

SAN CARLOS MILLING, CO., INCORPORATED, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 103379. November 23, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

Assailed in this petition for review on certiorari is the decision* of the Court of Appeals in CA-G.R. Sp No. 22346, dated 23 December 1991, the dispositive part of which reads:

"WHEREFORE, in view of the foregoing consideration, the petition is hereby DISMISSED, without pronouncement as to costs."[1]

The undisputed facts, as succinctly stated by the Court of Tax Appeals and adopted by the Court of Appeals in its decision under review, are as follows:

"Petitioner domestic corporation had for the taxable year 1982 a total income tax overpayment of P781,393.00 reflected as a creditable income tax in its annual final adjustment return. The application of the amount for the 1983 tax liabilities remained unutilized in view of petitioner's net loss for the year and still yet had a creditable income tax of P4,470.00 representing the 3% of 15% withholding tax on storage credits. Accordingly the final adjustment income tax return for the taxable year 1983 reflected the amount of P781,393.00 carried over as tax credit and P4,470.00 creditable income tax.

In a May 17, 1984 letter to the respondent, petitioner signified its intention to apply the total creditable amount of P785,863.00 against its 1984 tax dues consistent with the provision of Section 86, *ibid*, coupled with a comforting alternative request for a refund or tax credit of the same.

Respondent disallowed the proffered automatic credit scheme but treated the request as an ordinary claim for refund/tax credit under Section 292 in relation to Section 295 of the Tax Code and accordingly subjected the same for verification/ investigation.

No sooner than the respondent could act on the claim, petitioner filed a petition for review on July 18, 1984. And before this Court could formally hear the case, petitioner filed a supplemental petition on March 11, 1986, after having unilaterally effected a set-off of its creditable income tax vis a vis income tax liabilities, earlier denied by the respondent."[2]

On 28 February 1990, the Court of Tax Appeals dismissed the petition and held that prior investigation by and authority from the Commissioner of Internal Revenue were necessary before a taxpayer could avail of the provisions of Section 86 (now Section 69) of the Tax Code.[3] A motion for reconsideration was then filed but was denied in a resolution dated 25 June 1990 without prejudice, however, to any administrative claim for tax refund or tax credit.

Thereafter, petitioner appealed the adverse decision of the Court of Tax Appeals to the Court of Appeals. On 23

December 1991, respondent Court dismissed the appeal.

Hence, this recourse.

The main issue to be resolved in the petition at bench is whether or not prior authority from the Commissioner of Internal Revenue is necessary before a corporate taxpayer can credit excess estimated quarterly income taxes paid against the estimated quarterly income tax liabilities for the succeeding taxable year, under Section 86 (now Section 69) of the Tax Code.

It is the contention of petitioner, among others, that in the aforecited provision of the Tax Code, nowhere is it stated that the "imprimatur" or approval of the Commissioner of Internal Revenue must be secured prior to crediting a refundable tax amount. Petitioner further posits that neither does Revenue Regulation No. 10-77 implementing the Tax Code provision require prior approval of the Commissioner of Internal Revenue to avail of the automatic tax credit scheme.

After a careful study of the records of the present petition, we find the petition to be devoid of merit.

We begin with the subject Tax Code provision under scrutiny, thus:

"Sec. 86. Final Adjustment Return. - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:

- (a) Pay the excess tax still due; or
- (b) Be refunded the excess amount paid, as the case may be.

In case the corporation is entitled to refund of the excess estimated quarterly income tax paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year." (Under-scoring supplied)

On 7 October 1977, the Commissioner of Internal Revenue issued the implementing rules and regulations pertaining to the subject provision. The procedure laid out in said rules is found in Revenue Regulation No. 10-77, section 7 thereof, which reads:

"Sec. 7. Any excess of the total quarterly payments over the actual income tax computed and shown in the adjustment or final corporate income tax return shall either (a) be refunded to the corporation, or (b) may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year. The corporation must signify in its annual corporate adjustment return its intention whether to request for the refund of the overpaid income tax or claim for automatic tax credit to be applied against its income tax liabilities for the quarters of the succeeding taxable year, by filling up the appropriate box on the corporate tax return, BIR Form No. 1702."

The case of Commissioner of Internal Revenue vs. ESSO Standard Eastern, Inc., et al.,^[4] cited by petitioner, while not squarely in point, has touched on a significant aspect directly related to the issue at hand. There it was said:

The Commissioner's position is that income taxes are determined and paid on an annual basis, and that such determination and payment of annual taxes are separate and independent transactions; and that a tax credit could not be so considered until it has been finally approved and the taxpayer duly notified thereof. x x x." (underscoring supplied)

In other words, far from bolstering its position, petitioner's citation of the above case only serves to weaken the

same. What petitioner obviously seeks is judicial sanction of its act of unilaterally declaring as tax credit its excess estimated quarterly income taxes paid in a given year against its tax liabilities for the quarters of the succeeding taxable year. If petitioner's theory were to be sustained, this could wreak havoc and confusion in the tax system.

