Supreme Court E-Library

WARNING that a repetition of a similar act may warrant a more severe action by this Court.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Callejo, Sr., and *Tinga, JJ.,* concur.

THIRD DIVISION

[G.R. No. 140230. December 15, 2005]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF *STARE DECISIS*; A POINT OF LAW ALREADY ESTABLISHED WILL, GENERALLY, BE FOLLOWED BY THE SAME DETERMINING COURT AND BY ALL COURTS OF LOWER RANK IN SUBSEQUENT CASES WHERE THE SAME LEGAL ISSUE IS RAISED.— Under the doctrine of *stare decisis et non quieta movere,* a point of law already established will, generally, be followed by the same determining court and by all courts of lower rank in subsequent cases where the same legal issue is raised. xxx The Court has time and again stated that the rule on *stare decisis* promotes stability in the law and should, therefore, be accorded respect. However, blind adherence to precedents, simply as precedent, no longer rules. More important than anything else is that the court is right, thus its duty to abandon any doctrine found to be in violation of the law in force.

2. TAXATION; TAXES; DIRECT AND INDIRECT TAXES, DISTINGUISHED.— Based on the possibility of shifting the

Supreme Court E-Library

incidence of taxation, or as to who shall bear the burden of taxation, taxes may be classified into either direct tax or indirect tax. In context, direct taxes are those that are exacted from the very person who, it is intended or desired, should pay them; they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in. On the other hand, indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered. To put the situation in graphic terms, by tacking the VAT due to the selling price, the seller remains the person primarily and legally liable for the payment of the tax. What is shifted only to the intermediate buyer and ultimately to the final purchaser is the burden of the tax. Stated differently, a seller who is directly and legally liable for payment of an indirect tax, such as the VAT on goods or services, is not necessarily the person who ultimately bears the burden of the same tax. It is the final purchaser or end-user of such goods or services who, although not directly and legally liable for the payment thereof, ultimately bears the burden of the tax.

3. **ID.; ID.; INDIRECT TAXES; VALUE-ADDED TAX, ADVANCE SALES TAX AND COMPENSATING TAX ARE INDIRECT TAXES.**— The NIRC classifies VAT as "*an indirect tax ... the amount of [which] may be shifted or passed on to the buyer, transferee or lessee of the goods.*" xxx Advance sales tax has the attributes of an indirect tax because the tax-paying importer of goods for sale or of raw materials to be processed into merchandise can shift the tax or, to borrow from *Philippine Acetylene Co, Inc. vs. Commissioner of Internal Revenue,* lay the "economic burden of the tax," on the purchaser, by subsequently adding the tax to the selling price of the imported article or finished product. Compensating tax also partakes of the nature of an excise tax payable by all persons who import articles, whether in the course of business or not. The rationale for compensating tax is to place, for tax purposes, persons

Supreme Court E-Library

purchasing from merchants in the Philippines on a more or less equal basis with those who buy directly from foreign countries.

4. **ID.; ID.; ID.; THE LIABILITY FOR THE PAYMENT OF THE INDIRECT TAXES LIES ONLY WITH THE SELLER OF THE GOODS OR SERVICES, NOT IN THE BUYER THEREOF.**— It bears to stress that the liability for the payment of the indirect taxes lies only with the seller of the goods or services, not in the buyer thereof. Thus, one cannot invoke one's exemption privilege to avoid the passing on or the shifting of the VAT to him by the manufacturers/suppliers of the goods he purchased. Hence, it is important to determine if the tax exemption granted to a taxpayer specifically includes the indirect tax which is shifted to him as part of the purchase price, otherwise it is presumed that the tax exemption embraces only those taxes for which the buyer is directly liable.

5. **ID.; TAX EXEMPTIONS; STATUTES GRANTING TAX EXEMPTIONS MUST BE CONSTRUED STRICTLY AGAINST THE TAXPAYER AND LIBERALLY IN FAVOR OF THE TAXING AUTHORITY.**— Time and again, the Court has stated that taxation is the rule, exemption is the exception. Accordingly, statutes granting tax exemptions must be construed *in strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. To him, therefore, who claims a refund or exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. xxx It cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. When claimed, it must be strictly construed against the taxpayer who must prove that he falls under the exception. And, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all, and that, unless the privilege is limited to the very terms of the statute the favor would be extended beyond dispute in ordinary cases.

