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FIRST DIVISION

[G.R. No. 137377. December 18, 2001]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **MARUBENI CORPORATION,** *respondent.*

SYNOPSIS

Petitioner Commissioner of Internal Revenue assailed the decision of the CA and the Court of Tax Appeals (CTA), ruling that respondent's deficiency tax liabilities are deemed cancelled and extinguished upon the respondent's availment of tax amnesty under Executive Orders Nos. 41 and 64. Petitioner claimed the respondent is disqualified from availing of the amnesties because the latter falls under the exception in Sec 4 (b) of E.O. No. 41.

On appeal, the Supreme Court held for a taxpayer not to be disqualified under Sec. 4 (b) of E.O. No. 41, there must have been no income tax cases filed in court against him when E.O. No. 41 took effect on August 22, 1886. CTA Case No. 4109 questioning respondent's 1985 deficiency income and contractor's tax assessments was filed with the CTA on September 26, 1986. Insofar as respondent's deficiency income tax is concerned, respondent did not fall under the exception in Sec. 4 (b) of E.O. No. 41. However, insofar as the contractor's tax which is a tax on business covered by E.O. No. 64 is concerned, respondent already fell under the exception in Sec. 4 (b) of E.O. Nos. 41 and 64 and was disqualified from availing of the business tax amnesty granted therein.

SYLLABUS

1. TAXATION; AMNESTY COVERAGE UNDER E.O. NOS. 41 & 64; PERSONS ENTITLED THERETO; EXCEPTION; CASE AT BAR. — Petitioner's claim cannot be sustained. Section 4 (b) of E.O. No. 41 is very clear and unambiguous. It excepts from income tax amnesty those taxpayers "with income tax cases already filed in court as of the effectivity hereof." The point of reference is the date of *effectivity* of E.O. No. 41. The filing of income tax cases in court must have been made before and

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as of the date of effectivity of E.O. No. 41. Thus, for a taxpayer not to be disqualified under Section 4 (b) there must have been no income tax cases filed in court against him when E.O. No. 41 took effect. This is regardless of when the taxpayer filed for income tax amnesty, provided of course he files it on or before the deadline for filing. E.O. No. 41 took effect on August 22, 1986. CTA Case No. 4109 questioning the 1985 deficiency income, branch profit remittance and contractor's tax assessments was filed by respondent with the Court of Tax Appeals on September 26, 1986. When E.O. No. 41 became effective on August 22, 1986, CTA Case No. 4109 had not yet been filed in court. Respondent corporation did not fall under the said exception in Section 4 (b), hence, respondent was not disqualified from availing of the amnesty for income tax under E.O. No. 41. The same ruling also applies to the deficiency branch profit remittance tax assessment. A branch profit remittance tax is defined and imposed in Section 24 (b) (2) (ii), Title II, Chapter III of the National Internal Revenue Code. In the tax code, this tax falls under Title II on Income Tax. It is a tax on income. Respondent therefore did not fall under the exception in Section 4 (b) when it filed for amnesty of its deficiency branch profit remittance tax assessment.

2. ID.; ID.; STATUTE AMENDING A TAX LAW IS NOT GENERALLY GIVEN RETROACTIVE EFFECT; CASE AT BAR. — By virtue of Section 8 of E.O. No 64, the provisions of E.O. No. 41 not contrary to or inconsistent with the amendatory act were reenacted in E.O. No. 64. Thus, Section 4 of E.O. No. 41 on the exceptions to amnesty coverage also applied to E.O. No. 64. With respect to Section 4 (b) in particular, this provision excepts from tax amnesty coverage a taxpayer who has "*income* tax cases already filed in court as of the effectivity *hereof*." As to what Executive Order the exception refers to, respondent argues that because of the words "income" and "hereof," they refer to Executive Order No. 41. In view of the amendment introduced by E.O. No. 64, Section 4 (b) cannot be construed to refer to E.O. No. 41 and its date of effectivity. The general rule is that an amendatory act operates prospectively. While an amendment is generally construed as becoming a part of the original act as if it had always been contained therein, it may not be given a retroactive effect unless it is so provided expressly or by necessary implication and no vested right or obligations of contract are thereby impaired. There is nothing

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in E.O. No. 64 that provides that it should retroact to the date of effectivity of E.O. No. 41, the original issuance. Neither is it necessarily implied from E.O. No. 64 that it or any of its provisions should apply retroactively. Executive Order No. 64 is a substantive amendment of E.O. No. 41. It does not merely change provisions in E.O. No. 41. It *supplements* the original act by adding other taxes not covered in the first. It has been held that where a statute amending a tax law is silent as to whether it operates retroactively, the amendment will not be given a retroactive effect so as to subject to tax past transactions not subject to tax under the original act. In an amendatory act, every case of doubt must be resolved against its retroactive effect.

3. ID.; ID.; TERMS OF TAX AMNESTY MUST BE STRICTLY CONSTRUED AGAINST THE TAXPAYER; CASE AT BAR. — E.O. Nos. 41 and 64 are tax amnesty issuances. A tax amnesty is a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law. It partakes of an absolute forgiveness or waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored nor presumed in law. If granted, the terms of the amnesty, like that of a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority. For the right of taxation is inherent in government. The State cannot strip itself of the most essential power of taxation by doubtful words. He who claims an exemption (or an amnesty) from the common burden must justify his claim by the clearest grant of organic or state law. It cannot be allowed to exist upon a vague implication. If a doubt arises as to the intent of the legislature, that doubt must be resolved in favor of the state. In the instant case, the vagueness in Section 4 (b) brought about by E.O. No. 64 should therefore be construed strictly against the taxpayer. The term "income tax cases" should be read as to refer to estate and donor's taxes and taxes on business while the word "hereof," to E.O. No. 64. Since Executive Order No. 64 took effect on November 17, 1986, consequently, insofar as the taxes in E.O. No. 64 are concerned, the date of effectivity referred to in Section 4 (b) of E.O. No. 41 should be November 17, 1986. Respondent filed CTA Case No. 4109 on September 26, 1986. When E.O.

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No. 64 took effect on November 17, 1986, CTA Case No. 4109 was already filed and pending in court. By the time respondent filed its supplementary tax amnesty return on December 15, 1986, respondent already fell under the exception in Section 4 (b) of E.O. Nos. 41 and 64 and was disqualified from availing of the business tax amnesty granted therein.

APPEARANCES OF COUNSEL

Litigation & Prosecution Division for petitioner.
Sycip Salazar Hernandez & Gatmaitan for Marubeni Corp.

