COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. BENGUET CORPORATION, RESPONDENT.

G.R. NO. 145559. July 14, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner Commissioner of Internal Revenue seeks the reversal and setting aside of the following Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 38413, to wit:

> 1. Resolution dated May 10, 2000[1] insofar as it ordered petitioner to issue a tax credit to respondent Benguet Corporation in the amount of P49,749,223.31 representing input VAT/tax attributable to its sales of gold to the Central Bank (now Bangko Sentral ng Pilipinas or BSP) covering the period from January 1, 1988 to July 31, 1989; and
>
> 2. Resolution dated October 16, 2000[2] denying petitioner's motion for reconsideration.

The facts, as narrated by the CA in its basic Resolution of May 10, 2000, are:

> [Respondent] is a domestic corporation engaged in mining business, specifically the exploration, development and operation of mining properties for purposes of commercial production and the marketing of mine products. It is a VAT-registered enterprise, with VAT Registration No. 31-0-000027 issued on January 1, 1988. Sometime in January 1988, [respondent] filed an application for zero-rating of its sales of mine products, which application was duly approved by the [petitioner] Commissioner of Internal Revenue.
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> On August 28, 1988, then Deputy Commissioner of Internal Revenue Eufracio D. Santos issued VAT Ruling No. 378-88 which declared that the sale of gold to the Central Bank is considered an export sale and therefore subject to VAT at 0% rate. On December 14, 1988, then Deputy Commissioner Santos also issued Revenue Memorandum Circular (RMC) No. 59-88, again declaring that the sale of gold by a VAT-registered taxpayer to the Central Bank is subject to the zero-rate VAT. No less than five Rulings were subsequently issued by [petitioner] from 1988 to 1990 reiterating and confirming its position that the sale of gold by a VAT-registered taxpayer to the Central Bank is subject to the zero-rate VAT.
>
> As a corollary, and in reliance, of the foregoing issuances, [respondent], during the six (6) taxable quarters in question covering the period January 1, 1988 to July 31, 1989, sold gold to the Central Bank and treated these sales as zero-rated " that is, subject to the 0% VAT. During the same period, [respondent] thus incurred input taxes attributable to said sales to the Central Bank. Consequently, [respondent] filed with the Commissioner of Internal Revenue applications for the issuance of Tax Credit Certificates for input VAT Credits attributable to its export sales - that is, inclusive of direct export sales and sale of gold to the Central Bank corresponding to the same taxable periods, to wit:
>
> AMOUNT OF TAX CREDIT APPLIED FOR
> TAXABLE PERIOD

P34,449,817.71

01Jan88 to 30 Apr88

P30,382,666.86

01May88 to 31Jul88

P30,146,774.47

01Aug88 to 31Oct88

P13,467,663.41

01Nov88 to 31Jan89

P 7,030,261.29

01Feb89 to 30Apr89

P18,263,960.28

01May89 to 31Jul89

(CTA Decision dated March 23, 1995; Pages 83-86, rollo)

Meanwhile, on January 23, 1992, then Commissioner Jose U. Ong issued VAT Ruling No. 008-92 declaring and holding that the sales of gold to the Central Bank are considered domestic sales subject to 10% VAT instead of 0% VAT as previously held in BIR Issuances from 1998 to 1990. Subsequently, VAT Ruling No. 59-92, dated April 28, 1992, x x x were issued by [petitioner] reiterating the treatment of sales of gold to the Central Bank as domestic sales, and expressly countenancing the Retroactive application of VAT Ruling No. 008-92 to all such sales made starting January 1, 1988, ratiocinating, inter alia, that the mining companies will not be unduly prejudiced by a retroactive application of VAT Ruling 008-92 because their claim for refund of input taxes are not lost because the same are allowable on its output taxes on the sales of gold to Central Bank; on its output taxes on other sales; and as deduction to income tax under Section 29 of the Tax Code.