6. **POLITICAL LAW; CONSTITUTIONAL LAW; STATUTES; REPUBLIC ACT 7082; THE CLAUSE "*IN LIEU OF ALL TAXES,*" CONSTRUED; CASE AT BAR.**— [T]he clause *"in lieu of all taxes"* in Section 12 of RA 7082 is immediately followed by the limiting or qualifying clause "*on this franchise*

Supreme Court E-Library

or earnings thereof", suggesting that the exemption is limited to taxes imposed directly on PLDT since taxes pertaining to PLDT's franchise or earnings are its direct liability. Accordingly, indirect taxes, not being taxes on PLDT's franchise or earnings, are outside the purview of the "*in lieu*" provision. If we were to adhere to the appellate court's interpretation of the law that the "*in lieu of all taxes*" clause encompasses the totality of all taxes collectible under the Revenue Code, then, the immediately following limiting clause "*on this franchise and its earnings*" would be nothing more than a pure jargon bereft of effect and meaning whatsoever. Needless to stress, this kind of interpretation cannot be accorded a governing sway following the familiar legal maxim *redendo singula singulis* meaning, take the words distributively and apply the reference. Under this principle, each word or phrase must be given its proper connection in order to give it proper force and effect, rendering none of them useless or superfluous.

APPEARANCES OF COUNSEL

Osias B. Baldovino and *Pablo M. Bastes* for petitioner.
Meer Meer & Meer for respondent.

DECISION

GARCIA, *J.*:

In this petition for review on *certiorari*, the Commissioner of Internal Revenue (Commissioner) seeks the review and reversal of the September 17, 1999 Decision[1] of the Court of Appeals (CA) in *CA-G.R. No. SP 47895*, affirming, in effect, the February 18, 1998 decision[2] of the Court of Tax Appeals (CTA) in C.T.A. Case No. 5178, a claim for tax refund/credit

---

[1] Penned by Associate Justice Wenceslao I. Agnir, Jr. and concurred in by Associate Justices Ramon Mabutas, Jr. and Hilarion L. Aquino, (all ret.), of the former Twelfth Division.

[2] Penned by Associate Judge Ramon O. De Veyra and concurred in by the Associate Judge Ernesto D. Acosta, with Associate Judge Amancio Q. Saga, dissenting.

Supreme Court E-Library

instituted by respondent Philippine Long Distance Company (PLDT) against petitioner for taxes it paid to the Bureau of Internal Revenue (BIR) in connection with its importation in 1992 to 1994 of equipment, machineries and spare parts.

The facts:

PLDT is a grantee of a franchise under Republic Act (R.A.) No. 7082 to install, operate and maintain a telecommunications system throughout the Philippines.

For equipment, machineries and spare parts it imported for its business on different dates from October 1, 1992 to May 31, 1994, PLDT paid the BIR the amount of ₱164,510,953.00, broken down as follows: (a) compensating tax of ₱126,713,037.00; advance sales tax of ₱12,460,219.00 and other internal revenue taxes of ₱25,337,697.00. For similar importations made between March 1994 to May 31, 1994, PLDT paid ₱116,041,333.00 value-added tax (VAT).

On March 15, 1994, PLDT addressed a letter to the BIR seeking a confirmatory ruling on its tax exemption privilege under Section 12 of R.A. 7082, which reads:

> Sec. 12. The grantee ... shall be liable to pay the same taxes on their real estate, buildings, and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay. In addition thereto, the grantee, ... shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee, its successors or assigns, *and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof:* Provided, That the grantee ... shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Sec. 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto. (Italics supplied).

Responding, the BIR issued on April 19, 1994 Ruling No. UN-140-94,[3] pertinently reading, as follows:

---

[3] Records, pp. 46-49.

Supreme Court E-Library

PLDT shall be subject only to the following taxes, to wit:

x x x x x x x x x

7. The 3% franchise tax on gross receipts which shall be in lieu of all taxes on its franchise or earnings thereof.

x x x x x x x x x

The "in lieu of all taxes" provision under Section 12 of RA 7082 clearly exempts PLDT from all taxes including the 10% value-added tax (VAT) prescribed by Section 101 (a) of the same Code on its importations of equipment, machineries and spare parts necessary in the conduct of its business covered by the franchise, except the aforementioned enumerated taxes for which PLDT is expressly made liable.

x x x x x x x x x

In view thereof, this Office ... hereby holds that PLDT, is exempt from VAT on its importation of equipment, machineries and spare parts ... needed in its franchise operations.

Armed with the foregoing BIR ruling, PLDT filed on December 2, 1994 a claim[4] for tax credit/refund of the VAT, compensating taxes, advance sales taxes and other taxes it had been paying "*in connection with its importation of various equipment, machineries and spare parts needed for its operations*". With its claim not having been acted upon by the BIR, and obviously to forestall the running of the prescriptive period therefor, PLDT filed with the CTA a petition for review,[5] therein seeking a refund of, or the issuance of a tax credit certificate in, the amount of ₱280,552,286.00, representing compensating taxes, advance sales taxes, VAT and other internal revenue taxes alleged to have been erroneously paid on its importations from October 1992 to May 1994. The petition was docketed in said court as *CTA Case No. 5178*.

---

[4] *Ibid.*, pp. 50-52.

[5] *Ibid.*, pp. 41-45.

Supreme Court E-Library

On February 18, 1998, the CTA rendered a decision[6] granting PLDT's petition, pertinently saying:

> This Court has noted that petitioner has included in its claim receipts covering the period prior to December 16, 1992, thus, prescribed and barred from recovery. In conclusion, We find that the petitioner is entitled to the reduced amount of ₱223,265,276.00 after excluding from the final computation those taxes that were paid prior to December 16, 1992 as they fall outside the two-year prescriptive period for claiming for a refund as provided by law. The computation of the refundable amount is summarized as follows:

COMPENSATING TAX		
Total amount claimed		₱126,713.037.00
Less:		
a) Amount already prescribed: xxx		
Total	₱38,015,132.00	
b) Waived by petitioner		
(Exh. B-216)	₱ 1,440,874.00	₱ 39,456,006.00
Amount refundable		₱ 87,257,031.00
ADVANCE SALES TAX		
Total amount claimed		₱ 12,460.219.00
Less amount already prescribed:		₱ 5,043,828.00
Amount refundable		₱ 7,416,391.00
OTHER BIR TAXES		
Total amount claimed		₱ 25,337,697.00
Less amount already prescribed:		11,187,740.00
Amount refundable		₱ 14,149,957.00
VALUE ADDED TAX		
Total amount claimed		₱ 116,041,333.00

---

[6] *Rollo*, pp. 32-42.

Supreme Court E-Library

Less amount waived by petitioner (unaccounted receipts)	1,599,436.00
Amount refundable	₱ 114,441,897.00
TOTAL AMOUNT REFUNDABLE	₱ 223,265,276.00,

(Breakdown omitted)

and accordingly disposed, as follows:

WHEREFORE, in view of all the foregoing, this Court finds the instant petition meritorious and in accordance with law. Accordingly, respondent is hereby ordered to REFUND or to ISSUE in favor of petitioner a Tax Credit Certificate in the reduced amount of ₱223,265,276.00 representing erroneously paid value-added taxes, compensating taxes, advance sales taxes and other BIR taxes on its importation of equipments (sic), machineries and spare parts for the period covering the taxable years 1992 to 1994.

Noticeably, the CTA decision, penned by then Associate Justice Ramon O. de Veyra, with then CTA Presiding Judge Ernesto D. Acosta, concurring, is punctuated by a dissenting opinion[7] of Associate Judge Amancio Q. Saga who maintained that the phrase "*in lieu of all taxes*" found in Section 12 of R.A. No. 7082, *supra*, refers to exemption from "*direct taxes only*" and does not cover "*indirect taxes,*" such as VAT, compensating tax and advance sales tax.

In time, the BIR Commissioner moved for a reconsideration but the CTA, in its Resolution[8] of May 7, 1998, denied the motion, with Judge Amancio Q. Saga reiterating his dissent.[9]

Unable to accept the CTA decision, the BIR Commissioner elevated the matter to the Court of Appeals (CA) by way of petition for review, thereat docketed as ***CA-G.R. No. 47895***.

---

[7] *Rollo*, pp. 43-51.

[8] CA Records, pp. 34-40.

