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SECOND DIVISION

[G.R. No. 204142, November 19, 2014]

HONDA CARS PHILIPPINES, INC., PETITIONER, VS. HONDA CARS TECHNICAL SPECIALIST AND SUPERVISORS UNION, RESPONDENT.

D E C I S I O N

BRION, J.:

We resolve the present petition for review on *certiorari*[1] seeking to nullify the March 30, 2012 decision[2] and October 25, 2012 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 109297. These rulings were penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Romeo F. Barza and Edwin D. Sorongon.

The Factual Antecedents

On December 8, 2006, petitioner Honda Cars Philippines, Inc., *(company)* and respondent Honda Cars Technical Specialists and Supervisory Union *(union)*, the exclusive collective bargaining representative of the company's supervisors and technical specialists, entered into a collective bargaining agreement *(CBA)* effective April 1, 2006 to March 31, 2011.[4]

Prior to April 1, 2005, the union members were receiving a transportation allowance of P3,300.00 a month. On September 3, 2005, the company and the union entered into a Memorandum of Agreement[5] *(MOA)* converting the transportation allowance into a monthly gasoline allowance starting at 125 liters effective April 1, 2005. The allowance answers for the gasoline consumed by the union members for official business purposes and for home to office travel and *vice-versa.*

The company claimed that the grant of the gasoline allowance is tied up to a similar company policy for managers and assistant vice-presidents (AVPs), which provides that *in the event the amount of gasoline is not fully consumed, the gasoline not used may be converted into cash, subject to whatever tax may be applicable.* Since the cash conversion is paid in the monthly payroll as an excess gas allowance, the company considers the amount as part of the managers' and AVPs' compensation that is subject to income tax on

compensation.

Accordingly, the company deducted from the union members' salaries the withholding tax corresponding to the conversion to cash of their unused gasoline allowance.

The union, on the other hand, argued that the gasoline allowance for its members is a "negotiated item" under Article XV, Section 15 of the new CBA on *fringe benefits*. It thus opposed the company's practice of treating the gasoline allowance that, when converted into cash, is considered as compensation income that is subject to withholding tax.

The disagreement between the company and the union on the matter resulted in a grievance which they referred to the CBA grievance procedure for resolution. As it remained unsettled there, they submitted the issue to a panel of voluntary arbitrators as required by the CBA.

The Voluntary Arbitration Decision

On February 6, 2009, the Panel of Voluntary Arbitrators[6] rendered a decision/award[7] declaring that the cash conversion of the unused gasoline allowance enjoyed by the members of the union is a fringe benefit subject to the fringe benefit tax, not to income tax. The panel held that the deductions made by the company shall be considered as advances subject to refund in future remittances of withholding taxes.

The company moved for partial reconsideration of the decision, but the panel denied the motion in its June 3, 2009 order,[8] prompting the company to appeal to the CA through a Rule 43 petition for review. The core issue in this appeal was whether the cash conversion of the unused gasoline allowance is a fringe benefit subject to the fringe benefit tax, and not to a compensation income subject to withholding tax.

The CA Ruling

The CA Eight Division denied the petition and upheld with modification the voluntary arbitration decision. It agreed with the panel's ruling that the cash conversion of the unused gasoline allowance is a fringe benefit granted under Section 15, Article XV of the CBA on "**Fringe Benefits**." Accordingly, the CA held that the benefit is not compensation income subject to withholding tax.

This conclusion notwithstanding, the CA clarified that while the gasoline allowance or the cash conversion of its unused portion is a fringe benefit, it is "not necessarily subject to fringe benefit tax."[9] It explained that Section 33 (A) of the National Internal Revenue Code *(NIRC)* of 1997 imposed a fringe benefit tax, effective January 1, 2000 and thereafter, on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank-and-file employees) by the employer (unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer,

or when the fringe benefit is for the convenience or advantage of the employer).

According to the CA, "it is undisputed that the reason behind the grant of the gasoline allowance to the union members is primarily for the convenience and advantage of Honda, their employer."[10] It thus declared that the gasoline allowance or the cash conversion of the unused portion thereof is not subject to fringe benefit tax.[11]

The Petition

Its motion for reconsideration denied, the company appeals to this Court to set aside the CA's dispositions, raising the very same issue it brought to the appellate court — whether the cash conversion of the gasoline allowance of the union members is a fringe benefit or compensation income, for taxation purposes.