The respondent Court held that the choice of a corporate taxpayer for an automatic tax credit does not ipso facto confer on it the right to immediately avail of the same. Respondent court went on to emphasize the need for an investigation to ascertain the correctness of the corporate returns and the amount sought to be credited. We agree.

It is difficult to see by what process of ratiocination petitioner insists on the literal interpretation of the word "automatic." Such literal interpretation has been discussed and precluded by the respondent court in its decision of 23 December 1991 where, as aforesaid, it ruled that "once a taxpayer opts for either a refund or the automatic tax credit scheme, and signified his option in accordance with the regulation, this does not ipso facto confer on him the right to avail of the same immediately. An investigation, as a matter of procedure, is necessary to enable the Commissioner to determine the correctness of the petitioner's returns, and the tax amount to be credited." [5]

Prior approval by the Commissioner of Internal Revenue of the tax credit under then section 86 (now section 69) of the Tax Code would appear to be the most reasonable interpretation to be given to said section. An opportunity must be given the internal revenue branch of the government to investigate and confirm the veracity of the claims of the taxpayer. The absolute freedom that petitioner seeks to automatically credit tax payments against tax liabilities for a succeeding taxable year, can easily give rise to confusion and abuse, depriving the government of authority and control over the manner by which the taxpayers credit and offset their tax liabilities not to mention the resultant loss of revenue to the government under such a scheme.

Petitioner points out that the automatic tax credit scheme under the law refers to the amount "shown" in the final adjustment return of the corporate taxpayer and not as determined by the Commissioner, thereby recognizing the computation made by the taxpayer. This contention is not impressed with merit. To reiterate, Section 7 of Revenue Regulation No. 10-77 provides that "(a)ny excess x x x computed and shown x x x shall either (a) be refunded to the corporation, or (b) may be credited against the estimated quarterly income tax liabilities x x x."

The above rule is clear. It does not mean that reference to the amount "shown" in the final adjustment return prepared by the taxpayer implies that the taxpayer need not seek approval of the Commissioner prior to its effective availing of the tax credit scheme, it cannot simply credit an amount it deems as correct. Rather, it provides two (2) remedies, that is, the excess may either be refunded or credited, and, insofar as the option of tax credit is concerned, this right should not be construed as an absolute right which is available to the taxpayer at his sole option. It is our view that tax credit under the cited provision should be construed as an alternative remedy (to a refund) subject to the fulfillment of certain requirements, i.e., prior verification and approval by the Commissioner of Internal Revenue.

Further, the cited legal provision itself employs the word "may" in the phrase "may be credited", implying that the availability of the remedy of tax credit is not absolute and mandatory; it does not confer an absolute right on the taxpayer to avail of the tax credit scheme if it so chooses; neither does it impose a duty on the part of the government to sit back and allow an important facet of tax collection to be at the sole control and discretion of the taxpayer.

As aptly held by this Court in *In re Guarina*: [6]

"Whether the word 'may' in a statute is to be construed as mandatory and imposing a duty, or merely permissive and conferring discretion, is to be determined in each case from the apparent intention of the statute as gathered from the context, as well as from the language of the particular provision. The question in each

case is whether, taken as a whole and viewed in the light of surrounding circumstances, it can be said that a purpose existed on the part of the legislator to enact a law mandatory in character. If it can, then it should be given a mandatory effect; if not, then it should be given its ordinary permissive effect. x x x."

Anent the issue on petitioner's entitlement to a refund/credit under Sections 292 and 295 (now Sections 230 and 204 of the Tax Code) - since automatic tax credit without prior approval of the Commission of Internal Revenue under then Section 86 would not be available to the taxpayer - it must be stressed that the remedy of a refund/credit has never been denied the petitioner. On the contrary, the Commissioner of Internal Revenue has long informed petition-er that its request for automatic tax credit has been treat-ed as an ordinary claim for refund/tax credit under Section 292 in relation to Section 295 of the Tax Code, and that the same has been referred for investigation, report and recom-mendation to the Chief, Agriculture and Natural Resources Division of the Bureau of Internal Revenue. All that petitioner has to do, therefore, is to inquire regarding the status of its claim for refund/credit and await the decision in regard thereto.

WHEREFORE, the petition is hereby DENIED. The decision of the Court of Appeals appealed from is AFFIRMED with costs against the petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Nocon, and Puno, JJ., concur.

* Penned by Associate Justice Consuelo Ynares-Santiago with the concurrence of Associate Justices Ricardo Pronove, Jr. and Nicolas Lapena, Jr.

[1] Decision, Court of Appeals, p. 7; Rollo, p. 46

[2] Id., pp. 1-2; Rollo, pp. 40-41

[3] Petitioner's brief, p. 10

[4] G.R. No. L-28503, April 18, 1989, 172 SCRA 364

[5] Decision, Court of Appeals, p. 4; Rollo, p. 43

[6] 24 Phil. 37, 41 (1913)

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