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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

OZAMIZ MANABAY INDUSTRIES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5332

Promulgated:
SEP 24 1997

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DECISION

This is a petition for review filed by the petitioner, OZAMIZ MANABAY INDUSTRIES, INC., against respondent, COMMISSIONER OF INTERNAL REVENUE, decision, dated January 16, 1996, denying petitioner's protest of the assessment and holding it liable for the payment of deficiency value added tax on the sales of copra for the year 1993 in the total amount of P1,781,557.39.

The antecedent facts of the case are as follows:

Petitioner is a domestic corporation engaged in the business, among others, of buying and selling copra.

On November 27, 1995, petitioner was assessed by respondent deficiency value-added tax on the sales of copra for the year 1993, in the amount of P1,781,557.39, computed as follows: (p. 69, BIR rec.)

Gross sales on copra		P10,063,257.10
Output tax (P10,063,257.10 x $^{1}/_{11}$)	P	914,841.55
Less: Input tax		0.00
Deficiency Value Added Tax still Due	P	914,841.55
Add: 25% surcharge		228,710.40
20% interest from 3.25.93 to 10.25.95		504,505.44
Compromise penalty		133,500.00
Total Deficiency VAT due and collectible		P 1,781,557.39

On December 22, 1995, petitioner timely protested the assessment but the same was denied by the respondent in a decision, dated January 16, 1996, received by petitioner's counsel on February 2, 1996.

Hence, on February 23, 1996, petitioner filed through registered mail the instant petition for review.

Petitioner contends that VAT Ruling 190-90 which reversed BIR Ruling RR-6B-01 series of 1988, has no force and effect on the ground that petitioner was not notified nor was the VAT Ruling ever published. Thus, the assessment issued by the respondent against the petitioner has no legal basis.

BIR Ruling No. RR-6B-01, series of 1988, dated January 11, 1988, is quoted hereunder as follows:

Joebon Marketing Corporation
South Road, Dumaguete City
Negros Oriental

Attention: <u>Mr. Juanito U. Lee, President</u>

Gentlemen:

This refers to your letter dated December 9, 1987 addressed to the Provincial Revenue Officer of Dumaguete City, requesting our opinion on the applicability or non-applicability of the Value-Added Tax (VAT) assessment as imposed by Executive Order No. 273.

It is represented that JOEBON MARKETING CORPORATION is engaged in the buying and selling of copra; that our opinion is sought to guide you regarding compliance of the requirements under the law especially with reference to your registration if so covered.

In reply, I have the honor to inform you that pursuant to the unnumbered ruling of the Commissioner of Internal Revenue dated January 18, 1988 copra has been classified as agricultural food product and therefore not subject to the value-added tax in all stages of production or distribution.

Very truly yours,

(Sgd.)
BEETHOVEN L. RUALO
Regional Director

On August 17, 1990, VAT Ruling No. 190-90 was issued reclassifying copra as a non-food agricultural product. The sale thereof is exempt only if made by the primary producer pursuant to Sec. 103(a) of the Tax Code, as amended. Thus, as a trading company and a subsequent seller, sale of copra is already subject to VAT pursuant to Sec. 9(b)(1) of Revenue Regulations No. 5-87. This revokes VAT Ruling Nos. 009-88 and 279-88.

Later, in a letter, dated April 10, 1991, the Bureau of Food and Drugs, through its Director, Dr. Quintin L. Kintanar, addressed to Mr. Victor A Deoferio, Jr., Chairman, VAT Review Committee, BIR, clarified that copra is an agricultural food product because copra is produced from coconut meat which is food and more than 80% of products derived from copra are edible products.

On November 27, 1995, petitioner was assessed by the respondent deficiency VAT on its copra sales for 1993 in the amount of ₱1,781,557.39. Its protest was denied by the respondent.

