REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GOVERNMENT SERVICE
INSURANCE SYSTEM,
Petitioner,

- versus - C.T.A. CASE NO. 3459

COMMISSIONER OF INTERNAL
REVENUE and COMMISSIONER
OF CUSTOMS,
Respondents.

1/9/85

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D E C I S I O N

This is a claim of petitioner, Government Service, Insurance System, otherwise referred to as GSIS, for brevity, for the refund of the amounts of ₱1,147,059.36, ₱1,715,515.25 and ₱933,011.42, or a total of ₱3,795,586.03, representing 15% withholding final tax on the interest earned from savings deposit with the Philippine National Bank, hereinafter referred to as PNB for short, for the years 1979, 1980 and 1981, respectively, which were allegedly remitted to the Bureau of Internal Revenue by the said PNB, plus the amount of ₱345,329.85 paid for documentary stamp taxes for the year 1980, and customs duties and compensating taxes in the amount of ₱42,658.00 and ₱15,362,728.00 paid on July 31, 1981 and June to November 1982, respectively, to the Commissioner of Customs.

Petitioner is a government corporation established and existing under its charter, Commonwealth Act No. 186, as amended by Presidential Decree No. 1146. It had savings deposit with the Philippine National Bank which was subjected to the 15% withholding tax prescribed under Presidential Decree No. 1156, as implemented by Revenue Regulation No. 8-77, in relation to Section 23 of Presidential Decree No. 1177, which requires that all government offices units as well as government owned or controlled corporations are subject to all taxes.

On June 28, 1979, the GSIS made an inquiry from the Bureau of Internal Revenue on the propriety of the tax imposition considering its tax exemption under the GSIS Charter, or Presidential Decree No. 1146, which took effect on May 31, 1977.

In his letter of July 30, 1979, the then Acting Commissioner of Internal Revenue Efren I. Plana, ruled that the interest income on the savings deposits of the GSIS with the PNB is not exempt from the 15% withholding tax.

In 1979, 1980 and 1981, the PNB allegedly withheld 15% withholding taxes on the interest earned by the GSIS, plus documentary stamp taxes in accordance with Section 53(d)(I) of the 1977 Tax Code, as amended, and Section 23 of Presidential Decree No. 1177 and Section 222 of the Tax Code, as amended, respectively, computed (Exhs. A, A-1 and A-2, pp. 64-66, CTA rec.) as follows:

Year	Withholding Tax	Documentary Stamp	Total
1979	₱1,147,059.36		₱1,147,059.36
1980	1,715,515.25	₱345,329.85	2,060,845.85
1981	933,011.42		933,011.42
		Total	₱4,140,916.63

On March 9, 1981, the GSIS, through the Government Corporate Counsel, requested the Commissioner of Internal Revenue for a reconsideration of the ruling on the ground that the GSIS is exempt from all taxes or fees in accordance with its charter, Presidential Decree No. 1146, specifically under Section 33 thereof. (Exh. C, pp. 68-72, CTA rec.)

Likewise, on July 10, 1981, the GSIS wrote respondent Commissioner of Customs requesting confirmation of its tax exemption under Section 33 of Presidential Decree No. 1146 in relation to customs duties and compensating taxes the GSIS had to pay in importing materials and equipment for the on-going construction of its new headquarters building in Roxas Boulevard, Metro Manila. (Exh. D, p. 73, CTA rec.). In the meantime, on July 31, 1981 and June to November 1982, the GSIS paid the sum of ₱42,658.00 (Exh. B, p. 67, CTA rec.) and ₱15,362,728.00 (Exhs. J, J-1 to J-10, pp. 84-94, CTA rec.) respectively, as customs duties and compensating taxes.

About the time that the GSIS wrote the Commissioner of Customs on July 10, 1981, the GSIS, on the same date, also requested the Minister of Justice for a legal opinion on whether it still enjoys exemption from all tax assessments, fees, charges or duties of all kinds, as provided for in Section 33 of Presidential Decree No. 1146. (Exh. E, p. 74, CTA rec.)

On August 13, 1981, the Commissioner of Customs replied that "while the system continues to enjoy its tax exemption status under its revised charter, it is, however, bound to comply with the requirements of Section 23 of Presidential Decree No. 1177," invoking Opinion No. 98, s. 1979 of the Ministry of Justice. (Exh. F, p. 75, CTA rec.)

On September 8, 1981, the Minister of Justice rendered his Opinion No. 126, s. 1981, that the tax exemptions granted to the GSIS under Section 33 of Presidential Decree No. 1146 are retained by it, despite Presidential Decree No. 1177, which latter law fails to provide any explicit revocation of such exemption. (Exh. G, pp. 76-79, CTA rec.)

Consequently, on September 30, 1981, the GSIS repeated its request for reconsideration with respondent Commissioner of Internal Revenue, furnishing him with a copy of Opinion No. 126, Series of 1981, of the

Ministry of Justice, stating that there is no necessity for it to secure a subsidy under Section 23 of Presidential Decree No. 1177 since those who are required are only those tax exempt entities whose tax exemption have been removed under Section 23 of the decree. (Exh. H, pp. 80-81, CTA rec.)

On October 7, 1981, the GSIS again requested respondent Commissioner of Customs for reconsideration of his stand, stated in his letter of August 13, 1981, and stressed that there was no necessity in the circumstances to secure the subsidy mentioned in Section 23 of Presidential Decree No. 1177, as implemented by joint Finance/Budget Circular No. 2-78/79 nor to comply with P.D. 776 or P.D. 882 (Exh. 1, pp. 82-83, CTA rec.), which request was not acted upon by the Commissioner of Customs.

On May 4, 1982, petitioner GSIS filed its petition for review with this Court and respondents filed their joint answer on August 24, 1982.

During the pendency of this case with this Court, or on November 10, 1982, in BIR Ruling No. 280-82, respondent Commissioner of Internal Revenue, in reply to the GSIS letter of March 9 and September 30, 1981, granted the GSIS request for reconsideration declaring that the "<u>xxx interest income of the bank deposits of</u>

the GSIS is exempt from the 15% final withholding tax in the case of saving deposits and the 20% final withholding tax in the case of time deposits xxx" (underlining ours) and stating further that its letter "xxx serves as authority of the depository banks to forego withholding of the tax on the interest earnings of the deposits maintained by the GSIS with them, xxx" with respect to the taxes withheld, the Commissioner stated in said letter-ruling that "xxx appropriate action will be taken thereon in accordance with Section 295 of the Tax Code, as amended." (Exh. K, pp. 95-96, CTA rec.).

Subsequently, on July 27, 1983, the Bureau of Internal Revenue refunded to the GSIS the amount of ₱933,011.42 for the year 1981, acknowledged under GSIS Official Receipt No. 334065 dated July 27, 1983, but the taxes paid for the years 1979 and 1980 were not refunded on the ground that they are no longer within the two year prescriptive period.

The issues to be resolved are, to wit:

1. Whether or not we have jurisdiction to entertain the present petition for review with respect to the Customs duties and compensating taxes;

2. Whether or not the GSIS is subject to the 15% withholding tax on the interest earnings of its savings deposit;

3. Whether or not petitioner is entitled to the refund claimed; and

4. Whether or not prescription could be a bar to the claim for refund of the Government Service Insurance System.

From the facts and records of this case we could readily glean that this Court has no jurisdiction to entertain the present petition for review with respect to the customs duties and compensating taxes since there is no decision of the Commissioner of Customs which is appealable to this Court.

The August 13, 1981 reply of the Commissioner of Customs to petitioner's request for confirmation of its tax exemption under Section 33 of Presidential Decree No. 1146 cannot be said to be a decision but a mere opinion since it was not rendered by virtue of his appellate power under Section 2313 of the Tariff and Customs Code. It is noteworthy that at the time the request was made there was no payment yet of customs duties and compensating taxes which could be the basis for the decision of the Commissioner of Customs. The request was in relation to the customs duties and compensating taxes the GSIS had to pay in importing materials for its ongoing construction. This Court has a limited jurisdiction and is confined only to those matters provided under Section 7 of Republic Act No. 1125 creating the Court of Tax Appeals. In prescribing that only decisions of the Commissioner of Customs maybe appealed to this Court, Congress intended that all administrative remedies must first be exhausted, which means that a person aggrieved by the decision or action of the Collector of Customs wherein liability for customs duties, fees or other money charges is determined, in which case, the party adversely affected by such ruling after paying the amount of assessment, may make a protest and the Collector shall re-examine the matter, and should he overrule the protest and sustain his previous ruling, the party aggrieved is required to appeal said ruling to the Commissioner of Customs within fifteen days after notification. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector.

