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SECOND DIVISION

[G.R. No. 68252. May 26, 1995]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* TOKYO SHIPPING CO. LTD., represented by SORIAMONT STEAMSHIP AGENCIES, INC., and COURT OF TAX APPEALS, *respondents.*

SYLLABUS

1. **TAXATION; INCOME TAX; RESIDENT FOREIGN CORPORATION ENGAGED IN THE TRANSPORT OF CARGO; RULE AS TO TAX LIABILITY.** — There is no dispute about the applicable law. It is Section 24 (b) (2) of the National Internal Revenue Code which at that time provides as follows: "A corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be taxable as provided in subsection (a) of this section upon the total net income derived in the preceding taxable year from all sources within the Philippines: Provided, however, That international carriers shall pay a tax of two and one-half per cent (2 1/2%) on their gross Philippine billings: `Gross Philippine Billings' include gross revenue realized from uplifts anywhere in the world by any international carrier doing business in the Philippines of passage documents sold therein, whether for passenger, excess baggage or mail, provided the cargo or mail originates from the Philippines. The gross revenue realized from the said cargo or mail include the gross freight charge up to final destination. Gross revenue from chartered flights originating from the Philippine shall likewise form part of `Gross Philippine Billings' regardless of the place of payment of the passage documents. x x x." Pursuant to this provision, a resident foreign corporation engaged in the transport of cargo is liable for taxes

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depending on the amount of income it derives from sources within the Philippines. Thus, before such a tax liability can be enforced **the taxpayer must be shown to have earned income** source from the Philippines.

2. **ID.; TAX REFUND; RULE IN CLAIMING THEREOF.** — We agree with petitioner that a claim for refund is in the nature of a claim for exemption and should be construed in **strictissimi juris** against the taxpayer. Likewise, there can be no disagreement with petitioner's stance that private respondent has the burden of proof to establish the factual basis of its claim for tax refund.

3. **ID.; ID.; CLAIM THERETO SUFFICIENTLY ESTABLISHED IN CASE AT BAR.** — The pivotal issue involves a question of fact - whether or not the private respondent was able to prove that it derived no receipts from its charter agreement, and hence is entitled to a refund of the taxes it prepaid to the government. The respondent court held that sufficient evidence has been adduced by the private respondent proving that it derived no receipt from its charter agreement with NASUTRA. This finding of fact rests on a rational basis, and hence must be sustained. Exhibits "E", "F", and "G" positively show that the tramper vessel M/V "Gardenia" arrived in Iloilo on January 10, 1981 but found no raw sugar to load and returned to Japan without any cargo laden on board. Exhibit "E" is the Clearance Vessel to a Foreign Port issued by the District Collector of Customs, Port of Iloilo while Exhibit "F" is the Certification by the Officer-in-Charge, Export Division of the Bureau of Customs, Iloilo. The correctness of the contents of these documents regularly issued by officials of the Bureau of Customs cannot be doubted as indeed, they have not been contested by the petitioner. The records also reveal that in the course of the proceedings in the court *a quo*, petitioner hedged and hawed when its turn came to present evidence. At one point,

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its counsel manifested that the BIR examiner and the appellant division of the BIR have both recommended the approval of private respondent's claim for refund. The same counsel even represented that the government would withdraw its opposition to the petition after final approval of private respondents' claim. The case dragged on but petitioner never withdrew its opposition to the petition even if it did not present evidence at all. The insincerity of petitioner's stance drew the sharp rebuke of respondent court in its Decision and for good reason. Taxpayers owe honesty to government just as government owes fairness to taxpayers. In its last effort to retain the money erroneously prepaid by the private respondent, petitioner contends that private respondent suppressed evidence when it did not present its charter agreement with NASUTRA. The contention cannot succeed. It presupposes without any basis that the charter agreement is prejudicial evidence against the private respondent. Allegedly, it will show that private respondent earned a charter fee with or without transporting its supposed cargo from Iloilo to Japan. The allegation simply remained an allegation and no court of justice will regard it as truth. Moreover, the charter agreement could have been presented by petitioner itself thru the proper use of a subpoena *duces tecum*. It never did either because of neglect or because it knew it would be of no help to bolster its position. For whatever reason, the petitioner cannot take to task the private respondent for not presenting what it mistakenly calls "suppressed evidence."

