

**HYDRO RESOURCES CONTRACTORS CORPORATION, PETITIONER,
VS. THE COURT OF TAX APPEALS AND THE HON. DEPUTY MINISTER
OF FINANCE, ALFREDO PIO DE RODA, RESPONDENTS.**

G.R. No. 80276. December 21, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a special civil action of certiorari instituted by petitioner Hydro Resources Contractors Corporation against respondents Court of Tax Appeals and Deputy Minister of Finance which seeks to set aside the decisions of both public respondents holding petitioner liable for a 3% ad valorem duty in the amount of P281,591.00.

It appears that the National Irrigation Administration (referred to hereinafter as NIA for brevity) a government owned and controlled corporation, entered into an agreement, sometime in August 1978, with petitioner Hydro Resources Contractors Corporation (Hydro for short), for the construction of the Magat River Multipurpose Project in Isabela.

Under the aforesaid contract, designated as Contract No. MPI-C-1, petitioner was allowed to procure new construction equipment, spare parts and tools from abroad, the payment for which was advanced by NIA under a financing plan embodied in the contract, as follows:

- a) Procurement - Petitioner is required to submit to NIA for approval a list of new construction equipment, spare parts and tools which it intends to acquire from abroad. Petitioner shall procure these items as an agent of NIA as all invoices shall be in the name of said government agency. NIA undertakes to pay all import taxes, duties and all fees, impost and other charges that may be due on said importations.
- b) Ownership and delivery - The equipment and spare parts imported from abroad shall be owned by NIA and delivered to its construction site in Isabela.
- c) Repayment - Petitioner shall repay NIA the costs of the above procurement and the manner of repayment shall be through deductions from each monthly or periodic progress payment due to petitioner.
- d) Transfer of Ownership - Ownership shall be transferred to petitioner only upon complete payment of the costs abovementioned.

The equipment imported by NIA in 1978 and 1979 for Hydro's use are -

DESCRIPTION OF EQUIPMENT

NET BOOK VALUE

1 Tamrock Hyd. Jumbo Drill

Ser. #18153

P1,566,116.55

3 units Cat Drill Toyo TYPR 120

278,264.25

1 unit Tamrock Hyd. Drill

1,493,834.29

16 units Air Leg Drills Toyo

12,000.92

1 unit Toyo Reinforciong Bar

2,423.21

3 units Toyo TYCD 10 CY Cralwer

265,421.35

2 units Scheele K-60 Pump

624,772.80

2 units New Reed Gun Mdl. IAS

67,349.90

1 unit Prota Tunnel Profile

43,340.26

2 units Wild Theodolite Surveying

Equipment

28,545.93

1 unit Toyo Mud Sub Pump

201,108.01

2 units Aichi Skymaster Truck

mounted Boom

93,622.78

2 units Grindex Sub Type Pump

140,518.35

6 units K/Worth C500 Trick Mixer

1,690,054.60

1 unit Putamesitor

201,863.77

6 units Sullair Air Comp.

588,940.53

2 units Well Air Driven Grout

20,582.40

10 units Stancom VHF Radio Tran.

32,537.70

4 units Cummins

1,055,209.20

By the terms of the contract (quoted earlier) NIA undertakes payment of all the import duties and taxes incident to the importations deductible from the proceeds of the contract price. HYDRO shall repay NIA in full the value of the construction equipment out of the same proceeds before eventual transfer or taking ownership of subject construction equipment upon termination of the contract.

NIA reneged and failed in the compliance of its tax obligations. In the meantime, HYDRO had fully repaid the value of the construction equipment in the amount of P14,537,783.63 (US\$1,991,477.21) so much so that on December 6, 1982 and March 24, 1983, NIA executed deeds of sale covering the same and transferring the ownership thereof in favor of petitioner.

Upon the transfer of the ownership of the said equipment HYDRO was assessed by the Bureau of Customs the corresponding customs duty and compensating tax, respectively, as follows:

Customs Duty -

P1,214,010.00

Compensating Tax -

1,089,368.63

P2,303,378.63

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This amount was paid by HYDRO to the Bureau of Customs.

In addition, HYDRO was assessed additional 3% ad valorem duty in the amount of P281,591.00 prescribed in Executive Order 860. HYDRO also paid this amount but this time under protest.

The Collector of Customs acted favorably on petitioner's protest and ordered the refund of the amount paid for the

ad valorem duty in the form of tax credit, ruling that -

"The foregoing scheme entered into between NIA and HYDRO had generated a contract and it will be unfair to involve new proposal as in the imposition of 3% additional duty ad valorem which was not obtaining at the time of the agreement nor at the time of arrival and release of the shipment from the piers. For one thing, the scheme may be viewed in the same light as sales of commodities to be delivered at some future date, whose price or prices at the time of delivery may be way above or below the sale price or prices. For another thing, HYDRO may not be deprived of rights vested before the promulgation of Executive Order 860 prescribing 3% additional duty ad valorem." (p. 22, Rollo)

The Acting Commissioner of Customs affirmed the ruling of the Collector of Customs. In his 2nd Indorsement dated June 25, 1984, (p. 25, Rollo) Acting Commissioner Ramon Farolan stated -

"This Office shares the view of the Collector of Customs to the effect that the various equipment and parts in question which the National Irrigation Administration imported in 1978 and 1979 and subsequently sold to Hydro Resources Construction Corporation by virtue of a previous agreement, are subject to duties and taxes but not the additional 3% ad valorem duty under Executive Order No. 860 which took effect only on December 21, 1982. Moreover, the Deputy Minister of Finance, in his 1st Indorsement to the Central Bank dated March 26, 1983, which was then reproduced by the Central Bank Governor in a circular letter to all authorized agent banks, clarified that -

'Letters of Credit opened prior to the effectivity of P.D. 1853 and E.O. 860 are not subject to the provisions thereof even if they are amended after the effectivity thereof.'

(p. 15, Rollo)

These findings of the Collector of Customs as well as the Acting Customs Commissioner were reversed by the Deputy Minister of Finance.

Petitioner appealed to the Court of Tax Appeals but in its Decision dated May 22, 1987, the said court (with a dissenting opinion) affirmed the ruling of the Deputy Minister of Finance denying petitioner's claim for refund.

Hence, the present recourse, after petitioner's motion for reconsideration was denied.

In this petition, Hydro presents the following issues -

I

THE PUBLIC RESPONDENT CTA HAS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN REFUSING TO CONSIDER THE FACT THAT THE SALE OF THE NIA-FINANCED EQUIPMENT TOOK PLACE IN 1978.

II

THE PUBLIC RESPONDENT CTA HAS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN APPLYING EXECUTIVE ORDER NO. 860 RETROACTIVELY.

III

THE PUBLIC RESPONDENT CTA HAS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN FAILING TO CONSIDER THAT THE IMPOSITION OF THE 3% AD VALOREM TAX ON IMPORTATIONS MADE PRIOR TO ITS ISSUANCE IS VIOLATIVE OF THE CONSTITUTION.

IV

THE PUBLIC RESPONDENT CTA HAS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN IMPOSING THE AD VALOREM TAX SANS STATUTORY AND LEGAL BASIS.

The petition is meritorious.

Executive Order No. 860 which was the basis for the imposition of the 3% ad valorem duty upon the said importations, took effect on December 21, 1982. The importations were effected in 1978 and 1979 by NIA. Nonetheless, respondent Court of Tax Appeals denied petitioner's claim for refund because -

"When NIA transferred the equipment in question supposedly 'after its (HYDRO's) use for a number of years', it cannot be doubted that these equipment were sold and transferred presumably 'several years' after the equipments' importation in 1978 and 1979. It is obvious therefore that the sale or transfer of the ownership of the equipment to petitioner HYDRO were unquestionably made after the effectivity of PD 882 on January 20, 1976, undisputably said sale or transfer thereof was (sic) governed by Section 4 of PD 882 and was correctly applied by respondent. We take particular note of the fact that we cannot pinpoint with definiteness or exactitude from the evidence, when or what years after the years 1978 and 1979 importations were the equipment sold or transferred by NIA to petitioner HYDRO so that we can determine outright whether the sale or transfers are covered by the mandatory provision of Executive Order 860 effective on December 21, 1982 imposing 3% additional ad valorem duty on such importations. Such that if the sale or transfer of the ownership of the equipment were effected to petitioner HYDRO after December 21, 1982, the effective date of Executive Order No. 860, the 3% ad valorem duty is imposable as said Executive Order 860 was applied prospectively and rightly. If the sale or transfer of the ownership of the equipment to HYDRO were (sic) prior to the effectivity of Executive Order No. 860, then said Executive Order 860 is inapplicable, and petitioner is not liable to pay the 3% ad valorem duty of P281,591.00 and is entitled to the refund thereof.

