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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ELIEZER Y. LIM,
Petitioner,

- versus -

C.T.A. CASE NO. 5391

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 24 1997

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DECISION

This is an appeal from the decision of the respondent, dated May 21, 1996, allegedly through her authorized representative, Ms. Caridad C. Maglasang, Officer-in-Charge of Revenue Region No. 16, Bureau of Internal Revenue ("BIR" for brevity) denying petitioner's request for reconsideration of a deficiency assessment notice (no. 100-11-93-000161), dated March 13, 1996, for non-payment of value-added taxes ("VAT" for short) on copra transactions in the amount of P1,171,260.43 inclusive of surcharge, interest and compromise penalty for the year 1993.

Petitioner, under the trade name, Elim Agricultural Supply, with principal office at Lam-an, Ozamiz City, is a dealer of agricultural products and is particularly engaged in, among others, the business of buying and selling copra. (Petition, p. 4; ibid., Annexes "A" and "A-1")

The facts are simple.

On March 7, 1989, petitioner was issued Non-VAT Registration Certificate No. NV-10A-77-000146 on his copra transactions pursuant to BIR Ruling No. RR-6B-01, dated January 11, 1988, issued by BIR Regional Director Beethoven Rualo of Revenue Region No. 6-B, Bacolod City and VAT Rulings No. 009-88 and 279-88.

On August 17, 1990, respondent issued VAT Ruling No. 190-90 reclassifying copra as an agricultural non-food product and making it subject to VAT. As a consequence, respondent issued the aforecited assessment notice which petitioner protested in writing on April 16, 1996 (ibid., Annex "B") by invoking the following grounds, to wit:

a. The BFAD, not the BIR has the power to classify copra as agricultural food product or agricultural non-food product. Since copra has been classified as an agricultural food product by the BFAD (hereto attached as Annex "C"), it is therefore not subject to VAT under section 103(b) of the Tax Code.

b. Assuming that VAT Ruling 190-90 dated August 17, 1990, classifying copra as an agricultural non-food product is valid, it is nevertheless unenforceable against herein Petitioner, since it was not published as required by law, after it was promulgated.

c. Assuming further that VAT Ruling 190-90 is valid and enforceable, the same is violative of the constitutional right to equal protection of laws, since the sale of cassava starch, which is similarly situated to copra, is exempt from VAT pursuant to BIR Ruling No. 170-91, dated September 4, 1991.

d. The MISAMIS ORIENTAL ASSOCIATION OF COCO TRADERS, INC. vs. DEPARTMENT OF FINANCE SECRETARY, G.R. No. 108524 does not constitute *stare decisis* to the case at bar; the applicable case being the LIM HOA TING vs. CENTRAL BANK OF THE PHILIPPINES 104 Phil. 564, 579-580, applying the doctrine of *stare decisis non quieta movere.*

It is to be observed that the foregoing justifications of the petitioner dwelt on other matters such as the power of the Bureau of Food and Drugs (BFAD) and the two Supreme Court cases of *Misamis* and *Lim Hoa Ting*. Such anticipatory assertions can be explained by the fact that the petition at bar is the fourth identical case, in so far as the legal issues are concerned, to be filed with this Court. The first three cases were the **Joebon Marketing Corporation vs. Commissioner of Internal Revenue, CTA Case No.** 5001, promulgated on April 26, 1994 (see decision of the Court of Appeals in CA-G.R. SP No. 34559 promulgated on November 28, 1995 and the resolution of the Supreme Court in G.R. No. 125070 promulgated on July 17, 1996), **Eliezer Y. Lim vs. Commissioner of Internal Revenue, CTA Case No. 5208,** promulgated on

December 18, 1995 (still pending with the Court of Appeals under CA-G.R. SP No. 40565) and the **Ozamiz Manabay Industries, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5332** (still pending before this Court).

Continuing with the antecedents, petitioner allegedly received on May 21, 1996 the aforementioned letter denying his protest. Hence, this appeal.

At bar, petitioner repleads his stance *a quo*. On the other hand, respondent pointed out in her Answer that except for the amount of deficiency tax assessment and taxable period involved, the parties, subject matter, issues and questions of law of the instant case are the same as in the abovementioned CTA Case No. 5208.

A close scrutiny of the issues raised by the petitioner in the case at bar reveals, indeed, that they are similar with those contained in CTA Case No. 5208. These are:

> 1. Whether or not copra in its original state is considered agricultural food product;
>
> 2. Whether the BIR or the BFAD is the proper agency to determine the classification of copra as an agricultural food product or otherwise;
>
> 3. Whether or not petitioner and all other copra traders are afforded constitutional right to equal protection of laws in their sales of copra subjected to VAT; and,

> 4. Whether or not VAT Ruling No. 190-90 dated August 17, 1990 classifying copra as a non- agricultural food product is enforceable against petitioner despite the alleged lack of notice and publication requirements mandated by law.

After a careful scrutiny of the facts, the respective argumentation of the parties and applicable jurisprudence in point, We peremptorily rule in favor of the respondent.

On all the above issues, the Supreme Court has already ruled in **Joebon Marketing Corporation vs. Court of Appeals, The Commissioner of Internal Revenue, G.R. No. 125070, Resolution, dated July 17, 1996**, *supra*, in this wise:

a) as regards issues numbers 1 and 2

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> From the aforesaid decision of the Court of Tax Appeals, respondent Commissioner of Internal Revenue appealed to the Court of Appeals which reversed and set aside the CTA decision, pertinently ruling as follows:
>
> > As the government agency charged with the enforcement of tax laws, the opinion of the Commissioner of Internal Revenue, in the absence of any showing that it is plainly wrong, is entitled to great weight (Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary, 238 SCRA 63, 68 [1994]).
> >
> > The opinion rendered by the BFAD classifying copra as an agricultural

food product cannot be accorded persuasive effect as it is not the proper government agency tasked with the enforcement of tax laws, its primary function being the promotion of the health of the nation under the mandate of Republic Act No. 3720. (p. 44, Rollo)

We therefore uphold petitioner's right to assess private respondent for deficiency VAT for the year 1991, but we take exception to the imposition of surcharge, interest and penalty in addition to the tax proper.

Petitioner itself appears to have been uncertain whether or not to assess private respondent for deficiency VAT for 1991 in light of its prior rulings classifying copra as an agricultural food product. Such seeming uncertainty renders the assessment controversial, as in fact it was questioned before the CTA whose decision is the subject of the present petition, to justify private respondent's non-payment of surcharge, interest, and penalty arising from non-payment of the VAT for the year 1991.

Jurisprudence is replete with cases holding that where the deficiency assessment appears to be controversial, such as that subject of the instant case, the taxpayer should be held liable only for the tax proper and should not be held liable for the surcharge and interest (Cagayan Electric Power & Light Co., Inc. v. Commissioner of Internal Revenue, 138 SCRA 629, 631-632 [1985]; Advertising Associates, Inc. v. Commissioner of Internal Revenue, 133 SCRA 765, 770 [1984]). For the same, reason, we do not find the imposition of the amount of P1,000.00

> as and for compromise penalty warranted.
>
> WHEREFORE, the judgment appealed from is hereby reversed and set aside. The deficiency assessment for VAT issued to private respondent, Joebon Marketing Corporation, by petitioner, Commissioner of Internal Revenue, in the amount of P42,838.70 is upheld but the imposition, in addition thereto, of the 25% surcharge, interest and penalty should be, as it is hereby, deleted. No costs.
>
> SO ORDERED. (pp. 45-46, Rollo)

Hence, the present recourse. We find the petition devoid of merit as the issue raised by petitioner is now a settled matter.

Petitioner contends that the BFAD and not the BIR is the component 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 laws, *including rulings on the classification of articles for sales tax and similar purposes.*" (at p. 68). (italics supplied)

x-x-x

b) <u>with respect to issues numbers 3 and 4</u>

x-x-x

> ***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). (italics supplied)

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Our Supreme Court has definitively spoken. In fine, petitioner's contentions are herein found to be untenable. But with respect to his liability for surcharge, interest and penalty, petitioner is relieved therefrom following the above pronouncement. It is unfortunate, however, that petitioner failed to submit a copy of the questioned assessment notice. Without it, we have no way of knowing the tax proper in said notice. We deem it appropriate, thus, to leave such responsibility with the respondent.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit. **ACCORDINGLY**, Assessment Notice No. 100-11-93-000161, dated March 22, 1996, is hereby **MODIFIED** by the deletion thereunder of the surcharge, interest and penalty added to petitioner's tax deficiency proper.

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