accused-appellants.

SYNOPSIS

Crispin Royo and Mariano Maglente were charged with murder for the death of Carmen H. Chan. Royo gave two written confessions wherein he admitted having stabbed the victim and implicated Maglente as the one who suggested the killing due to the beastly treatment the two of them received from her as their employer. In both confessions, Royo was apprised of his