As a rule and principle, it was incumbent upon petitioner-taxpayer HYDRO to have shown that the sale or transfer of said equipment to it were made before December 21, 1982, when the Executive Order No. 860 was effective in order that it shall not be subject to the imposition of 3% additional ad valorem duty. Failing thus, its claim for refund in the amount of P281,591.00 unquestionably fails." (pp. 37-38, Rollo)

The foregoing conclusion is erroneous. The subsequent executions of the Deeds of Sale of the equipment in question on December 6, 1982 and March 24, 1983 are not relevant and material in the consideration of the application of Executive Order No. 860 because said Deeds of Sale were mere formalities in the implementation of Contract No. MFI-C-1 executed on August 1978, which should be reckoned and construed as the actual date of sale. This must be so because the contract of purchase and sale of the NIA-financed/owned equipment to Hydro took place in 1978 when Contract No. MP1-C-1 was signed by NIA and HYDRO wherein the contracting parties provided for their financing, procurement, delivery, repayment, transfer of possession and ownership. The said scheme contemplated a Contract of Sale within the purview of Art. 1458 of the Civil Code which provides -

"Art. 1458. By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay thereafter a price certain in money or its equivalent.

"A contract of sale may be absolute or conditional." (p. 11, Rollo)

This view is shared by the Collector of Customs in his decision when he declared that there being a meeting of the minds between NIA and HYDRO upon the object of the contract of sale and upon the price, the contract of sale of the equipment between them was perfected in 1978. It is a perfected contract of sale subject to a suspensive condition, the full payment by HYDRO of the consideration for the subject of the contract is the operative act to compel NIA to effect the transfer of absolute ownership thereof to HYDRO. And under Art. 1187 of the Civil

Code, the effectivity of said contract reverts back to the constitution of the contract, in this case - August 1978.

"ART. 1187. The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation." (p. 12, Rollo)

It is a cardinal rule that laws shall have no retroactive effect, unless the contrary is provided. Art. 4, Civil Code) Except for a statement providing for its immediate execution, Executive Order No. 860 does not provide for its retroactivity. Moreover, the Deputy Minister of Finance in his 1st Indorsement to the Central Bank dated March 26, 1983 which was reproduced by the Central Bank Governor in a circular letter to all authorized agent banks, clarified that letters of credit opened prior to the effectivity of E.O. 860 are not subject to the provisions thereof. Consequently, the importations in question which arrived in 1977 and 1978 are not subject to the the 3% additional ad valorem duty, the same being imposed only on those whose letter of credit were opened after the promulgation of Executive Order 860. In this regard Judge Alex Reyes in his dissenting opinion correctly observed -

"Let it suffice that the procurement of the equipment, as earlier stated, was not on a tax exempt basis as the import liabilities thereon have been secured to be paid under the terms of the financial scheme in the contract. The formality of vesting of title over the equipment was not an unwarranted expectation but a matter of an implementation of a pre-existing agreement, hence, the imported articles can only be subject to the rates of import duties/taxes prevailing at the time of entry or withdrawal from customs custody (Sec. 205, TCC) in 1978 and 1979, thus foreclosing any retroactive application of the 1982 Executive Order.

"Taken in the above light, it would be unfair and incongruous to hold petitioner to an additional levy sans any statutory basis. The majority could have fumbled into a precipitate action in taking an adverse position on petitioner's right to a refund." (pp. 44-45, Rollo)

IN VIEW OF THE FOREGOING CONSIDERATIONS, the petition is GRANTED; the assailed Decisions of respondents Court of Tax Appeals and Deputy Minister of Finance are SET ASIDE and another one rendered ordering the refund of the amount of P281,591.00 representing 3% additional ad valorem duty to petitioner Hydro Resources Contractors Corporation in the form of tax credit.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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