Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

SEALED AIR (PHILIPPINES), INC.,
Petitioner,

-versus-

THE CITY OF LAS PIÑAS AND MR. RIZAL Y. DEL ROSARIO, in His capacity as Treasurer of the City of Las Piñas,
Respondents.

CTA A.C. No 18

Members:
ACOSTA, P.J.
BAUTISTA, and
CASANOVA, JJ.

Promulgated:
NOV 13 2006, 10:55 Am

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DECISION

Casanova, J.

This is a Petition for Review in accordance with Section 9 of R.A. # 9282 assailing the Decision of the Regional Trial Court (RTC) of Las Piñas City, Branch 255. The RTC dismissed the Appeal filed by the petitioner (pursuant to Section 195 of the Local Government Code) against the City Treasurer of the City of Las Piñas, Mr. Rizal Y. Del Rosario, who denied the protest earlier filed by the petitioner. The protest arose from an assessment made by the respondent City Treasurer for alleged local tax deficiency following a reclassification of petitioner from "wholesaler" to "retailer".

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

Petitioner Sealed Air (Philippines) Inc. (formerly Cryovac Philippines Inc.), is a domestic corporation with principal office at Don Mariano Lim Industrial Complex, Alabang-Zapote Road, Las Piñas City.

Respondent City of Las Piñas is the local government unit exercising local tax jurisdiction over the petitioner. Respondent Rizal Y. Del Rosario is the Treasurer of Las Piñas City and is being impleaded in this Petition for Review as such.

On August 4, 2003, petitioner received a letter dated August 1, 2003 from the respondent City Treasurer requiring the former to settle the assessment made on the alleged local business tax deficiencies in the total amount of P5,499,323.25, inclusive of penalties and interests, covering the taxable period 1999-2003.

Petitioner received a follow-up assessment letter dated September 8, 2003 on September 9, 2003. Considering that the first assessment letter sent by the respondent City Treasurer was received by the petitioner on August 4, 2003, the latter had until October 3, 2003 within which to file its written protest to contest the said assessment pursuant to Section 195 of the LGC.

It appears from the respondent City Treasurer's letters that the assessment made was based on the petitioner's alleged failure to pay the correct amount of business taxes during the covered period. Notwithstanding the fact that petitioner was regularly paying the relevant local business taxes, a discrepancy arose due to the alleged erroneous classification of the petitioner.

According to the City Treasurer, the business tax classification of the petitioner should be that of "retailer" which is being taxed under Article VIII, Section 31 (d) of the Revenue Code of Las Piñas at the rate of One Percent (1%) on gross receipts exceeding P400,000.00. Petitioner was classified as a "wholesaler" prior to the issuance of the protested assessment and the tax re-classification had given rise to the alleged tax deficiencies of the petitioner.

In view of petitioner's assessment for local business tax deficiency, Sealed Air disputed the said assessment as the same is without any legal or factual basis- it being based on the wrongful assumption on the nature and kind of petitioner's business activities. Thus, petitioner filed its letter-protest dated September 24, 2003 with the respondent City Treasurer on September 30, 2003. Without admitting the validity of the subject assessment, petitioner showed that the deficiency tax due should be P3,625,078.25 based on a patent summation error committed in computing the alleged tax due.

In support of its protest, petitioner averred that it is a wholesaler and not a retailer, as in fact not allowed by law to engage in retail trade business and it has never been involved in any transaction involving retail trade. Also, its sales activities were purely made on a wholesale basis. Thus, as far as the petitioner was concerned, the tax deficiency assessment for local business tax covering the period 2000-2003 should be withdrawn. On the tax deficiency for 1999, the petitioner argued that the City of Las Piñas has no jurisdiction to collect taxes on the gross income generated by Sealed Air in 1998 considering that it has started business operations in Las Piñas only in January 1999.

However, the respondent City Treasurer was not convinced with the petitioner's arguments and proceeded to deny the protest. Petitioner filed an Appeal with the RTC of Las Piñas, entitled "*Cryovac Philippines, Inc. vs. THE CITY OF LAS PIÑAS and MR. RIZAL Y. DEL ROSARIO, in his capacity as Treasurer of the City of Las Piñas.*" The said case was raffled to Branch 255 and docketed as Civil Case No. 03-0269.

After trial on the merits, a Decision dated June 28, 2005 was promulgated by Honorable Presiding Judge Raul Bautista Villanueva, which is quoted hereunder for reference, to wit:

> "**WHEREFORE**, premises considered, judgment is hereby rendered as follows:
>
> 1. **DISMISSING** the Appeal dated 18 November 2003 filed by the appellant Cryovac Philippines, Inc., for utter lack of merit;

2. **DECLARING** the appellant Cryovac as a retailer and subject to business taxes under Sec. 31 (d) of the Revenue Code of the City of Las Piñas;

3. **FINDING** the said appellant liable for tax deficiencies due to the appellees City of Las Piñas and City Treasurer Rizal del Rosario and to immediately pay the same in an amount to be re-computed covering the period 1999 up to 2003; and

4. **REQUIRING** the above appellant to subsequently pay business taxes due from it as a "retailer", not as a "distributor".

No pronouncement as to costs.

SO OREDERED."

Petitioner filed a Motion for Reconsideration dated July 29, 2005 seeking reconsideration of the above-quoted Decision. On October 6, 2005, the court *a quo* denied the said motion for lack of merit.

Hence, this Petition for Review filed with the Court of Tax Appeals docketed as A.C. Case No. 18 entitled, "*Cryovac Philippines, Inc. vs. The City of Las Piñas and Mr. Rizal Y. Del Rosario, in his capacity as Treasurer of the City of Las Piñas*", wherein petitioner raised the sole issue:

WHETHER OR NOT PETITIONER SHOULD BE CLASSIFIED AS RETAILER SINCE THE PETITIONER IS IN TRUTH AND IN FACT A WHOLESALER.

On April 17, 2006, petitioner-Cryovac Philippines, Inc. filed a "Motion for Substitution of Parties" informing the Court that it had already transferred its entire assets and liabilities to Sealed Air Philippines, Inc. in accordance with the filing of the Articles of Plan of Merger with the Securities and Exchange Commission (SEC). The SEC has approved the said merger as per the Certificate of Filing of the Articles and Plan of Merger dated March 28, 2006. During the hearing for the Motion of Substitution of Parties, respondents' counsels posted no objection on the said motion. In a Resolution promulgated May 11, 2006, the Court granted the Motion for Substitution of Parties.

Pertinent to the resolution of this case are the respective definitions of the words "retailer" and "wholesaler", as stated in Section 131, paragraphs (w) and (z) of the Local Government Code of 1991, herein quoted as follows:

> "**Sec. 131. Definition of Terms**. – When used in this Title, the term:
>
> xxx xxx xxx
>
> (w) *'Retail' means a sale where the purchaser buys the commodity for his own consumption, irrespective of the quantity of the commodity sold;*
>
> xxx xxx xxx
>
> (z) *'Wholesale' means a sale where the purchaser buys or imports the commodities for resale to persons other than the end user regardless of the quantity of the transaction.*"

Petitioner alleges that it is not engaged in retail selling thus, should not be taxed as such by the City Government of Las Piñas. In support of its allegation, petitioner stated Section 4 of Republic Act 1180, which defines retail business, as follows:

> "Sec. 4. As used in this Act, the term 'retail business' shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption, but shall not include:
>
> (a) a manufacturer, processor, laborer or worker selling to the general public the products manufactured, processed or produced by him if his capital does not exceed five thousand pesos.
> (b) a farmer or agriculturist selling the product of his farm.
> (c) a manufacturer or processor selling to industrial and commercial users or consumers who use the products bought by them to render service to the general public and/or to produce or manufacture goods who are in turn sold by them.
> (d) a hotel-owner or keeper operating a restaurant, irrespective of the amount of capital, provided that the restaurant is necessarily included in, or incidental to, the hotel business." (As amended by P.D. No.714, May 28, 1975)

Under the above-provision, petitioner argues that the following elements should be present before a sale is considered as retail:

1. The seller should be habitually engaged in selling;
2. The sale must be direct to the general public; and
3. The object of the sale is limited to merchandise, commodities or goods for consumption.

In the present case, petitioner argues that while it is habitually engaged in the selling of packaging materials, the same are not sold to the general public and the classification and/or nature of these products point out that they are not consumption foods.

The City Treasurer of Las Piñas thinks otherwise. Respondent cited the case of *Buenaventura vs. Collector of Internal Revenue (G.R. No. 22175, November 13, 1924)*, to wit: "As may be seen, the distinguishing characteristic which the law takes into account in differentiating between a wholesaler and retailer is the characteristics or nature of the sale, that is whether or not it is for resale."

Respondent contends that "*if a sale is made to a consumer or end-user for his own personal consumption and not for the purpose of resale, the sale should be classified as retail, but if the sale is made for the purpose of reselling, the same must be considered to have been made at wholesale,*" (*Par. 24, Respondent's Memorandum*)

As stated above, the court *a quo* rendered the assailed Decision on June 28, 2006, finding for the respondents. In disposing the case against the petitioner, the lower court rationated:

> "xxx xxx xxx
>
> For one, the Court is convinced that the appellant is a retailer, not a wholesaler. Stated differently, the appellant is engaged in retail selling not wholesale selling of its products or merchandise. Indeed, there is showing that the products or merchandise of the appellant are being sold to its customers for their own consumption. Contrary to the claim of the

> appellant, the "packaging materials and equipments which are designed to meet the packaging requirements of many food and food distributor contributions catering to the general public" are actually being sold to end-users.
>
> It must be noted that even when the clients of the appellant include food companies like xxx, they are not really re-selling the packaging materials acquired or purchased from the appellant. Instead, the said merchandises of the appellant are being used to package foods being sold by their above customers. As sufficiently argued by the appellees, the Court agrees that the products or commodities being sold by the appellant were purchased by the latter's clients "for (their) own consumption and not for the purpose of reselling the same products or commodities purchased from Cryovac. Hence, they are engage(d) in retailing regardless of the quantity of the commodities being sold.
>
> Xxx xxx xxx."
> (Page 11, Decision. RTC Branch 255, Las Piñas City)

After a careful and thorough perusal, evaluation and study of the instant Petition for Review, We find the arguments raised by the petitioner meritorious.

We do not subscribe to respondents' contention that the difference between "retail" and "wholesale" is whether or not the sales are for resale, citing the case of *Buenaventura* as its legal basis. To determine a sale as "retail" just because such is made to a consumer or end-user for his own personal consumption and not for the purpose of resale, or as a "wholesale" because such is made for the purpose of reselling, is not enough. In addition, one has to consider the nature/characteristics of the products that would indicate that they are commodities or goods for consumption.

The Highest Tribunal, in the case of *Marsman & Co., Inc. vs First Coconut Central Co., Inc., No. L-39841, June 20, 1988*, had the occasion to discuss the elements of a "retail" sale. In the said case, the Supreme Court held:

> "For a sale to be considered as retail, the following elements should concur:
>
> (1) The seller should be habitually engaged in selling;
> (2) The sale must be direct to the general public; and

> (3) The object of the sale is limited to merchandise, commodities or goods for consumption.
>
> Xxx. Consumer goods may be defined as 'goods which are used or bought for use primarily for personal, family or household purposes. Such goods are not intended for resale or further use in the production of other products'. In other words, consumer goods are goods which by their very nature are ready for consumption.
>
> Producer goods have been defined as 'goods (as tools and raw material) that are factors in the production of other goods and that satisfy wants only indirectly - called also auxillary goods, instrumental goods, intermediate goods.' They are by their very nature not sold to the public for consumption. As such, the sale of producer goods used for industry or business is classified as a wholesale transaction. Wholesaling has been defined as 'selling to retailers or jobbers rather than to consumers or a sale in large quantity to one who intends to resell'."

As correctly pointed out by the petitioner, it is habitually engaged in the selling of packaging materials. However, its products are not sold to the general public and the classification and/or nature of these products would show that they are not consumption goods.

Petitioner sells its packaging materials to a limited fixed clientele and they were not intended for personal, family and household use. In support of its contention, petitioner submitted to the court a quo a computer generated list of its customers and their respective addresses as of September 25, 2003 (*Exhibits "G", "G-1" to "G-5"*). As can be seen in the said list of customers, petitioner has a limited and fixed clientele which are manufacturing and/or industrial companies of food products. These are ATU's Meat Products, Foodsphere Inc., Jollibee Food Corporation, JAKA Foods, King Sue Ham & Sausage Co. Inc., Monterey Farms, The Purefoods-Hormel Co. Inc., Pampanga's Best Inc., Swift Foods Inc., San Miguel Corporation, to name some. Indeed, these companies purchased the packaging materials from petitioner as containers of their products when sold to the general public.

In the assailed Decision, the lower court made the following finding with regard on the printing of the company's name on the packaging materials thus, indicating that they will not be resold, to wit:

> ". . . Based on the evidence presented by the appellant Cryovac, the packaging materials ordered from it and delivered to its clients are not being resold. The samples they submitted even showed that it is their clients who actually make use of the same since what the appellant delivers bears already the printed names of its clients. In fact, there is nothing left to be done other than to put inside the food products for which the packaging materials were ordered from the appellant by its various clients. Clearly, the sale of the packaging materials being done by the appellant Cryovac to its above-mentioned clients, to name a few, is not for resale, thereby making herein appellant a retailer." (*Page 12, Decision*)

We do not agree.

The company names printed on the packaging materials should not be used to determine whether or not the same would be resold. The written prints on the packaging materials are results of contractual negotiations between the parties whereby both sides are obliged to comply with their respective obligations. These also indicate the designation of the packaging materials when they are delivered to a particular food manufacturing company.

Further, it is incorrect to state that "there is nothing left to be done other than to put inside the food products for which the packaging materials were ordered from the petitioner its various clients." These packaging materials are placed in an assembly line where the food products are placed. Subsequently, the packaging materials are "vacuum sealed" to retain the freshness of the food products placed therein. The packaged foods undergo quality control inspection before selling them to the general public. Thus, it is clear from the foregoing that petitioner's packaging materials are not sold to end-users/consumers. They form part in the manufacturing process of food products being sold to the general public.

With regard to the third element, We find that the packaging materials being sold by the petitioner do not fall within the definition of "consumer goods" as enunciated in the above-cited case of *Marsman & Co.* The nature and/or classification of the sale of the packaging materials to the food manufacturing companies would show that they were not intended for personal, household and family use.

As earlier discussed, they are elements utilized in the production and manufacturing process of the food products, and as such, they are considered as intermediate or auxillary goods. They do not pertain to final and end use which is the direct satisfaction of human personal wants and needs. Although not raw materials in the production food and non-food products, the packaging materials are essential tools in the production and manufacturing of food products being sold to the general public.

In the sale of food products to the end-users/consumers, manufacturing and industrial companies incorporate and/or add the cost of all raw materials and expenses incurred in order to produce the products. Necessarily, petitioner's clients included the cost of the packaging materials in their selling price so as to compensate the cost or expense they incurred in the production and manufacturing of their food products.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **GRANTED**. Accordingly, the 28 June 2005 Decision and 6 October 2005 Order both issued by the Hon. Raul Bautista Villanueva of RTC Br. 255, Las Piñas City, are hereby **SET ASIDE**. In addition, the 01 August 2003 and 08 September 2003 assessments issued by the respondent City Treasurer of Las Piñas are hereby **DECLARED WITHOUT FORCE and EFFECT**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice