REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PUREGOLD DUTY FREE, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7812

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

NOV 2 5 2010
1:30 p.m.

x- x

RESOLUTION

Submitted for resolution is petitioner's **"Motion for Reconsideration (of the Resolution dated June 3, 2010)"** filed on June 10, 2010, together with respondent's **Comment** thereto, filed on July 14, 2010.

The records show that in the assailed Resolution dated June 3, 2010, the Court denied petitioner's *Motion for Early Resolution of the Issue of Amnesty*. Hence, the instant *Motion for Reconsideration* wherein petitioner raised the following arguments:

1. Petitioner has already presented evidence to prove that petitioner's tax liabilities are not of those excluded from the coverage of R.A. No. 9399;

2. Petitioner already presented evidence to show the difference between national taxes and the 5% special tax; and

3. Lastly, petitioner already presented evidence to show filing of tax amnesty return and payment of amnesty tax.

Respondent maintains that the tax liabilities being assessed against petitioner are excluded from the coverage of Republic Act (R.A.) No. 9399; thus, its availment of tax amnesty under the said law does not necessarily relieve it from the payment of its deficiency tax liabilities. Respondent cites as its basis Section 131(A) of the National Internal Revenue Code (NIRC) of 1997, as amended.

By way of a *Reply (to Respondent's Comment dated 14 July 2010)* filed on August 4, 2010, petitioner claims that the comment filed by respondent raises a moot point since the Court had already ruled that petitioner is entitled to avail of the tax amnesty under R.A. No. 9399. Also, petitioner reiterates its previous contention that it was able to substantiate its claim under R.A. No. 9399.

On September 2, 2010, this Court issued a *Resolution* holding in abeyance the resolution of the *Motion for Reconsideration* pending submission of petitioner's notice of availment and tax amnesty return.

In compliance with the said resolution, petitioner filed its *Manifestation of Compliance* on September 14, 2010, averring that the only prescribed form expressly created by the Bureau of Internal Revenue (BIR) for implementing R.A. No. 9399 is BIR Form No. 0616, as per Revenue Memorandum Circular No. 29-2007.

On November 15, 2010, respondent filed her *Comment (Re: Petitioner's Manifestation of Compliance)* reiterating the arguments mentioned in her *Comment (Re: Petitioner's Motion for Reconsideration of the Resolution dated 03 June 2010)* filed on July 14, 2010.

This Court finds merit in petitioner's Motion for Reconsideration of this Court's Resolution dated June 3, 2010.

Petitioner's prayer for cancellation of respondent's assessment in its *Petition for Review, Motion for Early Resolution of the Issue of Amnesty* and *Motion for Reconsideration* is primarily anchored on its alleged availment of tax amnesty under R.A. No. 9399.

Inevitably, to enjoy the benefits under the said law, petitioner must first prove that it complied with all the conditions thereto; particularly, Section 1 thereof which requires the filing of a notice and return in such form as shall be prescribed by the Commissioner of

Internal Revenue and the Commissioner of Customs, and thereafter, payment of an amnesty tax of Twenty-five thousand pesos (P25,000.00) within six months from the effectivity of R.A. No. 9399.[1]

Moreover, petitioner must also prove that its tax liabilities are not excluded under R.A. No. 9399 and its implementing rules and regulation, Department Order (DO) No. 33-07. Article 7 of Rule 4 under DO No. 33-07 reads:

> **"RULE 4**
>
> EXCLUSIONS, IMMUNITIES AND PRIVILEGES
>
> **ARTICLE 7.** *Exclusions.* - the one-time remedial amnesty under RA 9399 shall not include applicable taxes and duties on articles, raw materials, capital goods, equipment and consumer items removed from Special Economic Zones and Freeport Zones and entered into the customs territory of the Philippines for local or domestic sale, which shall be subject to the usual taxes and duties, as prescribed in the National Internal Revenue Code of 1997, as amended, and the Tariff and Customs Code of the Philippines, as amended."

In substantiating its compliance with Section 1 of Republic Act No. 9399, petitioner submitted Certificates of Registration/Tax Exemption[2] issued by the Clark Development Corporation, its Amnesty Tax Payment Form[3] and its BIR Tax Payment Deposit Slip[4].

---

[1] Section 1 of Republic Act No. 9399, March 20, 2007; An Act Declaring a One-Time Amnesty on Certain Tax and Duty Liabilities, Inclusive of Fees, Fines, Penalties, Interest and Other Additions Thereto, Incurred by Certain Business Enterprises Operating Within the Special Economic Zones and Freeports Created Under Proclamation No. 163, Series of 1993; Proclamation No. 120, Series of 1994; and Proclamation No. 984, Series of 1997, pursuant to Section 15 of Republic Act No. 7227, as amended, and for Other Purposes.
[2] Exhibits "B", "C", "D" and "E".
[3] Exhibit "R".
[4] Exhibit "S".

Based on the foregoing, the Court finds that petitioner has sufficiently established its compliance with the requirements provided under R.A. No. 9399.

As to whether or not petitioner's tax liabilities are excluded under R.A. 9399; it is significant to note that what petitioner seeks to cancel in its petition for review and *Motion for Early Resolution,* is respondent's assessment of deficiency excise tax and Value Added Tax (VAT) on **imported** alcohol and tobacco products.

Clearly, these are not taxes on articles, raw materials, capital goods, equipment and consumer items **removed** from the Special Economic Zones and Freeport Zones and entered into the customs territory of the Philippines for local or domestic sale. This may be verified in respondent's Formal Letter of Demand where it was stated that the assessment was made against petitioner's importation of wines, liquors and tobacco products. In view thereof, the deficiency tax assessments made against petitioner, which were sought to be cancelled in the instant petition, are not excluded under R.A. No. 9399.

As to respondent's contention that petitioner is not entitled to avail of the tax amnesty provided under R.A. No. 9399 on the basis of Section 131 of the NIRC of 1997; this Court is not persuaded.

The coverage of the tax amnesty is the difference of all national and local taxes that petitioner is liable under the Local Government Code, the Tax Code and other pertinent laws, and the 5% tax that petitioner had previously been liable pursuant to Executive Order (EO) No. 80.

Being liable to VAT and excise taxes on importations of alcohol and cigars under Section 131 of the 1997 Tax Code is not a condition to be excluded from the tax amnesty. Contrarily, being liable to such taxes is obviously contemplated by RA No. 9399 thru the phrase "**all national and local tax impositions under relevant tax laws, rules and regulations.**" If petitioner is liable to VAT and excise taxes pursuant to the provision of Section 131(A) of the 1997 Tax Code, then such amount of taxes will be used in determining the **difference** mandated by R.A. No. 9399, which in turn, is the subject of the latter law.

Furthermore, it is jurisprudentially settled that a tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate.[5]

Consequently, the government, through the enactment of R.A. No. 9399, expressed its intention to waive its right to collect petitioner's deficiency tax liabilities, which in this case is the tax imposed under Section 131(A) of the NIRC of 1997, subject to the condition that petitioner has complied with the requirements provided therein.

---

[5] Metropolitan Bank and Trust Company vs. CIR, G.R. No. 178797, August 4, 2009.

In the light of this Court's findings that petitioner has substantially complied with the tax amnesty program, petitioner is thereby relieved of any civil, criminal and/or administrative liabilities arising from or incident to the nonpayment of taxes, duties and other charges covered by the tax amnesty. However, the applicable tax and duty liabilities to be covered by the tax amnesty shall refer only to the difference between: (i) all national and local impositions under relevant tax laws, rules and regulations; and (ii) the five percent (5%) tax on gross income earned by said registered business enterprises as determined under relevant revenue regulations of the Bureau of Internal Revenue and memorandum circulars of the Bureau of Customs during the period covered.

Accordingly, the amount covered by the tax amnesty shall be the difference between the amount of P2,780,610,174.51, which comprises petitioner's deficiency excise tax and VAT[6]; and the amount of P38,700,200.55[7] which is the equivalent of 5% tax on gross income earned by said registered business enterprises for the calendar year 1998 to 2004; or a total of P2;741,909,973.96. Details are as follows:

Deficiency Excise Tax, VAT and Inspection Fees per Assessment				
		Excise Tax	P 923,418,902.25	
		VAT	1,857,037,916.57	
		Inspection Fees	153,355.70	P2,780,610,174.51
Less:	5% Income Tax Paid Per Returns filed			
	Exh	Year	5% Tax	

[6] Exhibit "X".
[7] Exhibits "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q" and "Q-1".

	G	1998	P 2,504,241.00	
	I	1999	11,357,233.00	
	K	2000	8,748,137.00	
	M	2001	3,419,044.00	
	O	2002	3,938,554.00	
	P	2003	4,295,522.00	
	Q	2004	4,437,469.55	38,700,200.55
Taxes covered by the tax amnesty				<u>P2,741,909,973.96</u>

WHEREFORE, premises considered, the instant *Motion for Reconsideration* is hereby **GRANTED**. The Resolution of this Court promulgated on June 3, 2010 is hereby set aside. Respondent's assessment against petitioner for deficiency VAT and excise tax for the importation of alcohol and tobacco products covering the period January 1998 to May 2004 is hereby **CANCELLED** and **SET ASIDE** solely in view of petitioner's availment of Tax Amnesty under Republic Act No. 9399. Accordingly, the instant Petition for Review is hereby deemed **WITHDRAWN** and the case is considered **CLOSED** and **TERMINATED.**

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice