REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENITO LEGARDA, INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 6617**

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 2 9 2004

x - x

DECISION

This case is a claim for refund/tax credit of the amount of P38,232.00 allegedly representing the value-added tax (VAT) remitted by petitioner to respondent in connection with its transaction with spouses Jacinto and Bernardina C. Vergara involving the sale of a parcel of land located in Sampaloc, Manila which allegedly was subsequently rescinded mutually by the parties.

The facts of the case as culled from the records and evidence are as follows:

Petitioner is a domestic corporation engaged in the business of selling and leasing of real properties in Sampaloc, Manila, with Tax Identification No. 000-439-375-000 and holds office at 1-A Sobriedad, Balic-Balic, Sampaloc, Manila.

On February 23, 2001, petitioner entered into a Contract to Sell *(Annex "A", Petition for Review)* with Spouses Jacinto and Bernardina Vergara for the sale of a parcel of land consisting of 106.20 square meters, situated at Lot 9-p, Block RP-16, Dos Castillas Street, Sampaloc, Manila and covered by Transfer Certificate of Title No. 252472 *(Exhibit "H-2," Case Records).*

The said contract stipulated that Sps. Vergara would pay the total amount of P1,911,600.00 plus 10% value-added tax, on installment basis, payable on or before the 23rd day of the month beginning March 2001 until fully paid and that they will give a down payment of P382,320.00 plus the value-added tax of P38,232.00.

Pursuant to the above-mentioned contract, the Vergara spouses gave petitioner their down payment of P382,320.00 and the value-added tax of P38,232.00 *(Annex "B", Petition for Review)*.

On March 22, 2001, petitioner paid to Equitable PCI Bank – España Branch its value-added taxes for the month of February 2001 amounting to P56,762.32 *(Annex "C" and Annex "D", Petition for Review)*. The VAT remitted by petitioner to the BIR for the month of February 2001 included the P38,232 VAT due from the transaction between petitioner and Sps. Vergara *(Annex "E", Petition for Review)*.

However, due to the refusal of the occupants of the subject lot to vacate the same, the Vergara spouses requested petitioner to cancel their contract and to refund the amount of P420,000.00, representing their down payment of P382,320.00 and the corresponding 10% VAT therefor. *(Annex "F", Petition for Review)*.

Complying with their request, the petitioner cancelled the Contract to Sell and refunded to Sps. Vergara the amount of P382,320.00 *(Annex "G" of Petition for Review)*. However, it could not return the P38,232.00 VAT since the same had already been remitted to the BIR.

On August 14, 2002, petitioner filed a letter-claim dated August 12, 2002 with the BIR *(Annex "H", Petition for Review)*, asking for a tax refund and/or credit in the amount of P38,232.00, representing the value-added tax it remitted by reason of its transaction with Sps. Vergara. On August 20, 2002, the Revenue District Office No. 32 BIR Revenue Region No. 6 sent petitioner its First Notice, requesting the latter to submit other documentary requirements necessary in evaluating the claim *(Annex "I", Petition for Review).*

On September 9, 2002, petitioner filed its Application for Tax Credits/Refunds with the BIR - Revenue District Office No. 32 *(Exhibit "J", Case Records).*

Thereafter, in compliance with the BIR's First Notice, on January 10, 2003, petitioner submitted to the BIR the other necessary/supporting documents relative to its request for a tax refund and/or credit *(Exhibit "K", Case Records).*

Petitioner initially waited for the action to be taken by the respondent on its claim for tax refund. However, inasmuch as the two (2) - year prescriptive period required by the 1997 Tax Code was about to lapse, the petitioner filed the instant petition with this court on March 21, 2003.

In his Answer filed on April 28, 2003, respondent asserted the following Special and Affirmative Defenses, to wit:

> "7. Taxes are presumed to have been collected in accordance with law. Hence, petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected;
>
> 8. Petitioner must show that it has complied with the provisions of Section 106 of the Tax Code, as implemented by Section 16 of Revenue Regulations No.5-87;
>
> 9. Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation (**Manila Electric Co. vs. Commissioner of Internal Revenue**);
>
> 10. The claim for tax refund has no legal basis since the rescission of the Contract to Sell was not in accordance with the

provisions of Article 1358 (1) of the Civil Code of the Philippines, quoted hereunder:

> Article 1358. The following must appear in a public document:
>
> (1) Acts and contracts which have for their object the creation, transmission, modification or extinguishments of real rights over immovable property; sales of real property or of an interest therein are governed by articles 1403, No. 2 and 1405;
>
> (2) The cession, repudiation or renunciation of hereditary rights or those of the conjugal partnership of gains;
>
> (3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person;
>
> (4) The cession of actions or rights proceeding from an act appearing in a public document.
>
> The requirement of a public document in Article 1358 is not for the validity of the instrument but for its efficacy. For greater efficacy of the contract, convenience of the parties and to bind third parties, the contracting parties should execute the necessary document to properly rescind the contract to sell real property.

In relation to said Article 1358, it is noteworthy to quote hereunder the provisions of Section 1403 (2), to wit:

> Article 1403. The following contracts are unenforceable, unless they are ratified:
>
> (2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed and by the party charged, or his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

(a) An agreement that by its terms is not to be performed within a year from the making thereof;

(b) A special promise to answer for the debt, default or miscarriage of another;

(c) An agreement made in consideration of marriage, other than a mutual promise to marry;

(d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidence, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

(f) A representation as to the credit of a third person.

11. The Contract to Sell is still valid and subsisting as there was no effective rescission thereof."

During the course of the trial, the parties decided to stipulate the issues to be resolved by the court, namely:

1. Whether or not petitioner is entitled to a Tax Refund and/or Tax Credit in the amount of P38,232.00, representing the Value-Added Tax due from the transaction between Petitioner and Spouses Vergara, which transaction was subsequently rescinded by the said parties.

2. Whether or not the rescission of the Contract to Sell was in accordance with the provisions of Article 1358 (1) of the Civil Code of the Philippines.

(*Joint Stipulation of Facts and Issues, page 61, CTA Records*)

After considering the attending facts, the evidence adduced and the applicable laws and jurisprudence, the court finds for the petitioner.

The court finds the following supporting facts to have sufficiently established and uncontroverted:

The petitioner entered into a Contract to Sell with Spouses Vergara (*Exhibit "A", Case Records*), and thereafter, received a down payment of P382,320.00, plus the value added tax of 38,232.00 therefor (*Exhibit "B", Case Records*). On March 22, 2001, the aforestated value-added tax was duly remitted and paid to the BIR (*Exhibits "C", "D", and "E", Case Records*). However, since the occupants of the lot subject of the sales agreement refused to vacate and surrender the possession thereof unto Spouses Vergara, the latter requested petitioner to rescind their Contract to Sell (*Exhibit "F", Case Records*). Petitioner granted to the aforesaid request and rescinded the contract.

Considering that rescission creates the obligation to return the object of the contract (**Sps. Mariano Z. Velarde and Avelina D. Velarde vs. Court of Appeals, et. al.,** *G.R. No. 108346, July 11, 2001*, citing **Co vs. Court of Appeals**, *312 SCRA 528, August 17, 1999* and **Vitug, Compendium of Civil Law and Jurisprudence,** *1993 Revised Edition, page 556*), the petitioner refunded the down payment of P382,320.00 to Spouses Vergara (*Exhibit "G", Case Records*). However, petitioner could no longer refund the value-added tax of P38,232.00 for the simple reason that the same was already remitted and paid to the BIR.

Noteworthy is the fact that aside from the duty of mutual restitution, another necessary effect of rescission is the total abrogation of the obligations arising from the contract. As explained by the Supreme Court in the case of **Ocampo vs. Court of Appeals**, (*233 SCRA 551, June 30, 1994*):

> "**To rescind is to declare a contract void in its inception and put an end to it as though it never were.** It is not merely to terminate it and release the parties from further obligations to each other but abrogate it from the beginning **and restore parties to relative positions which they would have occupied had no contract ever been made.**" *(Emphasis supplied)*

Moreover, the revenue bureau issued Revenue Memorandum and Regulation that although cover the issues of Documentary Stamp Tax (DST) and Capital Gains Tax (CGT) render principles analogous to the matter before this court. In **BIR Ruling No. 009-95**, dated January 16, 1995, the BIR explained that inasmuch as the sale did not materialize due to the failure of the vendee to pay the consideration of said sale transaction, it is not subject to CGT nor to DST. A similar declaration was provided in **Revenue Regulations No. 4-99, Section 3 (1)**, dated March 9, 1999, that, "In case the mortgagor exercise his right of redemption within one year from the issuance of the certificate of sale, no capital gains tax shall be imposed because no capital gains has been derived by the mortgagor and no sale or transfer of real property was realized".

Following the afore-quoted jurisprudence, it can be said that with the rescission of the Contract to Sell, petitioner and Spouses Vergara were returned to their previous positions prior to the transaction, as if they never entered into the said agreement. Thus, petitioner has no obligation to remit the value added tax of P38,232.00 to the BIR, and if payment has been made, the same must be returned.

As correctly explained by the petitioner, the remittance of the above-mentioned amount to the BIR constitutes erroneous payment, and the respondent has the obligation to return the same to the petitioner. This finds support in **Article 2154 of the New Civil Code of the Philippines**, which states that:

> "If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises."

The High Tribunal sufficiently explained its *raison d'etre* in the case of **BPI-Family Savings Bank, Inc. vs. Court of Appeals, et. al**., (*G.R. No. 122480, April 12, 2000*):

> **"If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments.** When it is undisputed that a taxpayer is entitled to a refund, the State should not invoke technicalities to keep money not belonging to it. **No one, not even the State should enrich oneself at the expense of another."** *(Emphasis supplied)*

Hence, the respondent's refusal to grant petitioner's claim for tax refund and/or credit is unjustified.

Proceeding now to the second issue.

Admittedly, the rescission of the parties' Contract to Sell was not reduced into writing. However, such fact could not be employed in claiming the cancellation of the said contract invalid or without legal effect.

It is noteworthy that Article 1358 of the Civil Code itself explains that formalities required under Article 1358 of the Civil Code are merely intended for greater efficacy or for the convenience of the parties. And inasmuch as the rescission of the parties' Contract to Sell brought no harm to the interest of the government, the BIR cannot resort to technicalities just to escape its obligation to return to petitioner and its client, Spouse Vergara the amount to which they are clearly entitled.

The Supreme Court aptly provided this judicial guideline in resolving matters such as the one before us in the afore-cited case of **BPI-Family Savings Bank, Inc. vs. Court of Appeals, et. al.**:

> "Finally, respondents argue that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the claimant. Under the facts of this case, we hold that petitioner has established its claim. Petitioner may have failed to strictly comply with the rules of procedure; it may have even been negligent. These circumstances, however, should not compel the Court to disregard this cold, undisputed fact: that petitioner suffered a net loss in 1990, and that it could not have applied the amount claimed as tax credits.
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> **Substantial justice, equity and fair play are on the side of the petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enriching itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payment of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.**" *(Emphasis supplied)*

WHEREFORE, petitioner's claim for tax refund or issuance of tax credit certificate is hereby **GRANTED** and respondent Commissioner of Internal Revenue is likewise **ORDERED** to **REFUND** or **ISSUE** the tax credit certificate for the claimed amount of P38,232.00.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

We concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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 Justice