

## THIRD DIVISION

[ G.R. No. 185588, February 02, 2010 ]

**PHILIPPINE BRITISH ASSURANCE COMPANY, INC.,  
PETITIONER, VS. REPUBLIC OF THE PHILIPPINES,  
REPRESENTED BY THE BUREAU OF CUSTOMS (BOC),  
RESPONDENT.**

### DECISION

**VELASCO JR., J.:**

#### The Case

This Petition for Review on Certiorari under Rule 45 seeks to reverse and set aside the July 23, 2008<sup>[1]</sup> and November 28, 2008<sup>[2]</sup> Resolutions of the Court of Appeals (CA) in CA-G.R. CV No. 88786, entitled *Republic of the Philippines represented by the Bureau of Customs (BOC) v. Philippine British Assurance Company, Inc.*

#### The Facts

Petitioner Philippine British Assurance Company, Inc. is an insurance company duly organized and existing under and by virtue of the laws of the Republic of the Philippines. As such, petitioner issues customs bonds to its clients in favor of the BOC. These bonds secure the release of imported goods in order that the goods may be released from the BOC without prior payment of the corresponding customs duties and taxes. Under these bonds, petitioner and its clients jointly and severally bind themselves to pay the BOC the face value of the bonds, in the event that the bonds expire without either the imported goods being re-exported or the proper duties and taxes being paid.

On December 9, 2003, the Republic, represented by the BOC, filed a Complaint dated December 3, 2003<sup>[3]</sup> against petitioner for Collection of Money with Damages before the Regional Trial Court, Branch 20 in Manila. The case was docketed as Civil Case No. 03-108583, entitled *Republic of the Philippines represented by the Bureau of Customs v. Philippine British Assurance Company, Inc.* It was alleged in the Complaint that petitioner had outstanding unliquidated customs bonds with the BOC.

After hearing, the trial court issued a Decision dated September 21, 2006,<sup>[4]</sup> the dispositive portion of which states:

PREMISES CONSIDERED, the Court finds for the Plaintiff Republic of the Philippines represented by the Bureau of Customs and the defendant British Assurance Company, Inc., is hereby ordered to pay the plaintiff the amount of Php736,742.03 representing defendant's unpaid/unliquidated customs bonds plus legal interest from the finality of this Decision. Defendant's counterclaims are hereby DISMISSED.

SO ORDERED.

From such Decision, petitioner filed a motion for reconsideration which the trial court denied in an Order dated February 5, 2007.

Thus, petitioner appealed the Decision to the CA.

The CA thereafter issued the first assailed Resolution dated July 23, 2008 dismissing the case for lack of jurisdiction.

Petitioner, thus, filed a Motion for Reconsideration dated August 11, 2008.<sup>[5]</sup> It was, however, denied by the CA in its second assailed Resolution.

Hence, we have this petition.

### **The Issues**

A.

The [CA] committed serious error of law when it ruled that it has no jurisdiction over the appeal and the same lies with the Court of Tax Appeals because the instant case is a tax collection case.

B.

The [CA] committed serious error of law when it failed to rule that customs bonds are in the nature of a contract between the surety and the Bureau of Customs.<sup>[6]</sup>

### **The Court's Ruling**

This petition must be granted.

### **The CA Has Jurisdiction over the Instant Case**

The CA ruled in the first assailed Resolution that it had no jurisdiction over the subject matter of the appeal, thus:

With the foregoing in mind, it cannot be denied that the issuance of such bonds is rooted on, based upon, and interrelated with the payment of taxes and customs duties. Strictly speaking, therefore, BOC's suit against British Assurance is one for collection of taxes. Taking in mind that this appeal, filed on March 13, 2007, involves a tax case decided by the RTC in the exercise of its original jurisdiction, it necessarily follows that jurisdiction over the same is with the Court of Tax Appeals pursuant to Republic Act No. 9282.<sup>[7]</sup>

On the other hand, petitioner argues that "in as much as Respondent's right was initially based on its right to collect duties and taxes, the same was converted to a right arising out of a contract, the bond being a contract between Respondent and Petitioner x x x."<sup>[8]</sup> In support of such contention, petitioner cites *Republic of the Philippines v. Mambulao Lumber (Mambulao)*,<sup>[9]</sup> wherein we ruled:

Although the original obligation of the lumber company arose from non-payment of taxes, the complaint against said Company and the Surety is predicated upon the bond executed by them. In other words, plaintiff's right originally arising from law has become a right based upon a written contract, enforceable within ten (10) years x x x.

We agree with petitioner's contention.

Republic Act No. (RA) 9282<sup>[10]</sup> amended Section 7 of RA 1125 to read as follows:

Section 7. Section 7 of the same Act is hereby amended to read as follows:

"Sec. 7. Jurisdiction. - The CTA shall exercise:

"a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x

"3. Decisions, orders or resolutions of the Regional Trial Courts in **local tax cases** originally decided or resolved by them in the exercise of their original or appellate jurisdiction. (Emphasis supplied.)

In the instant case, the original complaint filed with the trial court was in the nature of a collection case, purportedly to collect on the obligation of petitioner by virtue of the bonds executed by it in favor of respondent, essentially a contractual obligation.

As petitioner correctly points out, an action to collect on a bond used to secure the payment of taxes is not a tax collection case, but rather a simple case for enforcement of a contractual liability.

In *Mambulao*, Mambulao Lumber Company (MLC) was liable for deficiency sales tax to the Republic. The parties agreed to an installment plan, whereby MLC obligated itself to pay such obligation in 12 equal monthly installments. To secure the installment payments, MLC and Mambulao Insurance and Surety Corporation executed a surety bond in favor of the Republic. MLC defaulted in the payment of its obligation. Thus, the Republic proceeded against the surety bond. MLC sought the dismissal of the case against it on the ground of prescription, arguing that under Sec. 331, in relation to Sec. 183(A), of the National Internal Revenue Code (NIRC), internal revenue taxes must be assessed within five (5) years from the filing of the corresponding return.

Thus, we ruled in that case that the NIRC was inapplicable to the case and that the Republic had ten (10) years from default of payment within which to collect the indebtedness of MLC. We explained that an action based upon a surety bond cannot be considered a tax collection case. Rather, such action would properly be a case based on a contract.

In a more succinct ruling in *Republic of the Philippines v. Xavier Gun Trading*,<sup>[11]</sup> we decided:

**The present actions by the government are for the forfeiture of the bonds in question. Although the subject matter of said bonds are internal revenue taxes, it cannot be denied that upon the execution of said bonds, the taxpayer, as principal and the bondsman, as surety, assumed a new and entirely distinct obligation and became subject to an entirely different kind of liability.** Thus, it has been held:

However, as soon as the bond was executed, the taxpayer assumed a second and entirely distinct obligation, and became subject to a new and entirely different kind of liability ... **The new liability was voluntary and contractual. It was in form a direct and primary obligation, not to pay a tax, but to pay the sum of \$12,635.00, defeasible only upon payment by the tax-payer of a certain amount, to be fixed by subsequent action of the Commissioner.** No limitation was put upon the time within which the Commissioner

was required to act in fixing such sum. Inasmuch as the Collector had the right to proceed immediately for the collection of the tax, it follows that he also had the right to require, as the price of forbearance from such action, a general promise to pay such amount as might be found due at any time, either before or after the expiration of the statutory period . . . (McCaughn v. Philadelphia Barge Co., 27 F [2d] 628)

The making of the bond gives the United States a cause of action separate and distinct from an action to collect taxes which it already had. The statutes now pleaded to bar the suit can not be extended by implication to a suit upon a subsequent and substituted contract. The postponement of the collection of taxes returned was a waiver of the statutory limitation of five years that would have applied had the voluntary return of the taxpayer stood and no bond been given. If there is any limitation applicable to a suit on the bond, it is conceded that it has not yet become effective. (United States v. Barth Co., 73 L. Ed. 746; U.S. 278-279) (Emphasis supplied.)

Verily, the instant case is not a tax collection case; hence, the CA has jurisdiction over the case.

In addition, it must be stressed that even the BOC did not consider the case as one for tax collection. In its Complaint dated December 3, 2003, the BOC stated:

10. Plaintiff thus sent defendant PHILIPPINE BRITISH a letter dated October 5, 2001 informing said defendant that it had an outstanding unliquidated customs bonds with the Bureau of Customs in the sum of PHP 4,457,290.00 and that if defendant failed to explain within five days from receipt of such letter why these bonds have not been liquidated as set forth in Paragraph 6 hereof, then **plaintiff will forfeit the said customs bonds and institute collection against the said bonds.** x x x (Emphasis supplied.)

Pursuant to such letter, the BOC instituted a complaint against petitioner for collection of money, decidedly not a tax collection case, before the trial court. Moreover, as correctly pointed out by petitioner, the BOC purposefully did not follow the procedure in the proper prosecution of a tax collection case. This may only be explained with the fact that the BOC itself did not consider the action that it instituted as a tax collection case.

Certainly, the administrative agencies tasked with the prosecution of cases within their specific area of concern should know the nature of the action to be filed and the proper procedure by which they can collect on liabilities to it. Here, the BOC's actions reveal its position that indeed the case was not a tax collection case but an action for the enforcement

of a contractual obligation. Hence, appellate jurisdiction over the petition properly lies with the CA and not the Court of Tax Appeals.

**WHEREFORE**, this petition is **GRANTED**. The CA's July 23, 2008 and November 28, 2008 Resolutions in CA-G.R. CV No. 88786 are accordingly **REVERSED** and **SET ASIDE**. This case is hereby **REMANDED** to the CA for hearing on the merits.

No costs.

**SO ORDERED.**

*Corona, (Chairperson), Carpio<sup>\*</sup>, Nachura, and Brion<sup>\*\*</sup>, JJ., concur.*

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<sup>\*</sup> Additional member per Special Order No. 818 dated January 18, 2010.

<sup>\*\*</sup> Additional member per September 2, 2009 raffle.

[1] *Rollo*, pp. 32-35. Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

[2] *Id.* at 37-38.

[3] *Id.* at 63-79.

[4] *Id.* at 40-50.

[5] *Id.* at 51-61.

[6] *Id.* at 13.

[7] *Id.* at 34-35.

[8] *Id.* at 18.

[9] No. L-18942, November 30, 1962, 6 SCRA 858, 861.

[10] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other

Purposes.

[11] No. L-17325, April 26, 1962, 4 SCRA 1133, 1137.

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