REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HI CEMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5026

LIWAYWAY VINZONS-CHATO,
in her capacity as the Commissioner of Internal Revenue,
Respondent.

Promulgated:

JAN 29 1998

x - x

DECISION

This case involves an appeal from the decision of respondent Commissioner of Internal Revenue assessing the petitioner the amount of ₱6,892,103.14 representing deficiency value-added tax, inclusive of surcharge, interest and compromise penalty for taxable year 1988.

The antecedent facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines and engaged in the cement business. It is a VAT-registered person with VAT Registration No. 32-A-4-002077 (Exhibit F-2, G-2).

On March 4, 1992, petitioner received from the Bureau of Internal Revenue (BIR) an assessment notice (FAS-4-88-92-000944), together with a transmittal letter, dated February 28, 1992, for the taxable year 1988 for alleged deficiency value-added tax in the amount of ₱6,892,103.14 inclusive of surcharge, interest and compromise penalty. According to the assessment notice, the assessment would become final and unappealable if not

269

protested within thirty (30) days from receipt thereof (Exhibit A, CTA records, p. 6).

Two days thereafter (March 6, 1992), petitioner was surprised to receive a pre-assessment notice, dated February 21, 1992, from the BIR wherein petitioner was informed of a proposed assessment for alleged deficiency business (VAT/percentage/doc. stamp) tax for taxable year 1988 in the amount of P6,892,103.14 inclusive of surcharge, interest and compromise penalty (Exhibit B, CTA records, p. 8).

On March 24, 1992, a letter was sent by petitioner to the BIR protesting the pre-assessment notice (Exhibit C, CTA records, p. 9). It must be noted that petitioner, through its representative, Mario Casuparan, executed an undated Waiver of the Defense of Prescription under the Statute of Limitation. This waiver was not signed by the Commissioner of Internal Revenue (Exhibits Q-1, Q-2, page 151, BIR records).

On August 16, 1993, petitioner received from respondent a letter, dated June 30, 1993, denying petitioner's protest and reiterating the assessment for alleged deficiency business (VAT/percentage/doc. stamp) tax (Exhibit D, and D-1, CTA records p. 10). Then, on August 18, 1993, petitioner received a collection letter, dated August 11, 1993, from the BIR for alleged deficiency value added tax in the amount of ₱6,892,103.14 (Exhibits E, E-1, CTA records, p. 11). Not satisfied with the action taken by the respondent's BIR, petitioner filed a petition for review before this Court on September 3, 1993.

Petitioner avers that there is a variance in the pre-assessment notice and the final assessment notice in that the former indicated the alleged deficiency tax of petitioner as business (VAT/percentage/doc. stamp) tax while in the latter only deficiency value-added tax was mentioned. It further alleges that the assessment by respondent for deficiency value-added tax on business (VAT/percentage/doc. stamp) tax for the taxable year 1988 against petitioner is null and void for want of legal and factual basis; that the assessment failed to indicate the specific nature, itemization and/or composition of the alleged deficiency tax and to follow the procedure mandated by law; and that the assessment is not itself clear whether it is for deficiency value-added tax as mentioned in the final assessment notice and the collection letter or deficiency business (VAT/ percentage/doc. stamp) tax as indicated in the pre-assessment notice and the letter denying petitioner's protest.

Respondent, on the other hand, asseverates in her answer, inter alia, that there is no discrepancy between the pre-assessment notice and the final assessment notice as both notices state only one amount of deficiency tax, and that while the designation of the tax for which a deficiency is charged in the pre-assessment notice merely states the taxes which the examiner is authorized to examine for that specific year (VAT/percentage/doc. stamps). She further adds in her Special and Affirmative Defenses, that:

> 6. The petitioner was fully aware of the taxes being examined by the respondent's examiner as petitioner's representative had been assisting the examiner during the examination and that they were duly informed of the examiner's findings.
>
> 7. The petitioner was given full opportunities to oppose/comment on the findings of the examiner as their request for reinvestigation of the taxable year 1988 was granted. Such fact was made known to the petitioner and which the petitioner purposely opted to disregard;
>
> 8. The reinvestigation of the pertinent records of the petitioner for the said taxable year yield no factual or legal basis to change the assessment,
>
> 9. The petitioner failed to effectively oppose/refute the assessment as computed nor to prove its illegality,
>
> 10. The assessment in question have basis in fact and in law. Petitioner is liable for deficiency value added tax of P6,892,103.14 for the year 1988,

272

> 11. It is an established doctrine in taxation that the assessment of the representative of the Commissioner of Internal Revenue is prima facie correct and the burden of proof that it is otherwise is on the taxpayer to prove all the facts necessary to establish the illegality of the assessment.

The issue to be resolved is whether or not petitioner is liable for the payment of P6,892,103.14 representing deficiency value added tax, inclusive of surcharge, interest and compromise penalty for taxable year 1988.

Before we delve on this issue, we must first settle the preliminary and prejudicial issue of prescription raised by petitioner for if found to be meritorious, this issue and all other issue or issues involved in this case will be moot and academic.

Petitioner manifests that for failure of the respondent to show its factual basis and to follow the procedural requisites for its issuance, the assessment in question was no assessment at all but a mere scrap of paper without any legal effect. And as a mere scrap of paper, the assessment notice could not have tolled the running of the prescriptive period for making the assessment. Thus, respondent has lost whatever right there was to collect the alleged deficiency tax from petitioner by virtue of prescription.

