356 Phil. 189

THIRD DIVISION

[G.R. No. 125704, August 28, 1998]

PHILEX MINING CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, COURT OF APPEALS, AND THE COURT OF TAX APPEALS, RESPONDENTS.

D E C I S I O N

ROMERO, J.:

Petitioner Philex Mining Corp. assails the decision of the Court of Appeals promulgated on April 8, 1996 in CA-G.R. SP No. 36975[1] affirming the Court of Tax Appeals decision in CTA Case No. 4872 dated March 16, 1995[2] ordering it to pay the amount of P110,677,668.52 as excise tax liability for the period from the 2nd quarter of 1991 to the 2nd quarter of 1992 plus 20% annual interest from August 6, 1994 until fully paid pursuant to Sections 248 and 249 of the Tax Code of 1977.

The facts show that on August 5, 1992, the BIR sent a letter to Philex asking it to settle its tax liabilities for the 2nd, 3rd and 4th quarter of 1991 as well as the 1st and 2nd quarter of 1992 in the total amount of P123,821,982.52 computed as follows:

PERIOD COVERED	BASIC TAX	25% SURCHARGE	INTEREST	TOTAL EXCISE TAX DUE
2nd Qtr., 1991	12,911,124.60	3,227,781.15	3,378,116.16	19,517,021.91
3rd Qtr., 1991	14,994,749.21	3,748,687.30	2,978,409.09	21,721,845.60
4th Qtr., 1991	19,406,480.13	4,851,620.03	2,631,837.72	26,889,937.88
	47,312,353.94	11,828,088.48	8,988,362.97	68,128,805.39
1st	23,341,849.94	5,835,462.49	1,710,669.82	30,887,982.25

Qtr., 1992				
2nd Qtr., 1992	19,671,691.76	4,917,922.94	215,580.18	24,805,194.88
	43,013,541.70	10,753,385.43	1,926,250.00	55,693,177.13
	90,325,895.64	22,581,473.91	10,914,612.97	123,821,982.52
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In a letter dated August 20, 1992,[4] Philex protested the demand for payment of the tax liabilities stating that it has pending claims for VAT input credit/refund for the taxes it paid for the years 1989 to 1991 in the amount of P119,977,037.02 plus interest. Therefore, these claims for tax credit/refund should be applied against the tax liabilities, citing our ruling in Commissioner of Internal Revenue v. Itogon-Suyoc Mines, Inc.[5]

In reply, the BIR, in a letter dated September 7, 1992,[6] found no merit in Philex's position. Since these pending claims have not yet been established or determined with certainty, it follows that no legal compensation can take place. Hence, he BIR reiterated its demand that Philex settle the amount plus interest within 30 days from the receipt of the letter.

In view of the BIR's denial of the offsetting of Philex's claim for VAT input credit/refund against its exercise tax obligation, Philex raised the issue to the Court of Tax Appeals on November 6, 1992.[7] In the course of the proceedings, the BIR issued a Tax Credit Certificate SN 001795 in the amount of P13,144,313.88 which, applied to the total tax liabilities of Philex of P123,821,982.52; effectively lowered the latter's tax obligation of P110,677,688.52.

Despite the reduction of its tax liabilities, the CTA still ordered Philex to pay the remaining balance of P110,677,688.52 plus interest, elucidating its reason, to wit:

> "Thus, for legal compensation to take place, both obligations must be liquidated and demandable. 'Liquidated' debts are those where the exact amount has already been determined (PARAS, Civil Code of the Philippines, Annotated, Vol. IV, Ninth Edition, p. 259). In the instant case, the claims of the Petitioner for VAT refund is still pending litigation, and still has to be determined by this Court (C.T.A. Case No. 4707). A fortiori, the liquidated debt of the Petitioner to the government cannot, therefore, be set-off against the unliquidated claim which Petitioner conceived to exist in its favor (see Compañia General de Tabacos vs. French and Unson, No. 14027, November 8, 1918, 39 Phil. 34)."[8]

Moreover, the Court of Tax Appeals ruled that "taxes cannot be subject to set-off on

compensation since claim for taxes is not a debt or contract."[9] The dispositive portion of the CTA decision[10] provides:

> "In all the foregoing, this Petition for Review is hereby DENIED for lack of merit and Petitioner is hereby ORDERED to PAY the Respondent the amount of P110,677,668.52 representing excise tax liability for the period from the 2nd quarter of 1991 to the 2nd quarter of 1992 plus 20% annual interest from August 6, 1994 until fully paid pursuant to Section 248 and 249 of the Tax Code, as amended."

Aggrieved with the decision, Philex appealed the case before the Court of Appeals docketed as CA-G.R. CV No. 36975.[11] Nonetheless, on April 8, 1996, the Court of Appeals affirmed the Court of Tax Appeals observation. The pertinent portion of which reads:[12]

> "WHEREFORE, the appeal by way of petition for review is hereby DISMISSED and the decision dated March 16, 1995 is AFFIRMED."