In the instant case, there being no appeal by petitioner from the Collector of Customs to the Commissioner of Customs, the latter could not have rendered a decision pursuant to Section 2313 of the Tariff and Customs Code which is appealable to this Court. Under Section 7 of Republic Act No. 1125, <u>supra</u>, only decisions of the Commissioner of Customs involving the Customs laws, may be brought on appeal to this Court. There being no such decision, we have no jurisdiction to entertain the present petition for review with respect to the customs duties and compensating taxes.

With respect to the second and third issue, respondents maintain that the GSIS is subject to the 15% withholding tax on interest earnings of its savings deposit with the PNB, as well as documentary stamps taxes, since the exemption of petitioner under its charter was withdrawn by Section 23 of Presidential Decree No. 1177 which was approved on July 30, 1977 and, therefore is not entitled to refund. (Memo. of Respondent, pp. 198-199, CTA rec.)

Petitioner, on the other hand, maintains the opposite view. It alleges that the GSIS still continue to enjoy the tax exemption granted under Section 33 of Presidential Decree No. 1146, notwithstanding the provisions of Section 23 of Presidential Decree No. 1177 which have withdrawn the tax exemptions in general and which requires tax exempt entities to secure subsidies.

We adhere to the stand of petitioner. The law involved here is Section 33 of Presidential Decree No. 1146 which took effect on May 31, 1977, and Section 23 of Presidential Decree No. 1177, which took effect on July 30, 1977, stated hereunder for ready reference:

> "SEC. 33. Exemption from Tax, Legal Process and Lien. - It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the System

> shall be preserved and maintained at all times and that the contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the System and/or their employees. Taxes imposed on the System tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits under this Act. Accordingly, notwithstanding any laws to the contrary, the System, its assets, revenues, including all accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds. These exemptions shall continue unless expressly and specifically revoked and any assessment against the System as of the approval of this Act are hereby considered paid." (Underscoring supplied.)

> "SEC. 23. Tax and Duty Exemptions. - All units of government, including government-owned or controlled corporations, shall pay income taxes, customs duties and other taxes and fees as are imposed under revenue laws: Provided, that organizations otherwise exempted by law from the payment of such taxes/duties may ask for a subsidy from the General Fund in the exact amount of taxes/duties due: Provided, further, that a procedure shall be established by the Secretary of Finance and the Commissioner of the Budget, whereby such subsidies shall automatically be considered as both revenue and expenditure of the General Fund." (Underscoring supplied.)

From the above-quoted provisions of law, we are of the opinion that the tax exemption of the GSIS was not withdrawn by the enactment of Section 23 of Presidential Decree No. 1177.

It bears emphasis that Section 33 of Presidential Decree No. 1146, the GSIS charter, in a clear and preemptory tone, required that the exemption (from taxes, assessments, fees, charges or duties) granted thereunder to the GSIS "xxx shall continue unless expressly and specifically revoked xxx." Section 33 itself is categorical in stating that the intention behind such requirement of express and specific revocation is to promote the declared state policy of preserving and maintaining at all times the actuarial solvency of the funds of System and keeping as low as possible the contribution rates necessary to sustain the benefits granted under the GSIS Act, which objectives cannot be attained if taxes are imposed upon the petitioner GSIS.

In Presidential Decree No. 1177, especially its repealing clause therein, we are unable to find a provision which can reasonably be interpreted as having expressly revoked, or even modified, the tax exemptions granted to the GSIS under Section 33 of its charter, supra. Therefore, the correct interpretation of Section 23 of Presidential Decree No. 1177, taken in the light of Section 33 of Presidential Decree No.1146, should be that the legislative authority provided in Presidential Decree No. 1177 withdrawing tax-exemption privileges from all government agencies and instrumentalities does not include the GSIS and which exemption was conferred upon it under said Section 33 of

