530 Phil. 490

THIRD DIVISION

[G.R. NO. 144696, August 16, 2006]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PHILIPPINE GLOBAL COMMUNICATIONS, INC., RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Is respondent telecommunications company, Philippine Global Communications, Inc., liable to pay the 3% franchise tax under Section 117 (b) of Presidential Decree No. 1158 or the 1977 National Internal Revenue Code (Tax Code) during the suspension of the enforcement or implementation of Republic Act No. 7716[1] or the Expanded Value Added Tax Law (E-VAT Law) which was passed in 1994 amending such provision of the Tax Code?

Respondent operates under a legislative franchise granted by Republic Act No. 4617 to construct, maintain and operate communications systems by radio, wire, satellite and other means known to science for the reception and transmission of messages between any points in the Philippines to points exterior thereto. As such, it was subject to 3% franchise tax under Section 117 (b) of the Tax Code, as amended by Executive Order No. 72, which provided:

> SECTION 117. *Tax on franchises*. – Any provision of general or special laws to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchise, upon the gross receipts from the business covered by the law granting the franchise, a tax in accordance with the schedule prescribed hereunder:
>
> (a) On electric utilities, city gas and water supplies..... Two (2%) percent
>
> (b) On telephone and/or telegraph systems, and radio/or broadcasting stations.....Three (3%) percent
>
> (c) On other franchises.....Five (5%) percent
>
> The grantee shall file with, and pay the tax due thereon to, the Commissioner of

> Internal Revenue or his duly authorized representative in accordance with the provisions of Section 125 of this Code, and the return shall be subject to audit by the Bureau of Internal Revenue, any provision of any existing law to the contrary notwithstanding. (Underscoring supplied)

The said provision of the Tax Code was amended by Section 12 of the E-VAT Law which was passed in 1994, reading:

> SEC. 12. Section 117 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
>
> > SEC. 117. *Tax on Franchises*. — Any provision of general or special law to the contrary notwithstanding there shall be levied, assessed and collected in respect to all franchises on electric, gas and water utilities a tax of two percent (2%) on the gross receipts derived from the business covered by the law granting the franchise.
> >
> > The grantee shall file the return with, and pay the tax due thereon to, the Commissioner of Internal Revenue or his duly authorized representative in accordance with the provisions of Section 125 of this Code and the return shall be subject to audit by the Bureau of Internal Revenue, any provision of any existing law to the contrary notwithstanding.

As the immediately quoted Section 12 of the E-VAT Law shows, the payment of 3% franchise tax by a telecommunications company required under Section 117 (b) of the Tax Code was omitted.

Section 21 of the E-VAT law provides that the amendatory law "shall take effect fifteen (15) days after its complete publication in the Official Gazette **or** in at least (2) national newspapers of general circulation whichever comes earlier." The E-VAT Law was published in the **Malaya** and the **Journal** on May 12, 1994. It was published in the **Official Gazette** on August 1, 1994. It therefore became effective on May 28, 1994, or 15 days after its first publication in the said newspapers.

On June 30, 1994, this Court, in the consolidated cases of *"Tolentino et al. v. Secretary of Finance, et al."* (G.R. Nos. 115455, 115525, 115543, 115544, 115754 and 115781) assailing the constitutionality of the E-VAT Law, issued a Temporary Restraining Order (TRO) enjoining the "enforce[ment] and/or implement[ation]" of said law. The TRO was later to be lifted, however, on October 30, 1995.

On account of the suspension of the implementation of the E-VAT Law, respondent filed on May 20, 1996 with the Appellate Division, Tax Refund/Credit of the Bureau of Internal Revenue (BIR) a claim for refund[2] of the 3% franchise tax it allegedly erroneously paid during the 2nd quarter of 1994 until the 4th quarter of 1995 in the total amount of

P70,795,150.51, itemized as follows:

Period Covered	Date Paid	Total
2 nd Qtr. 1994	20 July 1994	P 9,380,243.00
3 rd Qtr. 1994	20 October 1994	10,892,806.80
4 th Qtr. 1994	20 January 1995	14,645,196.78
1 st Qtr. 1995	20 April 1995	9,512,684.78
2 nd Qtr. 1995	20 July 1995	9,870,148.49
3 rd Qtr. 1995	22 October 1995	8,586,305.90
4 th Qtr. 1995	22 January 1996	7,907,764.76
		P 70,795,150.51

Respondent claimed that with the passage and effectivity of the E-VAT Law on May 24 [sic], 1994, it was no longer obliged to pay the 3% franchise tax under Section 117 (b) of the Tax Code.[3]

Respondent added that the TRO issued in *Tolentino et al.* enjoining the enforcement and/or implementation of the E-VAT Law did not have the effect of extending its obligation under Section 117 (b) of the Tax Code to pay the 3% franchise tax since the exemption from or removal of liability for said 3% franchise tax under the E-VAT Law was not an issue in those cases; and with the effectivity of the E-VAT Law on May 24 [sic], 1994, it was benefited by the tax exemption which was self-operative and required no implementation to take effect.[4]

The BIR having failed to act on its claim, respondent filed a petition for review[5] before the Court of Tax Appeals (CTA) against herein petitioner Commissioner of Internal Revenue.

By Decision of October 2, 1997,[6] the CTA granted respondent's claim for refund, holding that the dropping of the provision of Section 117 (b) and (c) of the Tax Code in the E-VAT Law constitutes an express amendment by deletion,[7] and the clear legislative intent was to exempt respondent from payment of the 3% franchise tax.[8]

Moreover, the CTA held that the TRO issued by this Court in *Tolentino et al.* did not have the effect of suspending the exclusion of herein respondent from liability for the 3% franchise tax[9] since the TRO "has the effect of merely suspending the implementation but not the effectivity of [RA 7716] which is primarily a legislative function,"[10] it adding that once the TRO is lifted, "the law should be implemented as it is written and shall take effect on the date the law requires it to take effect."[11] The CTA explained:

> It is of the considered opinion of this Court that the exclusion of petitioner by

> way of an express amendment by deletion started immediately upon the effectivity of Republic Act No. 7716 on May 28, 1994 and with the continuing validity and operation of said Act notwithstanding the issuance of the TRO, such exclusion remain uninterrupted. As this Court sees it, the exclusion or deletion requires no enforcement and/or implementation to be applicable, which would thereby cover it within the ambit of the TRO. The words "enforcement" and "implementation" as applied to the ACT would necessitate the promulgation of rules and regulations which, in turn, demand some positive acts to be done by concerned taxpayers who will become liable to the tax, i.e., declaration and payment of taxes and compliance with reporting procedures. Exclusion or exemption, however, falls in a different class as the taxpayer so deleted or exempted is not duty bound to do any positive or negative act. xxx In this sense, the exemption or deletion benefiting petitioner can thus be stated beyond cavil to be one that is self-operative.
>
> In the light of the foregoing reasons, this Court joins the petitioner in its submission that "only those provisions in R.A. 7716 which need to be implemented by the BIR were restrained but those **provisions which are self-operative such as the grant of tax exemption or removal of a tax liability, which does not need implementation by the BIR to be effective, were already enjoyed by those entitled thereto upon the effectivity of the law."** [12] (Emphasis and underscoring supplied)

Thus the CTA ordered petitioner to "REFUND the amount of P70,795,150.51" to respondent.

Its motion for reconsideration of the CTA Decision having been denied, petitioner filed a petition for review before the Court of Appeals.

By Decision of August 21, 2000,[13] the appellate court affirmed that of the CTA. Hence, the present petition for review.

The petition is impressed with merit.

The amendment of a law, being part of the original which is already in force and effect, must necessarily become effective as part of the amended law at the time the amendment takes effect.[14]

Under the earlier quoted Section 12 of the E-VAT Law, only the franchise tax on "electric, gas and water utilities" was retained. The 3% franchise tax on "telephone and/or telegraph systems and radio broadcasting stations" to which category respondent belongs was omitted.