In answer to the petition for review filed by the petitioner, the respondent claimed she has the power to classify copra for VAT purposes pursuant to Sec. 245 of the Tax Code, as amended. Thus, when it classified copra as an agricultural non-food product under VAT Ruling No. 190-90 the notice and publication requirement are not required being merely an interpretative ruling. Copra is not an agricultural food product within the meaning of Sec. 103(b) of the Tax Code. Therefore, the sale is exempt from VAT only if made by the primary producer pursuant to Sec. 103(a) of the same Code. In this case, petitioner is not the primary producer of copra sold by it. Hence, the sale of copra by petitioner is, therefore, subject to VAT.

The issues presented for resolution are:

1. IS THE BUREAU OF INTERNAL REVENUE (BIR) EMPOWERED TO CLASSIFY AN AGRICULTURAL PRODUCT, SUCH AS COPRA, AS A FOOD OR NON-FOOD PRODUCT? IF NOT, IS THE SALE OF COPRA AS AN AGRICULTURAL FOOD PRODUCT EXEMPT FROM VAT?

2. WHETHER VAT RULING NO. 190-90, DATED AUGUST 17, 1990, CLASSIFYING COPRA AS AN AGRICULTURAL NON-FOOD PRODUCT IS ENFORCEABLE AGAINST PETITIONER DESPITE LACK OF NOTICE AND PUBLICATION IN THE OFFICIAL GAZETTE OR ANY NEWSPAPER OF GENERAL CIRCULATION, DESPITE THE FACT THAT IT IMPOSES PUNITIVE CHARGES, i.e. surcharge, compromise penalty and/or interest.

These issues have already been resolved by the Supreme Court in favor of the respondent in the cases of **Misamis Oriental Association of Coco Traders, Inc. vs. Department of Finance Secretary (238 SCRA 63) and Joebon Marketing Corporation vs. Court of Appeals and The Commissioner of Internal Revenue, G.R. No. 125070, dated July 17, 1996,** which latter case has became final on October 14, 1996 when the Supreme Court issued an Entry of Judgment.

It was held in the Joebon case anent the first and second issues, thus:

> "Petitioner contends that the BFAD and not the BIR is the competent government agency to determine the proper classification of food products.
>
> This contention is without merit. In Misamis Oriental Asso. of Coco Traders Inc. vs. Department of Finance (238 SCRA 63 [1994]) the Court stated:
>
>> Moreover, as the government agency charged with the enforcement of the law, the opinion of the Commissioner of Internal Revenue, in the absence of any showing that it is plainly wrong, is entitled to great weight. Indeed, the ruling was made by the Commissioner of Internal Revenue in the exercise of his power under 245 of the NIRC to "make

rulings or opinions in connection with the implementation of the provisions of internal revenue law, including rulings on the classification of articles for sales tax and similar purposes."

(at p. 68)

Petitioner next contends that it was denied due process because of non-publication or lack of notice. In the same above-cited case, it was held:

Petitioner complains that it was denied due process because it was not heard before the ruling was made. There is a distinction in administrative law between legislative rules and interpretative rules. There would be force in petitioner's argument if the circular in question were in the nature of a legislative rule But it is not. It is a mere interpretative rule.

(at p. 69)

Furthermore, the Supreme Court ruled in the case of **Philippine Refining Company vs. Court of Appeals, G.R. No. 118794, May 8, 1996**, that penalty and interest are not penal but compensatory, thus:

"We have likewise explained that it is mandatory to collect penalty and interest at the stated rate in case of delinquency. The intention of the law is to discourage delay in the payment of taxes due the Government and, in this sense, the penalty and interest are not penal but compensatory for the concomitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the Government. Unquestionably, petitioner chose to turn a deaf ear to these injunctions."

WHEREFORE, premises considered, judgment is hereby rendered dismissing the herein petition for lack of merit.

Petitioner is hereby **ORDERED** to **PAY** the respondent the amount of P1,648,057.39 (net of the compromise penalty) as deficiency VAT for 1993, plus 20% delinquency interest pursuant to Section 249(c) of the Tax Code, as amended. No pronouncement as to costs.

SO ORDERED.

ERNESTO D ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above 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