The company reiterates its position that the cash conversion of the union members' gasoline allowance is compensation income subject to income tax, and not to a fringe benefit tax. It argues that the tax treatment of a benefit extended by the employer to the employees is governed by law and the applicable tax regulations, and not by the nomenclature or definition provided by the parties. The fact that the CBA erroneously classified the gasoline allowance as a fringe benefit is immaterial as it is the law – Section 33 of the NIRC – that provides for the legal classification of the benefit.

It adds that there is no basis for the CA conclusion that the cash conversion of the unused gasoline allowance redounds to the benefit of management. Common sense dictates that it is the individual union members who solely benefit from the cash conversion of the gasoline allowance as it goes into their compensation income.

In any event, the company submits that even assuming that the cash conversion of the unused gasoline allowance is a tax-exempt fringe benefit and that it erred in withholding the income taxes due, still the union members would have no cause of action against it for the refund of the amounts withheld from them and remitted to the Bureau of Internal Revenue *(BIR)*.

Citing Section 204 of the NIRC, the company contends that an action for the refund of an erroneous withholding and payment of taxes should be in the nature of a tax refund claim with the BIR. It further contends that when it withheld the income tax due from the cash conversion of the unused gasoline allowance of the union members, it was simply acting as an agent of the government for the collection and payment of taxes due from the members.

The Union's Position

In its *Comment*[12] dated April 19, 2013, the union argues for the denial of the petition for lack of merit. It posits that its members' gasoline allowance and its unused gas equivalent are fringe benefits under the CBA and the law [Section 33 (A) of NIRC] and is therefore

not subject to withholding tax on compensation income. Moreover, under that law and BIR Revenue Regulations 2-98, the same benefit is not subject to the fringe benefit tax because it is required by the nature of, or necessary to the trade or business of the company.

The union further submits that in 2007, the BIR ruled that fixed and/or pre-computed transportation allowance given to supervisory employees in pursuit of the business of the company, **shall not be taxable as compensation or fringe benefits of the employees**.[13] It maintains that the gasoline allowance is already pre-computed by the company as sufficient to cover the gasoline consumption of the supervisors whenever they perform work for the company. The fact that the company allowed its members to convert it to cash when not fully consumed is no longer their problem because the benefit was already given.

Our Ruling

We partly grant the petition.

The Voluntary Arbitrator has no jurisdiction to settle tax matters

The Labor Code vests the Voluntary Arbitrator original and exclusive jurisdiction to hear and decide all unresolved grievances **arising from *the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies***.[14] Upon agreement of the parties, the Voluntary Arbitrator shall also hear and decide all *other labor disputes*, including unfair labor practices and bargaining deadlocks.[15]

In short, the Voluntary Arbitrator's jurisdiction is limited to labor disputes. Labor dispute means "any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing, or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."[16]

The issues raised before the Panel of Voluntary Arbitrators are: (1) whether the cash conversion of the gasoline allowance shall be subject to fringe benefit tax or the graduated income tax rate on compensation; and (2) whether the company wrongfully withheld income tax on the converted gas allowance.

The Voluntary Arbitrator has no competence to rule on the taxability of the gas allowance and on the propriety of the withholding of tax. **These issues are clearly tax matters, and do not involve labor disputes**. To be exact, they involve tax issues within a labor relations setting as they pertain to questions of law on the application of Section 33 (A) of the NIRC. They do not require the application of the Labor Code or the interpretation of the MOA and/or company personnel policies. Furthermore, the company and the union cannot agree or compromise on the taxability of the gas allowance. Taxation is the State's

inherent power; its imposition cannot be subject to the will of the parties.

Under paragraph 1, Section 4 of the NIRC, the CIR shall have the **exclusive and original jurisdiction** to interpret the provisions of the NIRC and other tax laws, subject to review by the Secretary of Finance. Consequently, if the company and/or the union desire/s to seek clarification of these issues, it/they should have requested for a tax ruling[17] from the Bureau of Internal Revenue (BIR). Any revocation, modification or reversal of the CIR's ruling shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the BIR;
(b) Where the facts subsequently gathered by the BIR are materially different from the facts on which the ruling is based; or
(c) Where the taxpayer acted in bad faith.[18]

On the other hand, if the union disputes the withholding of tax and desires a refund of the withheld tax, it should have filed an administrative claim for refund with the CIR. Paragraph 2, Section 4 of the NIRC expressly vests the CIR **original jurisdiction** over refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other tax matters.