Under Section 3 of the E-VAT Law, however, respondent's sale of services is subject to

VAT, [15] thus:

> SEC. 3. Section 102 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
>
> > SEC. 102. Value-added tax on sale of services and use or lease of properties. – (a) Rate and base of tax. - There shall be levied, assessed and collected, as value-added tax equivalent to 10% of gross receipts derived from the sale or exchange of services, including the use or lease of properties.
> >
> > The phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines, for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; x x x services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 117 of this Code; x x x (Underscoring supplied)

In fine, under the E-VAT Law, respondent ceased to be liable to pay the 3% franchise tax. It instead is made liable to pay 10% VAT on sale of services.

The effectivity of the E-VAT Law was, however, suspended, by this Court on June 30, 1994 when it issued a TRO pending the resolution of the *Tolentino et al*. cases challenging the constitutionality of the law. The Order granting the TRO reads:

> The Court, by a vote of 11 to 4, further Resolved to ISSUE a TEMPORARY RESTRAINING ORDER, effective immediately and continuing until further orders from this Court, ordering all the respondents to CEASE and DESIST from **enforcing** and/or **implementing** R.A. No. 7716, otherwise known as the "Expanded Value Added Tax Law."
>
> NOW, THEREFORE, effective immediately and continuing until further orders from this Court, You, respondents Executive Secretary TEOFISTO GUINGONA, JR., Secretary of Finance ROBERTO F. DE OCAMPO, Commissioner of Internal Revenue LIWAYWAY V. CHATO, and Commissioner of Customs GUILLERMO L. PARAYNO, Jr., or your agents, representatives and/or any person or persons acting in your place or stead, are hereby ORDERED to CEASE and DESIST from enforcing and/or implementing R.A. No. 7716, otherwise known as the "Expanded Value Added Tax Law." (Emphasis and underscoring supplied)

Notably, there is nothing in the above-quoted order that can be read to mean that the TRO applies only to the specific provisions of the E-VAT law which were being challenged in *Tolentino et al.* The wording of the order leaves no doubt that what was restrained by the TRO was the implementation of the E-VAT law in its entirety.

Respondent's view, which was adopted by both the CTA and the appellate court, that the TRO restrained merely the implementation of those provisions of the E-VAT Law which need to be implemented by the BIR and not those provisions which are self-operative, does not lie.

That the provisions of the Tax Code including Section 117(b), prior to their amendment by the E-VAT Law, were to apply in the interim, that is, while the TRO in *Tolentino et al.* was effective, is clearly reflected in Revenue Memorandum Circular No. 27-94 issued by petitioner on June 30, 1994. The said circular directed all internal revenue officers to comply with the following directives, to wit:

1. Stop implementation of the registration requirement for businesses newly covered by the Expanded VAT Law as prescribed under RMO 41-94 and other related revenue issuances.

2. Stop collection of the P1,000.00 annual registration fees prescribed by the expanded VAT Law.

3. All VAT and non-VAT persons shall be governed by the provisions of the National Internal Revenue Code **prior** to its amendment by Republic Act No. 7716 (e.g., operators of restaurants, refreshment parlors and other eating places including caterers shall continue paying the caterer's tax prescribed under Section 114 of the NIRC prior to its amendment by RA 7716; sale of copra which is exempted from VAT under Section 103 of the NIRC, as amended by RA 7716, shall be subject to 10% VAT pursuant to Section 103 of the old NIRC; sale of real property which became taxable under RA 7716 shall continue to be VAT exempt pursuant to the provisions of Sections 99 and 100 of the old NIRC; etcetera).

4. All sales invoices heretofore registered with the BIR as non-VAT sales invoices which have been superimposed with rubber stamp marking for issuance as VAT sales invoices pursuant to Revenue Regulations No. 10-94 shall be reverted to and considered remaining as non-VAT sales invoices.

5. All other amendments of the NIRC made by RA 7716 shall be considered **ineffective** until the Supreme Court has declared otherwise. In the meanwhile, pending decision of the Court, claims for refund of the P1,000.00 annual registration fee made under RA 7716 shall not be given due course. (Emphasis and underscoring supplied)

With the issuance of the TRO, the enforcement and/or implementation of the entire E-VAT law was stopped.[16]

On October 30, 1995, this Court, in *Tolentino et al.*, lifted the TRO after it denied with finality the motions for reconsideration of its decision upholding the constitutionality of the E-VAT Law.[17]

Under the circumstances, from the suspension of the effectivity of the E-VAT Law on June 30, 1994 up to October 30, 1995 when the TRO in *Tolentino et al.* was lifted, the tax liability of respondent was, following the earlier quoted Revenue Memorandum Circular, governed by Section 117 (b) of the Tax Code in which case it was liable to pay the 3% franchise tax. With the lifting of the TRO on October 30, 1995, respondent would have ceased to be liable to pay the 3% franchise tax.

The abolition of the 3% franchise tax on telecommunications companies, and its replacement by the 10% VAT, was effective and implemented only on January 1, 1996, however, following the passage of Revenue Regulation No. 7-95 (Consolidated Value-Added Tax Regulations).[18] Thus, respondent's claim for refund of the franchise tax it paid during the 2nd quarter of 1994 until the 4th quarter of 1995 must fail.

To grant a refund of the franchise tax it paid prior to the effectivity and implementation of the VAT would create a vacuum and thereby deprive the government from collecting either the VAT or the franchise tax.

WHEREFORE, the petition is **GRANTED**. The decision of the appellate court of August 21, 2000 is hereby **REVERSED** and **SET ASIDE.**

No pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga and Velasco, Jr., JJ., concur.

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[1] "AN ACT RESTRUCTURING THE VALUE ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION, AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES."

[2] Records, pp. 14-18.

[3] Id. at 3.

[4] Id. at 18.

[5] Id. at 1-6.

[6] Id. at 188-202.

[7] Id. at 194.

[8] Id. at 196.

[9] Id. at 197.

[10] Id. at 198.

[11] Id. at 199.

[12] Id. at 200-201.

[13] CA *rollo*, pp. 152-160. Penned by Associate Justice Wenceslao I. Agnir, Jr., and concurred by Associate Justices Angelina Sandoval Gutierrez and Oswaldo D. Agcaoili.

[14] *Camacho v. Court of Industrial Relations*, 80 Phil. 848, 854 (1948).

[15] Clarifying the issues affecting franchise grantees under Section 117 of the Tax Code, Revenue Memorandum Circular No. 5-96 was issued by the Commissioner of Internal Revenue pertinent portions of which provides to wit:

> Q-1. What are the franchise grantees subject to VAT beginning January 1, 1996?
> A-1 a. Telephone and telegraph companies;
> b. Radio and television broadcasting; and
> c. Other franchise grantees which are not included in No. 2 hereunder.
> Q-2. What franchise grantees are not subject to Vat but to the two percent (2%) tax under Section 117 of the Tax Code?
> A-2. a. Electric franchise grantees;
> b. Gas franchise grantees and
> c. Water utilities.
> Q-3. Now that franchise grantees [are] now subject to VAT, will they still be subject [to] the franchise tax?
> A-3. Franchise grantees now subject to Vat are no longer subject to franchise tax.
> Q-4. What happens to the "in lieu of all taxes" provision in the charter of a franchise grantee now covered by VAT?
> A-4. The "in lieu of all taxes: provision in the franchise is not affected by the

expanded Vat law. VAT merely replaced the franchise tax . In other words, VAT instead of franchise tax shall be in lieu of all taxes due from a franchise grantee.

[16] *Wiseman v. Philipps*, 191 Ark. 63, 84 S.W.2d 91.

[17] *Tolentino v. Secretary of Finance*, 319 Phil. 755, 803 (1995).

[18] *Vide* Separate Opinion of Justice Antonio Carpio in *PLDT v. City of Davao*, 447 Phil. 571, 593 (2003).
