LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PLANTERS PRODUCTS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5071

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 10 1997

x - x

DECISION

This case involves a disputed assessment for deficiency value-added tax in the amount of P1,292,737.29 for the first quarter (January to May) of taxable year 1988.

Petitioner is a corporation duly organized and existing under the laws of the Philippines and is engaged in the wholesale and retail trade of fertilizers and other agricultural and industrial products. It is a VAT-registered entity with VAT Registration No. 32 A-000890.

For the first quarter of the taxable year 1988, petitioner filed its VAT Return (Exh. A, p. 75, CTA rec.) on June 20, 1988, showing a "NIL" VAT liability.

Respondent does not agree on the amount of presumptive input tax claimed by petitioner in its 1988 First Quarter VAT return and consequently advised petitioner of the proposed assessment. Petitioner waived the running of the prescriptive period set under Sections 203 and 223 of the Tax Code, as amended, up to August 31, 1991.

On August 30, 1991, respondent issued an assessment (Exh. 2, p. 68, BIR rec.) demanding the payment of deficiency value-added tax for the first quarter of 1988 in the amount of P1,292,737.29, inclusive of interest, surcharge and compromise penalty, detailed as follows:

Deficiency Value-Added Tax 1988

Unallowable Presumptive Input tax claimed	P 621,054.96
Add: 25% surcharge	155,263.74
interest	496,418.59
compromise	20,000.00
Total amount due & collectible	P1,292,737.29

The assessment arose from the disallowance of the 8% presumptive input tax claimed on the beginning inventories of calcines amounting to P621,054.96, which petitioner failed to adjust in its Quarterly VAT return (Exh. 1, p. 62, BIR rec.). Respondent's examiner maintains that calcines is a by-product of manufacturing fertilizer. Inasmuch as this is a manufactured product, it is no longer entitled to the application of the 8% presumptive tax as per Revenue Regulations No. 5-87.

Petitioner filed a protest letter, dated October 4, 1991, setting forth its objections to the above-mentioned assessment, foremost among which is respondent's alleged error in disallowing the 8% presumptive input tax in the amount of P621,054.96 corresponding to its Calcine inventory as of December 31, 1987, thereby resulting in a VAT deficiency for the first quarter of 1988.

Respondent denied the protest in a letter, dated December 10, 1993, received by the petitioner on February 4, 1993, claiming therein that the petitioner failed to submit documents to controvert the subject assessment.

The final decision of the respondent with respect to its protest prompted the petitioner to file an appeal with this Court on March 3, 1994 setting forth therein the same objections already mentioned in their protest letter with an added allegation that the deficiency VAT assessment for the first quarter of taxable year 1988 issued on August 30, 1991, and received by it on September 9, 1991, has already prescribed. Section 203 of the Tax Code, as amended, provides that taxes shall be assessed within 3 years after the last day of the filing of the return. Since the return in question was filed on June 20, 1988, the 3 year period to assessed has prescribed on June 20, 1991. Consequently, the assessment issued on August 30, 1991 is invalid due to prescription.

Respondent affirms the findings of its revenue examiners with respect to the value-added tax deficiency of petitioner and concretized her stand by means of the following Special and Affirmative Defenses:

"8. Petitioner is liable for deficiency value-added tax in the amount of P1,292,737.29 for the first quarter of 1988;

9. Respondent conducted a thorough investigation of this case which resulted in the issuance of the subject assessment. Petitioner, however, failed to substantiate the grounds relied upon in its protest against the herein tax assessment;

10. Petitioner, under the law and facts involved herein, is not entitled to the transitory input tax credit provided for under Section 25 of E.O. No. 273;

11. The disallowance by respondent of petitioner's claim of presumptive input tax on the value of its inventory of calcine, a manufactured product, in the amount of P621,054.96, is in accordance with law and regulations as will be shown hereunder;