273

To shed light on this controversy, we shall quote the applicable provisions of the Tax Code particularly Section 203, thus:

> **Section 203.** ***Period of Limitation upon assessment and collection***-Except as provided in the succeeding section, internal revenue tax shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

Based on the above provisos, respondent can only issue an assessment within three (3) years from the last day required by law for the filing of the return.

In the case at bar, the assessment in question involves value-added tax. The assessment notice (FAS-4-88-92-000944) was issued on February 28, 1992 although it was received by petitioner on March 4, 1992. The petitioner alleges that by that time, the three-year period for assessment as provided in Section 203, NIRC, as amended, had already lapsed because the VAT Returns for the 3rd and 4th Quarters of fiscal year 1988 (Exhibit F-2 to F-14 and G-2 to G-13) were filed on November 21, 1988 and February 20, 1989, respectively. The petitioner relied on the prescriptive period for assessment or collection of internal revenue taxes, fees and charges of three (3) years. It should be noted that the assessment in question refers only to the 3rd and 4th quarters of the taxable year of 1988 as clearly seen from the BIR records submitted (see pages 152 to 154, BIR records).

We find petitioner's argument meritorious.

Section 110 of the Tax Code provides, thus:

> **SEC. 110. Return and payment of value-added tax.** (a) *Where to file the return and pay the tax.* - Every person subject to value-added tax shall file a quarterly return of his gross sales or receipts and pay the tax due thereon to a bank duly accredited by the Commissioner located in the revenue district where such person is registered or required to be registered. However, in cases where there are no duly accredited agent banks within the city or municipality, the return shall be filed and any amount due shall be paid to any duly accredited bank within the district, or to the Revenue District Officer, Collection Agent authorized Treasurer of the city or municipality where such taxpayer has his principal place of business. Only one consolidated return shall be filed by the taxpayer for all the branches and lines of business subject to value-added tax. If no tax is payable because the amount of input tax and any amount authorized to be offset against the output tax is equal to or is in excess of the output tax due on the return, the taxpayer shall file the return with the Revenue District Officer, Collection Agent or authorized municipal treasurer where the taxpayer's principal place of business is located.
>
> *(b) Time for filing of return and payment of tax.* - The return shall be filed and the tax paid within 20 days following the end of each quarter specifically prescribed for a VAT-

275

> registered person under regulations to be promulgated by the Secretary of Finance: *Provided, however,* That any person whose registration is cancelled in accordance with paragraph (e) of Section 107 shall file a return within 20 days from the cancellation of such registration.

In implementing the aforequoted section of the Tax Code, VAT Revenue Regulation No. 5-87 divided VAT-registered persons into three groups A, B, and C in accordance with the last digit of their VAT registration number. Those whose VAT registration numbers end in 1, 2, 3 and 4 shall be in Group A; 5, 6, 7, Group B and 8, 9, 10, Group C. The taxable quarters of these respective groups shall be as follows :

Group	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.
A	Jan 1-Mar31	Apr 1-June 30	Jul 1-Sept 30	Oct 1-Dec 31
B	Feb 1-Apr 30	May 1-Jul 31	Aug 1-Oct 31	Nov 1-Jan 31
C	Mar 1-May 31	Jun 1-Aug 31	Sep 1-Nov 30	Dec 1-Feb 28/29

The records show that the VAT registration number of petitioner ends in the number 7 (see Exhibits F-2 and G-2), thus it falls under Group B which are required to file its VAT returns for the third and fourth quarters within twenty days following October 31 and January 31, respectively. Petitioner filed its VAT return for the third quarter of 1988 on November 21, 1988. The assessment was issued on February 28, 1992 which is clearly beyond the three-year period to assess provided

276

by law because the reckoning date of said period begins on November 21, 1988, the date when the petitioner filed its VAT return for the third quarter of 1988.

With respect to the fourth quarter of 1988, petitioner filed its VAT return on February 20, 1989 (see Exhibit "G-2"). Similarly, the issuance of the assessment on February 28, 1992 was again made beyond the three-year period provided by law because the prescriptive period commenced to run on February 20, 1989, the date of filing of the VAT return for the fourth quarter.

The Waiver of the Defense of Prescription executed by the petitioner did not have the effect of extending the three-year period for assessment because this document was not signed by the Commissioner of Internal Revenue, contrary to the requirement provided in Section 223 (b) of the Tax Code which provides as follows :

> **SEC. 223. Exceptions as to period of limitation of assessment and collection of taxes.**-(b) If before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

The aforecited section 223(b) considers the waiver of the defense of prescription as an agreement entered into between the taxpayer and the Commissioner of Internal Revenue such that it must be signed by both of them to be valid. Revenue Memorandum Order No. 20-90 provides that only the Commissioner of Internal Revenue is authorized to sign a waiver for tax cases involving more than 1 million pesos and since the instant case involves more than 6 million pesos, the failure of the Commissioner of Internal Revenue to sign the said waiver renders it void and of no effect (**Luzon Packaging Products Inc. vs. Liwayway Vinzons Chato, CTA Case No. 5016 dated June 23, 1997 with Entry of Judgment dated September 25, 1997; Central Cement Corporation vs. Liwayway Vinzons-Chato, CTA Case No. 5024 dated June 13, 1997**).

WHEREFORE, in view of the foregoing, the assessment for deficiency value-added tax in the total amount of P6,892,103.14 issued against the petitioner for the taxable year 1988 is hereby **CANCELED** for having been issued beyond the three (3) year period provided by law.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

278

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals

279