

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. COURT OF APPEALS, COURT OF APPEALS AND ALHAMBRA INDUSTRIES, INC., RESPONDENTS.

G.R. No. 117982. February 06, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

ALHAMBRA INDUSTRIES, INC., is a domestic corporation engaged in the manufacture and sale of cigar and cigarette products. On 7 May 1991 private respondent received a letter dated 26 April 1991 from the Commissioner of Internal Revenue assessing it deficiency Ad Valorem Tax (AVT) in the total amount of Four Hundred Eighty-Eight Thousand Three Hundred Ninety-Six Pesos and Sixty-Two Centavos (P 488,396.62), inclusive of increments, on the removals of cigarette products from their place of production during the period 2 November 1990 to 22 January 1991.[1] Petitioner computes the deficiency thus -

Total AVT due per manufacturer's declaration

P4,279,042.33

Less: AVT paid under BIR Ruling No. 473-88

3,905,348.85

Deficiency AVT

373,693.48

Add: Penalties:

25% Surcharge (Sec. 248[c][3] NIRC)

93,423.37

20% Interest (P 467,116.85 x 82/360 days)

21,279.77

Total Amount Due

P 488,396.62

In a letter dated 22 May 1991 received by petitioner on even date, private respondent thru counsel filed a protest against the proposed assessment with a request that the same be withdrawn and cancelled. On 31 May 1991 private respondent received petitioner's reply dated 27 May 1991 denying its protest and request for cancellation stating that the decision was final, and at the same time requesting payment of the revised amount of Five

Hundred Twenty Thousand Eight Hundred Thirty-Five Pesos and Twenty-Nine Centavos (P 520,835.29), with interest updated, within ten (10) days from receipt thereof. In a letter dated 10 June 1991 which petitioner received on the same day, private respondent requested for the reconsideration of petitioner's denial of its protest. Without waiting for petitioner's reply to its request for reconsideration, private respondent filed on 19 June 1991 a petition for review with the Court of Tax Appeals. On 25 June 1991 private respondent received from petitioner a letter dated 21 June 1991 denying its request for reconsideration declaring again that its decision was final. On 8 July 1991 private respondent paid under protest the disputed ad valorem tax in the sum of P 520,835.29.[2]

In its Decision[3] of 1 December 1993 the Court of Tax Appeals ordered petitioner to refund to private respondent the amount of Five Hundred Twenty Thousand Eight Hundred Thirty-Five Pesos and Twenty-Nine Centavos (P 520,835.29) representing erroneously paid ad valorem tax for the period 2 November 1990 to 22 January 1991.

The Court of Tax Appeals explained that the subject deficiency excise tax assessment resulted from private respondent's use of the computation mandated by BIR Ruling 473-88 dated 4 October 1988 as basis for computing the fifteen percent (15%) ad valorem tax due on its removals of cigarettes from 2 November 1990 to 22 January 1991. BIR Circular 473-88 was issued by Deputy Commissioner Eufracio D. Santos to Insular-Yebana Tobacco Corporation allowing the latter to exclude the value-added tax (VAT) in the determination of the gross selling price for purposes of computing the ad valorem tax of its cigar and cigarette products in accordance with Sec. 127 of the Tax Code as amended by Executive Order No. 273 which provides as follows:

Sec. 127. Payment of excise taxes on domestic products. - x x x x (b) Determination of gross selling price of goods subject to ad valorem tax. - Unless otherwise provided, the price, excluding the value-added tax, at which the goods are sold at wholesale in the place of production or through their sales agents to the public shall constitute the gross selling price.

The computation, pursuant to the ruling, is illustrated by way of example thus -

$P44.00 \times 1/11 = P 4.00$ VAT

$P44.00 - P 4.00 = P40.00$ price without VAT

$P40.00 \times 15\% = P 6.00$ Ad Valorem Tax

For the period 2 November 1990 to 22 January 1991 private respondent paid P3,905,348.85 ad valorem tax, applying Sec. 127 (b) of the NIRC as interpreted by BIR Ruling 473-88 by excluding the VAT in the determination of the gross selling price.

Thereafter, on 11 February 1991, petitioner issued BIR Ruling 017-91 to Insular-Yebana Tobacco Corporation revoking BIR Ruling 473-88 for being violative of Sec. 142 of the Tax Code. It included back the VAT to the gross selling price in determining the tax base for computing the ad valorem tax on cigarettes. Cited as basis by petitioner is Sec. 142 of the Tax Code, as amended by E.O. No. 273 -

Sec. 142. Cigar and cigarettes - x x x x For purposes of this section, manufacturer's or importer's registered wholesale price shall include the ad valorem tax imposed in paragraphs (a), (b), (c) or (d) hereof and the amount intended to cover the value added tax imposed under Title IV of this Code.

Petitioner sought to apply the revocation retroactively to private respondent's removals of cigarettes for the period starting 2 November 1990 to 22 January 1991 on the ground that private respondent allegedly acted in bad faith which is an exception to the rule on non-retroactivity of BIR Rulings.[4]

On appeal, the Court of Appeals affirmed the Court of Tax Appeals holding that the retroactive application of BIR Ruling 017-91 cannot be allowed since private respondent did not act in bad faith; private respondent's

computation under BIR Ruling 473-88 was not shown to be motivated by ill will or dishonesty partaking the nature of fraud; hence, this petition.

Petitioner imputes error to the Court of Appeals: (1) in failing to consider that private respondent's reliance on BIR Ruling 473-88 being contrary to Sec. 142 of the Tax Code does not confer vested rights to private respondent in the computation of its ad valorem tax; (2) in failing to consider that good faith and prejudice to the taxpayer in cases of reliance on a void BIR Ruling is immaterial and irrelevant and does not place the government in estoppel in collecting taxes legally due; (3) in holding that private respondent acted in good faith in applying BIR Ruling 473-88; and, (4) in failing to consider that the assessment of petitioner is presumed to be regular and the claim for tax refund must be strictly construed against private respondent for being in derogation of sovereign authority.

Petitioner claims that the main issue before us is whether private respondent's reliance on a void BIR ruling conferred upon the latter a vested right to apply the same in the computation of its ad valorem tax and claim for tax refund. Sec. 142 (d) of the Tax Code, which provides for the inclusion of the VAT in the tax base for purposes of computing the 15% ad valorem tax, is the applicable law in the instant case as it specifically applies to the manufacturer's wholesale price of cigar and cigarette products and not Sec. 127 (b) of the Tax Code which applies in general to the wholesale of goods or domestic products. Sec. 142 being a specific provision applicable to cigar and cigarettes must perforce prevail over Sec. 127 (b), a general provision of law insofar as the imposition of the ad valorem tax on cigar and cigarettes is concerned.[5] Consequently, the application of Sec. 127 (b) to the wholesale price of cigar and cigarette products for purposes of computing the ad valorem tax is patently erroneous. Accordingly, BIR Ruling 473-88 is void ab initio as it contravenes the express provisions of Sec. 142 (d) of the Tax Code.[6]

Petitioner contends that BIR Ruling 473-88 being an erroneous interpretation of Sec. 142 (b) of the Tax Code does not confer any vested right to private respondent as to exempt it from the retroactive application of BIR Ruling 017-91. Thus Art. 2254 of the New Civil Code is explicit that "(n)o vested or acquired right can arise from acts or omissions which are against the law x x x x "[7] It is argued that the Court of Appeals erred in ruling that retroactive application cannot be made since private respondent acted in good faith. The following circumstances would show that private respondent's reliance on BIR Ruling 473-88 was induced by ill will: first, private respondent despite knowledge that Sec. 142 of the Tax Code was the specific provision applicable still shifted its accounting method pursuant to Sec. 127 (b) of the Tax Code; and, second, the shift in accounting method was made without any prior consultation with the BIR.[8]

It is further contended by petitioner that claims for tax refund must be construed against private respondent. A tax refund being in the nature of a tax exemption is regarded as in derogation of the sovereign authority and is strictly construed against private respondent as the same partakes the nature of a tax exemption. Tax exemptions cannot merely be implied but must be categorically and unmistakably expressed.[9]

We cannot sustain petitioner. The deficiency tax assessment issued by petitioner against private respondent is without legal basis because of the prohibition against the retroactive application of the revocation of BIR rulings in the absence of bad faith on the part of private respondent.

The present dispute arose from the discrepancy in the taxable base on which the excise tax is to apply on account of two incongruous BIR Rulings: (1) BIR Ruling 473-88 dated 4 October 1988 which excluded the VAT from the tax base in computing the fifteen percent (15%) excise tax due; and, (2) BIR Ruling 017-91 dated 11 February 1991 which included back the VAT in computing the tax base for purposes of the fifteen percent (15%) ad valorem tax.

The question as to the correct computation of the excise tax on cigarettes in the case at bar has been sufficiently

addressed by BIR Ruling 017-91 dated 11 February 1991 which revoked BIR Ruling 473-88 dated 4 October 1988 -

It is to be noted that Section 127 (b) of the Tax Code as amended applies in general to domestic products and excludes the value-added tax in the determination of the gross selling price, which is the tax base for purposes of the imposition of ad valorem tax. On the other hand, the last paragraph of Section 142 of the same Code which includes the value-added tax in the computation of the ad valorem tax, refers specifically to cigar and cigarettes only. It does not include/apply to any other articles or goods subject to the ad valorem tax. Accordingly,

Section 142 must perforce prevail over Section 127 (b) which is a general provision of law insofar as the imposition of the ad valorem tax on cigar and cigarettes is concerned.

Moreover, the phrase unless otherwise provided in Section 127 (b) purports of exceptions to the general rule contained therein, such as that of Section 142, last paragraph thereof which explicitly provides that in the case of cigarettes, the tax base for purposes of the ad valorem tax shall include, among others, the value-added tax.

Private respondent did not question the correctness of the above BIR ruling. In fact, upon knowledge of the effectivity of BIR Ruling No. 017-91, private respondent immediately implemented the method of computation mandated therein by restoring the VAT in computing the tax base for purposes of the 15% ad valorem tax.

However, well-entrenched is the rule that rulings and circulars, rules and regulations promulgated by the Commissioner of Internal Revenue would have no retroactive application if to so apply them would be prejudicial to the taxpayers.[10]

The applicable law is Sec. 246 of the Tax Code which provides -

Sec. 246. Non-retroactivity of rulings.- Any revocation, modification, or reversal of any rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or c) where the taxpayer acted in bad faith.

Without doubt, private respondent would be prejudiced by the retroactive application of the revocation as it would be assessed deficiency excise tax.

What is left to be resolved is petitioner's claim that private respondent falls under the third exception in Sec. 246, i.e., that the taxpayer has acted in bad faith.

Bad faith imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It partakes of the nature of fraud; a breach of a known duty through some motive of interest or ill will.[11] We find no convincing evidence that private respondent's implementation of the computation mandated by BIR Ruling 473-88 was ill-motivated or attended with a dishonest purpose. To the contrary, as a sign of good faith, private respondent immediately reverted to the computation mandated by BIR Ruling 017-91 upon knowledge of its issuance on 11 February 1991.

As regards petitioner's argument that private respondent should have made consultations with it before private respondent used the computation mandated by BIR Ruling 473-88, suffice it to state that the aforesaid BIR Ruling was clear and categorical thus leaving no room for interpretation. The failure of private respondent to consult petitioner does not imply bad faith on the part of the former.

Admittedly the government is not estopped from collecting taxes legally due because of mistakes or errors of its agents. But like other principles of law, this admits of exceptions in the interest of justice and fair play, as where injustice will result to the taxpayer.[12]

WHEREFORE, there being no reversible error committed by respondent Court of Appeals, the petition is DENIED and petitioner COMMISSIONER OF INTERNAL REVENUE is ordered to refund private respondent ALHAMBRA INDUSTRIES, INC., the amount of P520,835.29 upon finality of this Decision.

SO ORDERED.

Padilla, (Chairman), Kapunan, and Hermosisima, JJ., concur.

Vitug, J., see concurring opinion.

[1] CA Decision penned by Justice Quirino Abad Santos Jr., concurred in by Justices Antonio Martinez and Godardo Jacinto, pp.1-2; Rollo, pp.50-51.

[2] Id., pp.2-3; Rollo, pp.51-52.

[3] CTA Decision penned by Presiding Judge Ernesto Acosta with Associate Judges Manuel Gruba and Ramon de Veyra concurring.

[4]CTA Decision , pp.4-5; Rollo, pp.39-40.

[5] Petition, pp. 12-15; Rollo, pp. 19-22.

[6] Id., p. 16; id., p. 23.

[7]Id., pp.17-19; id., pp.24-26.

[8] Id., pp.21-23; id., pp.28-30.

[9] Id., pp. 23-24; id., pp. 30-31.

[10] Commissioner of Internal Revenue v. Telefunken Semiconductor Philippines, Inc., G.R. No. 103915, 23 October 1995, 249 SCRA 401; Bank of America v. CA, G.R. No. 103092, 21 July 1994, 234 SCRA 302; Commissioner of Internal Revenue v. CTA, No. L-44007, 20 March 1991, 195 SCRA 444; Commissioner of Internal Revenue v. Mega General Merchandising Corp., G.R. No. 69136, 30 September 1988, 166 SCRA 166; Commissioner of Internal Revenue v. Burroughs, G.R. No. 66653, 19 June 1986, 142 SCRA 324; ABS-CBN v. CTA, G.R. No. 52306, 12 October 1981, 108 SCRA 142.

[11] PAL v. Miano, G.R. No. 106664, 8 March 1995, 242 SCRA 235; Far East Bank v. CA, G.R. No. 108164, 23 February 1995, 241 SCRA 671; Samson v. CA, G.R. No. 108245, 25 November 1994, 238 SCRA 397; Marcelo v. Sandiganbayan, G.R. No. 69983, 14 May 1990, 185 SCRA 346; Ong Yiu v. CA, No. L-40597, 29 June 1979, 91 SCRA 223; Board of Liquidators v. Kalaw, No. L-18805, 14 August 1967, 20 SCRA 987.

[12]ABS-CBN v. CTA, see note 11.

CONCURRING OPINION

VITUG, J.:

I concur in the ponencia written by my esteemed colleague, Mr. Justice Josue N. Bellosillo. I only would like to stress that the 1988 opinion of the Commissioner of Internal Revenue cannot be considered void, considering that

it evinces what the former commissioner must have felt to be a real inconsistency between Section 127 and Section 142 of the Tax Code. The non-retroactivity proscription under Section 246 of the Tax Code can thus aptly apply. I reserve my vote, however, in a situation where, as the Solicitor General so points out, the revoked ruling is patently null and void in which case it could possibly be disregarded as being inexistent from the very beginning.

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