12. Paragraph (a), Section 166 of the Tax Code provides:

> Section 166. Credits against sales tax. - (a) Creditable taxes. Any excise sales or miller's [tax] paid under Title [IV and Title V] of th[is] Code, on domestically manufactured, processed, produced [or] imported raw materials, part, accessory or other article locally purchased or imported by the manufacturer for conversion into or intended to form part of any finished product for sale shall be credited against the sales tax due on the original sale of the finished product, except agricultural products; Provided, however, that the amount of sales tax on domestically purchased raw materials, part o[r] accessory, is separately indicated in the sales invoice. (Emphasis supplied)

Clearly, petitioner is not entitled to any tax credit which was then allowed under paragraph (a), Section 166 of the Tax Code because Calcine is not used as a raw material of a finished product subject to sales tax;

13. It must be stressed that the transitory provisions in the aforestated E.O. No. 273 simply provide for the mechanics of adjustment from one tax system to another. Thus, if tax crediting by a trader of a finished product (subject to turnover tax) is not allowed, it cannot, similarly, be claimed as presumptive input tax credit under the VAT system (E. O. No. 273).

14. The assessment has been issued within the three (3) year reglementary period to assess and, therefore, it is not barred by the statute of limitations;

15. Deduction being a matter of legislative grace shall be allowed only where there is a clear provision in the statute authorizing the deductions claimed (Ta[n] Guan v. Coli., CTA Case No. 451, December 27, 1958);

16. All presumptions are in favor of the correctness of the tax assessment, and the burden of proof that it is otherwise lies on the taxpayer (Interprovincial Autobus Co., Inc. v. CIR, 98 Phil. 290; CIR v. Avelino, 8 SCRA 572; Mindanao Bus Co. v. [Coll. of Internal Revenue, 1 SCRA] 538); and

17. The petition has no basis in fact and in law."

The first issue that must be resolved is whether or not the government's right to assess the petitioner's VAT deficiencies for the first quarter of 1988 has already prescribed. If the answer to the foregoing is in the negative, then the issue that confronts us is whether or not petitioner can avail of the 8% presumptive input tax under Section 25(a)(2)(3) of the Executive Order No. 273 on its inventory of Calcine in the amount of P621,054.96.

As to the first issue, petitioner maintains that the assessment letter, dated August 30, 1991, was issued outside the three-year period prescribed by law, thus the government is already barred from assessing its VAT deficiencies for the first quarter of 1988 because its VAT return for said quarter was filed on June 20, 1988, thus the three-year period expired on June 20, 1991.

In her answer, respondent confronted the issue of prescription by means of a general statement declaring that the "assessment has been issued within the three (3) year reglementary period to assess and, therefore, it is not barred by the statute of limitations" (No. 14 of Respondent's Answer, p. 27, CTA rec.).

A review of the records of this case reveal that the petitioner, through its Vice-President for Administration, Mr. Ceferino A. Patino, Jr., wrote a letter, dated June 18, 1991, addressed to the Commissioner of Internal Revenue, stating categorically that they (petitioner corporation) are waiving the running of the prescription period, fixed by Sections 203 and 223 of the Tax Code, up to August 31, 1991 (Exh. B, p. 76, CTA rec., and p. 60, BIR rec.). Apparently, this letter prompted the concerned BIR officials to issue the formal assessment on August 30, 1991, one day before the expiration date indicated in said letter (Exh. 3, p. 70, BIR rec.).

Unfortunately, this Court believes that a mere statement indicating an intention of waiving the running of the prescriptive period casually mentioned in a letter signed by the representative of the petitioner is not a valid waiver sufficient to stop the running of the prescriptive period for the assessment of taxes.

The three-year period provided in Section 203 of the Tax Code admits of exceptions enumerated in Section 223 of the same Code, and We quote:

> "Sec. 223. **Exceptions as to period of limitation of assessment and collection of taxes.** (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court after the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsify, fraud, or omission. Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof;
>
> (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. (Emphasis ours)

(c) Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in Court within three years following the assessment of the tax.