Philex filed a motion for reconsideration which was, nevertheless, denied in a Resolution dated July 11, 1996.[13]

However, a few days after the denial of its motion for reconsideration, Philex was able to obtain its VAT input credit/refund not only for the taxable year 1989 to 1991 but also for 1992 and 1994, computed as follows:[14]

Period Covered By	Tax Credit Certificate Number	Date Of Issue	Amount
Claims For Vat refund/credit			
1994 (2nd Quarter)	007730	11 July 1996	P25,317,534.01
1994 (4th Quarter)	007731	11 July 1996	P21,791,020.61
1989	007732	11 July 1996	P37,322,799.19
1990-1991	007751	16 July 1996	P84,662,787.46
1992 (1st-3rd Quarter)	007755	23July 1996	P36,501,147.95

In view of the grant of its VAT input credit/refund, Philex now contends that the same should, ipso jure, off-set its excise tax liabilities[15] since both had already become

"due and demandable, as well as fully liquidated;"[16] hence, legal compensation can properly take place.

We see no merit in this contention.

In several instances prior to the instant case, we have already made the pronouncement that taxes cannot be subject to compensation for the simple reason that the government and the taxpayer are not creditors and debtors of each other.[17] There is a material distinction between a tax and debt. Debts are due to the Government in its corporate capacity, while taxes are due to the Government in its sovereign capacity.[18] We find no cogent reason to deviate from the aforementioned distinction.

Prescinding from this premise, in Francia v. Intermediate Appellate Court,[19] we categorically held that taxes cannot be subject to set-off or compensation, thus:

> "We have consistently ruled that there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of tax cannot await the results of a lawsuit against the government."

The ruling in Francia has been applied to the subsequent case of Caltex Philippines, Inc. v. Commission on Audit,[20] which reiterated that:

> "x x x a taxpayer may not offset taxes due from the claims that he may have against the government. Taxes cannot be the subject of compensation because the government and taxpayer are not mutually creditors and debtors of each other and a claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off."

Further, Philex's reliance on our holding in *Commissioner of Internal Revenue v. Itogon-Suyoc Mines, Inc.*, wherein we ruled that a pending refund may be set off against an existing tax liability even though the refund has not yet been approved by the Commissioner,[21] is no longer without any support in statutory law.

It is important to note that the premise of our ruling in the aforementioned case was anchored on Section 51(d) of the National Revenue Code of 1939. However, when the National Internal Revenue Code of 1977 was enacted, the same provision upon which the Itogon-Suyoc pronouncement was based was omitted.[22] Accordingly, the doctrine enunciated in Itogon-Suyoc cannot be invoked by Philex.

Despite the foregoing rulings clearly adverse to Philex's position, it asserts that the imposition of surcharge and interest for the non-payment of the excise taxes within the time prescribed was unjustified. Philex posits the theory that it had no obligation to pay the excise liabilities within the prescribed period since, after all, it still has pending

claims for VAT input credit/refund with BIR.[23]

We fail to see the logic of Philex's claim for this is an outright disregard of the basic principle in tax law that taxes are the lifeblood of the government and so should be collected without unnecessary hindrance.[24] Evidently, to countenance Philex's whimsical reason would render ineffective our tax collection system. Too simplistic, it finds no support in law or in jurisprudence.

To be sure, we cannot allow Philex to refuse the payment of its tax liabilities on the ground that it has a pending tax claim for refund or credit against the government which has not yet been granted. It must be noted that a distinguishing feature of a tax is that it is compulsory rather than a matter of bargain.[25] Hence, a tax does not depend upon the consent of the taxpayer.[26] If any payer can defer the payment of taxes by raising the defense that it still has a pending claim for refund or credit, this would adversely affect the government revenue system. A taxpayer cannot refuse to pay his taxes when they fall due simply because he has a claim against the government or that the collection of the tax is contingent on the result of the lawsuit it filed against the government.[27] Moreover, Philex's theory that would automatically apply its VAT input credit/refund against its tax liabilities can easily give rise to confusion and abuse, depriving the government of authority over the manner by which taxpayers credit and offset their tax liabilities.

Corollarily, the fact that Philex has pending claims for VAT input claim/refund with the government is immaterial for the imposition of charges and penalties prescribed under Section 248 and 249 of the Tax Code of 1977. The payment of the surcharge is mandatory and the BIR is not vested with any authority to waive the collection thereof.[28] The same cannot be condoned for flimsy reasons,[29] similar to the one advanced by Philex in justifying its non-payment of its tax liabilities.

Finally, Philex asserts that the BIR violated Section 106(e)[30] of the National Internal Revenue Code of 1977, which requires the refund of input taxes within 60 days,[31] when it took five years for the latter to grant its tax claim for VAT input credit/refund.[32]

In this regard, we agree with Philex. While there is no dispute that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund,[33] however, once the claimant has submitted all the required documents, it is the function of the BIR to assess these documents with purposeful dispatch. After all, since taxpayers owe honesty to government it is but just that government render fair service to the taxpayers.[34]

In the instant case, the VAT input taxes were paid between 1989 to 1991 but the refund of these erroneously paid taxes was only granted in 1996. Obviously, had the BIR been more diligent and judicious with their duty, it could have granted the refund earlier. We need not remind the BIR that simple justice requires the speedy refund of

wrongly-held taxes.[35] Fair dealing and nothing less, is expected by the taxpayer from the BIR in the latter's discharge of its function. As aptly held in Roxas v. Court of Tax Appeals:[36]

> "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 collectot kill the 'hen that lays the golden egg.' And, in the order to maintain the general public's trust and confidence in the Government this power must be used justly and not treacherously."

