Supreme Court E-Library

THIRD DIVISION

[G.R. No. 115712. February 25, 1999]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **COURT OF APPEALS, COURT OF TAX APPEALS and CARNATION PHILIPPINES, INC. (now merged with Nestle Phils. Inc.),** *respondent.*

SYNOPSIS

In 1982, Carnation Phils., Inc., filed its Corporation Annual Income Tax Return for taxable year ending September 30, 1981; and its Manufacturer's/Producer's Percentage Tax Return for the quarter ending September 30, 1981. On October 13, 1986, March 16, 1987 and May 18, 1987, Carnation, through its Senior Vice President Jaime O. Lardizabal, signed three separate waivers of the Statute of Limitations under the National Internal Revenue Code. The waivers were not signed by the BIR Commissioner or any of his agents. On August 5, 1987, Carnation received BIR's letter of demand asking said corporation to pay their deficiency income tax and deficiency sales tax on undeclared sales, all for the year 1981. The demand letter was accompanied by assessment notices. Carnation disputed the assessments and requested a reconsideration and reinvestigation thereof. The protests were denied. Carnation appealed to the Court of Tax Appeals which nullified the assessments for having been issued beyond the five-year prescriptive period provided by law. On appeal, the Court of Appeals affirmed the decision of the Court of Tax Appeals. Hence, the present petition. The issue to be resolved by the Court is whether or not the three (3) waivers signed by Carnation are valid and binding as to toll the running of the prescriptive period for assessment and not bar the Government from issuing subject deficiency tax assessments.

The Supreme Court affirmed the decision of the Court of Appeals. The Court ruled that the waivers in question reveal that they are in no wise unequivocal, and therefore necessitates for its binding effect the concurrence of the Commissioner of Internal Revenue. Neither implied consent can be presumed nor can it be contended that the waiver required under Section 319 of the Tax Code is one which is unilateral nor can it be

Supreme Court E-Library

said that concurrence to such an agreement is a mere formality because it is the very signatures of both the Commissioner of the Internal Revenue and the taxpayer which give birth to such a valid agreement.

SYLLABUS

TAXATION; NATIONAL INTERNAL REVENUE CODE; EXCEPTIONS AS TO PERIOD OF LIMITATION OF ASSESSMENT AND COLLECTION OF TAXES; NEITHER IMPLIED CONSENT CAN BE PRESUMED NOR CAN IT BE CONTENDED THAT THE WAIVER REQUIRED UNDER SEC. 319 OF THE TAX CODE IS ONE WHICH IS UNILATERAL NOR CAN IT BE SAID THAT CONCURRENCE TO SUCH AN AGREEMENT IS A MERE FORMALITY BECAUSE IT IS THE VERY SIGNATURES OF BOTH THE COMMISSIONER OF INTERNAL REVENUE AND THE TAXPAYER WHICH GIVE BIRTH TO SUCH VALID AGREEMENT.— The waivers in question reveal that they are in no wise unequivocal, and therefore necessitates for its binding effect the concurrence of the Commissioner of Internal Revenue. In fact, in his reply dated April 18, 1995, the Solicitor General, representing the Commissioner of Internal Revenue, admitted that subject waivers executed by Carnation were *"for and in consideration of the approval by the Commissioner of Internal Revenue of its request for reinvestigation and/or reconsideration of its internal revenue case involving tax assessments for the fiscal year ended September 30, 1981 which were all pending at the time."* On this basis neither implied consent can be presumed nor can it be contended that the waiver required under Sec. 319 of the Tax Code is one which is unilateral nor can it be said that concurrence to such an agreement is a mere formality because it is the very signatures of both the Commissioner of Internal Revenue and the taxpayer which give birth to such a valid agreement.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Carlos V. Jaurigue for private respondent

Supreme Court E-Library

DECISION

PURISIMA, *J*:

Before the Court is an appeal from the decision of the Court of Appeals[1] dated May 31, 1994, which affirmed *in toto* the decision of the Court of Tax Appeals[2] dated January 26, 1993, the dispositive portion of which reads:

"WHEREFORE, the Court, finds the assessments for allegedly deficient income and sales taxes for petitioner's fiscal year ending September 30, 1981 covered by Demand Letter NO. FAS-1B-81-87 and Assessment Notices Nos. FAS-1-81-87-005824, FAS-4-81-87-005825 and FAS-4-81-87-005826 (all dated July 29, 1987) in the total amount of P19,535,183.44 to be NULL AND VOID for having been issued beyond the five-year prescriptive period provided by law."[3]

The undisputed facts of the case as recited in the Decision (*Annex "A"*) of the Court of Appeals, are:[4]

"On January 15, 1982, Carnation Phils. Inc. (Carnation), filed its Corporation Annual Income Tax Return for taxable year ending September 30, 1981; and its Manufacturers/Producers Percentage Tax Return for the quarter ending September 30, 1981.[5]

"On October 13, 1986, March 16, 1987 and May 18, 1987, Carnation, through its Senior Vice President Jaime O. Lardizabal, signed three separate 'waivers of the Statute of Limitations Under the National Internal Revenue Code' wherein it:

---

[1] Twelfth Division; Lantin, Gutierrez (*ponente*), Carpio Morales, *JJ*, members.

[2] Penned by Manuel K. Gruba, *Associate Judge*; concurred in by Ernesto D. Acosta, *Presiding Judge* and Ramon O. De Veyra, *Associate Judge*.

[3] *Rollo*, p 46.

[4] *Ibid.*, pp. 31-33.

[5] The percentage tax return for the quarter ending in September 30, 1981 was filed on Nov. 20, 1981, *Rollo*, p. 37.

Supreme Court E-Library

'x x x waives the running of the prescriptive period provided for in Sections 318 and 319 and other related provisions of the National Internal Revenue Code and consents to the assessment and collection of the taxes which may be found due after reinvestigation and reconsideration at any time before or after the lapse of the period of limitations fixed by said Sections 318 and 319 and other relevant provisions of the National Internal Revenue Code, but not after (13 April 1987 for the earlier-executed waiver, or June 14, 1987 for the later waiver, or July 30, 1987 for the subsequent waiver, as the case may be). However, the taxpayer (petitioner herein) does not waive any prescription already accrued in its favor.'

"The waivers were not signed by the BIR Commissioner or any of his agents.

"On August 5, 1987, Carnation received BIR's letter of demand dated July 29, 1987 asking the said corporation to pay P1,442,586.56 as deficiency income tax, P14,152,683.85 as deficiency sales tax and P3,939,913.03 as deficiency sales tax on undeclared sales, all for the year 1981. This demand letter was accompanied by assessment Notices Nos. FAS-4-81-87-005824, FAS-4-81-87-005825 and FAS-4-81-87-005826.

"In a basic protest dated August 17, 1987, Carnation disputed the assessments and requested a reconsideration and reinvestigation thereof.

"On September 30, 1987, Carnation filed a supplemental protest.

"These protests were denied by the BIR Commissioner in a letter dated March 15, 1988.

"Whereupon, Carnation appealed to the CTA.

"On January 26, 1993, the CTA issued the questioned order, the dispositive portion of which reads:

'WHEREFORE, the Court finds the assessments for allegedly deficient income and sales taxes for petitioner's fiscal year ending September 30, 1981 covered by Demand Letter No. FAS-1B-81-87 and assessment Notices No. FAS-1-81-87-005824, FAS-4-81-87-005825, and FAS-4-81-87-005826 (all dated July 29, 1987) in the total amount of P19,535,183.44 to be NULL AND VOID for having been issued beyond the five-year prescriptive period provided by law.'

Supreme Court E-Library

The pivot of inquiry here is whether or not the three (*3*) waivers signed by the private respondent are valid and binding[6] as to toll the running of the prescriptive period for assessment and not bar the Government from issuing subject deficiency tax assessments.

Section 318 (*now Section 203*) of the National Internal Revenue Code, the law then applicable reads:

"SEC 318. *Period of Limitations upon assessment and collection.*– Except as provided in the succeeding section, internal revenue taxes shall be assessed within *five years* after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purpose of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: *Provided*, That this limitation shall not apply to cases already investigated prior to the approval of this Code."[7] (italics ours)

The decision of the Court of Appeals affirming what the Court of Tax Appeals decided, established that subject assessments of July 29, 1987 were issued outside the statutory prescriptive period. Carnation filed its annual income tax and percentage tax returns for the fiscal year ending September 30, 1981 on January 15, 1982[8] and November 20, 1981,[9]

---

[6] *Rollo*, p. 33.

[7] The National Internal Revenue Code of 1977. Italics ours.

[8] The National Internal Revenue Code of 1977,

> SEC 87. (b) *Time for filing the income tax return.*—The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three quarters of the taxable year. The final adjustment return shall be filed on or before the 15th day of April or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be.

[9] Revenue Regulation No. 6-81.

> SEC. 2. *Percentage Tax.*— In general, unless otherwise specifically provided in the Tax Code, every person conducting business on which a percentage tax is imposed under Chapter II Title V of the Tax Code must render a quarterly declaration on a cumulative basis of the amount of his sales, receipts or earnings or gross value of

Supreme Court E-Library

respectively. In accordance with the above-quoted provision of law, private respondent's 1981 income and sales taxes could have been validly assessed only until January 14, 1987 and November 19, 1986, respectively.[10] However, Carnation's income and sales taxes were assessed only on July 29, 1987, beyond the five-year prescriptive period.[11]

Petitioner BIR Commissioner contends that the waivers signed by Carnation were valid although not signed by the BIR Commissioner because (a) when the BIR agents/examiners extended the period to audit and investigate Carnation's tax

---

output actually removed from the factory or mill warehouse, compute and pay the tax due thereon.

(a) *Quarterly Percentage Tax Return.* —

For each of the first three quarters of the taxable year, the tax so computed shall be decreased by the amount of tax previously paid and by the sum of the tax credits allowed under this Title for the preceding and current quarters. The tax due shall be paid not later than *twenty (20) days* following the close of each of the first three quarters of the taxable year. (BIR Form No....)

(b) *Final Annual Percentage Tax Return.* –

On or before the *twentieth day* of the second month following the close of the taxable year, a final percentage tax return shall be filed under BIR Form No.... covering the entire taxable year. If the sum of the total quarterly percentage tax payments made for the first three quarters and the total tax credit allowable for the taxable year are not equal to the total tax due on the entire gross sales, receipts or earnings or gross value of the output for that taxable year, the taxpayer shall either:

(1) Pay the tax still due; or

(2) Credit to the extent allowable under this Title, the amount of excess tax credits shown in the final adjustment return against the quarterly percentage tax liabilities for the succeeding taxable quarters.

Sales on consignment shall be considered actually sold on the day of sale or sixty (60) days after the date consigned, whichever is earlier. (Italics supplied)

[10] *Ibid*, p. 42.

[11] *Rollo*, pp. 33-34.

Supreme Court E-Library

returns, the BIR gave its implied consent to such waivers; (b) the signature of the Commissioner is a mere formality and the lack of it does not vitiate the binding effect of the waivers; and (c) that a waiver is not a contract but a unilateral act of renouncing one's right to avail of the defense of prescription and remains binding in accordance with the terms and conditions set forth in the waiver.[12]

Petitioner's submission is inaccurate. The same tax code is clear on the matter, to wit:

"SEC. 319. *Exceptions as to period of limitation of assessment and collection of taxes.* — (a) x x x

"(b) Where before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Commissioner of Internal Revenue and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreement in writing made before the expiration of the period previously agreed upon."