D E C I S I O N

PUNO, *J.*:

In this petition for review, the Commissioner of Internal Revenue assails the decision dated January 15, 1999 of the Court of Appeals in CA-G.R. SP No. 42518 which affirmed the decision dated July 29, 1996 of the Court of Tax Appeals in CTA Case No. 4109. The tax court ordered the Commissioner of Internal Revenue to desist from collecting the 1985 deficiency income, branch profit remittance and contractor's taxes from Marubeni Corporation after finding the latter to have properly availed of the tax amnesty under Executive Orders Nos. 41 and 64, as amended.

Respondent Marubeni Corporation is a foreign corporation organized and existing under the laws of Japan. It is engaged in general import and export trading, financing and the construction business. It is duly registered to engage in such business in the Philippines and maintains a branch office in Manila.

Sometime in November 1985, petitioner Commissioner of Internal Revenue issued a letter of authority to examine the books of accounts of the Manila branch office of respondent corporation for the fiscal year ending March 1985. In the course of the examination, petitioner found respondent to have undeclared income from two (2) contracts in the Philippines, both of which were completed in 1984. One of the contracts was with the National Development Company (NDC) in connection with the

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construction and installation of a wharf/port complex at the Leyte Industrial Development Estate in the municipality of Isabel, province of Leyte. The other contract was with the Philippine Phosphate Fertilizer Corporation (Philphos) for the construction of an ammonia storage complex also at the Leyte Industrial Development Estate.

On March 1, 1986, petitioner's revenue examiners recommended an assessment for deficiency income, branch profit remittance, contractor's and commercial broker's taxes. Respondent questioned this assessment in a letter dated June 5, 1986.

On August 27, 1986, respondent corporation received a letter dated August 15, 1986 from petitioner assessing respondent several deficiency taxes. The assessed deficiency internal revenue taxes, inclusive of surcharge and interest, were as follows:

I. DEFICIENCY INCOME TAX
FY ended March 31, 1985

Undeclared gross income (Philphos and and NDC construction projects)	₱ 967,269,811.14
Less: Cost and expenses (50%)	483,634,905.57
Net undeclared income	483,634,905.57
Income tax due thereon	169,272,217.00
Add: 50% surcharge	84,636,108.50
20% int. p.a. fr. 7-15-85 to to 8-15-86	36,675,646.90
TOTAL AMOUNT DUE	₱ 290,583,972.40

II. DEFICIENCY BRANCH PROFIT REMITTANCE TAX
FY ended March 31, 1985

Undeclared net income from Philphos and NDC construction projects	₱ 483,634,905.57
Less: Income tax thereon	169,272,217.00
Amount subject to Tax	314,362,688.57
Tax due thereon	47,154,403.00
Add: 50% surcharge	23,577,201.50
20% int. p.a. fr. 4-26-85 to 8-15-86	12,305,360.66
TOTAL AMOUNT DUE	₱ 83,036,965.16

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III. DEFICIENCY CONTRACTOR'S TAX
FY ended March 31, 1985

Undeclared gross receipts/ gross income from Philphos and NDC construction projects	₱ 967,269,811.14
Contractor's tax due thereon (4%)	38,690,792.00
Add: 50% surcharge for non-declaration	19,345,396.00
25% surcharge for late payment	9,672,698.00
Sub-total	67,708,886.00
Add: 20% int. p.a. fr. 4-21-85 to to 8-15-86	17,854,739.46
TOTAL AMOUNT DUE	₱ 85,563,625.46

IV. DEFICIENCY COMMERCIAL BROKER'S TAX
FY ended March 31, 1985

Undeclared share from commission income (denominated as "subsidy from Home Office")	₱ 24,683,114.50
Tax due thereon	1,628,569.00
Add: 50% surcharge for non-declaration	814,284.50
25% surcharge for late payment	407,142.25
Sub-total	2,849,995.75
Add: 20% int. p.a. fr. 4-21-85 to 8-15-86	751,539.98
TOTAL AMOUNT DUE	₱ 3,600,535.68

The 50% surcharge was imposed for your client's failure to report for tax purposes the aforesaid taxable revenues while the 25% surcharge was imposed because of your client's failure to pay on time the above deficiency percentage taxes.

xxx xxx xxx."[1]

Petitioner found that the NDC and Philphos contracts were made on a "turn-key" basis and that the gross income from the two projects amounted to ₱967,269,811.14. Each contract was for a piece of work and since the projects called for the

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[1] Assessment Letter of the Commissioner of Internal Revenue, *Rollo*, pp. 73-74; also marked as Exhibit "C" Pet and Exhibit "2" Resp, Folder No. 11, BIR Records, pp. 2072-2076.

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construction and installation of facilities in the Philippines, the entire income therefrom constituted income from Philippine sources, hence, subject to internal revenue taxes. The assessment letter further stated that the same was petitioner's final decision and that if respondent disagreed with it, respondent may file an appeal with the Court of Tax Appeals within thirty (30) days from receipt of the assessment.

On September 26, 1986, respondent filed two (2) petitions for review with the Court of Tax Appeals. The first petition, CTA Case No. 4109, questioned the deficiency income, branch profit remittance and contractor's tax assessments in petitioner's assessment letter. The second, CTA Case No. 4110, questioned the deficiency commercial broker's assessment in the same letter.

Earlier, on August 2, 1986, Executive Order (E.O.) No. 41[2] declaring a one-time amnesty covering unpaid income taxes for the years 1981 to 1985 was issued. Under this E.O., a taxpayer who wished to avail of the income tax amnesty should, on or before October 31, 1986: (a) file a sworn statement declaring his net worth as of December 31, 1985; (b) file a certified true copy of his statement declaring his net worth as of December 31, 1980 on record with the Bureau of Internal Revenue (BIR), or if no such record exists, file a statement of said net worth subject to verification by the BIR; and (c) file a return and pay a tax equivalent to ten per cent (10%) of the increase in net worth from December 31, 1980 to December 31, 1985.

In accordance with the terms of E.O. No. 41, respondent filed its tax amnesty return dated October 30, 1986 and attached thereto its sworn statement of assets and liabilities and net worth as of Fiscal Year (FY) 1981 and FY 1986. The return was received by the BIR on November 3, 1986 and respondent paid the amount of ₱2,891,273.00 equivalent to ten percent (10%) of its net worth increase between 1981 and 1986.

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[2] Entitled "Declaring a One-Time Tax Amnesty Covering Unpaid Income Taxes for the Years 1981 to 1985."

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The period of the amnesty in E.O. No. 41 was later extended from October 31, 1986 to December 5, 1986 by E.O. No. 54 dated November 4, 1986.

On November 17, 1986, the scope and coverage of E.O. No. 41 was expanded by Executive Order (E.O.) No. 64. In addition to the income tax amnesty granted by E.O. No. 41 for the years 1981 to 1985, E.O. No. 64[3] included estate and donor's taxes under Title III and the tax on business under Chapter II, Title V of the National Internal Revenue Code, also covering the years 1981 to 1985. E.O. No. 64 further provided that the immunities and privileges under E.O. No. 41 were extended to the foregoing tax liabilities, and the period within which the taxpayer could avail of the amnesty was extended to December 15, 1986. Those taxpayers who already filed their amnesty return under E.O. No. 41, as amended, could avail themselves of the benefits, immunities and privileges under the new E.O. by filing an amended return and paying an additional 5% on the increase in net worth to cover business, estate and donor's tax liabilities.

The period of amnesty under E.O. No. 64 was extended to January 31, 1987 by E.O No. 95 dated December 17, 1986.

On December 15, 1986, respondent filed a supplemental tax amnesty return under the benefit of E.O. No. 64 and paid a further amount of ₱1,445,637.00 to the BIR equivalent to five percent (5%) of the increase of its net worth between 1981 and 1986.

On July 29, 1996, almost ten (10) years after filing of the case, the Court of Tax Appeals rendered a decision in CTA Case No. 4109. The tax court found that respondent had properly availed of the tax amnesty under E.O. Nos. 41 and 64 and declared the deficiency taxes subject of said case as deemed cancelled and withdrawn. The Court of Tax Appeals disposed of as follows:

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[3] Entitled " Declaring a One-Time Tax Amnesty Covering Income Taxes, Estate and Donor's Taxes Under Title III, And The Tax on Business Under Chapter II, Title V, of the National Internal Revenue Code, As Amended, For the Years 1981- 1985."

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"WHEREFORE, the respondent Commissioner of Internal Revenue is hereby ORDERED to DESIST from collecting the 1985 deficiency taxes it had assessed against petitioner and the same are deemed considered [*sic*] CANCELLED and WITHDRAWN by reason of the proper availment by petitioner of the amnesty under Executive Order No. 41, as amended."[4]

Petitioner challenged the decision of the tax court by filing CA-G.R. SP No. 42518 with the Court of Appeals.

On January 15, 1999, the Court of Appeals dismissed the petition and affirmed the decision of the Court of Tax Appeals. Hence, this recourse.

Before us, petitioner raises the following issues:

"(1) Whether or not the Court of Appeals erred in affirming the Decision of the Court of Tax Appeals which ruled that herein respondent's deficiency tax liabilities were extinguished upon respondent's availment of tax amnesty under Executive Orders Nos. 41 and 64.

(2) Whether or not respondent is liable to pay the income, branch profit remittance, and contractor's taxes assessed by petitioner."[5]

The main controversy in this case lies in the interpretation of the exception to the amnesty coverage of E.O. Nos. 41 and 64. There are three (3) types of taxes involved herein — income tax, branch profit remittance tax and contractor's tax. These taxes are covered by the amnesties granted by E.O. Nos. 41 and 64. Petitioner claims, however, that respondent is disqualified from availing of the said amnesties because the latter falls under the exception in Section 4 (b) of E.O. No. 41.

Section 4 of E.O. No. 41 enumerates which taxpayers cannot avail of the amnesty granted thereunder, *viz*:

"*Sec. 4. Exceptions.*—The following taxpayers may not avail themselves of the amnesty herein granted:

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[4] CTA Decision, Annex "B" to Petition, *Rollo*, p. 45.

[5] Petition, p. 6; *Rollo*, p. 15.

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a) Those falling under the provisions of Executive Order Nos. 1, 2 and 14;

b) Those with income tax cases already filed in Court as of the effectivity hereof;

c) Those with criminal cases involving violations of the income tax law already filed in court as of the effectivity hereof;

d) Those that have withholding tax liabilities under the National Internal Revenue Code, as amended, insofar as the said liabilities are concerned;

e) Those with tax cases pending investigation by the Bureau of Internal Revenue as of the effectivity hereof as a result of information furnished under Section 316 of the National Internal Revenue Code, as amended;

f) Those with pending cases involving unexplained or unlawfully acquired wealth before the Sandiganbayan;

g) Those liable under Title Seven, Chapter Three (Frauds, Illegal Exactions and Transactions) and Chapter Four (Malversation of Public Funds and Property) of the Revised Penal Code, as amended."

Petitioner argues that at the time respondent filed for income tax amnesty on October 30, 1986, CTA Case No. 4109 had already been filed and was pending before the Court of Tax Appeals. Respondent therefore fell under the exception in Section 4 (b) of E.O. No. 41.

Petitioner's claim cannot be sustained. Section 4 (b) of E.O. No. 41 is very clear and unambiguous. It excepts from income tax amnesty those taxpayers "with income tax cases already filed in court as of the effectivity hereof." The point of reference is the date of *effectivity* of E.O. No. 41. The filing of income tax cases in court must have been made before and as of the date of effectivity of E.O. No. 41. Thus, for a taxpayer not to be disqualified under Section 4 (b) there must have been no income tax cases filed in court against him when E.O. No. 41 took effect. This is regardless of when the taxpayer filed for income tax amnesty, provided of course he files it on or before the deadline for filing.

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E.O. No. 41 took effect on August 22, 1986. CTA Case No. 4109 questioning the 1985 deficiency income, branch profit remittance and contractor's tax assessments was filed by respondent with the Court of Tax Appeals on September 26, 1986. When E.O. No. 41 became effective on August 22, 1986, CTA Case No. 4109 had not yet been filed in court. Respondent corporation did not fall under the said exception in Section 4 (b), hence, respondent was not disqualified from availing of the amnesty for income tax under E.O. No. 41.

The same ruling also applies to the deficiency branch profit remittance tax assessment. A branch profit remittance tax is defined and imposed in Section 24 (b) (2) (ii), Title II, Chapter III of the National Internal Revenue Code.[6] In the tax code, this tax falls under Title II on Income Tax. It is a tax on income. Respondent therefore did not fall under the exception in Section 4 (b) when it filed for amnesty of its deficiency branch profit remittance tax assessment.

The difficulty herein is with respect to the contractor's tax assessment and respondent's availment of the amnesty under E.O. No. 64. E.O. No. 64 expanded the coverage of E.O. No. 41 by including estate and donor's taxes and tax on business. Estate and donor's taxes fall under Title III of the Tax Code while business taxes fall under Chapter II, Title V of the same. The contractor's tax is provided in Section 205, Chapter II, Title V of the Tax Code; it is defined and imposed under the title on business taxes, and is therefore a tax on business.[7]

When E.O. No. 64 took effect on November 17, 1986, it did not provide for exceptions to the coverage of the amnesty for business, estate and donor's taxes. Instead, Section 8 of E.O. No. 64 provided that:

"*Section 8.* The provisions of Executive Orders Nos. 41 and 54 which are not contrary to or inconsistent with this amendatory Executive Order shall remain in full force and effect."