[9] CA Records, p. 40.

Supreme Court E-Library

As stated at the outset hereof, the appellate court, in the herein challenged Decision[10] dated September 17, 1999, dismissed the BIR's petition, thereby effectively affirming the CTA's judgment.

Relying on its ruling in an earlier case between the same parties and involving the same issue — *CA-G.R. SP No. 40811*, decided 16 February 1998 — the appellate court partly wrote in its assailed decision:

> This Court has already spoken on the issue of what taxes are referred to in the phrase "in lieu of all taxes" found in Section 12 of R.A. 7082. There are no reasons to deviate from the ruling and the same must be followed pursuant to the doctrine of *stare decisis*. xxx. "*Stare decisis et non quieta movere*. Stand by the decision and disturb not what is settled."

Hence, this recourse by the BIR Commissioner on the lone assigned error that:

> THE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT IS EXEMPT FROM THE PAYMENT OF VALUE-ADDED TAXES, COMPENSATING TAXES, ADVANCE SALES TAXES AND OTHER BIR TAXES ON ITS IMPORTATIONS, BY VIRTUE OF THE PROVISION IN ITS FRANCHISE THAT THE 3% FRANCHISE TAX ON ITS GROSS RECEIPTS SHALL BE IN LIEU OF ALL TAXES ON ITS FRANCHISE OR EARNINGS THEREOF.

There is no doubt that, insofar as the Court of Appeals is concerned, the issue petitioner presently raises had been resolved by that court in CA-G.R. SP No. 40811, entitled *Commissioner of Internal Revenue vs. Philippine Long Distance Company*. There, the Sixteenth Division of the appellate court declared that under the express provision of Section 12 of R.A. 7082, *supra, "the payment [by PLDT] of the 3% franchise tax of [its] gross receipts shall be in lieu of all taxes"* exempts PLDT from payment of compensating tax, advance sales tax, VAT and other internal revenue taxes on its importation of various

---

[10] *Rollo*, pp. 21-31.

Supreme Court E-Library

equipment, machinery and spare parts for the use of its telecommunications system.

Dissatisfied with the CA decision in that case, the BIR Commissioner initially filed with this Court a motion for time to file a petition for review, docketed in this Court as *G.R. No. 134386*. However, on the last day for the filing of the intended petition, the then BIR Commissioner had a change of heart and instead manifested[11] that he will no longer pursue G.R. No. 134386, there being no compelling grounds to disagree with the Court of Appeals' decision in CA-G.R. 40811. Consequently, on September 28, 1998, the Court issued a Resolution[12] in G.R. No. 134386 notifying the parties that "*no petition*" was filed in said case and that the CA judgment sought to be reviewed therein "*has now become final and executory.*" Pursuant to said Resolution, an Entry of Judgment[13] was issued by the Court of Appeals in CA-G.R. SP No. 40811. Hence, the CA's dismissal of CA-G.R. No. 47895 on the additional ground of *stare decisis*.

Under the doctrine of *stare decisis et non quieta movere,* a point of law already established will, generally, be followed by the same determining court and by all courts of lower rank in subsequent cases where the same legal issue is raised.[14] For reasons needing no belaboring, however, the Court is not at all concluded by the ruling of the Court of Appeals in its earlier CA-G.R. SP No. 47895.

The Court has time and again stated that the rule on *stare decisis* promotes stability in the law and should, therefore, be accorded respect. However, blind adherence to precedents, simply as precedent, no longer rules. More important than

---

[11] CA Records, pp. 110-111.

[12] *Rollo*, p. 245.

[13] *Rollo*, p. 246.

[14] *Ayala Corporation vs. Rosa-Diana Realty and Development Corp.*, 346 SCRA 663 [2000].

Supreme Court E-Library

anything else is that the court is right,[15] thus its duty to abandon any doctrine found to be in violation of the law in force.[16]

As it were, the former BIR Commissioner's decision not to pursue his petition in G.R. No. 134386 denied the BIR, at least as early as in that case, the opportunity to obtain from the Court an authoritative interpretation of Section 12 of R.A. 7082. All is, however, not lost. For, the government is not estopped by acts or errors of its agents, particularly on matters involving taxes. Corollarily, the erroneous application of tax laws by public officers does not preclude the subsequent correct application thereof.[17] Withal, the errors of certain administrative officers, if that be the case, should never be allowed to jeopardize the government's financial position.[18]

Hence, the need to address the main issue tendered herein.

According to the Court of Appeals, the "*in lieu of all taxes*" clause found in Section 12 of PLDT's franchise (R.A. 7082) covers all taxes, whether direct or indirect; and that said section states, in no uncertain terms, that PLDT's payment of the 3% franchise tax on all its gross receipts from businesses transacted by it under its franchise is in lieu of all taxes on the franchise or earnings thereof. In fine, the appellate court, agreeing with PLDT, posits the view that the word "*all*" encompasses any and all taxes collectible under the National Internal Revenue Code (NIRC), save those specifically mentioned in PLDT's franchise, such as income and real property taxes.

The BIR Commissioner excepts. He submits that the exempting "*in lieu of all taxes*" clause covers direct taxes only, adding that for indirect taxes to be included in the exemption, the intention to include must be specific and unmistakable. He thus faults the Court of Appeals for erroneously declaring PLDT

---

[15] *Urbano vs. Chavez*, 183 SCRA 347[1990].

[16] *Tan Chong vs. Secretary of Labor*, 79 Phil. 249 [1947].

[17] *Phil. Basketball Association vs. CA*, 337 SCRA 358 [2000].

[18] *Magsaysay Lines, Inc. vs. Court of Appeals*, 260 SCRA 513[1996].

Supreme Court E-Library

exempt from payment of VAT and other indirect taxes on its importations. To the Commissioner, PLDT's claimed entitlement to tax refund/credit is without basis inasmuch as the 3% franchise tax being imposed on PLDT is not a substitute for or in lieu of indirect taxes.

The sole issue at hand is whether or not PLDT, given the tax component of its franchise, is exempt from paying VAT, compensating taxes, advance sales taxes and internal revenue taxes on its importations.

Based on the possibility of shifting the incidence of taxation, or as to who shall bear the burden of taxation, taxes may be classified into either direct tax or indirect tax.

In context, direct taxes are those that are exacted from the very person who, it is intended or desired, should pay them;[19] they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in.[20]

On the other hand, indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else.[21] Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.

To put the situation in graphic terms, by tacking the VAT due to the selling price, the seller remains the person primarily and legally liable for the payment of the tax. What is shifted

---

[19] Aralar, *Agrarian Reform, Cooperatives & Taxation*, 2004 ed., p. 166.

[20] Dimaampao, *Tax Principles and Remedies*, 2005 ed., p. 120.

[21] *Commissioner of Internal Revenue vs. Tours Specialists, Inc.*, 183 SCRA 402 [1990].

Supreme Court E-Library

only to the intermediate buyer and ultimately to the final purchaser is the burden of the tax.[22] Stated differently, a seller who is directly and legally liable for payment of an indirect tax, such as the VAT on goods or services, is not necessarily the person who ultimately bears the burden of the same tax. It is the final purchaser or end-user of such goods or services who, although not directly and legally liable for the payment thereof, ultimately bears the burden of the tax.[23]

There can be no serious argument that PLDT, *vis-à-vis* its payment of internal revenue taxes on its importations in question, is effectively claiming exemption from taxes not falling under the category of direct taxes. The claim covers VAT, advance sales tax and compensating tax.

The NIRC classifies VAT as "*an indirect tax ... the amount of [which] may be shifted or passed on to the buyer, transferee or lessee of the goods.*"[24] As aptly pointed out by Judge Amancio Q. Saga in his dissent in C.T.A. Case No. 5178, the 10% VAT on importation of goods partakes of an excise tax levied on the privilege of importing articles. It is not a tax on the franchise of a business enterprise or on its earnings. It is imposed on all taxpayers who import goods (unless such importation falls under the category of an exempt transaction under Sec. 109 of the Revenue Code) whether or not the goods will eventually be sold, bartered, exchanged or utilized for personal consumption. The VAT on importation replaces the advance sales tax payable by regular importers who import articles for sale or as raw materials in the manufacture of finished articles for sale.[25]

Advance sales tax has the attributes of an indirect tax because the tax-paying importer of goods for sale or of raw materials

---

[22] Deoferio, Jr. and Mamalateo, *The Value Added Tax in the Philippines,* 2000 ed., pp. 35-36.

[23] Deoferio, Jr. and Mamalateo, *op. cit.*, p. 117.

[24] Section 105 of the Tax Code, as amended.

[25] Santiago, *National Internal Revenue Code Annotated,* 2000 ed., p. 234.

Supreme Court E-Library

to be processed into merchandise can shift the tax or, to borrow from *Philippine Acetylene Co, Inc. vs. Commissioner of Internal Revenue,*[26] lay the "economic burden of the tax," on the purchaser, by subsequently adding the tax to the selling price of the imported article or finished product.

Compensating tax also partakes of the nature of an excise tax payable by all persons who import articles, whether in the course of business or not.[27] The rationale for compensating tax is to place, for tax purposes, persons purchasing from merchants in the Philippines on a more or less equal basis with those who buy directly from foreign countries.[28]

It bears to stress that the liability for the payment of the indirect taxes lies only with the seller of the goods or services, not in the buyer thereof. Thus, one cannot invoke one's exemption privilege to avoid the passing on or the shifting of the VAT to him by the manufacturers/suppliers of the goods he purchased.[29] Hence, it is important to determine if the tax exemption granted to a taxpayer specifically includes the indirect tax which is shifted to him as part of the purchase price, otherwise it is presumed that the tax exemption embraces only those taxes for which the buyer is directly liable.[30]

Time and again, the Court has stated that taxation is the rule, exemption is the exception. Accordingly, statutes granting tax exemptions must be construed *in strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[31]

---

[26] 20 SCRA 1056 [1967].

[27] Sec. 169 of the 1986 NIRC.

[28] *Panay Electric Co. vs. Collector of Internal Revenue*, 97 Phil. 979 [1955].

[29] Epifanio G. Gonzales, *National Internal Revenue Code Annotated*, 2001 ed., citing BIR Ruling No. 91-151.

[30] Aban, *Law of Basic Taxation in the Philippines*, Revised Edition, pp. 25-26.

[31] *Commissioner of Internal Revenue vs. Visayan Electric Co.*, 23 SCRA 715 [1968].

Supreme Court E-Library

To him, therefore, who claims a refund or exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted.[32]

As may be noted, the clause *"in lieu of all taxes"* in Section 12 of RA 7082 is immediately followed by the limiting or qualifying clause *"on this franchise or earnings thereof,"* suggesting that the exemption is limited to taxes imposed directly on PLDT since taxes pertaining to PLDT's franchise or earnings are its direct liability. Accordingly, indirect taxes, not being taxes on PLDT's franchise or earnings, are outside the purview of the "*in lieu*" provision.

If we were to adhere to the appellate court's interpretation of the law that the "*in lieu of all taxes*" clause encompasses the totality of all taxes collectible under the Revenue Code, then, the immediately following limiting clause "*on this franchise and its earnings*" would be nothing more than a pure jargon bereft of effect and meaning whatsoever. Needless to stress, this kind of interpretation cannot be accorded a governing sway following the familiar legal maxim *redendo singula singulis* meaning, take the words distributively and apply the reference. Under this principle, each word or phrase must be given its proper connection in order to give it proper force and effect, rendering none of them useless or superfluous.[33]

Significantly, in *Manila Electric Company [Meralco] vs. Vera,*[34] the Court declared the relatively broader exempting clause "*shall be in lieu of all taxes and assessments of whatsoever nature ... upon the privileges earnings, income franchise ... of the grantee*" written in par. # 9 of Meralco's franchise as not so all encompassing as to embrace indirect tax, like compensating tax. There, the Court said:

It is a well-settled rule or principle in taxation that a compensating tax ... is an excise tax ... one that is imposed on the performance of

---

[32] *Province of Tarlac vs. Alcantara,* 216 SCRA 790 [1992], citing cases.

[33] Lee Jr., *Handbook of Legal Maxims,* pp. 190-191.

[34] 67 SCRA 351[1975].

Supreme Court E-Library

an act, the engaging in an occupation, or the enjoyment of a privilege. A tax levied upon property because of its ownership is a direct tax, whereas one levied upon property because of its use is an excise duty. ....

The compensating tax being imposed upon ... MERALCO, is an impost on its use of imported articles and is not in the nature of a direct tax on the articles themselves, the latter tax falling within the exemption. Thus, in *International Business Machine Corporation vs. Collector of Internal Revenue*, ... which involved the collection of a compensating tax from the plaintiff-petitioner on business machines imported by it, this Court stated in unequivocal terms that "it is not the act of importation that is taxed under Section 190 but the uses of imported goods not subjected to a sales tax" because the "compensating tax was expressly designated as a substitute to make up or compensate for the revenue lost to the government through the avoidance of sales taxes by means of direct purchases abroad.

x x x x x x x x x

xxx If it had been the legislative intent to exempt MERALCO from paying a tax on the use of imported equipments, the legislative body could have easily done so by expanding the provision of paragraph 9 and adding to the exemption such words as "compensating tax" or "purchases from abroad for use in its business," and the like.

It may be so that in *Maceda vs. Macaraig, Jr.*[35] the Court held that an exemption from "*all taxes*" granted to the National Power Corporation (NPC) under its charter[36] includes both direct and indirect taxes. But far from providing PLDT comfort, *Maceda* in fact supports the case of herein petitioner, the correct lesson of *Maceda* being that an exemption from "*all taxes*" excludes indirect taxes, unless the exempting statute, like NPC's charter, is so couched as to include indirect tax from the exemption. Wrote the Court:

xxx However, the amendment under Republic Act No. 6395 enumerated the details covered by the exemption. Subsequently,

---

[35] 197 SCRA 771 [1991].

[36] Com. Act No. 120, as successively amended by R.A. 358, R.A. 6395, P.D. No. 380, and P.D. 938.

Supreme Court E-Library

P.D. 380, made even more specific the details of the exemption of NPC to cover, among others, both direct and indirect taxes on all petroleum products used in its operation. Presidential Decree No. 938 [NPC's amended charter) amended the tax exemption by simplifying the same law in general terms. It succinctly exempts NPC from "all forms of taxes, duties fees ...."

The use of the phrase "all forms" of taxes demonstrate the intention of the law to give NPC all the tax exemptions it has been enjoying before. ....

x x x x x x x x x

It is evident from the provisions of P.D. No. 938 that its purpose is to maintain the tax exemption of NPC from *all forms* of taxes including indirect taxes as provided under R.A. No. 6395 and P.D. 380 if it is to attain its goals. (Italics in the original; words in bracket added)

Of similar import is what we said in *Borja vs. Collector of Internal Revenue.*[37] There, the Court upheld the decision of the CTA denying a claim for refund of the compensating taxes paid on the importation of materials and equipment by a grantee of a heat and power legislative franchise containing an "*in lieu*" provision, rationalizing as follows:

xxx Moreover, the petitioner's alleged exemption from the payment of compensating tax in the present case is not clear or expressed; unlike the exemption from the payment of income tax which was clear and expressed in the Carcar case. Unless it appears clearly and manifestly that an exemption is intended, the provision is to be construed strictly against the party claiming exemption. xxx.

Jurisprudence thus teaches that imparting the "*in lieu of all taxes*" clause a literal meaning, as did the Court of Appeals and the CTA before it, is fallacious. It is basic that in construing a statute, it is the duty of courts to seek the real intent of the legislature, even if, by so doing, they may limit the literal meaning of the broad language.[38]

---

[37] 3 SCRA 591 [1961].

[38] *Manila Electric Co. vs. Vera, supra.*

Supreme Court E-Library

It cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. When claimed, it must be strictly construed against the taxpayer who must prove that he falls under the exception. And, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all, and that, unless the privilege is limited to the very terms of the statute the favor would be extended beyond dispute in ordinary cases.[39]

All told, we fail to see how Section 12 of RA 7082 operates as granting PLDT blanket exemption from payment of indirect taxes, which, in the ultimate analysis, are not taxes on its franchise or earnings. PLDT has not shown its eligibility for the desired exemption. None should be granted.

As a final consideration, the Court takes particular stock, as the CTA earlier did, of PLDT's allegation that the Bureau of Customs assessed the company for advance sales tax and compensating tax for importations entered between October 1, 1992 and May 31, 1994 when the value-added tax system already replaced, if not totally eliminated, advance sales and compensating taxes.[40] Indeed, pursuant to Executive Order No. 273[41] which took effect on January 1, 1988, a multi-stage value-added tax was put into place to replace the tax on original and subsequent sales tax.[42] It stands to reason then, as urged by PLDT, that compensating tax and advance sales tax were no longer collectible internal revenue taxes under the NILRC when the Bureau of Customs made the assessments in question and collected the corresponding tax. Stated a bit

---

[39] Dimaampao, *Tax Principles and Remedies*, 2nd ed., pp. 108-109; citing 2 Cooley *Taxation,* 1403-1414.

[40] Santiago, *National Internal Revenue Code Annotated,* 2000 ed., p. 234.

[41] Adopting a Value-Added Tax, Amending For This Purpose Certain Provisions of the National Internal Revenue Code, and For Other Purposes.

[42] Preamble of EO 273.

Supreme Court E-Library

differently, PLDT was no longer under legal obligation to pay compensating tax and advance sales tax on its importation from 1992 to 1994.

Parenthetically, petitioner has not made an issue about PLDT's allegations concerning the abolition of the provisions of the Tax Code imposing the payment of compensating and advance sales tax on importations and the non-existence of these taxes during the period under review. On the contrary, petitioner admits that the VAT on importation of goods has "*replace[d] the compensating tax and advance sales tax under the old Tax Code.*[43]"

Given the above perspective, the amount PLDT paid in the concept of advance sales tax and compensating tax on the 1992 to 1994 importations were, in context, erroneous tax payments and would theoretically be refundable. It should be emphasized, however, that, such importations were, when made, already subject to VAT.

Factoring in the fact that a portion of the claim was barred by prescription, the CTA had determined that PLDT is entitled to a total refundable amount of ₱94,673,422.00 (₱87,257,031.00 of compensating tax + ₱7,416,391.00 = ₱94,673,422.00). Accordingly, it behooves the BIR to grant a refund of the advance sales tax and compensating tax in the total amount of ₱94,673,422.00, subject to the condition that PLDT present proof of payment of the corresponding VAT on said transactions.

WHEREFORE, the petition is partially *GRANTED*. The Decision of the Court of Appeals in CA-G.R. No. 47895 dated September 17, 1999 is *MODIFIED*. The Commissioner of Internal Revenue is *ORDERED* to issue a Tax Credit Certificate or to refund to PLDT only the amount of ₱94,673,422.00 advance sales tax and compensating tax erroneously collected by the Bureau of Customs from October 1, 1992 to May 31, 1994, less the VAT which may have been due on the importations in question, but have otherwise remained uncollected.

---

[43] Petition, p. 10; *Rollo*, p. 16.

Supreme Court E-Library

SO ORDERED.

Sandoval-Gutierrez, Corona, and *Carpio Morales, JJ.,* concur.

Panganiban (Chairman), J., took no part. Former counsel of a party.

THIRD DIVISION

[G.R. No. 141462. December 15, 2005]

DANZAS CORPORATION and ALL TRANSPORT NETWORK, INC., *petitioners, vs.* **HON. ZEUS C. ABROGAR, Presiding Judge of Br. 150 of Makati City, SEABOARD EASTERN INSURANCE CO., INC. and PHILIPPINE SKYLANDERS, INC.,** *respondents.*

SYLLABUS

1. CIVIL LAW; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; INSURER'S RIGHT OF SUBROGATION; EXTINGUISHED IN CASE THE ASSURED BY HIS OWN ACT RELEASES THE WRONGDOER OR THIRD PARTY LIABLE FOR THE LOSS OR DAMAGE FROM LIABILITY.— It is true that the doctrine in *Manila Mahogany Manufacturing Corporation v. Court of Appeals* remains the controlling doctrine on the issue of whether the tortfeasor, by settling with the insured, defeats the right to subrogation of the insurer. According to *Manila Mahogany:* "Since the insurer can be subrogated to only such rights as the insured may have, should the insured, after receiving payment from the insurer, release the wrongdoer who caused the loss, the insurer loses his rights against the latter. But in such a case, the insurer will be entitled to recover from the insured whatever it has paid to the latter, unless the release was made with the consent of the insurer." This is buttressed by a later decision, *Pan Malayan Insurance Corporation v. Court of Appeals*, in which we cited a number of exceptions to the rule laid down in Article 2207 of the Civil Code. Under the