On the basis of the aforequoted BIR Issuances, [petitioner] thus treated [respondent's] sales of gold to the Central Bank as domestic sales subject to 10% VAT but allowed [respondent] a total tax credit of only P81,991,810.91 which corresponded to VAT input taxes attributable to its direct export sales (CTA Decision dated March 23, 1995; Page 87). Notwithstanding this finding of the [petitioner], [respondent] was not refunded the said amounts of tax credit claimed. Thus, to suspend the running of the two-year prescriptive period (Sec. 106, NIRC) for claiming refunds or tax credits, [respondent] instituted x x x consolidated Petitions for Review with the Court of Tax Appeals, praying for the issuance of "Tax Credit Certificates" for the following input VAT credits attributable to export sales transacted during the taxable quarters or periods in question, to wit:

CTA Case

Number Amount of Tax Credit Applied for Taxable Period

4429 P64,832,374.67 01JAN88 to31JUL88

4495 P43,614,437.88 01AUG88to31JAN89

4575 P23,294,221.77 01FEB89 to31JUL89

P131,741,034.22 = TOTAL

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> Significantly, the total amount of P131,741,034.22, as hereinabove computed, corresponds to the total input VAT credits attributable to export sales made by [respondent] during the taxable periods set forth and therefore, represents a combination of input tax attributable to both (1) direct export sales and (2) sales of gold to the Central Bank. (Words in brackets added).[3]

In a decision dated March 23, 1995,[4] the Court of Tax Appeals (CTA) dismissed respondent's aforementioned consolidated Petitions for Review and denied the whole amount of its claim for tax credit of P131,741,034.22. The tax court held that the alleged prejudice to respondent as a result of the retroactive application of VAT Ruling No. 008-92 issued on January 23, 1992 to the latter's gold sales to the Central Bank (CB) from January 1, 1988 to July 31, 1989 is merely speculative and not actual and imminent so as to proscribe said Ruling's retroactivity. The CTA further held that respondent would not be unduly prejudiced considering that VAT Ruling No. 59-92 which mandates the retroactivity of VAT Ruling No. 008-92 likewise provides for alternative remedies for the recovery of the input VAT.

Its motion for reconsideration having been denied by the tax court, respondent appealed to the CA whereat its recourse was docketed as CA-G.R. SP No. 38413.

At first, the CA, in a decision dated May 30, 1996,[5] affirmed in toto that of the tax court.

However, upon respondent's motion for reconsideration, the CA, in the herein assailed basic Resolution dated May 10, 2000, reversed itself by setting aside its earlier decision of May 30, 1996 and ordering herein petitioner to issue in respondent's favor a tax credit in the amount of P131,741,034.22, to wit:

> IN THE LIGHT OF ALL THE FOREGOING, [respondent's] Motion for Reconsideration, x x x as supplemented, is GRANTED. The Decision of this Court, dated May 30, 1996, affirming the Decision of the Court of Tax Appeals x x x is SET ASIDE. The [petitioner Commissioner of Internal Revenue] is hereby ordered to issue [respondent] a TAX CREDIT in the amount of P131,741,034.22.
>
> SO ORDERED.

In its reversal action, the CA ruled that the tax credit in the total amount of P131,741,034.22 consists of (1) P81,991,810.91, representing input VAT credits attributable to direct export sales subject to 0% VAT, and (2) P49,749,223.31, representing input VAT attributable to sales of gold to the CB which were subject to 0% when said sales were made in 1988 and 1989. In effect, the CA rejected the retroactive application of VAT Ruling No. 008-92 to the subject gold sales of respondent because of the resulting prejudice to the latter despite the existence of alternative modes for the recovery of the input VAT.

This time, it was petitioner who moved for a reconsideration but his motion was denied by the CA in its subsequent Resolution of October 16, 2000.

Hence, petitioner's present recourse assailing only that portion of the CA Resolution of May 10, 2000 allowing respondent the amount of P49,749,223.31 as tax credit corresponding to the input VAT attributable to its sales of gold to the CB for the period January 1, 1988 to July 31, 1989. It is petitioner's sole contention that the CA erred in rejecting the retroactive application of VAT Ruling No. 008-92, dated January 23, 1992, subjecting sales of gold to the CB to 10% VAT to respondent's sales of gold during the period from January 1, 1988 to July 31, 1989. Petitioner posits that, contrary to the ruling of the appellate court, the retroactive application of VAT Ruling No. 008-92 to respondent would not prejudice the latter.

Initially, the Court, in its Resolution of January 24, 2001, [6] denied the Petition for lack of verification and certification against forum shopping. However, upon petitioner's manifestation and motion for reconsideration, the Court reinstated the Petition in its subsequent Resolution of March 5, 2001.[7]

The petition must have to fall.

We start with the well-entrenched 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.[8]

And this is as it should be, for the Tax Code, specifically Section 246 thereof, is explicit that:

> x x x 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.

There is no question, therefore, as to the prohibition against the retroactive application of the revocation, modification or reversal, as the case maybe, of previously established Bureau on Internal Revenue (BIR) Rulings when the taxpayer's interest would be prejudiced thereby. But even if prejudicial to a taxpayer, retroactive application is still allowed where: (a) a taxpayer deliberately misstates or omits material facts from his return or any document required by the BIR; (b) where subsequent facts gathered by the BIR are materially different from which the ruling is based; and (c) where the taxpayer acted in bad faith.

As admittedly, respondent's case does not fall under any of the above exceptions, what is crucial to determine then is whether the retroactive application of VAT Ruling No. 008-92 would be prejudicial to respondent Benguet Corporation.

The Court resolves the question in the affirmative.

Input VAT or input tax represents the actual payments, costs and expenses incurred by a VAT-registered taxpayer in connection with his purchase of goods and services. Thus, "input tax" means the value-added tax paid by a VAT-registered person/entity in the course of his/its trade or business on the importation of goods or local purchases of goods or services from a VAT-registered person.[9]

On the other hand, when that person or entity sells his/its products or services, the VAT-registered taxpayer generally becomes liable for 10% of the selling price as output VAT or output tax.[10] Hence, "output tax" is the value-added tax on the sale of taxable goods or services by any person registered or required to register under Section 107 of the (old) Tax Code.[11]

The VAT system of taxation allows a VAT-registered taxpayer to recover its input VAT either by (1) passing on the 10% output VAT on the gross selling price or gross receipts, as the case may be, to its buyers, or (2) if the input tax is attributable to the purchase of capital goods or to zero-rated sales, by filing a claim for a refund or tax credit with the BIR.[12]

Simply stated, a taxpayer subject to 10% output VAT on its sales of goods and services may recover its input VAT costs by passing on said costs as output VAT to its buyers of goods and services but it cannot claim the same as a refund or tax credit, while a taxpayer subject to 0% on its sales of goods and services may only recover its input VAT costs by filing a refund or tax credit with the BIR.

Here, the claimed tax credit of input tax amounting to P49,749,223.31 represents the costs or expenses incurred by respondent in connection with its gold production. Relying on BIR Rulings, specifically VAT Ruling No. 378-88, dated August 28, 1988, and VAT Ruling No. 59-88, dated December 14, 1988, both of which declared

that sales of gold to the CB are considered export sales subject to 0%, respondent sold gold to the CB from January 1, 1988 to July 31, 1989 without passing on to the latter its input VAT costs, obviously intending to obtain a refund or credit thereof from the BIR at the end of the taxable period. However, by the time respondent applied for refund/credit of its input VAT costs, VAT Ruling No. 008-92 dated January 23, 1992, treating sales of gold to the CB as domestic sales subject to 10% VAT, and VAT Ruling No. 059-92 dated April 28, 1992, retroactively applying said VAT Ruling No. 008-92 to such sales made from January 1, 1988 onwards, were issued. As a result, respondent's application for refund/credit was denied and, as likewise found by the CA, it was even subsequently assessed deficiency output VAT on October 19, 1992 in the total amounts of P252,283,241.95 for the year 1988, and P244,318,148.56 for the year 1989.[13]

Clearly, from the foregoing, the prejudice to respondent by the retroactive application of VAT Ruling No. 008-92 to its sales of gold to the CB from January 1, 1988 to July 31, 1989 is patently evident.

Verily, by reason of the denial of its claim for refund/credit, respondent has been precluded from recovering its input VAT costs attributable to its sales of gold to the CB during the period mentioned, for the following reasons:

First, because respondent could not pass on to the CB the 10% output VAT which would be retroactively imposed on said transactions, not having passed the same at the time the sales were made on the assumption that said sales are subject to 0%, and, hence, maybe refunded or credited later. And second, because respondent could not claim the input VAT costs as a refund/credit as it has been prevented such option, the sales in question having been retroactively subjected to 10% VAT, ergo limiting recovery of said costs to the application of the same against the output tax which will result therefrom.

Indeed, respondent stands to suffer substantial economic prejudice by the retroactive application of the VAT Ruling in question.

But petitioner maintains otherwise, arguing that respondent will not be unduly prejudiced since there are still other available remedies for it to recover its input VAT costs. Said remedies, so petitioner points out, are for respondent to either (1) use said input taxes in paying its output taxes in connection with its other sales transactions which are subject to the 10% VAT or (2) if there are no other sales transactions subject to 10% VAT, treat the input VAT as cost and deduct the same from income for income tax purposes.

We are not persuaded.

The first remedy cannot be applied in this case. As correctly found by the CA, respondent has clearly shown that it has no "other transactions" subject to 10% VAT, and petitioner has failed to prove the existence of such "other transactions" against which to set off respondent's input VAT.[14]

Anent the second remedy, prejudice will still, indubitably, result because treating the input VAT as an income tax deductible expense will yield only a partial and not full financial benefit of having the input VAT refunded or used as a tax credit. We quote with approval the CA's observations in this respect, thus:

> x x x even assuming that input VAT is still available for deduction, [respondent] still suffers prejudice. As a zero-rated taxpayer (pursuant to the 1988 to 1990 BIR issuances), [respondent] could have claimed a cash refund or tax credit of the input VAT in the amount of P49,749,223.31. If it had been allowed a cash refund or tax credit, it could have used the full amount thereof to pay its other tax obligations (or, in the case of a cash refund, to fund its operations). With VAT Ruling No. 059-92, [respondent] is precluded from claiming the cash refund or tax credit and is limited to the so-called remedy of deducting the input VAT from gross income. But a cash refund or tax credit is not the same as a tax deduction. A tax deduction has less benefits than a tax credit. Consider the following differences;

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2.42.1 A tax credit may be used to pay any national internal revenue tax liability. Section 104(b) of the Tax Code states;

"(b) Excess output or input tax. - xxx Any input tax attributable to xxx zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 106."

On the other hand, a tax deduction may be used only against gross income for purposes of income tax. A tax deduction is not allowed against other internal revenue taxes such as excise taxes, documentary stamp taxes, and output VAT.

2.42.2 In terms of income tax, a tax deduction is only an expense item in computing income tax liabilities (Sections 27 to 29, Tax Code) while a tax credit is a direct credit against final income tax due (Section 106[b], Tax Code). This is illustrated in the example below:

Assume that in 1988, respondent had a gross income of P1,000,000,000 and deductible expenses in general (such as salaries, utilities, transportation, fuel and costs of sale) of P500,000,000. Assume also that [respondent] had input VAT of P131,741,034.22, the amount being claimed in the instant case. [Respondent's] income tax liability, depending on whether it utilized the input tax as tax credit or tax deduction, would be as follows:

a. Tax credit

Gross Income (Section 28, Tax Code)
P1,000,000,000.00

Deductions (Section 29, Tax Code)
(500,000,000.00)

Taxable Income (Section 27, Tax Code)
P 500,000.000.00

Tax rate (Section 24[a], Tax Code)
x 35%

Tax Payable
P 175,000,000.00

Tax Credit
(131,741,034.22)

Tax due
P 43,258,965.78

b. Tax deduction

Gross income (Section 28, Tax Code)
P1,000,000,000.00

Deductions

General (Section 29, Tax Code) P500,000,000.00

Input VAT (VAT Ruling No. 059-92) P131,741,034.22 P 631,741,034.22)

Taxable income (Section 27, Tax Code)
P 368,258,966.78

Tax rate (Section 24[a], Tax Code)
x 35%

Tax payable
P 128,890,638.02

Tax Credit
-

Tax due

_____

P 128,890,638.02

Thus, if the input VAT of P131,741,034.22 were to be credited against the income tax due, the income tax payable is only P43,258,965.78. On the other hand, if the input VAT were to be deducted from gross income before arriving at the net income, the income tax payable is P128,890,638.02. This is almost three (3) times the income tax payable if the input VAT were to be deducted from the income tax payable.

As can be seen from above, there is a substantial difference between a tax credit and a tax deduction. A tax credit reduces tax liability while a tax deduction only reduces taxable income (emphasis supplied).

A tax credit of input VAT fully utilizes the entire amount of P131,741,034.22, since tax liability is reduced by the said amount. A tax deduction is not fully utilized because the savings is only 35% or P46,109,361.98. In the above case, therefore, the use of input VAT as a tax deduction results in a loss of 65% of the input VAT, or P85,631,672.24, which [respondent] could have otherwise fully utilized as a tax credit.

x x x x x x x x x

x x x the deduction of an expense under Section 29 of the Tax Code is not tantamount to a recovery of the expense. The deduction of a bad debt, for instance, does not result in the recovery of the debt. On the other hand, a tax credit, because it can be fully utilized to reduce tax liability, is as good as cash and is thus effectively a full recovery of the input VAT cost.[15] (Emphasis in the original; Words in brackets supplied).

We may add that the prejudice which befell respondent is all the more highlighted by the fact that it has been issued assessments for deficiency output VAT on the basis of the same sales of gold to the CB.

On a final note, the Court is fully cognizant of the well-entrenched principle that the Government is not estopped from collecting taxes because of mistakes or errors on the part of its agents.[16] But, like other principles of law, this also admits of exceptions in the interest of justice and fair play, as where injustice will result to the taxpayer.[17]

As this Court has said in ABS-CBN Broadcasting Corporation v. Court of Tax Appeals and the Commissioner of Internal Revenue:[18]

The insertion of Sec. 338-A [now Sec. 246] into the National Internal Revenue Code x x x is indicative of legislative intention to support the principle of good faith. In fact, in the United States x x x it has been held that the Commissioner or Collector is precluded from adopting a position inconsistent with one previously taken where injustice would result therefrom, or where there has been a misrepresentation to the taxpayer. [Word in brackets supplied].

Here, when respondent sold gold to the CB, it relied on the formal assurances of the BIR, i.e., VAT Ruling No. 378-88 dated August 28, 1988 and VAT Ruling RMC No. 59-88 dated December 14, 1988, that such sales are zero-rated. To retroact a later ruling " VAT Ruling No. 008-92 - revoking the grant of zero-rating status to the

sales of gold to the CB and applying a new and contrary position that such sales are now subject to 10%, is clearly inconsistent with justice and the elementary requirements of fair play.

Accordingly, we find that the CA did not commit a reversible error in holding that VAT Ruling No. 008-92 cannot be retroactively applied to respondent's sales of gold to the CB during the period January 1, 1988 to July 31, 1989, hence, it is entitled to tax credit in the amount of P49,749,223.31 attributable to such sales.

IN VIEW WHEREOF, the instant petition is DENIED and the assailed CA Resolutions are AFFIRMED.

No costs.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

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[1] Penned by Associate Justice Romeo J. Callejo, Sr., now a member of this Court, and concurred in by Associate Justices Godardo A. Jacinto (ret.) and Candido V. Rivera (ret.); Rollo, pp. 20-34.

[2] Rollo, pp. 35-36.

[3] CA Resolution; Rollo, pp. 21-24.

[4] Rollo, pp. 51-64.

[5] Penned by Associate Justice Pacita Canizares-Nye (ret.), with former Associate Justice Pedro Ramirez (ret.) and former CA Associate Justice Romeo J. Callejo, Jr., concurring; Rollo, pp. 86-94.

[6] Rollo, pp. 95-96.

[7] Rollo, p. 173.

[8] CIR v. Court of Appeals, Court of Tax Appeals & Alhambra Industries, Inc., G.R. No. 117982, February 6, 1997, 267 SCRA 557, 564; CIR v. Telefunken Semiconductor Phils., Inc., et al., G.R. No. 103915, October 23, 1995, 249 SCRA 401, 407; CIR v. Burroughs Limited and CTA, G.R. No. L-66653, June 19, 1986, 142 SCRA 324, 328; ABS-CBN Broadcasting Corporation v. CTA and CIR, G.R. No. L-52306, October 12, 1981, 108 SCRA 142, 148.

[9] Section 104 (a) of the (old) Tax Code, now Section 110 (A).

[10] Sec. 100 (a) of the (old) Tax Code. Said provision specifically reads: "Sec. 100 Value-added tax on sales of goods - (a) Rate and base of tax. - There shall be levied, assessed and collected on every sale, barter or exchange of goods, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged, such tax to be paid by the seller or transferor x x x"; now Sec. 106 (A).

[11] Section 104 (a) of the (old) Tax Code, now Section 110 (A).

[12] Sec. 104 (b) of the (old) Tax Code. Said provision specifically reads:

(b) Excess Output or Input Tax. - x x x Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes subject to the provisions of Sec. 106; now Sec. 110 (B).

[13] May 10, 2000, CA Resolution; Rollo, p. 27.

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[14] CA Resolution, May 10, 2000; Rollo, p. 30.

[15] Rollo, pp. 30-33.

[16] CIR v. Court of Appeals, Court of Tax Appeals and Alhambra Industries, Inc., supra at p. 565.

[17] Ibid.

[18] Supra at pp. 151-152.

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