The Court of Appeals itself also passed upon the validity of the waivers executed by Carnation, observing thus:

"We cannot go along with the petitioner's theory. Section 319 of the Tax code earlier quoted is clear and explicit that the waiver of the five-year prescriptive period must be in writing and signed by both the BIR Commissioner and the taxpayer.

"Here, the three waivers signed by Carnation do not bear the written consent of the BIR Commissioner as required by law.

"We agree with the CTA in holding "these '*waivers' to be invalid and without any binding effect* on petitioner (Carnation) for the reason that there was no consent by the respondent (Commissioner of Internal Revenue)."

"The ruling of the Supreme Court in *Collector of Internal Revenue vs. Solano,*[13] is in point, thus:

---

[12] *Rollo*, p. 24. Now Section 222.

[13] L-11475, July 31, 1958; cited in *Collector of Internal Revenue vs. Pineda,* 2 SCRA 401 and *Cordero vs. Gonda,* 18 SCRA 331.

Supreme Court E-Library

> "x x x The only agreement that could have suspended the running of the prescriptive period for the collection of the tax in question is, as correctly pointed out by the Court of Tax Appeals, a written agreement between Solano and the Collector, entered into before the expiration of the five-year prescriptive period, extending the limitation prescribed by law."

"For sure, no such written agreement concerning the said three waivers exists between the petitioner and private respondent Carnation."[14]

Verily, we discern no basis for overruling the aforesaid conclusions arrived at by the Court of Appeals. In fact, there is every reason to leave undisturbed the said conclusions, having in mind the precept that all doubts as to the correctness of such conclusions will be resolved in favor of the Court of Appeals.[15] Besides being a reiteration of the holding of the Court of Tax Appeals, such decision should be accorded respect. Thus, the Court held in *Philippine Refining Co. vs. Court of Appeals,*[16] that the Court of Tax Appeals is a highly specialized body specifically created for the purpose of reviewing tax cases. As a matter of principle, this Court will not set aside the conclusion reached by an agency such as the Court of Tax Appeals which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[17] This point becomes more evident in the case under consideration where the findings and conclusions of both the Court of Tax Appeals and the Court of Appeals appear untainted by any abuse of authority, much less grave abuse of discretion. Indeed, we find

---

[14] *Rollo*, pp. 34-35. Italics supplied.

[15] *Pilar Development Corporation vs. IAC, et. al.*, 146 SCRA 221.

[16] 256 SCRA 667.

[17] *Commissioner of Internal Revenue vs. Wander Philippines, Inc.*, 160 SCRA 579.

Supreme Court E-Library

the decision of the latter affirming that of the former free from any palpable error.[18]

What is more, the waivers in question reveal that they are in no wise unequivocal, and therefore necessitates for its binding effect the concurrence of the Commissioner of Internal Revenue. In fact, in his reply dated April 18, 1995, the Solicitor General, representing the Commissioner of Internal Revenue, admitted that subject waivers executed by Carnation were "*for and in consideration of the approval by the Commissioner of Internal Revenue of its request for reinvestigation and/or reconsideration of its internal revenue case involving tax assessments for the fiscal year ended September 30, 1981 which were all pending at the time.*" On this basis neither implied consent can be presumed nor can it be contended that the waiver required under Sec. 319 of the Tax Code is one which is unilateral nor can it be said that concurrence to such an agreement is a mere formality because it is the very signatures of both the Commissioner of Internal Revenue and the taxpayer which give birth to such a valid agreement.

WHEREFORE, the decision of the Court of Appeals is hereby *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Romero (Chairman), Panganiban, and *Gonzaga-Reyes, JJ.,* concur.

Vitug, J., on official business abroad.

---

[18] *Commissioner of Internal Revenue vs. Court of Appeals,* 271 SCRA 620.