4. **POLITICAL LAW; INHERENT POWERS OF THE GOVERNMENT; POWER OF TAXATION; MUST BE EXERCISED WITH CAUTION TO MINIMIZE INJURY TO THE PROPRIETARY RIGHTS OF THE TAXPAYER.** -- We cannot but bewail the unyielding stance taken by the government in refusing to refund the sum of ONE

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HUNDRED SEVEN THOUSAND ONE HUNDRED FORTY-TWO PESOS AND SEVENTY FIVE CENTAVOS (P 107,142.75) erroneously paid, the government succeeded in delaying its refund for fifteen (15) years. After fifteen (15) long years and the expenses of litigation, the money that will be finally refunded to the private respondent is just worth a damaged nickel. This is not, however, the kind of success the government, especially the BIR, needs to increase its collection of taxes. Fair deal is expected by our taxpayers from the BIR and the duty demands that BIR should refund without any unreasonable delay what it has erroneously collected. Our ruling in **Roxas *v.* Court of Tax of Appeals** (No. L-25043, April 26, 1968, 23 SCRA 276) is apropos to recall: "The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the 'hen that lays the golden egg.' And, in order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Gadioma Law Offices for respondents.

D E C I S I O N

PUNO, *J.*:

For resolution is whether or not private respondent Tokyo Shipping Co. Ltd., is entitled to a refund or tax credit for amounts representing pre-payment of income and common carrier's taxes under

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the National Internal Revenue Code, Section 24 (b) (2), as amended.[1]

Private respondent is a foreign corporation represented in the Philippines by Soriamont Steamship Agencies, Incorporated. It owns and operates tramper vessel M/V Gardenia. In December 1980, NASUTRA[2] chartered M/V Gardenia to load 16,500 metric tons of raw sugar in the Philippines.[3] On December 23, 1980, Mr. Edilberto Lising, the operations supervisor of Soriamont Agency,[4] paid the required income and common carrier's taxes in the respective sums of FIFTY-NINE THOUSAND FIVE HUNDRED TWENTY-THREE PESOS and SEVENTY-FIVE CENTAVOS (P59,523.75) and FORTY-SEVEN THOUSAND SIX HUNDRED NINETEEN PESOS (P47,619.00), or a total of ONE HUNDRED SEVEN THOUSAND ONE HUNDRED FORTY-TWO PESOS and SEVENTY-FIVE CENTAVOS (P107,142.75) based on the expected gross receipts of the vessel.[5] Upon arriving, however, at Guimaras Port of Iloilo, the vessel found no sugar for loading. On January 10, 1981, NASUTRA and private respondent's agent mutually agreed to have the vessel sail for Japan without any cargo.

Claiming the pre-payment of income and common carrier's taxes as erroneous since no receipt was realized from the charter agreement, private

[1] This appeal was brought pursuant to Republic Act No. 1125 (June 16, 1954), as amended. Under Batas Blg. 129, decisions of the Court of Tax Appeals are appealable to the Court of Appeals, amending the procedure prescribed by the Act. The change has been held to be merely procedural. (First Lepanto Ceramics, Inc. *vs.* Court of Appeals, G.R. No. 110571, March 10, 1994, 231 SCRA 30).

[2] TSN of May 10, 1982, p. 7.

[3] Annex "C".

[4] TSN of May 10, 1982, p. 3.

[5] Annex "A".

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respondent instituted a claim for tax credit or refund of the sum ONE HUNDRED SEVEN THOUSAND ONE HUNDRED FORTY-TWO PESOS and SEVENTY-FIVE CENTAVOS (P107,142.75) before petitioner Commissioner of Internal Revenue on March 23, 1981. Petitioner failed to act promptly on the claim, hence, on May 14, 1981, private respondent filed a petition for review[6] before public respondent Court of Tax Appeals.

Petitioner contested the petition. As special and affirmative defenses, it alleged the following: that taxes are presumed to have been collected in accordance with law; that in an action for refund, the burden of proof is upon the taxpayer to show that taxes are erroneously or illegally collected, and the taxpayer's failure to sustain said burden is fatal to the action for refund; and that claims for refund are construed strictly against tax claimants.[7]

After trial, respondent tax court decided in favor of the private respondent. It held:

"It has been shown in this case that 1) the petitioner has complied with the mentioned statutory requirement by having filed a written claim for refund within the two-year period from date of payment; 2) the respondent has not issued any deficiency assessment nor disputed the correctness of the tax returns and the corresponding amounts of prepaid income and percentage taxes; and 3) the chartered vessel sailed out of the Philippine port with absolutely no cargo laden on board as cleared and certified by the Customs authorities; nonetheless 4) respondent's apparent bit of reluctance in validating the legal merit of the claim, by and large, is tacked upon the 'examiner who is investigating petitioner's claim for refund which is the subject matter of this case has not yet submitted his report. Whether or not respondent

[6] Docketed C.T.A. Case No. 3260.
[7] Petition, pp. 6-9; *Rollo*, pp. 18-21.

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will present his evidence will depend on the said report of the examiner.' (Respondent's Manifestation and Motion dated September 7, 1982). Be that as it may the case was submitted for decision by respondent on the basis of the pleadings and records and by petitioner on the evidence presented by counsel *sans* the respective memorandum.

"An examination of the records satisfies us that the case presents no dispute as to relatively simple material facts. The circumstances obtaining amply justify petitioner's righteous indignation to a more expeditious action. Respondent has offered no reason nor made effort to submit any controverting documents to bash that patina of legitimacy over the claim. But as might well be, towards the end of some two and a half years of seeming impotent anguish over the pendency, the respondent Commissioner of Internal Revenue would furnish the satisfaction of ultimate solution by manifesting that 'it is now his turn to present evidence, however, the Appellate Division of the BIR has already recommended the approval of petitioner's claim for refund subject matter of this petition. The examiner who examined this case has also recommended the refund of petitioner's claim. Without prejudice to withdrawing this case after the final approval of petitioner's claim, the Court ordered the resetting to September 7, 1983.' (Minutes of June 9, 1983 Session of the Court). We need not fashion any further issue into an apparently settled legal situation as far be it from a comedy of errors it would be too much of a stretch to hold and deny the refund of the amount of prepaid income and common carrier's taxes for which petitioner could no longer be made accountable."

On August 3, 1984, respondent court denied petitioner's motion for reconsideration, hence, this petition for review on certiorari.

Petitioner now contends: (1) private respondent has the burden of proof to support its claim of refund;

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(2) it failed to prove that it did not realize any receipt from its charter agreement; and (3) it suppressed evidence when it did not present its charter agreement.

We find no merit in the petition.

There is no dispute about the applicable law. It is Section 24 (b) (2) of the National Internal Revenue Code which at that time provides as follows:

"A corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be taxable as provided in subsection (a) of this section upon the total net income derived in the preceding taxable year from all sources within the Philippines: Provided, however, That international carriers shall pay a tax of two and one-half per cent (2 1/2%) on their gross Philippine billings: 'Gross Philippine Billings' include gross revenue realized from uplifts anywhere in the world by any international carrier doing business in the Philippines of passage documents sold therein, whether for passenger, excess baggage or mail, provided the cargo or mail originates from the Philippines. The gross revenue realized from the said cargo or mail include the gross freight charge up to final destination. Gross revenue from chartered flights originating from the Philippines shall likewise form part of 'Gross Philippine Billings' regardless of the place or payment of the passage documents. x x x ."

Pursuant to this provision, a resident foreign corporation engaged in the transport of cargo is liable for taxes depending on the amount of income it derives from sources within the Philippines. Thus, before such a tax liability can be enforced **the taxpayer must be shown to have earned income** sourced from the Philippines.

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We agree with petitioner that a claim for refund is in the nature of a claim for exemption[8] and should be construed in **strictissimi juris** against the taxpayer.[9] Likewise, there can be no disagreement with petitioner's stance that private respondent has the burden of proof to establish the factual basis of its claim for tax refund.

The pivotal issue involves a question of fact — whether or not the private respondent was able to prove that it derived no receipts from its charter agreement, and hence is entitled to a refund of the taxes it pre-paid to the government.

The respondent court held that sufficient evidence has been adduced by the private respondent proving that it derived no receipt from its charter agreement with NASUTRA. This finding of fact rests on a rational basis, and hence must be sustained. Exhibits "E", "F", and "G" positively show that the tramper vessel M/V "Gardenia" arrived in Iloilo on January 10, 1981 but found no raw sugar to load and returned to Japan without any cargo laden on board. Exhibit "E" is the Clearance Vessel to a Foreign Port issued by the District Collector of Customs, Port of Iloilo while Exhibit "F" is the Certification by the Officer-in-Charge, Export Division of the Bureau of Customs, Iloilo. The correctness of the contents of these documents regularly issued by officials of the Bureau of Customs cannot be doubted as indeed, they have not been contested by the petitioner. The records also reveal that in the course of the proceedings in the court *a quo*, petitioner hedged and hawed when its turn

[8] Resins, Inc. *v.* Auditor General, L-17888, October 29, 1968, 25 SCRA 754

[9] Province of Tarlac *v.* Alcantara, G.R. No. 65230, December 23, 1992, 216 SCRA 790.

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came to present evidence. At one point, its counsel manifested that the BIR examiner and the appellate division of the BIR have both recommended the approval of private respondent's claim for refund. The same counsel even represented that the government would withdraw its opposition to the petition after final approval of private respondents' claim. The case dragged on but petitioner never withdrew its opposition to the petition even if it did not present evidence at all. The insincerity of petitioner's stance drew the sharp rebuke of respondent court in its Decision and for good reason. Taxpayers owe honesty to government just as government owes fairness to taxpayers.

In its last effort to retain the money erroneously prepaid by the private respondent, petitioner contends that private respondent suppressed evidence when it did not present its charter agreement with NASUTRA. The contention cannot succeed. It presupposes without any basis that the charter agreement is prejudicial evidence against the private respondent.[10] Allegedly, it will show that private respondent earned a charter fee with or without transporting its supposed cargo from Iloilo to Japan. The allegation simply remained an allegation and no court of justice will regard it as truth. Moreover, the charter agreement could have been presented by petitioner itself thru the proper use of a subpoena *duces tecum*. It never did either because of neglect or because it knew it would be of no help to bolster its position.[11] For whatever reason, the petitioner cannot take to task the private respondent for not presenting what it mistakenly calls "suppressed evidence."

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[10] See Nicolas *v.* Nicolas, 52 Phil. 265 [1928].
[11] See Ang Seng Quiem *v.* Te Chico, 7 Phil. 541 [1907].

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We cannot but bewail the unyielding stance taken by the government in refusing to refund the sum of ONE HUNDRED SEVEN THOUSAND ONE HUNDRED FORTY-TWO PESOS AND SEVENTY-FIVE CENTAVOS (P107,142.75) erroneously prepaid by private respondent. The tax was paid way back in 1980 and despite the clear showing that it was erroneously paid, the government succeeded in delaying its refund for fifteen (15) years. After fifteen (15) long years and the expenses of litigation, the money that will be finally refunded to the private respondent is just worth a damaged nickel. This is not, however, the kind of success the government, especially the BIR, needs to increase its collection of taxes. Fair deal is expected by our taxpayers from the BIR and the duty demands that BIR should refund without any unreasonable delay what it has erroneously collected. Our ruling in **Roxas *v.* Court of Tax Appeals**[12] is apropos to recall:

"The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the 'hen that lays the golden egg.' And, in order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously."

IN VIEW HEREOF, the assailed decision of respondent Court of Tax Appeals, dated September 15, 1983, is AFFIRMED *in toto*. No costs.

SO ORDERED.

Narvasa, C.J. (Chairman), Regalado and *Mendoza, JJ.*, concur.

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[12] No. L-25043, April 26, 1968, 23 SCRA 276.