(d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) herein above may be collected by distraint or levy or by a proceeding in Court within the period agreed upon in writing before the expiration of the three-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) **Provided, however,** That nothing in the immediately preceding section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax returns filed in accordance with the provisions of any tax amnesty law or decree. (As amended by BP 700)"

Subsection (b) hereinabove quoted clearly provides that for a waiver to be valid, said waiver must be embodied in an agreement signed by the taxpayer and the Commissioner of Internal Revenue. More specifically, Revenue Memorandum Order No. 20-90, dated April 4, 1990, provides for the following procedures in the execution of a valid waiver and these are the following:

"(1) The waiver must be in the form identified as Annex "A" hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase "but not after ______, 19 __" should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.

(2) The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.

Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

(3) The following revenue officials are authorized to sign the waiver;

(A) In the National Office

1) Assistant Commissioners for Collection (ACIRs), Special Operations, National Assessment, Excise, and Legal on tax cases pending before their respective offices.

In the absence of the ACIR, the Head Executive Assistant may sign the waiver. - For tax cases involving not more than P500,000.00.

2) Deputy Commissioner. - For tax case involving more

than P500,000.00 but not more than P1M.

3) Commissioner. - For tax cases involving more than P1M.

(B) <u>In the Regional Offices</u>

1) The Revenue District Officer with respect to tax case still pending investigation and the period to assess is about to prescribe regardless of amount.

2) The Regional Director, the Assistant Regional Director, the Chief, Assessment Branch or the Chief, Legal Branch with respect to cases still pending review and the period to assess/collect is about to prescribe, regardless of amount.

3) The Regional Director, the Assistant Regional Director, the Chief, Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and the period to assess/collect is about to prescribe, regardless of amount.

(4) The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

(5) The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting

in prescription of the right to assess/collect shall be administratively dealt with."

The statement found in the letter identified here as Exh. B, p. 76, CTA rec., waiving the running of the prescriptive period up to August 31, 1991, is clearly not in proper form prescribed by Section 223(b) of the Tax Code as implemented by Revenue Memorandum Order No. 20-90. Thus, it did not have the effect of suspending the period to assess petitioner's alleged VAT deficiency for the first quarter of 1988. The evidence shows that the VAT return of petitioner for the first quarter of 1988 was filed on June 20, 1988 (Exh. A, p. 75, CTA rec.). The assessment notice for said quarter was issued only on August 30, 1991, which is more than three years from June 20, 1988 when the value-added taxes were deemed paid. Section 203 of the Tax Code, as amended, explicitly provides that the counting of the three-year period shall begin from the date of the filing of the return, thus:

> "Sec. 203. **Period of limitation upon assessment and collection.** - Except as provided in the succeeding section, internal revenue taxes shall be assessed within three 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." (As Amended by BP 700)

In the case entitled **Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4498, dated May 3, 1996**, this Court acknowledged the importance of strict compliance with the proper form and procedures to constitute a valid waiver in order to suspend the running of the statute of limitations for the collection of taxes, which can also be applied to the assessment of taxes, thus:

> "Although the waivers of the Statute of Limitation were signed by Atlas' representative, the same has no force and effect considering that the Commissioner of Internal Revenue did not sign it. The only logical conclusion that can be reached is that there were no valid waivers executed there being no agreement that will toll the running of the statute of limitation on the part of the respondent. The waiver is vital for the suspension of the running of the period to collect the assessments issued by the respondent."

Respondent did not produce any evidence to contradict the petitioner's claim. Nowhere in the records of this case can there be found a waiver of the statute of limitations in the form prescribed by Revenue Memorandum Order No. 20-90. The only conclusion that can be reached is that the assessment of petitioner's VAT deficiencies for the first quarter of 1988 was issued beyond the three-year period prescribed by law, hence, has no more force and effect.

WHEREFORE, in view of the foregoing, the notice of assessment, dated August 30, 1991, issued by respondent against petitioner in the amount of ₱1,292,737.29 is hereby **CANCELLED** and **WITHDRAWN** on the ground of prescription. No cost of suits.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

ON LEAVE
RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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