Presidential Decree No. 1146. It is presumed that when Presidential Decree No. 1177 was in the process of formulation, the President was aware of the exemption provision of Section 33 of Presidential Decree No. 1146 of the GSIS; and that this tax exemption of the GSIS was still effective and enforced, and, therefore, it would continue unless expressly or impliedly revoked. "xxx. Laws are presumed to be passed with deliberation and with full knowledge of all existing ones on the subject, it is but reasonable to conclude that in passing a statute it was not intended to interfere with, or abrogate any former law relating to the same matter, unless the repugnancy between the two is not only irreconcilable, but also clear and convincing, xxx the later will not operate as a repeal of the earlier." (U.S. vs. Palacio, 33 Phil. 208). The failure of the President in providing such explicit and clear revocation in his Presidential Decree No. 1177, promulgated only two (2) months after Presidential Decree No. 1146, is indicative of the intent to retain the tax exemption privilege in question.

Moreover, the Minister of Justice, in Opinion No. 126, Series of 1981, has formulated the opinion that the GSIS retained its tax exemption under the provision of Section 33 of Presidential Decree No. 1146, notwithstanding the general provisions of Section 23 of

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Presidential Decree No. 1177, which alludedly failed to have provided for the specific revocation of the GSIS tax exemption. This opinion has a very high persuasive effect on this case.

Finally, no less than the Commissioner of Internal Revenue, in its BIR Ruling No. 280-82 dated November 10, 1982, has declared that the interest income of the bank deposits of the GSIS is exempt from the 15% final withholding tax and refunded to the GSIS the amount of ₱933,011.42 for the year 1981, acknowledged under Official Receipt No. 334065 dated July 27, 1983.

With respect to the fourth issue, respondent maintains that assuming for the sake of argument, but without admitting, that petitioner is exempted from the payment of taxes, including the questioned withholding tax and documentary stamp taxes, the claim for refund insofar as the 15% taxes withheld for the year 1979 in the amount of ₱1,147,059.36 and unspecified payments from January to May 3, 1980, has already prescribed since the instant petition for review was filed on May 4, 1982, beyond the two-year reglementary period prescribed under Section 292 of the Tax Code of 1977 as amended. (Memo. of Respondent, p. 205, CTA rec.)

Petitioner, however, contends that the two-year prescriptive period provided under Section 292 of the

Tax Code for the recovery of taxes erroneously or illegally collected, cannot be a bar to its claim for refund. Petitioner insists that the GSIS Charter, specifically its Section 33 thereof, exempts the GSIS, notwithstanding any laws to the contrary, from all taxes, assessments, fees, charges, or duties of all kinds. Section 292 of the Tax Code, therefore, must give way to Section 33 of Presidential Decree No. 1146. Besides, its exemption from taxes, legal processes and lien, has been statutorily elevated as a declared policy of the State. (Memo. of Pet., pp. 169-170, CTA rec.)

We go with the view of respondent that the claim for refund of the 15% taxes withheld for the year 1979 in the amount of ₱1,147,059.36 and unspecified payments from January to May 3, 1980, has already prescribed. We note that the instant petition for review was filed on May 4, 1982, which is beyond the two year reglamentary period prescribed under Section 292 (formerly 306 of the Tax Code) of 1977, as amended.

It is also provided under Section 292 of the 1977 Tax Code as amended, quoted hereunder for ready reference, to wit:

> Sec. 292. Recovery of tax erroneously or illegally collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without

> authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: xxx xxx xxx. (Underlining supplied.)

that where a tax has been erroneously paid or illegally collected, the one seeking to recover the tax must file a claim for refund with the Commissioner of Internal Revenue within two years after payment thereof, and the action for recovery must also be filed within the said two-year period (Coll. of Int. Rev. vs. CTA and Hume Pipe & Asbestos, Co., Inc., G.R. No. L-11497, Jan. 28, 1961, 1 SCRA 87-93; Guagua Electric Light Plant Co., Inc., vs. The Coll. of Int. Rev. and The Honorable Court of Tax Appeals, G.R. No. L-14421, April 29, 1961, 1 SCRA, 1221-1226.) Since petitioner Government Service Insurance System failed to file a claim for refund within the two year period after payment, we therefore rule that the same is barred from recovering the 15% taxes withheld for the year 1979 and from January to May 3, 1980.

WHEREFORE, the claim for refund of petitioner for the year 1979 and 1980 is hereby DENIED, without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, January 9, 1985.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge