REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PAPER INDUSTRIES CORPORATION
OF THE PHILIPPINES,
Petitioner,

- versus - C.T.A. CASE NO. 3215

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - - x

2/15/87

D E C I S I O N

Petitioner Paper Industries Corporation of the Philippines (PICOP for brevity) is organized under our laws, and is engaged in the operation of forest concessions, and among others, in the manufacture and sale of kraft and paper. It is registered as respect its integrated pulp and paper mills with the Board of Industries (BOI for short). Among the incentives granted to it under the Incentives Act, RA 5186, as amended, is the exemption from all taxes, except income tax, in graduated scale, according to the provision of Section 8(a) of said Act, as amended by PD 92, effective January 6, 1972

(69 Off. Gaz. No. 6, p. 746, dated February 3, 1973), the pertinent amendment of which provides as follows:

> SEC. 8. Incentives to a Pioneer Enterprise - In addition to the incentives provided in the following section, pioneer enterprises shall be granted the following incentives benefits:
>
> (a) Tax exemptions. - Exemption from all taxes under the National Internal Revenue Code, except income tax, to the following extent:
>
> (1) One hundred percent up to December 31, 1972;
> (2) Seventy-five percent up to December 31, 1975;
> (3) Fifty percent up to December 31, 1977;
> (4) Twenty percent up to December 31, 1979;
> (5) Ten percent up to December 1, 1981.

The 100% tax exemption of PICOP expired on December 31, 1972 so that beginning January 1, 1973, its exemption stood at 75%.

Because of the amendment of Section 8(a) of RA 5186 by PD 92 aforesaid, PICOP on March 30, 1973 requested the Board of Industries to extend its 100% tax exemption for a period of three (3) years from December 31, 1972 to December 31, 1975. On December

19, 1973, thru its Gov. Caesar Z. Lanuza, the BOI informed PICOP of the approval of its request (Minutes of Nov. 22, 1973). On this basis, PICOP had stopped paying the 25% sales tax due for the 4th Qtr. of 1973 and the 1st and 2nd Qtr. of 1974 in the total sum of ₱2,990,973.42.

On March 31, 1974, the National Economic Development Authority (NEDA for short) later on disapproved the request of PICOP. Upon receipt of this information, PICOP again resumed paying the 25% of the sales tax due for the 3rd and 4th Qtr. of 1974 and for the whole year of 1975, or a total of ₱2,256,525.00.

On May 13, 1974, PICOP again filed with NEDA a request for reconsideration of the disapproval because of the alleged heavy losses it had incurred in the last quarter of 1974 and in early 1975. In turn, NEDA, on May 23, 1975, referred this to the Board of Industries (BOI) for comment and recommendation. The said BOI recommended to NEDA 100% tax exemption for a period of 3 years to take effect 1975 to 1978, which was approved by NEDA on March 16, 1976.

On May 31, 1976, PICOP, after receipt of the approval of its request for reconsideration, requested further that the approved 100% exemption be made to retroact to December 31, 1972, the date of expiration of its original 100% tax exemption, but BOI referred it to the Bureau of Internal Revenue and the officials of the latter recommended denial of the request of petitioner.

On November 5, 1976, based upon a directive of Silvestre M. Torres, Jr., Acting Chief, Investment Incentives Division, addressed to Supervising Revenue Examiners Bienvenido Y. Boado and Francisco P. Magno of the same division, the latter rendered a report dated November 5, 1976 (Exh. C, pp. 99-115, BIR rec.) to the Commissioner of Internal Revenue that the payment of percentage taxes is mandatory and cannot be extended by the Commissioner of Internal Revenue and recommended the assessment of ₱5,094,294.10 against petitioner PICOP.

On January 5, 1977, petitioner received a deficiency sales tax assessment dated November 18, 1976, based upon the report and pertinent records submitted by the examiners (Exh. K, p. 61, CTA rec. and Exh. 7, p. 120 BIR rec.) demanding the payment of the total sum of ₱5,128,441.12, covering the 4th quarter of 1973 and the 1st and 2nd quarters of 1974, inclusive of surcharge and interest, as follows:

"Sales tax due, 4th quarter, 1973 (at 25% of 7%)	₱ 958,930.71	
25% surcharge for late payment ..	239,732.68	
	₱1,198,663.39	
14% Int. fr. 1/sl/74-12/18/76 ...	486,417.60	₱1,685,080.99
Sales tax due, 1st quarter, 1974 (at 25% of 7%)	₱1,151,012.68	
25% surcharge for late payment ..	287,753.17	
	₱1,438,765.85	
14% int.fr. 4/21/74-12/18/76	533,494.38	₱1,972,260.23
Sales tax due, 2nd quarter, 1974 (at 25% of 7%)	₱ 881,030.03	
25% surcharge for late payment ..	220,257.51	
	₱1,101,287.54	
14% int. fr. 7/21/74-12/18/76 ...	369,812.36	1,471,099.90
TOTAL AMOUNT DUE AND COLLECTIBLE		₱5,128,441.12

This deficiency came after petitioner has paid 25% of the 7% sales tax due for the 1st, 2nd and 3rd quarter of 1973. It, however, stopped to pay the 25% of the 7% sales tax due for the 4th quarter of 1973, and the 1st and 2nd quarter of 1974, in the amount of ₱2,990,473.42 aforesaid.

Petitioner protested the above deficiency sales tax assessment of ₱5,128,441.12 of the respondent Commissioner of Internal Revenue on January 18, 1977. (Exh. "M", petition for review, pp. 63-68, CTA rec.) Acting on this protest, respondent, on February 24, 1981, revised and finally reduced the assessment from

₱5,128,441.12 to ₱3,443,360.12 plus increments (Exhs. "N" and "9", p. 69 CTA rec., and p. 147 BIR rec., respectively.) The revised assessment provides in full as follows:

REPUBLIKA NG PILIPINAS
MINISTRI NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS
Quezon City

February 24, 1981

Gadioma & Colon, Lawyers
Dominion Building, 103 Pasay
Road, Legaspi Village, Makati
Metro Manila

Gentlemen:

With reference to your request for reconsideration of our decision requiring your client, PAPER INDUSTRIES CORPORATION of the Philippines, to pay the total sum of ₱5,128,441.12 as deficiency sales tax including surcharge and interest, covering the 4th quarter of 1973 and the 1st and 2nd quarters of 1974, I have the honor to inform you that this Office has wtihdrawn the assessment of ₱1,685,080.44, pertaining to the 4th quarter of 1973, it appearing that said tax liability was settled by the taxpayer on April 26, 1976 when it availed of LOI No. 308. Accordingly, only the sum of ₱3,443,360.13 representing the sales tax liability of your client for the two (2) quarters of 1974, is being considered in this case.

Contrary to the stand taken by you, we maintain that the decision on March 16, 1976 of the National

Economic Development Authority extending the 100% tax exemption of the taxpayer from October, 1975 to December, 1978 is not retroactive and does not therefore, relieve your client of paying the corresponding sales tax due for the 1st and 2nd quarters of 1974 in the sum of ₱3,443,360.13. It is a cardinal rule in this jurisdiction that an exemption from the payment of tax should be strictly construed. (Collector v. Manila Jockey Club, 98 Phil. 670)

In view thereof, it is requested that you urge your client, Paper Industries Corporation of the Philippines to pay the sum of ₱3,443,360.13 plus increments that may have accrued thereon, to the Collection Agent of Makati, Metro Manila, within fifteen (15) days from your receipt hereof, in order that this case may be closed and terminated. This constitutes our final decision on the matter.

Very truly yours,

RUBEN B. ANCHETA
Acting Commissioner

The three (3) issues presented in this case are as follows:

1. Whether or not the deficiency sales tax assessment for ₱3,443,360.13 is valid and enforceable;

2. Whether or not the imposition of the 25% surcharge is valid; and

3. Whether or not respondent Commissioner of Internal Revenue's right to issue the deficiency assessment has prescribed.

We will first consider the question on whether or not the sales tax assessment for ₱3,443,360.13 is correctly imposed under the prevailing provision of law. On March 30, 1973, because of petitioner's request for the continuance of its 100% exemption from January 1, 1973 to December 31, 1975 and having its request approved finally for October, 1975 or the 4th Qtr. of 1975, (but note that petitioner had paid erroneously the 25% of the 7% sales tax for this 4th quarter of 1975 which petitioner here did not seek for its refund) to 1978, petitioner contends that the exemption of 100% is valid de facto for the period from 1973 to 1978; that the NEDA's disapproval having been reconsidered in effect recognizes the legality and correctness of the original approval or action of the BOI; that the reversal of the NEDA stand approving finally the request of petitioner for the extension of its 100% exemption from the payment of sales tax reenforces the validity of the BOI extension dated December 19, 1973; and that the approval by the NEDA in effect leaves the BIR assessment without legal justification. It is petitioner's theory that the relief granted to PICOP due to its financial difficulties by BOI and NEDA, by way of the exemption granted, will be wiped out to the tune of ₱2,990,973.42, corresponding to the three quarters of 1973 and 1974 that should have been enjoyed by petitioner from the original extension of its exemption granted by BOI under the exemption law (Rep. Act 5186).

We are not in accord with the contention of petitioner in this issue. The approved exemption by the BOI which it informed petitioner pertain to the latter's request for extension of its exemption rights from January 1, 1973. This approval made is however without the corresponding approval by the NEDA of petitioner's request to which it was finally referred for action. But nevertheless the BOI approval previously given have impelled PICOP to stop the paying of the 25% of the 7% sales tax due for the 4th quarter of 1973 and the 1st and 2nd quarter of 1974 in the total sum ot ₱2,990,973.42 in the meantime. Without the final approval of the NEDA, petitioner PICOP is not legally exempt from paying the above amount of ₱2,990,973.42 as there was no valid extension of its exemption privilege. The law, Section 8, par. (a) of Republic Act No. 5186, as amended by PD 92, is clear in its provision that petitioner's 100% exemption sales tax ends on December 31, 1972, and that the extension of the 100% sales tax exemption shall be made possible only with the approval of the NEDA, upon recommendation of the BOI. Consequently, we hold petitioner is liable to pay 25% of the 7% sales tax for the 4th quarter of 1973, and the 1st and 2nd quarter of 1974 in the sums of ₱1,151,012.68 and ₱881,030.03, respectively.

We now come to the second question of whether or not petitioner is liable for the payment of 25% surcharge for late payment of the sales taxes for the 4th quarter of 1973 and the 1st and 2nd quarters of 1974.

Indeed, as truly and correctly proferred by petitioner, it was only relying with honesty and in utmost good faith upon the information of the BOI that it had approved its 100% sales tax exemption, which prompted it not to pay the 25% of the 7% sales tax due for the 4th quarter of 1973 and the 1st and 2nd quarters of 1974. Consequently, where a taxpayer failed to pay its taxes due to and on account of the fact that it based its actions upon reliance to certain official facts or rulings, the 25% penalty or surcharge is not imposable upon said taxpayer as it was only acting in complete honesty and good faith when it did not pay said sales tax. (Connel Bros.

Co. (Phil.) v. Coll., GR L-15470, March 31, 1964; 10 SCRA 469, 470-471; Phil. Mfg. Corp. v. Comm., CTA 448, Sept. 3, 1974.)

Finally, coming now the third issue of whether or not the right to issue the revised assessment has prescribed, it is asserted by petitioner that the revised assessment which covered the amount of ₱3,443,360.13 sales tax due against petitioner was dated February 24, 1981. This amount of revised unpaid sales tax assessment covered the 1st and 2nd Quarters of 1974. Based on the report and records of these sales which were made in the regular course of business, these were filed with the BIR or were otherwise due on or before December 31, 1974. The revised assessment of February 24, 1981, having been issued based on a solitary protest filed by petitioner on January 20, 1977, in order to be valid and lawful, there being no charge of fraud made therein, must be made within the 5-year period counted from 20th day after the end of each quarter (Sec. 183, National Internal Revenue Code), and the last quarter being on the 20th day from the end of the 4th quarter of 1974, the beginning of the 5-year period within which to issue the tax revised assessment is January 20, 1975, the date when the sales tax returns were filed or were due pursuant to Section 331 of the National Internal Revenue Code (Ilagan & Alejandrino vs. Coll., CTA 43, July 25, 1956; Equipment & Supply Co. vs. Comm. of Int. Rev., CTA 1795, October 30, 1971) which 5-year period expired on January 20, 1980.

The revised assessment against petitioner having been issued by respondent Commissioner of Internal Revenue only on February 24, 1981, it is over a year beyond January 20, 1980, the last day of the 5-year prescriptive period within which the respondent may issue the revised assessment. The right of respondent Commissioner of Internal Revenue to make the revised assessment has definitely prescribed. This is the result of similar holdings made by the Supreme Court in the cases of Pineda et al vs. Coll.; 2 SCRA 401; Carlos Moran Sison v. Coll., CTA 337, Feb. 28, 1958; Rep. vs. Alano, 12 SCRA 24; Coll. v. Solano, L-11475, July 31, 1958; Rep. v. Ablaza, 108 Phil. 1105, 1108. When the Commissioner of Internal Revenue makes an assessment, and based only on one single protest thereof (see cited cases of Pineda v. Coll., ibid.; Rep. vs. Alano, ibid.; Coll. vs. Solano, ibid.; Rizal Motors Inc. vs. Comm. of Int. Rev., CTA Case No. 1985, Dec. 27, 1972), filed by petitioner, and subsequently revises the assessment, the period of prescription is counted from the last revised assessment. (Republic vs. Lopez, G.R. L-18007, March 30, 1963, 7 SCRA 566, 569; Republic vs. Acebedo, G.R. L-20477, March 29, 1968, 22 SCRA 1356, 1358; Commissioner vs. vs. Sison, et al, GR L-13739, April 30, 1963; Coll. vs. Pineda, GR L-16705, Oct. 30, 1962.) And there being no fraud charged in the respondent's revised assessment, the prescriptive period to issue the same is five years as provided for in Section 331 of the National Internal Revenue Code. (See Central Azucarera de Tarlac vs. Coll., 104 Phil. 563, cited in Manila Electric Co. vs. Lingad, CTA 1030, March 15, 1972.)

