

COMMISSIONER OF INTERNAL REVENUE, PETITIONER VS. LA SUERTE CIGAR AND CIGARETTE FACTORY, RESPONDENT.

G.R. No. 144942. July 04, 2002

Ponente: VITUG, J.

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VITUG, J.:

In its resolution, dated 15 November 2000, this Court denied the Petition for Review on Certiorari submitted by the Commissioner of Internal Revenue for non-compliance with the procedural requirement of verification explicit in Section 4, Rule 7, of the 1997 Rules of Civil Procedure and, furthermore, because the appeal was not pursued by the Solicitor General. When the motion for reconsideration filed by petitioner was likewise denied, petitioner filed the instant motion seeking an elucidation on the supposed discrepancy between the pronouncement of this Court, on the one hand, that would require the participation of the Office of the Solicitor General and pertinent provisions of the Tax Code, on the other hand, that allow the legal officers of the Bureau of Internal Revenue (BIR) to institute and conduct judicial action in behalf of the Government under Section 220 of the Tax Reform Act of 1997 (R.A. 8424 effective 01 January 1998). -

"SECTION 220. Form and Mode of Proceeding in Actions Arising under this Code. - Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner." (Underscoring supplied)

Ordered to comment, the Office of the Solicitor General expressed the view that under the aforequoted Section 220 of the Tax Reform Act, amending Section 221 of the 1993 Tax Code, "the primary responsibility to conduct civil and criminal actions lies with the legal officers of the Bureau of Internal Revenue, such that it is no longer necessary for BIR legal officers to be deputized by the Office of the Solicitor General or the Secretary of Justice before they can commence any action under the 1997 Tax Code." [1]

The institution or commencement before a proper court of civil and criminal actions and proceedings arising under the Tax Reform Act which "shall be conducted by legal officers of the Bureau of Internal Revenue" is not in dispute. An appeal from such court, however, is not a matter of right. Section 220 of the Tax Reform Act must not be understood as overturning the long established procedure before this Court in requiring the Solicitor General to represent the interest of the Republic. This Court continues to maintain that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings. [2] This pronouncement finds justification in the various laws defining the Office of the Solicitor General, beginning with Act No. 135, which took effect on 16 June 1901, up to the present Administrative Code of 1987. [3] Section 35, Chapter 12, Title III, Book IV, of the said Code outlines the powers and functions of the Office of the Solicitor General which includes, but not limited to, its duty to -

"(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings;

represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

"x x x x x x x x

"(3) Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court."

In *Gonzales vs. Chavez*,^[4] the Supreme Court has said that, from the historical and statutory perspectives, the Solicitor General is the "principal law officer and legal defender of the government."

An exception to the above rule is that enunciated in the case of *Orbos vs. Civil Service Commission*,^[5] thus:

"In the discharge of this task the Solicitor General must see to it that the best interest of the government is upheld within the limits set by law. When confronted with a situation where one government office takes an adverse position against another government agency, x x x the Solicitor General should not refrain from performing his duty as the lawyer of the government. It is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position. In such an instance the government office adversely affected by the position taken by the Solicitor General, if it still believes in the merit of its case, may appear in its own behalf through its legal personnel or representative."^[6]

The present controversy ruminates upon the singular issue of whether or not Revenue Regulation 1767 issued by petitioner, in relation to Section 137 of the Internal Revenue Code in the imposition of a tax on stemmed-leaf tobacco, deviated from the tax code. This question basically inquires then into whether or not the revenue regulation has exceeded, on constitutional grounds, the allowable limits of legislative delegation.

Aware that the dismissal of the petition could have lasting effect on government tax revenues, the lifeblood of the state, the Court heeds the plea of petitioner for a chance to prosecute its case. It does appear from the statements of the Commissioner of Internal Revenue, seeking clarification on the issue of legal representation, that it has labored and acted in good faith.

Relative to the lack of verification required of petitions, this Court has held in a number of instances that such a deficiency can be excused or dispensed with in meritorious cases, the defect being neither jurisdictional nor always fatal.^[7] Verification is mainly intended to ensure that the allegations in the pleading are true and correct and not mere speculations. The Court may thus order the correction of the pleading or act on an unverified pleading, if the attending circumstances are such that strict compliance would not fully serve substantial justice^[8] which, after all, is the basic aim for the rules of procedure.^[9]

WHEREFORE, the Court hereby directs the Office of the Solicitor General (a) to enter its appearance for petitioner and (b) to manifest whether or not it is adopting the instant petition, both within ten (10) days from receipt of this resolution. The Court shall act on the motion for reconsideration of its resolution, dated 15 November 2000, after receipt by the Court of the appearance and manifestation of the Office of the Solicitor General hereinabove required.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Kapunan, Mendoza, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur. Quisumbing, J., abroad.

[1] Comment, p. 5.

[2] Republic vs. Register of Deeds of Quezon, 244 SCRA 537; CIR vs. S.C. Johnson and Son, Inc., 309 SCRA 87.

[3] Gonzales vs. Chavez, 205 SCRA 816.

[4] Ibid.

[5] 189 SCRA 459.

[6] At p. 466.

[7] PASUDECO vs. NLRC, 272 SCRA 737; Joson vs. Torres, 290 SCRA 279.

[8] Robern Development Corp. vs. Quitain, 315 SCRA 150.

[9] Balagtas Multi-Purpose Cooperative, Inc. vs. Court of Appeals, 314 SCRA 676.

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