Despite our concern with the lethargic manner by which the BIR handled Philex's tax claim, it is a settled rule that in the performance of governmental function, the State is not bound by the neglect of its agents and officers. Nowhere is this more true than in the field of taxation.[37] Again, while we understand Philex's predicament, it must be stressed that the same is not valid reason for the non- payment of its tax liabilities.

To be sure, this is not state that the taxpayer is devoid of remedy against public servants or employees especially BIR examiners who, in investigating tax claims are seen to drag their feet needlessly. First, if the BIR takes time in acting upon the taxpayer's claims for refund, the latter can seek judicial remedy before the Court of Tax Appeals in the manner prescribed by law.[38] Second, if the inaction can be characterized as willful neglect of duty, then recourse under the Civil Code and the Tax Code can also be availed of.

Article 27 of the Civil Code provides:

> "Art. 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary action that may be taken."

More importantly, Section 269 (c) of the National Internal Revenue Act of 1997 states:

> "xxx xxx xxx
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> (c) wilfully neglecting to give receipts, as by law required for any sum collected in the performance of duty or wilfully neglecting to perform, any other duties enjoined by law."

Simply put, both provisions abhor official inaction, willful neglect and unreasonable delay in the performance of official duties.[39] In no uncertain terms must we stress that every public employee or servant must strive to render service to the people with utmost diligence and efficiency. Insolence and delay have no place in government service. The BIR, being the government collecting arm, must and should do no less. It simply cannot be apathetic and laggard in rendering service to the taxpayer if it wishes to remain true to its mission of hastening the country's development. We take judicial

notice of the taxpayer's generally negative perception towards the BIR; hence, it is up to the latter to prove its detractors wrong.

In sum, while we can never condone the BIR's apparent callousness in performing its duties, still, the same cannot justify Philex's non-payment of its tax liabilities. The adage "no one should take the law into his own hands" should have guided Philex's action.

WHEREFORE, in view of the foregoing, the instant petition is hereby DISMISSED. The assailed decision of the Court of Appeals dated April 8, 1996 is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Kapunan and *Purisima, JJ.,* concur.

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[1] Penned by Justice Artemon D. Luna, concurred in by Justice Ramon A. Barcelona and Portia Alino-Hormachuelos.

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

[3] CTA Records, pp. 34-35.

[4] Rollo, pp. 172-174.

[5] 28 SCRA 867 (1969)

[6] Id., pp. 175-176

[7] Docketed as Case No. 4872, Rollo, pp. 177-187.

[8] Rollo, p. 55.

[9] CTA Decision, Rollo, p. 59.

[10] Rollo, pp. 59-60.

[11] Rollo, pp. 87-101

[12] Rollo, p. 45.

[13] Rollo, p. 48.

[14] Rollo, pp. 112-116.

[15] Memorandum, Rollo, pp. 307-308.

[16] Ibid.

[17] Cordero v. Gonda, 18 SCRA 331 (1966).

[18] Commissioner of Internal Revenue v. Palanca, 18 SCRA 496 (1966).

[19] 162 SCRA 753 (1988).

[20] 208 SCRA 726 (1992).

[21] Rollo, p. 33.

[22] Aban, Law on Basic Taxation, 1994, p. 19.

[23] Memorandum, Rollo, p. 389.

[24] Commissioner of Internal Revenue v. Algue, Inc., 158 SCRA 9 (1988).

[25] I Cooley, Taxation, §22.

[26] Ibid.

[27] Supra, note 19.

[28] Republic v. Philippine Bank of Commerce, 34 SCRA 361 (1970).

[29] Jamora v. Meer, 74 Phil. 22 (1942).

[30] (e) Period within which refund of input taxes may be made by the Commissioner - The Commissiioner shall refund input taxes within 60 days from the date the application for refund was filed with him or his duly authorized representative. No refund of input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c) as the case may be.

[31] Rollo, pp. 32-33.

[32] This provision has been amended by Section 112 (D) of Republic Act 8424 entitled the "National Internal revenue Act of 1997."

"(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commisioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full of partial denial of the claim for tax refund or tax credit, or the failure on

the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

[33] Commisioner of Internal Revenue v. Tokyo Shipping Co. Ltd., 244 SCRA 332 (1995).

[34] Ibid.

[35] Citibank of N.A v. Court of Appeals, G.R. No. 107434, October 19, 1997.

[36] 23 SCRA 276 (1968).

[37] Commissioner of Internal Revenue v. Proctor and Gamble PMC, 160 SCRA 560 (1988).

[38] Insular Lumber Co. v. Court of Appeals, 104 SCRA 721 (1981); Commissioner of Internal Revenue v. Victoria Milling Co., Inc., 22 SCRA (1968).

[39] Tolentino, Civil Code of the Philippines, Vol. 1, 1983, p. 117.