Consequently, we are of the opinion and so hold that the right to issue the revised assessment against petitioner by respondent Commissioner of Internal Revenue in the sum of ₱3,433,360.13, inclusive of increments, within the period of five years pursuant to the provisions of Section 331 of the National Internal Revenue Code, has prescribed and said revised assessment lost its validity and legality and has the effect as if "there is no deficiency in respect to such tax" (J.C. Yuseco vs. Coll. of Int. Rev., CTA 217, March 25, 1957, applying Sec. 14, RA 1125; see also Rep. of the Phil. v. Razon, Manila Civil Case No. 15566, Res., Jan. 23, 1957.) notwithstanding our finding in the first issue which becomes entirely unavailing in this case.

It has erstwhile been stated as a reminder, and borrowing from what our Supreme Court has said, in effect, that prescription is rigorous and at times harsh but there could be no oppression or inequity as this defense applies to both the Government and citizens or taxpayers. Its salutary and wholesome effect causes both to be alert and vigilant in order that both do not sleep on their rights and terminates what may otherwise be an endless litigation and consequent confusion. The beneficial purpose is that, to the citizens or taxpayers, they would have the feeling of security against revenue agents who may take advantage to harass taxpayers and protect them from protracted and unreasonable investigations; and that to the Government, tax officers shall be obliged to always act with promptness (Republic vs. Ablaza, op. cit, pp. 1107-1108) in subservience to the principle of human rights and substantial justice.

WHEREFORE, the decision of the Commissioner of Internal Revenue appealed from is hereby set aside.

No pronouncement as to costs.

SO ORDERED.

Quezon City, February 15, 1987.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Amante Filler

AMANTE FILLER
Presiding Judge

Dissents in separate opinion

ALEX Z. REYES
Associate Judge

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DISSENTING OPINION

The majority's decision would seem no more than a clumsy attempt to defuse the asserted import of a valid assessment by opting for the alternative defense of prescription thus opening a decidedly contentious note in having the same set aside. Apparently enamored by petitioner's own rhetorics the decision suffers from a surfeit of unctious semantics more generous than candid.

Faced up with the simple facts obtaining, the records show that -

November 18, 1976 - Respondent issued the deficiency assessment against the petitioner for a deliberately unpaid sales tax of the 4th quarter 1973, 1st and 2nd quarters 1974, aggregating ₱5,128,441.12, inclusive of interest and penalties.

January 18, 1977	- Petitioner protested the assessment as "tinted (sic) with legal and factual infirmities" claiming settlement of the 4th quarter 1973 liabilities under LOI 308 (amnesty) and enjoyment of full tax exemption privilege for the 1st and 2nd quarters of 1974 under an alleged NEDA Ruling per PD 92.
February 24, 1981	- Respondent denied petitioner's protest or request for reconsideration of the assessment on the ground that NEDA's decision specifically covered the period from October, 1975 to December, 1978 and therefore did not retroact to the 1st and 2nd quarters of 1974. Accordingly a revised assessment was issued covering the two (2) quarters aggregating the amount of ₱3,443,360.13.

Just so and aptly enough not much room is left over for suspense. I share respondent's unambiguous conclusion that, "Under the circumstances the protest of PICOP (petitioner) dated January 18, 1977 suspended the running of the period of prescription up to February 24, 1981, the date of the issuance of the revised assessment/decision of ₱3,443,360.13. Consequently, the period between January 18, 1977 up to February 24, 1981, is to be subtracted from the total prescriptive period, and therefore respondent's right to issue the deficiency sales tax assessment of ₱3,443,360.13 has not prescribed. (Commissioner v. Sison, L-1379, April 30, 1963, 7 SCRA 884, citing Rep. v. Ablaza, L-14519, July 26, 1960, 108 Phil. 1105; Querol v. Collector, L-16705, October 30, 1962, 6 SCRA 304; Rep. v. Lopez, L-18007, March 30, 1963, 7 SCRA 566. Cf Tan Guan v. Nable, No. L-18598, July 23, 1968, 24 SCRA 93)."

Respect for the authority of the Court is not served by precipitous overruling of multiple precedents. Let the chips fall where they may.

ALEX Z. REYES
Associate Judge