The union has no cause of action against the company

Under the withholding tax system, the employer as the withholding agent acts as both the government and the taxpayer's agent. Except in the case of a minimum wage earner, every employer has the duty to deduct and withhold upon the employee's wages a tax determined in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon the CIR's recommendation.[19] As the Government's agent, the employer collects tax and serves as the payee by fiction of law.[20] As the employee's agent, the employer files the necessary income tax return and remits the tax to the Government.[21]

Based on these considerations, we hold that the union has no cause of action against the company. The company merely performed its statutory duty to withhold tax based on its interpretation of the NIRC, albeit that interpretation may later be found to be erroneous. The employer did not violate the employee's right by the mere act of withholding the tax that may be due the government.[22]

Moreover, the NIRC only holds the withholding agent personally liable for the tax arising from the breach of his legal duty to withhold, as distinguished from his duty to pay tax.[23]

Under Section 79 (B) of the NIRC, if the tax required to be deducted and withheld is not collected from the employer, the employer shall not be relieved from liability for any penalty or addition to the unwithheld tax.

Thus, if the BIR illegally or erroneously collected tax, the recourse of the taxpayer, and in proper cases, the withholding agent, is ***against the BIR***, and not against the withholding agent.[24] The union's cause of action for the refund or non-withholding of tax is against the taxing authority, and not against the employer. Section 229 of the NIRC provides:

> Sec. 229. **Recovery of Tax Erroneously or Illegally Collected. – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax** hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

WHEREFORE, premises considered, we **PARTLY GRANT** the petition for review on *certiorari* filed by Honda Cars Philippines, Inc. We **REVERSE AND SET ASIDE** the March 30, 2012 decision and the October 25, 2012 resolution of the Court of Appeals in CA-G.R. SP No. 109297. We declare **NULL AND VOID** the February 6, 2009 decision and June 3, 2009 resolution of the Panel of Voluntary Arbitrators. No costs.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Mendoza, and *Leonen, JJ.*, concur.

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[1] *Rollo*, pp.10-31, filed pursuant to Rule 45 of the Rules of Court.

[2] Id. at 38-51.

[3] Id, at 53-56.

[4] Id. at 103-120.

[5] Id. at 14-16.

[6] Composed of Jane Peralta Viana, Chairperson and Arnel V. Lajada and Delia T. Uy, members.

[7] *Rollo*, pp. 79-85.

[8] Id. at 86-87.

[9] *Supra* note 2, p. 12, par. 1.

[10] *Supra* note 2, p. 13, par.1.

[11] Id. at 14, dispositive portion.

[12] *Rollo*, pp. 325-330.

[13] BIR Ruling DA-233-2007 dated April 17, 2007.

[14] LABOR CODE, Article 261.

[15] LABOR CODE, Article 262.

[16] LABOR CODE, Article 212 (l).

[17] Section 1 of Revenue Memorandum Order defines "tax ruling" as follows:

Sec. 1. Tax Rulings

Tax rulings are official position of the Bureau on inquiries of taxpayers, who request clarification on certain provisions of the National Internal Revenue Code (NIRC), other tax laws, or their implementing regulations, usually for the purpose of seeking tax exemptions. Rulings are based on particular facts and circumstances presented and are interpretations of the law at a specific point in time.

The Bureau also issues rulings to answer written questions of individuals and juridical entities regarding their status as taxpayers and the effects of their transactions for taxation purposes.

[18] NATIONAL INTERNAL REVENUE CODE, Article 246.

[19] NATIONAL INTERNAL REVENUE CODE, Section 79 (A).

[20] *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corp.*, G.R. No. L-66838, December 2, 1991, 204 SCRA 377.

[21] Id.

[22] *Heirs of MagdalenoYpon v. Ricaforte,* G.R. No. 198680, July 8, 2013, 700 SCRA 778.

[23] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue,* G.R. No. 170257, September 7, 2011, 657 SCRA 70.

[24] *Commissioner of Internal Revenue v. Smart Communication, Inc.,* G.R. Nos. 179045-46, August 25, 2010, 629 SCRA 342.
