REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

A.N.I. PHILIPPINE FORGE, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4649

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

R E S O L U T I O N

This case involves assessments for deficiency percentage taxes for the fiscal years ending June 30, 1986 and June 30, 1987 in the amounts of ₱627,161.27 and ₱528,394.54, respectively, issued by the Respondent on November 7, 1990 and received by the Petitioner on November 16, 1990 (see Annexes A and B). It shall be noted that the Petitioner timely filed its Percentage Tax Return for the period July 1985 to June 30, 1985 (see Exhibits A to D) and for the period July 1986 to June 30, 1987 (see Exhibits E to H). All the above documents formally offered by the Petitioner were never questioned by the Respondent except Exhibits E and F for allegedly "being irrelevant, immaterial and impertinent" (see Respondent's Comment to

Petitioner's Amended Formal Offer of Documentary Evidence, pp. 73-74, CTA Records). This however, was clarified by this Court when it resolves to:

> "3. Admit Exhibits "E" and "F", notwithstanding respondent's objections thereto on the grounds of irrelevancy/ immateriality. The Court notes that, contrary to respondent's assertions, the questioned documents are copies of petitioner's percentage tax returns respectively covering the periods from July to September, 1986, and from October to December, 1986;" (see Resolution dated July 28, 1992, pp. 82-83, CTA Records)

The petitioner duly protested the subject assessments on December 10, 1990 raising among others the defense of prescription for having been assessed beyond the reglementary period of three (3) years in violation to Section 203 of the Tax Code, 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." (Underscoring supplied).

On August 29, 1991, Petitioner received a letter from Respondent dated August 9, 1991 ignoring the former's protest and informing the Petitioner that the report of investigation covering its 1986 and 1987 business taxes have already been approved and that Demand Notices Nos. 37-2-00119-87-90 and 37-2-00119-A-87-90 issued by the Regional Director Revenue Region No. 40-C San Pablo City on November 7, 1990 were confirmed. Accordingly, Petitioner was required to pay the BIR the amount of ₱1,155,555.79 within fifteen (15) days from receipt of said letter (see Annex "D").

Hence, this appeal.

On March 31, 1992, Petitioner filed a Motion for Preliminary Hearing On the Issue of Prescription respectfully requesting this Court to first resolve the issue of prescription in order "to expedite the resolution of this case as the presentation of evidences on the merits of the case may be dispensed with or rendered unnecessary should the Honorable Court decide the issue of prescription in favor of the Petitioner" (see Motion, p. 29, CTA records).

It appears from the records that Petitioner filed its final percentage tax return for the fiscal years ending June 30, 1986 and June 30, 1987 on July 18, 1986 and July 14, 1987, respectively (Exh. "D" and "H"). Since Petitioner was assessed for alleged deficiency taxes for the fiscal years ending June 30, 1986 and June 30, 1987 only on November 16, 1990 way beyond the 3-year prescriptive period, it constitutes a violation of the aforequoted provision of the Tax Code. Hence,, the assessment should no longer be binding on the taxpayer (Commissioner of Internal Revenue vs. Ayala Securities Corp., 70 SCRA 204, March 31, 1976).

IN VIEW OF THE FOREGOING, this Court acting on the Motion for Preliminary Hearing on the Issue of Prescription filed by the Petitioner on March 31, 1992 hereby RESOLVES to ORDER the Commissioner of Internal REvenue to desist from collecting the deficiency percentage taxes for the same are assessed beyond the reglementary period of three (3) years.

SO ORDERED.

Quezon City, Metro Manila, April 13, 1993.

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge

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