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[6] 1984 and 1986 NIRC.

[7] Title V, 1984 and 1986 NIRC. Business taxes were replaced in 1988 by the Value-Added Tax under Executive Order No. 273.

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By virtue of Section 8 as afore-quoted, the provisions of E.O. No. 41 not contrary to or inconsistent with the amendatory act were reenacted in E.O. No. 64. Thus, Section 4 of E.O. No. 41 on the exceptions to amnesty coverage also applied to E.O. No. 64. With respect to Section 4 (b) in particular, this provision excepts from tax amnesty coverage a taxpayer who has "*income* tax cases already filed in court as of the effectivity *hereof*." As to what Executive Order the exception refers to, respondent argues that because of the words "income" and "hereof," they refer to Executive Order No. 41.[8]

In view of the amendment introduced by E.O. No. 64, Section 4 (b) cannot be construed to refer to E.O. No. 41 and its date of effectivity. The general rule is that an amendatory act operates prospectively.[9] While an amendment is generally construed as becoming a part of the original act as if it had always been contained therein,[10] it may not be given a retroactive effect unless it is so provided expressly or by necessary implication and no vested right or obligations of contract are thereby impaired.[11]

There is nothing in E.O. No. 64 that provides that it should retroact to the date of effectivity of E.O. No. 41, the original issuance. Neither is it necessarily implied from E.O. No. 64 that it or any of its provisions should apply retroactively. Executive Order No. 64 is a substantive amendment of E.O. No. 41. It does not merely change provisions in E.O. No. 41. It *supplements* the original act by adding other taxes not covered in the first.[12]

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[8] Comment, pp. 14-15; *Rollo*, pp. 99-100.

[9] Agpalo, *Statutory Construction*, p. 395 [1998]; Sutherland, *Statutory Construction*, vol. 1A (5th ed.) Sec. 22.36, p. 304 [1992-1994].

[10] *People v. Garcia*, 85 Phil. 651, 655 [1951]; Sutherland, *supra*, Sec. 22.35.

[11] *Buyco v. Philippine National Bank*, 112 Phil. 588, 592 [1961]; *Pacia v. Kapisanan ng mga Manggagawa sa MRR Co.*, 99 Phil. 45, 48 [1956]; Agpalo, *supra*, pp. 370, 395 [1998].

[12] A supplementary act is an amendatory act that supplies a deficiency, adds to, or completes or extends that which is already in existence without

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It has been held that where a statute amending a tax law is silent as to whether it operates retroactively, the amendment will not be given a retroactive effect so as to subject to tax past transactions not subject to tax under the original act.[13] In an amendatory act, every case of doubt must be resolved against its retroactive effect.[14]

Moreover, E.O. Nos. 41 and 64 are tax amnesty issuances. A tax amnesty is a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law.[15] It partakes of an absolute forgiveness or waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate.[16] A tax amnesty, much like a tax exemption, is never favored nor presumed in law.[17] If granted, the terms of the amnesty, like that of a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.[18] For the right of taxation is inherent in government. The State cannot strip itself of the most essential power of taxation by doubtful words. He who claims an exemption (or an amnesty) from the

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changing or modifying the original —Sutherland, *supra*, Secs. 22.24 and 22.01.

[13] *Collector of Internal Revenue v. La Tondena, Inc.*, 115 Phil. 841, 846-847 [1962].

[14] *Montilla v. Agustinian Corp.*, 24 Phil. 220, 222 [1913]; Agpalo, *supra*, at 370, 395.

[15] *Republic v. Intermediate Appellate Court*, 196 SCRA 335, 340 [1991] citing *Commissioner of Internal Revenue v. Botelho Corporation & Shipping Co., Inc.*, 20 SCRA 487 [1967].

[16] *Ibid.*

[17] *Commissioner of Internal Revenue v. Court of Appeals*, 301 SCRA 152, 171-172 [1999]; *People v. Castañeda*, 165 SCRA 327, 341 [1988].

[18] *People v. Castaneda*, *supra*, at 341; *E. Rodriguez Inc. v. Collector of Internal Revenue*, 28 SCRA 1119, 1127-1128 [1969]; *Commissioner of Internal Revenue v. A.D. Guerrero*, 21 SCRA 180, 183-185 [1967]; *Asiatic Petroleum v. Llanes*, 49 Phil. 466, 471 [1926].

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common burden must justify his claim by the clearest grant of organic or state law. It cannot be allowed to exist upon a vague implication. If a doubt arises as to the intent of the legislature, that doubt must be resolved in favor of the state.[19]

In the instant case, the vagueness in Section 4 (b) brought about by E.O. No. 64 should therefore be construed strictly against the taxpayer. The term "income tax cases" should be read as to refer to estate and donor's taxes and taxes on business while the word "hereof," to E.O. No. 64. Since Executive Order No. 64 took effect on November 17, 1986, consequently, insofar as the taxes in E.O. No. 64 are concerned, the date of effectivity referred to in Section 4 (b) of E.O. No. 41 should be November 17, 1986.

Respondent filed CTA Case No. 4109 on September 26, 1986. When E.O. No. 64 took effect on November 17, 1986, CTA Case No. 4109 was already filed and pending in court. By the time respondent filed its supplementary tax amnesty return on December 15, 1986, respondent already fell under the exception in Section 4 (b) of E.O. Nos. 41 and 64 and was disqualified from availing of the business tax amnesty granted therein.

It is respondent's other argument that assuming it did not validly avail of the amnesty under the two Executive Orders, it is still not liable for the deficiency contractor's tax because the income from the projects came from the "Offshore Portion" of the contracts. The two contracts were divided into two parts, *i.e.*, the Onshore Portion and the Offshore Portion. All materials and equipment in the contract under the "Offshore Portion" were manufactured and completed in Japan, not in the Philippines, and are therefore not subject to Philippine taxes.

Before going into respondent's arguments, it is necessary to discuss the background of the two contracts, examine their pertinent provisions and implementation.

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[19] *Asiatic Petroleum v. Llanes*, *supra*, at 471-472.

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The NDC and Philphos are two government corporations. In 1980, the NDC, as the corporate investment arm of the Philippine Government, established the Philphos to engage in the large-scale manufacture of phosphatic fertilizer for the local and foreign markets.[20] The Philphos plant complex which was envisioned to be the largest phosphatic fertilizer operation in Asia, and among the largest in the world, covered an area of 180 hectares within the 435-hectare Leyte Industrial Development Estate in the municipality of Isabel, province of Leyte.

In 1982, the NDC opened for public bidding a project to construct and install a modern, reliable, efficient and integrated wharf/port complex at the Leyte Industrial Development Estate. The wharf/ port complex was intended to be one of the major facilities for the industrial plants at the Leyte Industrial Development Estate. It was to be specifically adapted to the site for the handling of phosphate rock, bagged or bulk fertilizer products, liquid materials and other products of Philphos, the Philippine Associated Smelting and Refining Corporation (Pasar),[21] and other industrial plants within the Estate. The bidding was participated in by Marubeni Head Office in Japan.

Marubeni, Japan pre-qualified and on March 22, 1982, the NDC and respondent entered into an agreement entitled "Turn-Key Contract for Leyte Industrial Estate Port Development Project Between National Development Company and Marubeni Corporation."[22] The Port Development Project would consist of a wharf, berths, causeways, mechanical and liquids unloading and loading systems, fuel oil depot, utilities systems, storage

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[20] Exh. "AA", Project Background, Philippine Phosphatic Fertilizer Corporation, Folder No. 5, CTA Case No. 4109.

[21] Pasar is a copper smelter plant whose sulfuric acid by-product is used in manufacturing fertilizers— Exhibit "AA-1" Pet, Folder No. 5, CTA Case No. 4109.

[22] Exhibit "J" Pet, "Wharf/ Port Complex," Turn-Key Contract for Leyte Industrial Estate Port Project Between the National Development Company [*sic*] and Marubeni Corporation (hereinafter to be referred to as the "NDC Contract"), Folder No. 2, CTA Case No. 4109 and CTA Case No. 4110.

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and service buildings, offsite facilities, harbor service vessels, navigational aid system, fire-fighting system, area lighting, mobile equipment, spare parts and other related facilities.[23] The scope of the works under the contract covered turn-key supply, which included grants of licenses and the transfer of technology and know-how,[24] and:

"x x x the design and engineering, supply and delivery, construction, erection and installation, supervision, direction and control of testing and commissioning of the Wharf-Port Complex as set forth in Annex I of this Contract, as well as the coordination of tie-ins at boundaries and schedule of the use of a part or the whole of the Wharf/Port Complex through the Owner, with the design and construction of other facilities around the site. The scope of works shall also include any activity, work and supply necessary for, incidental to or appropriate under present international industrial port practice, for the timely and successful implementation of the object of this Contract, whether or not expressly referred to in the abovementioned Annex I."[25]

The contract price for the wharf/port complex was ¥12,790,389,000.00 and ₱44,327,940.00. In the contract, the price in Japanese currency was broken down into two portions: (1) the Japanese Yen Portion I; (2) the Japanese Yen Portion II, while the price in Philippine currency was referred to as the Philippine Pesos Portion. The Japanese Yen Portions I and II were financed in two (2) ways: (a) by yen credit loan provided by the Overseas Economic Cooperation Fund (OECF); and (b) by supplier's credit in favor of Marubeni from the Export-Import Bank of Japan. The OECF is a Fund under the Ministry of Finance of Japan extended by the Japanese government as assistance to foreign governments to promote economic development.[26] The OECF extended to the Philippine Government

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[23] Exhibit "J" Pet, NDC Contract, Article 1, *supra*.

[24] Exhibit "J" Pet, NDC Contract, Article 2.1, *supra*.

[25] "Scope of Work," Exhibit "J" Pet, NDC Contract, Article 2.2, *supra*.

[26] Exhibit "JJJ" Pet, Exchange of Notes dated June 9, 1981 by and between the Japanese and Philippine Governments, Folder No. 8, CTA Case No. 4109 and CTA Case No. 4110.

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a loan of ¥7,560,000,000.00 for the Leyte Industrial Estate Port Development Project and authorized the NDC to implement the same.[27] The other type of financing is an indirect type where the supplier, *i.e.*, Marubeni, obtained a loan from the Export-Import Bank of Japan to advance payment to its sub-contractors.[28]

Under the financing schemes, the Japanese Yen Portions I and II and the Philippine Pesos Portion were further broken down and subdivided according to the materials, equipment and services rendered on the project. The price breakdown and the corresponding materials, equipment and services were contained in a list attached as Annex III to the contract.[29]

A few months after execution of the NDC contract, Philphos opened for public bidding a project to construct and install two ammonia storage tanks in Isabel. Like the NDC contract, it was Marubeni Head Office in Japan that participated in and won the bidding. Thus, on May 2, 1982, Philphos and respondent corporation entered into an agreement entitled "Turn-Key Contract for Ammonia Storage Complex Between Philippine Phosphate Fertilizer Corporation and Marubeni Corporation."[30] The object of the contract was to establish and place in operating condition a modern, reliable, efficient and integrated ammonia storage complex adapted to the site for the receipt and storage of liquid anhydrous ammonia[31]and for the delivery of ammonia

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[27] Exhibit "JJJ-1" Pet, "Loan Agreement for the Leyte Industrial Estate Port Development Project," Folder No. 8, CTA Case No. 4109 and CTA Case No. 4110.

[28] Takeshi Hojo, TSN of March 23, 1990, pp. 17-20.

[29] Exhibit "J-2" Pet, Breakdown of Japanese Yen Portions I & II and Philippine Pesos Portion of Contract Price, Annex III to NDC Contract, Folder No. 2, CTA Case No. 4109 and CTA Case No. 4110.

[30] Exhibit "I" Pet, Folder No. 4, CTA Case No. 4109 and CTA Case No. 4110.

[31] Ammonia is one of the raw materials for fertilizer production — Hojo, TSN of March 21, 1990, pp. 20-21.

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to an integrated fertilizer plant adjacent to the storage complex and to vessels at the dock.[32] The storage complex was to consist of ammonia storage tanks, refrigeration system, ship unloading system, transfer pumps, ammonia heating system, fire-fighting system, area lighting, spare parts, and other related facilities.[33] The scope of the works required for the completion of the ammonia storage complex covered the supply, including grants of licenses and transfer of technology and know-how,[34] and:

"x x x the design and engineering, supply and delivery, construction, erection and installation, supervision, direction and control of testing and commissioning of the Ammonia Storage Complex as set forth in Annex I of this Contract, as well as the coordination of tie-ins at boundaries and schedule of the use of a part or the whole of the Ammonia Storage Complex through the Owner with the design and construction of other facilities at and around the Site. The scope of works shall also include any activity, work and supply necessary for, incidental to or appropriate under present international industrial practice, for the timely and successful implementation of the object of this Contract, whether or not expressly referred to in the abovementioned Annex I."[35]

The contract price for the project was ¥3,255,751,000.00 and ₱17,406,000.00. Like the NDC contract, the price was divided into three portions. The price in Japanese currency was broken down into the Japanese Yen Portion I and Japanese Yen Portion II while the price in Philippine currency was classified as the Philippine Pesos Portion. Both Japanese Yen Portions I and II were financed by supplier's credit from the Export-Import Bank of Japan. The price stated in the three portions

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[32] Exhibit "I" Pet, Article 2.1, Turn-key Contract for Ammonia Storage Complex Between Philippine Phosphate Fertilizer Corporation and Marubeni Corporation," (hereinafter referred to as Philphos Contract), *supra*.

[33] Exhibit "I" Pet, Article I, "Ammonia Storage Complex," Philphos Contract, *supra*.

[34] Exhibit "I" Pet, Article 2.1, Philphos Contract, *supra*.

[35] "Scope of Work," Exhibit "I" Pet," Article 2.2, Philphos Contract, *supra*.

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were further broken down into the corresponding materials, equipment and services required for the project and their individual prices. Like the NDC contract, the breakdown in the Philphos contract is contained in a list attached to the latter as Annex III.[36]

The division of the price into Japanese Yen Portions I and II and the Philippine Pesos Portion under the two contracts corresponds to the two parts into which the contracts were classified—the Foreign Offshore Portion and the Philippine Onshore Portion. In both contracts, the Japanese Yen Portion I corresponds to the Foreign Offshore Portion.[37] Japanese Yen Portion II and the Philippine Pesos Portion correspond to the Philippine Onshore Portion.[38]

Under the Philippine Onshore Portion, respondent does not deny its liability for the contractor's tax on the income from the two projects. In fact respondent claims, which petitioner has not denied, that the income it derived from the Onshore Portion of the two projects had been declared for tax purposes and the taxes thereon already paid to the Philippine government.[39] It is with regard to the gross receipts from the Foreign Offshore Portion of the two contracts that the liabilities involved in the assessments subject of this case arose. Petitioner argues that since the two agreements are turn-key,[40] they call for the supply of both materials and services to the client, they are contracts for a piece of work and are indivisible. The situs of the two

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[36] Exhibit "I-2 Pet," Breakdown of Japanese Yen Portions I & II and Philippine Pesos Portion of Contract Price, Annex III to Philphos Contract, Folder No. 4, CTA Case No. 4109 and CTA Case No. 4110.

[37] Hojo, TSN of March 22, 1990, pp. 6-7.

[38] *Id.*

[39] Footnote No. 2, Comment, p. 16; *Rollo*, p. 19.

[40] A "turn-key job" is defined as a job or contract in which the contractor agrees to complete the work of building and installation to the point of readiness for operation or occupancy — Webster's Third New International Dictionary of the English Language, Unabridged [1993].

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projects is in the Philippines, and the materials provided and services rendered were all done and completed within the territorial jurisdiction of the Philippines.[41] Accordingly, respondent's entire receipts from the contracts, including its receipts from the Offshore Portion, constitute income from Philippine sources. The total gross receipts covering both labor and materials should be subjected to contractor's tax in accordance with the ruling in *Commissioner of Internal Revenue v. Engineering Equipment & Supply Co.*[42]

A contractor's tax is imposed in the National Internal Revenue Code (NIRC) as follows:

"*Sec. 205. Contractors, proprietors or operators of dockyards, and others.*—A contractor's tax of four percent of the gross receipts is hereby imposed on proprietors or operators of the following business establishments and/or persons engaged in the business of selling or rendering the following services for a fee or compensation:

(a) General engineering, general building and specialty contractors, as defined in Republic Act No. 4566;

xxx xxx xxx

(q) Other independent contractors. The term "independent contractors" includes persons (juridical or natural) not enumerated above (but not including individuals subject to the occupation tax under the Local Tax Code) whose activity consists essentially of the sale of all kinds of services for a fee regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractors or their employees. It does not include regional or area headquarters established in the Philippines by multinational corporations, including their alien executives, and which headquarters do not earn or derive income from the Philippines and which act as supervisory, communications and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific Region.

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[41] Exhibit "4" Resp, Memorandum of Head Revenue Examiner to the Commissioner of Internal Revenue, BIR Records, Folder No. 11, CTA Case No. 4109 and CTA Case No. 4110; Exhibit "2" Resp, Letter Assessment of Commissioner Tan, *Rollo*, pp. 73-77.

[42] 64 SCRA 590 [1975].

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x x x x x x x x x."[43]

Under the afore-quoted provision, an independent contractor is a person whose activity consists essentially of the sale of all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractors or their employees. The word "contractor" refers to a person who, in the pursuit of independent business, undertakes to do a specific job or piece of work for other persons, using his own means and methods without submitting himself to control as to the petty details.[44]

A contractor's tax is a tax imposed upon the privilege of engaging in business.[45] It is generally in the nature of an excise tax on the exercise of a privilege of selling services or labor rather than a sale on products;[46] and is directly collectible from the person exercising the privilege.[47] Being an excise tax, it can be levied by the taxing authority only when the acts, privileges or business are done or performed within the jurisdiction of said authority.[48] Like property taxes, it cannot be imposed on an occupation or privilege outside the taxing district.[49]

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[43] 1984 NIRC; Sec. 170, 1986 NIRC. The contractor's tax was replaced in 1988 by the Value-Added Tax pursuant to Executive Order No. 273.

[44] *Commissioner of Internal Revenue v. Engineering Equipment & Supply Co.*, 64 SCRA 590, 597-598 [1975].

[45] Section 205 in relation to Section 188, 1984 NIRC; Aranas, *National Internal Revenue Code*, vol. 2, p. 134 [1983].

[46] *Commissioner of Internal Revenue v. Court of Tax Appeals and Avecilla Building Corp.*, 134 SCRA 49, 54 [1985]; *Celestino & Co. v. Collector*, 99 Phil. 841, 843 [1956]; E. Gonzales and C. Gonzales, *National Internal Revenue Code*, p. 527 [1984].

[47] Gonzales and Gonzales, *National Internal Revenue Code*, p. 456 [1986].

[48] *Iloilo Bottlers, Inc. v. City of Iloilo*, 164 SCRA 607, 615 [1988]; *Commissioner of Internal Revenue v. British Overseas Airways Corp.*, 149 SCRA 395, 410 [1987].

[49] *Gulf Refining Co. v. City of Knoxville*, 136 Tenn 23, 188 SW 798, 799 [1916]; *Robinson v. City of Norfolk*, 108 Va. 14, 60 SE 762, 763-764,

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In the case at bar, it is undisputed that respondent was an independent contractor under the terms of the two subject contracts. Respondent, however, argues that the work therein were not all performed in the Philippines because some of them were completed in Japan in accordance with the provisions of the contracts.

An examination of Annex III to the two contracts reveals that the materials and equipment to be made and the works and services to be performed by respondent are indeed classified into two. The first part, entitled "Breakdown of Japanese Yen Portion I" provides:

"Japanese Yen Portion I of the Contract Price has been *subdivided according to discrete portions of materials and equipment which will be shipped to Leyte as units and lots.* This subdivision of price is to be used by owner to verify invoice for Progress Payments under Article 19.2.1 of the Contract. The agreed subdivision of Japanese Yen Portion I is as follows:

x x x x x x x x x."[50]

The subdivision of Japanese Yen Portion I covers materials and equipment while Japanese Yen Portion II and the Philippine Pesos Portion enumerate other materials and equipment and the construction and installation work on the project. In other words, the supplies for the project are listed under Portion I while labor and other supplies are listed under Portion II and the Philippine Pesos Portion. Mr. Takeshi Hojo, then General Manager of the Industrial Plant Section II of the Industrial Plant Department of Marubeni Corporation in Japan who supervised the implementation of the two projects, testified that all the machines and equipment listed under Japanese Yen Portion

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15 LRA (N.S.) 294 [1908]— a license tax for revenue cannot be imposed by a city upon a circus exhibiting beyond its territorial limits; *see also* Cooley, *The Law of Taxation*, vol. 4, Secs. 1675, 1683; Cooley, vol. 1, Secs. 46, 94-95 [1924].

[50] Exhibit "J-2" Pet, Annex III to NDC Contract, *supra*; Exhibit "I-2" Pet, Annex III to Philphos Contract, *supra*.

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I in Annex III were manufactured in Japan.[51] The machines and equipment were designed, engineered and fabricated by Japanese firms sub-contracted by Marubeni from the list of sub-contractors in the technical appendices to each contract.[52] Marubeni sub-contracted a majority of the equipment and supplies to Kawasaki Steel Corporation which did the design, fabrication, engineering and manufacture thereof;[53] Yashima & Co. Ltd. which manufactured the mobile equipment; Bridgestone which provided the rubber fenders of the mobile equipment;[54] and B.S. Japan for the supply of radio equipment.[55] The engineering and design works made by Kawasaki Steel Corporation included the lay-out of the plant facility and calculation of the design in accordance with the specifications given by respondent.[56] All sub-contractors and manufacturers are Japanese corporations and are based in Japan and all engineering and design works were performed in that country.[57]

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[51] Hojo, TSN of March 22, 1990, pp. 11, 15.

[52] Exhibits "J-8-a" to "J-8-d" Pet,Vendor's List, Chapter 1.14, Leyte Industrial Estate Port Development Project, Technical Appendices to the Contract, pp. 1-127 to 1-131, Folder No. 2, CTA Case No. 4109; Exhibits "I-13-a" to "I-13-i" Pet, *Vendor's List for Main Items*, Chapter II, Technical Appendices for Leyte Fertilizer Project, Ammonia Storage Complex, pp. II-5.7-1 to II-5.7-9, Folder No. 1, CTA Case No. 4109.

[53] Hojo, TSN of March 22, 1990, p. 34; Kenjiro Yamakawa, TSN of Deposition Upon Oral Examination, January 31, 1992, p. 6; Exhibit "OO" Pet, Plant Supply Contract between Marubeni and Kawasaki Steel Corporation for NDC Project, Folder No. 6, CTA Case No. 4109; Exhibit "BBB-1" Pet, *Plant Supply Contract between Marubeni and Kawasaki Steel Corporation for Philphos Project*, Folder No. 7, CTA Case No. 4109. Both contracts allow Marubeni to procure materials and equipment from an approved list of sub-contractors without need of further approval from the owner — Article 8.4, Philphos contract; Article 8.4, NDC contract, *supra*.

[54] Hojo, TSN of March 22, 1990, p. 34.

[55] Exhibit "AAA-1" to "AAA-1-b" Pet, Folder No. 7, CTA Case No. 4109.

[56] Hojo, TSN of March 21, 1990, p. 32.

[57] Hojo, TSN of March 21, 1990, pp. 33-34.

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The materials and equipment under Portion I of the NDC Port Project is primarily composed of two (2) sets of ship unloader and loader; several boats and mobile equipment.[58] The ship unloader unloads bags or bulk products from the ship to the port while the ship loader loads products from the port to the ship. The unloader and loader are big steel structures on top of each is a large crane and a compartment for operation of the crane. Two sets of these equipment were completely manufactured in Japan according to the specifications of the project. After manufacture, they were rolled on to a barge and transported to Isabel, Leyte.[59] Upon reaching Isabel, the unloader and loader were rolled off the barge and pulled to the pier to the spot where they were installed.[60] Their installation simply consisted of bolting them onto the pier.[61]

Like the ship unloader and loader, the three tugboats and a line boat were completely manufactured in Japan. The boats sailed to Isabel on their own power. The mobile equipment, consisting of three to four sets of tractors, cranes and dozers, trailers and forklifts, were also manufactured and completed in Japan. They were loaded on to a shipping vessel and unloaded at the Isabel Port. These pieces of equipment were all on wheels and self-propelled. Once unloaded at the port, they were ready to be driven and perform what they were designed to do.[62]

In addition to the foregoing, there are other items listed in Japanese Yen Portion I in Annex III to the NDC contract.

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[58] Exhibit "J-2" Pet, Annex III to NDC Contract, pp. 356-363, *supra*.

[59] Exhibit "FF" Pet, Photograph of ship unloader and loader on a barge, Folder No. 5, CTA Case No. 4109.

[60] Hojo, TSN of March 22, 1990, pp. 11-12; Exhibit "FF-1" Pet, Photograph of roll off works for ship unloader, Folder No. 5, CTA Case No. 4109.

[61] Hojo, TSN of March 22, 1990, pp. 11-12; TSN of March 23, 1990, pp. 39-40.

[62] Hojo, TSN of March 23, 1990, pp. 38-39; Exhibits "II" and "JJ" Pet, Photographs of mobile equipment, Folder No. 5, *supra*.

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These other items consist of supplies and materials for five (5) berths, two (2) roads, a causeway, a warehouse, a transit shed, an administration building and a security building. Most of the materials consist of steel sheets, steel pipes, channels and beams and other steel structures, navigational and communication as well as electrical equipment. [63]

In connection with the Philphos contract, the major pieces of equipment supplied by respondent were the ammonia storage tanks and refrigeration units.[64] The steel plates for the tank were manufactured and cut in Japan according to drawings and specifications and then shipped to Isabel. Once there, respondent's employees put the steel plates together to form the storage tank. As to the refrigeration units, they were completed and assembled in Japan and thereafter shipped to Isabel. The units were simply installed there.[65] Annex III to the Philphos contract lists down under the Japanese Yen Portion I the materials for the ammonia storage tank, incidental equipment, piping facilities, electrical and instrumental apparatus, foundation material and spare parts.

All the materials and equipment transported to the Philippines were inspected and tested in Japan prior to shipment in accordance with the terms of the contracts.[66] The inspection was made by representatives of respondent corporation, of NDC and Philphos. NDC, in fact, contracted the services of a private consultancy firm to verify the correctness of the tests on the machines and equipment[67]while Philphos sent a representative to Japan to inspect the storage equipment.[68]

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[63] Annex III to NDC Contract, pp. 357-363, Exhibit "J-2" Pet, Folder No. 2, CTA Case No. 4109 and CTA Case No. 4110.

[64] Hojo, TSN of March 23, 1990, pp. 42-43.

[65] Hojo, TSN of March 23, 1990, pp. 42-43.

[66] Exhibit "J" Pet, Article 11, pp. 45-47, NDC Contract, *supra*; Exhibit "I" Pet, Article 11.5, pp. 43-44, Philphos Contract, *supra*.

[67] Exhibit "KK" Pet, NDC Board Resolution appointing Pacific Consultants, Int'l., Folder No. 3, CTA Case No. 4109.

[68] Exhibit "LL" Pet, letter of Philphos VP appointing a representative to inspect storage equipment, Folder No. 5, CTA Case No. 4109.

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The sub-contractors of the materials and equipment under Japanese Yen Portion I were all paid by respondent in Japan. In his deposition upon oral examination, Kenjiro Yamakawa, formerly the Assistant General Manager and Manager of the Steel Plant Marketing Department, Engineering & Construction Division, Kawasaki Steel Corporation, testified that the equipment and supplies for the two projects provided by Kawasaki under Japanese Yen Portion I were paid by Marubeni in Japan. Receipts for such payments were duly issued by Kawasaki in Japanese and English.[69] Yashima & Co. Ltd. and B.S. Japan were likewise paid by Marubeni in Japan.[70]

Between Marubeni and the two Philippine corporations, payments for all materials and equipment under Japanese Yen Portion I were made to Marubeni by NDC and Philphos also in Japan. The NDC, through the Philippine National Bank, established letters of credit in favor of respondent through the Bank of Tokyo. The letters of credit were financed by letters of commitment issued by the OECF with the Bank of Tokyo. The Bank of Tokyo, upon respondent's submission of pertinent documents, released the amount in the letters of credit in favor of respondent and credited the amount therein to respondent's account within the same bank.[71]

Clearly, the service of "design and engineering, supply and delivery, construction, erection and installation, supervision, direction and control of testing and commissioning, coordination..."[72]of the two projects involved two taxing

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[69] Exhibits "VV," "VV-1" to "VV-50-a" Pet, Folder No. 7, CTA Case No. 4109; Exhibits "CCC-1" to "CCC-27-a" Pet, Folder No. 6, CTA Case No. 4109.

[70] Hisatsugu Yoshida, TSN of September 20, 1991, pp. 15-33; Exhibits "VV" Pet, "ZZ", "ZZ-2-d," "AAA" Pet, Folder No. 6, CTA Case No. 4109.

[71] Yoshida, TSN of Deposition Upon Oral Interrogatories, January 27, 1993, pp. 11-12; Exhibits "JJJ-3" to "JJJ-17-c" Pet, Folder No. 10, CTA Case No. 4109.

[72] "Scope of Work," Exhibit "J" Pet, Article 2.1, NDC Contract; Exhibit "I" Pet, Article 2.1 Philphos Contract.

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jurisdictions. These acts occurred in two countries – Japan and the Philippines. While the construction and installation work were completed within the Philippines, the evidence is clear that some pieces of equipment and supplies were completely designed and engineered in Japan. The two sets of ship unloader and loader, the boats and mobile equipment for the NDC project and the ammonia storage tanks and refrigeration units were made and completed in Japan. They were already finished products when shipped to the Philippines. The other construction supplies listed under the Offshore Portion such as the steel sheets, pipes and structures, electrical and instrumental apparatus, these were not finished products when shipped to the Philippines. They, however, were likewise fabricated and manufactured by the sub-contractors in Japan. All services for the design, fabrication, engineering and manufacture of the materials and equipment under Japanese Yen Portion I were made and completed in Japan. These services were rendered outside the taxing jurisdiction of the Philippines and are therefore not subject to contractor's tax.

Contrary to petitioner's claim, the case of *Commissioner of Internal Revenue v. Engineering Equipment & Supply Co*[73] is not in point. In that case, the Court found that Engineering Equipment, although an independent contractor, was not engaged in the manufacture of air conditioning units in the Philippines. Engineering Equipment designed, supplied and installed centralized air-conditioning systems for clients who contracted its services. Engineering, however, did not manufacture all the materials for the air-conditioning system. It imported some items for the system it designed and installed.[74] The issues in that case dealt with services performed within the local taxing jurisdiction. There was no foreign element involved in the supply of materials and services.

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[73] 64 SCRA 590 [1975].

[74] Such as refrigeration compressors in complete set, heat exchangers or coils — *Id.*, at 598.

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With the foregoing discussion, it is unnecessary to discuss the other issues raised by the parties.

IN VIEW WHEREOF, the petition is denied. The decision in CA-G.R. SP No. 42518 is affirmed.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Kapunan, Pardo, and *Ynares-Santiago, JJ.,* concur.

FIRST DIVISION

[G. R. No. 139881. December 18, 2001]

ERNESTO L. JARDELEZA, JR., GLENDA L. JARDELEZA-UY, and GILDA LEDESMA-JARDELEZA, *petitioners, vs.* **THE HON. PRESIDING JUDGE, REGIONAL TRIAL COURT, 6TH JUDICIAL REGION, BRANCH 22, ILOILO CITY; and ROLANDO L. JARDELEZA,** *respondents.*

SYNOPSIS

The issue raised is whether petitioner could be required to surrender to the branch clerk of court the owner's duplicate certificate of title involved in a litigation to quiet title (Civil Case No. 23297) while the main case is still pending.

The Supreme Court held that the trial court gravely abused its discretion when it ordered the petitioner to surrender her owner's duplicate copy of title during the pendency of Civil Case No. 23297. Said civil case between the parties obviously involved the issue of ownership of Lot No. 33903-B. Possession of the owner's duplicate copy of the title is an attribute of ownership of the parcel of land involved. Until petitioner's title is nullified, she is entitled to have possession of the certificate of title.